

Claim form authorities to MAA (NSW) insurers: The right to withdraw written authority

Carrier v Donnelly

Sydney District Court matter no. 8336 of 1997. Tupman DCJ 2 March 1998

Martin Bell, Sydney

On 2 December 1997, a Motor Accidents Act claimant advised the NRMA's solicitors in District Court proceedings that a Plaintiff's Authority (attached to the initiating claim form) was withdrawn. This led to Sparke Helmore filing a Motion to dismiss the proceedings, which was heard before Her Honour Judge Tupman on 2 March 1998.

The case clarifies the claimant's right to withdraw that authority once proceedings are properly commenced. By virtue of the practice of insurers to extend the longevity of the authority given when the claim is commenced, the decision is a useful decision to point wayward insurers (and their representatives) to.

The plaintiff originally served a claim on 24 November 1995. Section 50A particulars were provided on 22 March 1997. The Plaintiff made an offer of settlement on 6 June 1997 and no counter-offer was ever made. The insurer had the Plaintiff attend four medical appointments and had directly requested and obtained a substantial number of reports from the Plaintiff's treating doctors. Proceedings were commenced on 29 October 1997.

Following the plaintiff's withdrawal of authority on 2 December 1997, the defendant's representative wrote threatening that the purported withdrawal rendered the claim form incomplete. They argued that the proceedings could not be maintained because there was no claim, requesting the plaintiff to immediately discontinue the proceedings.

The plaintiff's solicitors responded, pointing out that the time in which to take such action was two months from the proper making of a claim. They noted that the provisions concerning the making of claims is under the division headed, Claims and Other Matters Preliminary to Court Proceedings. The plaintiff's solicitors craved that the defendants consider the reasonableness of this interpretation in terms of procedural fairness and confirmed that the plaintiff did not intend to withdraw the statutory form or its parts. The Defendant sternly replied that the plaintiff's action constituted revocation or renunciation of the Authority and that a Motion must follow!

Whilst perhaps not surprising, it was disturbing to be informed by the Defendant's representatives that the Motor Accidents Authority (MAA) apparently agreed with the insurer's peculiar interpretation of the Act. Both the insurer and the MAA were apparently blind to the gross procedural unfairness that flows from an insurer being entitled to rely upon a pre-litigation Authority during litigation. Their thinking was apparently not troubled by the concept of the plaintiff's right to legal professional privilege, nor the unconscionability of a defendant obtaining plaintiff documents bearing the cloak of legal professional privilege.

Her Honour Judge Tupman gave an ex tempore Judgment in which she rejected the defendant's interpretation of the Act and noted the distinction under the Act between claims and court proceedings and the limitations on objecting to defects in the claim form. ■

Martin Bell is Principal of Martin Bell & Co in Sydney and is a NSW Branch Councillor of APLA. Martin can be contacted on **phone** (02) 9283 8411.

Jane Staley joins APLA secretariat

I am pleased to announce the appointment of Jane Staley to the position of Member Services Manager for the Australian Plaintiff Lawyers Association. Jane's career has focussed on community groups, with five years experience in conservation and women's welfare organisations in Victoria. She has a very good understanding of the needs of plaintiff lawyers and their clients.

Jane holds a BA (Hons 1) from the University of Melbourne, and is studying for a Masters of Community Management at University of Technology, Sydney. Jane looks forward to working with the members and advancing the activities and services of APLA. Jane started at our Artarmon, NSW, office in late March.

John Peacock
APLA Executive Director

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