SUPREME COURT OF QUEENSLAND

CITATION:	*Andrews v Traynor and Suncorp Metway Insurance Ltd* [2003] QSC 293
PARTIES:	**GARY MARK ANDREWS** (plaintiff) **v** **MARGARET ROSE TRAYNOR** **and** **SUNCORP METWAY INSURANCE LIMITED** ACN 075 695 966 (defendants)
FILE NO/S:	SC No 6111 of 1999
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	4 September 2003
DELIVERED AT:	Brisbane
HEARING DATE:	Written submissions
JUDGE:	White J
ORDER:	**1. The defendant Suncorp Metway Insurance Ltd pay the plaintiff the sum of $282,576** **2. The defendant pay the plaintiff's cost of and incidental to the proceedings on the standard basis**
CATCHWORDS:	INTEREST – RECOVERABILITY OF INTEREST – AWARD OF INTEREST AS DAMAGES – IN NEW SOUTH WALES – PARTICULAR CAUSES OF ACTION – personal injury proceedings under *Motor Accidents Compensation Act* 1988 (NSW) – whether plaintiff entitled to award of interest – whether damages assessment greater than 20 per cent higher than highest amount offered in settlement by defendant – whether offer unreasonable having regard to available information *Motor Accidents Compensation Act* 1988 (NSW)
COUNSEL:	J R Webb for the plaintiff R D Green for the second defendant
SOLICITORS:	Gall Sandfield & Smith for the plaintiff Dibbs Barker Gosling for the second defendant

[1] WHITE J: Reasons for the proposed judgment in this matter were delivered on 29 August 2003. Because it was a matter heard under the *Motor Accidents*

Compensation Act 1988 (NSW) ("the Act") issues associated with interest on the award of damages remain outstanding. Counsel were also given an opportunity to check the arithmetical calculations in the assessment of damages.

[2] As mentioned in the substantive reasons, the Act provides that the court may only award interest on past economic loss and on special damages. To obtain an award of interest the plaintiff must show that the damages assessment, excluding possible interest, is greater than 20 per cent higher than the highest amount offered in settlement by the defendant and that amount was unreasonable having regard to the information available to the defendant.

[3] The defendant's highest offer was $150,000 inclusive of statutory refunds plus costs on the District Court scale, made on the 24 July 2002. The proposed damages award plus 20 per cent exceeds that amount.

[4] The Act provides that the highest amount offered by the defendant is not unreasonable if, when the offer was made, the defendant was not able to make a reasonable assessment of the plaintiff's full entitlement to damages. The plaintiff contends that no new or unexpected evidence arose after the offer and that the offer, therefore, should be regarded, *prima facie*, as unreasonable.

[5] The difficulty for the defendant in assessing the appropriate level of damages to offer to the plaintiff was that the plaintiff's own treating doctors were unable to reconcile the plaintiff's symptoms on presentation with the organic evidence revealed on radiological investigation. This was compounded by the conduct of the plaintiff on examination (Waddell's signs) even when those signs were put in the context of the anxiety of the plaintiff to persuade his doctors that he was indeed suffering from the disabilities which he said he was. A number of those doctors including the medico-legal specialists suggested psychiatric assessment which might explain the plaintiff's presentation. There was no allegation of fraud. The assessment of Doctor Boulnois, a psychiatrist, did not advance matters.

[6] There were other factors which might have operated on the defendant's approach to an offer of settlement - the plaintiff's wife and two children were uninjured in the motor vehicle collision; and the plaintiff was also noted to have some pre-existing degenerative change to his spine.

[7] Another matter which made it difficult to assess the plaintiff's economic loss was the plaintiff's almost 12 month period of unemployment prior to the collision. No evidence was offered to the defendant that he was likely in the immediate future, to have been employed at an economically viable level. He indicated in his s 37 notice that he proposed working at his own business building fishing rods.

[8] A further factor which created some difficulty in forming the opinion of some of the medical specialists was the plaintiff's, no doubt unintentional, misinformation about when he first experienced low lumbar pain. This was crucial to the opinion of Dr Fraser who revised his position during the trial.

[9] In all those circumstances it was extremely difficult for the defendant to make any proper assessment of what injuries the plaintiff had actually suffered as a result of the motor vehicle collision and their consequences. It was not unreasonable, having

regard to the information available to it, to make the offer that it did. Accordingly, no interest should be awarded on past economic loss or special damages.

[10] The Act provides that costs are to be dealt with in accordance with the rules of court about offers to settle and are to follow the event.

[11] The plaintiff made an offer of settlement in the sum of $320,000. The amount of damages assessed does not exceed that amount. Both counsel accept that the appropriate order for costs is that the defendant pay the plaintiff's costs of and incidental to the proceeding to be assessed on the standard basis.

[12] The formal orders are:

1. The defendant Suncorp Metway Insurance Ltd pay the plaintiff the sum of $282,576.
2. The defendant pay the plaintiff's cost of and incidental to the proceedings on the standard basis.