

SUPREME COURT OF QUEENSLAND

CITATION: *Australian Meat Holdings Pty Ltd v Sayers* [2007] QSC 390

PARTIES: **AUSTRALIAN MEAT HOLDINGS PTY LTD**
ACN 011 062 338
(applicant)
v
CRAIG FREDERICK SAYERS
(respondent)

FILE NO/S: BS8888 of 2007

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 21 December 2007

DELIVERED AT: Brisbane

HEARING DATE: 6 December 2007

JUDGE: Daubney J

ORDER: **1. Pursuant to s 275(7) of the *Workers Compensation and Rehabilitation Act 2003 (Qld)*, the respondent provide to the applicant a signed authority to release information in the form required by Medicare Australia sufficient for that entity to disclose to the applicant all documents relating to the applicant for the period from 6 May 2002 to the present.**
2. Conditional upon the respondent providing the applicant with the signed authority provided for in one above, it is declared that the respondent's notice of claim for damages dated 8 January 2007 complies with s 275 of the *Workers Compensation and Rehabilitation Act 2003 (Qld)*.
3. The respondent pay the applicant's costs of and incidental to this application fixed in the sum of \$4,000.00.

CATCHWORDS: WORKERS' COMPENSATION – PROCEEDINGS TO OBTAIN COMPENSATION – PRELIMINARY REQUIREMENTS – CLAIMS FOR COMPENSATION - where respondent made claim for damages for injury suffered at work with the applicant – where respondent has not signed notice of claim for damages enabling applicant to obtain medical information from Medicare – whether respondent obliged to sign authority

Motor Accident Insurance Act 1994 (Qld)
Workers' Compensation and Rehabilitation Act 2003 (Qld)
 Ch 4 Pt 5, s 273, s 274 , s 275
Suncorp Metway Insurance Limited v Brown [2005] 1 Qd R
 204, applied

COUNSEL: T Enriken for the applicant
 DC Rangiah for the respondent

SOLICITORS: AK Compensation Lawyers for the applicant
 Maurice Blackburn Cashman Solicitors for the respondent

- [1] **DAUBNEY J:** The Respondent, Mr Sayers, claims that on 6 May 2005 he suffered an injury to his back while employed by the Applicant (then known as Australian Meat Holdings Pty Ltd) at its Townsville meatworks.
- [2] On 16 January 2007, the Respondent served on the Applicant a 'Notice of Claim for Damages' for the purposes of s 275 of the *Workers' Compensation and Rehabilitation Act 2003 (Qld)* ('WCRA'). The Applicant is a self-insurer for the purposes of the WCRA.
- [3] By a letter dated 17 January 2007 to the Respondent, the Applicant raised a number of compliance issues in relation to the 'Notice of Claim'. The issues included the adequacy of the written authority given by the Respondent to enable the Applicant to obtain information, including copies of documents relevant to the claim, from *inter alia*, Medicare Australia ('Medicare'). Enclosed with that letter was, relevantly, a form of authority to Medicare for signing by the Respondent and return to the Applicant. This was in Medicare's 'standard' form of authority.
- [4] On 1 February 2007, the Respondent's solicitors wrote to the Applicant, saying relevantly:
- The written authority was executed precisely in compliance with the Act. The fact that some Commonwealth instrumentality may not accept the authority in its present format does not invalidate the authority provided. We will obtain our client's instructions on the additional authorities but, in the meantime, we require compliance.
- [5] In a response dated 5 February 2007, the Applicant again sought completion of the authorities which had been sent on 17 January 2007.
- [6] In subsequent correspondence between the Applicant and the Respondent's solicitors, there was, in effect, a stand-off in relation to the Medicare authority, with the Respondent's solicitors continuing to assert compliance, and the Applicant seeking execution of the further form of authority.
- [7] Eventually, under cover of a letter dated 15 May 2007, the Respondent provided to the Applicant an executed form of authority which directed Medicare to divulge to the Applicant 'my Medicare claims history for the period 6 May 2002 to the date of this authority, limited to only those documents which are relevant to my claim for damages for an injury to my lumbar spine.'
- [8] On 17 May 2007, the Applicant sent this form of authority to Medicare with a request to be provided with information, but on 29 May 2007 Medicare wrote to the

Applicant advising that it was unable to comply with the request for information because '[u]nfortunately, the authority you have enclosed does not fully comply with the Delegate's requirements to authorise release of one's information', and referring to the provisions of s 130 of the *Health Insurance Act 1973* (Cth).

- [9] By a letter dated 6 June 2007, the Applicant forwarded a copy of that response from Medicare to the Respondent's solicitor, and again asked for the Respondent to sign an authority in the standard form supplied by Medicare.
- [10] On 14 June 2007, the Respondent's solicitors sent a facsimile to the Applicant in these terms:

We refer to previous correspondence.

We request you confirm that the only outstanding alleged compliance issue is our client's refusal to sign authorities, in the form you propose, directed to Medicare, CRS and PBS. Please provide your response within 7 days.

We confirm that we have written to each of these bodies, with our client's authority. We undertake to provide you with relevant sections of the files within 7 days of receipt.

- [11] By a response dated 15 June 2007, the Applicant disputed compliance with s 275 of WCRA, and again demanded that the signed form of Medicare authority be provided.
- [12] Eventually, on 24 August 2007, the Respondent's solicitors wrote to the Applicant, saying:

As foreshadowed in our letter of 14 June 2007, we intend to proceed on the basis that our firm obtain such records as are available from each of the four entities:

CRS;
Centrelink;
Medicare;
PBS; and provide relevant material from those records to you.

We can now bring you up to date as to the records obtained, and our client's attitude in respect of the disclosure of documents relevant to the claim in accordance with Section 275(7) of the Workers Compensation and Rehabilitation Act and Reg 111 of the regulations.

In relation to Medicare, the letter stated:

We are now in possession of a printout from Medicare disclosing our client's Medicare History Statement from 2 February 2006 to the date of insuring that notice being 28 June 2007. We are instructed to provide you with a copy of that printout, without deletion. It is enclosed with the original of this letter.

- [13] On 19 September 2007, the Applicant replied with this letter:

We refer to your letter.

To date we have not received the authorities. Your office has had the authorities since at least 18 January 2007. We have been waiting now seven months for your client to progress his claim and your office is hindering our ability to investigate your client's claim in a timely matter.

We consider we have been more than lenient with your client and we want your client to progress his claim without further delay. We believe no further delay is justified.

We reiterate Australia Meat Holdings Pty Limited is not satisfied that the Notice of Claim complies with s275 of the Workers' Compensation and Rehabilitation Act 2003. It does not waive compliance with the requirements and refer your letters dated 15 June 2007, 4 & 31 July 2007 and 21 August 2007.

Should we not receive the completed and signed authorities by the close of business today we will have no option but to bring an application without further notice to your office and we will be seeking indemnity costs of and incidental to the application.

We hope the application will not be needed.

- [14] Further correspondence passed between the parties' solicitors in September and October 2007, with each effectively reiterating the positions previously adopted, culminating in this application being filed, by which the Applicant sought an order that the Respondent provide a written authority directed to Medicare for the purposes of s 275(7) of the WCRA.
- [15] Since this application was filed on 9 October 2007, the Respondent has obtained from Medicare a Claims History Statement for the Respondent for the period from 7 May 2002 to 6 September 2007. The Respondent's solicitor has sworn an affidavit in which he says:

I undertake to the court to obtain material from the practitioners set forth in that claims history statement and provide to the Applicant, as has occurred with the other authorities (Centrelink, Commonwealth Rehabilitation Service and PBS) material which is relevant to the claim.

- [16] The object of Ch 4 Pt 5 of the WCRA, which prescribes the pre-court procedures to be observed in workers' compensation claims, is 'to facilitate the just and expeditious resolution of the real issues in a claim for damages at a minimum of expense' – s 273.

- [17] Section 274 provides:

274 Overriding obligations of parties

- (1) In accordance with the object of this part, this part is to be applied by the parties to avoid undue delay, expense and technicality and to facilitate the object.
- (2) A party impliedly undertakes to other parties to proceed in an expeditious way.
- (3) A court may impose appropriate sanctions if a party does not comply with a provision of this part.

- [18] By s 275(1), a claimant must give notice under that section, within the relevant limitation period, before starting a proceeding in a court for damages. Subsequent subsections prescribe the content and requirements for service of the notice. Section 275(2)(a) requires that the claimant must 'give the notice of claim in the approved form to the insurer at the insurer's registered office'.
- [19] Section 275(7) relevantly provides:
- (7) The notice must be accompanied by the claimant's written authority allowing the insurer to obtain information, including copies of documents relevant to the claim, and in the possession of –
- ...
- (f) a department, agency or instrumentality of the Commonwealth or the State; ...
- [20] The Applicant submits that the Respondent has not supplied the necessary written authority to Medicare, as required by s 275(7), and points to Medicare's refusal to provide information on the basis of the limited form of authority given by the Respondent in May 2007.
- [21] The Respondent submits that:
- (a) s 275(7), properly construed, only requires an authority to be provided which permits the release of relevant information and documents, and the Respondent is not required to provide an authority which would allow the Applicant to obtain material which is irrelevant to his claim for damages; and
- (b) the alternative procedure should be adopted whereby the Respondent's solicitor effectively filters the Medicare documentation and provides only the relevant material to the Applicant, in accordance with the undertaking referred to in [15] above.
- [22] I pause to observe here that Medicare's refusal to provide information pursuant to the limited form of authority given in May 2007 has not been challenged. The Respondent asserted that it was 'far from apparent', having regard to the terms of s 130(3)(c) of the *Health Insurance Act 1973* (Cth), that Medicare was entitled to refuse to accept an authority that authorized the release of limited information only. Neither party sought to lead any evidence from Medicare on this issue, nor did either party seek to have Medicare appear in this proceeding. In those circumstances, it is clearly undesirable that I express any view as to Medicare's lawful entitlement to adopt its attitude to the form of limited authority. On a practical level, I note that it was not made clear to me how a Medicare officer would approach the task of sifting the information held by Medicare for the purpose of answering a form of limited authority, i.e. how the officer is supposed to work out which of the items in a person's claims history are relevant to a particular injury and which are not; the potential for error by a Medicare officer in that position is almost self-evident. As matters stand on the evidence before me, however, the only form of authority by which Medicare will release information about the Respondent to the Applicant is one which will result in the Applicant receiving both information relevant to the claim and information which is irrelevant to the claim.
- [23] The obligation imposed on the Respondent by s 275(7) is to provide the Applicant with a 'written authority allowing the insurer to obtain information, including copies

of documents relevant to the claim, and in the possession of' Medicare. Even accepting that the purpose of this requirement is to allow the Applicant to obtain 'relevant' information, the mechanism for obtaining that 'relevant' information will result in the Applicant also being provided with irrelevant information. But to the extent that the Respondent objects to the Applicant receiving such irrelevant information, it must be recalled that documents, and the information they contain, discovered by the Applicant in a pre-litigation process such as this, may only be used for the purposes of the claim and not otherwise – *Suncorp Metway Insurance Ltd v Brown*.¹ This is an important circumscription on the way in which the Applicant can use the information obtained from Medicare pursuant to a general authority. Information it receives from Medicare which is irrelevant to the claim is precisely that – irrelevant – and must be treated as such, and not in any way dealt with by the Applicant for any other purpose.

- [24] A relatively similar question to that in this case came before the Court of Appeal in *Suncorp Metway Insurance Ltd v Brown*,² albeit under the *Motor Accident Insurance Act 1994* (Qld). In that case, Centrelink would not respond to a form of authority which had been provided by the claimant to the insurer. The claimant refused to co-operate with the insurer by signing a further form of authority. Williams JA observed that:-

- [14] When regard is had to the objects of the legislation set out in s 3, and in particular the object "to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents", the intent of the legislature, in my view, was to impose a broad general duty on a claimant to co-operate with the insurer.

His Honour continued:

- [16] A similar application came before Dutney J. in *Attard v. Hore* [2002] QSC 437; he ordered the claimant to execute an authority directed to Centrelink requesting the release of the Centrelink file. Subject to one matter to which I will refer later, I agree with all that his Honour said in his reasons, and in particular with the following statement:

'I am not persuaded that the civil liberties argument can be sustained in a case where a party comes to the Court seeking an order from the Court that she be paid a substantial sum of money as a result of injuries which she says she has suffered. It seems to me that the price of seeking such an order from the court is disclosure of a great deal of material which in other circumstances would be considered confidential. Unfortunately for plaintiffs, that is the price they pay if they want to receive a substantial damages award.'

- [25] The residual concern which Williams JA had was the prospect of enquiries going back many years, and was resolved by limiting the period in respect of which information could be sought to three years prior to the date of the accident. I note that there are no such temporal concerns in this case – the Applicant has not sought authority for any information prior to such a three year period.

¹ [2005] 1 Qd R 204, [1] (McPherson JA).

² Ibid; [2004] QCA 325.

- [26] The Respondent in this case has not yet provided the Applicant with a form of written authority which will allow the Applicant to obtain information from Medicare. He should do so. The alternative proposal advanced by the Respondent to have his solicitor act as a filter for information received from Medicare is simply not one contemplated by the legislation, and would not fulfil the mandatory requirements of s 275(7).
- [27] In any event, there is, in my view, an implied obligation on the part of the Respondent to co-operate with the Applicant by, relevantly, providing the Applicant with such form of written authority as will enable the Applicant to obtain from Medicare the information referred to in s 275(7).
- [28] I will hear the parties as to the appropriate form of order and as to costs.