



**CROWN SOLICITOR'S OFFICE**  
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23 December 2008 *[This field is a date creation field. The date will change if you save the document as a new document.]*

Mr Patrick Saidi  
Barrister at Law  
4 Selborne Chambers  
DX 531 SYDNEY

**By facsimile (02) 9233-6469** *[delete options not required]*

Dear Mr Saidi

**State of New South Wales ats Biles K M**

I refer to my email to you and Mr Arblaster dated 23 December 2008 in which I reminded counsel that one of the orders made by the Judicial Registrar at the last mention, was that any limitation motion by the defendant should be filed prior to 23 February 2009.

In that email I requested counsels' assistance to draft and settle the necessary limitation motions.

About the same time I received a fax from the solicitors acting for 13 of the 15 plaintiffs and I enclose a copy of the letter I received from them together with a copy of my reply.

Having reviewed the matter, and become reacquainted with the orders made on the last occasion, I raise a matter which may require the matter coming back before Her Honour prior to the next mention date.

Counsel will note from the orders made on the last occasion, that Her Honour noted that the pleadings did not comply with the Rules and further that a separate statement of claim was to be filed in respect of every action.

In light of those two orders, it would seem to me that:

1. A request for further and better particulars cannot be made until the plaintiffs file statements of claim pursuant to what was noted by the Judicial Registrar namely that there should be a separate statement of claim for each separate action.
2. In the circumstances, the defendant cannot file a defence; how can you file a defence to a statement of claim that has not been filed yet?
3. Following on from what I have said in 2 above, I am wondering whether it might be premature to even file a limitation motion, given that the plaintiff's have not filed a statement of claim. True there are two statements of claim filed, however they are

filed on behalf of 2 and 13 plaintiff's respectively. Given that Her Honour has said that a separate statement of claim should be filed for each separate claim, it would seem to me that an amended statement of claim needs to be filed for each of the 2 statements of claim previously filed and a fresh statement of claim filed in respect of the other 13 actions.

In the circumstances, it would seem to me that the order made by Her Honour that the defendant file a limitation motion prior to 23 February 2009, is frustrated by the circumstances in the matter and also by orders 1 and 2 made by Her Honour on the same day.

I do not think we can leave it at that however. On 11 September 2008 Her Honour also made a further order namely:

*"4. Both parties granted liberty to apply to have the matter listed on any issue which requires determination to assist in the management of the matter; either party could serve notice by fax on the other party and on the Judicial Registrar's Associate requesting a time for the matter to be listed before Her Honour".*

If counsel agrees with me that order no.5 made on 11 September 2008, in relation to the limitation motion is frustrated both by the circumstances and/or orders 1 and 2 made on that day, I think that in view of the order no.4 made by Her Honour, we would need to get the matter re-listed before Her Honour prior to the next mention date.

Does counsel agree that the defendant cannot consider any question in relation to limitations in the absence of the plaintiffs filing their statements of claim (or amended statement of claim as the case may be). If so, I would suggest and I seek counsel's agreement to this, that I give notice to the solicitors for the other parties as well as Her Honour's Associate to have the matter re-listed early in January 2009. Do you agree?

Counsel is requested to advise on this matter in a timely fashion early in January 2009.

I take the opportunity to enclose for inclusion in counsel's brief a copy of the motion by all the plaintiffs to join the actions which is returnable on 23 February 2009, at the same time as the directions hearing before Her Honour the Judicial Registrar.

Yours faithfully

Evangelos G Manollaras  
Solicitor  
**for Crown Solicitor**

Encl. *[delete if not required]*