

**NOTE TO PRACTITIONERS: STANDARD DIRECTIONS ONLY – ADAPT AS APPROPRIATE. ORDER WILL REFLECT COURT NOMINATED DATES AS REQUIRED**

**\*\*APPLICATION FOR ORDER 1 IS TO BE MADE ON SUMMONS**

IN THE SUPREME COURT OF VICTORIA AT [ ]  
COMMON LAW DIVISION  
DUST DISEASES LIST

S ECI 201[ ]

**BETWEEN:**

[ ]

Plaintiff

- and -

[ ]

Defendant

**MINUTE OF PROPOSED CONSENT ORDERS – FIRST DIRECTIONS**

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JUDICIAL OFFICER:

DATE MADE:

ORIGINATING PROCESS: [state whether by writ, by originating motion or otherwise]

HOW OBTAINED: By consent pursuant to Rule 59.07 of the *Supreme Court (General Civil Procedure) Rules 2015*.

ATTENDANCE: Not applicable.

OTHER MATTERS: [ ]

THE COURT ORDERS BY CONSENT THAT:

**\*\*Nunc Pro Tunc**

1. The Plaintiff have leave to proceed nunc pro tunc pursuant to sub-section [135BB(3) of the *Accident Compensation Act 1985 (Vic)* OR 357(3) of the *Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)* DELETE WHICHEVER IS INAPPLICABLE].

### **Trial and trial fees**

2. The proceeding is set down for trial in the [.....] circuit sittings commencing [.....] before a judge [and jury] on an estimate by the parties that the trial will occupy [ ] sitting days.
3. In order to secure the trial date, the setting down and hearing fees are to be paid in accordance with the *Supreme Court (Fees) Regulations 2018* (Vic) as if the date fixed/set down for the hearing is the date of commencement of the circuit. **Further, the first day jury fee is to be paid at the same time as the setting down fee.**
4. Any application to adjourn or vacate the trial date must be made as soon as it is known that the trial is not ready to proceed on the date fixed.

### **Pleadings and particulars**

5. **The Defendant is to file and serve a defence by [ ].**
6. The parties are to make any request for further and better particulars by [ ].
7. The parties are to file and serve any further and better particulars required within 28 days of receipt of such request.
8. The Defendant is to file and serve any third party notices by [ ].
9. **The Defendants are to file and serve any notices of contribution by [ ].**

### **Discovery & interrogatories**

10. All parties are to make discovery (including full inspection) in accordance with the *Supreme Court (General Civil Procedure) Rules 2015* ('the Rules') and file and serve an affidavit of documents by [ ].
11. If parties wish to interrogate, they must serve interrogatories for the examination of another party by [ ].
12. Answers to interrogatories must be filed and served in accordance with the Rules.

### **Order 41 Examination - De Bene Esse**

13. Rule 41.01(2) of the Rules is dispensed with.
14. The Plaintiff has leave to be examined on oath or affirmation before an examiner to be appointed by the Court.

15. Any such examination is to occur at a time and place to be agreed upon by the parties in consultation with the Court and subject to the Plaintiff's health, condition and whereabouts but, in any event, is to be concluded by **[INSERT DATE AT LEAST TWO CLEAR BUSINESS DAYS PRIOR TO THE COMMENCEMENT OF THE CIRCUIT ]**.
16. For the purposes of Rule 41.07(1) of the Rules, the Plaintiff is to arrange for an audio-visual recording and transcript of the examination.
17. The examination is otherwise to be conducted in accordance with Order 41 of the Rules.
18. The costs of the examination, including the examiner's fees and travelling and/or accommodation expenses, are to be borne in the first instance by the Plaintiff and, subject to any subsequent order, are ultimately to be costs in the proceeding.

### **Evidence**

19. Any subpoena under Order 42A of the Rules is to be issued and served by [ ].
20. The parties are to exchange any medical and/or expert reports concerning damages and liability, including those required to be served under Order 33 or Order 44 of the Rules by [ ].
21. The Plaintiff is to serve particulars of special damages, loss of earnings and loss of earning capacity along with supporting documentation by [ ].
22. No later than [ ]:
- (a) the parties are to exchange any supplementary medical and expert reports concerning damages and liability, along with supporting documentation; and
  - (b) the Plaintiff must serve any final particulars of special damages, loss of earnings and loss of earning capacity.

### **Pre-trial conference [DELETE FOR NON-EXPEDITED TRIALS]**

23. The parties are to attend a pre-trial conference not before [ ] and, in any event, no later than a date to be nominated by the Court.

### **Mediation [DELETE IF PRE-TRIAL CONFERENCE REQUESTED]**

24. The parties are to have attended a mediation of the proceeding by [ ].
25. The mediator and parties are to notify the Court of the status of the proceeding within 7 days of the mediation.

### **Callover**

26. The parties are to attend a callover on a date to be fixed by the Court.

27. The parties are to file a list of expert and lay witnesses to be called at trial no later than 2 days prior to the callover.

28. At the callover each party should be in a position to:

- (a) confirm that the proceeding is ready for trial;
- (b) confirm the estimated number of sitting days;
- (c) confirm whether the proceeding is to be heard by Judge alone or by jury
- (d) confirm the name and contact details of the practitioner with conduct of the proceeding and advise whether counsel has been briefed for trial;
- (e) confirm payment of the trial fee and jury fee (if the trial is to be heard before a jury)
- (f) address the Court on the proposed witnesses, expert and lay, to be called at trial;
- (g) advise whether any witnesses will require an interpreter or will need to give evidence via video-link;
- (h) advise whether any witnesses have special needs;
- (i) advise whether a view is likely to be required during trial;
- (j) identify any outstanding interlocutory issues; and
- (k) identify the main issues in dispute.

**Costs**

29. Costs in the proceeding.

.....

[ ]

Solicitors for the Plaintiff

Date: [ ]

[ ]

Solicitors for the Defendant

Date: [ ]

**DATE AUTHENTICATED:**

[For Court use only, please leave blank]