IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

COMMON LAW DIVISION

DUST DISEASES LIST

S ECI 2023 0XXXX

BETWEEN:

|  |  |
| --- | --- |
| **NAME OF THE PLAINTIFF**  | Plaintiff |
|  |  |
| and |  |
|  |  |
| **NAME OF THE DEFENDANT**  | Defendant |

**FIRST DIRECTIONS ORDER**

|  |  |
| --- | --- |
| JUDICIAL OFFICER: | Judicial Registrar Baker |
|  |  |
| DATE MADE: |  |
|  |  |
| ORIGINATING PROCESS: | By writ filed Click or tap to enter a date.. |
|  |  |
| HOW OBTAINED: | By consent pursuant to Rule 59.07 of the *Supreme Court (General Civil Procedure) Rules* *2015* (‘the Rules’). |
|  |  |
| 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) *Accident Compensation Act 1985* (Vic) OR 357(3) *Workplace Injury Rehabilitation and Compensation Act 2013*.

**Trial and trial fees**

1. The proceeding is granted an expedited trial.
2. The proceeding is fixed for trial not before Click or tap to enter a date. before a Choose an item. on an estimate by the parties that the trial will occupy XX 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). Where applicable, 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.

**Amendments to the timetable**

1. For all interlocutory steps occurring prior to the final directions hearing, the parties may extend or abridge such dates in the interlocutory timetable by consent in accordance with rule 3.02(3) of the Rules without seeking further orders of the Court.

**Pleadings and particulars**

1. The defendant is to file and serve a defence by Click or tap to enter a date..
2. The parties are to make any request for further and better particulars by Click or tap to enter a date..
3. The parties are to file and serve any further particulars required within 28 days of receipt of the request for further and better particulars.
4. The defendant is to file and serve any third party notices by Click or tap to enter a date..
5. The defendants are to file and serve any notices of contribution by Click or tap to enter a date..

**Discovery and interrogatories**

1. All parties are to make discovery (including full inspection) in accordance with the Rules and file and serve an affidavit of documents by Click or tap to enter a date..
2. If parties wish to interrogate, they are to file and serve interrogatories for the examination of another party by Click or tap to enter a date..
3. Answers to interrogatories are to be filed and served in accordance with the Rules.

**Order 41 Examination - De Bene Esse**

1. Rule 41.01(2) of the Rules is dispensed with.
2. The plaintiff has leave to be examined on oath or affirmation before an examiner to be appointed by the Court.
3. 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 2 clear business days prior to the trial date.
4. 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.
5. The examination is otherwise to be conducted in accordance with Order 41 of the Rules.
6. 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**

1. Any subpoena under Order 42A of the Rules is to be issued and served by no later than eight weeks prior to the trial date.
2. 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 Click or tap to enter a date..
3. The plaintiff is to serve particulars of special damages, loss of earnings and loss of earning capacity, along with supporting documentation by Click or tap to enter a date..
4. No later than Click or tap to enter a date.:
	1. the parties are to exchange any supplementary medical and expert reports concerning damages and liability from experts or medical practitioners whose reports have previously been served in the proceeding, along with supporting documentation; and
	2. the plaintiff is to serve any final particulars of special damages, loss of earnings and loss of earning capacity.

**Mediation and post-mediation directions hearing**

1. The parties are to have attended a mediation of the proceeding by Click or tap to enter a date..
2. Within three days prior to the date for the mediation, the legal practitioners for the defendants are to confer, by telephone or in conference, for the purpose of addressing the issue of contribution of their respective clients towards any resolution of the plaintiff’s claim.
3. The parties are to notify the Court of the status of the proceeding within 7 days of the mediation.
4. Should the proceeding not resolve at mediation, the parties are to attend a post-mediation directions hearing on [COURT USE ONLY Click or tap to enter a date.].
5. At least 2 days prior to the post-mediation directions hearing, the parties are to file a list of witnesses.
6. At the post-mediation directions hearing, the parties are to advise the Court:
	1. whether the court ordered timetable has been complied with;
	2. what issues remain in dispute;
	3. whether it is proposed to seek leave to amend any pleading or join further parties;
	4. whether the initial estimate of the length of the trial requires adjustment;
	5. the areas or issues in respect of which each party intends to adduce expert evidence;
	6. the utility of experts conducting a conference or preparing a joint report, if appropriate; and
	7. whether it is proposed to seek leave to rely upon expert reports not served in accordance with these orders.

**Pre-trial conference and final directions hearing**

1. The parties are to attend Choose an item.no later than 7 days before the final directions hearing.
2. Within 3 days prior to the date for the conference, the legal practitioners for the defendants are to confer for the purpose of addressing the issue of contribution of their respective clients towards any resolution of the plaintiff’s claim.
3. Should the proceeding not resolve at the conference, the parties are to attend a final directions hearing on Click or tap to enter a date. **(Court use only).**
4. At least 2 days prior to the final directions hearing, the parties are to file a list of witnesses.
5. For the purposes of the final directions hearing, each party should be in a position to:
	1. confirm that the proceeding is ready for trial;
	2. confirm the estimated number of sitting days;
	3. confirm whether the proceeding is to be heard by judge alone, or by jury;
	4. advise whether counsel has been briefed for trial;
	5. confirm payment of the trial fee and jury fee (if the trial is to be heard before a jury);
	6. address the Court on the expert and lay witnesses to be called at trial;
	7. advise whether any witnesses will require an interpreter or will need to give evidence via video-link;
	8. advise whether any witnesses have special needs;
	9. advise whether a view is likely to be required during the trial;
	10. identify any outstanding interlocutory issues; and
	11. identify the main issues in dispute.

**Costs**

1. Costs in the proceeding.

*Signature* *Signature*

…………………………………… ………………………………………………

|  |  |
| --- | --- |
| Solicitors for the PlaintiffDate: Click or tap to enter a date. | Solicitors for the DefendantDate: Click or tap to enter a date. |