SUPREME COURT OF QUEENSLAND

CITATION:	*Hunt v Lemura & Anor (No 1)* [2011] QSC 426
PARTIES:	**CARLA LOUISE HUNT** (Plaintiff) v **CARL SEBASTIAN LEMURA** (First Defendant) **AUSTRALIAN ASSOCIATED MOTOR INSURERS LIMITED** (Second Defendant)
FILE NO/S:	564 of 2010
DIVISION:	Trial
PROCEEDING:	Claim
ORIGINATING COURT:	Supreme Court, Cairns
DELIVERED ON:	4 October 2011 (ex tempore ruling)
DELIVERED AT:	Cairns
HEARING DATE:	3-5 October 2011
JUDGE:	Henry J
RULING:	**"Quantum statement" admitted into evidence as Exhibit 18.**
CATCHWORDS:	EVIDENCE – admissibility of "*Quantum statement*" in personal injury trial – where statement contained quantum calculations which were in dispute – whether entirety of statement should be admitted *Evidence Act 1977* (Qld) s 92 *Uniform Civil Procedure Rule 1999* (Qld) r 5, 394
COUNSEL:	A R Philp SC with P Lafferty for the plaintiff G Crow SC for the defendants
SOLICITORS:	Roati & Firth Solicitors for the plaintiff Miller Harris Lawyers for the defendant

HIS HONOUR: At the outset of this trial, Mr Crow SC, counsel for the defendant, objected to the proposed tender through the plaintiff by her counsel Mr Philp SC, of a document headed, "Quantum statement". I allowed the tender of the document, which became Exhibit 18. These are my reasons for doing so.

It is tolerably well known that at least since an era when Sir George Kneipp was the Northern Judge, the resident Judges from Rockhampton north have generally allowed the tender of so-called quantum statements in personal injuries trials. The practice appears to have been so long accepted that counsel before me have been unable to locate any published ruling on argument as to the admissibility of such statements. The upshot is that I have no guidance from past authority in respect of this longstanding practice as to the usual content of the statements allowed by it and the basis for their admissibility under it.

In the circumstances, I do not purport by this ruling to either endorse or depart from an apparently longstanding yet largely undefined practice. My ruling must inevitably be based only on the admissibility of the document sought to be tendered here. For reasons which will become apparent however, the existence of the abovementioned practice has some passing relevance to discretionary considerations affecting my ruling.

Exhibit 18 contains information which falls loosely into two categories, namely evidence which the plaintiff could give in

the normal course of evidence-in-chief and quantum calculations.

As to the former the plaintiff's statement addresses her injuries and illnesses suffered pre and post accident, the accident, the injuries suffered as a result of the accident, her attendance upon and treatment received from various health practitioners, her pain and suffering, her past problems in working after being injured, her plans for work in the future and the impact of her injuries on those plans, her loss of amenities of life and consequence of the injuries, her medical and associated expenses in consequence of the injuries, the care and assistance she had needed in the past as a result of the injuries, the care and assistance she is likely to require in the future as a result of her injuries, and her estimated future medical and associated expenses. These are all matters of fact about which she could give direct oral evidence-in-chief. It is unlikely that she would have the capacity to recall all of the factual detail which her statement recounts, for example, the dates of her attendance upon medical practitioners and specific amounts expended by her on medical treatment. However it is highly likely that in the normal course of giving evidence-in-chief she would be permitted to refresh her memory from documents in order to give such evidence. That of course would be a time consuming exercise.

The calculation of quantum in the statement is, in the main, contained within schedules annexed to it but some of it is mixed among paragraphs in the body of the statement which also

contain information of the kind which could be given in evidence-in-chief. As a result there is a blending of the calculation of quantum exercise with the provision of the evidentiary data or information used in those calculations.

It is obviously preferable to separate the exercise of calculating quantum from the exercise of adducing the evidence used in those calculations. The latter is probably a matter for evidence while the former is a matter largely for submission. It might be helpful to think in language of "quantum statement" and "quantum calculations" in order to avoid mixing the two.

Had there been a clearer demarcation between the two categories of information in the statement, I would have received that part of the statement containing information which could be given in evidence by the plaintiff as an exhibit and received the balance simply as an aid in much the same way as counsels' submissions as to the calculation of loss and damage, urged upon the Court, are commonly received.

In receiving the entirety of the statement as an exhibit, I did so alive to the fact that the quantum calculations should not be acted upon as evidence.

In exercising my discretion to permit the tender of the entirety of the statement, the foundation for which I will shortly identify, I regarded that course as the most expedient of the three options open to me. The other two options were

to simply refuse the tender of any statement or to adjourn to allow the statement to be reconfigured in order that the evidentiary component could be tendered. I took the view that the time likely to be taken in reconfiguring the statement would give rise to an unwarranted delay, particularly in circumstances where I would not intend, in any event, to act upon quantum calculations as evidence. As to the former option I was also influenced by considerations of expedience.

It is tolerably clear that the plaintiff prepared for this trial in anticipation of the following of the traditional practice in relation to the tendering of quantum statements. The unheralded abandonment of that practice by me would inevitably have resulted in the plaintiff requesting an adjournment for some time to more effectively prepare for what would have been very lengthy evidence-in-chief. That would necessarily have involved the marshalling of a considerable number of documents that would need to be shown to the plaintiff in the course of her evidence-in-chief.

A concern I did hold about fairness to the defendant was that the quantum statement had apparently only been provided to the defence on the day before trial. That is obviously unacceptable. Had, for example, the quantum statement been provided by way of an affidavit in the context of a direction by the Court that there be evidence-in-chief by affidavit, as can and does occur under the UCPR, it is inevitable that the directions would have set a timeframe for provision of such material far in advance of the trial. I infer however, that

much of the content of the statement was no surprise to Mr Crow because by the morning of trial he indicated that he only required some short further time to prepare in response to his receiving the statement belatedly. I appreciate his candour. Had he indicated that as a result of the late delivery of the statement, he would require the trial to be adjourned, for example, for an entire day, the considerations of expedience which influence the exercise of my discretion in this instance, may have given risen to a different ruling.

Turning finally to the basis for the admissibility of the quantum statement in this case, section 92 of the Evidence Act rendered admissible those parts of the statement containing information which the plaintiff would have been permitted to give in evidence-in-chief. Mr Crow submitted in effect though, that even those passages were not really the statement of the plaintiff and that in truth the statement was a contrived document probably authored by her lawyer and was thus not "direct" oral evidence. The submission was likely provoked more so by the quantum calculation components of the statement than by the paragraphs containing first-hand evidence from the plaintiff.

The reality is that lawyers commonly play a significant role in taking affidavits of witnesses which are later filed or tendered in evidence. Regardless of whether a lawyer has assisted in the taking of a statement or affidavit, the ultimate question is whether or not the evidence being provided therein is the evidence of the statement's purported

author. In this case, in the course of indicating I was inclined to allow the tender of the statement, I qualified that view by indicating the statement should first be signed and declared by the plaintiff as she would have done, were it an affidavit. Mr Crow, again exercising commendable candour, waived the need for that in the circumstances acknowledging that her counsel could just as easily open her evidence-in-chief by having her swear the contents of the statement to be true and correct.

Another major component of Mr Crow's objection was that allowing the tender of the statement would permit leading "par excellence". That is so, but we are in an era when the tender of evidence-in-chief in documentary form, in civil cases, is hardly unheard of. The tender of a statement through section 92 with the statement's author being called for cross-examination or the adducing of evidence-in-chief by affidavit with the author being produced for cross-examination are obviously legal exceptions to the traditional principle that evidence-in-chief should not be the product of leading.

The provisions allowing the abovementioned practices are not the only modern departures from the rules of evidence. Uniform Civil Procedure Rule 394(1) provides: "If a fact in issue is not seriously in dispute, or strict proof of a fact in issue might cause unnecessary or unreasonable expense, delay or inconvenience in a proceeding, the Court may order that evidence of the fact may be given at the trial or at any other stage of the proceeding in any way the Court directs."

Further, Uniform Civil Procedure Rule 5 provides at subsections (1) and (2): "The purpose of these rules is to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense. Accordingly, these rules are to be applied by the Courts with the objective of avoiding undue delay, expense and technicality, and facilitating the purpose of these rules."

In my view rule 394 and rule 5 read in conjunction, enliven a discretion in me to allow the tender of the entirety of the so-called quantum statement. In the circumstances of this individual case, in the exercise of my discretion in favour of its tender, considerations of delay and inconvenience loomed large for the reasons I have already explained. However, I also balance those considerations against the question whether any of the content of the quantum statement was seriously in dispute.

Plainly enough, the question of the calculation of the appropriate quantum is a matter in dispute but as already explained in receiving the statement as an exhibit, I do not intend to act upon the quantum calculations as evidence. The major factual dispute, as is apparent from the pleadings, goes to issues of whether or not the plaintiff was injured as seriously as she represents by the accident in question and whether or not she already had a pre-existing injury and, obviously, the appropriate quantum to be awarded depending on my findings of fact about those issues. The manner in which

her statement addresses those issues of fact, is brief and uncontroversial and I perceived no material disadvantage to the defence from the manner in which the statement touched upon those issues.

Finally, in the course of argument in relation to the exhibit, there were also some specific rulings made in relation to specific objections about certain paragraphs. The reasons I gave in ruling as I did in respect of those, appear to be reasonably clear on a perusal of the transcript of yesterday, but perhaps for one I should comment on further.

The statement did, in purporting to describe the injuries suffered by the plaintiff, provide diagnostic information by her of a kind which plainly she would not be permitted to give in evidence-in-chief. I upheld Mr Crow's objection in that regard and struck out those offending sections of the relevant paragraph. Had the paragraph simply contained the plaintiff's lay description of her injury or injuries, there would obviously have been no difficulty.
