

CS/694

RE: HIV HAEMOPHILIACS LITIGATION

CONFERENCE WITH COUNSEL: 29 NOVEMBER 1989

NOTES

INTRODUCTION

1. JOURNALISM - whether to approach Attorney-General or Judge (J) to muzzle Sunday Times (ST) - Justin Fenwick (JF) advised that muzzling couldn't be achieved yet - ST article wouldn't affect J's mind.

2. DAMAGES - problematic to calculate because of possible discrepancy between damages obtainable by a "live" plaintiff and those obtained by the estate of the deceased.

ISSUES

3. Five issues:

- (a) preliminary issues;
- (b) summons;
- (c) amendments to Statement of Claim (SOC);
- (d) general conduct of the action;
- (e) expert witnesses.

4. PRELIMINARY ISSUES AND SUMMONS - Andrew Collins Q.C (AC) less optimistic about success on preliminary issue (relating to hepatitis) than JF - muddle exists over question of facts - hepatitis issue expensive to fight - wary of amount of evidence required to fight the issue - manufacturers won't want to proceed on the basis there was negligence - manufacturers will probably be determined to fight the issue of negligence tooth and nail - will probably deploy considerable resources to prove no negligence - advantages of treating it as a prelim. issue is that it will save costs and time, if won - disadvantage of so treating would be to give confidence on legal issues to plaintiffs if they win making settlement more difficult - all in all treating hepatitis point as a preliminary issue would be an expensive gamble - pl.'s want this point tried as a preliminary issue.

5. AMENDMENTS TO SOC - amendments considered (a) negligence; (b) Wednesbury unreasonableness; and (c) Hepatitis and exotic or unknown viruses - discussion on meaning of "exotic" = viruses not endemic in UK - reality of plaintiffs case is that risk:benefit ratio in allowing through unscreened infected blood disfavoured plaintiffs - contrary argument is that the need for blood outweighed the risk of hepatitis.

6. Prcis' of articles referred to in SOC contain comments gleaned from introduction to papers on other topics.

7. Problem of "other viruses" - need to look at the transmissibility of viruses

8. Giving blood - donors interviewed.

9. Heat treatment- evidence of other viruses being transmitted to Haemophiliacs.

CONDUCT OF CASE

10. AGREED FACTS - generally agreed except for fact that prions are smaller than viruses, and connection of hepatitis with cancer is unclear.

11. Plaintiffs attempting to show that hepatitis is like AIDS (virus which can be transmitted through blood products)- problem of connection between haemophilia and AIDS - only connection is that they are both viruses causing infectious diseases - there is nothing to suggest as a matter of fact that being knowledgeable about hepatitis the Department of Health (DH) ought to have done something about AIDS - the present view is to pull the plug on hepatitis as a preliminary issue - plaintiffs spoiling for a preliminary issue on the merits of the case.

12. LEGAL AID - the Plaintiffs will not be prejudiced in their legal aid position by receipt through the MacFarland Trust of £ 20 k.

COMMITTEE FOR THE SAFETY OF MEDICINES (CSM)

13. CSM independent advisory body - not part of LA: Arguments against both:

(a) duties to collect information - but collection of information is a power not a duty - CSM does not owe duty to a particular group - duties owed to whole public as opposed to private individuals - Hong Kong line of cases

(b) public policy arguments unlikely to succeed given Hill and Chief Constable line of cases.

DEPARTMENT OF HEALTH

14. If duty of care point not taken as a preliminary issue, it should not be conceded - J should be invited to proceed as if the DH had voluntarily assumed a duty towards the plaintiffs and submit the duty of care point at the end - public policy points are not to be conceded - LA and CSM not to admit duty of care - aim is to get both out of the litigation as quickly as possible

DEFENDANT MANUFACTURERS

15. JF couldn't envisage any circumstances in which the manufacturers would be joined as third parties - manufacturers will be well equipped to assemble evidence and expertise

to rebut plaintiffs claims - as manufacturers not joined by DH any costs incurred would be passed on to privately paying plaintiffs - manufacturers could pull plug on Factor VIII production - Davies, Arnold, and Cooper have asked for extensive discovery of manufacturers.

16. If the legally-aided plaintiffs now pull out, it will be very difficult for legally-aided plaintiffs to continue - Plaintiffs feel that defendants wont go the whole way - Haemophilia Society do not want to be seen to push the litigation as Counsel advised they would lose at the outset

EXPERT WITNESSES

17. Problem - many letters of refusal - experts for HA may be willing to act for other defendants.

Position:

Prof. Rees (New York Blood Bank)	- a possibility
Prof. Weir	- no to HA's
Jeffreys	- no
Bloom	- qualified yes
Zuckermann	- no, too busy
Perry	- yes
Williams	- probably yes
Ludlum (Haemophiliac Director)	- possibility
Mortimer	
Geddes (Birmingham)	
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Tyrell (virologist)	