

## *Claimant's excuse for delay "stretches credulity" - Defendant succeeds in limitation defence*

*Morgan v JBS Australia PTY Limited [2016] QDC 226*

### Key Points

- To bring a claim for personal injury outside the usual three year limitation period in Queensland, the main thing a Plaintiff needs to show is that a material fact of a decisive character occurred within the previous 12 months.
- Usually, the fact that a Plaintiff's injury is more serious than he or she had initially recognised is capable of constituting a "material fact".
- However this case demonstrates that even when a judge is sympathetic to the plight of a Plaintiff, to obtain an extension, a Plaintiff must show that they have taken reasonable steps to ascertain the "material fact" before the expiration of the three year period.

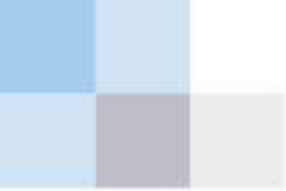
### The Facts

- The Plaintiff was a meat worker who on 27 August 2012 suffered a reasonably serious injury to his right index finger. It was common ground that the Plaintiff would have had reasonable prospects of establishing negligence and the Defendant did not allege that it was prejudiced by the delay in bringing a claim.
- The Plaintiff promptly consulted a surgeon who provided a report stating that his predicted prognosis was that by mid-October 2012 the Plaintiff would have returned to a full capacity for work. The court also accepted that the surgeon in March 2013 the surgeon told the Plaintiff that it would take 2 to 3 years for his injury to return to normal.
- However, crucially in September 2014 the Plaintiff attended his GP reporting significant symptomology, following which he was given a certificate stating he was not fit for work and referred to the surgeon for "reconstruction". The Plaintiff did nothing in respect of the advice he received and the referral.
- It was not until around one month after the expiry of the limitation period that the Plaintiff consulted solicitors, following which he brought an application for an extension of the limitation period.

### The Decision

In rejecting the Plaintiff's application, Judge Everson found:

- The fact that a Plaintiff's injury turns out to be more serious than he or she had previously realised has long been recognised as capable of being a "material fact" capable of enlivening a courts discretion to grant an extension.

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- The “material fact” must produce the conclusion that the action would result in an award of damages sufficient to justify the bringing of an action which was previously not worth bringing.

In weighing the factors relevant to the last issue, his Honour noted the importance of the index finger to a manual worker and the fact that he had reasonable prospects of success in a negligence action. His Honour therefore found that although he had sympathy for the Plaintiff's plight that it stretched credulity that he was justified in blindly relying on the previous prognosis from his surgeon when by September 2014 he had increased symptoms, had been provided with a medical certificate stating that he was unfit for work and had been referred for a “reconstruction”. In particular the court found that the Plaintiff needed to take reasonable steps to investigate his medical condition after consulting his GP in September 2014

## Lessons Learnt

In recent years Defendants could be forgiven for thinking that it has become much easier for Plaintiff's to obtain extensions of the limitation period. However, this case demonstrates that even in a matter where a judge concedes sympathy for a Plaintiff he will not obtain an extension of the limitation period unless he has taken reasonable steps to ascertain the extent of his medical condition prior to the expiration of the limitation period.

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