Risks Involved in the Litigation.

LIE 10
LIE 16

POLICY-IN-CONFIDENCE

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From: Ronald Powell SOLB3

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HIV HAEMOPHILIAC LITIGATION

We asked Junior Counsel

1. I spoke to Justin Fenwick today and, as requested, asked him if he was able to quantify the various risks involved in this litigation.

2. He said that the risk factors of various aspects of the case had to be considered separately.

3. On the question of whether or not the Department of Health owed a duty of care to the individual plaintiffs he thought we had a 50% chance of winning. He thought that a Judge would be more than willing to find this part in the plaintiffs' favour.

4. On whether the Department had acted unreasonably in the particular circumstances, he thought that we had a 70% or better chance of winning.

5. As to whether or not there had been actual negligence in the early years on the question of self sufficiency, he pointed out that there are some terrible gaps. He said there was obviously quite a lot of neglect which he thought was inevitable if money was tight and decisions were having to be made on the basis of not where can we spend money, but where can we avoid spending it. He thought however that this did not amount to negligence in the legal sense and that the chances of resisting a claim even with a sympathetic Court were 60% in our favour.

6. As regards whether or not there was negligence generally in the later years, he noted that the plaintiffs appeared to be watering down the claims against us and thought we had a much better chance of succeeding here, perhaps as much as 75%.

7. On the question of causation (as to whether the link between the infection and a particular blood product supplied could be established), he thought our chances of success were much better, perhaps as high as 80% or 90%. But a Judge might give any plaintiff the benefit of the doubt and with a sympathetic Judge our chances here could be down to 60%.

8. He pointed out that if the plaintiffs failed on any of these tests then they would fail completely. He thought that overall that we were left with something better than a 60% chance of winning. He thought it reasonable to think in terms of an overall chance of success between 60% and 75% but pointed out that we could of course lose. He did not think we should lose however and did not think we will. Any doubts however were bound to be resolved in the plaintiffs' favour.

9. He thought the Treasury would be wise to presume a one third chance of our losing but ought not to forget that if we did lose we lost entirely.

10. Opinions were bound to vary between Counsel. Andrew Collins eg, might take a stronger view on the duty of care, and Michael Spencer might take the opposite view.

11. On the question of costs he said that in the Opren case the costs of the settlement were something like £2½m (this I think must be the plaintiffs' costs only). In that case a settlement was reached after discovery but before preparations had been made for a trial (so that it was settled slightly earlier in the proceedings than the stage that we have reached).

12. He did not think it would be unreasonable if for the Health Authorities, the Central Government defendants, and for the plaintiffs, there was a bill of £5m per party. For the CBLA the bill would very much depend on the costs being charged by Clifford Chance, who were expensive.

13. He pointed out also that the plaintiffs were now talking in terms of a trial to six to ten months.

14. The fees for Counsel for each party might be as much as £800,000. In addition there would be the experts' fees as well.

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