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RESTRICTED LEGAL

Our Ref: McEw212

Ms McEwen SOLB4

From: Dr A Rejman CA-OPU2

Date: 2 December 1996

Copy: Dr Metters
The Solicitor
Mr Milledge

RE: HEPATITIS C LITIGATION: GENERIC INVESTIGATION:

UPDATE: LITIGATION AGAINST DEPARTMENT OF HEALTH, THE LICENSING AUTHORITY AND THE COMMITTEE OF SAFETY OF MEDICINES

GRO-A **-V- DEPARTMENT OF HEALTH AND OTHERS**

1. Thank you for your minute of 29 November.

2. I would agree with you that we should wait until the position is clearer, however I have the following comments about haemophilia patients and HCV. Some of it is repeating what I have earlier said, but the nevertheless I think one should remember these various points.

3. Hepatitis and the failure to prevent transmission of this was a main plank of the HIV/haemophilia litigation and the plaintiff's solicitors even wanted this taken up as a preliminary issue since they felt that if they failed on hepatitis they would also fail on HIV. When the settlement was finally agreed in court, Rupert Jackson QC on behalf of the plaintiff's team (which included his junior, Michael Brook) admitted that it would have been difficult for the plaintiffs to prove negligence. That is he accepted that they were likely to lose, which after all is the reason why they accepted a settlement for a much lower sum than originally claimed.

4. You will also be aware that in the HIV haemophilia litigation the Legal Aid Board did not ask for a generic investigation. Had they done so then presumably the solicitors acting on behalf of the plaintiffs would have had to disclose to them papers which were in their possession stating that it was highly unlikely that the plaintiffs would succeed in their court case, and that they should rely upon a publicity campaign, pressure from MPs and others to obtain a payment. The nearest that the HIV haemophilia litigation came to some sort of assessment of likely success was in the appeal court on PII, when the judges said that there was

arguable case to be answered, and hence allowed some of the documents to be shown to the other side.

5. You will also be aware of the timing of the moves towards a settlement. This was immediately prior to the exchange of witness statements. We know what the defendants' expert witness statements said, and we have a shrewd idea that the plaintiffs' witness statements were not supportive of the plaintiffs' case.

6. You specifically asked about introduction of heat treatment of blood products earlier than 1985. I sent you on 17 June a background paper on heat treatment. In this I particularly highlighted that the first heat treatment of Factor VIII was developed in West Germany in 1979, but it was not until 1987 that it was satisfactorily established that indeed this product was safe from transmitting hepatitis. Other important factors were the marked loss of activity, 92%, the fact the Germans were not prepared to share details, and insufficient supply for Germany let alone for export. Other manufacturers tried heat treatment in the early 1980s, and these failed. In the end it was HIV and the deaths occurring from AIDS which were the real stimulus to the heat treatment procedure. One must recall that the long term seriousness of NANB hepatitis was not fully appreciated until the mid 1980s. One should also recall that Selby claims to have been infected in 1979, I believe it was probably much earlier.

7. In these circumstances, I would find it very difficult to understand if the Legal Aid Board were prepared to fund haemophilia patients who acquired hepatitis C and not blood transfusion recipients. In these circumstances I would suggest that Ministers should ask for an independent assessment (? judicial review) of the process of the advice given to the Board and their response. It would be wrong for public funds to be wasted, and I am sure that others also would question whether the views presented to the Board by an individual who stood to gain from continuing litigation were indeed impartial.

GRO-C

Dr A Rejman
Room 420 Ext GRO-C
EH