Supreme Court Notes

This month's reporter is Mark Hunter.

Criminal Law – Drink Driving – Section 39 Traffic Act

Paterson -v- Materna
S.C. No JA36 of 1996

Judgment of Mildren J delivered 28 August 1996 (unreported)

A magistrate had dealt with the appellant in respect of two charges of drink driving. The first offence was committed on 24 November 1995 and the second on 25 February 1996. Blood alcohol levels were 0.236% and 0.212% respectively. The appellant had one prior conviction for drink driving in 1993.

The magistrate recorded convictions for each offence on the same day at the same time. He imposed a five year disqualification of the appellant's driver's licence on the first offence and a cumulative five year disqualaification for the second drink driving offence. The appeal was in respect of this order.

The learned magistrate said he had studied section 39 (1) of the *Traffic Act* and believed he had "no option" other than to impose a cumulative period of disqualification for the second offence.

HELD

A magistrate has no power to accumulate periods of disqualification.

His Honour allowed the appeal, quashed the cumulative disqualification order and, exercising his discretion, substituted a concurrent disqualification period of seven years.

APPEARANCES

Gibson for Appellant
Bannon QC for Respondent

Civil Law – Section 82 (2) – Work Health Act

Johnston -v- Paspaley Pearls
Court of Appeal No AP17 of 1995

Judgment of Martin CJ, Mildren & Thomas JJ published 7 August 1996 (unreported)

The Court of Appeal was asked to rule on whether the time limit imposed by section 82 (2) of the Work Health Act was mandatory or directory.

The appellant made two claims for compensation in respect of the same injury. The first was served within six months of the injury as required by section 182 (1) of the Act. The appellant failed, however, to comply with section 82 (2) by not serving on the respondent a prescribed medical certificate within twenty eight days of the claim being made. The respondent rejected this claim.

A second claim, accompanied by a prescribed medical certificate, was served on the respondent a few weeks later but this claim fell outside the time limits prescribed by section 182 (1) of the Act, having been made more than six months after "the offence of the injury".

The second claim was abandoned by the appellant a fortnight after it was served.

The appellant proceeded with the first claim and the Work Health Court upheld its validity on the basis that the employer had been faxed a medical "report" within twenty eight days of the claim and had been served with a prescribed medical certificate, albeit in breach of section 82 (2).

The decision was set aside on appeal by Kearney J who ruled that the section 82 (2) time limit was mandatory and the claim therefore invalid.

In the Court of Appeal, the appellant contended that the section 82 (2) time limit was directory.

HELD

1. The section 82 (2) time limit is mandatory and lends itself only to non-compliance or strict compliance.
2. The section is designed to ensure that claims are pursued by workers in a timely manner and that the mechanism under section 85 (the employer's election) is triggered.
3. Unless section 82 (2) is strictly complied with, the claim is invalid.

The appeal was unanimously dismissed.

APPEARANCES

Appellant: Counsel: Southwood
Solicitors: Cridlands
Respondent: Counsel: Tippett
Solicitors: Ward Keller

COMMENTARY

The appellant had abandoned his second claim which breached section 182 (1) of the Act. It should be noted, however, that the Work Health Court has the power under section 182 (3) to excuse such a breach where it is occasioned by "mistake, ignorance of a disease, absence from the Territory or other reasonable cause."

Dow-Corning Silicone Implant Claims

Practitioners with clients who may have a claim against Dow-Corning, the manufacturer of silicone implants, especially breast implants are advised that Dow-Corning has filed for protection under Chapter 11 of the US Bankruptcy Code.

Those who wish to file a claim with the bankruptcy court must do so by January 15 1997 for those resident in the US and February 14 1997 for those outside the US.

Dow-Corning have made a range of silicone implants, but it is considered that the largest class of claimants will be those who have silicone breast implants. Other products include knee, hip, joint or toe and penile/testicular implants.

With respect to silicone breast implants, women who have or have had these implants must file if they have a claim or wish to preserve their rights to assert a claim in the future, even if they have already registered in other breast implant litigation. Women whose implants were not made by Dow-Corning and for which Dow-Corning supplied no raw materials need not take action. In addition to implant recipients, spouses and children (born and unborn) may also have a claim.

Further information on how to lodge a claim and can be obtained on help line 0011 1 402 445 9273, or by writing to:

Foreign Claims Information Centre
PO Box 7500
Midland, MI 48641-7500 USA.

Information is also available via World Wide Web at http://www.implantclaims.com