

SUPREME COURT OF QUEENSLAND

CITATION: *Dixon v Australian Meat Holdings Pty Ltd* [2003]
QSC 267

PARTIES: **DONNA-MARIE DIXON**
(Plaintiff/Respondent)
v
AUSTRALIAN MEAT HOLDINGS PTY LTD
ACN 011 062 338
(Defendant/Applicant)

FILE NO: S38 of 2000

DIVISION: Trial Division

DELIVERED ON: 25 August 2003

DELIVERED AT: Brisbane

HEARING DATE: 18 August 2003

JUDGE: Dutney J

ORDERS: **1. Application dismissed;**
2. Costs reserved.

CATCHWORDS: STATUTORY INTERPRETATION – where conditional damages certificate issued on wrong WorkCover file number – where self-insurer asserts proceedings are a nullity – where file numbers of WorkCover are internal administration matters

Supreme Court Act 1995 (Qld)
WorkCover Queensland Act 1996 (Qld)
WorkCover Queensland Act Amending Act 1999 (Qld)

Bell v Australian Meat Holdings [2003] QCA 209, followed
Clarkson v Australian Meat Holdings Pty Ltd [2002] QSC 347, referred to
Craig v BHP Coal Pty Ltd (S160 of 1999 – unreported – 19/10/2000), followed

Trathen v Consolidated Meat Group (S248 of 2003 – unreported – 20th June 2003), followed
Watters v WorkCover Queensland [2001] QSC 331, followed

COUNSEL: Mr J.B. Rolls for the Plaintiff/Respondent
Dr G.J. Cross for the Defendant/Applicant

SOLICITORS: Rees R & Sydney Jones for the Plaintiff/Respondent
Abbott Tout for the Defendant/Applicant

- [1] This is an application by Australian Meat Holdings (“AMH”) as a self insurer under the *WorkCover Queensland Act 1996* in relation to an action brought by Donna-Marie Dixon for damages for a work related injury.
- [2] The injury is said to have occurred over a period of time. The period covers a time prior to the commencement of the *WorkCover Queensland Act 1996* (which Act commenced on 1st February 1997) and the time after the commencement of that Act and up until she ceased work for Australian Meat Holdings on 8th September 1999.
- [3] During the relevant period Ms Dixon lodged a number of claims with WorkCover to which WorkCover has ascribed the numbers 9060662926, 970646047, 970667863, 980584797 and 990523682. Each of the claims relates to the onset of symptoms for what, in the statement of claim is alleged to be a soft tissue, musculo-ligamentous, rotator cuff injury to the right shoulder. It is further alleged that the injury was brought about by performing repetitive activity over the whole period of Ms Dixon’s employment with AMH.
- [4] The claim to which the number 9060662926 was ascribed by WorkCover was lodged on 29th October 1996 and described the injury as being a strain to the right shoulder occurring over a period of time.
- [5] On 29th September 1999 Ms Dixon’s solicitors sought a conditional damages certificate from WorkCover covering the period from 1 January 1996 up to

31st January 1997. This was a certificate to satisfy the requirements of s182D of the *Workers' Compensation Act* 1990. The letter made reference to the claim lodged on 29th October 1996 and the subsequent claims lodged on 27th June 1997, 8th March 1999 and 4th August 1999 in relation to the same injury. The letter commented that it appeared to have been caused progressively over the whole time of Ms Dixon's employment with AMH.

- [6] A conditional damages certificate was provided relating to an over period of time injury from 1st January 1996 referring to claim number 960662926.
- [7] An action was commenced pursuant to this certificate on 3rd December 1999 for injury suffered during the period 7th August 1995 until 31st January 1997. Of course, no certificate was required prior to 1st January 1996.
- [8] On 21st January 2000 Ms Dixon's solicitors wrote to WorkCover referring to the conditional damages certificate from 1st January 1996 on claim 960662926 and pointing out that their client had continued to work for AMH until 7th September 1999. To enable legal proceedings to be commenced in relation to the period covered by the 1996 legislation a conditional damages certificate was sought covering the balance of the period. Specifically the solicitors sought a certificate for an over period of time injury from 1st February 1997. The letter was directed to WorkCover's reference 990523682. This reference was to the number of a file opened by WorkCover in relation to a claim lodged on 4th August 1999.
- [9] The requested certificate was issued on 27th January 2000 referring to statutory claim 960662926 in relation an injury over a period of time from 1st February 1997. An action seeking damages was issued on 28th January 2000 for an injury suffered between 1st February 1997 and 7th September 1999. Apart from the reference to the claim number there is no indication on the conditional certificate as to the injury to which it relates. The conditional damages certificate was enclosed with an undated letter from WorkCover reading as follows:

“I refer to your application for a damages certificate dated 21st January, 2000 (and to the conditional certificate issued by WorkCover on 27th January, 2000).

I have considered your application and have concluded for the purpose of seeking damages, that at the relevant time you were a worker, an injury was sustained within the meaning of the WorkCover Act 1996 and the injury was sustained after 1st February 1997.

Attached is a Conditional Damages Certificate which will allow you to continue the proceedings at law for damages.”

- [10] On 25th May 2000 WorkCover forwarded a notice of assessment in relation to claim 960662926 to the solicitors for Ms Dixon. It related to an over period of time injury from 1st January 1996 until 25th October 1996. At the same time WorkCover advised the solicitors that the conditional damages certificate previously issued was incorrectly placed on claim 960662926 and should have been on claim 990523682. The solicitors were advised that steps were being taken to rectify this problem. As chance would have it, this was the claim reference on the solicitor’s letter requesting the conditional damages certificate. It was also a claim for the same injury if the injury was to be regarded as occurring progressively throughout the period of Ms Dixon’s employment.
- [11] On 16th June 2000 WorkCover issued a conditional damages certificate bearing that date on claim 990523682. Mr Houlihan, the solicitor, pointed out to WorkCover that proceedings had been issued in reliance on the conditional damages certificate issued in January and WorkCover had now purported to withdraw it and substitute one with a different claim number. The effect was that Ms Dixon’s claim was delayed by six months. On 2nd August 2000 the WorkCover officer telephoned Mr Houlihan and advised that for administrative purposes WorkCover needed to have a conditional damages certificate corresponding with its file number. Accordingly a fresh conditional damages certificate was issued on 11th August 2000 with reference to claim 990523682 but backdated to 27 January 2000.

- [12] A notice of assessment was issued on claim 990523682 on 30th November 2000 in relation to an “OPT” injury to the right shoulder. On 14th December 2000 Mr Houlihan wrote to WorkCover noting that the conditional damages certificate he had received referred only to claim 990523682 whereas there had been three claims. He asked WorkCover to amend the conditional damages certificate to reflect all three claims post 1st February 1997. He also noted that the notice of assessment also referred only to 990523682 and requested that it be correspondingly amended. WorkCover responded on 29th December 2000 by issuing three separate conditional damages certificates. One for each claim. It also amended the notice of assessment to limit it to the period from 5th March 1999 and advised that notices of assessment covering the other claim files would be issued once Ms Dixon had been further assessed. Those additional notices of assessment have not yet been issued although there appear to be valid reasons for that. One reason is that the matter has since been through litigation including an appeal in relation to an extension of the limitation period
- [13] AMH now submits that the proceedings issued on 28th January 2000 are a nullity because they were not supported by a valid conditional damages certificate when issued or alternatively invalid save for the period of time for which the notice of assessment has so far issued. The basis of the alternative submission is that once a notice of assessment has issued the conditional damages certificate becomes inoperative.
- [14] I consider the points taken to be ill founded.
- [15] In *Craig v BHP Coal Pty Ltd*¹ I expressed some views on the requirements of a conditional damages certificate. In particular I considered that it was unnecessary for it to particularise the injury suffered as long as the event giving rise to the injury or some other indication of the matter to which it related was apparent. The purpose of the certificate is to enable the worker to commence proceedings urgently without prejudicing WorkCover’s right to

¹ S160 of 1999 - unreported – 19/10/2000

later reject the claim if not ultimately satisfied it is a claim for which damages are available under the Act. I am not aware of any authority which would cause me to alter that view.

[16] There is nothing in the *WorkCover Queensland Act 1996* to which I have been referred which gives any particular significance to the claim number ascribed by WorkCover to a claim. The injury suffered by Ms Dixon was a repetitive shoulder strain injury. It manifested itself in periodic symptoms for which separate claims were made. As the symptoms subsided Ms Dixon returned to work. On the material before me, however, there is nothing to suggest that there was ever more than one injury. The injury referred to in the conditional damages certificate issued on 27th January 2000 was the same injury as that for which proceedings were issued the next day. It is then and not later that in my view the validity of the proceedings must be judged. As at the 28th January 2000 there was a conditional damages certificate for an over period of time injury from 1st February 1997. The injury was identifiable from the claim number on the certificate as being a repetitive right shoulder strain. This corresponds exactly with the proceedings. That it was not limited to the claim lodged in 1996 is equally clear from the covering letter.

[17] The effort of WorkCover to replace the certificate with a number of certificates is in my view nothing more than an administrative convenience. I consider the comments I made recently in *Trathen v Consolidated Meat Group*² in which I followed the decision of Holmes J in *Watters v WorkCover Queensland*³ are equally applicable here even though those cases concerned a notice of assessment and a notice of claim rather than a conditional damages certificate and a statement of claim. It is comforting to know that the Court of Appeal reached exactly the same conclusion in *Bell v Australian Meat Holdings*⁴. The conditional damages certificate under s262 of the Act applies to the “injury”. There is only one injury in relation to which a claim had been made and to which a conditional damages certificate could refer. It seems to

² S248 of 2003 – unreported -20th June 2003

³ [2001] QSC 331

⁴ [2003] QCA 209

me to make no difference that it is referred to by reference to the number of one of several claims made in relation to it rather than in descriptive terms.

[18] I do not consider s34 of the *WorkCover Queensland Act 1996* assists AMH. It was submitted that each claim was a separate “injury” within that definition because it was an aggravation of an earlier injury and thus required a separate conditional damages certificate. The short answer is that a progressive condition is not necessarily to be treated as an aggravation and hence a fresh “injury” each time there is one of a series of intermittent symptomatic episodes. Further, until the section was amended with effect from 1 July 1999⁵ the classification of an aggravation as a separate injury applied only to a disease and not to a personal injury. Hence, at worst for Ms Dixon only the last claim in August 1999 could be regarded as a separate injury from the injury covered by 960662926 even if I were wrong in my other conclusions.

[19] In any event I consider the situation is squarely met by s342 of the *WorkCover Queensland Act 1996* which entitles a person dealing with WorkCover to assume compliance with the Act. Ms Dixon’s solicitors’ correspondence makes it abundantly plain that they were seeking a conditional damages certificate covering the period from the commencement of the 1996 Act until Ms Dixon ceased work with AMH in September 1999. The certificate they received purported to satisfy this requirement. The covering letter confirmed that it did. I do not consider it is open to AMH as the successor to WorkCover in relation to this matter to now say that the notice WorkCover issued was issued with an error and that in consequence Ms Dixon’s rights have been extinguished. That is precisely the mischief s342 is designed to prevent. I do not consider that Ms Dixon’s solicitors actually knew that the certificate issued was invalid in that it related in fact only to a claim which predated the commencement of the 1996 Act. There is nothing in the material before me which leads me to make such a finding. Nor do I consider that they ought to have been awake to the defect in the conditional damages certificate now alleged. In view of the circumstances which I have set out Ms Dixon’s

⁵ *WorkCover Queensland Act Amending Act 1999* (no.17 of 1999 s8)

solicitors were, in my view, quite justified in accepting that if WorkCover said, “Here is a conditional damages certificate for the period from 1st February 1997” and the conditional damages certificate on its face showed it was for a progressive injury from that date, that was what it was. Whatever the solicitors knowledge of claim numbers, they were an internal administrative device of WorkCover. What use WorkCover chose to make of them was a matter for it. Equally it was a matter for WorkCover as to the file to which it attributed a conditional damages certificate where there was a progressive injury in relation to which there had been multiple claims.

[20] The fact that only one notice of assessment has issued is not in my view relevant in this application. WorkCover made it clear when it issued the notice of assessment that it was only the first of what would eventually be one notice of assessment for each claim. There is no suggestion any claim has been rejected. Until the promised further notices of assessment are issued the action simply remains stayed to the extent it relates to the periods covered by those conditional damages certificates for which there is as yet no notice of assessment.

[21] In the result the application is dismissed. Costs are not sought by Ms Dixon. She seeks only an order for costs to be in the cause. Hence it is not necessary to decide whether an application to strike out proceedings as invalid or a nullity constitutes an order in the proceedings as opposed to an order in relation to the proceedings (assuming there is some difference). In the former case s325(1) would prima facie preclude the making of an order for costs. In the latter case an order could be made under s221 of the *Supreme Court Act* 1995⁶. In the result I will reserve the question of costs in case it should be wished to argue it at a later stage of the proceedings.

⁶ see *Clarkson v Australia Meat Holdings Pty Ltd* [2002] QSC 347 at [5] and [6]