IN THE HIGH COURT OF JUSTICE 1988 L No. 3679

QUEEN'S BENCH DIVISION

B E T W E E N:

LPN 8 Plaintiff

-and-

HAMPSTEAD HEALTH AUTHORITY First Defendant

-and-

NORTH EAST THAMES REGIONAL 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-

NORTH WEST THAMES REGIONAL HEALTH AUTHORITY
Sixth 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. He was also treated with such products both before and after the dates shown in the said Schedule.

5. Paragraphs 5 to 8 of the Statement of Claim are admitted and accordingly it is admitted and averred that the Plaintiff seroconverted between 12th May 1982 and 4th May 1983.

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 the 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) it is admitted that the Plaintiff was treated with commercial Factor VIII concentrate on the occasions pleaded in Schedule I; but he was also treated before the date of his seroconversion with home-produced Factor VIII concentrate. The Plaintiff is put to proof that it was treatment with the former which caused him to become infected with the HIV virus and that the home-produced concentrate would not itself have so infected him;

(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) notwithstanding the foregoing, staff at the Royal Free Hospital Haemophilia Centre at all material times preferred to use home-produced Factor VIII when it was available but at the material times insufficient Factor VIII concentrate was being produced by the BPL to supply all the needs of the said Centre;

(iv) 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 last given non-heat-treated concentrate on 16th June 1984 and was not thereafter treated with such concentrate;

(ii) it is denied that it was negligent not to give the Plaintiff heat-treated concentrate on or before the said date; if and in so far as it is alleged that heat-treated concentrate should have been given against the risk of hepatitis or other viruses, these Defendants repeat the matters pleaded in paragraphs 34 and 70 (1) and (2) of the Health Authorities' Defence to the Re-Amended Main Statement of Claim; if and in so far as it is alleged that that heat-treated concentrate should have been given against the risk of infection with the HIV virus, there were no circumstances

such as to require consideration of its use before the said date : no general recommendation, even of a qualified kind, of the use of heat-treated concentrates was given by the National Haemophilia Foundation in the United States until 10th October 1984 or by the Haemophilia Reference Centre Directors in the United Kingdom until 14th December 1984 (as pleaded in paragraph 70(3) of the Health Authorities' said Defence); further, heat-treated concentrate was not generally available before or at the said date;

(iii) further and in any event, even if (which is denied) the Plaintiff should have been treated with heat-treated concentrate at an earlier date:

(a) it is denied such earlier date would have been sufficiently early to haveprevented him from seroconverting, which, as pleaded in paragraph 5 hereof, occurred between 12th May 1982 and 4th May 1983;

(b) he is put to proof that earlier treatment with heat-treated concentrate would have prevented him from seroconverting: the earliest heat-treated concentrates were not wholly effective to prevent transmission of the HIV virus;

(c) he is put to proof that heat-treated concentrate would then have been available.

12. With regard to sub-paragraphs (ak) and (al):

(i) it is impossible to plead fully to the said sub-paragraphs 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 given the information referred to in these sub-paragraphs;

(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 (an):

(i) it is admitted that the Plaintiff received prophylactic treatment with non-heat-treated Factor VIII concentrate on the occasions identified in the notes contained in Schedule 1 to the Statement of Claim;

(ii) it is denied that it was negligent so to treat him;

(iii) further and in any event, the Plaintiff is put to proof that even if he had not been treated prophylactically he would not have seroconverted.

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. 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 11th day of May 1990 by Beachcroft Stanleys of 20 Furnival Street, London EC4A 1BN.
Solicitors for the First and Second Defendants.