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Subject: HCV LITIGATION

Anita

Thank you for your minute of 1 October.

I spoke to Simon Pearl today. On the ECJ issue, he doesn't think that DMS are using this as a bargaining tool. He is writing to DMS today opposing the referral and setting out his reasons, and will copy the letter to me. He will also keep us in touch with developments so that we can intervene if need be.

Simon Pearl confirmed that we have not conceded, even for the purposes of this litigation, that body parts are a "product" within the meaning of the CPA. There is just one case in the class action - a heart transplant - where this issue would arise if the litigation goes to trial. Simon is convinced that the courts would rule that body parts are "products". We will therefore need to consider how we want this handled if, for whatever reason, a settlement is not reached. A legal device, which Simon suggested would avoid a judgement on body parts, would be to concede that the HCV infection was caused by the blood used in the transplant. But this would need careful consideration.

Simon Pearl hopes to let me have some further data by the end of this week to help us calculate the amount of money needed for the provisional settlement.

[Emma - The heart transplant case is an early one so would fall outside the terms of the proposed settlement. If the settlement is accepted, it is unlikely that these early cases, which are also the weaker ones, would go to trial.]

Charles