



CTP Case Update

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Cases

1. Allianz Australia Insurance Limited v Ma [2023] NSWPICMP 652
2. Fajloun v Allianz Australia Insurance Limited [2023] NSWPICMP 534
3. Ghaznawi v Allianz Australia Insurance Limited [2023] NSWPICMP 603
4. Saleh v Insurance Australia Limited t/as NRMA Insurance [2024] NSWPICMP 14
5. El-Kazzi v Insurance Australia Limited t/as NRMA Insurance [2024] NSWPICMP 591.
6. Bridgefoot v Allianz Australia Insurance Limited [2024] NSWPICMP 194
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Allianz Australia Insurance Limited v Ma [2023] NSWPICMP 652



Were the lumbar annular tears in a 40 year old carpenter with no significant recorded history of lower back pain caused by the accident. The review panel's consideration of occupational risks.

Facts

- On 9 December 2020, the Claimant was stopped at an intersection in his Hilux Ute when an Audi Q7 rear-ended him.
- The claimant, among other injuries, reported he sustained a lumbar spine injury.
- A post-accident MRI revealed that the claimant had an annular L5/S1 disc tear.
- The claimant never had any significant lumbar spine pain before the accident.
- The claimant did disclose to the PIC Medical Assessor that he had occasional lower back pain before the accident and was treated with acupuncture. Still, he never had any constant lower back pain.
- The insurer determined that the annular tears were not caused by the accident. The claimant referred the decision to the PIC to determine a threshold injury dispute.
- On 22 March 2023, Dr Tamba Lebbie of the PIC determined that the accident caused the annular tears but did not explain why and how the imaging findings corresponded to the symptoms reported by the claimant.
- The insurer lodged a s7.26 review application, which was accepted.

Allianz Australia Insurance Limited v Ma [2023]

NSWPICMP 652



The Panel was asked to determine if (1) there was radiculopathy as defined by the Guidelines and (2) if the annular tear was caused by the accident:

Radiculopathy

- The Panel did not find radiculopathy as defined by the Guidelines at the time of the Review Panel PIC assessment.
- The Panel also noted that the Primary Medical Assessor Dr Tamba Lebbie did not find radiculopathy as defined by the Guidelines at the time of the initial PIC assessment.
- The Panel then considered if there was radiculopathy at any time after the accident by examining the claimant's clinical records. The Panel noted that Mr Ma has been treated by two medical practices and two physiotherapists, but none of them have diagnosed him with radiculopathy within the meaning of the Guidelines.
- There were reports of radiating pain in the left buttock and upper limb, but radiating pain is not one of the five signs of radiculopathy (NB needs to be verifiable radicular pain).
- The Panel determined there was no radiculopathy within the meaning of the Guidelines.

Allianz Australia Insurance Limited v Ma [2023]

NSWPICMP 652



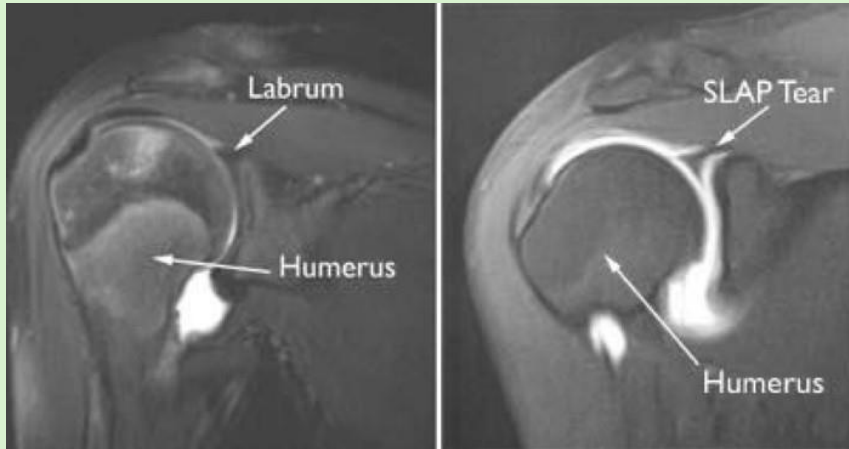
Annular tear

- Was the annular tears caused by the accident? The panel noted the following:
 1. the photograph of the claimant's vehicle does not appear to show any damage. The panel, however, did note there was a tow bar, which could have absorbed an impact and prevented more significant damage to Mr Ma.
 2. Both cars were driveable after the accident. Airbags did not deploy.
 3. Ma described that at the time of the rear-end collision, he felt his body moving forward but that his seatbelt stopped him from moving further forward. He did not hit his head, and his body did not hit any part of the inside of the cabin.
- The panel determined that the annular tears identified on the MRI scan of the lower back taken two months after the accident could not be caused by the accident.
- This was because in their clinical experience, tears of the annulus fibrosis at two levels would **require a significant force** and a **mechanism of lifting and twisting** and Mr Ma **did not describe a mechanism** of injury with much or any movement of his lower back.
- The Panel also noted that the MRI findings of L2/3 (dehydrated disc) and L3/4 mild foraminal stenosis were degenerative findings that would not have been traumatic but pre-existing.
- The panel also took into consideration that the claimant was 40 years of age and worked as a **carpenter**. The claimant described his work as relatively heavy before and after the accident (including lifting weights of up to 20kg). **It was the clinical experience of the Panel that people of the claimant's age and occupation** would often have changes in their spine, such as tears or fissures in the annulus fibrosis at multiple levels, which are asymptomatic.
- Accordingly, it was determined that the claimant did not sustain an annular tear because of the accident and did not have radiculopathy as defined by the Act. Accordingly, the Panel determined that the claimant only had soft tissue threshold injuries.
- **Interestingly**, the Panel did not precisely determine if the accident aggravated the claimant's pre-existing annular tear.

Fajloun v Allianz Australia Insurance Limited [2023] NSWPICMP 534



LEGAL HEROES



The importance of MRIs when diagnosing tears.

An earlier ultrasound scan obtained after the accident reported no SLAP tear, but a later MRI of the same shoulder conducted a year after the accident reported there were tears.

Facts:

- The claimant was a 57 year old council worker who was involved in a significant rear end motor accident in early March 2020. Reportedly the claimant lost consciousness and his vehicle was pushed 10 meters ahead. His rear tires were split and his car was written off.
- The claimant had no significant shoulder issues except for a right shoulder complaint which warranted some treatment 16 years before the accident.
- The claimant saw his General Practitioner the next day and reported, among other injuries, pain in his left and right shoulders.
- Bilateral shoulder ultrasounds were conducted on 18 March 2020. The report revealed degenerative changes in both AC joints, bilateral bursitis, bilateral tendinosis and **bilateral partial thickness tears of the supraspinatus**. There was also a tear of the right subscapularis.
- A left shoulder MRI was conducted a year later on 21 April 2021 which confirmed various degenerative changes but **no rotator cuff tears**.
- A right shoulder MRI also dated 21 April 2021 reported a **SLAP tear** involving the bicep, a posterior inferior labral tear, ACJ arthropathy and bursitis. The SLAP tear was new and not picked up on the earlier ultrasound.
- Allianz, the insurer for the vehicle at fault, alleged the claimant's injuries were threshold injuries. His matter was referred to PIC for determination.
- The insurer relied on biomechanical expert Dr Michael Griffiths. Dr Griffiths opined that the design of modern cars supported the shoulders and therefore it is unlikely the claimant sustained any injuries from the accident. He did, however, confirm the accident may have aggravated a pre-existing shoulder condition.
- Assessor Wijetunga examined the claimant on 20 October 2022 and determined all injuries referred for assessment were threshold injuries. Specifically, she found that the shoulder scans did not show any signs of acute injury. She also observed that partial thickness tears were common ultrasonographic findings for people in the claimant's age group.
- Dr Wijetunga did not comment on whether the accident caused the SLAP tear, so a review application was lodged and accepted.
- Assessor Tania Rogers assessed the claimant on behalf of the Panel on 14 September 2023. She also read the MRI films.

Fajloun v Allianz Australia Insurance Limited NSWPICMP 534



- Before the Panel could determine what injuries were caused by the accident, they first had to determine if shoulder injuries were present.
- The panel noted the presence of partial thickness tears of the bilateral shoulders on the ultrasounds. The lack of a tear on the MRI of the left shoulder and the presence of a SLAP tear on the right shoulder MRI. Dr Rogers also confirmed the presence of a further labral tear in the right shoulder.
- The Panel at [116] determined that MRIs are a more accurate diagnostic tool for labral tears than ultrasound scans. The Panel preferred the MRI scan report over the ultrasound scan report.
- **LEFT SHOULDER** : the MRI report as reviewed by Dr Rogers showed no tear and therefore the injury to the left shoulder was threshold only.
- **RIGHT SHOULDER**: there was a SLAP tear in the right shoulder. The Panel then considered whether the accident caused the right shoulder tears. Causation was considered in accordance with *Briggs v IAG Limited t/as NRMA Insurance [2022] NSWSC 372 (Briggs No 2)*, which was conveniently summarised at [127] of the decision.

[127] *The test, therefore, to be applied as set out in Part 6 of the Guidelines and the questions to be answered by this Panel is whether Mr Fajloun’s right shoulder injuries were “caused by the accident” and the approach to that should be a consideration of a medical decision and a non-medical informed judgment as follows:*

- Could the accident have caused either or both of the labral tears in the right shoulder (medical determination), and*
- Did the accident in fact cause either or both of the labral tears in the right shoulder (non-medical determination).*

Fajloun v Allianz Australia Insurance Limited NSWPICMP 534



Could the accident have caused either or both of the right shoulder tears? (medical determination)

1. The panel opined that the mechanism of injury (the tight gripping of the steering wheel while he moved backwards against the collapsing seat and subsequent sliding down in the seat) could have caused either or both of the two tears in the claimant's right shoulder. They also noted that SLAP Tears could be both traumatic and degenerative.

Did the accident cause either or both of the labral tears? (non-medical determination)

The panel noted the following factors.

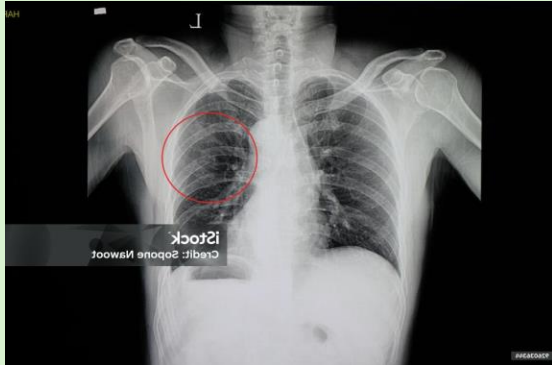
1. Except for the right shoulder complaint some 16 years before the accident, the claimant's right shoulder has mostly been asymptomatic.
2. The claimant's occupation as council worker, whilst physical, was not hard or strenuous – he mainly sprayed weedkiller, operated a ride-on mower, used a whipper snipper and pruned small trees. The Panel did note that the claimant's occupation would have made the right shoulder more vulnerable to injury.
3. There was a contemporaneous report of shoulder pain after the accident and a worsening of shoulder pain after the accident.

The panel determined that the labral tear was caused by the accident.

Takeaway lesson

- MRIs are a more accurate diagnostic tool than ultrasounds.
- When determining causation, the panel must consider non-medical and medical factors.
- The claimant's occupation is relevant and important when determining causation. Note *Allianz v Ma*, carpentry work and annular tears.
- When assessing tears in the shoulder one should account for all tears asked to be assessed – ie *Charouk v Allianz* and the reason for this appeal

Ghaznawi v Allianz Australia Insurance Limited [2023] NSWPICMP 603



Can there be a finding of a fractured rib even if an xray conducted at time of the accident did not show a fracture?

Facts

- On 3 February 2019 the claimant was boarding a bus from the back doors, when the back doors suddenly closed. This caused the claimant to be thrown onto her right side and hit the side of the bus. The claimant then fell backwards and was caught by a passenger standing behind her.
- The claimant reported that the accident caused multiple injuries, among which included fractured ribs. The claimant attended Westmead Hospital four days after the accident where she was diagnosed with a right rib fracture. The diagnosis was made based on a clinical assessment. X-rays taken at the Hospital did not report any fractures.
- The claimant was 13 weeks pregnant at the time of the accident and could not undergo a CT Scan to determine if there was a fracture.
- The Insurer determined the claimant's injuries were threshold injuries only, and the claimant's threshold injury dispute was referred to the PIC for determination.
- The Primary PIC Assessor, Dr Woo, determined all injuries were threshold injuries. The claimant lodged a review, which was accepted.

Ghaznawi v Allianz Australia Insurance Limited [2023] NSWPICMP 603



- The Medical Review Panel accepted that the Claimant sustained right fractured ribs because
 - There was contemporaneous evidence in hospital records which confirmed a painful right chest wall
 - The pain was severe enough to warrant potent opiate analgesia
 - The Panel accepted the diagnosis of multiple clinicians (including a Staff Specialist) who examined the claimant at Westmead Hospital
 - The examining doctors at the Hospital reported clinical signs that suggested a rib fracture.
 - Non-displaced rib fractures are inherently difficult to see on plain X-rays
 - The claimant continued to experience persistent severe pain after discharge and required further hospital visits for opiate analgesia, which further supports the diagnosis of fractures rather than soft tissue injuries.
- **Takeaway lesson:** Medical Members will consider all the evidence and their medical training to make findings on causations.



Can surgery convert a threshold injury into a non threshold injury?

Facts:

- On 22 October 2018, the claimant, a taxi driver, was T boned by the insured driver when the insured driver failed to stop at a stop sign. The insured driver was said to have travelled at 60 km/hr. Airbags were deployed.
- The Ambulance was called, and the claimant was conveyed to St George Hospital for review and discharged the same day. The records of the NSW Ambulance Service and St George Hospital both confirm, amongst other injuries, a contemporaneous complaint of a neck injury, lumbar spine and right shoulder injury.
- **Neck:** Three weeks after the accident, on 23 November 2018, an MRI Scan of the Cervical spine was performed. The scan reported mild to moderate disco vertebral spondylosis changes, most marked at C4/5 and C5/6, resulting in mild central canal stenosis.
- The claimant reported no history of neck pain before the accident.
- A nerve conduction study was conducted on 16 July 2019. It reported minor right C6/7 radiculopathy. Conservative treatment failed.
- The claimant was referred to a Neurosurgeon and he was recommended to undergo a C4/5 and C5/6 cervical discectomy and fusion. The surgery was conducted on 12 November 2020.
- **Right Shoulder** – an x-ray taken around six weeks after the accident reported a focal rotator cuff tear at the right shoulder. An MRI scan of the right shoulder taken a year after the accident reported nil focal tears.
- The insurer deemed all injuries to be threshold injuries and also alleged that the cervical fusion was not caused by the accident. The matter was referred to the PIC. The Assessor opined there was insufficient indication for the cervical fusion and also found no tear in the right rotator cuff.
- **Cervical and lumbar spine-** Dr Cameron did not find there was any Radiculopathy
- The claimant successfully lodged a review application.

Saleh v Insurance Australia Limited t/as NRMA Insurance [2024] NSWPICMP 14.



- The Review Panel found:
- **Cervical spine** – the surgery and post-operative scarring were causally related to the accident because the accident aggravated a pre-existing asymptomatic condition. The Panel also stated that surgery was part of a treatment regime course that comes into play when other treatments have failed. The Panel concluded that the accident materially contributed to the need for surgery, which would not have arisen but for the accident.
- At [187], the panel said:
 - “..., the claimant **has had to undergo surgery, which by its nature has damaged some of the claimants** “nerves, ligaments, menisci or cartilage”. In this claim, the surgery has involved damage by way of tearing to the claimant’s nerves, ligaments, muscle and bone. This is a non-threshold injury.”
- The Panel’s comments appear to somewhat challenge the general statement made by the Court in **Mandoukos v Allianz Australia Insurance Limited** [2023] NSWSC 1023 – which commented that there is no presumption that below-threshold injury becomes an above-threshold injury due to surgery.
- *Mandoukos was appealed, but the appeal was not successful. The Court of Appeal stated that there was no error with the certificate because both the PIC Medical Assessor and the PIC Delegate were not required to consider whether the removal of bone during the foraminotomy rendered the injury non-minor / non-threshold because that question was not put to them and therefore did not form part of the “medical dispute” which was referred to the PIC for determination.*
- **Mandoukos v Allianz Australia Insurance Limited** [2024] NSWCA 71 at [99] – made some interesting passing comments – which was essentially, that the Court viewed subsequent surgery as possibly a “different” injury from the injury sustained at the time of the motor accident. The foraminotomy procedure occurred some 18 months after the motor accident. It involved a mechanism, consensual surgical removal of bone, entirely separate from the impact of the motor accident. The Court was not required to make a finding on this, so this point is still undecided.
- **Right Shoulder – at [190]**, the Panel stated that **MRI scans were more sensitive than ultrasound scans** and therefore preferred the MRI scan over the ultrasound scan. The MRI scan did not report a tear; thus, the claimant’s right shoulder injury was a threshold injury.

El-Kazzi v Insurance Australia Limited t/as NRMA Insurance [2024] NSWPICMP 591.



What are the factors to consider when considering if treatment is reasonable and necessary?

Facts

- The Claimant was involved in a motor vehicle accident on 9 November 2019. He alleged sustaining injuries to his cervical spine and both shoulders as a result of the accident.
- The Claimant's orthopaedic surgeon Dr Nair requested perineural blocks, a cervical discectomy and fusion.
- Dr Nair made the treatment recommendation because the scans showed multilevel degenerative pathology, which he characterised as permanent and anatomical aggravation. Dr Nair initially recommended a CT guided C5/6 foraminal nerve root block and further conservative management incorporating physiotherapy, chiropractic treatment and exercise physiology. The earlier nerve root block provided temporary but fleeting relief.
- Those treatments were denied by the insurer and an internal review affirmed the decision.
- The matter was referred to the PIC and at first instance, the PIC Medical Assessor determined the proposed treatment related to the injury caused by the motor accident and were reasonable and necessary in the circumstances.
- The Medical Assessor concluded that the proposed treatment was reasonable and necessary. He qualified this finding because the perineural block injection was also diagnostic. The justification for cervical discectomy and fusion would depend on whether the blocks relieves neck and arm pain.
- The Insurer sought a review.

El-Kazzi v Insurance Australia Limited t/as NRMA Insurance [2024] NSWPICMP 591.



Does the proposed treatment relate to the injury resulting from the motor accident?

- The Panel noted the motor accident need only be a material contribution to the need for treatment.
- The Panel noted that there was an immediate report of neck pain after the accident and an increase in neck complaints to the treatment team after the accident. They concluded that the accident materially contributed to the permanent aggravation of the degenerative cervical condition detected on several MRI scans.
- The Panel also noted that whilst the Claimant had low level symptoms from time to time before the accident in his occupation as a taxi driver which required treatment. It did not restrict him working as a taxi driver, unlike the current symptoms, which are linked to the subject accident. It follows that the accident resulted in the need for the neck treatment.

El-Kazzi v Insurance Australia Limited t/as NRMA Insurance [2024] NSWPICMP 591.



Was the requested Treatment Reasonable and necessary in the circumstances

- The Panel noted that the reasonable and necessary test in CTP was a more onerous test than the NSW workers compensation legislation which requires a worker to establish that the treatment is “reasonably necessary.”
- At [92] of the Certificate the Panel observed that the motor accidents legislation requires them to consider two important aspects:
 - 1) consider whether there is a rationale for the treatment related to injury suffered in the subject accident (Reasonableness); then
 - 2) addressing whether it is necessary
- With respect to the first limb, **reasonableness**, the Panel referred to the case of *Diab v NRMA Ltd* [2014] NSWCCPD 2 (Diab) at [88]. In that case five relevant considerations were listed:
 - I.the appropriateness of the particular treatment;
 - II.the availability of alternative treatment;
 - III.the cost of the treatment;
 - IV.the actual or potential effectiveness of the treatment, and
 - V.the acceptance by medical experts of the treatment as being appropriate or likely to be effective.
- However, the Panel also added that the words “**in the circumstances**” in the context of whether the treatment is “reasonable and necessary” **must refer to the claimant’s particular circumstances**. In other words The test of “reasonable and necessary in the circumstances” **does not direct attention to the relationship between the accident and the treatment**. That issue arises from considering whether treatment “relates to the injury caused by the accident.”
- With respect to the second limb, **necessary**, the Panel referred to a workers compensation Decision of *Clampett v WorkCover Authority of NSW*, which in effect states that for a treatment to be necessary it must be indispensable and cannot be done without.
- In this case, the claimant was re-examined by PIC Panel Assessor Dr McGrath, who found that there was radiculopathy, unrelenting pain or worsening neurological symptoms after the accident.
- Dr McGrath also considered the exercises prescribed for the claimant for his neck rehabilitation were a poor choice for his condition. He opined that the claimant’s exercise physiologist should modify his plan before considering fusion surgery.
- Given the above findings and also the fact that surgery is expensive and risky, the panel found that the treatment was not reasonable and necessary.

Bridgefoot v Allianz Australia Insurance Limited

[2024] NSWPICMP 194



Background

- The claimant had a significant pre-accident history. There was an X-ray of the right knee dated 1 August 2017 which showed advanced degenerative disease of the medial compartment, with nearly complete loss of the joint space. A tripartite patella was noted. However, the claimant was active and in 2018, the claimant was able to do yoga and walk 300km of the Camino del Santiago pilgrimage in 2018 with no reported knee issues.

Facts

- The Claimant was injured in two motor accidents, approximately one year apart, in 2018 and 2019. On both occasions, the Claimant was a passenger on a bus.
- In the 2018 accident, the claimant seated on a bus when the bus pulled out from the kerb at high-speed, mounted a gutter and struck a brick wall. It then reversed, also at high-speed, and hit the side of the road, jamming the front door. The claimant was then thrown forward by the impact and hit both knees and her left foot on a low horizontal bar on the seat in front of her.
- In the 2018 accident the claimant claimed among other injuries, a right knee injury- which was explained as an-anterior, posterior, and medial crush injury to **the right knee**; acceleration and deterioration of osteoarthritis;
- In the 2019 accident the claimant was seated in a bus, when the bus made a steep turn to the left and went over a speed bump. The seat that the claimant was sitting on, which was not bolted in properly, lifted and moved forward causing her to hit both knees on the metal part of the seat in front. She was then dropped into a void where the seat had been and felt instantaneous pain in her right knee. A report of an MRI of the right knee 24 February 2020 noted a meniscal tear and degenerative changes.
- For the 2019 accident the claimant claimed among other injuries claimed a right knee injury- traumatic meniscal injury and traumatic **patellar fracture resulting in total knee replacement**;
- The insurer alleged the right knee injuries were threshold injuries only. The matter was referred to the PIC.

Should the insurer pay for a TKR, if the accident aggravated the advance degenerative changes in the knee

Bridgefoot v Allianz Australia Insurance Limited

[2024] NSWPICMP 194



- Assessor Dr Ian Cameron determined the right knee injuries in both the 2018 accident and the 2019 accident were minor. The claimant appealed.
- The Claimant alleged that each accident caused an injury to her right knee which ultimately led to a total knee replacement (TKR).
- The claimant also relied on the decision of *Venizelou v AAI Ltd* [2021] NSWPCMP 215 where the Panel held that the motor accident aggravated and accelerated degenerative changes and caused further tearing of a degenerate lateral meniscus: this was held to be a non-threshold injury as defined in s 1.6 of the Act.

Bridgefoot v Allianz Australia Insurance Limited

[2024] NSWPICMP 194



Panel Decision

- The Medical Review Panel concluded that the 2019 MVA caused an above-threshold injury for the following reasons:
- The Claimant claimed that the second accident caused 'a traumatic meniscal injury and traumatic **patellar injury resulting in a total knee replacement**'
- An 'injury' is established where the motor accident is a necessary **condition of the continuum of harm or disturbance** suffered.
- In this case, the claimant suffered a contusion of the right knee with post-accident imaging demonstrating bony oedema in the region of the underlying tripartite patella.
- The Panel was satisfied that the bony contusion or bone bruise of the patella following the 2019 accident constituted an **aggravation of underlying degenerative change in** the claimant's patellofemoral joint causing an **aggravation** and **accelerated progression** of symptoms from the underlying pathology resulting in the total knee replacement.
- The Panel opined that the indication for a TKR is **most commonly incapacitating pain and/or loss of function/mobility**. The presence of severe arthritis on an X-ray is an **insufficient basis** to recommend a knee replacement. Indeed, severe X-ray changes may be asymptomatic or minimally symptomatic. This was the case here. The claimant had been able to walk 300km of the Camino del Santiago pilgrimage in 2018 with no reported knee issues.
- The TKR was a necessary condition of the continuum of harm caused by the 2019 MVA because it flowed from the aggravation of the underlying pre-existing arthritic condition in the Claimant's right knee caused by that accident. The claimant mobility was profoundly impacted and hence the TKR was necessary and reasonable and resulted from the accident.
- The TKR was not a soft tissue injury and was, therefore, an above-threshold injury.



Aleksic v AAI Limited t/as GIO [2023] NSWPICMP 466



Facts:

- Claimant suffered from a pre-existing Major Depressive Disorder following death of her husband in 2007. She was in partial remission at the time of the accident.
- The subject accident occurred on 1 February 2020 when a vehicle at fault collided into the passenger side of the claimant's car. The claimant's grandson was seated in the rear passenger seat. The claimant alleged she suffered personal injuries as a result of the accident. She made a claim against GIO, the insurer of the vehicle at fault.
- A few weeks later on 24 February 2020, the claimant was involved in a subsequent motor accident when a kangaroo collided with her vehicle. The claimant made a claim against QBE.
- Both QBE and GIO alleged the claimant had threshold injuries. Accordingly, the threshold injury disputes were referred to the PIC for determination. The same assessor, Member Dr Samuels, determined the disputes and two separate decisions were published for each respective accident.
- Member Dr Samuels determined the claimant had Major Depressive Disorder which pre-dated the accident and found that whilst the GIO **accident aggravated the Major Depressive Disorder, it did not cause it**. Dr Samuels then determined the claimant had threshold injuries.
- The Claimant successfully applied for a review.

Aleksic v AAI Limited t/as GIO [2023] NSWPICMP 466



- **The Panel Determined:**
- The Claimant suffered from a pre-existing Major Depressive Disorder before the accident. The Major Depressive Disorder was in partial remission at the time of the subject accident. The Major Depressive Disorder was aggravated and exacerbated by the motor accident. This opinion was the same opinion of the Member Samuel the primary assessor. The only difference was that Dr Samuel's applied the wrong causation test.
- The correct causation test with respect to aggravation and exacerbation, as per *Briggs v IAG* (No2), is contained in Part 6 of the Guidelines (the WPI Part). The relevant clause relating to causation is Clause 6.6 and 6.7 of the *Guidelines*, which provides that a motor accident does not need to be the sole cause of a medical condition that is alleged to be more than a threshold injury. It just needs to be a contributing cause that is more than negligible.
- The Panel concluded that the subject GIO accident aggravated the Claimant's Major Depressive Disorder and that Major Depressive Disorder was not a threshold injury.
- The Panel also found that the subsequent accident further exacerbated the Claimant's symptoms, resulting in a full relapse of her Major Depressive Disorder.
- The Panel Decision is consistent with the decision of **AAI Limited t/as GIO v Hoblos [2023] NSWPICMP 210**. A decision where the Panel held that a psychological injury was established if the motor accident aggravated, accelerated or exacerbated a psychological condition.

Aleksic v AAI Limited t/as GIO [2023] NSWPICMP 466



Key Takeaway

1. A motor accident does not need to be the sole cause of a medical condition that is alleged to be more than a threshold injury. It just needs to be a contributing cause that is more than negligible.
2. The claimant only needs to show that the accident materially contributed to the injury through either aggravation, acceleration or exacerbation.

Overall take away messages

- PIC Medical Assessors are becoming more open to using their medical knowledge to draw inferences to make findings on causation. E.g. occupational history (carpenter/council worker), clinical history (rib fracture) and clinical knowledge (when a TKR becomes necessary)
- Imaging, **whilst** not necessary for determining whether injury is a threshold injury, is still vitally important, especially if the imaging is done early after the accident. Imaging must be considered in the context of the clinical history and mechanism of the accident.
- MRIs are more accurate than ultrasounds.
- Not all imaging reports are correct.
- The accident just needs to be a material cause and not the sole cause of a non-threshold injury.
- If there is a pre-existing condition, be sure to consider whether there has been an aggravation of a pre-existing condition. If there is, the claimant must refer to precise clinical evidence to prove there has been an aggravation and identify this as an issue.
- The mere presence of a tear shown on imaging cannot automatically infer that an injury is more than a threshold injury. Causation must still be established.
- The Reasonable and Necessary test in CTP is a much higher burden than WC. The treatment must be absolutely indispensable, and recovery cannot be achieved without it.

Legal Heroes – we help surgeons get treatment approved.



- Legal Heroes specialises in representing patients in the NSW Workers Compensation and CTP Compensation schemes.
- We help surgeons get treatments approved.
- Legal Heroes is run by David Weng, an NSW Law Society Accredited Specialist in Personal Injury Law and Law Society Injury Compensation Committee Member. David previously worked for the insurer and knows what they look for when reviewing treatment denials
- David is an approved solicitor under the ILARS grant scheme and the NSW Government will pay Legal Heroes for most of the legal fees for the treatment disputes. This means less cost and stress for the injured patients.
- Save on admin staff time – Legal Heroes will chase the insurer for you - if the requested surgery is denied or not approved 28 days from the date of the request, and with patient consent, a referral can be made to Legal Heroes and they will follow up with the insurer to get the treatment approval.
- Zero cost assessment– Legal Heroes will talk to the patient and assess the prospects of overturning surgical treatment denials for free.
- If the surgery denial is overturned, most legal fees for the surgery denial will be paid by the NSW Government if it's a worker compensation or CTP matter. You will be informed of the win.
- No win, no fee guarantee. If the patient's treatment is not approved, the patient does not pay.
- Option for a treating report request – Some referrals will result in a need to request a treating report. The report will usually not exceed 7 questions. Doctors have a choice to opt-in or opt-out of the report request. Doctors will be paid for the report.
- Direct access to subject matter expert – Surgeons get direct access to David and can ask him any workers compensation or CTP Compensation question

Legal Heroes –how denials can be referred



- Any denied surgical request - large or small
- Preferably not already represented by another lawyer
- **With** patient's consent, Surgeons can pass on the patient details to Legal Heroes and we will contact the patient **or** Surgeons can refer the patients to Legal Heroes – details below.
- How to contact Legal Heroes:
 - Email:** d.weng@legalheroes.com.au
 - Landline :** 8896 6068
 - Mobile:** 0488 163 966
 - Website:** www.legalheroes.com.au