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Personal Injury Law WA

28–29 April 2008

Hyatt Regency

Perth

Exploring the latest developments
in personal injury law

- **HEAR FROM** Dr Aubrey Birkelbach, *Arbitrator, Dispute Resolution Directorate, WorkCover* on arbitration do's and don'ts
- **EXPLORE** characteristics of an optimal settlement with **Michael Gething**, *Principal Registrar, District Court of WA*
- **DEMYSTIFY** the test for "reasonable foreseeability" in the *CLA*
- **DETERMINE** whether a claim exists under the *Civil Liability Act*
- **DISCOVER** how *Hotson v East Berkshire* impacts on a plaintiff's "loss of chance"

Expert speakers include:

Michael Gething, *Principal Registrar, District Court of Western Australia*

Dr Aubrey Birkelbach, *Arbitrator, Dispute Resolution Directorate,*

WorkCover Western Australia

David Clyne, *Barrister*

Piet Jarman, *Partner, Jarman McKenna*

Brian Nugawela, *Barrister*

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Personal Injury Law WA

8:30
Conference Registration

9:00
Welcome and Opening from the Chair

MEET YOUR
CHAIR

David Clyne, Barrister, has 35 years' experience practising primarily in personal injury and insurance law. He has been a Commissioner of the District Court of Western Australia and was a member of the Legal Practice Board of Western Australia for 13 years, including six years as Deputy Chairman. David holds masters degrees in law and arts and has been a member of the Superannuation Complaints Tribunal.

Discussing the *Civil Liability Act*

9:10
The Essential Case Law Update

This session will examine the manner in which Courts have interpreted various aspects of the *Civil Liability Act*. It will include consideration of pronouncements on inherently dangerous activities and the effectiveness of exclusion notices.

Gray Porter, Partner, **Talbot Olivier**

10:00
Assessing Damages Under the *Civil Liability Act*

- Examining how the *Civil Liability Act* changes the overriding principles governing assessment of damages at common law
- Discussing the capping regime
- Assessing quantum of a claim
- Surveying recent quantum decisions of personal injury awards

Sarah Harrison, Partner, **Mallesons**

10:50
Morning Tea

11:20
Examining Economic Loss Provisions and Considering their Effect

- Overview of economic loss provisions in the *Civil Liability Act*
- Assessing economic loss of a self-employed person
- Calculating *CLA* restrictions on recovering compensation
- Anticipating judgments – what can we expect from the courts?

Heinrich Moser, Barrister

12:30
Networking Lunch for Speakers and Delegates

1:30
Re-assessing Reasonable Foreseeability in Light of the *Civil Liability Act*

- Overview of the test for reasonable foreseeability
- Considering the changes and their effects
- Analysing the elements
- Assessing requirements of proof

Brian Nugawela, Barrister

Public Liability

2:20
Demystifying Liability of Public Authorities

- Interpreting the liability provisions
- Considering an assessment of liability: duty of care, breach of duty and causation
- Succeeding as a plaintiff

Raoul Cywicki, Barrister

3:10
Afternoon Tea

3:40
Satisfying the Evidentiary Requirements of a Public Liability Claim

- Considering the requirements under the Act
- Establishing your claim – issues for consideration
- Ensuring admissibility

Patrick Mugliston, Barrister

Occupier's Liability

4:30
Discussing Recent Decisions Under the *Occupier's Liability Act*

Analysis of recent case law includes:

- *Gove v Black Ors* [2006] WASC 298
- *Town of Mosman Park v Tait* [2005] WASCA 124
- *Junkovic v Neindorf* [2004] SASC 325

David McKenna, Partner, **Jarman McKenna**

5:20
Closing Remarks from the Chair

5:30
Close of Day One

What your colleagues had to say about previous personal injury law conferences:

“Well presented and topical presentations by up-to-date practitioners”

“Extremely useful and thorough”

“Informative conference providing insight on the varied issues of personal injury”

8:30

Conference Registration

9:00

Opening Remarks from the Chair

MEET YOUR
CHAIR

John D'Angelo, Partner, **Friedman Lurie Singh & D'Angelo** is a Barrister and Solicitor of the Supreme Court of WA, specialising in tort litigation. He was admitted to practice in 1976 and later formed D'Angelo & Co before eventually joining with D'Alessandro & Associates in 1991. In 1995 that firm became D'Angelo & Partners which subsequently merged with Friedman Lurie & Singh, one of the largest independent law firms in WA. John is a member of the Law Society of WA and Australian Lawyers Alliance.

Workers' Compensation

9:10

Settling the Dust of the 2005 Reforms

- Summarising the reforms
- Considering the Act in light of its reforms
- Grappling with the changes
- Assessing the current state of the law

Piet Jarman, Partner, **Jarman McKenna**

10:00

The Do's and Don'ts of Successful Arbitration

- Preparing your claim and determining correct procedure
- Satisfying the court's requirements
- Considering pitfalls and mitigating errors
- Summarising best practice techniques

Dr Aubrey Birkelbach, Arbitrator, *Dispute Resolution Directorate, WorkCover*

10:50

Morning Tea

Medical Negligence

11:20

Discussing the *Acts Amendment (Consent to Medical Treatment) Bill 2007 (WA)*

- Amending the *Guardianship & Administration Act*
- Treating without consent
- Recognising valid refusal of treatment
- Examining the common law consequences

Dr Brenda McGivern, Senior Lecturer, *University of Western Australia Law School*

12:30

Networking Lunch for Speakers and Delegates

1:30

Analysing Causation, Loss of Chance and the Assessment of Damages

- Comparing jurisdictions: *Hotson v East Berkshire Area Health Authority* and *Rufo v Hosking*
- Proving there is a loss on the balance of probabilities or demonstrating a loss of chance
- Evaluating the judgments and analysing their effect
- Determining the current state of the law

Geoff Bourhill, Partner, **Lavan Legal**

Motor Vehicle Accidents

2:20

Assessing Damages under the *Motor Vehicle (Third Party Insurance) Act 1943*

- Applying section 3C to damages for non-pecuniary loss
- Assessing gratuitous services pursuant to section 3D
- Reviewing recent cases

John Staude, Barrister

3:10

Afternoon Tea

3:40

Don't Settle for Second Best: Mediation in Personal Injury Cases

- Preparing to mediate
- Managing client expectations
- Managing emotions
- Characteristics of an optimal settlement
- Discussing closure techniques

Michael Gething, Principal Registrar, *District Court of Western Australia*

Damages

4:30

Claiming for Damages for Persons Under Disability

- Examining the criteria of disability
- Applying for approval of compromise
- Considering claims for children
- Choosing a trustee
- Damages for trust fees and fund management expenses

Helen Prince, Barrister

5:20

Closing Remarks from the Chair

5:30

Close of Conference

WHY ATTEND THIS EVENT?

- **Get the inside word!** Hear a District Court Registrar and WorkCover Arbitrator offer tips on how to effectively manage claims.
- **Accelerate** your understanding of the *Civil Liability Act* with in-depth analysis from leading professionals
- **Step ahead** of the rest by anticipating judicial directions in civil liability claims
- **Overcome** the uncertainties involved in bringing and defending public liability claims
- **Update** your knowledge on new developments in medical negligence law

ABOUT THE PRESENTERS

Dr Aubrey Birkelbach, Arbitrator, **Dispute Resolution Directorate, WorkCover WA** he was appointed Member of the former Workers' Compensation Board 1993 and subsequently served as both a conciliation officer and review officer in the pre-2005 Conciliation and Review Directorate. He has been an arbitrator since November 2005.

Geoff Bourhill, Partner, **Lavan Legal** has been in practice for 25 years and a partner for 18 years. His areas of expertise include motor vehicle, public liability, employer's liability, workers' compensation, solicitor's negligence and medical negligence claims.

Raoul Cywicki, Barrister, **Sir Clifford Grant Chambers**, was admitted as a Barrister and Solicitor to the Supreme Court of Western Australia in 1983. Raoul has broad civil litigation experience and has lectured in contract, agency law and tort.

Michael Gething, Principal Registrar, **District Court of Western Australia** spends a significant part of his time mediating personal injury claims and commercial disputes. He is also responsible for the case management program for civil claims brought in the court.

Sarah Harrison, Partner, **Mallesons Stephen Jaques** specialises in the areas of occupational health and safety, mining safety incidents and insurance law. She is an experienced personal injuries litigator who acts for defendants in claims including paraplegic/quadruplegic, major burns and major brain injuries.

Piet Jarman, Partner, **Jarman McKenna** has a general insurance litigation practice and has appeared in significant landmark cases involving insurance litigation. He advises insurers and corporations in relation to changes in litigation involving the insurance industry.

Dr Brenda McGivern, Senior Lecturer, **University of Western Australia Law School** and consultant with Sparke Helmore Lawyers, has practised principally in the area of professional indemnity insurance, specialising in health law. Her primary teaching and research interests are in torts and health law. She currently serves on the Human Reproductive Technology Council of WA and on the Clinical Ethics Service for Princess Margaret Hospital and King Edward Memorial Hospital.

David McKenna, Partner, **Jarman McKenna** has appeared regularly in trials in the then Workers' Compensation Board, District and Supreme Court, both at first instance and at appellate level. David has been an adviser to the Insurance Council of Australia and other corporate bodies in relation to changes in public liability law. He has developed a substantial practice in relation to catastrophic injuries.

Heinrich Moser, Barrister, **Stone Chambers** was admitted to the Supreme Court of Western Australia and the High Court of Australia in 1995. He obtained a masters of laws in 2001 and was accredited as a family law arbitrator in the same year. He has a broad practice, is a member of various professional organisations and is widely published.

Patrick Mugliston, Barrister, **Francis Burt Chambers** has 15 years' advocacy experience in commercial matters, murder trials and appellate work. He reports for the WA State Law reports on personal injury decisions in the District Court and is to co-author of Traffic Law WA 2007.

Brian Nugawela, Barrister, **John Toohey Chambers**, was admitted to practice in WA in 1992. He has practised almost exclusively in the area of tort law, workers' compensation and statutory compensation schemes. He has appeared as counsel in all levels of the judicial hierarchy, including the High Court.

Gray Porter, Principal, **Talbot Olivier** has over 20 years' experience advising and representing insurers, employers and brokers regarding liability, contractual and compensation issues. During this time he has provided advice in respect of liability and compensation reform bills and current legislation.

Helen Prince, Barrister, **Francis Burt Chambers** has broad general experience in civil, industrial, administrative, insurance and criminal law. Between 1993 and 1995 she lectured and tutored in evidence at Murdoch University.

John Staude, Barrister, **Francis Burt Chambers**, practises mainly in the areas of civil liability and insurance law. From 1988 to 2002 he was a member of the legal panel of the Insurance Commission of WA. John is briefed on behalf of plaintiffs and defendants and appears regularly in the District and Supreme Courts.

WHO SHOULD ATTEND?

- Solicitors
- Associates
- In-house Lawyers
- Claims Managers
- Claims Assessors
- OHS Managers
- Barristers
- Senior Associates
- Government Lawyers
- Claims Advisors
- Insurance Managers
- Dispute Resolution Specialists

CONFERENCE DATE AND VENUE

28-29 April 2008
Hyatt Regency Perth
99 Adelaide Terrace, Perth,
Western Australia, Australia 6000
Tel: +61 8 9225 1234
Fax: +61 8 9325 8899
Email: perth@hyatt.com.au

PROGRAM CHANGES

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YES! I would like to register for Personal Injury Law WA 28-29 April 2008

A EARLY BIRD SPECIAL (expires on 3 March 2008)

- Two-day conference \$1600.00 + GST = \$1760.00
 One-Day Conference only# \$ 850.00 + GST = \$ 935.00

STANDARD PRICE (after 3 March 2008)

- Two-day conference \$1800.00 + GST = \$1980.00
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I would like to attend Day1 Day 2

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- Account no. _____
- Signature _____

CONFERENCE RESOURCES

I am unable to attend but would like to purchase a set of conference papers for Personal Injury Law WA \$300 + GST = \$330

TEAM DISCOUNTS*

Register a team of 3 for Personal Injury Law WA at the same time, from the same organisation and receive a free pass for the 4th delegate.

* Early Bird, Team Discounts and any other discount cannot be taken concurrently

C Delegate details (for additional delegates please photocopy form)

Mr/Ms/Dr _____
first name surname

Position _____

Organisation _____

Postal Address _____

Suburb _____ Postcode _____ State _____

Telephone _____

Fax _____

Email _____

YES! I would like to receive information on upcoming events via email.