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IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

**2002 No. 4877
2002 No. 4878
2002 No. 7909
2002 No. 7910
2002 No. 7911**

BETWEEN

ANTHONY FOSTER & ORS

and

NOREEN HARRISON & ORS

Plaintiffs

Defendants

Brief to Counsel to Confirm Previous Advice

Brief to: David Collins QC
Room 1013, Latham Chambers
500 Bourke Street
Melbourne, Vic, 3000

Clerk: Dever

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Instructions to Counsel

Counsel will recall having been briefed in this matter on behalf of the defendants including having appeared at the mediation at which the proceedings were ultimately resolved.

The Archdiocese is in discussions with its insurers seeking to recover part of the settlement payments. In those discussions we have indicated that the settlement reached by the Archdiocese was reached in accordance with Senior Counsel's advice, and the insurers have requested written confirmation of that advice. Counsel is asked to draft an appropriate memorandum.

We note that the mediation took place on 7 November 2005. Mr Beach QC was the mediator. Mr Stanley QC and Mr Seccull represented the plaintiffs, accompanied by Mr Jorgensen. The Archdiocese was represented by Senior Counsel, Mr Lyons, Mr Exell and the writer.

Stanley made it clear that the family had decided that none of them were prepared to resolve their cases for what is available under the Archdiocese's ex-gratia compensation scheme. He assured us that the cases would go to trial unless they settled. He said that the family had financial resources to defend any interlocutory applications brought by the defendants and that ultimately, the cases would go to trial. He said that if the cases were treated as assessments, then Emma in particular would be given significant damages by a jury. Emma's claim involves a claim for loss of earning capacity, which he detailed as amounting to \$685,000. In terms of medical expenses, Emma incurs \$250 per month on medication costs alone. Pain and suffering would be assessed on the basis that included a recognition of the fact that she was penetrated and that she bled. She remains on medication to prevent her menstruating because she is unable to cope with the bleeding. She is totally addicted to the medication she is on, which is similar to methadone and her prognosis is poor.

Mr Stanley then turned to Katie and argued that her position would have been very similar to Emma but for her motor vehicle accident. He noted that Katie had been seen by Professor McFarlane before the car accident it was clear she was binge drinking. He argued that the abuse was a contributing factor to the motor vehicle accident. If they failed in establishing that, then the claim would be limited to the problems she suffered up to the accident, and ongoing counselling. Therefore her claim is on a different level to Emma. She is approximately 90% disabled according to the TAC assessment, and she receives 24 hour attendant care. She has laboured speech but is able to communicate.

In relation to the parents Mr Stanley referred to recent changes to the law that clarified that they both have a cause of action for pain and suffering arising out of what they were told regarding the effects of the abuse. What, he asked, what a jury award them for the loss of two of their daughters?

In relation to Aimee, Mr Stanley conceded that it was harder to see what her cause of action is. He said that at least morally, Aimee is entitled to compensation for what her parents assess as the loss of two years growing up.

My notes record that after the responses put on behalf of the defendants, an offer was made by the defendants of \$250,000 plus costs less HIC, with no ongoing entitlement to Carelink and confidentiality.

The plaintiffs then made a counter-offer of \$1.5 million plus costs. The defendants made a counter-offer of \$350,000 on the same terms as previously.

After Mr Foster spoke directly to us, the plaintiffs made a counter-offer of \$750,000 plus solicitor/client costs in all cases, an ongoing entitlement to Carelink and an indemnity to each plaintiff in relation to the HIC.

The defendants made a counter-offer of \$500,000 plus HIC, solicitor/client costs, ongoing entitlement to Carelink and confidentiality.

The plaintiffs rejected this offer and indicated that \$750,000 was their bottom line.

A further counter-offer was then put on behalf of the defendants of \$750,000 plus solicitor/client costs, and indemnity in respect of the HIC but no ongoing entitlement to Carelink.

This offer was accepted.

I am **enclosing** copies of the amended statements of claim, medical reports provided by the plaintiffs and the terms of settlement.

I would be grateful if Counsel could draft a memorandum.

As Junior Counsel has been away we have not spoken with him. If Counsel wishes Junior Counsel to prepare a draft of the memorandum for Senior Counsel to settle, please let us know and we will forward a brief to Junior Counsel.

Corrs Chambers Westgarth

Richard Leder
Partner

1 November 2006