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INSURANCE LAW BULLETIN

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PERILS OF OBTAINING AN INDEPENDENT MEDICAL ASSESSMENT BEFORE THE PLAINTIFF'S REPORT IS SERVED

Mitsis v. Holy Trinity Greek Orthodox Community of London

[The information below is provided as a service by Shillington McCall LLP and is not intended to be legal advice. For additional information on the issues within, please contact the firm at (519) 645-7330.]

The Superior Court recently released its judgment in the case of *Mitsis v. Holy Trinity Greek Orthodox Community of London* (“*Mitsis*”), dismissing the defendant’s request for an order requiring the plaintiff to attend a second defence medical examination. **This decision is significant as it demonstrates in some cases that it may be advisable for the defence to refrain from conducting an independent medical examination until the plaintiff’s medical expert report is provided.**

Facts

The plaintiff commenced an action following a slip and fall in which she sustained an orthopaedic shoulder fracture. No expert examinations had been conducted by either party when the pre-trial was scheduled. The defendant was the first party to serve an expert medical report from a physiatrist. When the plaintiff served an expert report from an orthopaedic surgeon, the defence scheduled a second defence medical, also with an orthopaedic surgeon. The plaintiff refused to attend which resulted in a motion for an order compelling her to attend.

Discussion

The automatic right to one independent medical is legislated by the *Courts of Justice Act* and at Rule 33.02 of the *Rules of Civil Procedure*. A defendant must obtain a court order to compel the plaintiff to undergo a subsequent medical examination.

Where the defence obtains a report before a plaintiff has served their own expert reports, it may lose the opportunity to have control over future reports and expert opinions. While it may be frustrating to wait for the plaintiff to serve reports, especially as the time for trial approaches, waiting may be in the defence’s best interest. A careful eye on service deadlines must be kept and scheduling difficulties can arise. One strategy is to ensure that there is an early agreement between counsel on service dates of reports. The defence can then attempt to ensure that an assessment can be completed and a report served well before pretrial/trial.

We are pleased to advise that we have become **Shillington McCall LLP** effective January 1, 2021. Our physical address, phone number and fax number remain unchanged.