LIE 10.

Ref: Canav238

IN CONFIDENCE

Mr J Canavan EHF1A

From: Dr A Rejman MEDISP/A

Date: 23 August 1991

Copy: Mr R Powell SOLB3
Ms I Doyle SOLB4

HIV HAEMOPHILIA LITIGATION: MEDICAL NEGLIGENCE CASES: TOPPING-UP

1. I enclose some brief notes about these cases raised by Mr Powell in his minute of 25 July 1991 which refers to his minute of 15 May 1991 offers in Part B.

2. MM008

i. The claim for diet of 1315 per annum for 9 years totals almost £12,000 to which interest has been added. As I mention in my minute of yesterday regarding FF004 I do not believe that any allowance should be made for this special diet as the duration of need of such a diet is very short indeed and I would ask the Plaintiffs to justify it.

ii. I agree with Professor Hardisty's conclusion that causation is extremely doubtful and could have been at any time between 1979 and 1984. It is interesting to see that between March 1979 and August 1982 the patient had 54000 units of FVIII of which only 1250 were NHS and the rest commercial, while the single dose in May 1984 was 480 units. Although I accept that the chances of the commercial FVIII in 1984 being HIV positive is higher than in the previous years, nevertheless the much larger amount of FVIII that he had prior to that time must make it quite probable that it was the earlier FVIII that caused the HIV infection. If this is the case then it must be accepted that he became HIV infected at a time when the risk was only just becoming known.

iii. I would agree that the offer of £10,000 by the Health Authorities for nuisance value is reasonable and I see no reason to top-up.

3. HS003

i. Again we have this problem about a claim for special diet. In this case the claimant says that dietary analysis carried out on behalf of the Haemophilia Society suggested additional dietary costs of 21.82 per week where a patient is HIV infected but does not have ARC/AIDS. Again I refer to the advice from the AIDS Unit and would disregard this claim which amounts to almost £10,000.

ii. I note also a discrepancy in respect of the wife's supposed earnings in a fish and chip shot. In the ISC dated 24 5 1990 this is stated to be £24 per week, in the notes to the pecuniary loss schedule it is stated to be £32.24p per week with putative 6% increments in April 1989 and April 1990.

iii. As regards the case itself, the negligence is claimed to be because of delay in treatment at the first hospital.

iv. I agree with Professor Hardisty that the causation is doubtful since it was NHS FVIII concentrate that he received in December 1982, with Cryoprecipitate, again NHS in 1983 and 1985, any of which could have been the source of his infection.

v. However, it may be for reasons of public criticism over the initial management at Ipswich Hospital that the HAs wish to buy-off this claim.

vi. If one subtracts the £10,000 for diet leaving £206,000 then the £30,000 already offered plus £60,500 credited makes up 44% of the full amount whereas if £40,000 is added the figure comes to 49%. If the £50,000 sought by the Plaintiffs were paid this would bring the figure paid to approximately 54%.

4. LPN 73 (medical aspects to be resolved)

i. I am particularly anxious about this case.

ii. I have discussed, in broad terms, the suggestion made in this case with a couple of Scientific and Professional colleagues in the Department.

iii. All of us are of the opinion that it is highly speculative to suggest that this individual, no matter how bright, could be guaranteed a well paid job in the US. After all this is a highly competitive field and we are in the recession. Many companies which were flushed with funds in the early 1980s have now had to contract or have gone bankrupt. I believe that we should very severely discount these potential earnings on the possibility of the individual <u>not</u> having obtained a post in the US.

iv. Similar considerations apply to the claim of having been passed over for promotion in Glaxo's for 3 years. One would have to seek proof and particularly that a suitable vacancy was available at the time.

v. Since a very high proportion of the total claim relates to potential loss of earnings (£120,000 out of a total of £200,000) I believe that we should not offer any top-up in this particular case.

vi. I agree with Professor Hardisty that this is a doubtful case and these doubts are reinforced by the fact that in the Individual Statement of Claim there is no reference to any Armour product, nor any reference to a promise by the doctors not to give the Plaintiff any commercial product.

vii. In the worst case the Plaintiff could sue for failure to comply with a promise and not that he became infected as a result of that failure to keep a promise.

viii. At the time he was supposedly given heat-treated Armour product. This product was supposed to be amongst the safest available. It is only subsequently that we learnt that the heat-treatment procedure was insufficient to kill HIV.

ix. The dates in this case do not match. Different dates are mentioned in the ISC and Professor Hardisty's report. There is also some doubt as to whether the Armour product was the source of infection. He had a negative HIV test in August 1985 and the ISC states that he had positive sample on 13 December 1985. If this is correct then it suggests that he sero-converted within a space of 11 days.

x. I am assured by the AIDS Unit that development of antibody within 11 days would be highly unlikely. It usually takes between 6 weeks and 6 months. Scientific advice should be sought once the correct dates of HIV negative and HIV positive test results are available and when dates and details of treatment are known.

xi. It is quite possible that the infection was caused by earlier treatment with non-heat treated NHS concentrate or by NHS Cryo.

xii. I would strongly suggest that Simon Pearl gets all the details on this particular case before he conducts any further negotiation with the Plaintiff's solicitors.

xiii. If it is the case that the client became infected with non-heat treated NHS FVIII or Cryoprecipitate then in

fact the Health Authority should be making no offer at all instead of the £100,000 that they are offering. Also one might ask why in this expensive doubtful case they are offering two thirds of the cliam and not between one third and one half.

xiv. Another point that might be worth noting is that in this case for some reason the credit for the Macfarlane Trust settlement sum has been subtracted from the gross value of the claim as opposed to being subtracted from the discounted sum. This does make a difference in that if the £23,500 is taken away from the £200,000 and then two-thirds of this is calculated this gives one a figure of £116,000 as opposed to £108,500 if it is from the discounted sum of £132,000.

xv. Also I note that LPN 73 is claiming £1,000 for future funeral expenses. I think it is commonly accepted that each of us must die and so the only way to avoid funeral expenses is to give your body to medical science, when the Medical School will pay for the costs of burial after the body has been dissected. Is LPN 73 suggesting that were it not for his HIV, which presumably excludes him from giving away his body, this is what he would have done?

5. LPN 84 (back to Simon Pearl)

i. I agree with Professor Hardisty that this is a doubtful case, particularly since bleeding post tonsillectomy can be fatal in haemophiliacs and I would not accept the reassurance of the Consultant at Margate that NHS concentrate would have been available within 45 minutes. This does not allow for transport problems and would not be accepted in a Court of Law if the patient were to die as a result of waiting for it.

ii. There is some doubt about whether the treatment given in 1985 was heat treated concentrate or not.

iii. I agree with Simon Pearl that the special damages are way over the top and include all sorts of other claims such as replacement costs of car etc.

iv. In normal circumstances I would advise against any top-up for this particular case but knowing that the particular case comes from the same hospital as LPN69 where 100% liability has been conceded, it may be that the Health Authority solicitors believe that it would prudent to settle in this particular case.

6. MM 009 ✓

i. I agree with Professor Hardisty that the causation is doubtful but I take issue with his suggestion that using concentrate in October 1983 to cover dental fillings could

automatically be assumed to be unjustified. Without knowing the exact details of the dental surgery being performed, I think one has to reserve judgement. In addition the current recommendation at that time, which was covered by a letter from the Haemophilia Centre Directors Organisation dated 24 June 1983 stated that:

> "For mildly affected patients with Haemophilia A or Von Willebrand's disease and minor lesions, treatment with DDAVP should be considered."

It then continued by stating that:

> ".... this is in any case the usual practice of many Directors."

ii. This suggests that while DDAVP was what many people used there was no definite statement to say that no other treatment could be used.

iii. In addition this statement also said that there was as yet insufficient evidence to warrant restriction of the use of imported concentrates in those who had previously been exposed to imported concentrates.

iv. On this basis I would advise against topping-up in this particular case, despite the small sum claimed by the Health Authorities.

v. Again we have a claim for diet which amounts to over £4,000, which if it is excluded brings down the sum closer to the offer made by the Health Authorities.

7. Happy to discuss any of these points in further detail.

GRO-C

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