

MAKINSON d'APICE
LAWYERS

15 May 2013

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Our Ref: 130979:AXK

BY PASSWORD PROTECTED EMAIL ONLY: emma.fenby@ccinsurance.org.au

Ms Emma Fenby
Special Issues Case Manager
Catholic Church Insurance Limited

Dear Emma

First Report

CCI Claim Reference:	3148293
CCI Client:	Diocese of Lismore
Claimant:	Jennifer Ingham
Alleged Offender:	Father Rex Brown
Date of Loss:	1978-1982
Contribution by Client:	\$NIL
Claim Estimate:	\$189,992.00
Defence Costs Estimate:	\$2,000.00
Defence Costs Incurred:	\$900.00
Limit of Indemnity:	\$2,000,000.00 (plus claimant + defence costs)
Large Loss:	No

1. Recent Developments / Current Status

- 1.1 Jennifer Ingham (**claimant**) brought a complaint under Towards Healing last year through the Professional Standards Office (**PSO**), Queensland. Michael Salmon, Director of the PSO in NSW/ACT, has been appointed as facilitator.
- 1.2 Arrangements are being made to conduct a facilitation in Brisbane on 23 or 24 May 2013. You have asked us to provide an advice on quantum only for the purposes of the Towards Healing Facilitation.

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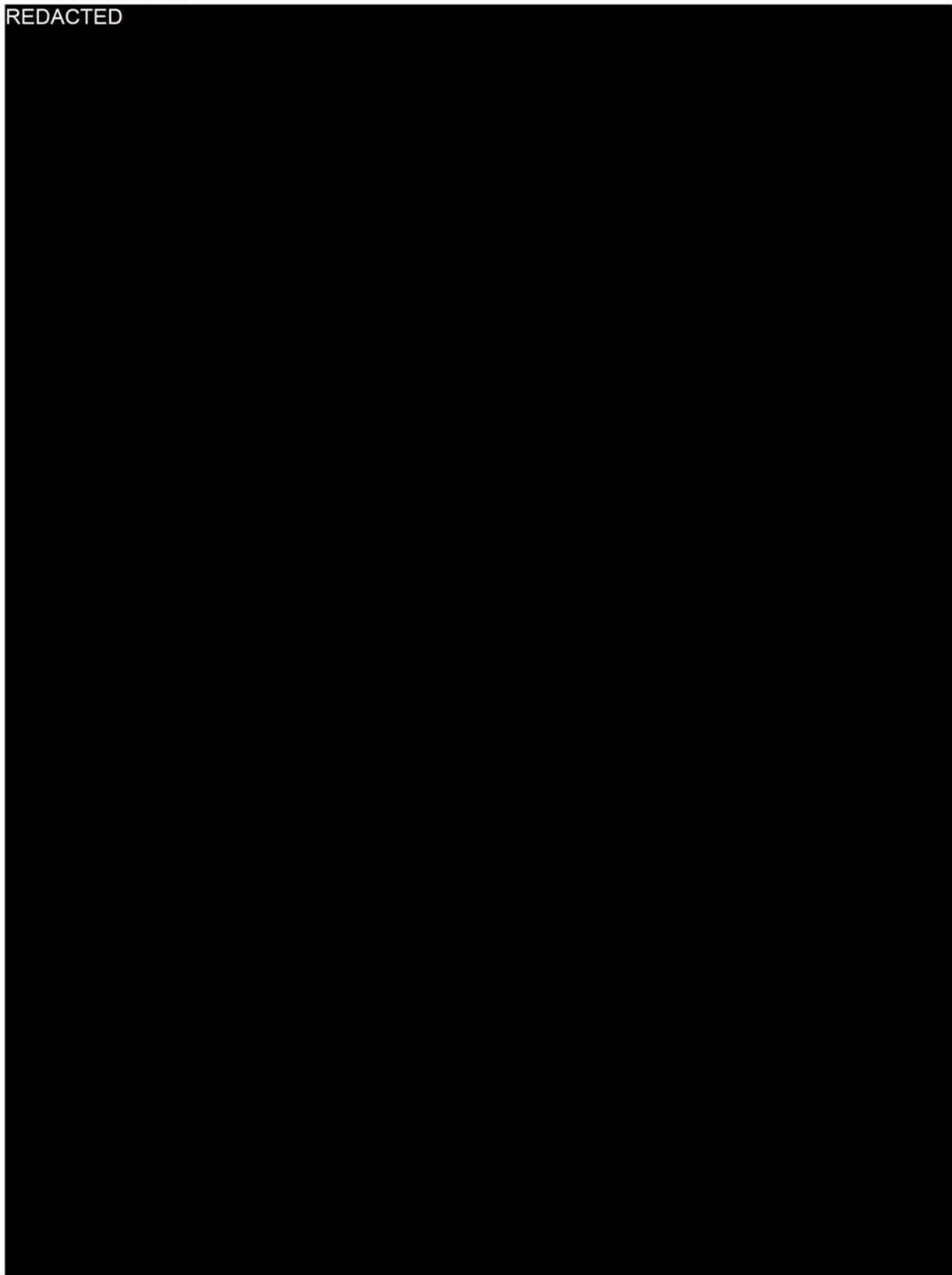


Liability limited by a scheme approved under Professional Standards Legislation

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2. Circumstances

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3. Indemnity

3.1 The Diocese of Lismore held a CCI Public Liability Policy for the relevant period. The limit of indemnity is \$2 million plus claimant and Defence costs. There is no excess payable under the policy.

3.2 Indemnity has been granted to the Diocese on the basis of currently known facts and circumstances by letter dated 14 December 2012.

4. Liability

4.1 We have not been asked to advise on liability. We simply observe that, according to the material provided to us, the claimant was not the only one abused by Fr Brown. The claimant attended a meeting in 1990 with Fr Mulcahy (a local priest and a friend of the family) and other senior priests. When the claimant told them of the abuse, Fr Mulcahy allegedly broke down crying and was very distressed. He told the claimant that he knew about the abuse but it had not been stopped. One of the other priests at the meeting said they were aware that two other girls had also been abused. In 2003, the claimant also told a priest at the Dutton Park Administration Office of the abuse by Fr Brown when she was trying to reconcile herself with the church and get some closure. The priest listened and was sympathetic but no action was taken. Finally, she also disclosed the abuse in 2006 to another priest at the Ekibin Catholic Church. When told of the abuse, the priest became angry and said that he was "*Sick of people blaming priests for these matters*".

Date of knowledge
1985 from
review
of personnel
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Diocese .

4.2 For the purposes of the Towards Healing facilitation later this month it should be assumed that liability will be found in favour of the claimant.

5. Quantum

5.1 We have been provided with the Towards Healing Contact Report as well as the detailed report of Professor Roger Dooley, Clinical Psychologist, dated 30 April 2013. We have relied on these documents for the purposes of what follows.

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REDACTED

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5.7 As you know, attempting to put a percentage figure on attribution is an imprecise science. Different doctors will come to a different view. A judge is not bound by a doctor's opinion in this regard and may reach his/her own conclusion based on other evidence. Moreover, in this case, one has to look carefully at Professor Dooley's attribution in light of the fact that he has been the treating psychologist for almost 25 years.

J
|| Treating
claimant
over last 25
years.

5.8 Nevertheless, in our opinion, his views on attribution do not seem unreasonable or inaccurate. He readily concedes that the anorexia developed a year or so prior to the first episode of abuse and that this was a significant factor in the claimant's life. On the other hand it is true that the claimant would have recovered quicker and with less trauma (including multiple hospitalisations) if her psychological state was not compounded by the abuse from Fr Brown.

5.9 Professor Dooley considers that the claimant requires ongoing treatment for the next 3 years at monthly intervals. The current cost of this is approximately \$7,992.00 at today's figures.

- 5.10 Professor Dooley concedes that the claimant's current and future employment, which is restricted to about 20 hours per week, is really related to her jaw pain following the failed surgical procedure. If this is correct, it will significantly impact upon future economic loss. || No economic loss - unrelated separate low suit.
- 5.11 Taking into account the whole of Professor Dooley's report, it seems that the heads of damage applicable to this claimant are as follows:
- (a) General damages – these would be reasonably significant given the nature of the abuse; the length of time over which it was perpetrated and the way in which Fr Brown groomed the claimant into becoming financially and emotional dependant upon him by the provision of employment, hospitalisation costs and trips to/from Sydney. We appreciate this is under Towards Healing but if one were to access general damages at large, the claimant would be entitled to something in the order of 30 - 35% of a most extreme case which would equate to \$123,000.00 - \$187,500.00 (this is attributing only 75% of her symptomology to the abuse – the general damages figure would be much higher if the whole of her symptomology were attributable to the abuse). ||
 - (b) Past treatment/counselling/hospitalisation/out of pocket expenses – it is difficult to know what this figure might be because a lot of it was paid by Fr Brown himself for many years. However, the claimant clearly had considerable ongoing treatment from Professor Dooley for many years and we anticipate her past expenses may be in the range \$10,000.00 - \$20,000.00.
 - (c) Past economic/wage loss – the claimant left school prior to completing Year 12 at a time when she was being sexually abused by Fr Brown. Although her anorexia had commenced a year or two earlier, we will not be able to discount the possibility that the abuse impacted upon her final year of studies and early employment opportunities. **REDACTED**
REDACTED
REDACTED We would allow a small economic cushion of say \$20,000.00 - \$30,000.00 to cover a loss of employment opportunities in her early work life prior to the mandibular problems surfacing. || Buffer.
 - (d) Future loss of earning capacity – this does not appear to be an issue attributable to the abuse but rather the chronic pain **REDACTED** **REDACTED** which has resulted in the claimant being unable to work for more than about 20 hours per week. Agree.
 - (e) Future treatment costs – we consider that an allowance should be made for this on the basis of Professor Dooley's report. He has calculated the present day cost at \$7,992.00 on the basis of approximately 3 years of future counselling as the claimant goes through the Towards Healing process and "adjustment counselling following any resolution". Agree.

6. Contribution

- 6.1 Not applicable.

7. Expert Reports/Documents Required/Enquiries Required

7.1 Not applicable.

8. Risk Management/Loss Prevention

8.1 Not applicable.

9. Estimate

9.1 We **attach** the estimate sheet. We have taken mid-range figures from the commentary provided above and estimate the quantum of the claim as follows based on common law principles:

- (a) Claim estimate: \$189,992.00;
- (b) claimant's costs estimate: \$NIL;
- (c) Defence costs estimate: \$2,000.00.

10. Strategy for Resolution of the Claim

10.1 We note that a Towards Healing Facilitation is being organised for later this month. The report of Professor Dooley is sufficiently detailed and well balanced to proceed with a facilitation.

11. Recommendations and instructions

11.1 The claim estimate of \$189,992.00 has been provided as a likely common law assessment based on the available material at this stage. However, in light of this matter being under Towards Healing, it may be possible to achieve a settlement for an amount lower than this assessment. *Tealaw*

11.2 We would recommend a starting offer of approximately \$30,000.00 inclusive of costs, and to go up to about \$75,000.00 inclusive of costs in order to attempt settlement of the matter under Towards Healing. We are not aware of the claimant having retained a solicitor so it would appear that legal costs will not be a factor. *now has*

Please do not hesitate to contact us if we can be of any further assistance.

Yours faithfully

Makinson d'Apice

Makinson d'Apice

Attachments to First Report

- 1. Estimate Sheet (Annexure F)