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IN REPLY PLEASE QUOTE
ACR/C1486/046/CCO

DATE
30 October 1991

STRICTLY PRIVATE AND CONFIDENTIAL

Dr R.S. Lane
Director and General Manager
Bio Products Laboratory
Dagger Lane
Elstree
Hertfordshire WD6 3BX

Dear Dr Lane,

HIV Haemophilia Litigation

You may recall that during the course of the above litigation, the CBLA was required to disclose by way of discovery documents relevant to the generic issues. A List was duly served and copies of the documents were supplied to Messrs. Pannone Napier at their request.

Discovery by the Defendants to a Plaintiff's representative was granted upon receipt of an undertaking as to the use which could be made of the documents disclosed. It was expressly provided that whilst disclosure could be made to any firm of solicitors representing one or more Plaintiffs in the litigation, this was subject to that firm giving the express undertaking.

We were informed by Messrs. Pannone Napier on 23rd September 1991 that CBLA's documents had been sent to J. Keith Park & Co (another member of the Plaintiffs' Steering Committee). This, we believe, is in contravention both of the requirement to provide an express undertaking limiting the use which may be made of those documents and of the terms of the Settlement Agreement.

The Settlement Agreement provides that documents disclosed on discovery by any Defendant shall be returned to the Defendant's solicitors or destroyed. This obligation does not apply to those Plaintiffs pursuing medical negligence claims against Health Authorities - in these cases they are at liberty to retain documents disclosed by such Health Authorities until the conclusion of the litigation.

I am informed by J. Keith Park & Co that CBLA's documents are "being preserved at the present time" as they may be required (i) in the continuing individual claims against various Health Authorities and (ii) are to be the subject of an application in connection with forthcoming transfusion litigation.

A LIST OF THE NAMES OF THE PARTNERS IS OPEN TO INSPECTION AT THE ABOVE OFFICE

REGULATED BY THE LAW SOCIETY UNDER THE FINANCIAL SERVICES ACT 1986

This is contrary to the terms of the Settlement Agreement which provides that:-

> "*...all parties undertake that they will not make any further use of any information acquired from documents disclosed on discovery in this litigation without leave of the Court or agreement of the party by whom such document was disclosed save for the proper purpose of pursuing such claims for medical negligence against Health Authorities as may be permitted hereunder. For the avoidance of doubt, this paragraph shall apply where lawyers acting for any of the Plaintiffs in the co-ordinated arrangements are instructed to act in cases concerning HIV infection by blood transfusion or hepatitis infection by blood transfusion or treatment with blood products*".

Arguably, CBLA's documents may be of relevance to Plaintiffs pursuing medical negligence claims against Health Authorities, although they are unlikely to refer directly to the treatment of an individual Plaintiff. In relation to the transfusion litigation, it is unlikely that CBLA's documents are relevant, bearing in mind that BPL supplies blood products, rather than whole blood.

I wrote to J. Keith Park & Co on 9th October 1991 requesting an express undertaking that until the issue of disclosure is resolved, the documents disclosed by the CBLA are not used for any purpose unconnected with the HIV haemophilia litigation. No response has been forthcoming.

A solicitor at the Department of Health informed me that negotiations had taken place with the Plaintiffs' solicitors regarding the use of documents disclosed in the haemophilia litigation, in connection with blood transfusion and hepatitis C cases. She did not appear unduly concerned that documents may be used in contravention of the purpose for which they were disclosed: the Department is already a recipient of Writs arising out of blood transfusion claims: if the Plaintiffs' solicitors retain documents disclosed in the HIV litigation, this avoids the cost of re-starting the discovery process over again.

I believe that CBLA's position is different, in that it did not supply whole blood for use in transfusion. Accordingly, it does not fall subject to the same obligations on discovery which apply automatically to parties in legal proceedings. The Court has a power to order discovery against a non-party in a personal injury action but only upon application for an Order for disclosure, where the person against whom the order is sought is made a party to the application. The Department does not, however, object if the CBLA decides to pursue the Plaintiffs' solicitors, for the return of its documents.

In summary, J. Keith Park & Co are able to make use of CBLA's documents either by agreement of the CBLA or with leave of the Court. It may be that the CBLA has no objection to the use of its documents in any subsequent proceedings, but I believe that CBLA should have the opportunity to provide for restrictions on the use of the documents, taking into account their nature and subject matter.

I would be grateful to hear from you if you have any specific views on this issue. In the meantime, I will continue to pursue matters with J. Keith Park & Co. I have also written to Pannone Napier, on the basis that

they should not have sent the documents to another party, without our prior consent.

With kind regards.

Yours sincerely

GRO-C

Angela C. Robertson