

# SUPREME COURT OF QUEENSLAND

CITATION: *Moore v Consolidated Meat Group* [2002] QSC 366

PARTIES: **GARRY LESLIE MOORE**  
(Applicant)  
v  
**CONSOLIDATED MEAT GROUP PTY LTD**  
**ACN 065 093 709**  
(Respondent)

FILE NO: S529 of 2002

DIVISION: Trial Division

DELIVERED ON: 8 November 2002

DELIVERED AT: Rockhampton

HEARING DATE: 7 November 2002

JUDGE: Dutney J

ORDERS: **Application dismissed**

CATCHWORDS: WORKERS' COMPENSATION - STATUTORY INTERPRETATION – NOTICE OF ASSESSMENT – Whether a Notice of Assessment can contain both a certificate injury and a non-certificate injury – whether acceptance of a lump sum offer of compensation where psychiatric injury WRI of 22.5% and physical injury WRI of 7.6% in same Notice of Assessment extinguishes right to claim common law damages for physical injuries.

*Lau v WorkCover Queensland* [2002] QCA 244 referred to.

*WorkCover Queensland Act* 1996 (Qld) ss 33, 42, 43, 207, 259

COUNSEL: D V McMeekin SC for the applicant  
A M Arnold for the respondent

SOLICITORS: Macrossan & Amiet for the applicant  
Swanick Murray Roche for the respondent

1. This is an application for a declaration that a notice of claim pursuant to the provisions of s280 of *the WorkCover Queensland Act 1996* is complies with the statutory provisions.
2. The application raises an interesting point.
3. The applicant was assessed as having an injury to his shoulder with a work related impairment (“WRI”) assessed at 2%, a compression fracture of his vertebral column assessed at 6% and a brain injury assessed at 0%. In addition the applicant was assessed with a psychiatric injury assessed at 22.5%. The Notice of Claim claims compensation both in relation to the physical injuries and in relation to the psychiatric injury. The respondent disputes the applicant’s right to claim common law damages in relation to the physical injuries and hence objects to their inclusion in the Notice of Claim.
4. The notice of assessment listed the injuries in tabular form and an amount of lump sum compensation for each injury in relation to which a percentage WRI was assessed. The notice of assessment then contained the following text:

“You have sustained permanent impairment from the psychiatric/psychological injury assessed for the purposes of this notice of assessment.

The work related impairment (WRI) for your psychiatric/psychological injury is: 22.5%

You have sustained permanent impairment from the other (ie physical) injury assessed for the purpose of this Notice of Assessment.

The work related impairment (WRI) for your other (ie physical) injury is: 7.6%

You are entitled to lump sum compensation of \$40,540 and therefore, under section 205 of the *WorkCover Queensland Act 1996*, you are offered the above amount of lump sum compensation.”

- [5] The applicant accepted the lump sum offer of compensation and proceeded with the preliminary steps for a common law claim.

[6] The argument centres on whether the applicant has suffered a “certificate injury” in relation to all injuries arising out of the event giving rise to the multiple injuries. The consequences of the injuries being a “certificate injury” are significant. If the applicant has a certificate injury in relation to the physical injuries he can proceed with his common law claim. If not his acceptance of the parts of the lump sum relating to the physical injuries has extinguished his common law rights.

[7] A “certificate injury” is defined in s42 of the Act as follows:

“(1) A ‘certificate injury’ is –

- (a) a psychiatric or psychological injury from an event that results in a WRI of a worker of 20% or more; or
- (b) another injury from an event that results in a WRI of a worker of 20% or more.

(2) The worker’s WRI for a psychiatric or psychological injury and the worker’s WRI for another injury must not be combined in calculating the WRI for the worker’s certificate injury.”

[8] A “non certificate injury” is defined in s43 of the Act as follows:

“(1) A ‘non-certificate injury’ is –

- (a) a psychiatric or psychological injury from an event that results in a WRI of a worker of less than 20%; or
- (b) another injury from an event that results in a WRI of a worker of less than 20%; or
- (c) an injury that does not result in any WRI of a worker.

(2) The worker’s WRI for a psychiatric or psychological injury and the worker’s WRI for another injury must not be combined in calculating the WRI for the worker’s non-certificate injury.”

[9] It seems to me that the effect of these sections is that a “certificate injury” relating to a psychiatric or psychological injury cannot include physical injuries. The reverse applies in relation to a “non-certificate injury” for physical injuries. The two are mutually exclusive even if arising from the same event. Since the WRI’s of the two types of injuries cannot be combined it seems to me it must follow that it is possible to have both a “certificate injury” as a result of a psychiatric or psychological injury and a “non-

certificate injury” as a result of physical injuries both arising from the one event. The concept of multiple injuries from a single event is contemplated by section 33.

[10] I can see no particular difficulty in a single notice of assessment relating both to a certificate injury and a non-certificate injury.

[11] Because “certificate injury” and “non-certificate injury” are defined solely by reference to the percentage WRI the requirements of s253(1) that the worker receive “a notice of assessment ... stating that the worker has sustained a certificate injury” or “a notice of assessment ... stating that the worker has sustained a non-certificate injury” are satisfied by the statements in the notice issued here identifying the percentage WRI separately for the psychiatric and other (physical) injuries.

[12] Here the notice of assessment was also accompanied by further pages containing copies of sections 11, 259, 260 and 325 of the Act together with a copy of sections 42 and 43 and some explanatory notes which included the following:

“6. ASSESSING THE INJURY

For the purpose of establishing whether a worker has a certificate injury or non-certificate injury, the work related impairment for a psychiatric or psychological injury cannot be combined with the work related impairment for a physical injury.

In other words, if the work related impairment for a physical injury is assessed at 10% and the work related impairment for a psychiatric or psychological injury is assessed at 15%, both injuries are non-certificate injuries because each is under 20%.

12 NON-CERTIFICATE INJURY AND OFFER OF LUMP SUM COMPENSATION

A worker with a non-certificate injury must choose between accepting the lump sum compensation offer or bringing a common law action for damages (see section 207 of the Act).

If a worker accepts the offer of a lump sum compensation, he or she cannot later bring an action for common law damages. In other words, the worker’s decision is irrevocable. The worker either elects to pursue a common law claim or accepts the offer of lump sum

compensation made in the Notice of Assessment. This means that if a worker rejects the offer of lump sum compensation, the worker will be taken to have made an irrevocable election and cannot later accept the offer.

If it has been decided that a worker has a WRI of less than 20%, the workers' compensation insurer will give the worker copies of the following sections of the Act:

Section 11	Meaning of "damages"
Section 259	Claimant may seek damages only on receipt of notice of assessment
Section 260	Consequences of seeking damages
Section 325	Principles about orders as to costs

This is a requirement under section 207(2) of the Act

**It is important that the worker carefully reads these sections of the Act so that they are aware of their rights."**

[13] In my view these accompanying notes and statutory provisions satisfy the requirement in s259(3) that the requirement to make an election is in the notice of assessment. Although physically the requirement to make the election is on a different piece of paper from the Notice of Assessment it sufficiently satisfies the requirement that it be "in" the Notice of Assessment if it accompanies it as part of the same sheaf of papers. Although the offer is framed as a single lump sum its constituent parts are set out in the notice of assessment. There does not appear to be any reason why the applicant was required to accept the whole of the sum offered or reject the whole. It was open to the applicant to accept the sum of \$30,304 offered in relation to the certificate injury and not the \$10,236 in relation to the non-certificate injury.

[14] Having regard to the form of the notice of assessment, the prohibition in the Act against combining psychological and physical injuries and the absence of any compelling reason why a notice of assessment should not relate to both a certificate injury and a non-certificate injury I am of the view that the acceptance by the applicant of the whole of the lump sum offered constitutes an irrevocable election in relation to the non-certificate injuries.

[15] The right of the applicant to claim common law damages in relation to the non-certificate injuries no longer exists.

[16] Strictly this conclusion does not resolve the application in the sense that the Notice of Claim may still be complying even if containing in addition to injuries in relation to which a common law claim may be made it also contains reference to injuries in relation to which no such claim can be made.<sup>1</sup> Since the dispute between the parties is in reality not in relation to the form of the Notice of Claim but in relation to the entitlement to claim common law damages in relation to the physical injuries I do not, in the exercise of my discretion, propose to make any declaration in relation to the form of the Notice of Claim. By deciding the issue solely on the basis of the real issue the applicant has the opportunity to take the matter further if he so desires.

[17] I refuse the application.

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<sup>1</sup> See *Lau v WorkCover Queensland* [2001] QCA 244