

**IN THE DISTRICT COURT  
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE  
KI TE WHANGANUI-A-TARA**

**[2024] NZACC 002**

**ACR 214/21  
(ACR 236/21)**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	HELEN WATSON Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: 22 December 2023

Held at: Hamilton/Kirikiriroa

Appearances: K Koloni for the Appellant  
B Marten for the Accident Compensation Corporation (“the  
Corporation”)

Judgment: 8 January 2024

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**RESERVED JUDGMENT OF JUDGE P R SPILLER**  
**[Claim for deemed cover - s 58, Accident Compensation Act 2001 (“the Act”)]**

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**Introduction**

[1] Appeal 214/21 is an appeal from the decision of a Reviewer dated 17 August 2021. The Reviewer dismissed an application for review, declining Ms Watson deemed cover for a chronic regional pain syndrome (CRPS). Appeal 236/21 (concerning costs) was discontinued by Ms Watson on 21 December 2023.

## **Background**

[2] Ms Watson was born in 1981. She worked in various roles, latterly as a caregiver.

[3] On 3 November 2009, Ms Watson was injured when she fell over while carrying a wine bottle, and she suffered a laceration to her left wrist. A claim was lodged for this injury with the Corporation.

[4] On 9 November 2009, the Corporation issued a letter to Ms Watson, noting that it had received a claim for her injury on 3 November 2009. The Corporation granted Ms Watson cover for an open wound of her left hand, excluding the fingers.

[5] On 27 January 2010, Mr Gert Starker, Orthopaedic Surgeon, noted that Ms Watson's ulnar nerve was found to be intact, and muscle atrophy was not detected. However, she complained of loss of sensation and weakness in the hand.

[6] On 13 April 2010, Dr Sharon McHardy, GP, listed CRPS as a complication. This complication was repeatedly confirmed by GPs following subsequent consultations with Ms Watson.

[7] On 8 June 2010, the Corporation sent a letter to Ms Watson, advising that the Corporation required an assessment of her current condition, to enable the Corporation to determine her entitlements. The purpose of the assessment, arranged with Dr David Waite, Occupational Physician, was to establish if she was able to return to her pre-accident employment, and Dr Waite would be asked to provide recommendations in regard to her rehabilitation.

[8] Also on 8 June 2010, the Corporation sent a letter to Dr Waite. This noted that the Corporation had received a claim from Ms Watson for "open wound of hand, excluding fingers left". The Corporation advised that it required further medical information to enable it to make an informed cover decision and provide appropriate rehabilitation, and asked Dr Waite to assess Ms Watson and answer attached questions.

[9] On 21 June 2010, Dr Waite provided a medical assessment of Ms Watson. Dr Waite provided a response to the Corporation's questions as to:

- (i) Ms Watson's medical complaints,
- (ii) relevant work and other activities,
- (iii) current findings, diagnosis and her functional limitations,
- (iv) her ability to engage in her pre-accident occupation, and
- (v) recommendations for her rehabilitation to return to her pre-accident occupation.

[10] In the course of the IMA report, Dr Waite advised that his diagnosis was that Ms Watson had CRPS involving the left upper limb following laceration to her wrist:

Initial impression was that there had been damage to the sensory branches of the left ulnar nerve. Helen certainly had numbness following this trauma. With persisting symptoms she underwent nerve conduction studies on 31.3.10 at Palmerston North Hospital.

Following this routine investigation she has developed diffuse wrist pain. She has been left with somewhat disabling symptoms and has now developed signs of a chronic regional pain syndrome involving the left upper limb.

[11] On 10 August 2010, following Dr Waite's advice, the Corporation referred Ms Watson to a programme "to assist with pain management as per Dr Waite's report, assist with full return to work". The injury diagnosis remained "open wound of hand, excluding fingers, left".

[12] On 15 September 2010, Ms Sarah Holland provided a report of Ms Watson's pain management programme. It was noted that Ms Watson had made good progress in some areas and that her scores on measures of pain severity, perceived disability and pain catastrophizing had reduced, but that her score on the fear of re-injury had increased.

[13] On 28 October 2010, the Corporation issued a specialist referral to Dr William Turner, Specialist in Occupational Medicine, noting that the Corporation required

further medical information to make an informed cover decision and provide appropriate rehabilitation for Ms Watson.

[14] On 1 November 2010, nerve conduction studies were done on Ms Watson. Dr Annemarei Ranta, Neurologist, concluded:

Normal study. There is no electrophysiological evidence of a left ulnar neuropathy.

[15] On 23 November 2010, Dr Turner reported that, having seen Ms Watson, she had returned appropriately to part-time light duties and she had an ability to continue in this role. Dr Turner accepted that, while it was initially thought that Ms Watson had suffered ulnar nerve damage, this was subsequently unproven. Dr Turner considered it likely that she had a neuroma through likely severing of a cutaneous nerve, leading to a disabling pain and/or dysaesthesiae.

[16] On 19 April 2011, an MRI scan of Ms Watson's wrist revealed no evidence of neuroma of the dorsal branch of the ulnar nerve.

[17] On 20 May 2011, Mr Jim Armstrong, Consultant Surgeon, considered (based on MRI results) that there was no evidence of any neuroma or scarring along Ms Watson's ulnar nerve.

[18] On 15 June 2011, an ACC clinical advisor noted that the MRI report revealed a (non-injury related) ganglion cyst in Ms Watson's radiocarpal joint, and the advisor determined that this cyst was the most likely cause of Ms Watson's ongoing pain.

[19] On 29 June 2011, Dr Turner considered (based on MRI results) that there was no evidence of ulnar nerve damage from Ms Watson's injury. Dr Turner noted that there was little evidence that she suffered from a chronic pain disorder with a significant component of dysaesthesia to her symptoms.

[20] On 10 August 2011, Dr David Hartshorn, Specialist Occupational Physician, reported that the current diagnosis was that of a centrally mediated pain disorder following a laceration of Ms Watson's left wrist, and that the laceration itself did not

appear to have resulted in any significant neurological damage. Dr Hartshorn noted that the recent MRI confirmed that there was no evidence of neurologic dysfunction or other significant structural dysfunction as a result of the injury event itself.

[21] On 10 October 2011, Mr Tom Naser, Clinical Psychologist, reported that Ms Watson had physical consequences of her injury and was also depressed, was anxious, had reduced stress resilience, and showed some pain behaviours with the early signs of possible CRPS developing.

[22] On 23 April 2012, Dr Frank Thomas, Pain Medicine Specialist, determined that Ms Watson was suffering from “neuropathic pain from injury of the ulnar nerve resulting from an injury sustained in November 2009”, she had become depressed and she had gained weight.

[23] On 28 June 2012, Ms Olivia Cassin, Senior Clinical Psychologist, reported on Ms Watson’s attendance at a series of clinical psychology sessions. Ms Cassin noted that Ms Watson had decided to return to her previous job, and that she had a number of ongoing psychological and psychosocial issues that were unrelated to her injury.

[24] On 6 August 2012, Dr Thomas advised that Ms Watson was doing “particularly well” and was able to work full time. She still experienced neuropathic pain affecting her left ulnar region but was managing it better.

[25] On 10 August 2012, Dr Peter Nelson provided a vocational independence assessment of Ms Watson, and noted her original diagnosis of laceration left wrist on the ulnar side and the current diagnosis of chronic regional pain syndrome.

[26] On 28 October 2014, Dr Selim Kabir, GP, provided a medical certificate certifying Ms Watson as fit to perform normal work from 28 October 2014, with the diagnosis of “open wound wrist unspecified” and the comment of “cut L wrist while carrying wine bottle. Chronic pain – requiring last week admission in base”.

[27] On 4 May 2021, Ms Watson, through her representative, Ms Koloni, filed a review application stating that the Corporation had failed to issue a decision

following a report by Dr Waite, and so Ms Watson had deemed cover for CRPS. On the decision date that Ms Watson sought to review, Ms Koloni stated: “No decision on cover for CRPS following new medical information”. Ms Koloni stated that Ms Watson’s ideal outcome would be that the Corporation provide a deemed decision letter for cover for CRPS, as diagnosed by Dr Waite.

[28] On 26 July 2021, review proceedings were held to consider whether Ms Watson had deemed cover for CRPS. On 17 August 2021, the Reviewer dismissed the review, on the basis that there was no jurisdiction to consider the matter. The Reviewer found that Dr Waite’s report was not a claim for cover as it was never intended to be such, and the report did not sufficiently identify CRPS as Ms Watson’s personal injury. The Reviewer also found, in terms of section 134(1) of the Act, that there was no jurisdiction to deal with Ms Watson’s application.

[29] On 16 September 2021, a Notice of Appeal was lodged.

### **Relevant law**

[30] Section 3 of the Accident Compensation Act 2001 (“the Act”) provides:

The purpose of this Act is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social, and personal costs), through—

...

- (b) providing for a framework for the collection, co-ordination, and analysis of injury-related information: ...
- (c) ensuring that, where injuries occur, the Corporation’s primary focus should be on rehabilitation with the goal of achieving an appropriate quality of life through the provision of entitlements that restores to the maximum practicable extent a claimant’s health, independence, and participation:
- (d) ensuring that, during their rehabilitation, claimants receive fair compensation for loss from injury, including fair determination of weekly compensation and, where appropriate, lump sums for permanent impairment:

- (e) ensuring positive claimant interactions with the Corporation through the development and operation of a Code of ACC Claimants' Rights: ...

[31] Section 48(a) of the Act provides that a person who wishes to claim under the Act must lodge a claim with the Corporation for cover for his or her personal injury. Section 49 provides for the lodging of such a claim by a treatment provider. Section 52(1) provides that a person must lodge a claim with the Corporation in a manner specified by the Corporation, and it may impose reasonable requirements on the person, such as, for example, requiring the person to lodge a written claim.

[32] Sections 56(2) and 57(2) require the Corporation to take certain steps as soon as practicable, and no later than a specified time, after a claim is lodged. Section 58(1) provides that, when the Corporation fails to comply with a time limit under section 56 or section 57, the claimant is to be regarded as having a decision by the Corporation that he or she has cover for the personal injury in respect of which the claim was made.

[33] Section 89(b) provides that an assessment of a claimant's vocational rehabilitation needs must consist of an initial medical assessment to determine whether the types of work identified by an initial occupational assessment are, or are likely to be, medically sustainable for the claimant.

[34] Section 134(1) of the Act provides:

- (1) A claimant may apply to the Corporation for a review of—
  - (a) any of its decisions on the claim:
  - (b) any delay in processing the claim for entitlement that the claimant believes is an unreasonable delay:
  - (c) any of its decisions under the Code on a complaint by the claimant.

[35] In *Thomas*,<sup>1</sup> where the appellant's advocate had written on her behalf to the Corporation seeking a determination for cover for a mental injury, Beattie DCJ stated:

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<sup>1</sup> *Thomas v Accident Compensation Corporation* [2008] NZACC 278.

[17] Having received that claim for cover, I find that it was incumbent upon the respondent to take steps to investigate the claim and make a determination. Such investigation would, in the first instance, require the appellant to be seen by a duly qualified psychiatrist and for a report to be prepared.

[18] It is the case, as far as this Court understands, that following receipt of the claim no step was taken by the respondent to investigate the claim for mental injury in any way whatsoever, and I infer that it was not until Mr Nielson's letter of 16 October 2007 that the respondent may have taken a first step.

[19] It was central to Counsel for the Respondent's case that the claim sought was merely for an extension of cover not a new claim for cover. That assertion, I find, is too simplistic, as I find it to be clear from the statutory provisions that what is being sought is cover for a separate and distinct personal injury, namely a mental injury. The fact that the claimed mental injury must be one which has been suffered because of a physical injury, does not in any way make it just an extension of cover for that physical injury. Whilst it may be that if and when cover is granted, it can be regarded as an extension of cover, nevertheless it requires a decision of the respondent that the claimant has been granted cover for a specific type of personal injury, namely that identified in s.26(1)(c).

[36] In *Medwed*,<sup>2</sup> Ongley DCJ stated:

[14] The scheme of the Act also requires a claimant to make an application for cover. The obligation rests on the claimant. A case manager could well have a responsibility to advise a claimant who needed to make a separate cover claim. The Corporation could invite a claimant to lodge a claim, but there is no obligation on the Corporation, in the absence of a claim, to carry out investigations in case of a possible entitlement available to a claimant. It is, the claimant who has to explain, by way of an application for cover, the kind of injury that the claimant suffered and the facts supporting the accident cause of the injury. If there was a case in which the circumstances were so clear that the Corporation gave cover, without receiving a formal claim, then there would be no problem. But if the Corporation unilaterally considered and declined cover, without receiving a claim, it would be acting outside its authority under the Act.

[37] In *Sinclair*,<sup>3</sup> Dobson J stated:

[26] I am not satisfied that the adoption of a generous approach to what might constitute the lodging of a claim for cover can focus upon the nature of the Corporation's responses to an initiative by a claimant. Conceptually, the adequacy of what is submitted as a claim may, in some circumstances, be influenced by the nature of the Corporation's response to it. However, that does not justify an approach which uses a misconceived or inappropriate response on behalf of the Corporation to transform what is patently something other than a claim for cover under the Act into such a claim. ...

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<sup>2</sup> *Medwed v Accident Compensation Corporation* [2009] NZACC 86.

<sup>3</sup> *Sinclair v Accident Compensation Corporation* [2012] NZHC 406.



[39] I have confirmed that the claim initiated by Ms Sinclair did not constitute a claim for cover for mental injury following physical injury in terms of the process required by the Act. Having done so, there is no scope to invoke the notion of legitimate expectation on her part to transform the legal effect of her actions and the Corporation's response so that her claim would be treated as such.

[38] In *Ambros*,<sup>4</sup> Glazebrook J, for the Court of Appeal, envisaged the Corporation taking an inquisitorial role, and the Court taking, if necessary, a robust and generous view of the evidence as to causation:

[64] An important factor that favours the Supreme Court of Canada's approach applying in that context is the essentially inquisitorial role of the Corporation, both when an initial claim is made and in the review function. ... The inquisitorial approach should generally mean that, to the extent this is practical, all aspects of the claim (including causation) have been investigated by the Corporation before matters reach the courts. ... In our view, it is in keeping with the non-adversarial nature of the claim and review process that the Corporation should investigate all possible aspects of a claim, at least in a rudimentary fashion and as far as practicable. It would thus be in a position, once the matter comes before a court, to lead evidence on all points that were investigated, whether strictly obliged to or not.

[39] In *Westpac Banking Corporation*,<sup>5</sup> Beattie DCJ stated:

... it is incumbent upon the claimant to establish that she has in fact suffered a personal injury, as that phrase is described in the Act. That description requires that there be a physical injury, that is there must be evidence of a discrete injury which has caused physical harm to the body of the claimant. As has been held by this Court on many occasions the mere experiencing of pain is not of itself injury and is not necessarily evidence of injury.

[40] In *Studman*,<sup>6</sup> Ellis J stated:

[26] ... this requirement for "bodily harm" means that neither "pain" nor "stiffness" by and of itself constitutes a physical injury. Although both pain and stiffness may well be symptomatic of an underlying (and potentially qualifying) physical injury, that is not necessarily so. Most obviously, I suppose, pain could just as easily be caused by disease, for which (in general terms) coverage is not extended. It is for that reason that it is, in my view, necessary separately to identify the underlying physical injury with some precision.

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<sup>4</sup> *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

<sup>5</sup> *Westpac Banking Corporation v Accident Compensation Corporation* [2000] NZACC 298.

<sup>6</sup> *Accident Compensation Corporation v Studman* [2013] NZHC 2598.

[41] In *Van Essen*,<sup>7</sup> Joyce DCJ stated:

[51] [Section 134(1)(b)] is to the effect that a claimant may apply to the Corporation for a review of any delay in processing a claim for any entitlement that the claimant believes has been an unreasonable delay.

[52] But of course what Mr Van Essen was really after was recognition of cover for mental injury from which various forms of entitlement might then flow.

## Discussion

[42] The issue in appeal ACR 214/21 is whether Ms Watson is entitled to a deemed decision granting cover for CRPS.

[43] Ms Koloni, for Ms Watson, submits that the purpose of the referral to Dr Waite was clearly indicated to be to allow the Corporation to make an informed cover decision. The Corporation provided entitlements, which included a pain management programme, but failed to update Ms Watson's covered injuries. Ms Watson relied on the Corporation's referral and Dr Waite's report and trusted that her covered injuries would be updated to cover for CRPS. The Corporation had a responsibility to follow through and approve cover once it received the reports it had requested. The Corporation's failure to extend cover for CRPS, or at least advise Ms Watson of the need for her to lodge a claim for such cover, shows a picture of neglect by the Corporation. The Corporation failed to issue a cover decision in terms of section 56 of the Act, and so Ms Watson is entitled to deemed cover for CRPS under section 58 of the Act.

[44] This Court acknowledges the above submissions. However, the Court points to the following considerations.

[45] First, for Ms Watson to qualify for deemed cover for CRPS, she needs to have made a claim for this injury.<sup>8</sup> This is revealed in case-law such as in *Thomas*, where the Court was clear that the Corporation was required to investigate *having received a claim* for cover.<sup>9</sup> It is the responsibility of Ms Watson to lodge such a claim, and there is no obligation on the Corporation, in the absence of a claim, to carry out

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<sup>7</sup> *Van Essen v Accident Compensation Corporation* [2013] NZACC 12.

<sup>8</sup> Section 58(1).

<sup>9</sup> *Thomas*, above note 1, at [17]-[18].

investigations as to cover for CRPS.<sup>10</sup> In the absence of a claim for cover for CRPS, Ms Watson does not have a legitimate expectation that what is patently something other than a claim for cover under the Act will be transformed into such a claim.<sup>11</sup> Section 3 of the Act provides for a *fair and sustainable* scheme for managing personal, including a framework for the collection of injury-related information. Part of this framework and its sustainability is the requirement imposed on the claimant to lodge a claim for a specified injury if cover is being sought.

[46] Second, the Corporation's referral to Dr Waite and his ensuing report are patently not a claim for cover for CRPS by Ms Watson. The Corporation, in referring Ms Watson to Dr Waite, explicitly stated that Ms Watson's claim for cover was "open wound of hand, excluding fingers left". The Corporation advised Dr Waite that it required further medical information to enable it to make an *informed* cover decision (that is, not a new cover decision) and provide appropriate rehabilitation. Dr Waite's report was required to address the Corporation's questions about Ms Watson's medical condition in relation to her ability to engage in her pre-accident occupation and recommended rehabilitation in this regard. Dr Waite's advice followed the instructions and responded to the questions presented by the Corporation. Dr Waite's assessment that Ms Watson had "now developed signs of a chronic regional pain syndrome" cannot be construed as a claim by her or her treatment provider for cover for CRPS as a discrete injury caused by her accident.

[47] Third, it is well established that the mere experiencing of pain is not of itself injury and is not necessarily evidence of injury, as pain can be caused by factors other than a claimed physical injury.<sup>12</sup> It would therefore have been necessary to identify and establish the underlying physical injury with precision.<sup>13</sup> In this regard, the Court notes that, while Dr Waite, GPs and Mr Naser (Psychologist) referred to signs of CRPS, other specialists have not diagnosed this condition and its cause.

[48] Fourth, it is not evident to the Court that Ms Watson has suffered prejudice by the lack of express cover for CRPS. The Corporation has proceeded on the basis that

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<sup>10</sup> Section 48(a) and *Medwed*, above note 24, at [14].

<sup>11</sup> *Sinclair*, above note 2, at [26] and [39].

<sup>12</sup> *Westpac Banking Corporation*, above note 5.

<sup>13</sup> *Studman*, above note 6, at [26].

Ms Watson has been entitled to pain management and other services provided by the Corporation, arising from Ms Watson's covered injury. She and her advocate have expressed appreciation for the services that have been provided, and it is not clear that the lack of express cover for CRPS has resulted in lesser-quality services than if such cover had been granted.

[49] Fifth, the review application in which Ms Watson claimed deemed cover (filed nearly 11 years after Dr Waite's report) acknowledged that there had been no decision on cover for CRPS. A claimant may apply to the Corporation for a review of any of its *decisions* on the claim, any delay in processing the claim for *entitlement* that the claimant believes is an unreasonable delay, and any of its decisions under the *Code on a complaint* by the claimant.<sup>14</sup> In view of the fact that none of these categories applied to Ms Watson, the Reviewer correctly declined jurisdiction to decide on Ms Watson's claim.

## **Conclusion**

[50] This Court expresses its sympathy with Ms Watson for the ongoing pain and health-related issues that she has suffered over a number of years. Ms Watson has complied with repeated assessments and cooperated with the rehabilitation services offered by the Corporation. However, the absence of a claim for cover for CRPS is the vital missing link in the chain of events prescribed for cover by the governing Act. This Court does not have the power to override the express provision of the Act which required Ms Watson to make a claim if she wished cover to be granted for CRPS.

[51] In light of the above considerations, the Court finds that Ms Watson is not entitled to deemed cover for CRPS. The decision of the Reviewer dated 17 August 2021 is therefore upheld. This appeal is dismissed.

[52] I make no order as to costs.

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<sup>14</sup> Section 134(1).

[53] This Court notes that Ms Watson has cover for a laceration to her left wrist and entitlements that legitimately flow from this cover. If Ms Watson considers that she is entitled to cover for other personal injuries (such as CRPS), she may consider filing a claim for any such cover, and this claim will be considered by the Corporation in due course.

A handwritten signature in dark ink, appearing to read 'P R Spiller', written in a cursive style.

P R Spiller  
District Court Judge

Solicitors for the Respondent: Izard Weston