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L A W Y E R S

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To Ms Julie Cameron and
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Our Ref KJH 1436909

Date 19 February 2002

Number of pages (including this one): 3

Subject Brisbane Grammar School - Claim by BQA & Others

Dear David and Julie,

Thank you for your letter dated 7 February 2002 attaching a copy of the e.mail your client had received from BQP and other material.

We note your concerns in relation to any further delay joining insurers as third parties. We understand those concerns and, if you feel that you must proceed to join the insurers forthwith then you should do so. Certainly, for the moment at least, neither AIG or Royal & SunAlliance is in a position to confirm a grant of indemnity.

However, it seems to us that it would be highly undesirable from both your client's perspective and our clients' perspectives for the indemnity issue to be determined by means of a conventional adjudication being made in each claim. At present, our particular concern has been directed to the issue of non-disclosure because of the contents of the e.mail from BQP. An indemnity dispute in each claim with respect to matters such as those raised by BQP which proceeded to adjudication would cause your client significant difficulty. By necessity, your client would be engaged in a war on two fronts. The plaintiffs would be alleging that your client had knowledge and took no action, assertions that would be reinforced by the insurers.

Further, the publicity surrounding a formal and repeated declinature by insurers would no doubt be unwelcome.

Of course, non-disclosure is not the only indemnity issue. For example, in the context of Royal and SunAlliance, the more fundamental issue of the period, if any, that it was on risk remains unresolved. In this context, we repeat our request for copies of all documents that evidence any period of insurance with Royal and SunAlliance. If the documentary evidence is incomplete, please advise what other evidence has led your client to believe that Royal and SunAlliance was on risk for the period alleged.

OPERATOR N.D. AT 3:37 PM
ADVISED TO AT AM
PM
DATE 19/2/02 IN COLL

If you do not receive all pages please telephone +61 7 3119 6481

IMPORTANT - The contents of this facsimile may be privileged and confidential. Any unauthorised use of the contents is expressly prohibited. If you have received the document in error, please advise us by telephone (reverse charges) immediately and then shred the document. Thank you.

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In all of the circumstances, we suggest the following system as a mechanism to unravel the indemnity issues that arise as harmoniously and quickly as possible:

- you provide us with copies of any other documentation that you may hold that touches on the issue of non-disclosure. It may well be that the provision of a copy of the lists of documents that you have prepared in each claim will be sufficient for that purpose. However, any other material that touches on the issue should also be provided;
- we be afforded an opportunity to interview each of the people identified in the BQP e.mail and any other people who allegedly received reports of Lynch's impropriety. Of course, you are most welcome to be present at such interviews;
- we will attempt to discuss the matter directly with BQP
- once these investigations have been completed, we will provide our clients with an appropriate advice;
- once our clients have considered that advice a meeting take place involving our respective clients and their legal advisers.

Subject to the evidence that we uncover during those investigations, and subject to the advice we provide to our clients and the instructions we receive from our clients, it may be possible for us to agree upon other protocols or systems to resolve the issue of indemnity.

For example, it may be possible for your client and our clients to agree that one claim be used as a 'test case' to determine the issue of indemnity for all other claims. Our clients would need to carefully consider such a proposal as, by agreeing to do so, our clients would be abandoning the right to cross examine witnesses that may be called by the plaintiffs in other claims but not in the test case. However, that detriment may be outweighed by the saving in costs and the overall enhancement of your client's position with respect to each plaintiff which, apart from anything else, can only enhance our clients' positions. We reiterate that our clients are in no position to do more than flag this as one possibility that they may be prepared to consider in due course.

Our clients may also be prepared to consider some ADR process pursuant to which the indemnity issue is referred to an arbitrator with the parties agreeing to be bound by the arbitrators decision. There would be very significant procedural issues that emerge in the context of such a referral. For example, on our present understanding of the issue, it would be necessary for evidence to be given by relevant witnesses and for parties to be afforded the right to cross examine the witnesses. Whether that is procedurally possible in the context of this dispute is uncertain. Once again, we stress that this process has only been identified at present as an option that may be worth considering in due course.

Apart from such resolution mechanisms, we suggest that we continue to liaise in relation to any matters of mutual interest. For example, the system by which you have referred certain issues to us for our consideration and in respect of which we have expressed a preliminary view seems a convenient procedure to address miscellaneous issues as they arise. Whilst it would be a little cumbersome for us to obtain specific instructions in relation to each minor issue that emerges we should be able to afford your client a degree of comfort by advising that, as we have in relation to the issues that have arisen to date, nothing in the procedure you have proposed would cause us to recommend that indemnity be declined.

Of course, and as said at the outset, in your view it may be appropriate for you to proceed to join our clients in some or all of the pending litigation. There is nothing we can do to prevent you from doing that if you think it appropriate. Additionally, once our clients are joined, there is no

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obvious reason why a cooperative approach to the resolution of the indemnity issue cannot continue.

We look forward to hearing from you.

Yours faithfully,
MINTER ELLISON

