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To: parblaster <parblaster@selbornechambers.com.au>, saidi <saidi@selbornechambers.com.au>
Sent: Thursday, 11/09/2008 05:28 PM
Subject: State of New South Wales ats **AIL**

I advise that I attended the Directions Hearing before her Honour the Judicial Registrar on 11 September 2008.

Ms Wall of Counsel appeared for all the plaintiffs.

I enclose a copy of my report of even date which sets out what transpired at the mention, the orders made and certain other follow-up investigations being undertaken.

The enclosed memo is self-explanatory. Counsel is requested to make any observations in relation to what has transpired and the future conduct of the matter.

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----- Forwarded by Evangelos G Manollaras/CSO/NSW_AG on 11/09/2008 05:26 PM

Evangelos G Manollaras/CSO/NSW_AG
11/09/2008 05:25 PM

To
robyn.young@community.nsw.gov.au
cc

Subject
State of New South Wales ats **AIL**

Dear Robyn

I advise that I attended a Directions Hearing in both of these matters before the Judicial Registrar on Thursday 11 September 2008. Ms Wall of Counsel appeared for the plaintiffs.

As soon as Judicial Registrar McDonald took her seat, she immediately announced that she wanted to see a separate Statement of Claim in respect of each of the 15 plaintiffs. There was some discussion about this. Counsel for the plaintiff indicated that the plaintiffs had filed a Motion seeking to amalgamate all the actions into one Statement of Claim. She also indicated that the Motion had only been filed the day before and had still not been served on the defendant. Accordingly, I can not give you a copy of that Motion.

In any event, her Honour indicated that she felt that the pleadings reflected that there were 15 separate actions which should be covered by 15 separate Statements of Claim. Her Honour noted that obviously each plaintiff alleged a separate act of assault. Similarly each plaintiff may have had different injuries and different disabilities. It was impossible to try all 15 actions

under one Statement of Claim.

Her Honour wanted to know from the plaintiff where the matter was going. Counsel for the plaintiff was somewhat at a loss for words. In her prior discussion with me, she had indicated that she wanted a lot of time to prepare the matter.

At this juncture, I informed her Honour that the defendant had done as much as it could on the present pleadings. The defendant had sought particulars from the plaintiffs in respect of the claims by AIL [REDACTED] and Douglas and was in the process of preparing a request for particulars in relation to the other 13 claims. Furthermore, the defendant had engaged an investigator to investigate the allegations as far as possible in the absence of full particulars. The defendant hoped to obtain some further and better particulars from AIL [REDACTED] and Douglas in respect of their claims and whilst the request was made on 7 August, in view of the nature of the claim and the nature of the allegations, I informed her Honour I did not really expect a response for at least two or three months.

Counsel for the plaintiff indicated that there was an outstanding subpoena and that once that was resolved, the plaintiffs could respond to particulars.

I suggested to her Honour and to our opponent, that as there was still a major limitation question, perhaps the plaintiffs might consider proceeding with a limitation motion in respect of one of the claims as the result of that motion might assist both the plaintiffs and the defendant in relation to the future conduct of the remaining actions. I suggested that neither the defendant nor the other 14 plaintiffs were to be bound by whatever decision was made in the one claim that the limitation motion proceeded on.

This was a suggestion of Mr Paul Arblaster when I discussed the matter with him on the day prior to the mention.

Both her Honour and the plaintiffs' Counsel found favour with the suggestion and an indication was given that if sufficient instructions were obtained from all the plaintiffs, it was likely that the plaintiffs would proceed with a limitation motion by AIL [REDACTED] as the, for use of a better expression, test case.

Her Honour indicated that she wanted to case manage this matter or case manage these 15 claims and informed us that any motions etc should be made returnable before her Honour. Her Honour made the following formal orders/notations:-

Noted at this stage that the pleadings did not comply with the rules.

Noted at this stage that a separate Statement of Claim is to be filed in respect of every action.

Plaintiffs' Motion seeking to amalgamate all the actions in a one claim is now returnable before her Honour on 23 February 2009.

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.

Any limitation motion should be filed prior to the next mention date which is 23 February 2009.

Stood over to all other aspects of the claims and also for Directions on 23 February 2009 at 3.00pm.

The Judicial Registrar noted that these two matters (presently two matters but possibly 15 in the near future) were the only matters listed at that time.

I mention that the notation by her Honour that the plaintiffs should file a separate Statement of Claim and separately plead each claim came, I suspect as a result of extensive submissions made by me on the previous occasion indicating a number of grounds on which these claims were unsuitable to proceed under one Statement of Claim.

The outstanding action for the present in this matter would appear to be:-

Resolution of the plaintiffs' subpoena. I still have to produce the materials you briefed me in respect of Douglas and AIL [REDACTED].

Furthermore, we need to produce the Bethcar file. This file contains details in respect of some 60 children, 15 of whom are presently plaintiffs in this litigation.

In respect of the other materials produced and to be produced (apart from the Bethcar file), we have sought a release from each of the plaintiffs in favour of every other plaintiff that they have no objection to each of them having access to the others confidential departmental files. Counsel for the plaintiff reported that 5 of the 13 plaintiffs in RE number 2, had consented and believe that the other 8 consents would be forthcoming however, contacting them was a difficult matter.

Douglas and AIL [REDACTED] have already consented.

In relation to the Bethcar file, I would suppose it would be preferable to endeavour to shift through all the papers to ensure that any documentation referable to children who are not now claimants in this litigation, not be produced as part of the Bethcar file.

Subject to Counsel agreeing to this, do you agree that those are my instructions?

I have had AIL [REDACTED] examined by Dr Skinner and the appointment went ahead on 9 September 2008. I imagine I will receive Dr Skinner's report within a couple of weeks. At this stage, I have not made any arrangements to have any of the other 14 claimants medically examined.

On the one hand, I am a little nervous about taking no further steps in respect of all the other 14 claims pending the decision by the plaintiffs whether to move on one limitation motion in respect of one of the claims. However, should that eventuate, and should the limitation motion be successful for the defendant, there is a possibility that all the other claims would go away.

Nevertheless, I feel that we should make some attempt to have medical evidence qualified in respect of the other 14 claimants or at least some of them. Do you agree with this?

I have made a request for further and better particulars in respect of claims by AIL [REDACTED] and Douglas. Subject to Counsel settling a draft request in respect of the other 13 claimants, further requests in respect of those 13 claims can be made.

Generally, I want to be able to at least give the Judicial Registrar the impression that the defenendat is endeavouring to prepare a defence in respect of all 15 claims. Whilst the Judicial Registrar has noted that this matter will not be case managed in accordance with the standard directions, but individually case managed by her Honour, nevertheless her Honour will want to see progress.

Mr Paul Arblaster of Counsel is preparing a detailed chronology in respect of all 15 claims. This will assist in defending any limitation motion brought in respect of any or all of the 15 claimants.

Mr Peter Maxwell is continuing the factual investigation into the incident.

I am endeavouring to resolve all outstanding subpoena issues with Counsel for the plaintiffs.

During the short conversation I had with Ms Wall following mention of the matter before her Honour, she informed me that she was to be lead in this matter by Mr John Catsanos.

I have reported both to Mr Saidi and Mr Arblaster as to what has transpired.

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