
From: Wendy Blacker
To: Scott.Catling@allianz.com.au [Scott.Catling@allianz.com.au]; Christian Mathis [christianmathis@nsw.uca.org.au]; Jim Mein [jimm@nsw.uca.org.au]; John Oldmeadow [johno@nsw.uca.org.au]; Weeks, John [weeksj@knox.nsw.edu.au]
CC: Brianna Roach [BRoach@nsw.gadens.com.au]
Sent: 12/10/2010 10:10:57 AM
Subject: FW:ASD [redacted]

Good morning Gentlemen

As you are aware, Dr Paterson has agreed to meet with [redacted] ASD. It is proposed it will occur on Monday 18 October at 10:00 am. I am yet to confirm that time with Dr Paterson. The meeting was proposed by [redacted] ASD on the basis that he accepted, albeit reluctantly, the non-disparagement, confidentiality, no admission of liability, discontinuation of proceeding (as distinct from verdict and judgment in his favour) and settlement sum clauses in the settlement agreement.

At the time of the settlement conference [redacted] ASD had incurred \$55,000.00 in legal fees. On instructions from his solicitor in relation to the apportionment of the settlement sum, we allowed \$50,000.00 for fees as a portion of the settlement sum of \$150,000.00. This amount was consistent with the offers we had made during settlement negotiations.

[redacted] ASD now seeks to 're-agitate' the non disparagement clause and the costs (see below). I assume (but do not know for certain) that the re-agitation of costs is to secure a higher sum in settlement to cover the \$5,000.00 (not previously allowed for) plus costs that have been incurred in the interim.

In my view, having regard for the liability risk (the teacher was terminated immediately upon the matter being reported, although there is an argument that the School ought to have been on notice), the circumstances of the incident (a one off, elbow coming into contact with clothed groin) and the short duration of 'injury' (commencing with the criminal procedure), there are no compelling evidentiary reasons to accede to the requests that I anticipate will be forthcoming.

Unless you instruct me to the contrary, I propose, when I call the plaintiff's solicitor to inform him of the following instructions, which I have assumed:

1. The apportionment of the settlement sum (of \$150,000.00) is a matter for the plaintiff and his solicitor. The defendants have no objection to it being apportioned in a different amount to that currently proposed, however, the sum will not be increased.
2. The non-disparagement clause remains. If the plaintiff wishes to propose an amendment to the clause, the amendment will be considered, but there will be no agreement to dilute the effect of the clause.

Please let me know immediately if you disagree with this approach or you wish to provide alternative instructions.

Of course taking this stance needs to be weighed against the cost of litigation if the plaintiff refuses to accept the proposed responses. Litigation inevitably brings publicity. However, I reiterate the *relatively* low (but not absent) risk of being found liable if the matter were to proceed to hearing. This matter is also the first in a number to hopefully resolve and, despite the confidentiality clause, it is not unforeseeable that the amount and pressure brought to bear may come to the attention of other claimants, particularly in circumstances where the same solicitor is now acting for a number of claimants. It is important not to raise expectations of other claimants in circumstances where every matter needs to be considered on its merits.

Kind regards
Wendy

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Think before you print.

From: Howard Harrison [mailto:Howard_Harrison@codea.com.au]
Sent: Tuesday, 12 October 2010 7:53 AM
To: Wendy Blacker
Subject: ASD

Wendy Monday 18 th at 10-00 am suits best.I am instructed to reagitate issue of non disparagement clause and costs.Can we talk?

Howard Harrison
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