

From: Evangelos G Manollaras <"notes:cn=evangelos g manollaras/ou=cso/o=nsw_ag">
To: "robyn.young" <robyn.young@community.nsw.gov.au>
Sent: Tuesday, 22/06/2010 12:58 PM
Subject: Fw: AIL v NSW

Robyn,

I instructed Paul Arblaster at a directions hearing yesterday afternoon before Judicial Registrar Smith. Mr Cotsanos of counsel appeared for the plaintiffs. I have attached a brief report to me of the orders made from Mr Arblaster.

There were a number of novel arguments advanced by Mr Cotsanos. He submitted that the evidence at the substantive trial and at the limitation motion would be very similar, and as the plaintiffs were impecunious, the court should allow both hearings to be conducted at the same time. That was opposed. The submission was that the evidence in the limitation motion would be only a fraction of what evidence might otherwise adduced at trial. The Judicial Registrar wanted to know what prospect there was that the matter might be resolved at mediation. I instructed Mr Arblaster, that whilst there was a limitation issue, the State might not be interested in a mediation, particularly where, the defendant could not see that it could be held liable for the plaintiffs' injuries, even leaving the limitation question aside.

There were estimates given as to the limitation motion of 2-3 weeks, and for trial of 3 months plus. Mr Arblaster reasoned that there were 15 plaintiffs, they would each take approx 3 days of evidence, and cross examination which makes it 45 days, and that's just the plaintiffs case. You are aware that there is a potential defendant's witness list of over 70.

The Judicial Registrar was troubled by the provisions of ss 56-58 Civil Procedure Act (CPA) and their application to these proceedings, on the one hand trying to expedite the proceedings, which may have meant adopting the approach submitted by the plaintiff, or on the other hand ensuring that the defendant's rights are not trampled and in this regard appeared to have found some succour in s 58(2) CPA, in deciding to have the limitation motion first. His Honour seemed hopeful that once the limitation problem was resolved, the substantive litigation might otherwise resolve by way of mediation.

Mr Arblaster's memo sets out the orders made. The plaintiff wanted more extensive orders to cover service of the defendant's evidence (at one stage suggesting that the defendant should serve first, although that suggestion was finally scotched), however we submitted that it would be in the best interests of the parties and case management to bring the matter back for further review by the Judicial Registrar, just after the plaintiffs were to complete service of their evidence. In particular we were of the view that there was a distinct possibility that some of the plaintiffs at least may well default on attending medical appointments, or default on the service of evidence, and it would be in the defendant's interests to review the matter at that stage.

I had a thought which I briefly discussed with counsel, in relation to undertaking some surveillance of the plaintiffs, or at least some of them. The plaintiffs allege only psychiatric injury. On the other hand, they may complain to the doctors about their inability to do certain things and some film on them doing what they allege they cannot do, could undermine their credibility, not only on quantum, but on liability too. I think there could be value in at least undertaking some surveillance. I note that medical appointments are being arranged for all 15 plaintiffs in August through to late September, both in Sydney and in regional areas, and this is a good time for surveillance investigators to pick up on the surveillance target. I would suggest that given the potential total damages in the matter, an initial budget of say \$20,000 to \$30,000 to undertake some surveillance could prove of benefit. You might like to consider this aspect and provide the necessary instructions.

Evangelos G. Manollaras
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for Crown Solicitor

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----- Forwarded by Evangelos G Manollaras/CSO/NSW_AG on 22/06/2010 10:39 AM

"Paul Arblaster" <parblaster@selbornechambers.com.au>
21/06/2010 06:03 PM

To
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cc
"Patrick Saidi" <saidi@selbornechambers.com.au>, <Patricia_Oey@agd.nsw.gov.au>
Subject
AIL v NSW

Dear Angelo

The matter came before Judicial Registrar Smith for directions this afternoon.

There was lengthy argument about the appropriate way forward in terms of the procedural management of the claims, in particular whether the limitations applications should be heard together with the substantive hearing or separately. Mr Katsanos appeared for the plaintiffs and sought directions which would have resulted in the limitations applications and substantive proceedings being heard together in early 2010. We requested that the limitations applications be heard first.

The Judicial Registrar preferred our position and made the following orders:

1. In relation to the notices of motion, the plaintiffs are to serve all medical evidence on which they rely at hearing of the limitations motions by 15 November 2010 and all other evidence by 20 December 2010.
2. The matter is listed for directions on 21 December 2010 at 2.00pm for orders to be made as to the service of the defendant's evidence and to set a hearing date for the motions.
3. Liberty to apply on 3 days' notice by email to the Judicial Registrar.

The Judicial Registrar sought an estimate for the hearing of the motions. I suggested that it was too early to give an estimate with any degree of precision but broadly estimated that they could take around 2-3 weeks. This will depend upon the approach taken at the hearing and we will need to give some thought to that issue prior to the next occasion.

It is anticipated that the plaintiffs' evidence will comprise medical reports and affidavits by each of the plaintiffs.

I noted that the defendant will continue to prepare its evidence on the motions as best it can whilst awaiting the plaintiffs' evidence.

Patricia Oey and I will continue to prepare letters of instruction to the medical experts together with bundles of documents from the subpoenaed material and the Department's files for each of the plaintiffs. I understand that arrangements are being made for Peter Maxwell to prepare an affidavit identifying prejudice and other evidence relevant to the limitations applications.

The Judicial Registrar commented that after the motions have been determined then, depending upon the outcome, the matters should probably then be referred to mediation prior to any substantive hearing.

Regards
Paul Arblaster

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