

Joanna Mitchell

From: Jodie_Vella@agd.nsw.gov.au
Sent: Thursday, 16 August 2012 4:13 PM
To: Joanna Mitchell
Subject: Re: AIL v State of NSW
Attachments: Advice from Steven Woods re Offer of Compromise -AIL -17 July 2012.pdf

Dear Joanna

I refer to your email below.

In relation to point (1) of your email, I **attach** a copy of an advice of Mr Steven Woods, dated 17 July 2012, wherein Mr Woods explains his previous recommendation to serve an Offer of Compromise in terms of Verdict for the Defendant and no order as to costs, upon all plaintiffs. Mr Woods does not disagree with the joint advice of Mr Cashion SC and Mr Arblaster.

Reading the advices together, then, the following options are suggested:

- a) that instructions be provided to serve an Offer of Compromise in terms of Verdict for the Defendant, no order as to costs, on all plaintiffs; or alternatively
- b) that instructions be provided to serve an offer in these terms on the three plaintiffs nominated at paragraph 24 of the joint advice of Mr Cashion SC and Mr Arblaster, and as supported by Mr Woods in his advice of 17 July 2012, being Kathleen Biles, AIN [redacted] and Douglas Biles.

The defendant's professional costs and disbursements at present total approximately \$706,682.32.

I do not consider there to be any disadvantage in serving an Offer of Compromise in terms of Verdict for the Defendant, no order as to costs, on all plaintiffs. Indeed, if the offers are not accepted, the defendant may still derive a benefit from those offers having been made on any costs argument in due course. I therefore recommend the approach of (a) above.

I look forward to your instructions in this regard.

As to point (2) of your email, once the defendant's evidence for the limitation application and stay/dismissal application has been served on 31 August 2012, I will be in a position to turn my focus to preparing a quantum and liability advice for each plaintiff, with a view to these advices forming the basis of any targeted offers that may be made at a later point in the proceedings.

Kind regards
Jodie Vella
Solicitor
for Crown Solicitor

NSW Crown Solicitor's Office | Level 5, 60-70 Elizabeth Street, Sydney NSW 2000
GPO Box 25 SYDNEY 2001 | DX 19 SYDNEY | www.cso.nsw.gov.au
Email: jodie_vella@agd.nsw.gov.au | Tel: (02) 9224 5266 | Fax: (02) 9224 5122

"Joanna Mitchell"
<Joanna.Mitchell@facfs.nsw.gov.au>

To <Jodie_Vella@agd.nsw.gov.au>

cc

Subject D2012/283620 : FW: AIL v State of NSW

13/07/2012 12:23 PM

22/08/2012

Dear Jodie

Further to Evangelos' email (attached), I would be grateful if the Crown could provide a brief advice on the following:

1. Mr Cashion and Mr Arblaster recommend a "targeted" settlement strategy, whereas Mr Wood prefers the approach to make offers to all plaintiffs. Could Mr Woods please provide a very brief explanation as to why he prefers this approach?
2. If a targeted strategy was pursued, could you briefly provide an analysis of each plaintiff and the order in which they would be approached and estimated costs?

Kind regards

Joanna

Joanna Mitchell | Legal Officer | Child Law Team | Legal Services

Department of Family and Community Services | Community Services

T02 9716 2793 | F 02 9716 2988

A4-6 Cavill Avenue, Ashfield 2131 NSW or DX 21212 Ashfield

E joanna.mitchell@facs.nsw.gov.au

W www.facs.nsw.gov.au

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Received: from GSDCMX02.BIZLINK.NSW.GOV.AU ([172.26.12.5]) by DCEX3.bizlink.nsw.gov.au with Microsoft SMTPSVC(6.0.3790.4675); Fri, 25 May 2012 15:48:09 +1000
Received: from cluster-k.mailcontrol.com ([116.50.57.190]) by MX02.BIZLINK.NSW.GOV.AU with ESMTP; 25 May 2012 15:47:54 +1000
Received: from goodmdgl.agd.nsw.gov.au (Ingateway.agd.nsw.gov.au [203.3.176.70] (may be forged)) by rly09k.srv.mailcontrol.com (MailControl) with ESMTP id q4P5H0H023531 for <Joanna.Mitchell@facs.nsw.gov.au>; Fri, 25 May 2012 06:47:31 +0100
Subject: All (Offer of Compromise re All's Claim) - Counsel's Advice
Date: Fri, 25 May 2012 15:44:50 +1000
Message-ID: <OFBD399AAE.837823E4-ONCA257A09.001D99F4-CA257A09.001FCDC1@agd.nsw.gov.au>
From: <Evangelos_Manollaras@agd.nsw.gov.au>
Sender: <Marion_Epps@agd.nsw.gov.au>
To: "Joanna Mitchell" <Joanna.Mitchell@facs.nsw.gov.au>
Cc: <Jodie_Vella@agd.nsw.gov.au>, <Evangelos_Manollaras@agd.nsw.gov.au>
Content-Type: multipart/mixed; boundary="----=_NextPart_003_01CD3A39.F6B1B280"
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Return-Path: <Marion_Epps@agd.nsw.gov.au>
X-OriginalArrivalTime: 25 May 2012 05:48:09.0551 (UTC) FILETIME=[F705C5F0:01CD3A39]
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Content-class: urn:content-classes:message
X-MS-Has-Attach: yes
X-MS-TNEF-Correlator:
Thread-Topic: All (Offer of Compromise re All's Claim) - Counsel's Advice
Thread-Index: Ac06Ofn0rb49uybIR92UAEXNT2kCWQ==

Dear Joanna

I refer to Ms Vella's e-mail last week, indicating that Counsel's advice as to the acceptance or otherwise of the offer of compromise made on behalf of All would be forwarded to the Department early this week. I apologise that the advice is only now being forwarded, having only just been received this afternoon.

I am forwarding it to you in Ms Vella's absence today.

There is nothing really I can add to the advice that is enclosed. Both myself and Ms Vella had significant input by way of observations to Counsel prior to the advice being finalised.

Mr Woods of Counsel who is also briefed in this matter but does not appear as a signatory to the advice was also of the view that the offer should be accepted. Mr Woods did, however, express the view that the defendant should consider making similar offers to all other fourteen plaintiffs.

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In this regard I am of the view that the option suggested in the enclosed joint advice is to be preferred in lieu of making offers to all fourteen plaintiffs.

In considering what pro-active steps the defendant could take to resolve the matters as a result of the Offer of Compromise served on behalf of Ms All [redacted], a number of options were considered as reflected in the enclosed advice. We also considered the option of making each offer dependant on the acceptance of every other offer but decided against that idea as it might prevent the resolution of a claim which might otherwise be resolved. There was also some doubt as to whether the offer could be phrased in such terms.

The preferred view expressed in the enclosed advice is to select various plaintiffs who may have a weak case or who it is anticipated may present poorly in Court and target them for resolution of their claim by offering a verdict for the defendant with no order as to costs. There is no necessity to obtain immediate instructions in relation to this if the Department agrees with this option, as it is not presently envisaged that any offer to settle in relation to the other fourteen claims is to be made contemporaneous with the defendant's response to the Offer of Compromise by All [redacted].

In summary, therefore, I seek instructions:

1. To accept the Offer of Compromise of resolving the claim by All [redacted] with a verdict for the defendant and no order as to costs. Please note that the offer is open for acceptance until **8 June 2012**. If further time is required by the Department to consider this proposal, please inform me so that I can at least endeavour to have the time for acceptance extended.
2. Consideration as to what offers, if any, are to be made to the other fourteen plaintiffs.

Please telephone to discuss if necessary.

Ms Vella will be back in the office on Monday 28 May 2012.

Evangelos G. Manollaras
Solicitor
for Crown Solicitor

NSW Crown Solicitor's Office | Level 5, 60-70 Elizabeth Street, Sydney NSW 2000
GPO Box 25 SYDNEY 2001 | DX 19 SYDNEY | www.cso.nsw.gov.au
Email: evangelos_g_manollaras@agd.nsw.gov.au | Tel: (02) 9224-5103 | Fax: (02)9224 5122

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[attachment "D2012 201387.pdf" deleted by Jodie Vella/CSO/NSW_AG]

22/08/2012