

MF 580/306



Litigation Unit

To: Dr Jones - MCA
Mr Alder - BM/E
Dr Jefferys - BM/A
Dr Wood - BM/C
Mr Canlin - SOLC5

From: R M Gutowski - MCA/E

Date: 13 December, 1990

Copy: Mr Love - MCA/E
Mr Rees - MCA/E
Miss Bendall - SOLC5
Mr Whitbread - MCA/C✓
Dr Rotblat - MCA/A
Dr Purves - MCA/A
Mr Canavan - EHF1
Float/File

HIV Litigation

1. Following the Prime Minister's announcement of an extra £42m to be made available to the haemophiliacs who contracted AIDS from infected Factor VIII I attended a meeting with EHF1 and MEDTEP to discuss the proposed Terms of Settlement - a copy of the latest Version (III) is attached.
2. The Terms of Settlement concentrate on the category of the infected haemophiliac, the amounts payable, the social security disregards, and the legal aid/costs situation. Paragraph 4 emphasises that the payments are made 'on behalf of the First Central Defendants' (ie the Secretary of State) 'and not on behalf of any other Defendant and are made without any admission of negligence, breach of statutory duty or other liability'. I asked for this paragraph to be strengthened with a separate specific reference to the fact that the Licensing Authority and the Committee on Safety of Medicines have continually categorically denied liability and will continue to do so. This is an attempt to ringfence the LA/CSM from the 'deal' in order to discourage any future litigants who feel that as their injuries were drug induced they were also deserving of 'preferential treatment'. Do we want to pursue this? As far as our documents are concerned Paragraph 14 is important in that it is essential that all our documents are either returned or destroyed. In due course we will also need to obtain an undertaking with regard to the Plaintiff's expert Charles Medawar following the precedent set in the Opren litigation. Charles Medawar, apart from being the Plaintiff's 'expert' in this litigation is also an investigative journalist who has been very critical of the pharmaceutical industry and the regulatory process.

During the meeting I also asked that Counsel's advice be sought about our position if a number of Plaintiffs refused to accept the offer - which was based on a figure put forward by their own legal advisers - and continue the litigation. This is important as it would be just as expensive in money and resources to defend a charge of negligence and breach of statutory duty brought by one Plaintiff instead of 1,200.

4. As far as the LA/CSM's costs were concerned I confirmed that in the event of the whole action being discontinued they would not be pursued against the Plaintiffs - in line with our stated policy. To date this only covers our inhouse administrative costs.
5. Due to the tight deadline being imposed by Counsel I would be grateful for any comments by noon today. I shall be out of the office this afternoon and tomorrow in Brussels: should any major problems arise Murray Love (ext **GRO-C**) has agreed to take the lead in my absence.

GRO-C

R M Gutowski
Rm 1327 Ex **GRO-C**
Market Towers