MEDICAL PANEL REFERRALS AND DETERMINATIONS IN MULTI-DEFENDANT CLAIMS

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INTRODUCTION

In Victoria, an injured plaintiff who brings a public liability or medical negligence claim is usually required to demonstrate they have suffered a 'significant injury,' before they are entitled to claim non-economic loss (pain and suffering).

The issue of whether a plaintiff has suffered a 'significant injury' is often determined by referring a plaintiff to the independent statutory "Medical Panel," which determines whether a plaintiff's level of impairment satisfies the threshold level.

If a defendant fails to refer a plaintiff to the Medical Panel within the relevant time limits, they are deemed to have accepted that a plaintiff has suffered a 'significant injury' and entitled to claim non-economic loss.

In *Citywide Service Solutions Pty Ltd v. Rosata* [2023] VSCA 281, the Victorian Supreme Court of Appeal has recently considered:

- Whether a defendant who has failed to refer a plaintiff can rely on another defendant's favourable medical panel determination; and
- The impact of two different medical panel determinations on a plaintiff's entitlement to general damages against the defendant who successfully referred the plaintiff.

BACKGROUND

The County Court has consistently held that a plaintiff is entitled to claim general damages against a defendant who fails to refer a plaintiff, even where another defendant has successfully referred them to the Medical Panel.

At first instance in *Rosata*, it was held that an initial medical panel determination which found that the threshold level of impairment had been met, was not superseded by a subsequent determination that threshold level of impairment was not met.

DECISION

The Court of Appeal has confirmed that:

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- A defendant who does not refer a plaintiff to the medical panel is not able to rely on another defendant's successful referral; and
- Where there are two different panel determinations, the defendant who successfully referred the plaintiff is entitled to rely on that determination, which overturned the first instance decision in *Rosata*.

In reaching this decision, the Court of Appeal agreed, inter alia, with the decision of Judge Tsalamandris in *Ceri v. Secure Parking Management No 2 Pty Ltd* [2019] VCC 640 that the *Wrongs Act 1958* (Vic) (Act) contemplates situations where there may be more than one referral.

The Court of Appeal also acknowledged that its decision could affect entitlements to contribution between some defendants liable for the same damage, but noted that this was not a basis for failing to give effect to the wording of the Act.

KEY TAKEAWAYS

Failing to refer a plaintiff continues to create significant issues when it comes to seeking contribution from other defendants who successfully referred a plaintiff.

Therefore, if there are multiple defendants, it would be prudent to continue to refer a plaintiff, where appropriate, to avoid the risk of being the only defendant liable for general damages, even if another defendant has already unsuccessfully referred a plaintiff.

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