HIV HAEMOPHILIA LITIGATION : NOTE OF TELEPHONE CONVERSATION WITH JUSTIN FENWICK ON THE 7TH NOVEMBER 1990

Mr Fenwick said that Andrew Collins had spoken to Rupert Jackson last Friday and had arranged for them to meet on Monday. They met on Monday at 8.00 am. Those attending were Andrew Collins, Rupert Jackson, Justin Fenwick, Michael Brooke and Dan Brennan.

Andrew Collins put our position to them. We could not initiate a compromise but were prepared to listen to what they had to say. They did not balk at this.

They were told that the figures we might have in mind were not on the paper that they had submitted. The top range of figures were out of the question. If the figures they would settle for were only to the middle or the right-hand side of the list of figures then it was best for us to accept that we would have to go to Court.

They said that the had a Steering Committee meeting that evening and would discuss matters then.

Mr Collins raised with them the question of the possible debate in the House of Commons. He made clear that success for them in that debate would not necessarily affect the outcome of negotiations.

The Steering Committee met on Monday evening and a further meeting between Counsel concerned has been arranged for 6.00 pm this evening. Mr Fenwick suspects that they will come back asking for about £40m as openers. He will report back after the meeting but has got the impression that their sights are not set high.

In the light of this Mr Fenwick had four matters he wished to raise.

Costs

In the meeting he had taken the line which he thought reasonable, that we would offer to pay costs on a quasi legal aid taxation. This would stop people sending in bills that were effectively nonsense. He did not think the Government should do anything to acquire a reputation for being a soft target on costs. With a sort of legal aid taxation the lawyers would then get what they would get from the legal aid fund. He excepted we might have to pay more of the generic costs for those who were not legally aided but that would not necessarily be a problem.

Involvement of Health Authorities

The other side were told at the meeting that they should not assume that the Health Authorities knew what was going on but in negotiating with them, if they did, they should not forget that there was only one central paymaster. They should not expect to get some money from us and some further money from the Health Authorities.

Effect of Further Payments on Benefits

He thought the effect of any further payments under a McFarlane Trust could be crucial. The other side had said in the meeting that the McFarlane Trust payments did not effect benefit and they wanted that to continue. We discussed in general terms the effect on benefit. Mr Fenwick saw no objection in principle to the McFarlane Trust payments being disregarded when payments were to an affected haemophiliac or living dependents but queried whether it would be wise to have payments disregarded when they went to persons entitled under a deceased haemophiliac's estate. In that way someone might acquire a nest egg that they could keep for some considerable time without it having any effect on their benefit entitlement. That seemed to him to be wrong in principle.

He thought that if the prima facie effect on benefit would be substantial and that we could remove that effect, that was a fact to be taken into account possibly in deciding the overall level of the settlement and might encourage settlement at a lower figure.

He asked if I could provide a list of benefits that might be effected by McFarlane Trust payments and how they would be effected. It would be useful if he could have it even only an outline, in time for the meeting this evening.

Generally

He had since spoken to Richard Price, the barrister who was appearing for the CBLA. Mr Price agreed that there did not seem to be any claim in law against the CBLA.

Mr Price had also said that he had gained the impression from the plaintiffs that they were now soft peddling on the Court action because they considered they had won the propaganda battle. This implied that they were waiting for an offer in settlement, their costs and the moral victory.

Mr Fenwick made the general point to me that many legal aid certificates are granted only to the stage where the exchange of pleadings (Statement of Claim, defence etc) is finished and the other parties' documents have been examined. At that point the legal aid authorities frequently require an advice from Counsel concerned on the prospects of success before extending the legal aid certificate to cover the work involved in preparing for the trial and the trial itself. It occurred to him therefore that the plaintiffs may well have reached the stage where they can go no further without the terms of the legal aid certificate being extended. It might well be that Counsel for the plaintiffs were finding it difficult to advise the legal aid authorities that the legal aid certificates should be extended because they had doubts as to the likely success of the claim in Court.

For these reasons Mr Fenwick began to consider that the plaintiffs may now be in a position where they need the matter to be settled. He thought that about 20% of the plaintiffs were not legally aided and they also would need to contribute perhaps a £1,000 to £3,000 each before the final preparations for trial started. They also might need an assurance that the money would be well spent before preceding any further.

RONALD POWELL

SOLB3

7th November 1990