

having charge of this action on behalf of the plaintiffs. The plaintiffs have claimed damages including aggravated and exemplary damages against the defendant which is the operator of Channel 7 Brisbane. The action arises out of the telecasting on numerous occasions prior to and on 20 March 1997 of a promotion for the "Today Tonight" programme and the telecast on 20 March 1997 as part of the "Today Tonight" programme of a story about how patients go from doctor to doctor collecting dangerous drugs.

The promotion contained the following words:-

"Announcer: On Today Tonight ...It's just too easy. From doctor to doctor Woman: I've took up to 180 pills

Announcer: Collecting dangerous drugs

Doctor: There are doctors who actively encourage it

Announcer: Wasting millions. The Brisbane doctors letting it happen. Today Tonight."

Pleadings have been delivered. An amended statement of claim was delivered on 22 July 1997 and transcripts of the telecast of 20 March 1997 appear as schedule A to the statement of claim and as annexure A to an amended defence which was delivered on 18 July 1997. A reply was delivered on 25 July 1997.

The evidence before me shows that the case which the plaintiffs seek to establish at trial is that on the pretext of providing an example of the occurrence of "doctor shopping" the defendant, by use of a hidden camera, recorded a consultation which its "researcher" one Erina Flessas, had with the second plaintiff and which took place on the premises of the first plaintiff on 19 March 1997. The plaintiffs' case is that Ms Flessas took part in a normal consultation in which she was asked about her history, in which she was examined and in which she was given appropriate advice about possible changes to her life style and that, in the circumstances, the second plaintiff appropriately prescribed to her Normison tablets with

appropriate directions as to their usage. The plaintiffs' case is that the secretly filmed tape was selectively edited and gave the impression that the second plaintiff prescribed such tablets within seconds of Ms Flessas presenting herself. The plaintiffs' solicitor in his affidavit has said by way of example that the unedited tape records the second plaintiff stating, in the course of enquiring about the "patient's history":

"I can get you to sleep at night, that's not hard with tablets, but what's keeping you awake, where's the problem, where's the stress, what's happening, why are there tears occasionally."

According to the allegations in the schedules to the statement of claim the defendant edited this passage so that the second plaintiff is recorded as saying:-

"I can get you to sleep at night that's not hard with tablets."

In addition, it is alleged that the tape was edited so that it appears that the second plaintiffs words "we'll give you some Normison to try and help you to sleep" occurred within seconds of the "patient" complaining of "feeling very tired having a lot of trouble sleeping".

The defendant has pleaded substantive defences of qualified privilege and in reply the plaintiffs allege and propose to prove at trial that the promotion and the telecast were made with an absence of good faith in that:-

- "(a) the defamatory imputations published concerning the plaintiffs were not relevant to the matters the existence of which may excuse the publication in good faith of defamatory matter;
- (b) the manner and extent of the broadcast was excessive;
- (c) the defendant was actuated by ill-will or by some other improper motive;

- (d) the defendant believed the defamatory matter concerning the plaintiffs to be untrue or was recklessly indifferent as to its truth or falsity."

Paras 21, 28, 29, 30 and 33 of their amended statement of claim show the plaintiffs propose to prove at trial that the defendant:-

- (a) included film of the plaintiffs in the broadcast when it had no good reason to do so;
- (b) included file of the plaintiffs in the broadcast when it had no grounds to suspect that the plaintiffs were guilty of any wrongdoing;
- (c) made the broadcast without making any or any adequate enquiry about whether the plaintiffs were guilty of any wrongdoing;
- (d) made the broadcast knowing that the imputations which they conveyed concerning the plaintiffs were false, or with reckless indifference as to their truth or falsity;
- (e) selectively edited tape in order to give the impression that the second plaintiff prescribed tablets within seconds of the patient presenting herself.

The plaintiffs' submit that in order to succeed on these issues it is essential for them to obtain relevant admissions concerning the defendant's pre-broadcast conduct, including the process by which the matter was "researched" and the beliefs of those responsible for the telecast as to whether the plaintiffs had engaged in the practices referred to in the promotion and in the telecast.

I should at this stage say that Douglas Paul Spence (on whose affidavit the plaintiffs rely), was admitted as a solicitor on 17 December 1970 and since then has acted in numerous defamation actions on behalf of both plaintiffs

and defendant including many actions involving media defendants in which qualified privilege was pleaded as a defence. He has sworn that it is his experience that a plaintiffs prospect of proving an absence of good faith depends upon ascertaining, prior to trial, accurate details in relation to the manner in which the matter complained of was investigated, the inquiries made by the defendant, the manner in which material was edited and the processes by which a decision was made to publish the matter in question. He has sworn that in particular it is essential to establish the steps taken by the defendant to verify the truth of assertions contained in the matter complained of, including, in particular, statements concerning the plaintiff and to establish the state of the defendant's knowledge and belief in relation to the assertions contained in the broadcast particularly assertions which either intentionally or unintentionally concern a plaintiff. Mr Spence has sworn that in his experience these matters which I have just mentioned tend to be peculiarly within the knowledge of the defendant and that without obtaining relevant admissions in this regard, a plaintiff is at risk of failing to discharge the onus of proof in relation to the issue of good faith. He further swears that without appropriate admissions a plaintiff is at risk that the issue of "good faith" will not be left to the jury or if it is left to the jury the jury may infer that the defendant's conduct was not reckless or otherwise lacking in good faith.

Mr Spence also swears that the obtaining of relevant admissions in relation to these matters is also essential to properly prepare a plaintiffs case on damages particularly where a claim is made for aggravated and exemplary damages.

I now turn to what Mr Spence has deposed in relation to the present action. He has sworn there is no assurance that the defendant will call as witnesses at trial any witnesses including its employees who were responsible for researching, preparing, editing, previewing and authorising

the telecast complained of; but that even if all or some of those witnesses are called he is concerned that it will be too late for the plaintiffs to investigate assertions which are made in the course of the defendant's case concerning its pre-broadcast conduct and in particular the steps taken by it to verify the accuracy of claims made in the telecast. He has sworn that unless the plaintiffs are aided by answers to interrogatories concerning the defendant's pre-telecast conduct including the extent of its "research" and whether it had any and if so what grounds to suspect the plaintiffs of wrongdoing, the plaintiffs will not be in a position to call evidence in relation to these matters in its case or adequately prepare for the cross-examination of the defendant's witnesses. In his affidavit he has mentioned by way of example that the plaintiffs suspect that the assertion in the telecast that the defendant's researcher visited "a series of doctors complaining about nothing specific" and that "within minutes two out of three doctors were writing up prescriptions for the kind of drug doctor shoppers abuse" is unsubstantiated and was known to be false. Mr Spence deposes that the plaintiffs wish to guard against surprise at trial by evidence being called during the defendant's case concerning those matters.

It is not the first time the matter of interrogatories in this action has come before this Court. On 23 April 1997 there was a hearing before Mr Justice Dowsett in which the plaintiffs sought to obtain leave to administer interrogatories a draft of which had been delivered to the defendant's solicitors prior to the hearing. Mr Spence has sworn that the defendant argued before his Honour that it was premature to grant leave to interrogate and that a number of matters about which interrogatories were directed might be admitted. This assertion by Mr Spence has not been challenged.

On 27 October 1997 the plaintiffs filed a summons seeking leave to deliver interrogatories in the form appearing in the schedule to these reasons. This application brought forth a cross-application by the

defendant for the action to be referred to mediation. Both before and at the hearing of these applications on 11 November 1997 the defendant's solicitors and counsel submitted to the effect that the defendants wished to mediate the matter, that many judges take the view that matters can be mediated without discovery let alone interrogatories, that whatever questions the plaintiffs wished to ask the defendant can be asked as part of the mediation process and that was the course the defendant wished to take in relation to the interrogatories sought to be delivered and that the defendant did not then accept that the plaintiffs had a right to insist upon answers to interrogatories at that stage.

On 11 November 1997 Mr Justice Helman directed the parties participate in a mediation and that occurred before Mr Keane QC on 28 November 1997. Thereafter there was correspondence relating to the interrogatories, some of which were answered by the defendant.

Before me the plaintiffs assert, through their solicitor Mr Spence, that they propose to prove amongst other things that the research for the telecast was not as claimed in the broadcast, was grossly inadequate, failed to disclose wrongdoing by the plaintiffs and that preparation of the story and the editing of file was undertaken recklessly or with a deliberate knowledge of the falsity of the defamatory matter concerning the plaintiffs. As Mr Spence points out, in order to present its case the plaintiffs must call evidence in relation to these matters which he submits are peculiarly within the defendant's knowledge and that the only convenient means of doing so is to interrogate the defendant.

I now turn to the interrogatories in question.

Interrogatory 2(j)

The defendant has agreed to answer this interrogatory.

Interrogatory 3(a)

Again the defendant has agreed to answer this interrogatory.

Interrogatory 3(b), 3(d) and 3(e)

These interrogatories address the defendant's knowledge and belief as to the imputations pleaded by the plaintiffs in paras. 8 and 14 of the amended statement of claim. Mr Applegarth by way of basic submission has said that interrogatory 3 inquires in relation to the defendant's knowledge or belief in relation to the defamatory matter which the plaintiffs propose to prove was conveyed by the promotion and the telecast. He submits that the obtaining of answers to these interrogatories is essential to their ability to prove an absence of any honest belief in imputations conveyed concerning the plaintiffs and/or the recklessness of the defendant's conduct.

The defendant has objected to answering these interrogatories 3(b), 3(d) and 3(e) on the basis that as so framed they are vexatious. Miss Philippides relies particularly on an unreported decision of Hunt J in the Supreme Court of New South Wales - Howard v Nationwide Publishing Service - delivered on 26 February 1987 in which the interrogatory in question was:-

"At the time of publishing the [first] matter did you believe or have the opinion (specifying which) that."

And there followed a series of statements expressed in the precise terms of the imputations pleaded by the plaintiff.

At p.4 of his reasons Hunt J said:-

"... before an answer to an interrogatory along the lines here administered would be ordered, a defendant would have to be asked whether any consideration had been given to the possibility that the matter complained of could be understood as conveying the particular imputation. Then, in the event of an affirmative answer or in a case where

it was reasonably foreseeable that the imputation could be conveyed (and notwithstanding the denial that the defendant intended to convey the imputation upon which the plaintiff relies), a further question could be asked as to whether the defendant had any belief in its truth: No such introductory interrogatory was administered in this case"

Miss Philippides points out (correctly) that in interrogatories 10 and 11a preliminary question of the type referred to by Hunt J in the above passage is indeed asked.

In the case before me the defendant denies the imputations pleaded by the plaintiffs and in the view which I take of interrogatories 3(b) 3(d) and 3(e) the objection taken is valid.

Interrogatory 3(f) and 3(g)

These interrogatories, directed as they are to the defendants knowledge or belief prior to the telecast, each refers to the plaintiffs or either of them being guilty of any and if so what "wrongdoing" and whether the plaintiffs or either of them had so conducted themselves as to give rise to a suspicion that they were guilty of any and if so what wrongdoing. Objection is based on the submission that the word "wrongdoing" is ambiguous, embarrassing and irrelevant. The interrogatories are based on paras. 29 and 30 of the amended statement of claim which allege that the defendant included film of the plaintiffs when it had no grounds to suspect the plaintiffs were guilty of any wrongdoing and the defendant made broadcast without making any or any adequate enquiry about whether the plaintiffs were guilty of any wrongdoing. The word "wrongdoing" is one in common use. In the Shorter Oxford English Dictionary "wrong-doer" is defined as follows:-

1. One who commits wrongful, unjust or blameworthy acts; one who transgresses or offends against the moral law;

2. Law. One who is guilty of a wrong, tort or trespass; a law breaker.

The thrust of the transcript of the telecast (as exhibited to the amended statement of claim) and as pleaded by the plaintiffs is that the second plaintiff in particular was more than ready promptly to prescribe dangerous drugs to what are called "doctor shoppers" the latter people collecting dangerous drugs. It is said at the commencement of the telecast that patients going from doctor to doctor collecting dangerous drugs - "costing us millions".

The allegations in para. 14 (which relate to the telecast) are such that if any one of them were made out the reasonable man in the street would regard the conduct the subject of the imputation as being wrongdoing. In my view the reference to "wrongdoing" is not ambiguous and when read in the light of the allegations in para. 14 of the amended statement of claim the defendant is well able to answer these interrogatories. I propose to order that the defendant do answer interrogatories 3(f) and 3(g).

Interrogatories 10 and 11

I propose to deal with these two interrogatories at the same time. Interrogatory 10 is directed to the intentions of the defendant in telecasting the promotion and the imputations pleaded in para. 8 of the amended statement of claim. Interrogatory 11 is directed to intentions of the defendant in telecasting the telecast and the imputations pleaded in para. 14 of the statement of claim. I note also that in para.23 of the amended defence an alternate plea is made that if either or both the plaintiffs are identified by the promotion or the telecast or both, the publication of the promotion and the publication of the telecast were made in good faith. The plaintiffs of course have the onus of proving absence of good faith. I accept Mr Applegarth's submission that the intention of the defendant to convey particular imputations concerning the plaintiffs is highly relevant to the issue

of good faith and that whether or not the defendant intended to convey particular imputations and/or gave any consideration to the possibility that the programme might convey defamatory imputation concerning the plaintiffs is a matter peculiarly within the knowledge of the defendant. I respectfully adopt what was said by Hunt J in the second schedule of his judgment in Makim v John Fairfax & Sons Limited Australian Defamation Reports 50, 075 at pp.40, 534-5. The second schedule is headed "the defendants state of mind". Relevantly his Honour said:-

"The defendant must usually have an honest belief in the truth of what he published. That belief is, however, not necessarily co-extensive with his belief in the truth of the imputations which the jury finds were in fact conveyed to the ordinary reasonable reader. His belief must be looked at rather in the context of the imputations which he intended to convey."

(his Honour then referred to certain authorities for that statement).

His Honour continued:-

"It is for that reason that a plaintiff is entitled to interrogate the defendant not only as to his intention to convey the imputations pleaded by the plaintiff (Casey v ABC (1981) 1 NSWLR 305 at 308; Lewis v Page (Hunt J 19 July 1989 unreported) at 9-10; but also as to the imputations which he intended to convey: Palmer v John Fairfax & Sons Limited (1986) 5 NSWLR 727 at 731; Brazel v John Fairfax & Sons Limited (Hunt J 17 February 1989 unreported) at 1-2; Lewis v Page at 10; and (as relevant to the reasonableness of his conduct where statutory qualified privilege is pleaded, and where it is reasonably foreseeable that a particular imputation could be conveyed) as to whether he gave any consideration to the possibility that the matter complained of would be understood as conveying such an imputation, his belief in the truth of that imputation and what steps he took to prevent the matter complained of from being so understood: Howard v Nationwide Publishing Services Pty Ltd (Hunt J, 26 February 1989, unreported) at 3-4.

If no evidence is led of the defendant's intention to convey any particular imputations, it is open to the jury to conclude that he intended to convey those imputations ultimately found in fact to have been conveyed to the ordinary reasonable reader: Evatt v John Fairfax & Sons Limited (Hunt J, 19 June 1985 unreported) at 5; (20 June 1985 unreported) at 14. The same inference would be open if the jury did not accept evidence given of the defendant's intention"

On the aspect of the plaintiffs' being at risk of failing to discharge the onus of proof in relation to the issue of good faith, I respectfully adopt the following statement of Thomas J. in Kerrisk v North Queensland Newspaper Co Ltd (1992) 2 Qld.R 398 at 410:-

"The vital point that emerges at this point of preparation for the trial is that it is essential from the plaintiffs point of view that if such evidence exists, he be in a position to present a positive case showing a lack of good faith on the part of the defendant. It should not be assumed that he would at trial be granted the indulgence of splitting his case. Nor could he safely assume that the defendant would call evidence whereupon counsel's cross-examination would fill the deficit. It could not be assumed that cross-examination would be effective without some prior information concerning the source allegedly relied on, and the dealings of the newspaper company in relation to the matter."

These interrogatories Nos. 10 and 11 as drafted are ones which in my view the plaintiffs are entitled to have the defendant answer. I reject the defence argument that interrogatories 10(a), 10(c), 11(a) and 11(c) are unnecessary because the defendant has pleaded the imputations on which it relies (paragraphs 13, 14, 15 and 19 of its defence).

Interrogatory 13

This interrogatory is directed to a photocopy of a newspaper article which is a report of an interview with a man named in the article as Les Riley and described in the

article as "Channel 7 Brisbane boss". The interrogatory is directed to the following words appearing in that article and in the article attributed to Riley as his actual words:-

"That one-hour block, to a large degree, determines how you will perform for the rest of the night."

"Not totally but if you can do well from 6 pm to 7 pm you've got a better than even chance of doing well for the rest of prime time. News and Today Tonight are the two local programmes that we can influence very heavily. Our concentration on those areas has paid off."

Mr Spence in his affidavit on which the plaintiffs rely in support of the present application, has sworn that the plaintiffs propose to prove at trial that false and sensational allegations were made against them as a means of boosting the ratings of "Today Tonight" and thereby gaining financial advantage for the defendant. He swears that interrogatory 13 relates to what appears to be the publicly expressed position of the defendant's managing director. He swears that such an interrogatory is a convenient means to avoid the need to subpoena the journalist who wrote the article referred to in the interrogatories. He further swears there is no assurance that the defendant will call its managing director as a witness to permit him to be cross-examined concerning these matters

The defendant has proposed that the plaintiffs can subpoena Mr Riley in their case. In my respectful view it would be naive to believe that the plaintiffs would be prepared to do this. Were the plaintiffs to adopt that course they would be putting Riley forward as a witness of truth and furthermore probably would have no knowledge of exactly what he intended to say once in the witness box.

On 24 March 1998 the plaintiffs' solicitors asked that the defendant admit that Riley made the quoted statement but no informal admission was made. By the time of hearing before me, no such admission had been made even with a full

reservation by the defendant of its rights to argue relevance. I accept that the motivation of the defendant to boost its ratings and profit at the expense of individuals who may well be defamed - individuals such as the plaintiffs - is an integral part of the plaintiffs' case. It seems to me also that the interrogatory while arguably going to the matter of good faith is also relevant to the issue of aggravated and exemplary damages claimed by the plaintiffs.

Interrogatories 14(b) (i) , 14(c) (i) and 14(d)

The first of these seeks to elicit the net asset value of the defendant, the second seeks to elicit the net profits earned by the defendant in the financial year ended 30 June 1996 and in the financial year ended 30 June 1997 and the third seeks to elicit what revenue, on average, was earned by the defendant from advertising broadcast between 6 pm and 7 pm on week day evenings in March 1997.

As to the first two of these, Mr Spence has sworn that the defendant has provided upon disclosure certain financial statements in relation to the year ended 30 June 1996 but none in relation to the financial year during which the programme was broadcast or subsequent periods. He further swears that answers to interrogatories are a convenient means of providing this information in a jury trial and will avoid the necessity to tender large volumes of financial documents (if and when they are disclosed). As to interrogatory 14(d) he swears the defendant hasn't given disclosure of financial information, ratings cards or any other documents which enable the plaintiff's to ascertain the revenue which on average it earned during the news and current affairs hour during which the matter complained of was broadcast.

Miss Philippides took the point that the matters enquired into in these three interrogatories were not the subject of a particular pleading. However, in my respectful view they are relevant to an award of exemplary damages and a case for such damages has been pleaded. Mr Applegarth has

referred to a number of authorities including XL Petroleum (NSW) Pty Ltd v Caltex Oil (Australia) Pty Ltd (1985) 155 CLR 448 at 471 in which a statement by Lord Diplock in Broome v Cassell was cited with approval - it was to the effect that the social purpose of an award of exemplary damages is to "teach a wrong doer that tort does not pay".

I accept also Mr Applegarth's submission that evidence of the defendant's means is relevant not only to show that the defendant can afford to satisfy a substantial judgment "but to show what sum will be a sufficient deterrent against repetition of the conduct that attracts the award" (citing XL Petroleum at 472).

In regard to the third interrogatory namely 14(d), I propose to order that the defendant answer this interrogatory but exclude any reference to "and/or by the Seven Network".

In summary then the orders I make are:-

1. I order the defendant do answer interrogatories numbered 2(a)-(e) both inclusive 2(j), 3(a), 3(f), 3(g), 4, 9, 10, 11, 13, 14(b)(i), 14(c)(i) and 14(d) excluding from 14(d) the words "and/or by the Seven Network" in the interrogatories a copy of which is Exhibit DPS 1 to the affidavit of Douglas Paul Spence, sworn herein on 7 November 1997.
2. I further order that the defendant file and serve its affidavit sworn in answer to such interrogatories within 14 days from today.

I heard argument on costs and in my view costs of this application should follow the event. I therefore order the defendant to pay the plaintiff's' costs of and incidental to this application to be taxed.

The following order is made by consent to the parties:-

1. That the plaintiff's have leave to further amend their statement of claim to plead in para. 18 thereof the following words:-

"The Second Plaintiff developed an acute stress reaction and an adjustment disorder with anxious and depressed mood. After the telecast was broadcast the Second Plaintiff's blood pressure was found to be considerably raised and he commenced treatment for hypertension which is suspected to have been caused by the stress caused by the promotion and telecast."

SCHEDULE

IN THE SUPREME COURT OF QUEENSLAND

No. 2695 of 1997

BETWEEN:

TARINGA 24 HOUR MEDICAL CENTRE PTY LTD (ACNFirst
010 212 926) Plaintiff

AND:

ATHOLL JONATHON MILLER Second Plaintiff

AND:

BRISBANE TV LIMITED (ACN 009 684 020) Defendant

**INTERROGATORIES DELIVERED BY THE PLAINTIFFS FOR THE
EXAMINATION OF THE ABOVENAMED DEFENDANT**

Delivered the _____ day of _____ 1997

In these Interrogatories:

- "the promotion" refers to the telecast referred to in paragraph 4 of the Statement of Claim;
- "the telecast" refers to the telecast of the "Today Tonight" program on 20 March 1997, referred to in paragraph 9 of the Statement of Claim.

1. What were the names and positions of the servants or agents of the Defendant who were engaged in each of the following activities:
 - (a) research for the telecast;
 - (b) research by visiting "a series of doctors complaining about nothing specific";
 - (c) drafting the words spoken:
 - (i) in the promotion;
 - (ii) by Hamilton-Smith in the telecast;
 - (iii) by Chris Allen in the telecast;
 - (d) editing and producing the promotion;
 - (e) editing film used in the telecast;
 - (f) previewing the telecast;
 - (g) authorising the telecast to be telecast on 20 March 1997;
 - (h) declining to provide on 20 March 1997 the written undertaking sought in the letter a copy of which is Annexure B to the Amended Defence delivered 18 July 1997.
2. Prior to the telecast:
 - (a) did the Defendant take any, and if so what, steps to verify the truth of the statements contained in the telecast, and which of them, and did it make any, and if so what, inquiries with a view to ascertaining whether such statements or any of them were true or not?
 - (b) of whom and when and how were such inquiries made?

- (c) identify all documents read in the course of such inquiries and the dates of, parties to, and substance of all interviews;
 - (d) did the Defendant receive any and what answer or answers and from whom to any and which of the inquiries mentioned in answer to Interrogatory (a) herein?
 - (e) state the date or dates upon which such answer or answers were received;
 - (f) did the Defendant make any, and if so what, attempt to contact the plaintiff's or either one of them to verify the accuracy of the statements contained in the broadcast?
 - (g) did the Defendant seek the plaintiff's' response to any material which they intended to broadcast in the course of the telecast?
 - (h) did the Defendant interview the plaintiff's or either of them?
 - (i) did the Defendant make any inquiry of the Plaintiff's concerning material which they intended to telecast?
 - (j) if not, why was no inquiry made?
3. Prior to the telecast, did the Defendant have any, and if so what, knowledge or belief in relation to each of the following matters:
- (a) as to whether or not the Second Plaintiff was one of the doctors referred to in the promotion as:
 - (i) "doctors who actively encourage it";
 - (ii) "the Brisbane doctors letting it happen";
 - (b) as to whether the Second Plaintiff:

- (i) was letting patients collect dangerous drugs in large quantities;
 - (ii) was actively encouraging patients to collect dangerous drugs in large quantities;
 - (iii) was actively encouraging patients to go from doctor to doctor collecting dangerous drugs;
 - (iv) had over-prescribed dangerous drugs to the woman appearing in the promotion;
 - (v) was one of the doctors who handed over a prescription to the woman Elaine without even checking her condition;
 - (vi) engaged in the practice of handing over prescriptions for potentially addictive drugs without checking the patient's condition;
 - (vii) within minutes of being consulted by a patient complaining about nothing specific wrote out a prescription for the kind of drugs "doctor shoppers" abuse;
 - (viii) was partly to blame for people addicted to prescription drugs developing devastating symptoms such as liver damage;
 - (ix) was guilty of malpractice;
 - (x) was unfit to practice medicine;
- (c) as to whether the First Plaintiff had at its Centre a doctor or doctors who engaged in the practices referred to in:
- (i) the promotion;
 - (ii) the telecast;

- (d) as to whether the First Plaintiff permitted doctors at its Centre to engage in malpractice;
- (e) as to whether the Plaintiff's or either of them were too easily persuaded by people addicted to prescription drugs to prescribe the types of dangerous drugs "doctor shoppers" abuse;
- (f) as to whether the Plaintiff's or either of them were guilty of any, and if so what, wrongdoing;
- (g) as to whether the Plaintiff's or either of them had so conducted themselves as to give rise to a suspicion that they were guilty of any, and if so what, wrongdoing.

4. In the course of preparing the telecast:

- (a) was not film footage taken by the Defendant of the front of the premises of the Taringa 24 Hour Medical Centre at 191 Moggill Road and of signage at those premises including the words "24 Hour Medical Centre"?
- (b) if so, why were such images recorded?
- (c) were not such images broadcast in the course of the telecast?
- (d) if so, why were those images telecast?

5. In the course of preparing the telecast:

- (a) was not film and an audio recording secretly recorded by the Defendant or on the Defendant's behalf:
 - (i) at the First Plaintiff's premises;
 - (ii) in the course of a consultation with the Second Plaintiff?

- (b) if so, why were such images and sounds recorded?
- (c) were not such sounds and images broadcast in the course of the telecast?
- (d) if so, why were those images and sounds telecast?

6. At the time of broadcasting:

- (a) the promotion;
- (b) the telecast;

did the Defendant have any knowledge or belief as to whether:

- (i) viewers would identify the Plaintiff's or either of them;
- (ii) that the identity of the Plaintiff's or either of them would be circulated "on the grapevine";
- (iii) that the promotion and/or the telecast would arouse the curiosity of viewers, particularly members of the medical professional, about the identity of the doctor? depicted therein and the clinics at which they practised.

7.(a) Who was the person (hereinafter referred to as "the patient") who engaged in the consultation with the Second Plaintiff which was filmed at the First Plaintiff's premises (hereinafter referred to as "the consultation")?

- (b) By what process and by whom were:
 - (i) film;
 - (ii) audio recordings;

of the consultation edited?

8. At the time of:

(a) the promotion;

(b) the telecast;

did the Defendant have any, and if so what, belief:

(i) as to the nature of the drug Normison;

(ii) as to whether Normison is a "dangerous drug" as that term is commonly used;

(iii) as to whether Normison is one of the kind of drugs "doctor shoppers" abuse?

9. Look at Annexure "A" of the Amended Defence and in particular the words "within minutes two out of three doctors were writing out prescriptions for the kind of drugs doctor shoppers abuse" and say:

(a) was that statement true?

(b) if so, what were the names and clinics of the two doctors or the two out of three doctors referred to in the statement?

(c) was the Second Plaintiff one of the two doctors or one of the three doctors (stating which) referred to in the statement?

(d) did not film of the Second Plaintiff appear at the part of the telecast at which the words "within minutes two out of three doctors were writing out prescriptions for the kind of drugs doctor shoppers abuse" were spoken?

(e) did a researcher visit on behalf of the Defendant a series of doctors complaining about nothing specific?

(f) if so:

- (i) who were those doctors?
 - (ii) what information was obtained as a result of those visits?
10. In telecasting the promotion did the Defendant intend:
- (a) to convey any, and if so what, information concerning the Plaintiff's or either of them;
 - (b) to convey any, and if so which, of the imputations pleaded in paragraph 8 of the Statement of Claim;
 - (c) to convey any, and if so what, imputations concerning the Plaintiff's or either of them?
 - (d) if the answer to Interrogatory (b) or (c) herein is in the affirmative, did the Defendant believe the imputation to be true?
 - (e) if the answer to Interrogatory (b) herein is in the negative, did the Defendant give any consideration to the possibility that the promotion could be understood as conveying any, and if so which, of the imputations pleaded in paragraph 8 of the Statement of Claim?
 - (f) if so, did the Defendant take any, and if so what, steps to prevent the broadcast from being so understood?
11. In telecasting the telecast did the Defendant intend:
- (a) to convey any, and if so what, information concerning the Plaintiff's or either of them;
 - (b) to convey any, and if so which, of the imputations pleaded in paragraph 14 of the Statement of Claim;

- (c) to convey any, and if so what, imputations concerning the Plaintiff's or either of them?
- (d) if the answer to Interrogatory (b) or (c) herein is in the affirmative, did the Defendant believe the imputation to be true?
- (e) if the answer to Interrogatory (b) herein is in the negative, did the Defendant give any consideration to the possibility that the telecast could be understood as conveying any, and if so which, of the imputations pleaded in paragraph 14 of the Statement of Claim?
- (f) if so, did the Defendant take any, and if so what, steps to prevent the broadcast from being so understood?

12. Approximately how many viewers does the Defendant estimate viewed:

- (a) the telecast;
- (b) each promotion or advertisement for the telecast?

13. Look at the photocopy newspaper article annexed hereto and marked "A" and in particular the following words appearing therein:

"That one-hour block, to a large degree, determines how you will perform for the rest of the night"

'Not totally but if you can do well from 6pm to 7pm you've got a better-than-even chance of doing well for the rest of prime-time. News and Today Tonight are the two local programmes that we can influence very heavily. Our concentration on those areas has paid off.'"

and say:

- (a) were not those words or words to like effect (hereinafter referred to as "Riley's statement")

said by the Defendant's managing director, Les Riley, in or about April 1997;

- (b) was not Riley's statement made by him in the course of his employment with the Defendant?
- (c) does not Riley's statement represent the views of the Defendant?
- (d) is not Riley's statement true?

14.(a) Is the Defendant wholly owned or controlled by a company or group of companies known as "the Seven Network"?

(b) what is the net asset value of:

- (i) the Defendant;
- (ii) the Seven Network?

(c) what net profits were earned in the financial year ended 30 June 1996 and in the financial year ended 30 June 1997 by:

- (i) the Defendant;
- (ii) the Seven Network?

(d) What revenue, on average, was earned by the Defendant and/or by the Seven Network from advertising broadcast between 6pm and 7pm on weekday evenings in March 1997?

The Defendant is required to answer each of the above Interrogatories.

Solicitors for the Plaintiff's

In THE SUPREME COURT OF QUEENSLAND

No. 2695 of 1997

BETWEEN:

TARINGA 24 HOUR MEDICAL CENTRE PTY LTD (ACN
010 211 926)

First
Plaintiff

AND:

ATHOLL JONOTHAN MILLER

Second Plaintiff

AND:

BRISBANE TV LIMITED (ACN 009 684 020)

Defendant

This and the preceding 10 pages is the document marked
"DPS1" referred to in the Affidavit of DOUGLAS PAUL SPENCE
sworn herein before me this 7th day of November 1997.