

Speaker 1: On 8826PR, this is Peter Bell.

Peter Bell: Twenty two past one. We are with Jeff Potter from Friedman Lurie Singh & D'Angelo. We're talking about personal injury, medical negligence law. If you've got a question for Jeff, 92211882. To Kevin in Balcatta, hi Kevin.

Kevin: Good day gentleman, how are you?

Peter Bell: Good.

Kevin: Yes just wondering. I've had an accident about a year ago and I still,[inaudible 00:00:30] commission are still investigating the problem. They accepted one point liability again, they said they are investigating. Is that normal? Or is there something wrong with the case?

Jeff Potter: Well, it depends on the facts of the case. But, my usual practice is if the Insurance Commission can't make a decision in three months, well, I'll just issue legal proceedings. Because it shouldn't take more than three months to investigate. I assume it's a motor vehicle accident? It shouldn't take more than three months to investigate such an accident and sometimes you've just got to push them. Instruct a lawyer, commence legal proceedings, find out what's going on.

Kevin: I was just on my way to work and hit by another car, which failed to stop in a give away sign. Everything is in my side, but I'm not sure what the investigating is ...

Jeff Potter: I think what you'll probably find may have happened, is that the driver of the vehicle that didn't stop, they can't find that driver. So, they have to go through the process of trying to find the driver.

Kevin: Oh, actually the driver was there. At the moment I was taken to the hospital. At that time he was in a ... The police was interviewed him and everything and he got a fine for his reckless driving, or something like that, which I got all of that information. Still I'm not sure what's going on.

Jeff Potter: Kevin, do you have a lawyer helping you at the moment?

Kevin: Yes, that' right. Yes.

Jeff Potter: Okay, well maybe just ask that lawyer to be a little more proactive and say that I think things have gone on long enough. I want to see some action.

Peter Bell: Yes, sounds a good idea. Okay, Kevin. Thanks. To Michelle in Thornley.

Michelle: Hi, this is the second time I've rung, how embarrassing.

Peter Bell: It's not embarrassing.

Michelle: I'm ringing to inquire, when I was 13 I had an operation. It was a large one, I had my large bowel removed. Now, when that actually happened my father was given three options. The doctor who operated on me was meant to be the best in Australia at the time. So, we went to Sydney. He give my dad three ultimatums, and my dad chose, as an example, number two operation. It wasn't until about three years later or two years later when a better specialist came along board in Sydney that my dad changed doctors, who had to perform another operation on me. When he opened me up, the files did not match the insides of my body. So, a different operation was actually done than what my dad agreed to. So, I was under anesthetic for 12 hours. And my dad was aware of it, he found out when I was 15, I found out about it, probably five years ago.

You've got seven years to claim a medical malpractice claim, I believe. But, does that mean when you're a minor that you actually fall underneath your parent knowing for those seven years that you've got , that you lost any chance of medical malpractice suit? Or, does that come once your an adult and you find out that's what happened? You've got chance to do something about it?

Peter Bell: Good question Michelle. Jeff over to you.

Jeff Potter: Well the Limitation Acts are pretty complicated. Generally speaking before a particular date in November 2005, people injured before then had six years, in personal injuries from the date of [inaudible 00:03:40] to the day they turned 18. Then subsequent to that November 2005, it's only three years but it's extendable up to six years, but there's an exception for child birth and all those other things. There is an interesting exception and I don't think that Kerry's

Peter Bell: Michelle.

Jeff Potter: Michelle sorry, I don't think Michelle's mad, but if you're insane, the limitation period doesn't quite run, which I actually used once, which was interesting. But minors, they get a bit of leeway by the courts and there's been some interesting decisions under the new act when that's been applied. But, essentially, is you don't know about it, you get a bit of leeway as well. My feeling on this one, just off the very brief information, is it's probably a bit far in the past. But you've got to weigh up how bad is the damage? Then, is it worth investigating for the injured person? What's, if you like, the pot of gold or what's the damages they might be entitled to. But complicated case.

Peter Bell: It is. It does raise an interesting question about, I guess, when you became aware of it and when dealing with minors generally, kids. You might not have been aware of it and like Michelle, until you might have had the operation when you're 15, but actually found out about the alleged malpractice or whatever you want to call it at 20 and then you want to do something when you're 22. So under the rules now, were seven years has passed. You might not fit in, but you only actually found out two years ago. You know what I'm saying? That was long winded and complicated, but it does raise that sort of question I guess.

Jeff Potter: Well, when they changed the Limitation Act, there was a lot of work on that issue. Because under the old act it was just too bad. It was a straight mathematical thing, no extensions except asbestosis. But under the new legislation, it's a bit more flexible. But, my feeling is, this one probably won't fit in. If there's a lot of damage there and it's a big operation obviously. Go and speak to a lawyer. We're good guys. Usually we won't charge unless we recover compensation. And often you'll spend five, ten hours looking at something.

Peter Bell: Okay, there you go. There's some advice Michelle. Good luck with that.

To Kerry in Rockingham. Hi, Kerry.

Kerry: Yes. Hi, thanks for taking my call. I've just got a situation where we had to claim insurance recently. We live in a rear block in Rockingham and the people in front are starting to build. And the earth moving guys, when they were digging, dug through all the utilities, gas, power and Telstar and ripped them out of the ground. So we couldn't live in our house and we had to move to a hotel for a few days. And of course we were slammed with the excess. And so, I'm wanting to know can we claim against the earth moving company or the builder or the owner for that excess?

Jeff Potter: That's an easy question, yes.

Kerry: Oh beaut.

Jeff Potter: Whether you'll win or not, I don't know. But, sometimes what happens is that people distinguish between the excess and the actual damage. The damage is all the damage. And you're entitled to be paid for all of it. But if you're paid by your insurer there might be an excess, but if somebody else is responsible, whether they're insured or not. The whole damage is recoverable.

Kerry: Oh beaut. So would I send it to the earth moving company or the owner of the land?

Jeff Potter: I'd start with the owner and I'd just try and be nice to them because they're gonna be living next door aren't they?

Kerry: Yeah, it's no drama with them.

Jeff Potter: This is what insurance is all about. It should be done in a non confrontationist way. Just as long there is a bit of progress, a few time limits etc. and just move the issue along. And they should tell you who the insurer is and be nice to the insurer and it sounds pretty clear from what you've said what's happened.

Kerry: Yeah, that's what I asked my insurance company if they knew their insurance and they said they didn't know who they were. But I think they do.

Jeff Potter: The other thing I just should add is that, your insurer who is also suffered lots of loss. So it's really their job to do it.

Kerry: No, actually all the damages have been sent to the relevant ... You know the Water Corp etc. no, they didn't actually. All it was was food, our food was completely gone and three nights accommodation. But we didn't have power and stuff for a week, but they didn't actually, it was only very minimal. About 1,000 dollars, so we're the ones that had suffered the worst. And we had no fault at all, so that's why I asked.

Jeff Potter: I think you've got two choices. One is to go the route I mentioned before to try and recover the costs. And the second is to have a series of very good barbecues with your new neighbor.

Peter Bell: Good on you Kerry. Thank you very much for calling.

Thank you everyone for your calls. And thank you Jeff.