

YOUR REF:

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CONTACT:

PARTNER: Howard Harrison

REDACTED

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PRIVATE & CONFIDENTIAL

Ms Marita Wright
National Claims Manager
Liability Department
Catholic Churches Insurance Ltd
REDACTED
MELBOURNE VIC 3001

Dear Ms Wright

TRUSTEES OF THE MARIST BROTHERS ATS CNK

We refer to recent discussions.

We confirm that Brother Alexis and Mr Michael Salmon from the Sydney Professional Standards Office are in conversation with CNK (aka REDACTED REDACTED) who claims to have been abused by the late Brother Patrick Butler whilst in the care of the Marist Brothers as a student at Marist Brothers Hamilton between 1973 and 1974.

Brother Alexis is proposing to make an offer of settlement of \$40,000. Mr CNK has legal representation.

BACKGROUND

There is a Statement of Complaint by Mr CNK together with telephone notes of various discussions that have been had with him.

It is alleged by Mr CNK that he was abused by the late Brother Pat Butler in around 1973/1974 when Mr CNK was a pupil at Marist Brothers Hamilton School. The late Brother Butler was at the school during the time. Mr CNK was then known as REDACTED and has had at least one other name. He has been involved in drug abuse and the like since leaving school and has presented at times as being quite disturbed.

The abuse as described does not appear to be at the "heavy" end of the scale but involved inappropriate touching on a consistent basis.

It is to be noted that there are at least four other complaints regarding the late

Brother Butler and at least 2 if not 3 of those went to the Police and one of them proceeded with charges although the charge was dismissed because of the age of the evidence.

Brother Alexis interviewed the late Brother Butler and interviewed various complainants (and has noted that one complaint goes back to 1993) and is satisfied that it is more probable than not that these occurred in this instance and indeed in each of the instances.

Liability - Limitations

If this matter were to run there would be a number of witnesses who could potentially give evidence of similar abuse together with evidence of recorded complaints to the Brothers over some years.

There has been police involvement and in the CNI matter we understand that charges were laid in Queensland, although the case did not proceed beyond the committal hearing stage.

The fact that a number of boys were abused is the type of evidence that would be used to suggest there was at the very least a failure in the administration, reporting system, supervision and the like and the Plaintiff would have a reasonable argument that there has been some breach of duty, as more could have been done to protect him.

The obligation to protect a school pupil is a particularly high one and whilst it is not strict liability, it is certainly a non-delegable duty.

Therefore in this matter there must be some reasonable prospect that the Plaintiff will succeed although of course it would be met with not only difficulties in proving breach of duty, but with the *Ellis v Pell* defence which may defeat the claim. The Plaintiff would also have to overcome the *Limitation Act* and the fact that he complained many, many years ago and is yet to commence proceedings, would not assist him in getting leave, although given apparent psychological difficulties, the Court may well find he is sufficiently disabled to be entitled to the Court's discretion in bringing proceedings.

Clearly there are significant legal hurdles for the Plaintiff to overcome but we would see the Plaintiff as having a 50/50 prospect of making out a legal liability case.

QUANTUM

Noting that the Plaintiff appears to have been abused even though at the so-called "lower end of the scale", some 35 plus years ago and has been acutely aware of the problems ever since, indeed complained about them seemingly some 17 years ago, and had a life post-school involved in drugs, with a whole host of other problems, it is to be expected that the Plaintiff would obtain supportive psychiatric evidence to suggest that many of his problems stem from the abuse of trust, when he was abused as a young school boy.

If he has had these symptoms over such a lengthy period, then his allowance for pain and suffering would be at least in the range of \$150,000 and there would probably be an allowance for interest on the past pain and suffering for such a claim in the vicinity of \$40,000 to \$50,000. There would likely be allowances for counselling, and in his case there could well be allowances for diminished earning capacity as it would appear he has had minimal work opportunities since leaving school. It is the type of claim that one would expect could if successfully run, be worth well in excess of \$250,000.

In general terms the case at full value could assess as follows:

General damages	\$150,000
Interest on general damages	\$50,000
Past out of pocket expenses	\$5,000
Future out of pocket expenses	\$20,000
Past economic loss – buffer	\$50,000
Future economic loss – buffer	\$100,000
Estimate for superannuation	\$Nil
Exemplary damages	\$Nil

RECOMMENDATIONS

Having regard to the liability issues as set out above, and a lack of available medical support at this stage, the claim should be compromised to something significantly less than 50% of value.

However in our view any settlement of up to \$50,000 would be a reasonable outcome when one has regard to the fact that the abuse has almost certainly occurred, the length of time since the abuse, the evidence from the papers itself of complaint of symptoms over much of the last two decades if not longer and the need for an early pastoral resolution for a matter such as this.

Please advise if you require any further information.

Yours faithfully
Carroll & O'Dea
 Per: