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Private & Confidential - Legal Professional Privilege Applies

Brother Michael Hill
Provincial
Marist Brothers
14 Drummoyne Ave
DRUMMOYNE NSW 2047

9 April 1997

Dear Brother

RE: GREGORY SUTTON - CLAIM FOR INDEMNITY ON CCI

We refer to our discussions on 9 April 1997.

We confirm that the conferences with the various claimants are proceeding smoothly. Present at these discussions are Mr Paul Reynolds from CCI and his solicitor, Mr Paul Gamble from Dunhill Madden Butler. The Plaintiffs are represented by their solicitor and Mr Greg Woods, QC.

We confirm that there is no cover available in relation to these matters under the Special Issues Contract due to knowledge on the part of the Marist Brothers of Sutton issues prior to the time Special Issues was taken out. Accordingly, the only prospect for indemnity relates to the public liability policies which were on foot at the time of the misconduct alleged.

As previously discussed, there are still a number of unresolved legal issues as regards the applicability of public liability policies in respect of this type of liability as opposed to more conventional liability, eg: slip and fall cases, claims for negligence in respect of failure to maintain premises, etc.

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Brother Michael Hill

- 2 -

Generally, CCI are taking the view that public liability policies will respond to such claims unless the claim relates to misconduct which occurred on the part of an individual after the Order was on notice of relevant difficulty with the man in question.

Accordingly, there are two areas of ongoing uncertainty in respect of the applicability of the public liability policies in these cases:

1. unresolved legal issues of interpretation;
2. the prospect that it might transpire that on the basis of constructive knowledge or otherwise the Trustees through the knowledge of individual members of the leadership team had notice of difficulties with Sutton at a time prior to the commission of offences of such an order as to render the public liability policies inoperable in all of the circumstances.

CCI have raised the prospect of a financial compromise to resolve these issues which would involve the Marist Brothers bearing financial responsibility for the first \$25,000.00 of each claim.

Negotiations are continuing and we would like your instructions on the issue of a financial contribution from the Marist Brothers towards settlements as a means of putting insurance cover into place in due course. It might be best to make a decision in relation to the extent of any such contribution once settlement figures are known.

Our fundamental view is that the Marist Brothers would be successful on a claim for indemnity against CCI in relation to these matters. Nevertheless there are sufficient issues in relation to legal interpretation and the possibilities of difficulty on the knowledge front such as to justify some financial contribution in order to achieve certainty on the insurance front.

Yours faithfully
CARROLL & O'DEA
Per:

