

**From:** Benish Haider <"notes:cn=benish haider/ou=cso/o=nsw\_ag">  
**To:** "Joanna.Mitchell" <joanna.mitchell@facs.nsw.gov.au>  
**Sent:** Wednesday, 13/03/2013 10:44 AM  
**Subject:** RE: Biles \_ Instructions to file Appeal\_MPL7300972\_2218/2008

---

CSO REFERENCE: 200801481 - D2013/102157

Thank you Joanna

Benish Haider  
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: benish\_haider@agd.nsw.gov.au | Tel: (02) 8093 5546 | Fax: (02) 9224 5122

"Joanna Mitchell" <Joanna.Mitchell@facs.nsw.gov.au>  
13/03/2013 11:43 AM

To  
<Benish\_Haider@agd.nsw.gov.au>  
cc  
<Helen\_Allison@agd.nsw.gov.au>, "Jeevani Korathota"  
<Jeevani.Korathota@facs.nsw.gov.au>  
Subject  
RE: Biles \_ Instructions to file Appeal\_MPL7300972\_2218/2008

Dear Benish,

Thank you for your email and advice.

You are instructed to file the file the White Appeal Book, Summons and Notice of Appeal. However, I request that the advice on quantum and liability be made available by the end of March at the latest in order that we may be able to take decision about the future of the Appeal (and the matter as a whole) in a timely manner and without incurring further costs.

Kind regards

Joanna Mitchell | Legal Officer, Child Law and General Litigation | Legal Services

Department of Family and Community Services | Community Services

T 02 9716 2793 | F 02 9716 2988

A 4-6 Cavill Avenue, Ashfield 2131 NSW or DX 21212 Ashfield

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

W www.facs.nsw.gov.au

#### LEGAL PROFESSIONAL PRIVILEGE

This email may contain legal advice. If so, it is a privileged communication and should not be forwarded, sent or distributed, in whole or in part, including any attachments, to any agency or organisation outside of Community Services without the express written permission of Legal Services. When placing this e-mail on file it should be tabbed with a tab marked "Legal Professional Privilege" to ensure that a claim of privilege is made over this document in the event the file is subpoenaed.

From: Benish\_Haider@agd.nsw.gov.au [mailto:Benish\_Haider@agd.nsw.gov.au]  
Sent: Tuesday, 12 March 2013 4:16 PM  
To: Joanna Mitchell  
Cc: Helen\_Allison@agd.nsw.gov.au  
Subject: Biles \_ Instructions to file Appeal\_MPL7300972\_2218/2008

Dear Ms Mitchell,

I refer to the conference held at my Office on 8 March 2013 and your telephone conversation with Ms Benish Haider of 11 March 2013.

I confirm that the strategy for the further conduct of this matter is as follows:

#### Advice from CSO

In relation to the advice on quantum and liability, I note that this is well underway and a the estimated date for completion and provision of the advice is the end of March 2013.

#### Appeal

In relation to the appeal, I note that the Notice of Appeal, Summons and Summary of Argument in addition to the White Appeal Book is due to be filed tomorrow, Wednesday, 13 March 2013. I note that you have indicated that you are unable to provide specific instructions in relation to the Appeal by tomorrow.

In my view, the appeal folder and documents should be filed on this day to preserve the defendant's position. I note that you will be able to obtain detailed instructions in relation to whether the appeal should be withdrawn at a later date. further, I note that you anticipate such instructions can be provided once the advice on quantum and liability has been provided to you.

#### Batistatos

In relation to the continuation of the Batistatos argument, I note that at the conference on 8 March 2013, Counsel was of the view that the Batistatos argument had good prospects of success. I confirm that the hearing in relation to the Batistatos argument was almost completed at the time that the subpoenas were issued by the plaintiff and the matter was stayed pending the appeal. I support Counsel's advice and in my view, the Batistatos argument should be pursued and not withdrawn. I note that there are costs implications if the Batistatos argument is withdrawn at this stage. You have instructed me to advise in relation to the Batistatos argument in the quantum and liability advice. In this regard I also refer you to Counsel's advice of 1 February 2012

attached hereto for your convenience,

#### Long Term Strategy Considerations

I note that in your telephone conversation of 11 March 2013 with Ms Haider you stated that there were two points in relation to strategy which you were considering.

Whether the interlocutory application, the appeal and the Batistatos argument should be pursued in light of the Crown Solicitor's view on quantum and liability, and

whether on a costs benefit analysis and from a policy point of view it is appropriate for the State to pursue the appeal and continue with the Batistatos Application.

As to paragraph 2, I am unable to comment on policy issues. In relation to a cost benefit analysis, I note that Kathleen Biles offered to settle her claim for \$170,000 plus costs. I further note that Kathleen Biles does not have a claim against Colin Gibson and her claim, by comparison, is a weaker claim than some of the other plaintiffs, who may wish to settle at a higher rate. Assuming the remaining 14 plaintiffs agree to settle the claim at around the same figure as Kathleen Biles, the settlement is likely to exceed 2.38 million dollars plus costs.

#### Instructions Required

I attach a copy of the final Summons, Notice of Appeal and Summary of Argument. Please provide instructions to file the White Appeal Book, Summons and Notice of Appeal tomorrow Wednesday, 13 March 2013 in order to preserve the defendant's position, subject to the possibility that the appeal may be withdrawn at a later stage depending on your view upon receipt of my advice in relation to quantum and liability.

Please contact Ms Benish Haider on (02) 8093 5546 to further discuss this matter.

Kindest regards

Benish Haider  
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](http://www.cso.nsw.gov.au)  
Email: [benish\\_haider@agd.nsw.gov.au](mailto:benish_haider@agd.nsw.gov.au) | Tel: (02) 8093 5546 | Fax: (02) 9224 5122

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

Visit us at [www.lawlink.nsw.gov.au](http://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.

=====