hba *legal.*

Reporting on Incidental Findings

Jacqueline Lee Freestone v Murrumbidgee Local Health District

[2016] NSWDC 53

Key Points

- This case raises some interesting factual issues regarding radiologists' practice, including reporting on incidental findings, the importance of having detailed notes of past clinical history and utilising appropriate, non-invasive tests to diagnose and report.

Background

Jacqueline Lee Freestone (the plaintiff) was admitted to Wagga Wagga Base Hospital on 2 January 2004 with abdominal symptoms. The plaintiff underwent a CT scan of her abdomen which diagnosed pancreatitis, for which she was subsequently treated and discharged home. The plaintiff was 19 years old at this time and had a history of Non-Hodgkins lymphoma affecting her right tonsil which had been cured 9 years earlier.

In 2007 and 2008 the plaintiff began to experience urinary tract symptoms with increasing frequency. In June 2008, following review by her GP, she was referred for ultrasound and CT investigation which demonstrated a lesion in her left kidney which was biopsied and showed to be a nephrobastoma, "Wilm's tumour". The plaintiff consequently underwent a nephrectomy (removal of the kidney), chemotherapy and radiotherapy.

The plaintiff claimed that the defendant was negligent for failing to identify and report the renal mass in the CT scan of 2004 and to note its significance. The plaintiff claimed that she suffered physical and psychiatric injuries as a result of the delayed diagnosis. The case raised 3 main issues: the duty of care of the radiologist who reported the 2004 CT scan, the extent to which any delay in diagnosis was causative of the plaintiff's claimed loss and the assessment of damage.

The Law

Duty of care

Expert evidence was divergent on multiple points including whether or not it was necessary for the radiologist who reported on the 2004 scan to include in the report an incidental finding of the abnormal lesion, in addition to contrasting opinions on the appearance of the lesion, the prevalence of radiological findings of kidney cysts and the circumstances when such cysts ought to be reported.

The plaintiff's expert radiologist, Dr Lees, was of the view that the lesion could have easily been detected with the technology available at Wagga Wagga Base, these scientific studies

were simple, non-invasive and commonly conducted in the defendant's radiology practice. Dr Jones, the defendant's expert radiologist did not accept that the appearance of the lesion in 2004 was abnormal and referred to the issue of abnormality involving a value judgement of the reporting radiologist. However, Dr Jones conceded that the lesion would have been visible to the eye of trained radiologist. This is the view His Honour adopted in the absence of the reporting radiologist having not been called to give evidence and the adverse inference that arose: *Jones v Dunkel* [1959] HCA 8; 101 CLR 298.

Dr Lees opined that although cysts are very common in people over the age of 50 and were rare in young adults, the presence of a renal cyst, simple or not, should have raised concern sufficient for a radiologist to include it in their report. Dr Lees said that the findings in this case ought to have been reported on because it was "rare, untested and came with a differential diagnosis of a cyst or tumour, one of which could be fatal". Dr Jones disagreed, opining that he would not report the lesion in the circumstances of acute abdominal pain because the relevant findings in a radiologist's report were those related to the clinical presentation. Although tumours were frequently detected incidentally, it was a matter for the radiologist to determine whether to report an incidental non-significant finding – the radiologist was not obliged to report on it. Dr Jones argued that for a radiologist to report on all incidental findings could potentially lead to patients undergoing unnecessary and often life threatening investigations.

Ultimately, His Honour accepted that the lesion shown in the 2008 scan was the same as depicted in the 2004 scan and would have been seen by the reporting radiologist in 2004. His Honour's findings largely accepted the view of the plaintiff's expert that the lesion, an incidental finding which was a rare finding in a person such as the plaintiff, ought to have been reported on in 2004.

Causation and Damages

The plaintiff underwent two biopsies of the renal mass; the first biopsy failed because it punctured the lung and failed to obtain a sample of the tissue to diagnose the mass. The second biopsy was successful and obtained a sample to diagnose a Wilm's tumour. However, the second biopsy caused a spillage of the cancer cells into the surrounding tissue which potentially caused metastatic seeding, the outcome of which was that the plaintiff was automatically treated for Stage III Wilm's tumour which included radiation therapy in addition to chemotherapy and surgery.

Despite varying expert views on whether management would have differed in 2004 (i.e. if the lesion had been detected in 2004 whether a biopsy and nephrectomy would have occurred) His Honour found that treatment in accordance with the Stage III protocol was not causally connected to the defendant's negligence. However, His Honour did accept that the period of ill health prior to the diagnosis, the effect of the failed first biopsy, the disclosure of the delayed diagnosis and mistrust in the health profession and uncertainty about the consequences of the delay in diagnosis on the ultimate outcome of the cancer, caused the psychiatric injuries alleged. The plaintiff was awarded damages for each head of damage sought in the amount of $609,939.50.

Conclusion

This case raises interesting factual issues related to accepted practice in radiology, specifically, how radiologists manage and report on incidental findings, their subjective interpretation of images and the clinical information necessary to allow them to report on relevant incidental findings.

Lesions and masses on CT scans have varying appearances, whether it is their shape, size, contours and density, all of which assist in determining whether such a lesion or mass is likely to be of concern and/or whether further investigations and follow up are warranted. However, reporting on incidental findings (such as lesions and masses) can give rise to potentially unnecessary and dangerous intervention and it is the role of the radiologist to make a value judgment on his or her interpretation of the scans.

Although this case demonstrates competing views with respect to most aspects of clinical practice, the experts were unanimous on the importance of being provided with a relevant clinical history to properly report incidental findings. Both parties' expert radiologists commented that they would have approached the finding of a lesion differently if they had been provided with the plaintiff's prior history of NHL, a disease that could affect the kidneys so as to make the lesion a relevant incidental finding.

Contact

For more information on this article, please contact:

Shannon Mony
Partner
T: +61 (08) 9265 6016
M: 0452 210 682
shannon.mony@hbalegal.com

Phoebe Nicholls
Associate
T: +61 (02) 931701126
M: 0401 319 378
phoebe.nicholls@hbalegal.com

www.hbalegal.com