

From: "David.Wells" <david.wells@facs.nsw.gov.au>
To: Evangelos_Manollaras <evangelos_manollaras@agd.nsw.gov.au>
Sent: Thursday, 09/02/2012 08:11 AM
Subject: RE: AIL

CSO REFERENCE: 200801481 - D2012/39797

This is not a substantial tactical change. Just a bit of necessary tinkering.

Please proceed as recommended,.

David Wells

Team Leader, General Litigation

Legal Services Branch

Department of Family and Community Services

Community Services

DX 20803 The Entrance

Phone (02) 4333 3254

Fax (02) 4333 3257

From: Evangelos_Manollaras@agd.nsw.gov.au
[mailto:Evangelos_Manollaras@agd.nsw.gov.au]
Sent: Thursday, 9 February 2012 09:01 AM
To: David Wells
Cc: Jodie_Vella@agd.nsw.gov.au; Anthony_McCarthy@agd.nsw.gov.au
Subject: AIL
Importance: High

David

I refer to recent instructions received from you to proceed with an application by the defendant seeking a permanent stay and/or dismissal of all 15 actions, as a preliminary issue when the matter is listed to consider the application by Kathleen Biles (one of the 15 plaintiffs) to extend the limitation period, to commence 20 February 2012.

I advise that the motion has been filed and perhaps not unexpectedly has drawn a great deal of opposition and objections from the plaintiffs' lawyers. Most of the objections would appear to me to be frivolous, dealing with inconvenience of witnesses, but there is also some substantive objection in that they have been caught unaware of the possibility of all claims being dismissed, without the opportunity to prepare for such an application. That complaint is not entirely justified, because the parties were ordered to serve all their evidence, in respect of all 15 claims, and later a decision was made to run only one application which would not be treated as effecting any of the others. on that basis all the evidence in relation to both parties has already been

served. However, it is possible that the plaintiffs might wish to put on further evidence to counter what Peter Maxwell says in his affidavit as for example where he says that the Bethcar file reveals that witness X has relevance to the litigation but he has died and therefore there is prejudice as against the defendant. In response to that, the plaintiff might put on evidence that whilst witness X is no longer available, witnesses A and B were also in a position to know those facts and circumstances, and they are available. that is the way the argument unfolded in Batistatos.

Counsel have come up with a compromise, with which I concur, and it is set out in the attached letter drawn by Mr Woods of counsel, and submitted to senior counsel to settle. I doubt whether there will be any substantial change to the draft, as the letter was drawn after a conference with senior counsel. Basically, the offer to be made to the plaintiffs, subject to your concurrence is that the defendant's application proceed on 20 February, to be run concurrently with the plaintiff's application, that the evidence adduced be evidence in both applications, and that the applications against the other 14 plaintiffs be stood over to await the determination of the application in the matter of Kathleen Biles.

May I please have timely instructions to proceed on this basis. The major changes to the previous instructions is that the applications in respect of the other 14 claims are deferred for the moment, and the application is now to be run concurrently, and not as a preliminary issue. I need to get the finalised version off to the plaintiffs' lawyers this morning, so an urgent reply would be welcome. The plaintiffs are awaiting to see what compromise we are willing to put up before having the matter listed for further directions as a result of the filing of the defendant's motion.

Should you wish to discuss, please telephone me.

Evangelos G Manollaras
Solicitor
for Crown Solicitor

Torts Service/Regulatory Practice Group çCROWN SOLICITOR'S OFFICE
Level 5 ç60-70 Elizabeth Street çSydney NSW 2000 çDX 19 Sydney
Direct Line 02 9224 5103 çFax 02 9224 5122 *
Evangelos_G_Manollaras@agd.nsw.gov.au

----- Forwarded by Evangelos G Manollaras/CSO/NSW_AG on 09/02/2012 08:31 AM

Steven Woods <swoods@wentworthchambers.com.au>

09/02/2012 08:21 AM

To

"Evangelos_Manollaras@agd.nsw.gov.au" <Evangelos_Manollaras@agd.nsw.gov.au>

cc

Subject

AIL draft ltr 9-2-12

Angelo,
This draft has been sent to Mr Cashion and Mr Arblaster, to be settled.
I forward it to you now to assist in obtaining instructions.
Steven Woods

Department of Attorney General and Justice - Promoting a Just and Safe Society.

Visit us at www.lawlink.nsw.gov.au.

Please consider our environment before printing this email. This email and any attachments may be confidential and contain privileged information. If you are not the intended recipient you must not use, disclose, copy or distribute this communication. If you have received this message in error please delete and notify the sender. When communicating by email you consent to the monitoring and recording of that correspondence.

=====

Security Statement

This email may be confidential and contain privileged information. If you are not the intended recipient you must not use, disclose, copy or distribute this email, including any attachments. Confidentiality and legal privilege attached to this communication are not waived or lost by reason of mistaken delivery to you. If you have received the email in error please delete and notify the sender. Any views expressed in this email are those of the author and do not necessarily represent those of the department, except where the sender expressly, and with authority, states them to be the views of the Department of Family and Community Services NSW. The department does not represent, warrant or guarantee that the integrity of this email has been maintained, or that the communication is free of error, virus, interception, inference or interference.