

HIV Haemophiliac Litigation

MAIN SETTLEMENT

NOTE

from Plaintiffs' Junior Counsel

Michael Brooke

25th April 1991

1. I refer to the final version of the Main Settlement Agreement ("MSA"), a copy of which is attached.
2. As everybody knows this is the result of long drawn-out negotiation. In its final version I consider the MSA to be acceptable and I recommend that Plaintiffs accept these terms as the terms on which to accept the Department of Health's offer to settle the claims.
3. There are several matters I should mention:
 - a. You should consider the time limits for claims by:
 - i. Non-Plaintiff existing potential claimants (para 1 (7) (ii), (iii) & (iv));
 - ii. Future potential claimants (para 1 (8));and whether they affect any people connected with your cases.
 - b. Paragraph 7: the Legal Aid Board's statutory charge.
 - i. So far as Plaintiffs who are not pursuing medical negligence claims, this should not be a problem as all that needs to be done is for the Department of Health to provide the Legal Aid Board with a satisfactory form of indemnity. The steering committee is doing what it can to bring that to a conclusion.
 - ii. So far as Plaintiffs who are pursuing medical negligence claims, this is a problem as the Legal Aid Board is maintaining its position

that it cannot waive the statutory charge. It is the intention that the matter should be referred to Mr Justice Ognall for decision, when we expect to be supported by the Department of Health. It is hoped to have this hearing on 1st May 1991. If we are unsuccessful, I am afraid there is nothing more that can be done and these Plaintiffs will have to accept that if they pursue their medical negligence claims, the charge will continue to apply to their main settlement award.

- c. Schedule 8 part 1. You will see that this is more or less the same list as was produced in January 1991. A number of the cases listed have since been expressly withdrawn. The cases in fact going on as medical negligence will be put in a new list on 1st May 1991. There was no point in doing an interim list at this stage. You should not therefore be concerned to see a case of yours in schedule 8 part 1 which you have withdrawn as a medical negligence claim.
- d. Schedules 1 to 6: These are being done in two versions, one that preserves anonymity and the other that identifies the people involved. The version of the MSA intended for general circulation will have anonymous Schedules 1 to 6 annexed to it; that will be sufficient for any individual solicitor to identify his own Plaintiffs. The nominate schedules are for the use of the Department of Health, the MacFarlane Trust and probably Master Turner.

Paragraph 1 (9): If in the schedules a case of yours bears either * or #, a payment will not be made until you have completed the HHL documents process and the Department of Health has agreed the

categorisation of the case, failing which the matter has been decided by Mr Justice Ognall.

4. The mechanics for formal offer and acceptance of the settlement is as follows:
 - a. A standard form of offer letter by the Department of Health with a copy of The MSA attached will be sent out to all individual solicitors next week.
 - b. The individual solicitor then accepts on behalf of his clients by sending either one or two letters in the form of the pro-forma letters of acceptance attached to this note. You should use pro-forma A for all your cases which are not going on as medical negligence claims. You should use pro-forma B for all your cases which may still be going on as medical negligence claims. Each letter should have attached a list of the Code numbers of the cases to which the letter of acceptance relates. Where any of these code numbers bear either * or # in schedules 1 to 6 of the MSA, you should place the same symbol against the code number in your list. Thus, however many clients you may have, you will at most be sending off two letters of acceptance (subject to the next sentence). If you have any cases where you have reason to believe that the Plaintiff may wish to bring proceedings against Armour in the USA, you should add the following to your letters of acceptance in respect of those Plaintiffs:

"These Plaintiffs understand that the payments being made by the Department of Health are voluntary in nature, without any admission of legal responsibility and extend to HIV-infected haemophiliacs who have not brought proceedings.

They further understand that their receipt of these payments from the Department of Health will not preclude them from commencing legal proceedings against any non-U.K.-governmental body or company, and in particular against any commercial manufacturer or supplier of blood-derived products".

- c. It is important that I keep track of the acceptances, so when you send off your letter(s) of acceptance please send a copy of it(them) with the list(s) attached to me.
- d. Thereafter once payment has been made in any case by the MacFarlane Trust, you will file Notice of Discontinuance.
- e. Again, it is important that I keep track of the notices of discontinuance, so when you serve and file one please send a copy of it to me.

5. In the case of each copy of a letter of acceptance please attach the documents to a cover sheet bearing the code letters and name of your firm and then send it to:

Michael Brooke,
2, Crown Office Row,
Temple, London EC4Y 7HJ.

or

Michael Brooke,
LDE Box No 1041.

Please mark the envelope clearly "HHL Acceptances".
Please do not fax these documents.

6. In the case of each copy of a notice of discontinuance please attach the document to a cover sheet bearing the code number of the case in question and then send it to:

Michael Brooke,

25/04 '91 13:21

01 583 1205

2 C.O.R.

008

2, Crown Office Row,
Temple, London EC4Y 7HJ

or

Michael Brooke,
LDE Box No 1041.

Please mark the envelope clearly "HHL Discontinuances".
Please do not fax these documents.

GRO-C

2, Crown Office Row,
Temple E.C.4.

25th April, 1991

Pro forma letter of acceptance A

Office of the Solicitor,
Department of Health,
New Court, 48 Carey Street,
London WC2A 2LS

Dear Sir, ..

HIV Haemophiliac Litigation

We act for and write on the instructions of the Plaintiffs listed in the schedule to this letter. We write in reply to your letter datedenclosing proposed terms of settlement and offering to settle our Plaintiff clients' claims on those terms. On behalf of the Plaintiffs listed in the schedule to this letter and in reliance on what you state about the extent of the disregard of settlement payments in assessing Statutory Benefits we accept your offer to settle on those terms; upon payment by the MacFarlane Trust to each such Plaintiff of the appropriate sum due to him or her that Plaintiff will cause a notice of discontinuance to be served and filed at Court pursuant to the leave given by Mr Justice Ognall, discontinuing that Plaintiff's action against all Defendants to the action.

Yours etc..

Pro forma letter of acceptance B

Office of the Solicitor,
Department of Health,
New Court, 48 Carey Street,
London WC2A 2LS

Dear Sir,

HIV Haemophilic Litigation

We act for and write on the instructions of the Plaintiffs listed in the schedule to this letter. We write in reply to your letter datedenclosing proposed terms of settlement and offering to settle our Plaintiff clients' claims on those terms. The Plaintiffs listed in the schedule to this letter are pursuing their claims against the Health Authorities they have sued in respect of medical negligence, as to which claims all the Plaintiffs' rights are reserved. On behalf of the Plaintiffs listed in the schedule to this letter and in reliance on what you state about the extent of the disregard of settlement payments in assessing Statutory Benefits we accept your offer to settle their claims against all Defendants other than Health Authority Defendants on those terms; upon payment by the MacFarlane Trust to each such Plaintiff of the appropriate sum due to him or her that Plaintiff will cause a notice of discontinuance to be served and filed at Court pursuant to the leave given by Mr Justice Ognall, discontinuing that Plaintiff's action against all Defendants to the action, other than Health Authority Defendants.

Yours etc..