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L A W Y E R S

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ESTABLISHED 1992

MEMBER FIRM



OUR REF: BMW:KAMM:02012
YOUR REF:

7 June 2005

Mr Terence Lindsay
27-29 Culgoa Crescent
LOGAN VILLAGE QLD 4207

RE: PERSONAL INJURIES CLAIM

Further to your email dated 1 June 2005 we advise that we have attended to payment of Dr. Roche's account.

Unfortunately in our adversarial compensation system the Claimant has the onus of proof and the Respondent normally does not have to prove anything. Consequently, you have to prove not **only** a relevant breach of duty but also have to prove that the particular breach of duty caused **injury**/damage which in turn needs to be capable of rational calculation within the parameters set by the relevant legislation and precedent.

Whilst it undoubtedly seems unfair from your perspective it is certainly the case that if you cannot **prove** that the relevant breach of duty caused quantifiable damage to you then you "essentially **have** no case" as you quite correctly observed.

At this stage your options remain as discussed on 9 September 2004 and are summarised below:-

1. If you think there is a chance of obtaining supportive medical opinion from some other source you should continue to pursue your enquiries rather than convene a compulsory conference.
2. Once you have exhausted the search for supportive medical opinion the only way to progress the matter is to convene a compulsory conference;
3. At the time of convening the compulsory conference, if not done earlier, we will need to provide Queensland Health with a copy of the reports by Dr. Hourigan and Professor Roche together with copies of any additional relevant material that has not previously been disclosed.
4. At the conference the strategy would be to extract from Queensland Health whatever is going to be its best offer so that you can then make a decision about whether or not to accept that offer or to proceed with litigation.
5. Assuming that that matter does not settle at the compulsory conference you and Queensland Health will have to exchange written final offers which will remain open



5. Assuming that that matter does not settle at the compulsory conference you and Queensland Health will have to exchange written final offers which will remain open for 14 days after which, if neither offer has been accepted, you will be able to proceed with your litigation.
6. If you are to proceed with the litigation appropriate steps have to be taken between day 15 and day 60 following the compulsory conference and once the steps are taken to progress the litigation you will become potentially liable for costs of the litigation in the event that your claim is ultimately unsuccessful.

We remain of the view that at a compulsory conference Queensland Health would probably increase its offer (currently \$5,000.00 "all up") but we do not see Queensland Health offering more than about \$15,000.00 "all up" to settle your claim.

Given that Queensland Health acknowledges a breach of duty by its staff we do not know whether the bad press that Queensland Health is currently receiving would have any effect on its attitude to settling the claim but, even if it did have some positive effect, we are sure that Queensland Health would not come remotely near the \$200,000.00 that you have spoken about.

We await your further instructions but in the meantime we will take no steps to communicate with the Respondent's solicitors pending your further instructions.

Yours faithfully


JONATHAN C. WHITING & ASSOCIATES