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To: Marion Epps <"cn=marion epps/ou=cso/o=nsw_ag@nsw_ag">
Sent: Thursday, 12/01/2012 07:12 AM
Subject: Fw: Biles

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please trim

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----- Forwarded by Evangelos G Manollaras/CSO/NSW_AG on 12/01/2012 08:16 AM

Michael Cashion <mcashion@sixthfloor.com.au>
11/01/2012 04:39 PM

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cc

Subject
RE: Biles

Angelo

Paul and I had a conference just before Xmas to discuss where we were at and what needed to be done in the latter part of January and into early February. Our understanding and thinking was consistent with your email. I will give you a call in the morning to discuss.

Regards

Michael

From: Evangelos_Manollaras@agd.nsw.gov.au [Evangelos_Manollaras@agd.nsw.gov.au]
Sent: Tuesday, 10 January 2012 2:20 PM
To: mcashion@sixthfloor.com.au
Cc: swoods@wentworthchambers.com.au; parblaster@selbornechambers.com.au;
Jodie_Vella@agd.nsw.gov.au
Subject: Biles

As you are aware, the application by Kathleen Biles to extend the limitation period is listed for hearing in the District Court Sydney on 20 February 2012 with a three day estimate.

I note that in my absence last year, Short Minutes of Order were entered on 9 September 2011 and that the issue raised in relation to a subpoena in order number 9A has been resolved.

I note the following orders to be outstanding:

" 5. The applicant to file and serve any application for exemption from the expert witness requirements of the UCPR and made returnable at the hearing by 20 January 2012

6. The Court directs the defendant to serve any further material upon which it proposes to rely at the hearing by 20 January 2012

7. The parties to serve upon each other a list of the objections, including the basis for such objection, which they intend to make, to the evidence to be relied upon by the other party by 6 February 2012

8. The applicant to file and serve a statement of the propositions of the law upon which she intends to rely at the hearing of the limitation application by 6 February 2012

9. The respondent to file and serve a statement of the propositions of the law upon which it intends to rely at the hearing of the limitation application by 13 February 2012 "

In relation to order number 5, I have not seen anything from the plaintiff as yet, although the plaintiff still has a few days to run before 20th expires.

In relation to order number 6, I understand from a conversation I had with Mr Arblaster prior to Christmas, that the defendant does not propose to serve any further evidence. There was a possibility that some further investigation by Mr Maxwell may have been made available in sufficient time to issue further subpoenas which might lead to further evidence by Peter Maxwell. However, that has not eventuated. In the circumstances, am I correct in assuming that the defendant has completed service of all evidence (subject to what I say in the penultimate paragraph) on which it will rely on at the hearing of the limitation motion?

Pursuant to order number 7, the parties are to serve a list of objections including the basis for each objection which they intend to make to the evidence to be relied upon by the opposing party by 6 February. In relation to the defendant's objections to the plaintiff's evidence, I assume Counsel will prepare the list. As I was away for a significant amount of time last year my recollection of the evidence by Kathleen Biles has somewhat faded. However, I anticipate reviewing my notes and providing my thoughts on the matter by 24 January if not earlier.

To some degree, I imagine that what the plaintiff does in relation to order number 5 may effect what the defendant does in relation to order number 7.

Pursuant to order number 9, the defendant is to file and serve a statement of the propositions of the law upon which it intends to rely at the hearing of the limitation application. It is possible that a conference amongst Counsel and myself may be necessary in relation to this before finalising the statement. If I am correct in this, may I please get some notice of any such conference as it is likely that the Departmental representative will want to be present at that conference.

I advise that I have issued subpoenas to all the witnesses required for cross examination, including Mr Maxwell, pursuant to order number 10. I note that pursuant to order number 10, the applicant has indicated that she requires Dr Skinner for cross examination but has not clearly identified whether Mr Maxwell would be required. I am just wondering whether we should be giving the plaintiff some sort of deadline by which time the plaintiff advises whether Mr Maxwell is required or not required. It would be rather silly to pay Mr Maxwell several days stand-by fees in circumstances where the plaintiff might ultimately not require him for cross examination. I would think that we should be informed about this at least two weeks before the hearing date. I will be however guided by Counsel in relation to this.

I also note from a conference note made by Ms Vella on 23 November 2011, between her and Mr Arblaster, that consideration was to be given as to whether the defendant should re serve the material on which it relies on, that just relates to Kathleen Biles. I am not overly fond of the idea of re service of documents which are quiet voluminous, but if we must, we must. To avoid any

objection by the plaintiff, perhaps we should ensure that this is done by 20 January. I note that in the alternative, we would consider whether we might just provide a list of the evidence served and which we would rely on in the application by Kathleen Biles. Can I have an urgent response to this aspect please.

I have just telephoned each Counsel's chambers and I am informed that Mr Cashion and Mr Arblaster return this week, and that Mr Woods returns on 23 January.

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