



**Crown  
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7 December 2012

Ms Jeevani Korathota  
Director Legal Services  
Legal Services, Community Services,  
Department of Family and Community Services  
DX 21212 ASHFIELD

**Attention:** Joanna Mitchell

**By email**

Dear Ms Korathota

**State of New South Wales ats Biles & Ors**

As you are aware, this matter was listed for an interlocutory hearing from 12 November 2012 to 15 November 2012 and is part heard. This matter is next before the District Court on **13 December 2012**.

On 13 December 2012, the following issues will be considered by the Court:

- The subpoenas filed 20 November 2012 issued by the plaintiff;
- The defendant's Notices of Motion seeking to set aside these subpoenas;
- The continuation of the Hearing of the plaintiff's limitation application including orders made in relation to the provision of written submissions; and
- The continuation of the Hearing of the defendant's Notice of Motion seeking a permanent stay of the proceedings including orders made in relation to the provision of written submissions.

I refer to your telephone conversation with Ms Benish Haider of this office on 6 December 2012. I now enclose a copy of an advice dated 16 November 2012 prepared by Steven Woods of Counsel in relation to the possible settlement of the proceedings as they relate to Kathleen Biles only.

As previously discussed, this advice has not been sent you as yet because I am in the process of preparing an advice in relation to quantum and liability which is intended to complement the attached advice from Counsel.

I am now providing Counsel's advice to you before my advice is finalised, as Counsel requires urgent instructions in relation to removing the limitation argument from the Defence

filed 11 June 2010 in relation to Kathleen Biles. A copy of the Defence filed 11 June 2010 is attached for your convenience.

The part of Counsel's advice relevant to this issue is at paragraphs [9] to [21].

In particular, at paragraph [14] of Counsel's advice, Mr Woods outlined Dr Skinner's response to question from his Honour at the Hearing on 14 November 2012, wherein Dr Skinner made concessions in relation to Ms Biles' avoidance behaviour as it related to confronting the issues that occurred at BethCar and the relevance of the same to Ms Biles' illness.

At paragraph [20], Counsel recommends that the Defence in the matter of Kathleen Biles' case only be amended so as to no longer rely upon the limitation issue. The relevant paragraph of the Defence is at paragraph [20].

Over the Course of the Hearing and in particular due to the nature of his Honour's questioning of the expert witnesses, it has become increasingly clear that his Honour will find in favour of the plaintiff in relation to the limitation motion. As such, it may be prudent to remove this part of the Defence so as to better refine the issues on which the remainder of the Hearing should focus.

The next stage of the Hearing will involve the preparation of written submissions in relation to the limitation and stay argument as well as the privilege issues that has arisen out of the plaintiff call for documents pursuant to the subpoenas filed 20 November 2012.

Withdrawing the limitation application will prevent a Judgment being made in relation to limitation issue. I note that although the limitation defence in respect to each plaintiff's turns on the facts of each plaintiff's case, a Judgment in favour of Kathleen Biles in relation to limitation will assist the 13 other plaintiffs by potentially identifying the weaknesses in the defendant's case on limitation.

In addition, if the plaintiff was to have a Judgment in its favour in relation to limitation, and attempts were made to resolve the matters by way of settlement, the Judgment in favour of the plaintiff would place the plaintiff at a higher bargaining position than if no Judgment was made in relation to limitation.

## Costs

In relation to costs, I note that the plaintiff would seek costs in respect to the limitation application whether the limitation application is lost by the defendant by way of Judgment or if the limitation Defence is withdrawn.

I note that any costs associated with the further preparation of submissions in relation to the limitation application will be saved if the limitation Defence is withdrawn.

By withdrawing the limitation Defence, Counsel and I can focus on presenting the best case possible in relation to the stay application and privilege as it relates to the material provided by Mr Peter Maxwell, private investigator.

I seek your **urgent** instructions in relation to withdrawing paragraph [20] of the Defence, namely, the limitation defence.

Yours faithfully



Benish Haider  
Solicitor  
**for Crown Solicitor**

Encl.