

SUPREME COURT OF QUEENSLAND

CITATION: *Suncorp Metway Insurance Ltd v Hill* [2004] QCA 202

PARTIES: **SUNCORP METWAY INSURANCE LIMITED** ACN 075
695 966
(applicant/applicant)
v
EMILY MAREE HILL
(respondent/respondent)

FILE NO/S: Appeal No 9790 of 2003
DC No 2805 of 2003

DIVISION: Court of Appeal

PROCEEDING: Application for Leave s 118 DCA (Civil)

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 11 June 2004

DELIVERED AT: Brisbane

HEARING DATE: 2 April 2004

JUDGES: McPherson and Jerrard JJA and Fryberg J
Separate reasons for judgment of each member of the Court,
each concurring as to the orders made

ORDERS: **1. Leave to appeal be granted and the appeal allowed, and in lieu of the orders made on 3rd October 2003, order that the respondent Emily Maree Hill give Suncorp Metway Insurance Limited such information as was reasonably requested by it in the questions delivered by it to the respondent by letter dated 9 December 2002**

2. That the applicant pay the respondent's costs of the appeal assessed on the standard basis

CATCHWORDS: INSURANCE – THIRD PARTY LIABILITY INSURANCE – MOTOR VEHICLES – COMPULSORY INSURANCE LEGISLATION – GENERALLY – QUEENSLAND – duty of claimant to give information reasonably requested by insurer – effect of s 37A *Motor Accident Insurance Act* 1994 (Qld) on obligation to give information pursuant to s 45 – whether information sought by insurer was reasonably requested

Motor Accident Insurance Act 1994 (Qld), s 37, s 37A, s 45
Motor Accident Insurance Regulation 1994 (Qld), s 10
Adam P Brown Male Fashions Ltd v Philip Morris Inc (1981)

148 CLR 170, cited
Gitsham v Suncorp Metway Insurance Limited [2002] QCA 310; [2003] 2 Qd R 251, cited
Horinack v Suncorp Metway Insurance Ltd [2000] QCA 441; [2001] 2 Qd R 265, cited
Ridolfi v Rigato Farms Pty Ltd [2000] QCA 292; [2001] 2 Qd R 455, cited

COUNSEL: W Sofronoff QC, with R Green, for the applicant
 J Logan SC for the respondent

SOLICITORS: The applicant appeared on its own behalf
 Kerin & Co for the respondent

- [1] **McPHERSON JA:** I have read the reasons of Jerrard JA for allowing this appeal. I agree with his Honour's reasons and with the orders that he proposes.
- [2] **JERRARD JA:** This proceeding on appeal is an application by Suncorp Metway Insurance Limited for leave to appeal against a decision given on 3 October 2003 by a learned judge of the District Court. That application sought a declaration pursuant to s 50 of the *Motor Accident Insurance Act 1994* (Qld) that the respondent Emily Hill was obliged to provide further information "in the nature of answers to the questions delivered by" it to Ms Hill, described in the application as delivered pursuant to s 45 of the Act under cover of correspondence from Suncorp dated 9 December 2002. The application also sought an order that Ms Hill answer those questions by way of a statutory declaration and within 14 days.
- [3] The applicant submits in this Court that the proceedings both here and in the District Court raised matters of significance for insurers and legal practitioners acting in proceedings under the Act, and the proper application of various of its provisions. The respondent contends that the proceedings below and in this Court are in respect of the exercise of a judicial discretion in respect of a matter of practice and procedure under that Act, and that this Court would loath to grant leave.¹

Background matters

- [4] The respondent was injured in a motor vehicle accident on 9 July 2002, when the vehicle that a Mr Con Lucas was driving on the South East Freeway collided with the rear of a vehicle she was driving. On 17 July 2002 Ms Hill executed on page 6 thereof an eight page standard form document, giving timely notice in accordance with s 37 of the Act to Suncorp as the compulsory Third Party Insurer of Mr Lucas under Part 3 of the Act. In answer to the question appearing on the form "who caused the accident and why", the response appears "Con Lucas. Driving without due care and attention - driving too fast". In the section headed "Describe what happened", the answer appears:

"Unit 2 was travelling south along South East Freeway, going past Greenslopes bus (two illegible words on the photocopied form). Approximately 300m before Marshall Road exit unit 2 was travelling at 100 kmh and about to change lanes from right to middle lane when

1. Citing *Adam P. Brown Male Fashions Ltd v Philip Morris Inc.* (1981) 148 CLR 170 at 177 and *Ridolfi v Rigato Farms Pty Ltd* [2001] 2 Qd R 455 at [23] and [28].

she was hit from behind by unit 1 who came up behind unit 2 and pushed her car onto the guard rail”.

- [5] The standard form asks that the figure “1” be used to describe the vehicle that caused the accident. Those answers given by or on behalf of Ms Hill (they are handwritten and her signature is witnessed by a person in her present solicitor’s office) describe a collision occurring when Ms Hill was travelling at 100 kmh and Mr Lucas was obviously travelling faster, and by inference significantly in excess of the permissible speed.

- [6] Ms Hill gave a different account in a tape-recorded conversation with a police officer investigating the collision in July 2002. She told that officer that:

“I was going along, I was doing the speed limit in the fast lane and I indicated to go left into the middle lane and then I don’t know whether my tyre blew but the car hit the guard rail and then someone hit me up the bum. I blanked out for a second and didn’t realise what had happened. I turned around and saw that a car had hit me. I thought I had just hit the guard rail.”

In answer to the question “You said that you think your tyre blew, how was that?” she replied “I couldn’t steer or move, I don’t know. I have not had a blow out before”. In answer to another question, she said: “I’m pretty sure that it blew before I hit the guard rail”. And when asked if anything had happened to the steering wheel prior to her collisions with the guard rail, she said “I can’t really remember but I tried to pull the car away from the rail and I couldn’t”.

- [7] It is not clear when that account was given; it may have been on 10 July 2002 and it was before 22 July 2002. That account does not describe the speed of her vehicle when the following vehicle collided with hers. It does describe her colliding with the guard rail before the other car drove into hers.

- [8] Mr Lucas was also questioned by a police officer in a tape-recorded conversation, and his account described Ms Hill’s car as stopped or stationary at the time of the collision. He also thought Ms Hill had a “blow out”, and he said that he “had a look at the front wheel and that was the main cause of it” (apparently referring to her car); and he described his having become aware of her having a problem with her vehicle when the car travelling in front of his, and behind hers, moved into the left hand lane. As Mr Lucas described it:

“I was travelling on the Freeway, um seeing smoke come off the tyres, the car in front of me pulled out into the left hand lane, I hit the picks, and ran into the back of her car”; and

“as soon as the ute swerved I seen it, I didn’t really know what was happening at the time until the car pulled out and I slowed down and then I hit the picks and um I saw the car, the car was stopped there was no where I could go and there was nothing I could do.”

- [9] The appeal record does not reveal when Suncorp received the traffic incident extract containing those two versions of the collision, and which was printed on 24 July 2002 and exhibited in the record to an affidavit of its employed solicitor. However, on 9 December 2002 Suncorp wrote to Ms Hill’s solicitors asking them to have Ms Hill provide answers in the form of a statutory declaration to 15 questions, which

Suncorp's correspondence said it was asking pursuant to s 45(1) of the Act. Ms Hill's solicitors have consistently declined to answer those questions, describing them in the correspondence passing between the parties as being asked in the form of "the old interrogatories",² and her solicitors contended that s 45 did not authorise Suncorp to require Ms Hill to answer what were interrogatories. Those solicitors advised Suncorp that if it wished to forward an Additional Information Form (provided for by s 37A of the Act), then Ms Hill would complete that form. For its part, Suncorp insisted in the parties' correspondence upon a right to request information of Ms Hill pursuant to s 45 of the Act and to ask that her answers be verified by statutory declaration pursuant to s 45(7); prior to the hearing of the appeal, neither party would depart from those stated positions, and this resulted in Suncorp's application filed 27 August 2003 for the orders and declarations it sought, which application was heard on 16 September 2003. The application was based on s 50 of the Act, which empowers a court to order a claimant or an insurer to take specified action to remedy the default when there has been a failure to comply with a relevant duty imposed by the Act.

- [10] Prior to that application being filed Ms Hill's solicitors had advised Suncorp in a letter dated 17 March 2003 that "the questions and answers" in the Police Report described the circumstances of the accident "from our client's view point".³ However, after it was filed those solicitors had forwarded to Suncorp by letter dated 10 September 2003 a medical report dated 28 August 2003, in which Ms Hill was recorded as telling an orthopaedic surgeon this about the incident:⁴

"She states that she was changing lanes into the left hand lane when another vehicle hit her from behind forcing her into the guard rail where she impacted on the driver's side."

This is a different version again, apparently coming from Ms Hill, and the third one from her of which Suncorp had knowledge. It was at least the fourth version of how the collision occurred which Suncorp had received. The appeal record does not disclose what, if anything, the passengers in the car Mr Lucas drove had described to Suncorp about the circumstances of the collision. Ms Hill's solicitors had reminded Suncorp in March 2003 that it had not disclosed any accident information conveyed to it by any s 37 notices supplied by either of those passengers.

Suncorp's questions

- [11] The 15 questions Suncorp posed to Ms Hill were as follows: -
1. Prior to motor vehicle accident, had your client been experiencing any problems with her motor vehicle tyres in particular the tyre which allegedly blew out. If so, please provide us with the details.
 2. Did your client experience any problems with the steering of her vehicle prior to the accident, if so, provide details.
 3. When did your client first notice that her tyre had blown out.

2. In correspondence dated 6 February 2003, at AR 31, and 17 March 2003, at AR 48.

3. At AR 47.

4. At AR 87

4. Did your client impact with anything prior to our insured, if so, please provide full details including the time between this impact and the collision with our insured.
5. Prior to her accident, was your client's vehicle serviced regularly, if so, by whom and when was the last time it was serviced.
6. The last time your client's vehicle was serviced, was there any problems with either tyres, wheels, steering and brakes of the vehicle, if so, provide details.
7. Was your clients vehicle in a road worthy condition prior to the accident, if not, please provide full details.
8. Prior to the accident where had your client been and where was she going.
9. Prior to the collision with our insured vehicle did your client have her hazard lights on.
10. Prior to the accident what speed was your client travelling, and how does she know this.
11. Immediately prior to the accident was your client's vehicle moving and if so, what was the speed she was travelling.
12. Immediately prior to the accident what was your client's next intention.
13. Immediately prior to the accident was your client's full attention on the road, if not, please provide full details.
14. Did your client take any evasive action to avoid the collision.
15. Please describe the exact position of your client's vehicle on the roadway immediately prior to the collision."

Provisions of the Act and Regulations

[12] The sections of the Act and Regulations relevant to this appeal are as follows. First there is s 37, which relevantly reads:

"37 Notice of accident claim

(1) Before bringing an action in a court for damages for personal injury arising out of a motor vehicle accident, a claimant must give written notice of the motor vehicle claim to the insurer or 1 of the insurers, against which the action is to be brought -

(a) containing a statement of the information required under a regulation;".

Section 37(2) provides the times within which that notice must be given.

- [13] Regulation 10 of the *Motor Accident Insurance Regulation* 1994 lists the matters that must be included in a notice of claim. These include particulars of the claimant; of the circumstances of the accident; of its cause; of the vehicles involved and the names and addresses of the owner and a driver of each; of the names and addresses of the witnesses to the accident, of the police officer who attended the scene or to whom the accident was reported; of the claimant's employment and income at the time; of all significant disabilities suffered by the claimant and all claims made for damages, compensation or social security benefits for a significant disability; of all amounts received by way of damages, compensation or social security for such a disability; of the date the claimant was first examined by a doctor in relation to personal injury resulting from the accident and the date the claimant first consulted a lawyer about the possibility of making a claim. Regulation 10(2) requires that the notice contain a statement of the nature and extent of the claimant's loss, so far as it can be assessed as at the date of the notice, and an offer of settlement or a statement of why the claimant is not in a position to make one.
- [14] Regulation 10(3) requires that other than in a derivative claim, the notice contain a medical certificate stating a description of the injury and its effects including the extent to which it has limited or is likely to limit the claimant's ability to work, and details of hospitalisation and medical treatment to the date of the certificate and medical treatment considered necessary in the future. Regulation 10(5) requires that the notice include written permission allowing the insurer to have access to, and make copies of, records about the claimant and relevant to the claim, which are in the possession of other insurers, or of departments or agencies of the Commonwealth or the State (or another State) which administer police, transport, taxation, or social welfare laws; or of hospitals, ambulance or other emergency services, or of doctors or professional providers of rehabilitation services and the like, or of employers of the claimant or educational institutions.

Approved Forms

- [15] Regulation 10(4) provides that the notice must be in a form approved by the Commission (the Motor Accident Insurance Commission). The form signed by Ms Hill answers that description, as the approval of the December 2001 version of it was notified in the Government Gazette of 12 April 2002, pursuant to s 58(5) in Part 8 of the *Statutory Instrument Act* 1992. It makes provision within it for supplying the particulars, statements, information and authorities already described and mandated by s 37(1)(a) and Regulation 10.
- [16] Section 37 in its original form was slightly amended by the *Motor Accident Insurance Amendment Act* 2000, relevantly in force from 1 October 2000, and which introduced a s 37A. Section 37A(1) provides:
- “An insurer to whom notice of a motor vehicle accident claim is given may ask the claimant to provide additional information about the claim and the circumstances out of which it arises”.

Sub-section (2) provides:

“The information must be provided in a form approved by the Commission (an ‘**additional information form**’) to be completed and returned to the insurer.”

The explanatory note to that amending Act merely observes that the new section allows an insurer to seek additional information.

- [17] Regulation 10A⁵ merely provides that an additional information form must be signed and witnessed as indicated in the form and, where the form indicates the information is supposed to be verified on oath, contain the form of the oath completed by the claimant and the person authorised to take the oath. Neither s 37A nor Regulation 10A make any provision for the varieties of additional information an insurer may ask a claimant to provide.
- [18] On the appeal the Court was provided with a copy of the “additional information form” approved by the Commission. The notification of approval of that form was also published in the Government Gazette of 12 April 2002, at page 1386. A claimant completing that form must answer both specific questions and one very general one about the circumstances of the accident (questions 2-10); answer questions about any police action taken after the accident (questions 11-14); about the injuries sustained in the accident and how they now affect the claimant, and about whether the claimant needed an ambulance or was treated at or admitted to any hospital other than that shown on the Notice of Accident Claim form; provide for the names of all practitioners who have treated the claimant for injuries to be listed; describe whether rehabilitation has been recommended, and if so whether a plan has been developed for the claimant and whether the claimant has started that rehabilitation, and if so who provides it (questions 15-25); give details of the income lost because of the accident, and whether the claimant has returned to work at all and if not when the claimant expects to; answer questions about details of employment during the three years prior to the accident (or self-employment if applicable); give answers about any separate periods the claimant has been away from work because of the accident, including short periods; say whether the work now done or weekly income received is different because of the accident, whether the claimant has lost income from self-employment because of it; give details of estimated income lost and whether any business is still operating; describe details of wages or salary lost as an employee because of the accident and employment details, together with usual weekly working hours and standard weekly earnings; say whether the claimant had a second job before the accident and details of that, and whether before the accident the claimant had made further arrangements to start any new job, stop work or change duties; provide details of money received before or after the accident because of personal injuries, illness or disabilities (question 26-43); and say what the claimant would accept in payment of the claim. The information sought by the questions asked in that approved additional information form appears to be what an insurer would usually and reasonably require, in addition to that provided in a properly completed s 37 claim form, when attempting to resolve a claim.

Other obligations and duties imposed by the Act

- [19] Section 41 of the Act obliges an insurer, within six months after receipt of a notice of a motor vehicle accident claim, to take reasonable steps to inform itself of the circumstances of the accident out of which the claim arose, to give the claimant written notice stating whether liability is admitted or denied and the percentage of any contributory negligence claimed, and to advise a claimant who has made an

5. Inserted by 2000 S L No 236, effective from 1 October 2000.

offer of a settlement whether that is accepted or denied or to invite a claimant who has not yet made an offer of settlement to do so. Section 42(2) obliges an insurer as soon as practicable after receipt of notice of a claim to make a fair and reasonable estimate of the damages to which the claimant would be entitled in an action against the insurer, and to make a written offer (or a counter offer) of settlement, setting out in detail the basis on which the offer is made; or else the insurer must settle the claim by accepting the claimant's offer.

- [20] It is the obligations cast on it by s 41(2) which the applicant says justifies it in seeking orders that Ms Hill be ordered to answer the described questions, other than question 8 which the applicant acknowledges asks for irrelevant information. The applicant submits that for it to make a fair and reasonable estimate of Ms Hill's damages in an action against it, and for it to make an offer to her, it must form as clear as possible an understanding of the circumstances of the accident and of its liability as an insurer. For the right to seek information from Ms Hill relevant to that, other than in the answers she had given in her s 37 notice or might give when completing an additional information form, Suncorp relies on s 45(1)(b)(i) of the Act, which was enacted in the original Act,⁶ and which thus preceded the insertion of s 37A.
- [21] That section provides that a claimant must cooperate with the insurer and in particular must give information reasonably requested by the insurer about the circumstances of the accident out of which the claim arose, about the nature of the injuries resulting from the accident and any consequential disabilities and financial loss, about the medical treatment and rehabilitation services the claimant has sought or obtained, and about the claimant's medical history and any other claims for compensation for personal injury made by the claimant. This Court remarked in *Gitsham v Suncorp Metway Insurance Limited* [2003] 2 Qd R 251 at 265 that a fair reading of s 45(1)(b) compelled the conclusion that it intended to cover the whole field of what an insurer who might become a defendant would want to know about the claim, and that this was hardly surprising if an appropriate offer of settlement was to be made either informally or in a (mandatory) final offer. It was said that it was not surprising that the section covered such a wide field, because an insurer would not have the benefit of pleadings at that stage to define the ambit of the claim for damages, nor a statement of loss and damage.
- [22] Section 47 imposes a similar duty upon an insurer to cooperate with a claimant, including a duty to provide the claimant with copies of reports and other documentary material in the insurer's possession about the circumstances of the accident, and a duty if so requested to provide information in the insurer's possession, or which it can find out from the insured, about the circumstances or reasons for the accident. Those obligations respectively imposed by ss 45 and 47 would last until settlement of the claim or determination of it by judgment.
- [23] As was observed in the principal judgment in *Gitsham*⁷ and in the principal judgment of this Court in *Horinack v Suncorp Metway Insurance Ltd* [2001] 2 Qd R 265 at [13], one of the stated⁸ and principal objects of the Act is to bring about the speedy resolution of personal injury claims resulting from motor vehicle accidents,

6. As s 45(1)(a).

7. In [9].

8. In s 3(c).

and thus to avoid their determination by courts wherever possible. No doubt to that end, the amendment Act introduced a division 5A, providing for a compulsory conference of the parties before a claimant brings an action for damages in a court, and providing for the exchange of mandatory final offers if the claim is not settled at that conference. Mandatory offers have significant costs consequences in any subsequent litigation.

The judgment under challenge

[24] The object of avoiding recourse to court proceedings has not been the subject of outstanding achievement in this claim. The learned judge who dismissed Suncorp's application considered that it had chosen not to comply with s 37A of the Act when seeking additional information about the circumstances out of which the claim arose; the learned judge considered that s 37A, and regulation 10A and that approved additional information form, were the means the Parliament had provided by which an insurer might obtain that additional information. The judge held that Ms Hill's mandatory obligation to "complete and return" that form (imposed by s 37A(3)) could not be the subject of compliance when the form had never been sent. Accordingly, Ms Hill had not failed to comply with any relevantly imposed duty. The learned judge also held that if the duty imposed by s 45 was quite independent of that imposed by s 37A, then the information sought in the questions asked by Suncorp was not information reasonably requested by it.

[25] The judge held that was because what was reasonable was to be judged objectively and in the light of the insurer's knowledge derived from the claimant, the driver or owner of the insured vehicle (the driver or owner is obliged by s 35 of the Act to provide any information about an accident which an insurer may reasonably require within one month after receiving a request for it) and other sources, such as the police (an obligation is imposed by s 34 upon a person who proposes to make a motor vehicle accident claim to ensure that appropriate notice of that has been given to a Police Officer). The learned judge considered that some of the questions Suncorp wanted answered were either already answered by Ms Hill, some were irrelevant or immaterial, and some were patently of a fishing nature. Further, since Suncorp had denied liability for the incident, the learned judge had great difficulty in seeing why any need continued to exist for answers to those questions. Finally, and independently of the other expressed reasons, the learned judge was firmly of the view that the material already possessed by Suncorp, which included the tape-recorded interviews with Mr Lucas and Ms Hill, the file Suncorp possessed of the damage to Ms Hill's vehicle (it being by coincidence the property insurer of the vehicle she was driving), and the loss assessor's report it had received, was sufficient to paint a very good picture of the incident, from which a decision could be made by Suncorp on the chance that Ms Hill would succeed in establishing liability in it.

Resolution of this application for leave

[26] The judge who determined the application has considerable experience in civil litigation. Nevertheless, I respectfully disagree with the learned judge's opinion that Suncorp already possesses such sufficient information about the circumstances of the accident as would enable it to have a very good understanding of what occurred. It has three conflicting accounts from Ms Hill and a quite different one again from Mr Lucas. The photographs of Ms Hill's vehicle and the nature of the repairs

performed on it do not establish how or why the collision happened between the vehicles. To make a fair and reasonable estimate of the damages to which Ms Hill would be entitled in an action against it, and to comply sensibly with its obligation to make an offer of settlement to her, Suncorp needs to know all that it can reasonably learn about that collision, which includes knowledge of whether Ms Hill can describe what happened. If she cannot then Ms Hill and Suncorp are equally disadvantaged; if she can, that is information Suncorp can reasonably request from her.

- [27] It may be that provision of the information reasonably requested by Suncorp will give it a forensic advantage in its dealings with Ms Hill. This would occur for example if, when giving her answers verified by statutory declaration as Suncorp requested she do, she revealed that she now has little or no recollection of what happened. Other ways in which a claimant in her position might provide answers potentially damaging to credit can be imagined in circumstances of this sort. These include by providing answers which clearly contradict a version already given by the claimant. The fact of a potential forensic advantage from answers which may be given is not relevant to whether the information is reasonably requested by the insurer. No question of self-incrimination arises in this matter.
- [28] I also respectfully consider that the effect of the introduction of s 37A into the Act is not to deprive Suncorp of the benefit of the obligation placed on Ms Hill by s 45. While s 37A and Regulation 10A do not in any way limit the information which can be sought, the approved form asks for particular information which is probably that most commonly sought by insurers reviewing their files before making an offer. Section 37A provides a mechanism by which that commonly sought and relevant information must be supplied. Section 45(1)(b), in comparison, describes an ongoing duty to provide both the information which can be conveyed by completing an additional information form and a far wider range of information, being that reasonably requested about the four topics described in that section. Section 37A does not declare or imply that the procedure authorised therein is the only mechanism of obtaining either the information that can be provided by completing an additional information form or such further information that an insurer may reasonably request.
- [29] Senior counsel for Ms Hill submitted or accepted in argument that Suncorp might have asked those same 15 questions as an annexure to question 2 on the approved additional information form. Question 2, as the learned trial judge observed, “blandly” asks a claimant to “Please advise any additional information to that which was provided in the ‘notice of accident claim’ form and which would assist the insurer to better understand the circumstances and cause of the accident”. Counsel for Ms Hill submitted that step of asking these same questions in an annexure could have been taken but that the issue still would have remained whether that information, asked for as part of an additional information form and pursuant therefore to s 37A (as his instructing solicitors had required), was reasonably requested. That submission correctly identifies the only relevant question as being whether the information sought was reasonably requested, and that Ms Hill’s solicitors were in error, as was the learned trial judge, in taking the strict view that it must be asked for as information to be provided in an additional information form, and assertedly pursuant to s 37A, rather than frankly requested pursuant to s 45.

- [30] I also respectfully consider the learned judge to have been in error in the view, apparently formed, that Suncorp's rejection of liability made the answers it sought irrelevant. That rejection of liability occurred on 3 April 2003, and was expressed to be because Ms Hill's solicitors were refusing to cooperate by answering the "s 45" questions; because Suncorp still did not have a copy of the Police file; and because Suncorp contended that it was an inevitable accident with the real cause being a tyre blow out. That denial of liability was made pursuant to s 41(1)(b)(i), but nothing in the Act prevents an insurer from reversing that denial, nor relieves an insurer who has denied a liability from the obligation imposed by s 45(2) of fairly and reasonably estimating the damages to which Ms Hill would be entitled, nor of making a written offer. Nor did the denial relieve Suncorp of the liability of taking the other steps required by the Act, such as attending a compulsory conference and making a mandatory final offer, nor of the obligations imposed on it by s 47. Those obligations would of course entitle Ms Hill's solicitors to request Suncorp to provide answers to questions those solicitors might ask when seeking information in Suncorp's possession or which Suncorp can find out.
- [31] Information can be reasonably requested relevant to obligations under the Act whether or not the questions seeking it appear to be fishing or in the form of interrogatories. Some of the questions now automatically asked in the additional information form also have the appearance of "fishing", and some of being interrogatories; but this does not make the answers any less relevant. The beneficial purpose of the legislation requires that a common sense approach be taken both in framing questions intended to extract reasonably requested information and in answering them. It is appropriate to consider questions asked one by one, rather than to take "block" objections on the grounds of "fishing"; both parties agreed that if this Court considered the learned judge below erred in law in the construction of the Act and the obligations it imposed, and that those errors resulted in an injustice to Suncorp, then the appropriate order for this Court would be to allow the appeal and order that in relation to the questions set out in Suncorp's letter, that Ms Hill provide the information reasonably requested therein. The applicant agreed that it would pay Ms Hill's costs in any event. I consider the learned judge erred as described and that Suncorp was thereby deprived of the benefit of a right.
- [32] I would order that -
1. Leave to appeal be granted and the appeal allowed, and in lieu of the orders made on 3rd October 2003, order that the respondent Emily Maree Hill give Suncorp Metway Insurance Limited such information as was reasonably requested by it in the questions delivered by it to the respondent by letter dated 9 December 2002.
 2. That the applicant pay the respondent's costs of the appeal assessed on the standard basis.
- [33] **FRYBERG J:** I agree with Jerrard JA and with the orders he proposes.