SCHEDULE I

SCHEDULE 11
PARAGRAPH OF REAMENDED
MAIN STATEMENT OF CLAIM
NOT RELIED UPON

LPN

92 (a1) - (b1), (b4)

IN THE HIGH COURT OF JUSTICE 1990 L No. 416

QUEEN'S BENCH DIVISION

B E T W E E N:

LPN 157 Plaintiff

-and-

NORTH EAST THAMES REGIONAL HEALTH AUTHORITY

First Defendant

-and-

HAMPSTEAD HEALTH AUTHORITY Second Defendant

-and-

THE DEPARTMENT OF HEALTH Third Defendant

-and-

THE ATTORNEY GENERAL
(on behalf of the Committee on Safety of Medicines)

Fourth Defendant

-and-

THE ATTORNEY GENERAL
(on behalf of the Licensing Authority under the Medicines Act 1968)

Fifth Defendant

-and-

CENTRAL BLOOD LABORATORIES AUTHORITY

Sixth Defendant

-and-

NORTH WEST THAMES REGIONAL HEALTH AUTHORITY

Seventh Defendant

-and-

PETER BERNARD ALLEN KERNOFF

Eighth Defendant

DEFENCE OF FIRST AND SECOND DEFENDANTS

1. Paragraph 1 of the Statement of Claim is admitted.

[redacted]

2. The Plaintiff's date of birth is admitted. It is admitted that he is in category b (i).

3. Paragraph 3 of the Statement of Claim is admitted.

4. It is admitted that the Plaintiff was treated with blood products as shown in Schedule I to the Statement of Claim, but it is not admitted that the said Schedule is a complete record of such treatment. The Plaintiff was treated by and on behalf of the First Defendant as a National Health Service patient at the Royal Free Hospital only from 16th October 1985 onwards.

5. With regard to paragraphs 5 to 8 of the Statement of Claim, it is admitted that the Plaintiff's first positive sample was taken on 21st October 1985; accordingly he seroconverted before the said date and was infected before he was ever treated by or on behalf of these Defendants.

6. Paragraph 9 of the Statement of Claim is admitted.

7. As to paragraph 10 of the Statement of Claim, these Defendants adopt in their entirety Parts I and II of the Health Authorities' Defence to the Re-Amended Main Statement of Claim. With regard to Part III ("Duties of Care and Breaches of Duty of Care"), they deny that they were

negligent or have otherwise acted wrongfully or unreasonably as alleged in paragraphs 92 and 92A thereof, which are the only paragraphs in which allegations are made against them. With regard to the Particulars under paragraph 92, so far as adopted by this Plaintiff, these Defendants' Defence is as follows.

8. With regard to sub-paragraphs (a) to (af), i.e. the allegations under heads 1 to 6, these are mainly of a "generic" character, and these Defendants adopt the pleading to them in paragraphs 63 to 94 of the Health Authorities' Defence to the Re-Amended Main Statement of Claim. Insofar as some of the allegations pleaded in these sub-paragraphs are individual rather than generic in character, they appear all to be repeated in the sub-paragraphs under heads 7 and 8 and are pleaded to below.

9. With regard to sub-paragraphs (ag) and (ah), it is impossible to plead to these without proper particulars of what "other form of treatment might have been given" and when, and why it is said that it was negligent to give Factor VIII concentrate in preference to that alternative. It is these Defendants' case that at all times during which the Plaintiff was being treated with Factor VIII concentrate it

was the treatment of choice, or in any event a reasonable treatment for him, notwithstanding such risk as there may have been of infection with hepatitis, HIV or other viruses therefrom.

10. With regard to sub-paragraph (ai):

(i) the Plaintiff was not treated with non-heat-treated commercial Factor VIII concentrate by or on behalf of these Defendants before the date of his seroconversion;

(ii) it is in any event denied that it was negligent to treat the Plaintiff with commercial Factor VIII concentrate, as opposed to home-produced concentrate, on the occasions that he was so treated; if and insofar as it is established that at any material time there was a body of opinion to the effect that it was preferable for haemophiliacs to be treated with home-produced concentrate, it is nevertheless denied that the contrary view was unreasonable or in any event that it was negligent to treat haemophiliacs or the Plaintiff in particular, with commercial

concentrate in preference to home-produced concentrate;

(iii) it is in any event denied that the damage suffered by the Plaintiff, namely infection with the HIV virus, was foreseeable or was in any event of a kind which these Defendants or their staff were under a duty to prevent.

11. With regard to sub-paragraph (aj):

(i) the Plaintiff was not treated with non-heat-treated concentrate by or on behalf of these Defendants before the date of his seroconversion;

(ii) accordingly this allegation is of no causative relevance to any case the Plaintiff might have against these Defendants.

12. With regard to sub-paragraph (ak) :

(i) it is impossible to plead fully to the said sub-paragraph without further particulars of what information it is alleged should have been given to the Plaintiff, and when;

(ii) it is not admitted that the Plaintiff was not aware of the risks of viral infection from blood products and that he was not given the information referred to in this sub-paragraph;

(iii) it is denied that the Plaintiff could and should have been given any further information at any earlier or material date;

(iv) further and in any event, even if the Plaintiff had been so informed :

(a) it is denied that he would have acted any differently;

(b) he is put to proof that such action as he would have taken would have pre-dated his becoming infected.

13. With regard to sub-paragraph (bt) :

(i) it is impossible to plead to the allegations therein pleaded without the particulars requested;

(ii) on 20th January 1988 the Plaintiff stated that he did not wish to attend group counselling and discussion meetings;

(iii) it is in any event denied that even if the

Plaintiff had been informed, advised or counselled any earlier or differently :

(a) he would have acted any differently;

(b) such action as he would have taken would have prevented his becoming infected.

14. Save as aforesaid, no admissions are made as to paragraph 11 of the Statement of Claim.

15. No admissions are made as to paragraph 12 of the Statement of Claim.

16. It is not admitted that this is an appropriate case for an order for provisional damages.

17. It is admitted and averred that prior to his seroconversion the Plaintiff's treatment and concentrates were paid for by the Embassy of the United Arab Emirates and accordingly these Defendants are not liable for any negligence and/or breach of duty in respect of the same.

18. The Plaintiff's cause of action accrued, and he had the requisite knowledge under Section 11 (4) (b) of the Limitation Act 1980, more than three years before the issue of the Writ herein, and accordingly this claim is statute-barred.

JOHN GRACE

Served this 30th day of July 1990 by Beachcroft Stanleys of 20 Furnival Street, London EC4A 1BN.

Solicitors for the First and Second Defendants.

1990 L No. 416

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BETWEEN:-

LPN 157 Plaintiff
-and-
NORTH EAST THAMES R.H.A.
First Defendant
-and-
HAMPSTEAD H.A.
Second Defendant
-and-
THE DEPARTMENT OF HEALTH
Third Defendant
-and-
THE ATTORNEY GENERAL
(on behalf of the Committee on Safety of Medicines)
Fourth Defendant
-and-
THE ATTORNEY GENERAL
(on behalf of the Licensing Authority under the Medicines Act 1968)
Fifth Defendant
-and-
NORTH WEST THAMES R.H.A.
Sixth Defendant
-and-
CENTRAL BLOOD LABORATORIES AUTHORITY
Seventh Defendant
-and-
P.B.A.KERNOFF
Eighth Defendant

DEFENCE OF FIRST AND SECOND DEFENDANTS

Messrs Beachcroft Stanleys
20 Furnival Street
London EC4A 1BN
Ref: GW/NETRHA/MAW/31188