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Your Ref:
My Ref: 200802078
T03 Evangelos G Manollaras
Tel: (02) 9224-5103
Fax: (02) 9224-5122
Email: crownsol@agd.nsw.gov.au

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

By facsimile (02) 9233-6469

Dear Mr Saidi

State of New South Wales ats Biles

By the time that Counsel receives this letter, Counsel will have received a separate letter enclosing further particulars in this matter provided by Women's Legal Services, together with amended Statements of Particulars in 11 of the 13 claims handled by Women's Legal Services.

Counsel will recall that of the total 15 claims, Women's Legal Services act for 13 of the plaintiffs whilst Bell & Johnson act for the other two. The Amended Statements of Particulars forwarded under separate cover were only in respect of 11 of the 13 plaintiffs for which Women's Legal Services Act.

Counsel will note that the plaint number used in the amended proceedings is 3199/08. It was my understanding that when the actions were consolidated, they were amalgamated into one plaint number, being plaint number 2218/08. Possibly, the plaint number 3199/08 was used by the Women's Legal Services because the original Statement of Particulars was under that plaint number. I envisage we will have problems like this over the entire life of this litigation.

At the same time as serving these further particulars, Women's Legal Services forwarded a letter, seeking to sound out the defendant on mediation. I enclose a copy of that letter.

It seems to me that the request to consider mediation sooner rather than later may be on the basis of relieving the plaintiff's lawyers from particularising their clients' claims. I may be wrong but I get the impression that the Women's Legal Services view of mediation is a situation where the defendant turns up with a cheque book and after some polite conversation with the plaintiff's lawyers and several cups of coffee the plaintiff's walk off with damages in the order of what was discussed between you and Mr Catsanos, somewhere in the vicinity of $3M.

It is my view that whilst mediation may be an option which the parties need to closely consider as a means to resolving the litigation instead of trial, this is not a matter that can be

considered at this stage, whilst the plaintiffs still have not particularised their claims and the defendant given the opportunity to obtain its own medical evidence. Indeed, several of the claimants have no medical support for their claim at all.

Furthermore, the defendant has not had the opportunity to fully investigate the claims on the question of liability, including the question of limitations and, as previously discussed, the possibility of one or two claims having been absolutely barred. Of course, the question of limitation is something that can be resolved at mediation, along with all other aspects of the claims. Nevertheless, I still feel that it is premature for us to consider mediation in circumstances where we have not had the opportunity to fully investigate issues of liability. Certainly, at mediation, any question of liability being in issue would be bargaining chips for the defendant in endeavouring to resolve the claim.

Without going into chapter and verse on the subject, it is my view that it is too early in this litigation to consider mediation. The plaintiffs have still to fully particularise their claims; the plaintiffs still, in some cases, have to serve any medical evidence at all; the defendant has no medical evidence of its own; the defendant does not have sufficient particulars and has not filed a defence; and all the claims are statute barred with one or two meeting the requirements of the absolute bar. Whilst I would not want to close the door to an eventual mediation in this litigation, I would think that it is far too early to approach the matter on that basis.

Having said that, on the other hand, it might be possible to agree to a mediation in principle subject to drawing a timetable agreeable to the parties whereby the particulars demanded by the defendant are provided by the plaintiffs; the plaintiff serves all the medical evidence on which each of the fifteen claimants rely; the defendant has an opportunity to obtain its own medical evidence in respect of all fifteen claimants and has a certain period of time, say three to six months, in which to conduct whatever factual investigation on liability it can complete within that time limit and then in say 9 – 12 months time we agree to have the matter mediated on the evidence available at that time.

I make this as a suggestion to the alternative of running this matter at trial. I would imagine that this matter will not be ready for trial for two or three years. That in itself may be beneficial to the defendant; the plaintiffs losing interest in the claim altogether. I would imagine that in the intervening period before we get to trial there would be several more interlocutory procedures, certainly a lot of directions hearing before the Judicial Registrar, and that the trial itself could go for several weeks. Whilst the suggested mediation procedure I have outlined above would in itself be a costly exercise, it would be nowhere as costly as running this matter at trial and it is made on that basis.

Counsel might like to consider these matters and advise as to the manner in which I should seek instructions from the defendant to respond to the "feeler" put out by the Women's Legal Services in their enclosed letter dated 27 November 2009.

On the question of selection of a mediator, I would suggest that if he is still available to do mediations, Sir Laurence Street. I was involved with Sir Laurence in a mediation approximately 12 months ago involving a plaintiff with catastrophic injuries in his action against the RTA as sole defendant. It was a matter where liability was in issue but the plaintiff had suffered catastrophic injuries. It was a matter where the plaintiff had significant problems on liability and there was always the possibility on that basis that at trial he could end up with nothing. The downside for the defendant in that matter was that if the plaintiff got

up on liability, he might get full value of his claim, somewhere in excess of $5M to $6M. The matter was resolved at mediation. Sir Laurence was especially effective in having the plaintiff focus on the fact that liability was in issue and the possible consequences should the matter go to trial.

Furthermore, I would think that the Department of Community Services would never have any objection to Sir Laurence Street being appointed as a mediator in any matter involving that Department. I would think that it would look good for the Department having a former Chief Justice as a mediator in a mediation like this one.

At this stage I have not shared my views with the defendant but will await Counsel's consideration of the request by the Women's Legal Services. I have, however, forwarded a copy of this letter and the enclosures to Mr Arblaster.

Yours faithfully

Evangelos G Manollaras
Solicitor
for Crown Solicitor

cc: Mr Paul Arblaster