

Leanne Norman

From: Leanne Norman
Sent: Thursday, 21 October 2021 9:13 AM
To: patrick.george@kennedyslaw.com
Subject: Hedley & Ors ats Poland
Attachments: Letter BHF to Kennedys 21.10.21.pdf

Categories: Filed to ND
FilingIndicator: -1

Dear Patrick

Please see the attached letter.

Kind regards

**BANKI
HADDICK
FIORA**

Leanne Norman | Partner
Level 10, 179 Elizabeth Street Sydney NSW 2000
T +61 2 9266 3454 | E norman@bhf.com.au | www.bhf.com.au

Liability limited by a scheme approved under Professional Standards Legislation | This email, including any attachments, is intended only for the addressee. It is confidential and may contain privileged information. Any unauthorised use or disclosure is prohibited. If you have received the email in error, please immediately let the sender know by email or telephone and delete the email from your system.

FEDERAL COURT OF AUSTRALIA

NSD 1485, 1486, 1487 of 2018

Date: ^{25 March} April 2022

Roberts-Smith v Fairfax Media Publications Pty Limited & Ors

Exhibit No: A168

MFI No: _____

Assoc: Flyn Wells

21 October 2021

Patrick George
Senior Partner
Kennedys

BY EMAIL – patrick.george@kennedyslaw.com

Dear Patrick

Subject to Common Interest Privilege

HEDLEY & ORS ats POLAND
Supreme Court of Western Australia Proceedings CIV 1370 of 2019 (Proceedings)

We refer to our video conference on 15 October 2021.

As you know, we act for the first to third defendants in the Proceedings, and for the Nine group of companies (**Nine**), of which the corporate defendant is a member.

Nine offers to fund future legal costs incurred by Clare Bradley, David Birch and Andrew William Hastie (**the fourth to sixth defendants**), and pay any damages, settlement sum(s) or costs payable pursuant to any adverse costs order which may become payable by them, in their capacity as defendants to the Proceedings, on the following conditions:

1. Nine will take carriage of the of the matter on behalf of the fourth to sixth defendants and defend and/or settle the matter on their behalf.
2. The fourth to sixth defendants agree to provide Nine with all assistance, information and documents it reasonably requires to investigate and defend the case against all of the defendants.
3. Nine shall appoint its solicitors, Banki Haddock Fiora, their Western Australian solicitor agent, Carmel Galati, Martin Goldblatt of counsel, and any additional legal representative Nine may wish to engage in the future, to act for the fourth to sixth defendants.
4. Nine will seek the consent of the fourth to sixth defendants before filing a defence, settling the Proceedings, appointing any additional legal representatives or taking any other major step in connection with the Proceedings on behalf of the fourth to sixth defendants. However, in the event that such consent is withheld, Nine may elect to withdraw from this agreement in accordance with clause 5 below;
5. Either the fourth to sixth defendants (or any of them) or Nine may withdraw from this agreement at any time should the withdrawing party reasonably form the view that there is an unresolvable conflict between the parties and that such conflict prejudices their interests.

6. In the event that either Nine or the fourth to sixth defendants (or any of them) reasonably form the view that there is a potential conflict between them, then prior to any party withdrawing from this agreement in accordance with clause 5 above, Nine shall provide the fourth to sixth defendants with a reasonable opportunity to seek independent, third party legal advice on the subject of the apprehended conflict. Nine shall bear the reasonable costs of such advice and may stipulate a cap on the costs payable by it at that time.
7. The fourth to sixth defendants will not admit liability or settle the case against them without prior authorisation by Nine.
8. The fourth to sixth defendants will not make any public comments about the Proceedings or Mr Poland without the prior consent of Nine.
9. The fourth to sixth defendants will notify their legal representatives immediately should they form the view that their interests in the case conflict with those of Nine.
10. Nine shall indemnify the fourth to sixth defendants for damages which they are ordered to pay, other than where:
 - (a) there is a finding of malice against them; or
 - (b) damages are awarded against them on an exemplary basis.

We would appreciate it if you could seek instructions as to whether the terms of this offer are acceptable to your clients, Mr Birch and Mr Hastie. Although we note that you do not act for Ms Bradley, we assume that your clients could liaise with her, or that you would be able to liaise with her solicitors, as to her position as to the proposed terms? Otherwise please let us know if we should take this up directly with Ms Bradley's solicitors.

We look forward to hearing from you.

Yours sincerely



Leanne Norman
Partner
T: (02) 9266 3454
norman@bhf.com.au