



CASE ALERT

Eric John Kennedy v Brodun Construction Pty Ltd, C28-2008

On 16 December 2008 Commissioner McCann found that when a worker enters into an agreement incorporating an election to accept a Schedule 2 payment, a redemption of weekly payments and a release and discharge of the employer from future liability to pay compensation the worker is forever foreclosed from being paid a further schedule 2 payment for any incremental increase in impairment.

The Facts

On 13 May 2004 the worker and the employer entered into an agreement. Pursuant to the Agreement the employer paid the worker the sum of \$68,700.00 which included a Schedule 2 payment of \$4,571.32. The Schedule 2 payment was calculated on the basis that the worker had a 5% permanent loss of the efficient use of the right leg at or above the knee. On 25 May 2007 the worker gave notice to the employer that the permanent loss of the efficient use of the right knee had increased to 17.5%. He also gave notice of having suffered a permanent disability to his left knee of 7.5% arising out of the same events as those which caused the right knee injury. The worker claimed to be entitled to an incremental Schedule 2 payment in respect of his right knee and an initial Schedule 2 payment in respect of his left knee. The employer's insurer refused to accept liability.

The Decision

Commissioner McCann held that the word "redemption" referred to in s76 connotes the compounding of future recurrent or inchoate or potential claims and rights in respect of Schedule 2 payments, statutory expenses and weekly payments whether under s67(1) or (4), or s76(1).



He also held that the phrase “further compensation” in s67(5)(a) should be construed as referring to weekly payments and Schedule 2 payments, so that the combined effect of s67(5) is to extinguish a worker’s entitlement to all compensation upon the redemption of weekly payments.

McCann said that given a worker can no longer unilaterally redeem weekly payments of compensation and must rely on obtaining a consent order or an agreement, and may enter into an agreement for a lump sum as a result of a compromise, there is a need to ensure that workers fully understand the full consequences of entering into an agreement.