



L A W Y E R S

23 September 2002

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Dear Phillip/Ken

BRISBANE GRAMMAR SCHOOL - VARIOUS CLAIMS

I confirm that the meeting with insurers tomorrow will take place at Phillip's office at 12.00 noon. We thought it sensible to bring the meeting forward as one of the insurer's representatives has a commitment at 3.00 pm. The Chairman of the Board of Trustees, Mr Howard Stack, and I will be attending the meeting on behalf of the School.

The thrust of the submissions on behalf of the School in relation to the alleged non-disclosure and the proposal that the School contribute 20% will be as follows:

- 1 Neither the **BQP** conversation nor the **BQH** conversation (referred to below), even assuming both occurred in the terms alleged which of course is denied, amounted to a material circumstance which required disclosure to underwriters.
- 2 Alternatively, even if there was a general duty to disclose such matters then the requirement for disclosure by the School was excluded by conduct/implication as a result of the history of dealings between the underwriters and the brokers on behalf of the School over a long period of time and/or waived by the insurers.
- 3 Finally, and in any event, in all the circumstances it would be unconscionable for underwriters to rely upon non-disclosure.

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SYDNEY MELBOURNE BRISBANE PERTH CANBERRA GOLD COAST
OUR LIABILITY IS LIMITED BY THE SOLICITORS SCHEME, APPROVED UNDER THE PROFESSIONAL STANDARDS ACT 1994 (NSW).

THIS LIMITATION OF LIABILITY APPLIES TO CLAIMS THE PROPER LAW OF WHICH IS THE LAW OF NEW SOUTH WALES.

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Wotton & Kearney, Lawyers

BRISBANE GRAMMAR SCHOOL - VARIOUS CLAIMS

Last Wednesday, 18 September, Counsel for the various plaintiffs served on our Counsel a copy of statutory declaration by BQH [redacted] dated 17 September (copy **attached**) in respect of which we, in consultation with Mr Syd Williams QC, have had the opportunity to take instructions from Mr Howell this morning. Mr Howell has no recollection of the meeting taking place and his position is very strongly to the effect that had he been informed as alleged then he would have acted immediately. We are preparing an affidavit for signature by Mr Howell which we expect to be in a position to provide to you tomorrow.

Lastly, Phillip, you will recall that when we were endeavouring to identify relevant underwriters we suggested that your client, Insurance Company of North America, was also on risk for the 1977/78 insurance year. That was the position as put to us by the School's brokers. However, as no one had any documentary evidence of that suggestion, your clients have not accepted that they were on cover. We had spoken to relevant personnel of the brokers at the time who could recall there was a change from the School's traditional underwriters to "the American Underwriters" but no one was able to recall the exact date. We have now located a Board minute which confirms the date the change was made: from 1 September 1977. I **attach** a Board minute dated 21 September 1977. While the minute does not identify the new insurers the representatives of the brokers say that they are 99.9% sure it was Insurance Company of North America because there was not a double change over a two year period. Therefore, I request you have your clients urgently reconsider their position on this issue.

Yours sincerely

David Abernethy
Partner

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