

## INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

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**Subject:**

**Summary**

SUBMISSION TO THE LEGISLATIVE COUNCIL  
GENERAL PURPOSE STANDING COMMITTEE NO.1

- § -

INQUIRY INTO PERSONAL INJURIES  
COMPENSATION LEGISLATION

- § -

## **SUBMISSIONS**

### **Background**

I act for a man ("**DM**") who was injured in a motor vehicle accident on 2 April 2002.

DM is 35 years old, has a loving and devoted partner ("**AM**") and they have two children aged 9 years and 11 years respectively.

DM has made a Compulsory Third Party Claim under the New South Wales Motor Accident Compensation Scheme, and a prominent Compulsory Third Party Insurer (the "Insurer") has accepted liability.

### **The Accident**

DM's accident occurred on the Princes Highway south of Nowra. He was driving a cab-over style truck, which means the driver is essentially sitting at the front most part of the vehicle. There is no bonnet or engine in front of him. The only parts of the vehicle ahead of the driver are the windscreen, the dashboard and the bumper bar.

DM was travelling at about 90 km/h in a 100 km/h zone. The other vehicle was travelling in the opposite direction, toward DM, at about 100 km/h. When the vehicles were between 100 metres and 200 metres apart, still travelling toward each other, the vehicle travelling in the opposite direction crossed onto DM's side of the road. DM tried to take evasive action but had insufficient time to avoid a head-on collision. The vehicles collided with a combined impact speed of somewhere between 150 and 170 kilometres per hour. That collision unfolded right in front of and beneath DM's driving position. DM could clearly see the faces of the occupants of the oncoming vehicle as it collided with his own. Both those occupants were killed. DM was badly injured, as was his passenger.

### **DM's Injuries**

One of the injuries suffered by DM in the motor vehicle accident was post traumatic stress disorder ("**PTSD**"). Sometimes claims for post traumatic stress disorder are trivialised because the incident giving rise to them is seen to be of a minor nature. That is not so in DM's case.

DM has been receiving treatment for severe PTSD from a local clinical psychologist (Helen Rutland), and from a psychiatrist (Dr Stephen Hook) who has prescribed certain medication for him. It should be noted at this point that both Ms Rutland and Dr Hook are treating specialists. They are not 'hired guns' engaged by lawyers to prove a case on DM's behalf. Their focus has been to try and deal with DM's significant psychiatric symptoms.

Those symptoms have included a significant tendency toward suicidal thoughts and outbursts of extreme violence on DM's part. Since the accident DM has required hospitalisation for those symptoms. Ms Rutland and Dr Hook have been working hard to try and provide treatment and prescribe medication that will assist DM to become well.

**Enclosed** are copies of the reports provided on DM's behalf by Ms Rutland and Dr Stephen Hook:

1. Helen Rutland dated 18 September 2002;
2. Helen Rutland dated 6 March 2004;
3. Helen Rutland dated 9 June 2004;
4. Helen Rutland dated 30 September 2004;
5. Dr Stephen Hook dated 15 March 2003;
6. Dr Stephen Hook dated 20 January 2004;
7. Dr Stephen Hook dated 12 July 2004.

All of those reports have been provided to the Insurer.

I have also had DM examined by a medico-legal specialist psychiatrist, Dr Hugh Jolly and his reports dated 18 December 2002 and 25 October 2004 are **enclosed**. Dr Jolly's reports have also been provided to the Insurer.

The Insurer had their own psychiatrist, Dr James Maguire, examine DM in November 2003. Dr Maguire provided a report to the insurer on DM's condition. A copy of that report, dated 26 November 2003, is also **enclosed**. As can be seen from that report, Dr Maguire had full access to records in relation to DM's accident and, in particular, the numerous reports from Helen Rutland and Dr Hook.

In his report, Dr Maguire particularly notes - from both his own consultation with DM and from the reports of DM's treating specialists - DM's suicidal tendencies and his outbursts of

extreme violence. Dr Maguire agrees with the diagnosis of PTSD, agrees that the symptoms being suffered by DM flow from that PTSD, and agrees that the PTSD was caused by the motor vehicle accident. Dr Maguire also notes without particular dissent the treatment being provided to DM by Helen Rutland and Dr Hook and the medication that has been prescribed for DM. Dr Maguire agrees that DM requires further and on-going treatment into the future, makes his own suggestions concerning possible future treatment, and further notes that Dr Hook was trying different medications in order to see what best suited DM in terms of his treatment.

## The Law

Section 83 of the *Motor Accidents Compensation Act 1999* provides:

“ (1) **Once liability has been admitted** (wholly or in part) or determined (wholly or in part) against the person against whom the claim is made, **it is the duty of an insurer to make payments to or on behalf of the claimant in respect of:**

- (a) **hospital, medical and pharmaceutical expenses**, and
- (b) **rehabilitation expenses**, and
- (c) respite care expenses in respect of a claimant who is seriously injured and in need of constant care over a long term, and
- (d) attendant care services expenses in respect of a claimant who is seriously injured and in need of constant care over a long term (being services provided by a person with appropriate training to provide those services, but not including services provided by a person who is related to the claimant or any services for which the claimant has not paid and is not liable to pay),

**as incurred.**

(2) **The duty of an insurer under this section to make payments applies only to the extent to which those payments:**

- (a) **are reasonable and necessary in the circumstances**, and
- (b) **are properly verified**, and
- (c) **relate to the injury caused by the fault of the owner or driver of the motor vehicle** to which the third-party policy taken to have been issued by the insurer relates.”

In DM's case:

- Liability has been admitted;
- DM has incurred and will in future continue to incur medical and pharmaceutical expenses for treatment with respect to his PTSD;
- DM's PTSD is an injury caused by the fault of the owner/driver covered by Insurers CTP policy in the accident;

- Those expenses are reasonable and necessary - being prescribed by DM's treating specialists - and the Insurer's own evidence does not suggest otherwise; and
- Those expenses have been properly verified by sending the original accounts to the Insurer.

Clearly, under section 83, the Insurer has a duty to pay those expenses.

### **Refusal of the Insurer to Pay for Treatment and Medication**

Since 21 October 2003 the Insurer has failed to pay the treatment accounts rendered by Helen Rutland. Since October 2004 the Insurer has also failed to pay the treatment accounts rendered by Dr Stephen Hook, **and** has failed to pay for DM's medication, despite accounts for all of the above being submitted to the Insurer.

Helen Rutland, Dr Hook and DM's pharmacist have generously continued to provide treatment and medication to DM without payment, but they can no longer afford to do so. I **enclose** copies of the following communications to the Insurer (or their legal advisers) on this issue:

1. Letter to the Insurer dated 6 October 2004;
2. Letter to the Insurer's solicitors dated 30 March 2005;
3. Letter to the Insurer's solicitors dated 1 April 2005.

On 7 September 2004 the Insurer lodged an Application for Assessment of a Treatment Dispute with the Medical Assessment Service. A copy of that application is **enclosed**.

The Insurer disputes its obligation to pay for both past and future psychological treatment for DM, in particular psychological counselling from Helen Rutland, psychiatric consultations with Dr Hook and anti-depressant medication prescribed by Dr Hook. Their dispute is based on the assertion that those expenses are both not reasonably necessary and not related to injuries caused by the accident. In their annexure to that application they recite a number of incidents which they say have led to DM's psychological symptoms and they state "We are of the view that the medication, counselling and psychiatric consultations are not reasonable and necessary and are not related, wholly or at all, to this accident but to previous conditions and events".

It is highly significant that this opinion of the Insurer is completely contrary to its own medical evidence. The medical evidence that the Defendant relies upon with respect to DM's mental condition and the Insurer's treatment dispute is the report of Dr Maguire referred to above (the reports of Drs Turnbull, Harvey and Fearnside dealing with orthopaedic and neurological aspects of injuries to DM's back and knee).

Recounting that evidence ***from the Insurer's own specialist***.

- Dr Maguire agrees with the diagnosis of PTSD,
- Dr Maguire agrees that the symptoms suffered by DM flow from that PTSD,
- Dr Maguire agrees that the PTSD was substantially the result of the motor vehicle accident, and
- Dr Maguire agrees that DM requires further continuing treatment for PTSD, even going so far as to suggest that DM may require hospitalisation and specialist in patient treatment.

We put on a detailed response, a copy of which is also ***enclosed***.

Ultimately the matter was dismissed at a preliminary assessment by the Motor Accidents Assessment Service. That decision dismissing the treatment dispute did not attempt to determine the matter on the merits of the case but made the decision on the basis that there was no evidence that the treatment "is to be provided". Quite frankly that decision seems bizarre in the context of all the material provided with the reply.

Even though the Insurer's application with respect to the treatment dispute has been dismissed it remains the case that the Insurer is not paying the treatment accounts of Helen Rutland, Dr Hook and for the pharmaceutical treatment prescribed by Dr Hook.

### **Potential Consequences of the Insurer's Actions**

The Insurer has provided no good reason for refusing to pay these accounts – certainly not its refusal to pay the accounts of Dr Hook and for the medication that DM needs. Its own psychiatrist raises no objection to the course of treatment being provided by Dr Hook, and confirms that further continuing treatment is needed.

MAS, the authority given responsibility for determining the issue simply ignored all the evidence submitted in relation to the dispute and avoided determining the matter by deciding that there was no dispute.

The potential consequences for DM, his immediate family and the wider community are disastrous. Firstly, there is a very real and significant risk that DM could commit suicide. If he did, the damages that would thereafter be payable as a result of this matter would be significantly less than those that would be payable if he had survived. Secondly, there is also a significant risk to DM's wife and children. In the past DM's PTSD has triggered significant outbursts of aggressive and violent behaviour that have resulted in him being hospitalised. Those violent outbursts are part of his PTSD. They have been contained and reduced by the treatment and medication he has been receiving. If his family remain living with him when he is not on medication his wife and children are at risk of serious injury or worse. The only other option is for AM and the children to leave DM and live elsewhere, no doubt heightening the risk that DM will commit suicide. Thirdly, there is the risk to the wider community should DM's aggression or violence be demonstrated outside the home.

It should not be assumed that MAS and the Insurer are not aware of these risks. The enclosed material from both this firm, Helen Rutland and in various medical reports (including that of the Insurer's own expert) clearly identify the very serious risks listed above as the potential consequences of the Insurer's refusal to pay for further treatment, particularly for DM's medication.

## **Conclusion**

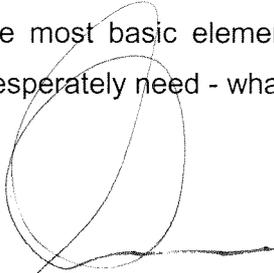
This is not a matter where big-ticket, or difficult to determine, items like the amount of non-economic loss, future economic loss or past and future gratuitous care are presently in issue. This is a case about the fundamental rights of an injured person to treatment. In this case there is no evidence supporting any apparent dispute as to liability, diagnosis or the suitability of treatment. Despite that the Insurer simply refuses to pay the very basic amounts that the injured person's treating doctors say he needs. Without that treatment and medication the very life of the injured person and the safety of his family are at risk.

This stubborn refusal of the Insurer to meet clear cut obligations in a case as straightforward as this demonstrates the Insurer's mindset of not only putting profit ahead of people but doing so in a way that is contrary to their clear legal obligations.

The Motor Accidents Assessment Service seems to be of little assistance in determining matters of this kind. A clear-cut treatment dispute was put to MAS with an abundance of evidence and submissions from both sides. Despite the material in front of MAS it determined that there was no dispute and declined to deal with the matter further. Even if

the matter had proceeded beyond the preliminary assessment with respect to the treatment dispute, that dispute would take approximately 4 months further to resolve and consequently would still not be resolved at the time of the making of these submissions.

If people injured in motor vehicles accidents are to be so unfairly and unreasonably denied the most basic elements of compensation - that is, payment for medical treatment they desperately need - what then is the purpose of having any purported insurance at all?

A handwritten signature in black ink, appearing to be 'Colin Campbell', written over a circular scribble.

**COLIN CAMPBELL**

**MORTON & HARRIS**

DATED: 14 April 2005

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*\*Enclosure*