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GRO-C

Your ref: AJT/SJH 1314

Our ref: 78/273/236 B

18 April 1991

Dear Sirs

**SCOTTISH HIV/HAEMOPHILIA LITIGATION GROUP
DEED OF TRUST**

I refer to my letter of 12 April and also my letter of 17th with which I attached a copy of draft 9 of the terms of settlement. I now attach revised Schedule 3 to the Trust Deed and revised Schedule 4 to the Trust Deed. Schedule 3 you will already have as Schedule 1 to the terms of settlement. Schedule 4 deals with the Scottish adaptations to the Trust Deed.

In Schedule 4 you will note that paragraph 1 sets out the new provisions in relation to Category G claimants and paragraph 6 deals with the rules for devolution of sums payable on death.

Yours faithfully

RICHARD M HENDERSON

SCHEDULE 4

MODIFICATION OF THE APPLICATION OF THE PROVISIONS OF THE TRUST DEED IN SCOTLAND

1. Any reference to Category G or Category G plaintiff means:-

(a) any pursuers who have prior to 13 December 1990 instituted any action or proceedings before the Scottish Courts against the Secretary of State or any health service body alleging injury arising from treatment of that person or any other person with Factor VIII, Factor IX (whether cryoprecipitate or concentrate), and

(b) any person who has prior to 13 December 1990 presented a legal aid application to the Scottish Legal Aid Board in contemplation of any such action or proceedings,

and where in either case those persons or pursuers have not sero-converted and/or been infected with HIV to their knowledge, but are at risk of doing so because they are the intimates of haemophiliacs who have sero-converted and/or been infected with HIV or developed AIDS.

2. Any reference to "children" or "dependant children" means:-

(1) any minor or pupil child liable to be maintained by a person who is a beneficiary under the provisions of this Deed of Trust,

(2) any unborn child who when born would be liable to be so maintained, and

(3) any person over the age of 18 in full-time education liable to be so maintained.

3. Any reference to a person under a disability shall be taken to mean such a person who is an incapax and in respect of whom a curator bonis has been appointed.

4. Any reference to the Secretary of State in connection with the grant of an undertaking shall mean the Secretary of State for Scotland.

5. The provisions of clauses 9, 10, 12, 13, 14 and 15 shall be read as subject to the following modifications:-

(a) in each of the clauses referred to the period of three months shall date from the date upon which the person to whom payment may be made shall have received notice of entitlement in terms of the provisions of this Trust Deed;

(b) in each of the clauses referred to above the undertaking shall be in the form set out in Schedule 3 hereto;

(c) in clause 10 sub-paragraph (b) shall not apply.

6. Clauses 11 and 16 shall have no effect and the following provisions shall apply in their place:-

(1) If the Trustees are satisfied that any person who is or may become entitled to a payment under the Deed, has died and was at the date of his death:

(a) married but childless, then the provision of sub paragraphs 2 and will apply,

(b) a haemophiliac with children, then the provision of sub paragraphs 3, 4 and will apply,

(c) survived by a parent or parents then the provisions of sub paragraph will apply.

(2) In any case to which sub paragraph 1(a) applies and where the Trustees are further satisfied that that person was at the date of death living with his spouse in the same household, they shall pay to that spouse the appropriate sum specified in clause 3 above provided that that spouse:-

(a) has applied to the Trustees for payment within three months of the date on which the spouse shall have received notice of the provisions of the Trust Deed, and

(b) gives an undertaking in the form set out in Schedule 3 hereto.

(3) In any case to which sub paragraph (1)(b) above applies the Trustees shall make payment of the appropriate sum under clause 3 as follows:

(a) where the deceased was at date of death living with his spouse in the same household then one half of the appropriate sum shall be paid to the spouse and the remaining half shall be payable as if sub-paragraph (b) below applied;

(b) where the deceased was not at date of death living with his spouse in the same household then the appropriate sum shall be paid to the [guardian or curator.] for the children except that if any of the children is aged 18 or over at the date of death of the deceased the Trustees shall pay a proportion of the sum payable to that child calculated in accordance with sub-paragraph (4) below.

(4) In any case in which a sum is payable to a child aged 17 or over in terms of sub-paragraph 3(b) above that sum shall be calculated by dividing the total sum payable for behoof of the children by the number of children concerned.

(5) In any case to which sub paragraph 1(c) applies the Trustees shall pay out of the appropriate sum specified in Clause 3 the sum of [£2,000] to each parent the balance of the appropriate sum to be payable in terms of this Schedule,

provided that where any such parent claims in a case to which sub paragraph (2) above also applies then the sum payable to that parent shall be deducted in equal parts from the sums otherwise payable to the spouse and for behoof of the children.

(6) Without prejudice to sub-paragraph (1) to (5) above if the Trustees are satisfied that any person who is or may become entitled to a payment under this Deed has died and was at the date of his death an infant, a single adult, married but childless (other than a person to whom paragraph 6(1) applies), an intimate, or a haemophiliac with children (other than a person to whom paragraph 6(2) above applies), they shall pay to that person's personal representatives the appropriate sum specified in clause 3 above

(7) The Trustees shall not be required to make any payment in terms of the schedule except where:

(a) the person to whom payment is to be made shall have applied for payment within 3 months of the date on which the person received notice of the entitlement of the deceased in terms of the provisions of the Trust Deed, and

(b) gives an undertaking in the form set out in Schedule 3 hereto.

Schedule 1

UNDERTAKING TO BE GIVEN BY A QUALIFYING PERSON TO RECEIVE
PAYMENT FROM THE MACFARLANE TRUST

Whereas the Secretary of State for Scotland has set out proposals for payment of certain sums to or in respect of haemophiliacs infected with human immuno deficiency virus and to or in respect of other persons who may have become infected as a consequence of their relationship to such a haemophiliac;

and whereas the proposals for payment involve such payment at the instance of the Trustees of the MacFarlane (Special Payments) (No.2) Trust; and whereas it is a condition for payment of funds to persons entitled to receive funds from the Trust that a discharge and undertaking be granted to the Secretary of State and others.

Now therefore I _____ residing at _____

hereby undertake as follows;

1. I hereby discharge the said Secretary of State and all other Ministers of the Crown and Government Departments or bodies or any of their respective agents, servants or employees whomsoever (hereinafter referred to as "the Crown"), from any liability they may have in respect of the infection of _____

with human immuno deficiency virus, allegedly arising out of treatment with Factor VIII or Factor IX (whether cryoprecipitate or concentrate)

2. I hereby discharge any Health Board, the Common Services Agency, the Scottish National Blood Transfusion Service or any other body established under the National Health Service (Scotland) Act 19 _____ or any of their respective agents, servants or employees whomsoever (hereinafter referred to as "a health service body") from any liability they may have in respect of the infection of _____ with human immuno deficiency virus allegedly arising out of treatment with Factor VIII or Factor IX (whether cryoprecipitate or concentrate)

3. I acknowledge that payment of any sums is made without admission of liability on the part of the Crown or any health service body.

4. I undertake not to bring any proceedings against the Crown or any health service body now or at any time in the future in respect of the said infection of _____ by human immuno deficiency virus.

Provided that this discharge and undertaking shall be without prejudice to any claim competent to me against any health service body in respect of any alleged medical negligence in connection with the infection of _____ with human immuno deficiency virus allegedly arising out of treatment with Factor VIII or Factor IX (whether cryoprecipitate or concentrate), and for the purpose of this undertaking the expression medical negligence shall include only specific allegations as to negligence in the application of treatment including treatment with Factor VIII, Factor IX or cryoprecipitate and shall not extend to averments as to the policy for such treatment or the selection or screening of any blood products or other material in such treatment, and by way of example:-

a. that self-sufficiency in blood products should have been achieved at any date prior to the date of his or her sero-conversion;

- b. that donor warnings were inadequate;
- c. that heat-treated blood products should have been made available for use by any Health Service body by any earlier date than in fact was the case;
- d. that blood products screened for HIV should have been made available for use by any Health Service body by any date earlier than in fact was the case;
- e. that Health Service bodies should have taken steps to increase the supply of blood products made from non-commercial plasma, whether by arranging for fractionation of such plasma otherwise than by the BPL or by increasing supplies of plasma by investment in plasmapheresis or by having plasma fractionated in Scotland or otherwise.

Further provided that this discharge and undertaking is conditional upon receipt by me of the sum of £ from the MacFarlane (Special Payments)(No.2) Trust which shall be evidenced by my grant of a receipt to the Trustees of the said Trust.

Dated at this day 1991.

Signed

Witness

Address

Occupation

Witness

Address

Occupation