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I N D E X

STRICTLY PRIVATE & CONFIDENTIAL 26th June 1992

DAC REPORT FOR MEETING ON 3RD JULY 1992

There are currently 14 outstanding cases.

All of the other claims have now been settled (although not necessarily the costs thereof).

Seven cases are listed for trial before Mr. Justice Alliott commencing 16th October and short summaries of the position in relation to these seven cases are attached.

There are a further seven cases where indications were given during the informal procedures that the Health Authorities were prepared to make proposals, albeit not necessarily on a full liability basis, but where settlements have not yet been successfully negotiated. In six of these cases, payments into Court have been made, and the seventh JKP 116, is complicated by an unrelated medical negligence case and will have to be considered separately. No pleadings have been served in these seven cases, which theoretically will have to proceed if they remain unresolved.

We also attach an updated status report on all cases so the extent and levels of settlements can be reviewed.

Turning to the seven cases listed for trial in October, we should endeavour to settle two of them, namely SI 12 and JKP 35. One case, NV004, cannot be assessed on liability, because there is am imminent amendment to the case which could materially effect the position and will require further expert evidence. The remaining four cases are ones which the Health Authorities ought to win. JKP 107 and JKP 109 are very strong for the Health Authorities, JKP 43 and DMS 99 arguably somewhat weaker.

Estimates with regard to ongoing costs were given in our

letter of 23rd April. Some reduction can be expected on the basis that the number of cases that we anticipate will need to be tried is now down to four or five.

We appreciate that the costs of defending these cases are disproportionate to the likely damages that will be awarded or settlements that might be capable of being achieved. Since the announcement of the Government settlement of the main action in December 1990, we have been attempting to resolve the medical negligence cases, first through the informal procedures of reviews conducted by Professor Hardisty which involved categorising cases into "No negligence", "Doubtful" and "Negligence", and settling the second two categories, and thereafter by the reappraisal of each ongoing case in detail, once further information and experts reports were obtained.

Decisions need to be taken as to whether the remaining cases should be dealt with strictly on their merits, which may involve four or five being tried, or whether for other reasons, be they economic or political, attempts should now be made to dispose of these cases. It may be said that to settle these cases would be "unfair" to other cases which were treated in a different fashion but nevertheless settlement could be justified on the basis of economics and certainty. There may be difficulty with the treating clinician in the case of DMS 99 (and perhaps JKP 109) if the settlement route was adopted.

It is difficult to given an accurate figure of damages that would be awarded, on a full liability basis, in the outstanding cases at this stage. Schedules of Special Damages and Future Loss do not have to be served by the Plaintiffs until 31st July. The standard general damage figure in the negotiated settlements (£60,000 for adults, £40,000 for children), have not been agreed for these cases, and there is a risk that the Judge will award a greater sum. As a reserve figure we would suggest an overal sum for General Damages and Special Damges of £100,000 be reserved for each of the

childrens' cases that go to trial (two) and £150,000 for the adult cases (three). Although these figures are higher than almost all of the negotiated settlements, we recognise that damages tend to be higher at trial than by way of settlement.

There is a very substantial amount of work that has to be done between now and the trial. An Interlocutory Timetable is attached. If a decision is taken at this meeting, in principle, to settle these cases, in the interest of costs, it would be wise to communicate this decision to our opponents as early as possible.

SJP

26th June 1992

STATUS REPORT ON

MEDICAL NEGLIGENCE CASES

Part A - Cases Settled

Name of Case	Amount	Costs settled (Y/N)
LPN 69	£ 55,000	Y
LPN 46	£ 20,000	Y
LPN 122	£ 15,000	Y
LPN 35	£ 60,000	Y
LPN 25	£ 85,000	Y
LPN 26	£ 50,000	Y
LPN 71	£ 4,500	Y
LPN 181	£ 40,000	Y
TEVB 001	£ 15,000	N
WB 001	£ 5,000	N
AMCG 027	£ 53,000	N
MK 021	£ 68,000	Y
AGP 001	£ 27,000	N
MK 001	£ 15,000	Y
ME with HJJJ 030	£ 36,500	N
SI 025	£ 57,500	N
SI 015	£ 10,000	N
WB 002	£ 89,000	N
SPN 20	£ 65,000	Y
AMCG 21	£ 76,000	N
HS 3 (including £10,000 from Dept of Health)	£ 40,000	N
LPN 73	£100,000	Y
M&M 8 (including £5,000 from Dept of Health)	£ 15,000	Y
M&M 9 (including £3,350 from Dept of Health)	£ 20,000	Y
LC 22	£130,000	N
MPN 106	£ 48,000	Y
LPN 84 (including £4,500 from Dept of Health)	£ 20,500	N
JKP 19	£ 9,000	N
JKP 86	0	Y
JKP 03	0	Y
JKP 14	0	N
JKP 37	£ 2,500	N
JKP 33	£ 80,000	N

TOTAL 33

Part B - Cases which have been withdrawn

JKP 046
JKP 144
JKP 034
JKP 104
JKP 131
JKP 105
JKP 139
SI 21

TOTAL 8

Part C - Offers Outstanding

Name of Case	Offer	Counter Proposal
FF 004	£112,500 (paid into Court)	None
FF 002	£25,000 "	
JKP 47	£20,000 "	
JKP 92	£42,000 "	
JKP 27	£30,000 "	
JKP 28	£40,000 "	

TOTAL 6

Part D - Cases where Health Authority Defendants have indicated an intention to make proposals

Name of Cases

JKP 116

TOTAL 1

PART E - Cases which are listed for trial in October 1992

Name of Case

NV 004
SI 012 (£40,600 paid into Court
JKP 107
DMS 99
JKP 109
JKP 43
JKP 35 (instructions to settle obtained)

TOTAL 7

DAC SUMMARY REPORT - DMS 99

Adult haemophiliac born GRO-A 1938. Severe haemophiliac. More work has been done on this case than any other, largely because the treating physician, Dr. Jones, is taking a considerable personal interest in its outcome and feels professionally "challenged".

The case relates to a hip replacement operation performed in October 1984. It is argued that this was elective surgery and that the operation should have been put off until heat-treated Factor VIII was available. Professor Bloom and Dr. Ludlam (and Dr. Jones himself) have all prepared detailed reports justifying the treatment given to the Plaintiff. There is no doubt that he was infected as a result of the treatment given post-operatively. NHS Factor VIII was specifically ordered for the operation which was successfully performed but shortly thereafter he developed an inhibitor. This was life threatening and required Dr. Jones to take immediate action. Dr. Jones gave him commercial Factor VIII and several days thereafter Porcine (pig) Factor VIII. The Porcine material rapidly restored Factor VIII levels and the Plaintiff recovered.

The allegations are that the Plaintiff ought to have been given Porcine Factor VIII immediately the inhibitor developed, which would have avoided any infection. A new, alternative allegation, is that heat-treated Factor VIII could have been obtained on a named patient basis. All of these allegations are countered in considerable detail by Dr. Jones, and our experts, but the Plaintiff's expert, Dr. Savidge, in a report which is written in somewhat excessive terms, calls Dr. Jones' management of the Plaintiff post-operatively as one of "therapeutic desperation" and below a level of reasonable competence of any Reference Centre Director. Given the fact that both Professor Bloom and Dr. Ludlam are Reference Centre Directors, and they do not criticize the treatment, it is difficult to see how this argument will succeed on the Bolam

test.

Conclusion

There is no doubt that an enormous amount of money is being spent on this case. The Plaintiff is not legally aided (the only one). Even assuming we win, it may be that the Health Authorities would not wish to enforce an order for costs against the Plaintiff personally, and hence the economics of this case would justify a commercial settlement if one were available and if Dr. Jones could be persuaded. On the merits of the case however, the prospects of success are good.

DAC SUMMARY REPORT - JKP 107

Child born GRO-A 1977. Severe haemophiliac. From December 1977 until June 1983 he received treatment on numerous occasions, practically all with commercial Factor VIII concentrate. Upon receipt of the HCDO letter of June 1983 recommending a change to cryoprecipitate and/or NHS Factor VIII concentrate where possible for children, this recommendation was immediately followed. A blood sample taken on 31st October 1984 has been retrospectively tested as HIV positive. There was one treatment on 8th October 1984 with commercial Factor VIII but it is unlikely that this particular dose resulted in seroconversion detected in the sample three weeks later. We have not received the Plaintiff's expert report in this case and it seems they have not got one yet. Both Professor Bloom and Dr. Ludlam have concluded that the Plaintiff was almost certainly infected prior to June 1983 and the treatment given was not negligent. Dr. Mortimer of the PHLS has confirmed the view that seroconversion was before June 1983 on the balance of probabilities.

Conclusion

This is a case, very similar to many others throughout of the country, where a child was treated with commercial Factor VIII prior to June 1983 and has seroconverted as a result. There is nothing unusual about this case and it is one where it is considered unlikely that the Plaintiff will succeed. The Plaintiff has recently changed his solicitors and does not have any expert evidence at all. Orders have been recently made by the Judge regarding service. There must remain a question mark as to whether or not it will proceed but it is still listed for trial.

DHSC0043164_002_0016

DAC SUMMARY REPORT - SI 12

Haemophiliac born GRO-A 1958. Treated in Southampton. There are considerable evidential difficulties in this case. The parties cannot even agree as to whether the Plaintiff was a moderate or a mild haemophiliac, or the date of seroconversion. The claim has recently undertaken a change of direction by way of an Amended Statement of Claim alleging that there was negligence in the treatment of the Plaintiff who had a tooth extracted in September 1984 without any Factor VIII cover. When he bled post-extraction, he was given a substantial amount of NHS Factor VIII, but from a batch now known to be infected. The Plaintiff also had an operation in October 1984 which was covered by a mixture of commercial and NHS Factor VIII concentrate. It is argued by the Plaintiff that this was a non-essential operation. Our own expert considers that it would have been wise to have ensured that there was sufficient supplies of NHS Factor VIII concentrate for this operation, although does not consider it negligent not to have done so.

Causation arguments are also difficult because the Plaintiff received a substantial amount of commercial Factor VIII concentrate in 1979 through 1981. He then received the infected batch of NHS Factor VIII in September 1984, and commercial Factor VIII in October 1984. There was an ambivalent test result on a blood sample in December 1984. Dr. Mortimer of the PHLS has advised that he considers it probable that the December 1984 test was positive and if he is correct on that, then on the balance of probabilities he was infected before September 1984. In the absence of a reliable result on the specimen of December 1984 however, infection due to treatment in September and October 1984 cannot be ruled out. We are certainly vulnerable in respect of the September and October 1984 treatment. On the basis of the evidence, we have received instructions to try to settle the case on a 50% basis and a recent payment into Court has been made.

Conclusion

We will be in difficulty on negligence. There are good arguments on causation. We should try to dispose of this case without any trial.

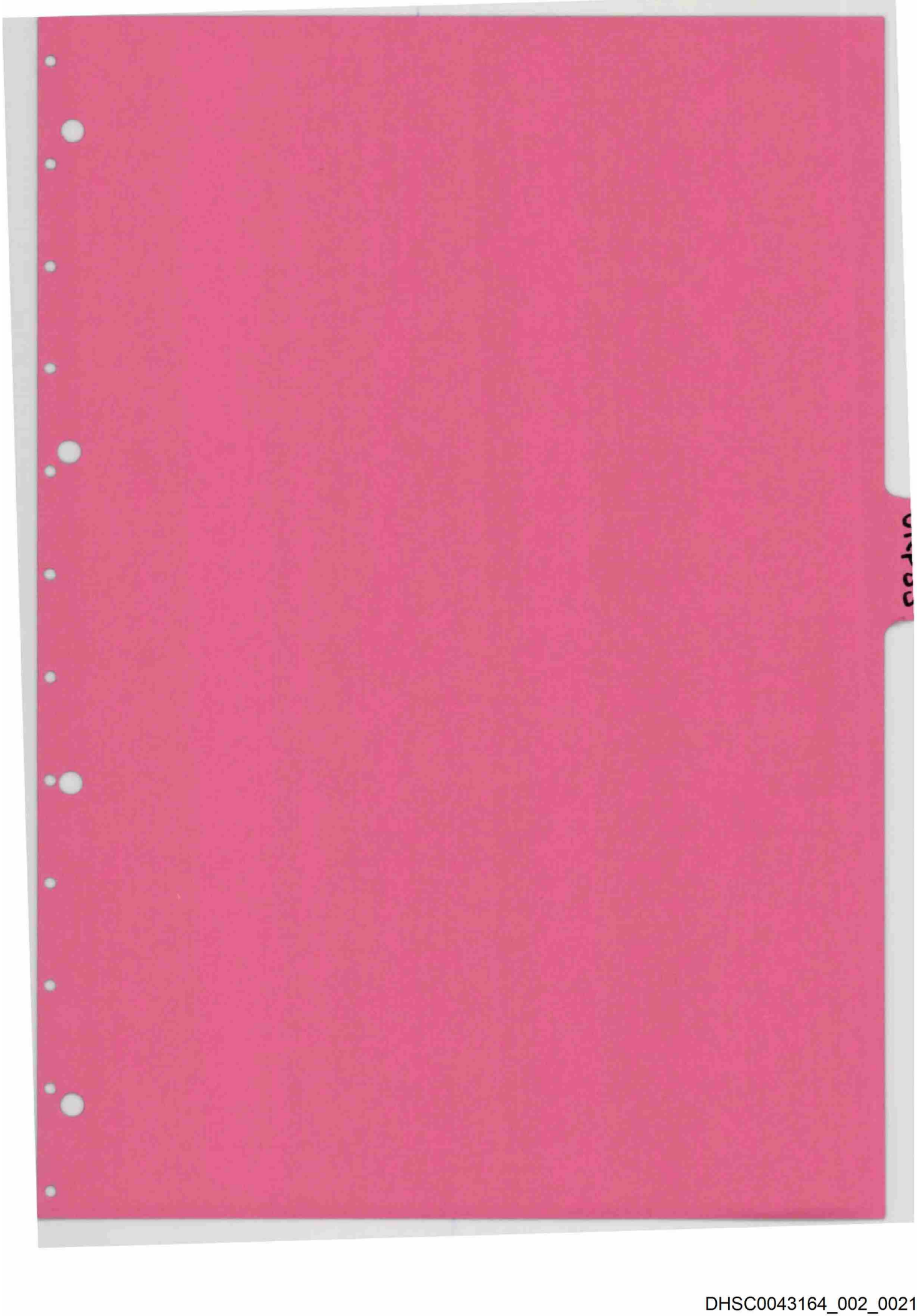
DAC SUMMARY REPORT - NV 004

The Plaintiff is a wife of a haemophiliac who became infected by her husband. The pleadings allege that the Haemophilia Centre at Coventry inadequately counselled her as to the degree of risk of infection from unprotected sexual intercourse. The evidence suggests that she was tested for HIV on a number of occasions and the last negative sample was taken as late as April 1987. A sample taken in July 1987 was positive. The evidence of the Haemophilia Centre is that this woman was counselled on a number of occasions and was fully aware of the risks that she was taking. Our expert, Professor Bloom, has prepared a report concluding that based on the statements of the Haemophilia Centre witness as to the counselling given, there was no negligence.

We have recently been informed however that the Plaintiff intends to amend the pleading to allege that she should have been referred to a gynaecologist for fertility testing. The doctor knew of her determination to have a child and it is alleged that it was negligent not to carry out tests to ensure that this was possible. When this new case is pleaded (the Judge has ordered that the draft be provided by 3rd July), it will probably be necessary to obtain further expert evidence as to the extent to which such action could be regarded as reasonable practice in 1987.

Conclusion

Based on the current pleading, we are confident that the claim would fail. The amended pleading, when it is served, will change the complexion of the case, and we will have to reserve judgement on this case. It remains a unique case whoever as the Plaintiff is not a haemophiliac and could be tried separately from the rest, if need be.



DAC SUMMARY REPORT - JKP 35

The Plaintiff was born in GRO-A 1981 and is a mild haemophiliac. He was treated at the Alder Hey Hospital, Liverpool. The first HIV antibody test was August 1985 and this was positive. He was treated with commercial factor VIII concentrate from November 1982 to July 1983. It is likely that this caused his infection. The Plaintiff's expert report, by Dr. Savidge, is critical of the treatment given. He argues that as a mild haemophiliac, orthodox medical practice ought to have involved treatment with cryoprecipitate, DDAVP, or at worst NHS factor VIII concentrate. The treating doctor, Dr. Martin, will not make a good witness. We have reports from two experts. Professor Bloom has concluded that there is no negligence although it would have been wise to have introduced a hierarchical system of treatment by June 1983 and considered the Plaintiff for DDAVP. Dr. Ludlam (whose report we have not served) is more critical of the defendants' treatment and considers that to justify the use of commercial factor VIII for this child, it would be necessary to show that cryoprecipitate and NHS Factor VIII concentrate were not available. We are unable to do this, and Dr. Martin in his evidence says that he gave no consideration to alternative treatment.

Conclusion

Although commercial concentrate was not administered after July 1983 and therefore seroconversion was "early", because of the mildness of the Plaintiff's condition, and the weakness of our doctor's evidence, there is a substantial risk of losing this case. We do consider that this is case for settlement and have recently received instructions to proceed on this basis. Hopefully this case will therefore not proceed to trial.

DAC SUMMARY REPORT - JKP 43

Adult male haemophiliac born GRO-A 1965. Treated at the Royal Liverpool Hospital by Dr. McVerry who will make only an average witness. The records of the hospital are poor and incomplete. In December 1980 he had a complicated fracture of the humerus and the operation required high doses of concentrate. He also required physiotherapy thereafter which was covered with commercial concentrate. He had a further major episode of bleeding in January 1983 which was too serious to be treated with DDAVP or cryoprecipitate and he was treated with commercial factor VIII. He then had no further treatment with factor VIII concentrate at the hospital until the present time but (and the records are not clear) he may have received supplies for home treatment. He was first found to be HIV positive in February 1987. There were surprisingly no earlier tests performed.

Dr. Savidge, for the Plaintiff, criticises the treatment regime and record keeping. He draws attention to the possibility that the patient was receiving Factor VIII concentrate for home treatment as late as 1985/86. Professor Bloom and Dr. Ludlam for the Defendants take the view that all the treatment given to the Plaintiff was perfectly justified and that the very strong probability is that he was infected as a result of treatment from one of the two major post-traumatic bleeds in 1980 and 1983, prior to a time when there ought to have been any special attempts to get the Plaintiff NHS concentrate. Dr. Philip Mortimer of the PHLS has also reviewed the records for the Defendants and is of the view that the Plaintiff was infected by his early treatment.

Conclusion

This is a case that the Defendant should win. It is not without certain difficulties because of lack of records, but our experts are confident that there was no negligence, and seroconversion was early on. Subject to overall considerations of politics and economics, this case should be fought.

DAC SUMMARY REPORT - JKP 109

Haemophiliac child born in GRO-A 1980. Severe haemophiliac Treated at the Birmingham Children's Hospital. The evidence is that the Plaintiff was infected by May 1983 (blood sample tested retrospectively) and that infection was almost certainly as a result of U.S. commercial factor VIII.

The Plaintiff's expert, Dr. Savidge, criticises the fact that the Plaintiff was given commercial factor VIII during 1981 and 1982. He talks of a "bizarre approach to patient management".

We have a strong witness in Dr. Hill who is able to explain the treatment given to the child on clinical grounds, particularly the fact that the child had an allergic reaction to cryoprecipitate. Our expert, Professor Bloom, does not consider the defendants negligent in the use of Factor VIII concentrate instead of cryoprecipitate for the treatment of this child during the period in question. He does not consider that it is negligent for the Plaintiff to have received commercial as opposed to NHS concentrate during the period in question. The preference for NHS concentrate at the time was based mainly on a hepatitis risk and a question of transmission of AIDS in haemophilia was only vaguely appreciated and was not generally brought to the notice of the Haemophilia Centre Directors until June 1983 when the recommendation of the possibility of introducing a hierarchical scheme for treatment of haemophiliac patients was suggested.

Conclusion

We consider that the Defendants will not be found negligent in the manner in which they treated the Plaintiff. This treatment is consistent with many others across the Country where medical negligence cases has not been pursued and many cases which were originally pursued but dropped during the informal procedures. One of the weaker cases being pursued. Subject to economic and political considerations, this case should be defended.

Mr. John Evans,
Legal Department,
Trent Regional Health Authority,
Fulwood House,
Old Fulwood Road,
SHEFFIELD S10 3TH

41/751605/GM

23rd April 1992

Dear John,

HIV Haemophilia Litigation

I refer to your letter of 17th March. I attach a revised status report.

I have been giving careful thought to your request for an estimate of future likely expenditure on damages, claimants' costs and my firm's costs and disbursements.

It is obviously extremely difficult to be accurate but assuming that the outstanding cases are resolved in the fashion that we currently anticipate I would predict that you would have to make a provision of £600,000 for damages. This is assessed on the basis that there are 17 outstanding cases, five of which will be withdrawn or wholly successful in defence and 12 of which will result in some payment of damages. The average damages paid in cases so far is £45,000 and allowing for inflation I have predicted an average settlement of £50,000 for each of these 12 cases.

As far as costs are concerned, the first tranche of cases are due to be tried in October. I would suggest that the allowance for costs, including Counsels and experts fees between now and date of trial would be in the order of £200,000. Trial costs, involving three counsel, with an estimated length of five weeks could add a further £300,000, making a total of £500,000.

I find it difficult to give any firm indication of what the Plaintiffs solicitors costs have been in dealing with the cases which we will need to settle. I suspect that they will be fairly high, particularly in comparison with the costs of the medical negligence cases which were settled quickly. I would

Contd.../...

suggest that £150,000 be reserved for claimants costs on cases to be settled, including the costs of the cases which have yet to be taxed or agreed, of which there are several.

I am assuming that we will succeed in the cases which go to trial and will not be obliged to pay claimants' trial costs. For estimate purposes however, you need to reserve a further sum, say £150,000 (assuming that some but not all cases will be lost).

In summary, I would estimate that you should reserve the following in broad terms:-

Damages	£600,000
DAC costs & disbursements through trial	£500,000
Claimants' costs	£150,000
Claimants' trial costs if successful in some cases	£150,000
Total	£1,400,000

I suggest a further £100,000 in unforeseen contingencies be built in to the estimate resulting in an overall estimate of £1,500,000.

Yours sincerely,

SIMON PEARL

HIV MEDICAL NEGLIGENCE CASES
INTERLOCUTORY TIMETABLE

1. Generic reports to be exchanged by the 1st July 1992 or as soon as possible thereafter (extension now granted to 3rd July).

2. The last day for meeting of experts 10th July 1992 - save for NV004 and JKP107 where experts to meet as soon as practicable.

3. Plaintiffs to serve reports on condition and prognosis within 21 days ie by 10th July.

4. Plaintiffs serve Schedules of Special Damages and Future Loss (to include documents) by 31st July 1992, to include expert reports on quantum.

5. Interlocutory Hearing before Alliott J 3rd August 1992.

6. Supplementary Expert Reports to be served by 7th August 1992.

7. Defendants to serve reports on condition and prognosis within 42 days (ie by 8th August 1992).

8. Defendants to prepare provisional trial bundles by 1st September 1992.

9. Plaintiffs to comment on provisional trial bundles by 14th September 1992.

10. Defendants to serve Counter-schedules of Special Damages and expert evidence on quantum by 18th September 1992.

.../...

11. Trial bundles to be finalised and served by Defendants by 21st September 1992.

12. Documents to be delivered to Alliott J for pre-trial reading by 1st October 1992.

13. Interlocutory hearing before Alliott J Friday 2nd October 1992.

14. Note of those witnesses the parties do not propose to call at trial to be served by 5th October 1992.

15. Responses to 14 above to be served within 7 days thereafter (ie by 12th October 1992).

16. Plaintiff's opening note to be prepared by Monday 12th October, if possible.

17. Trial commences Monday 19th October 1992 (estimated duration 8 weeks).

Individual Cases

1. DMS 99

(i) Defendants to serve Supplementary List of Documents within 21 days (by 10th July) with liberty to the Plaintiff to apply for verification of the Supplemental List by Affidavit.

(ii) Plaintiffs granted leave to re-amend the Statement of Claim.

.../...

(iii) Defendants to serve re-amended Defence, if so advised, by 24th July 1992.

2. JKP35 and 43

(i) Defendants to provide a letter stating what has become of documents sought by Plaintiffs within 14 days, i.e. by 3rd July 1992.

3. SI12

(i) Defendants dental reports and both parties orthopaedic reports to be exchanged by 24th July.

(ii) Plaintiff granted leave to amend the Statement of Claim.

(iii) Defendants granted leave to amend the Defence, if so advised, within 21 days, ie by 10th July 1992.

4. NV004

(i) Plaintiffs given leave to re-re-amend the Statement of Claim, if so advised, by 3rd July.

(ii) Plaintiffs to serve Further and Better Particulars of the Statement of Claim and replies to Interrogatories by 10th July.

(iii) Witness Statements to be exchanged by 10th July.

(iv) Expert evidence to be exchanged by 7th August 1992.

.../...

5. JKP107

(i) Witness Statements to be exchanged by 29th June 1992.

(ii) Expert reports to be exchanged by 10th July 1992.