**TELEPHONE ATTENDANCE NOTE**

CLIENT: CBLA
MATTER: Contaminated Blood - HIV
FILE REF: C1486/046
DATE: 4 December 1991

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**ACR calling Tony Mallen, Deas Mallen Souter. ACR time engaged: 29 minutes.**

1. I was calling you upon receipt of your fax containing a copy of a Summons returnable 11th December 1991 in relation to the documents disclosed by CBLA and the other Defendants in the HIV Haemophilia Litigation.

2. The purpose of my call was to obtain more information from you, prior to seeking instructions from the CBLA.

3. You informed me, "without prejudice", that where you state in your letter that no action lies against some Defendants, this applies specifically to the CBLA and NWTRHA. I enquired whether this statement was made on behalf of your own firm, or on behalf of the Plaintiffs generally. You said that Michael Brook will advise the other Plaintiff firms in similar terms. Michael Brook will advise the Legal Aid Board accordingly. Rupert Jackson will be the Plaintiffs' leader and this will be his advice.

4. In relation to the hepatitis claims, in your view and that of Michael Brook, no Plaintiffs have any claim against the CBLA.

5. You confirmed that the Plaintiffs bringing actions in respect of hepatitis infection are <u>all</u> new Plaintiffs. This of course applies also to the blood transfusion cases. You said that one lady was treated with a blood product (which you have never heard of and you could not recall its name). One or two Plaintiffs are haemophiliacs who did not become infected with HIV.

6. I enquired as to the purpose for which an Order was sought against the CBLA: CBLA's discovery did <u>not</u> encompass claims relating to hepatitis.

Further, CBLA was in the business of manufacturing blood products not whole blood for transfusion.

7. In this respect, you said you did not recall having specifically reviewed the CBLA's documents during the haemophilia litigation. The documents were split into groups. You thought that CBLA's documents were sent to Hugh Evans and Dan Brennan. You were not certain whether your partner, Tony Deas saw them. In your view, none of CBLA's documents are relevant. However, you are not certain whether Graham Ross at J. Keith Park & Co takes a similar view. Your own problem is that during the litigation you inspected an enormous amount of documents. You cannot recall what information you learned from each document. In some cases, the significance of one document only became apparent when you inspected another document. If you were not permitted to use the information contained in CBLA's discovery (and that of the other Defendants) you would have to advise the Plaintiffs that you could not act on their behalf, lest you may inadvertently breach the undertaking given in the haemophilia litigation.

8. Accordingly, from your own point of view the reason for which you require the Order, is to protect you from breach of the undertaking you have already given. Your own purpose is not to inspect the CBLA's documents.

9. You gave me two examples of cases in which Plaintiffs will be advised that they have no claim. One Plaintiff was infected with hepatitis in the late 1970's. A HIV Plaintiff was infected in 1982.

10. I expressed my concern that CBLA's documents were being held by J. Keith Park & Co, with whom I had been in correspondence relating to the return or destruction of those documents. To date, I had received no satisfactory undertakings or explanation as to why the documents were being retained. I was therefore surprised that the documents were the subject of a Summons issued by your firm, and not by J. Keith Park & Co.

11. You said that J. Keith Park & Co is involved in a number of continuing medical negligence cases against Health Authorities. There are about a dozen cases continuing towards trial. Of these, 8 or 9 are represented by J. Keith Park & Co. Your firm represents one Plaintiff and Stephen

Irving represents one Plaintiff. J. Keith Park & Co have on transfusion case. You are not certain about hepatitis cases. However, it is planned that you will split the work i.e. of reviewing documents, between the two firms.

12. I emphasised that I had not obtained any instructions from CBLA. However, if CBLA were prepared for the documents to be used by the Plaintiffs, I anticipated that they would require similar undertakings to those given in the haemophilia litigation. I pointed out that this was relevant for two reasons. First, the subject matter of the documents is not such that it is necessarily relevant to the proposed litigation. Secondly, express provision was made in the Orders in the haemophilia litigation, with regard to scientific and technical documents. You said you had instructed Michael Brook to spell out the undertakings that the Plaintiffs would be prepared to give. You had suggested to him that the equivalent undertakings be given to those in the haemophilia litigation.

13. I noted with concern that it was proposed that these matters be dealt with by the Judge on 11th December 1991. You apologised for this. You said you received a draft Summons from Michael Brook yesterday. You suggested that CBLA's Counsel, Richard Price speaks to Michael Brook to discuss the nature of the undertakings that CBLA would require.

14. I enquired when you would be in a position to supply us with a copy of the Affidavit in support of your application. You said that Michael Brook took the view that Affidavit evidence was not required.

15. You made it clear that your purpose in obtaining an express Order of the Court containing undertakings, was to ensure that you were able to bring all the Plaintiffs' firms into line (particularly J. Keith Park & Co).

16. You said that you believe there is no reason why CBLA's documents should be disclosed to the lead solicitors, if they contain nothing of relevance. You do not wish to look at them. However, it is likely that J. Keith Park & Co will wish to do so.

17. I enquired whether you had obtained a reaction from any other Defendants. You said you had spoken to Ron Powell, at the Department of

Health back in May or June. His view was that on balance it was a good idea for the lead solicitors to deal with these cases, rather than passing them to new solicitors at enormous cost and trouble to the Defendants. It was felt that with your knowledge of the claims, you would be in a position to advise a client when there was no case.

18. In addition, you had spoken to Messrs. Capsticks, who, you believed, represented South East Thames Health Authority and Hastings Health Authority. Their initial reaction was to resist disclosure. However, they reverted to you later saying that South East Thames instructed them to accept your proposals. Simon Pearl, informally, informed you back in September/October that he would agree also.

19. In conclusion, you confirmed that you would be prepared to accept any undertakings we required in relation to CBLA's documents. I agreed to revert to you in due course, once I had obtained firm instructions.

ACR