ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

SUIT NO ANUHCV 2004/0419

BETWEEN

JOHN SAMUEL

Claimant

and

THOMAS MOTLEY

First Named Defendant

STATE INSURANCE CORPORATION

Second Named Defendant

Appearances:

Mr George Lake of Lake and Kentish for the Claimant
Ms Denise Jonas-Parillon of Hill and Hill for the Second Named Defendant

....

2005: December 15th
2006: March 15th

....

JUDGMENT

[1] **Blenman, J:** This is an application by the State Insurance Corporation (the Corporation) to have Mr John Samuel's (Mr Samuel's) claim, filed against the corporation, struck out.

[2] Mr Samuel was driving his Mitsubishi L 200 pickup truck Number C2604 on Horsfords Hill St Mary's Antigua when it collided with motor vehicle Number R 24 driven by Mr Thomas Motley (Mr Motley). Mr Samuel was injured and his vehicle was damaged.

[3] Around the 9th of May 2001 the corporation, acting under the policy of insurance covering the said vehicle R 24, compensated Mr Samuel for the damage done to his vehicle C 2604 as a result of the collision.

[4] On 25th October 2004, Mr John Samuel filed a claim against Mr Thomas Motley (Mr Motley) and the State Insurance Company in which he sought damages from both parties

for personal injuries that he alleged he suffered due to Mr Motley's negligence. Attached to his statement of claim are a number of medical reports that are of significance to the application before the court and with which I will deal in more detail shortly. He seeks a number of reliefs against both Mr Motley and the corporation.

[5] The corporation has applied to have his claim struck out and relies on the following grounds in its application namely:

(a) The action is barred by section 13 of the Limitation Act 1997;

(b) There is no cause of action against the corporation as disclosed on the pleadings;

(c) Mr Samuel amended his claim form without obtaining the permission of the court as required by CPR 2000 Part 19.4 and Part 20.2 His failure to obtain the court's permission is fatal.

Issues

[6] The main issue is:

(a) Whether or not Mr Samuel's claim is statute barred and should therefore be struck out.
(b) An ancillary issue is whether Mr Samuel acted in accordance with CPR 2000 in amending his pleadings.

Background

[7] It is necessary to set out the relevant parts of the claim and statement of claim together with the supporting medical evidence. As I so do.

[8] In paragraph 13 of the statement of claim, Mr Samuel alleged that after the collision, on 19th January 2001 he was diagnosed by Dr Kiwomya as having a hyperextension of his neck which produced some ligament strain in his back. Dr Kiwomya in his medical report "JS1" stated:

> "On examination, **he was complaining of severe pain and stiffness in the neck and Lumbo-sacral spine**. The obvious injuries were laceration of the oral cavity and the persistent cervical intractable pain. There were no other physical signs and x-rays depicted only postural changes. He

was given analgesics to relieve pain and was advised to take physiotherapy for backache.
Impression: It is likely that his neck suddenly jerked into Hyperextension as the accident occurred, and this produced ligament strain.
Therefore, Mr Samuel sustained injuries that produced temporary disabilities. It is too early to anticipate the prognosis, however; a Specialist Report is essential."

[9] In paragraph 14 of his statement of claim, Mr Samuel alleged that on the 17th February 2001 he visited Dr K K Sing, an Orthopedic Surgeon, who examined him and issued a report. Dr Singh at that time indicated that he did not see any evidence of bony injury or joint abnormality. In his report, Dr KK Singh indicated that the claimant had recovered from his soft tissue injury although he was still temporarily disabled in his full movements.

Dr Singh's medical report is reflected in Exhibit "JS2" and states:

"He further mentioned that this automobile was not equipped with driver side airbag. Mr Samuel **was complaining of pain in cervical spine and lower lumbar spine following this accident.**
On examination young healthy looking male with stable cardio-pulmonary status no abnormal abdominal or neurological symptoms were met with.
In examination of his skeleto-muscular system confined to his cervical spine and lumbo-sacral spine **he had classical signs to conclude the diagnosis of soft tissue cervical spine injury and severe whiplash injury to his lumbo-sacral spine**.
Radiological studies Ref.#200691 done on 12th February, 2001 were reviewed by me where I did not see any signs of bony injury or joint abnormality."

[10] In paragraph 15 of the statement of claim, Mr Samuel alleged that he again visited Dr KK Singh and the doctor advised him that he had no permanent physical impairment. The doctor's Medical Report Exhibit JS3 states as follows:

"Lately I have examined John Samuel on 21st March, 2001 when he has regained full range of movements in his lumbo-sacral spine as well as in cervical spine.
As per the disability assessment on 21st March 2001, Mr John A Samuel has not ended up with any permanent physical impairment.
Conclusion
Mr John A Samuel was temporarily disabled in the functions of his cervical spine and lumbo-sacral spine from the date of accident until 21st March 2001. As per examination on 21st March 2001 Mr Samuel has not ended up with any permanent physical impairment.

It is likely that John may develop post traumatic degenerative joint disease in his cervical and lumbo-sacral spines giving rise to partial permanent physical impairment as he grows older"

[11] In paragraph 16 of his statement of claim, Mr Samuel said that about 14th November, 2001 he realized his condition was deteriorating instead of improving as his doctor had told him. He again visited Dr KK Singh, who again advised him that he had no permanent physical impairment although he was temporarily disabled by attacks of pain.

[12] In paragraph 17, he said that about June 2002 he began to experience diminished sensation in his left foot. On 22nd August 2002, he again visited Dr KK Singh who after examining him told him that he was suffering from "mild disc bulge at 2 inter-vertebral levels L3-L4 and L4-L5 (Exhibit JS 4 copy of report dated 5th September 2002 Dr. KK Singh) states.

> "Mr John Samuel was seen by me again after disability assessment on 22nd August, 2002 and on account of diminished sensation (new findings) in L5 dermatome in left foot, I recommended a CT scan to exclude suspected prolapse of lumbar inter-vertebral disc and as per our records at present report Ref. Film #215719 dated 28th August, 2002, **Mr John Samuel is suffering with mild disc bulge at 2 inter-vertebral levels L3-L4 and L4-L5 which was reported by our Consultant Radiologist.**
>
> Recent examination has revealed full functioning range of lumbo-sacral movements but Mr Samuel has diminished sensation in the dermatome distribution of L5 thus he is still temporarily disable in his lumbo-sacral spine and in full functions of left lower limb and will require final assessment to evaluate the total duration of his temporary disability and to calculate the percentage of permanent physical impairment if he ends up with any at the end of his treatment.

[13] On the 13th day of May 2004 the claimant was examined by Dr Terry Isidore in Miami Florida. He was diagnosed as suffering from severe traumatic cervical hyperflexion/hyperextension injuries, severe traumatic lumbar myositis with right leg radiculopathy, and cephalgia. Dr Isidore's report indicates that due to the specific nature of the injuries the prognosis at present is guarded. Additional time and care will be required before maximum medical improvement can be reached. The patient is to avoid heavy lifting.

[14] Mr Samuel caused an affidavit of service to be filed, on February 24, 2005, and indicated that the claim was served on the corporation. On March 24th 2005, Mr Samuel filed an amended claim in which he changed the name of the second defendant from State Insurance Company to State Insurance Corporation.

[15] The firm of Hill and Hill filed an acknowledgement of service, on the 6th May 2005, on behalf of the corporation and by Notice of Application dated May 18th, 2005 sought to have the court remove the corporation as a party to the claim. They later sought, by application, to have the claim struck out on the basis that it was statute barred.

[16] Mr Samuel further amended his claim on June 3, 2005 without leave of the court. He amended the claim form as to seek the following reliefs:

> (1) Damages for personal injuries suffered by Mr Samuel as a result of the negligence of the Mr Motley of the United States of America.
>
> (2) A declaratory order against the corporation that as Mr Motley's they are obliged to indemnify Mr Samuel in respect of any judgment in his favour arising out of any wrongful acts within the terms of the Policy.
>
> (3) A declaration that by accepting liability for damages to the Claimant's vehicle, the second Defendant is estopped from denying liability for personal injuries suffered by the Claimant in the said collision.

[17] Mr Samuel also caused paragraph 6 of the Statement of Claim to be amended to read as follows.

> "The second named defendant (the corporation) was at all material times a company incorporated under the Companies Act of the Laws of Antigua and Barbuda carrying on the business of general insurance and at all relevant times the insurance of motor vehicle R 24 driven by the first defendant.
>
> The second named defendant was at all material times a company incorporated under the Companies Act of the Laws of Antigua and Barbuda carrying on the business of general insurance and at all relevant times the Insurance of Motor vehicle R 24 driver by the first defendant."

Law

[18] The relevant legal provisions of the Limitation Act 1997 Laws of Antigua and Barbuda (the Act) are as follows:

Section 13(1)-(4) of the Act provides:

> "13(1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.
>
> (2) None of the time limits given in the preceding provisions of this Act shall apply to an action to which this section applies.
>
> (3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (4) or (5).
>
> (4) Except where subsection (5) applies, the period is three years from
>
> (a) The date on which the cause of action accrued; or
> (b) The date of knowledge (if later) of the person injured.

[19] Section 16(1) of the Act states:

> "16(1) In sections 13 and 14 references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts –
>
> (a) **That the injury in question was significant**;
>
> (b) **That the injury was attributable in whole or in part to the act or omission, which is alleged to constitute negligence nuisance or breach of duty;**
>
> (c) **The identity of the defendant**; **and**
>
> (d) **If it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts 13 supporting the bringing of an action against the defendant**;

> **and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant**
>
> (2) **For the purposes of this section an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.**
>
> (3) **For the purposes of this section a persons knowledge includes knowledge which he might reasonable have expected to acquire –**
>
> (a) **from facts observable or ascertainable by him**; **or**
>
> (b) **from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek**;
>
> **but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, act on) that advice.**"

Mr Samuel's submissions

[20] Learned counsel Mr George Lake submitted that the collision occurred on the 17th January 2001 and that Mr Samuel received immediate medical attention and was advised by the attending doctor that his injuries would heal in a short period of time. He said that Mr Samuel did not know that his injuries were such that he would be justified in instituting legal proceedings for damages due to the injuries he sustained as a result of the accident. Counsel argued that the claim is not statute barred since time does not run until the date of knowledge of the person injured. By virtue of section 16 of the Act "knowledge" is defined as the date on which Mr Samuel first had knowledge of the fact that the injury in question is significant.

[21] Mr Lake relied on section 16 of the Act and asks the court to accept that Mr Samuel was examined by the orthopedic surgeon on the island and was advised by the doctor that there was nothing irregular. It was in June 2002, that, Mr Samuel's condition changed and

that he started to experience diminished sensation in his left foot. Mr Samuel was treated for that condition and still was of the view that his condition warranted him seeking compensation for his personal injuries.

[22] Mr Lake further submitted that Mr Samuel only became aware of the severity of his condition, in May 2004 when Dr Isidore in Miami, diagnosed him Counsel therefore urged the court, to accept that in the circumstances, the limitation period should run from May 2004 or in the alternative from June 2002 and in either of the two event the claim would not be statute barred since it was filed well within the 3 year period.

[23] In seeking to persuade the court not to strike out the claim learned counsel relied on the Eastern Caribbean Supreme Court decision **Vivian Alexander et al v. Richard Smith Civil Appeal No 4 of 2003** which dealt with the issue of whether the minority of an infant is a factor that the court should take into consideration in its determination of the issue of time running against an infant claimant. In that case Mr Justice Brian Alleyne JA, as he then was, examined the case of **Davis v. City Hackey Health Authority [1991' 2 Med LR 366** in which the Court of Appeal upheld the judgment of the trial judge. The Court of Appeal in **Davis** said and I quote "In that case the learned said trial judge the relevant Act provides two different limitation periods. He said this:

> "Accordingly, if one is looking at the second limitation period (paragraph (b) of subsection (4) one does not approach it on the basis that there is first of all a three year limitation period and nothing that happens during that period should be looked at on the issue of reasonableness. The second limitation period is entirely different from the normal three year period; consequently the question of reasonableness has to be looked at in the context of the whole period of time since the events said to give rise to the cause of action."

[24] Mr Justice Alleyne JA in a very useful exposition said "*clearly, the question of knowledge, or lack thereof, defines an entirely different limitation period independent of the date of occurrence which gave rise to the cause of action*." I cannot add anything to that exposition and therefore adopt it.

Corporation's submissions

[25] Learned counsel Ms Denise Parillon-Jonas, appearing on behalf of the corporation, argued that there is no doubt that Mr Samuel has filed his claim more than three years after the cause of action accrued. She submitted however, that Mr Samuel sought to argue that his date of knowledge was much later. She said that there is no dispute as to whether or not Mr Samuel knew the identity of the defendants and that he knew that his injuries were attributable in whole or in part to the defendants.

[26] However, she submitted that Mr Samuel first had knowledge that his injuries were significant as early as January 2001 and therefore the court should dismiss his claim since he has instituted his action in 2005 it is clearly statute barred.

[27] She submitted that the five medical reports exhibited by Mr Samuel to his Statement of Claim as "JS1", "JS2", "JS3", "JS4"; and "JS5" **all** clearly indicate that he suffered **serious injuries as a result of the accident.** In fact, Dr Kiwomya in his medical report (exhibit JS1) stated that upon examining Mr Samuel on **January 19, 2001,** he complained of "severe pain and stiffness in the neck and Lumbo-sacral spine…. Laceration of the oral cavity and the persistent cervical intractable pain."

[28] Counsel submitted that the Court should accept that Mr Samuel knew that he sustained a serious injury since January 19th 2001. Counsel referred to Exhibit "JS2", and said that Dr KK Singh, an orthopaedic specialist, indicated that he examined Mr Samuel on 12th February, 2001 and diagnosed him as suffering from soft tissue cervical spine injury and severe whiplash injury to his lumbo-sacral spine. Counsel submitted that this severe nature of Mr Samuel's injuries was confirmed and reported to Mr Samuel by Dr Singh since February 12th 2001.

[29] In addition, Mr Samuel's own evidence is that as a result of his injuries he could no longer work on his farm and was forced to hire Mr Peter Jacob and pay him $500.00 per week to do the farming. This is reflected in paragraph 25 of the Statement of Claim and Exhibit "JS9" to the Statement of Claim. Counsel advocated that at paragraph 26 of the

Statement of Claim, Mr Samuel indicated that he suffered loss and special damage of $88,000.00 as a result of having to pay the wages of the farm worker, Peter Jacob. Receipt No. 68 of Exhibit "JS9" clearly indicates that Mr Samuel has been paying Mr Peter Jacob to do his (Samuel's) farm work since January 20th, 2001, three days after the accident.

[30] Counsel pointed out that based on Mr Samuel's own evidence there is no doubt that from the date of the accident he incurred significant financial loss as a result of his injuries – financial loss at the rate of $500.00 per week or approximately $2,000.00 per month. Counsel submitted that Mr Samuel's alleged financial loss at the rate of $500.00 per week on account of his injuries is evidence of the seriousness and importance of the injuries.

[31] Counsel further submitted that Mr Samuel had knowledge that he suffered significant and serious injury a few days after the date of his accident (and at latest January – February 2001) and the medical experts confirmed to him that he had suffered significant and severe injuries. In support of this contention, counsel pointed out that Mr Samuel in his pleadings indicated since January 2001 he was in constant, severe, intractable pain. She further argued that contrary, to Mr Lake's submissions that Mr Samuel was told that his injuries were not serious, all of the medical reports indicate that he suffered serious injury and Mr Samuel alleged financial loss on account of his injury indicates the seriousness of his condition. Ms Parillon-Jonas argued that even if Mr Samuel had not obtained medical advice, "he ought to have known that his condition was serious because it was he who had to endure constant severe pain."

[32] In support of her arguments, counsel submitted that the test is whether the Claimant would have been reasonable in considering the injury not sufficiently serious to justify instituting proceedings for damages – See **Nash v. Eli Lilly & Co [1993] 4 All ER 383 at 391.** Counsel stated that having regard to the diagnoses of severe injury by Mr Samuel's medical doctors, the severe, debilitating, persistent pain suffered by him and his constant financial losses since the accident, he has clearly failed the test. Mr Samuel would have been totally unreasonable and practically ridiculous in considering his injuries not

sufficiently serious to justify instituting proceedings. Counsel therefore argued that the court should have no difficulty in concluding that Mr Samuel possessed the requisite knowledge since 2001. Accordingly his action is statute barred.

Court's analysis

[33] I am of the view that what I am required to do is to review the pleadings together with the medical reports filed on behalf of Mr Samuel in order to determine the corporation has satisfied the evidential burden of establishing that Mr Samuel had knowledge with section 16 of the Act and therefore ought to have filed his claim in an earlier period of time.

[34] In **Harford v. Brookes [1991] 3 All ER 559** Lord Donaldson said on the question of knowledge that:

> "The word has to be construed in the context of the purpose of the section, which is to determine a period of time within which a plaintiff can be required to start any proceedings. In this context "knowledge" clearly does not mean, "know for certain and beyond possibility of contradiction." It does, however, mean "know with sufficient confidence to justify embarking on the preliminaries to the issue of a writ such as submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence."

[35] I am also cognizant of the fact that this is an application that the court should approach with caution and I am guided by Mr May LJ in **Davis v. Ministry of Defence**.[1985] CA 418 said and I quote:

> "As the application is summarily to strike out the action in limine … the court should only accede to it if the answer to the question (as to when the plaintiff had knowledge is clear and obvious and the contrary unarguable."

[36] In **Nash v. Eli Lily & Co** the court had to address the Limitation Act of England 1980 and the material sections were sections 11 and 14 which are in substance identical to section 13(4) and 16 of the Limitation Act of Antigua and Barbuda. The relevant sections of the English Act are as follows:

> (3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (4) or (5) below.
>
> (4) Except where subsection (5) below applies, the period applicable is three years from (a) the date on which the cause of action accrued; or (b) the date of knowledge (if later) of the person injured.
>
> Subsection (5) is not relevant. None of the claims qualify under section 11(4)(a) and the question in each case is whether the claim is within three years from the date of knowledge of he plaintiff under section 11(4)(b).

Section 14 provides:

> "(1) In sections 11 and 12 of this Act references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts – (a) that the injury in question was significant; and (b) that the injury as attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and (c) the identity of the defendant … and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.
>
> (2) For the purposes of this section an injury is significant if the person whose date of knowledge is in question would reasonable have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.
>
> (3) For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire – (a) from facts observable or ascertainable by him; or (b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek; but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

[37] In **Nash v. Eli Lily & Co (1992) 4 All ER 383** it was held that the onus of establishing that the date of actual knowledge fell within the limitation period rests on the plaintiff, but the evidential burden of proving an earlier date of constructive knowledge rests on the defendant. It was stated that:

> "The 'date of knowledge' under section 11(4)(b) of the Act is when a claimant first had knowledge of the facts listed in section 14(1)(a), (b) and (c). The three relevant inquiries in these cases are, therefore, (1) when the injury was known to be 'significant' within the definition of section 14(2); (2) when it was known that the injury was attributable to the act or omission of the defendant; and (3) when the identity of the defendant or defendants was known. Apart from direct or actual knowledge a plaintiff may be affected by 'constructive knowledge' under section 14(3). This is knowledge which he might reasonably have been expected to acquire in the several manners under paras (a) and (b). There are issues as to the construction and application of these provisions, which are common to all the appeals. We will first consider the submissions, which have been made upon these common issues."

[38] At page 392 letter (c) - (d) Purchas LJ dealt extensively with the requisite knowledge and stated that:

> "In applying the section to the facts of these cases, we shall proceed on the basis that knowledge is a condition of mind which imports a degree of certainty and that the degree of certainty which is appropriate for this purpose is that which, for the particular plaintiff, may reasonably be regarded as sufficient to justify embarking upon the preliminaries to the making of a claim for compensation such as the taking of legal or other advice."

[39] Later at letter (d – e) of page 392 Purchas LJ stated:

> "Whether or not a state of mind for this purpose is properly to be treated by the court as knowledge seems to us to depend, in the first place, upon the nature of the information which the plaintiff has received, the extent to which he pays attention to the information as affecting him, and his capacity to understand it. There is a second stage at which the information, when received and understood, is evaluated. It may be rejected as unbelievable. It may be regarded unreliable or uncertain. The court must assess the intelligence of the plaintiff; consider and assess his assertions as to how he regarded such information as he had; and determine whether he had knowledge of the facts by reason of his understanding of the information. The section, it is to be emphasized, attaches consequence to the having of knowledge which depends upon information and understanding. It does not depend upon the character of a plaintiff with reference, for example, to how vindictive or forgiving he may be with reference to an injury done, nor whether he is acquisitive of self-denying or long-suffering or self-pitying. Such attributes, when demonstrated, may be of assistance in judging the probability of conduct

or the reliability of assertions but they do not determine whether a plaintiff has knowledge."

[40] At page 395 Lord Punchas went on to elaborate thus:

"The answer to the problem, we think, is to be found in the way in which the court should, on the facts, approach and decide the question whether and when a claimant's state of mind amounted to knowledge for the purpose of sections 11 and 14 of the Act. As we have said above, whether a claimant has knowledge depends both upon the information he has received and upon what he makes of it. If it appears that a claimant, while believing that his injury is attributable to the act of omission of the defendant, realises that his belief requires expert confirmation before he acquires such a degree of certainty of belief as amounts to knowledge, then he will not have knowledge until that confirmation is obtained. Frequently, as it seems to us, it will be safe for the court to proceed upon the basis that a claimant did realize that he required confirmation if he acted in a manner consistent with that state of mind even if he is, as he may frequently be, unable to recall with any degree of precision what his state of mind was. Conclusions as to a claimant's state of mind will, we think, usually be more securely based upon inference from conduct in the known circumstances than from a claimant's later assertion as to how he now recalls his then state of mind as between, for example, belief or knowledge. We add that we have difficulty in perceiving how in any case where a claimant has sought advice and taken proceeding it can rightly beheld that the claimant had not then had relevant knowledge."

[41] Further in **Nash v. Eli Lily & Co ibid p 895 - 896** their Lordship utilized the following conclusions to guide them in their consideration of the submissions made in this case. I find it very useful to reproduce their conclusions, as I hereby do.

"(1) 'Knowledge' in the meaning of section 14 is a state of mind experienced by the plaintiff actually existing or which might have existed had the plaintiff, acting reasonable, acquired knowledge from the facts observably or ascertainable by him or which he could have acquired with the help of medical or other appropriate expert advice which it was reasonable for him to obtain.

(2) The period of limitation begins to run when the plaintiff can first be said to have had knowledge of the nature of his injury to justify the particular plaintiff taking the preliminary steps for the institution of proceedings against the person or persons whose act or omission has caused the significant injury concerned.

(3) By section 14(3) 'knowledge' for the purposes of 14(1) includes knowledge reasonable expected to be acquired. There will be cases in which a firmly held belief actually held by the plaintiff precluded consideration of any further steps which he might reasonable have taken to acquire from knowledge of further facts before initiating proceedings. In other cases the state of the plaintiff's belief would make it reasonable for him to make the further inquiries envisaged in section 14(3). The temporal and circumstantial span of reasonably inquiry will depend on the factual context of the case and the subjective characteristics of the individual plaintiff involved.

(4) It is to be noted that a firm belief held by the plaintiff that his injury was attributable to the act or omission of the defendant, but in respect of which he thought it necessary to obtain reassurance or confirmation from experts, medical or legal, or others, would not be regarded as knowledge until the result of his inquiries was known to him or, if he delayed in obtaining that confirmation, until the time at which it was reasonable for him to have got it. If negative expert advice is obtained, that fact must be considered in combination with all other relevant facts in deciding when, if ever, the plaintiff had knowledge. If no inquiries were made, then, if it were reasonable for such inquiries to have been made, and if the failure to make them is not explained, constructive knowledge within the terms of section 14(3) must be considered. If the plaintiff held a firm belief, which was of sufficient certainty to justify the taking of the preliminary steps for proceedings by obtaining advice about making a claim for compensation, then such belief is knowledge and the limitation period would begin to run.

(5) Finally it is important to remember where the onus of proof lies. If the writ is not issued within three years of the date when the cause of action arose (see section 11(4)(a), the onus is on the plaintiff to plead and prove a date within the three years preceding the date of the issue of the writ, (see section 11(14)(b). If the defendant wishes to rely on a date prior to the three-year period immediately preceding the issue of the writ, the onus is on the defendant to prove that the plaintiff had or ought to have had knowledge by that date."

[42] Each case must be determined based on its own facts. Applying the principles enunciated in **Nash v. Eli Lily & Co** ibid, I am far from persuaded by the submissions advanced on behalf of Mr Samuel. I do not for one moment overlook the indications that Mr Samuel consulted other doctors subsequent to January and

February 2001. I note that on 17th February 2001, Dr Singh diagnosed him as cervical spine injury and severe whiplash. The true position, in my opinion, despite Mr Lake's vigorous submission is that as early as January/February 2001, Mr Samuel had acquired knowledge that his injury was significant from the fact known by him or which he obtained with medical help. I am fortified in this view, by the fact that Mr Samuel was a farmer was unable to work from that period and had to employ someone to work on his behalf.

[43] Accordingly, I am satisfied that the corporation has discharged the burden placed on them and have proved that Mr Samuel had the requisite knowledge as early as January – February 2001.

[44] By way of emphasis, I have no doubt that early as January 2001 and as late as February 2001 Mr Samuel had the requisite knowledge which could have enabled him to justify him taking the preliminary steps for proceedings by obtaining advice about making a claim for compensation. Accordingly the limitation period began to run as early as February 2001. Therefore, when Mr Samuel instituted proceedings on 25th October 2004 in doing so he clearly fell outside of the limitation period.

[45] The period of limitation therefore began to run when he first had knowledge of the nature of his injury sufficient to justify him taking preliminary steps for the institution of proceedings against the person or persons whose acts caused him significant injury. The simple logic of the corporation's case as advanced by Ms Parillon is therefore most attractive. He ought to have commenced his claim within 3 years from February 2001. Mr Samuel failed to do this.

[46] For all the above reasons, I am of the respectful opinion that Mr Samuel's claim is statute barred.

[47] In view of my above ruling it is therefore unnecessary to address the second issue raised in relation to his alleged non-compliance with the rules and I decline to do so.

Conclusion

[48] Accordingly, I make the following orders.

(1) I hereby strike out Mr John Samuel's claim against the State Insurance Corporation.

(2) I further order that he pays the Corporation costs in the sum of $2,500.00.

[50] I gratefully acknowledge the assistance of both learned counsel.

Louise Esther Blenman
High Court Judge.