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Mr I J Burgess

Mr C Maas - former A.B.A. Ltd
employee - mesothelioma claim.

A series of meetings to discuss this case of a damages claim was recently held in Perth by Messrs S B Benson and N E Irving, as follows:

- 1 20 Jun 77 Mr Sadleir of Robinson Cox & Co. (CSR's Perth solicitors) plus Mr Bills and Mr Stacy of CSR, Perth.

The purpose of this meeting was to explore the various options open in dealing with the matter and in particular to establish what the basis of discussion with SGIO should be.

- 2 21 Jun 77 Same people plus Mr G A Kennedy QC. This meeting considered a draft strategy evolved out of the discussion on the 20th for the SGIO meeting. The purpose was to check out the strategy, find out any pitfalls and add suggested matters.
- 3 22 Jun 77 Messrs S B Benson and NE Irving with SGIO (Mr C Lang, assistant General Manager, Mr G Darge solicitor attached to SGIO and Mr K Bower, Claims Manager).

Mr Darge led the discussion at this meeting and pointed out that the common law extension of the A.B.A. workers compensation policy was limited to £1000 (\$2000) per claim maximum cover with a £5000 "disaster cover" until 1 Jan 59 when the common law extension increased to an unlimited amount.

Mr Darge went on to point out that Mr Maas was employed at Wittenoom from 21 Oct 57 to 6 Nov 59 (24 months). He stated SGIO's opinion that their liability in Mr Maas' case would be limited to \$2000 plus 10/24 of judgement or settlement sum and that CSR would be liable for the remainder (i.e. 14/24 less \$2000). The contribution is based on the 24 months of employment of Mr Maas at Wittenoom and the two proportions cover the periods before and after 1 Jun 59.

The meeting agreed to a course of action to be followed and this was:

- (a) SGIO will write to CSR Sydney (with copy to CSR Perth office). Copy of this letter is attached.
 - . explaining the situation of limited liability for common law cover under the A.B.A. Employers Idemnity Policy.
 - . pointing out that it is a situation of joint liability.
 - . suggesting settlement be on the basis of contribution as outlined above.
 - . asking for such medical opinion as we might have relating in particular to the period of incubation for both asbestosis and mesothelioma.
- (b) CSR Sydney will reply accepting or rejecting the principle of contribution and the percentage basis of payment.
- (c) SGIO will obtain medical opinions on the present state of Mr Maas' health and on the time when both diseases of asbestosis and mesothelioma could be held to have manifested themselves. They will send copies to CSR together with their assessment re the possibility/desirability of defending Mr Maas' common law claim and also re a negotiated settlement.
- (d) A further meeting with SGIO in Perth between SBB/NEI to discuss defending or settling the claim and also to discuss the settlement sum to be paid.
- (e) CSR will seek the advice of Robinson Cox & Co and Mr Kennedy in re (d) above.
- (f) SGIO have in mind a joint carriage of the matter between themselves and CSR together with a joint briefing of counsel to advise eventually on defending/settling/amount.

General notes on this meeting

- (a) Mr Darge holds the view that SGIO's interest would be best served by the matter being defended on the basis that it is out of time (6 years under Limitations Act) - provided medical opinion states that the claimed disease manifested itself prior to 1971.

At present his advice is being given considerable weight by SGIO. Also AGM Lang believes instant settlement negotiations would be undesirable because of other potential claims not only for asbestosis and mesothelioma but for silicosis from gold mining and other employees. The area of potential is large.

- (b) The Maas claim is the first common law claim in WA arising out of industrial disease.
- (c) SGIO have placed a tentative estimate of \$100,000 on the Maas claim.
- (d) SGIO are currently paying weekly compensation to 160 former A.B.A. employees. An estimate of the weekly cost to SGIO is \$16,000.
- (e) Three Wittenoom employees have already died of mesothelioma (without claiming at common law).
- (f) SGIO are thinking about a pessimistic estimate of \$33 million if all potential asbestosis sufferers (i.e. Wittenoom employees) claimed at common law; the present 160 plus an estimated further 170, totally 330 at \$100,000 per claim = \$33,000,000.
- (g) We stated a belief that early settlement would be desirable for both SGIO and CSR for the following reasons.
 - . CSR believes there is a moral obligation for someone to pay Mr Maas a reasonable sum as soon as possible and before he dies (his solicitor believes this is only 6 months away).
 - . Avoid adverse publicity which could result and would involve both organisations if the matter was defended on a legal technicality ("out of time") or was unduly protracted by using due process of law.
 - . If the case was defended and lost or won the resultant publicity could attract further claimants.
 - . If the amount paid in settlement became publicised this could give rise to further claims.

SGIO stated their understanding of CSR's wish to settle quickly and quietly and AGM Lang was sympathetic to our position. However, they felt that they had to protect their financial position considering the potentially high number of common law claims.

It was also suggested that the best way of resolving SGIO's dilemma may be contact at a more senior level e.g. general management CSR/SGIO.

- (h) They see that medical evidence is of paramount importance in determining their attitude to defending or settling the matter.
- (i) SGIO believe Mr Maas is being advised by the AWU and by Dr Janet Elder of Sir Charles Gardiner Hospital and Mrs Rowcraft, social worker attached to that hospital. This hospital is recognised as the principal centre for diagnosis and treatment of pneumoconiosis cases in WA. SGIO believe that these people are hostile to CSR as connected with Wittenoom.

4. 22 Jun 77 CSR and Messrs Sadleir and Kennedy
This meeting was a debriefing session following the SGIO meeting.

Mr Kennedy expressed the opinion that CSR had little choice but to accept SGIO's offer of contribution. A copy of his written opinion is attached.

General comments

- (a) Dealing with Mr Maas' claim established that there has been bad management on both CSR's and SGIO's part.

As regards CSR, there has been no co-ordinating function; too many people have been receiving fragmented information. As a result it was only after reference to files in Perth that pertinent information was discovered although much of this had been sent to headquarters some time previously.

Also Perth branch had been authorising industrial disease claimants (by filling out a statutory form) but has not been passing this information on (it seems that they checked and received the reply that "Sydney" was not interested in the forms). There have been more than 150 industrial disease claimants during the period 30 Jun 58 to 30 Sept 76, amongst ex-A.B.A. employees.

As regards SGIO, they have not been keeping a separate tab on the cost of asbestosis claims and do not know how much they have paid out for ex-Wittenoom employees. Our conservative estimate arising out of the discussion would be at least \$750,000.

- (b) The meeting with SGIO officers established a good rapport and a sound basis for future discussion and joint handling of the Maas case and all future cases. An exchange of information was arranged for.
- (c) SGIO have paid workers compensation claims to relatives of ex-Wittenoom employees who are living overseas e.g. one or more cases in Hong Kong.
- (d) SGIO are aware that former Wittenoom residents, not employees but school children have consulted the Sir Charles Gardiner hospital clinic for treatment. So far there have been no claims from these people; claims could eventuate if Mr Maas' case is widely publicised.
- (e) CSR's public liability insurers, SBU Insurance Group should be kept fully informed of all moves in the Maas case as we would be seeking to present to them for payment claims from other than A.B.A employees. In this context it will be necessary to clearly establish when SBU had the Wittenoom operations covered; at present they believe the cover was only from 1958 onwards.
- (f) Future contact with SGIO will involve a Mr Taylor who apparently handled common law claims, but who was on leave at the time of the visit.

Attached;

- Appendix (a) Copy of letter from SGIO
- (b) Copy of Mr Kennedy QC opinion
- (c) Profile of Mr Maas

NE Irving
SB Benson
27 Jun 77

NE
SB