

SUBMISSION ON POLICY ISSUES RAISED IN ROUND 6

Submitted By: John Paul Sterndale

Email: [REDACTED]

Phone Number: [REDACTED]

Submission for: My Self

Name of other person, business or organisation:

Do you agree to your submission being published: Yes

Do you agree to your full name being published: Yes

Your submission:

This is a complaint against the Insurance Commission of Western Australia (ICWA)

ICWA is a wholly WA government-owned insurance company, tasked with handling and compensating all third-party victims of motor vehicle accidents (MVA) in Western Australia. What people don't know, however, is that if you become the innocent victim of an MVA:

ICWA is not obliged to pay you salary continuance during your recovery period. Although in theory, you can make an application for salary continuance, ICWA rarely, if ever, grants it. The reason is simple, salary continuance takes pressure off you, the claimant, and ICWA wants you to be under as much financial stress as possible, so as to force you to settle your claim for as little as possible. It would be logical for the system to work the same as Workers' Compensation, in that you receive your full pay during your convalescence period!

The overwhelming majority of the medical profession, will not bill ICWA directly for any treatment you require, even if you have a claim number. The reason, I kept hearing from my doctor was that they (the doctors) regularly wait for years for payment and sometimes never get paid. Medicare and private health insurance will pay their normal share, however, you have to inform both organizations that the injuries are the result of an MVA and it is YOUR responsibility to seek eventual reimbursement for these medical costs from ICWA. If you fail to do this, you will have to pay for your medical expenses out of any settlement you may or may not receive. You now have no salary continuance and have to pay for your out of pocket medical expenses and deal with a mountain of paperwork.

Also, ICWA will not pay any medical expenses until it has received a signed statement from the driver of the vehicle at fault. In my case, that was a driver who has never held a driver's license and had multiple convictions for driving without a license and had no fixed address. This was the reason I first contacted a lawyer as ICWA said for months that they had they could locate the driver. Eventually, it was the lawyer who finally got ICWA to engage a private investigator and track the driver down.

The Case Managers at ICWA have no medical training and they are the people who decide whether they pay for your treatment and ultimately whether you receive compensation or not. These untrained public servants will decide whether reports from your cardiologist, psychiatrist, orthopaedic surgeon, blunt chest trauma specialist, neurosurgeon, GP or emergency department are accepted or disputed.

If your claim is less than a \$100,000, you have a good chance of receiving a payout relatively quickly as any legal challenge - in most cases - is more expensive than a settlement. If your claim sits between \$100,000 and \$250,000 you are entering a grey zone where you have to expect a longer and more complex process and it can be worthwhile for ICWA to challenge your claim. However, if your claim is exceeding \$250,000, congratulations, you now have a 90% chance of your claim going to a judge for settlement and this is where your problems really start. You now have no salary continuance and you are paying for all your out of pocket medical expenses, foot enormous legal bills and witness costs and you also pay for all costs related to expert reports.

ICWA likes to claim, that only 1-3% of claims go before a judge and likes to portray these claimants as being unreasonable. This is nonsense because what the statistics show clearly is that ICWA is not able or unwilling to settle large claims and instead "subcontracts" the ultimate decision to the legal system. So here you will be facing new obstacles as none of the lawyers, barristers or judges have any medical training and yet they are being asked to interpret often very complex evidence in order to come to a decision. I like to compare the situation to somebody that has been diagnosed with a serious illness, let's use cancer as an example. If this person wishes to get a second opinion what he/she going to do is seek such opinion by engaging a solicitor or a judge. The option of a solicitor and a judge seems ridiculous, doesn't it, but that is exactly what happens if you have been seriously injured in an MVA in WA. In the event a case goes to court,

ultimately a judge will make a decision in regards to the cancer treatment, as opposed to a fully qualified oncologist.

As the judge found in my case that I was an "unreliable historian" and that I had obtained referrals to doctors by deceit, had falsified my symptoms when speaking to psychiatrists and that I had made a fraudulent claim against the Insurance Commission of WA. The Insurance Commission, however, has expressly refused to pursue me in court for making a fraudulent claim. They have even stated (verbally) that they are not going to pursue me for their costs in defending themselves against my claim. According to the ten CEO of ICWA, Mr Vic Evans, if ICWA did pursue me through the courts, ALL the evidence that they had withheld from the trial, would become admissible and they would lose instantly.

My case and research and investigation has shown the following:

The WA Insurance Commission will withhold, as standard practice, ALL expert and/or medical evidence that supports a claimant's case.

How the Insurance Commission of WA instructs and allows its lawyers to argue a case which it knows is not correct, including false accusations and claims with the purpose to mislead and misinform the judge.

That 90% of large claims are forced to go before a judge for settlement, although in many cases, ICWA could settle these cases but refuses to do so.

That by "subcontracting" the decision out to the courts, ICWA circumvents the rules, purpose, intent and values which are outlined in its corporate Statement of Intent and the Insurance Commission Act of 1986. The most important of these rules is the requirement that ICWA must consider ALL the available expert evidence when settling a claim. This requirement is also outlined in ICWA's own Guidelines for Injured Third Party Victims of Motor Vehicle Accidents.

That the public servants/case managers at ICWA who are responsible for handling a claim and who analyze and judge the expert medical evidence have no medical training or qualifications to fulfil such an important position.

How organizations such as the WA Ombudsman actively protects organizations such as ICWA from criticism or consequences instead of protecting the public from the excesses of these organizations.

How organizations such as the Insurance Commission of Western Australia and the Ombudsman of Western Australia try to use Australian privacy legislation to suppress exactly what was discussed and said by public servants during official meetings and phone conversations with members of the public.

How the Ombudsman of Western Australia, tries to prevent disclosure of the questionable contents of his official decisions by threatening prosecution under the Parliamentary Commissioner Act of 1971.

That when the courts are not given ALL the available evidence, their decisions become nothing more than arbitrary.

That the judge assigned to hear a claim is based on the luck of the draw and none of the judges has any medical training and possibly no experience in personal injury law.

The press is powerless to publish the contents of the transcripts and audio recordings because of the public services and its public servants right to privacy when officially communicating with a member of the public, ie you or me. Sounds ridiculous when you read it, doesn't it!

In my case, The Insurance Commission called only a single witness to give testimony at trial. This was a medical report the Insurance Commission obtained from the brother of the Insurance Commission Case Manager responsible for my claim, John Langton. It is interesting to note that this doctor never reviewed me in person and yet it was the only medical report that the Insurance Commission was able to obtain which was critical of my claim.

ICWA had previously sent me to numerous medical experts from various fields who examined and reviewed me in person and all these reports were very supportive of my claim and left no doubt that the motor vehicle accident was responsible for me not being able to return to my profession as an airline pilot. In formulating their reports these independent experts restricted their answers to the questions that they received in writing from the law firm that represented ICWA - Talbot & Olivier - and they furthermore restricted themselves to their area of expertise e.g. Cardiology, Aviation Medicine, Orthopedic Surgery, Occupational Health and Psychiatry. They took into consideration all the expert opinions they had received from my medical experts.

However, in the report ICWA obtained from the brother (Dr Paul Langton, Cardiologist) of the responsible ICWA Case Manager John Langton, this was not the case. The doctor not only answered the four questions outlined in the letter he had received from ICWA lawyers; he went on to answer questions that he was not asked. He also put forward a number of alternative causes to my symptoms which required him to give an expert opinion on everything from Psychiatry,

Aviation Medicine, Occupational Health and Orthopedic Surgery. In every other report ICWA had obtained from other medical experts, the experts always referred questions which were outside their area of expertise to an expert in that field. This was not the case in the report ICWA had obtained from the brother of the Case Manager responsible for my claim. I have been told by doctors that, as a general rule, doctors giving expert reports are advised by the AMA (Australian Medical Association) that they should restrict their reports to their own area of expertise; in his case, this would have been cardiology. Furthermore, the court rules for expert witnesses state that the role of an expert witness is to assist the judge and not represent the interest of the party whom they compiled their report for.

During cross-examination, this doctor was examined in detail as to who from ICWA or elsewhere was involved in instructing (briefing) him before he compiled his report. This was very important as my lawyers were interested in understanding why he would answer questions he was not asked and why he gave expert opinions in areas outside of his dedicated speciality of cardiology and the particular aspect of not having reviewed me in person.

In addition, it was unusual that he never took into account or quoted any of the other expert reports ICWA had obtained from experts in these other fields which all supported my claim. The question as to whether he had been influenced or possibly briefed by someone with a vested interest in the case was critical. If it had become known that he had discussed the case or received instructions from his brother before compiling his report, it would have put his entire report into question. As he was the only medical expert being called by ICWA to give testimony in support of the Insurance Commission, it would normally have been disregarded due to the conflict of interest and possible lack of objectivity. ICWA's sole argument for taking my claim to trial was the report they had obtained from this one doctor. Without it, ICWA's CEO Vic Evans confirms, ICWA had no case as all of ICWA's other experts supported my claim.

In a letter from ICWA's CEO, Vic Evans dated the 12 January 2011, he answered my question as to why ICWA took my case to trial and wrote; As promised, I now formally confirm that the Insurance Commission's position in defending your claim was that the atrial fibrillation and psychological problems, which you were diagnosed with, were matters that remained "in Issue" because we questioned their casual relationship to your motor vehicle accident. It is important to note that my "atrial fibrillation" had been cured by two ablation procedures in late 2003 and early 2004.

Additionally the "psychological problems" had, according to ICWA's own psychiatric report from Dr Peter McCarthy, developed as a direct result of the MVA. Mr Vic Evans' statement is based solely on the report from ICWA's Case Manager's brother (Dr Paul Langton) who had never reviewed me in person or spoken to me. Without the report from his (Mr Vic Evans/ICWA) Case Manager's brother (Dr Paul Langton) ICWA would have had no "expert" evidence to support an "issue" and in the words of ICWA's CEO Vic Evans, ICWA would have had no case to take to court.

Since the trial in April/May 200, the following three statements have been made to the question as to who briefed/instructed the brother:

Example 1 - Excerpt from the Official Trial Transcript:

(Question from my Barrister Theo Lampropoulos SC) - You had no discussions with anyone outside Talbot Oliver about the case? (Answer from Dr Langton)--- No.

Question Theo Lampropoulos SC- Not at all?

(Answer Dr Langton) ---About the instruction on the case, do you mean?

(Question Barrister Theo Lampropoulos SC) - Well, about any relevant background or circumstances, issues, that sort of thing?

(Answer Dr Langton) - I can't remember specifically discussing anything. I may well have asked colleagues for opinions of, say, interpretation of lung function test, how definitively would a lung function test assess something. I may well have discussed with one of the electrophysiologists how obvious would it be for pulmonary stenosis as a complication of an electrophysiological study to show up on a test. That's the only examples that I can think of.

(Question Barrister Theo Lampropoulos SC) - No discussions with any non-medical people about the relevant background circumstances?---(Answer Dr Langton) - None whatsoever.

(Question Barrister Theo Lampropoulos SC) - None whatsoever. I see. And you can't offer any – you don't know at all why you were selected in particular - - -?

(Answer Dr Langton) - You may be - - -

- - - by Talbot Olivier?---

(Answer Dr Langton) - You may be alluding to someone that works for an insurance company who knows of me, but the only discussions I've had with extraneous people is, "Would you be prepared to offer a case?"

(Question Barrister Theo Lampropoulos SC) - And the person that you talk about that – who's employed by some insurance company, is that the person named in the second paragraph, John Langton from Insurance Commission of Western Australia?---

(Answer Dr Langton) - Yes, indeed.

(Question Barrister Theo Lampropoulos SC) - Who is, in fact, your brother?---

(Answer Dr Langton) - Correct.

Example 2 - Written reply from Dr Langton dated the 8 February 2012

Dr Langton now states - "I had a brief telephone conversation with my brother Mr John Langton during which he asked me whether, in my opinion, the condition of atrial fibrillation would potentially restrict or otherwise interfere with a pilot's capacity for employment. I discussed the issue of atrial fibrillation very briefly and generally, I was qualified to provide an expert opinion.....At no point in that brief conversation was I provided with any specifics about the matter in respect of which an opinion might be required, in particular, there was no mention of Mr Sterndale by name. It was a very short and general discussion".

Example 3 - Statement made by ICWA's CEO Vic Evans - during a meeting on the 23 of January 2012

".... he (John Langton)was reprimanded and the issue was taken up (with him) and why he would even expose himself to any risk involved in instructing his brother about it and he is not to do it again and in fact if my memory serves me correctly, the case was taken off him".

Is it just me or do examples 2 and 3 not only contradict the testimony given by the doctor at trial, but that the statement from ICWA's CEO Vic Evans, states that his brother John Langton (ICWA's Case Manager) was the person who instructed his brother regarding the report he was being asked to write. I will let you, the reader, decide if the differences in the three statements constitute a case of perjury!

Differences in statements from ICWA's CEO Vic Evans as to the reason why ICWA took my claim to court:

Furthermore, ICWA's CEO Vic Evans, in his most recent letter dated the 31 January 2012, has now has dropped the claim that ICWA's reason for taking my claim to trial was because ICWA had an "issue" with cardiological and psychiatric evidence my side presented. He now confirms that ICWA's sole reason for taking my claim to trial was that they never had any "issue" with the evidence presented and instead "engineered" for the matter to go to court because; "liability for your claim was never disputed. It was the quantum of damages you sought that created this regrettable outcome".

Again this argument is nonsense because ICWA's own expert (Qantas) agreed with the calculations/quantum we had given to the Insurance Commission, years before trial begin. Interestingly, however, in the letter, Vic Evans denies that its John Langton had been reprimanded, which directly contradicts what he said during the meeting.

ALL the evidence, therefore, proves that the sole purpose of all of ICWA's outrageous tactics, lies and untrue assertions at trial was that they did not want to pay for what they themselves now concede, was a legitimate claim. So much for justice and ICWA's published Mission and Values!

To support the above allegations I am making available all the correspondence, emails, decisions, transcripts of meetings and phone calls as well as the actual audio recordings.

ICWA's tactics and methods would never be accepted from a commercial insurance company, so why is it in order for ICWA to without evidence, use the brother of the case manager as its only "expert witness", or for the case manager to influence his brother as to what is required in his reports. It is to be noted that ICWA's expert witness has since been struck off by AHPRA for 18 months, fined \$30'000 for serious misconduct!

I have created a website with all the details, documents and audio-recordings. The web address is:

www.icwa.biz