

8 DEC.

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Mr Wilson
MCA
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MT

From: Kate Lee SOL C5
Date: 7/12/89
Copies: Mr Hagger
Dr Rotblat
Dr Purves
Mr Gutowski

HIV LITIGATION

1. I attach a short note of the hearing of the Summons for Directions heard on 5/12/89 (a fuller account will be provided later) and a note of the short conference with Counsel which followed.
2. May I draw your attention in particular to the question whether an application to the Court of Appeal should be made to seek leave to appeal against the decision of Mr Justice Ognall not to allow a trial of the preliminary issues (see paragraph 6 of the conference note); and Counsel's suggestion that an open letter be sent to the plaintiffs as in the OPREN case see paragraph 3 of the conference note).
3. Subject to Andrew Collins' views, Counsel was not in favour of appealing. The main losers were the Plaintiffs, as explained in paragraph 2 of the conference note.
4. Our chances of success on appeal were slim (see paragraph 6 of the conference note). Even if we did succeed in the no duty of care argument, if the MSC alleged unreasonableness rather than no duty of care, we would not have gained anything.
5. Also by not taking no duty of care as a preliminary issue in HIV, it left us free to bring it up in benzodiazepines, where there was likely to be less of a public sympathy problem, and as explained in paragraph 4 of the conference note, this would read across.
6. So far as the open letter is concerned, the offer not to seek an order for costs if actions are discontinued now follows the precedent set in the OPREN case, and, viewed with the additional money made available to the McFarlane Trust, may be seen as a sympathetic gesture.

GRO-C

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GRO-C