Blood Money

Settlement offers big payout but small compensation

January 1, 1997 By Dan Levy

The road to resolving the legal claims of HIV positive people with hemophilia (PWHs) is cluttered with several failed attempts. In late 1993, a $160 million settlement offer was rejected because plaintiffs thought it was insufficient. Last year, a class-action lawsuit was thrown out because a federal judge ruled it might bankrupt the blood-product industry. Now, a settlement worth $100,000 per person may be near for thousands of PWHs from the pharmaceutical firms they accuse of knowingly selling HIV-infected blood products.

Whether the charges leveled by these PWHs are true is cause for intense debate. However, two congressionally mandated studies state that the U.S. government failed in its regulatory responsibility regarding blood and blood products. It is also known that an estimated 10,000 people with hemophilia in the United States received tainted blood-clotting substances manufactured by four companies: Bayer A.G., Baxter Healthcare, Armour and Alpha. More than 3,000 of them have already died.

Under the settlement plan, the four companies would establish a $600 million fund for people who got HIV by using their blood products between 1978 and 1985. The fund would pay $100,000 to each plaintiff (or a survivor) if the claim is approved and the plaintiff agrees not to make further claims against the companies.

Lawyers for both sides say payments could begin by the end of the year. But he companies have the right to withdraw the offer if they determine that not enough plaintiffs want to take part in the settlement.

“This proposal is inteded for people who have not filed, could not file or do not wish...to assume the risks and delays of the oucome of individual litigation,” says David Shrager, a Philadelphia-based lawyer handling the settlement offer for the people with hemophilia. “It is also intended for those who wish to accept a certain amount and put this behind them.”

But the Committee of Ten Thousand (COTT), an activist group of PWHs based in Washington, D.C., says the plaintiffs can prove criminal conduct and end up with a larger payout-but pursuing hundreds of smaller legal actions in court. “The pharmaceuticals put $600 million on the table because they’re scared to death of what we know,” says COTT president Corey Dubin. “We have

memos showing they knew about the [tainted blood products] problem in 1982. They didn't tell us or our doctors, and they didn't recall the products."

COTT cites a 1982 Centers for Disease Control (CDC) finding that certain plasma-donor groups, including gay men and prisoners, had a high incidence of both hepatitis B and GRID, as AIDS was then called. When that information became known, activists contend, the companies should have discontinued using plasma from those donor groups in the manufacturing of blood products. The group also points to a March 1983 CDC report that AIDS was transmitted through Factor VIII concentrate, the main blood product used by people with hemophilia.

"Those allegations have never been proved, and they have no basis," says Rick Berkman, a lawyer for Baxter Healthcare.

For many PWHs and their survivors, the legal wrangling may end with the settlement. Tiffany Althouse says her brother Patrick Taylor received tainted factor VIII in the early '80s and died of AIDS in 1991. Her family will apply for the settlement, although she says a $100,000 award does not make up for the loss or for the accumulated costs of HIV treatment. "It's a lousy amount to replace the life of my brother," she says.

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