

HGH

30 April 1996

Private and Confidential - Legal Professional Privilege Applies

Brother Julian McDonald, cfc
Provincial
St Mary's Provincial Administration
Christian Brothers
Private Box 154
BALMAIN NSW 2041

Dear Sir

RE: SLATER & GORDON PROCEEDINGS - SYDNEY

We refer to recent discussions in connection with the Meeting arranged for Friday next.

We enclose herewith copies of the following:-

- (a) Final form of Third Party notice proposed for the Melbourne proceedings.
- (b) Letter forwarded to Brother Shanahan dated 29 April 1996 in respect of meeting with Archbishop Hickey.
- (c) Letter forward to Phillips Fox dated 29 April 1996.
- (d) Letter to hand from Dunhill Madden Butler dated 11 April 1996.
- (e) Draft letter to Slater & Gordon in relation to settlement.

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- (f) Copy of Supreme Court Statement of Claim drafted in relation to the Indemnity issue.
- (g) Draft letter to Dunhill Madden Butler in relation to Indemnity.
- (h) Private and Confidential Questionnaire re: request for additional information from CCI.

Slater & Gordon have indicated that they would recommend to their client's a settlement of \$9.5 million involving the following elements:-

- ◆ The dropping of the Court cases.
- ◆ The establishment of a trust fund in Perth of \$4.5 million to be utilised for the provision of non-cash assistance, such fund to be created by two annual payments of \$2.25 million.
- ◆ Slater and Gordon's costs to be paid of \$2.5 million.
- ◆ An additional sum of \$2.5 million to be paid out in cash to individual claimants being cases of significant and serious alleged injury.
- ◆ The fund to be administered by an independent board with representatives of the Voices and or Slater and Gordon as well as representatives of the Christian Brothers.

The attached draft letter reflects some of the legal hurdles that confront Slater & Gordon. We feel that this is probably the time to seek to at least establish what can be achieved in relation to settlement although there is a risk that settlement now would be perceived as reflective of a change in posture arising from recent publicity, in particular in connection with the NSW Royal Commission into the Police Service.

We believe that an overall settlement of five million dollars involving the dropping of the cases and the provision of non financial needs based help would be a very good outcome for the Order. However:-

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- (i) It remains to be seen whether settlement at this financial level can be negotiated.
- (ii) Realistically a final settlement will probably need to incorporate some cash component.
- (iii) A settlement not involving a cash element would be more difficult for Slater & Gordon to sell to their clients.
- (iv) If a cash element is to be allowed for it must be kept as the smallest possible component so that the overall outcome is a non legal non damages constructive result which does not sanction the use of the Court system or reflect adversely on the reputation of the Order more than is absolutely necessary.

Catholic Church Insurances Limited if not contributing at this time towards settlement must be informed of any approach to Slater & Gordon and agree to the same if the claim for indemnity is to be protected. We cannot settle litigation without appropriate approval and liaison with the insurer even though indemnity has been declined.

Contribution is unlikely to be forthcoming at this time from the State of Western Australia although a firmer and detailed approach based on a specific proposition might generate cooperation/assistance. It would be clearly preferable to settle the case with contribution having been agreed to as regards to the State of Western Australia and Catholic Church Insurances Limited rather than having settled the proceedings confronting the prospect of pursuing these entities through the Court system for reimbursement.

There would be a number of subsidiary issues requiring resolution and agreement including:-

- (a) The question of compliance with the Health & Other Services (Compensation) Act 1985 which requires a Defendant paying out a personal injuries claim to secure a clearance from the Health Insurance Commission and to make adjustment for any Medicare payments relevant to the matter.

- (b) The terms and objects of the trust fund.
- (c) The membership of the Board of the same.
- (d) The terms of a joint press release which would be the one and only public statement in relation to the matter.
- (e) The life of the trust fund and the position with any surplus funds.
- (f) The extent of confidentiality that would be required as a part of a settlement in relation to the complaints, the litigation and the terms of settlement. Would we wish to seek to prevent Mr Blyth and others from publishing books etc.

The key issues thus to be resolved at this stage include the following:-

- (i) Are the Christian Brothers willing or able if need be to "go it alone" to resolve these cases for a figure in the order of five million dollars without prejudice to indemnity and with a potential claim for contribution available through the Court system against the State of Western Australia.
- (ii) Agreement as to the next step in pursuing a negotiation process with Slater & Gordon, CCI and the State of Western Australia.
- (iii) The figure that should be allowed for Slater & Gordon's costs.
- (iv) Whether and to what extent a cash component should be allowed for the more seriously injured men and if so how such payment would be assessed and distributed.
- (v) Whether a time limit should be imposed on any offer of settlement.
- (vi) Whether the trust fund would be restricted to Slater & Gordon for the client's alone.

We believe that the negotiations will involve at least a two step approach with an initial proposition from the Brothers incorporating perhaps the following elements:-

◆ A package involving:-

◆ Fund	\$3,000,000
◆ Legal Costs	\$1,250,000
◆ Total	\$4,250,000

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- ◆ Thereafter in response to a counter offer from Slater & Gordon a further offer might incorporate:-

◆ Fund	\$3,000,000
◆ Costs	\$1,500,000
◆ A cash compensation component as a part of the costs figure ought to be administered by the Trust	\$ 500,000
◆ Sub Total	\$5,000,000

No doubt amplification on these matters will be required on Friday.

Yours faithfully
CARROLL & O'DEA
Per: