SUPREME COURT OF QUEENSLAND

CITATION:	*Re Lindsay v Smith & Anor* [2001] QCA 229
PARTIES:	**PETER ERIC LINDSAY** (plaintiff/respondent) **v** **DANIEL OATES SMITH** (first defendant/first applicant) **THE NOMINAL DEFENDANT** (second defendant/second applicant)
FILE NO/S:	Appeal No 1937 of 2001 DC No 2099 of 1999
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s118 DCA (Civil)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	15 June 2001
DELIVERED AT:	Brisbane
HEARING DATE:	4 May 2001
JUDGES:	McMurdo P, McPherson JA, and Chesterman J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application dismissed with costs**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - GENERAL PRINCIPLES – INTERFERENCE WITH JUDGE'S FINDINGS OF FACT – where trial judge concluded the respondent had put off proceedings at the request of the applicant – whether the trial judge correctly followed *Morris v FAI General Insurance* INSURANCE – THIRD-PARTY LIABILITY INSURANCE – MOTOR VEHICLES – where the insurer admits liability – where the insurer later pleaded the respondent's claim was out of time – whether statement in letter constituted a contract – whether sufficient detriment shown so that the appellant is estopped from disputing liability *Motor Accident Insurance Act* 1994 (Qld) s 33, s 37, s 39, s 41, s 42, s 51

Croft v Francis & FAI General Insurance Company Limited [2000] QDC 109, disapproved
Coyne v Coyne (1997) 18 Qld Lawyer Rep 44, cited
Morris v FAI General Insurance Company Limited [1995] QCA 157, followed
Newton, Bellamy & Wolfe v State Government Insurance Office (Qld) [1986] 1 QdR 431, followed
Ryan v Pont and FAI General Insurance Company Limited [1997] QSC; Appeal No 24 of 1996, 12 June 1997, cited
Till v The Nominal Defendant [1999] QCA 490, cited
Vonhoff v FAI General Insurance Company Limited (1996) 24 MVR 537, cited

COUNSEL: Mr R Myers for the applicants
Mr S Given for the respondent

SOLICITORS: MacGillivrays for the applicants
Gadens for the respondent

[1] **McMURDO P:** I have read the reasons for judgment of Chesterman J and agree with all that he says. I only add the following brief comment.

[2] In addition to the matters raised by Chesterman J, the applicant submitted that the decision of the primary judge was contrary to the following decisions of Queensland trial courts: *Vonhoff v FAI General Insurance Company Limited*,[1] *Ryan v Pont and FAI General Insurance Company Limited*,[2] *Croft v Francis and FAI General Insurance Company Limited*,[3] *Coyne v Coyne*[4] and also this Court's decision in *Till v The Nominal Defendant*.[5]

[3] Chesterman J has dealt with the flaws in that contention as to *Till* and rejected the approach taken in *Coyne*.

[4] In *Vonhoff* an admission of liability under s 41 *Motor Accident Insurance Act* 1994 on the facts of that case was not found to preclude the defendant from pleading contributory negligence.

[5] In *Ryan*, an application for judgment for damages to be assessed based on an admission made under s 41 *Motor Accident Insurance Act* 1994, *Newton, Bellamy and Wolfe v State Government Insurance Office*[6] was distinguished on its facts; there was no evidence of any acceptance of an offer and nor was there forebearance by the plaintiff sufficient to constitute consideration for the admission of liability. Estoppel was not considered.

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1 (1996) 24 MVR 537.
2 Appeal No 24 of 1996, 12 June 1997.
3 [2000] QDC 109.
4 [1997-98] 18 QLR 44.
5 [1999] QCA 490.
6 [1986] 1 QdR 431.

[6] *Coyne*, too, was an application by the plaintiff to enter judgment on the basis of an admission of liability under s 41 *Motor Accident Insurance Act* 1994. The judge found on the facts of that case, which were distinguishable from *Newton*, there was no contract; nor was there sufficient evidence to justify an estoppel for the purposes of the application.

[7] The learned primary judge's decision was not contrary to any principles established in *Vonhoff*, *Ryan* or *Coyne*, which, like this case, turned on the application of their own facts to the law.

[8] For the reasons given by Chesterman J, the primary judge's conclusion was open on the evidence before him. This is not therefore a proper case in which to grant leave to appeal.

[9] I agree that the application for leave to appeal should be refused with costs to be assessed.

[10] **McPHERSON JA**: For the reasons given by Chesterman J, I agree that this application should be dismissed with costs.

[11] **CHESTERMAN J:** On 15 July 1995 the respondent was a passenger in a taxi crossing an intersection in Townsville. As it did the taxi was struck by a car, driven by the first applicant, who failed to obey a stop sign. The car was insured by FAI General Insurance Company Limited ("FAI"). A plaint issued in the District Court claimed damages on behalf of the respondent from the first applicant and FAI which subsequently became insolvent. It has been replaced in the proceedings by the Nominal Defendant pursuant to s 33(2) of the *Motor Accident Insurance Act* 1994 ("Act"). It is now the second applicant having become the first applicant's insurer for the purposes of the Act.

[12] The respondent resides in Victoria and instructed a local firm of solicitors, Harward Andrews Lawyers, to act on his behalf to recover damages. Mr Rutherford from that firm wrote to FAI on 3 November 1995 inquiring of "its attitude towards (the respondent's) claim". Having received no reply Mr Rutherford wrote again on 7 December 1995. On 22 December 1995 he sent FAI the respondent's notice of claim required by s 37 of the Act. FAI replied by letter dated 4 January 1996 which read:

> "We have your . . . notice of claim . . . We are satisfied the notice has been given as required.
>
> Liability in this matter is admitted, however, whilst the form has been completed, we note that neither an offer to settle nor medical reports were enclosed.
>
> We therefore would thank you to forward any reports that are to hand together with your advices regarding when we can expect final reports and an offer to settle in due course."

[13] Mr Rutherford deposed that he relied on FAI's admission of liability and "assumed that the . . . claim would proceed as an assessment of damages only". He informed the respondent of the admission and of his belief that all that needed to be done was

to collect evidence so that they would "be in a position to make an offer of settlement in accordance with the procedure made known to us by (FAI)".

[14] The respondent's injuries at first appeared capable of a relatively simple assessment. However complications in his condition appeared to develop late in December 1996 which necessitated a further, thorough, medical investigation of the respondent's injuries and their sequel.

[15] On or about 26 October 1997 Mr Rutherford spoke by telephone with a clerk employed by FAI in Brisbane. She had rung to inquire about the respondent's claim because, she explained, she had not heard from the Brisbane solicitors engaged by Mr Rutherford as his agents. On or about 13 March 1998 he spoke again by telephone with the clerk who said that the Brisbane solicitors:

> "Do not appear to be doing anything. There is no correspondence on the file from (them). We require communication from local solicitors as soon as possible. I will call you in two weeks to confirm we have received correspondence . . ."

[16] Mr Rutherford had told FAI's clerk that the respondent would not be able to make an offer to settle the respondent's claim until he had received the results of the further medical examination. There was a delay in obtaining that report, for which the doctor apologised. Mr Rutherford had not been told by FAI the course he proposed was unacceptable to it or that FAI required the respondent to commence proceedings within the limitation period. Mr Rutherford deposed:

> "Until all medical reports have been received . . . the (respondent) was not reasonably able to formulate an offer, nor was (FAI) in a position to consider or respond to any offer . . . I relied on the admissions of liability by (FAI) which caused me to consider that the second defendant would deal with the (respondent's) case as an assessment only."

[17] The third anniversary of the infliction of the respondent's injuries was 15 July 1998. On 19 August 1998 Mr Rutherford heard from his Brisbane agents. They had spoken to FAI about the respondent's claim but had been told that the insurer would not consider it because the limitation period had expired. That same day Mr Rutherford obtained urgent instructions from the respondent (in relation to the quantum) of the claim and passed those instructions onto his Brisbane agents for communication to FAI. On 18 November 1998 he was informed by his agents that FAI refused to entertain his offer for settlement.

[18] The respondent's plaint was filed on 27 May 1999. On 16 July FAI filed its defence which pleaded *inter alia* that the action had "not been commenced within three years after the date upon which the alleged cause of action arose and . . as a consequence . . . the action is statute barred pursuant to s 11 of the *Limitations of Actions Act* 1974".

The respondent applied for orders that that part of the defence be struck out, or that judgment be entered for the respondent for damages to be assessed. In each case the basis for the relief claimed was the admission of liability made by FAI in its letter of 4 January 1996. On 15 December 2000 his Honour Judge Samios gave judgment for the respondent against the first applicant and FAI for damages to be

assessed. His Honour found that applicants were stopped from denying liability. FAI's admission was, his Honour found, a representation on which Mr Rutherford and the respondent relied in not commencing proceedings within three years. That reliance would have been to the respondent's detriment if the applicants could dispute their liability to pay damages to the respondent. As well his Honour found that the admission constituted a contract between FAI and the respondent, or an offer which had been accepted by the respondent the terms of which were that FAI promised to pay the respondent reasonable damages.

[19] Both findings are criticised by the applicants who complained of particular injustice in the present case and that his Honour's judgment constitutes "a dangerous precedent . . . in respect of the significance of admissions made pursuant to s 41 of the Act".

[20] The conclusions reached by the learned District Court judge are amply supported by a number of authorities which have never been doubted. They have been applied in many instances. They are said to be no longer applicable because FAI's admission was made under statutory compulsion and was for the purposes only of the Act. It is submitted therefore the admission cannot be regarded as giving rise to an estoppel or a contract.

[21] Before considering the authorities it is appropriate to look at the Act. Section 37 provides that:

> "Before bringing an action . . . for damages for personal injury arising out of a motor vehicle accident, a claimant must give written notice of the . . . accident claim to the insurer . . . against which the action is to be brought –
>
> (a) containing a statement of . . . information required . .
> (b) authorising the insurer to have access to records and sources of information . . ."

By s 39 if such a notice is given to an insurer it must, within fourteen days, give the claimant written notice stating whether it is satisfied that notice has been given as required or waiving the requirement of notice, or if the insurer is not satisfied with the contents of a notice, identifying the deficiency.

Section 39 (5) provides that a claimant may bring proceedings for damages only if he is given notice, or the insurer has waived compliance with the requirement of notice, and, at least six months have elapsed since the giving of notice or the waiver, unless the insurer denies liability or the extent to which it admits liability is unacceptable to the claimant.

Section 41 provides:

> "Within 6 months after an insurer receives notice of a motor vehicle accident claim . . . the insurer must –
>
> (a) take reasonable steps to inform itself of the circumstances of the motor vehicle accident out of which the claim arises; and
> (b) give the claimant written notice stating

(i) whether liability is admitted or denied; and
(ii) if contributory negligence is claimed – the degree of the contributory negligence expressed as a percentage; and

(c) if the claimant made an offer of settlement . . . inform the claimant whether the insurer accepts or rejects the offer or . . . invite the claimant to make a written offer of settlement.

(2) As soon as practicable after an insurer received notice of a claim . . . the insurer must –

(a) make a fair and reasonable estimate of the damages to which the claimant would be entitled in an action . . . and

(b) make a written offer . . . or settle the claim by accepting an offer made by the claimant."

[22] Once an insurer admits liability pursuant to s 41(2) it becomes obliged to pay for hospital, medical and pharmaceutical expenses reasonably incurred by the claimant (s 42) and it must insure that reasonable rehabilitation services are made available to the claimant (s 51(3)).

Section 41(6) allows an insurer to withdraw an admission in circumstances specified by the subsection but this has been held to be declaratory of the general law. The subsection does not indicate the only circumstances in which an admission of liability may be withdrawn (See *Till v The Nominal Defendant* [1999] QCA 490; Appeal No 2676 of 1999, 26 November 1999).

[23] The case principally relied upon in this area of jurisprudence is *Newton, Bellamy & Wolfe v State Government Insurance Office (Qld)* [1986] 1 Qd R 431, a case decided on the previous motor vehicle insurance legislation. SGIO was the licensed insurer of a vehicle whose driver caused the death of the plaintiff's parents. The estate sued for damages for the lost dependency. Following correspondence from the plaintiff's solicitors the insurer wrote asking for details of the claim and adding "it is confirmed that liability is not an issue". Correspondence followed in which details of loss were provided but no agreement was reached on quantum. Eventually proceedings were commenced but a defence was delivered raising the limitation period. The plaintiff sought and obtained a declaration that the correspondence constituted an "agreement for the admission of liability" and an agreement "not to plead . . . any limitation period". In their joint judgment Andrews ACJ and Derrington J said (437):

> " . . . we are of the view that . . . an agreement was reached between the parties. The question thus is whether what is said between them contains an implied undertaking not to plead the statute . . . the arrangement here is supported by consideration. The insurer by accepting liability offers the other party an inducement and impliedly requests him to forebear from taking action with avoidance of costs of formal proceedings at the expense of the insured. Once the negotiations are thus commenced the potential for saving is created and the insurer is bound to pay something, however ultimately it is to be assessed, to that other party."

[24] McPherson J (as his Honour then was) was of the same opinion. He wrote (441 – 444):

> "The statement in the . . . letter constituted a contract, or at least a firm offer capable of being accepted so as to create a contract. If the latter, then it was one that was accepted by the solicitor's letter . . . providing particulars of the claims . . .
>
> It seems to me that where, as here, parties who may be expected to know something of the form of legal proceedings, are addressing themselves to a claim such as this (in which the only issues are liability and quantum of damages) the use by one of them of the expression 'liability is not in issue' must be understood to mean at least that, if and when the plaintiff's claim is pleaded, the defendant will not expressly or by implication deny . . . allegations . . . that plead facts which if proved would establish liability on the part of the defendant. . . . this case is one where . . . liability in damages for the loss resulting from the negligence . . . was 'once and for all definitely accepted' by the SGIO so as to preclude it from putting forward any defence whatever which would impeach that liability.
>
> . . . there is really no doubt that the parties contemplated that, if liability was settled by agreement but quantum of damages was not, the damages would be assessed by the court in a action brought by the plaintiffs for that purpose . . . I see no great difficulty in identifying the consideration . . . forbearance to sue, even if only for a short period, is consideration for a promise . . . Here it is not at all difficult to discern in the correspondence at least an implied request by the SGIO that the plaintiffs refrain from suing pending an investigation by the former of the circumstances of the accident . . . The delay in instituting proceedings gave it an opportunity of . . . investigating . . . liability. Given that opportunity, which it sought and acted upon, the SGIO agreed that it was liable. It may not now say that there was no consideration for that agreement."

[25] I have set out the passages from the judgments at some length because they seem entirely apposite to the present case, subject to a possible qualification which will be discussed in the following paragraphs. I would have thought that commonly an admission of liability by a compulsory motor vehicle insurer would give rise to a contract in the terms described by McPherson J. The contract is, in essence, "in consideration of the claimant forbearing to sue and not incurring the expense of proving liability, which the insurer will ultimately have to pay, the insurer admits liability and agrees to pay reasonable damages". There will, of course, be cases in which an admission of liability does not give rise to a contract but, often, I would expect it to do so. In this case, as in *Newton*, FAI's letter of 4 January 1996 at least constituted an offer to pay reasonable damages on the consideration identified. The respondent, by his solicitor, accepted the offer when FAI was informed that medical reports would be obtained and sent when the respondent's injuries had stabilised. The respondent forbore to commence proceedings pursuant to the agreement and did not incur expenses of proving negligence against the first applicant.

[26] The qualification I mentioned is said to arise from the terms of Division 3 of Part 4 of the Act. Counsel for the applicants stressed that the admission was made pursuant to the obligation found in s 41 and for the "limited purpose of resolving the claim expeditiously", which is the evident objective of that Division. I cannot see that this makes any difference to the applicable law of contract. Section 41 did not oblige FAI to admit liability. Its obligation was to respond within six months to the respondent's notice of claim. Its response had to indicate whether it admitted or disputed liability or to what extent it admitted it. It was perfectly free to deny liability, even in circumstances where investigation indicated that the first applicant was the sole cause of the accident. Such a response is discouraged by s 41(7), which imposes costs sanctions on intimated positions on liability which turn out to be unrealistic, but it is not prohibited.

[27] The applicants stress the moratorium on the commencement of legal proceedings created by s 39(5) of the Act. This prevents the institution of proceedings until the expiration of six months from the notice of claim, or the denial of liability, whichever comes first. An admission of liability, where that is the insurer's response, should occur within the six month period. A claimant cannot start proceedings in the balance of the period. For this reason it is submitted that an admission cannot result in a claimant forbearing to sue, because it is prevented from suing by the Act. The judgments in *Newton* found consideration for the insurer's promise to pay damages in such forbearance. The argument has substance but it is not, I think, sufficient to prevent, in an appropriate case, the formation of a contract consequent upon an admission of liability. It is to be noted that the moratorium dates from the notice, not the admission. The applicants' argument would have more force if it were the case that every admission would, *ipso facto* delay the commencement of proceedings by six months. The strength of this argument may vary with the length of time between the giving of notice and the insurer's response. There is more scope to find a request to forbear from bringing suit where the admission of liability is made shortly before the six months expire than where it is made soon after notice is given. The present application is in that category. The admission was made on 4 January 1996. The respondent could not have sued until 22 June 1996 by virtue of s 39(5). Even in such cases the admission may constitute a request not to commence proceedings after the expiration of the six month moratorium is ordained to allow the insurer to decide its response to the claim and, where liability is admitted, to allow both parties to reach a settlement before costs of litigation are incurred. It is common experience that negotiations for settlement often extend beyond six months. It is by no means strange that an insurer who accepts that it is liable to pay damages should request a claimant not to commence proceedings, in order to save costs, at least until reasonable attempts have been made to reach a settlement. If a claimant accedes to such a request and defers proceedings, even for a brief period, beyond the statutory moratorium, there will be consideration for a contract of the type identified. Moreover consideration is also provided by the claimant incurring the cost of proving negligence. Such consideration is not affected by the compulsory delay. Those costs can be incurred during the period.

[28] The trial judge was justified in concluding that there had been such a request for forbearance by FAI and that the respondent, by his solicitors, had put off proceedings beyond 22 June 1996 by reason of that request. The conversations between FAI's clerk in October 1997 and March 1998 indicate that FAI encouraged

Mr Rutherford to submit an offer supported by medical reports. Its implied complaint that the respondent was not proceeding diligently to a settlement, and its acquiescence in the explanation that the respondent could not make a sensible offer until further medical examinations were completed support the conclusion that FAI expected that negotiations might be protracted. This supports the judge's view that FAI had requested the institution of proceedings be delayed beyond the six month moratorium.

[29] The second basis on which Samios DCJ disposed of the application was also justified by authority. In *Morris v FAI General Insurance Company Limited* [1995] QCA 157 (Appeal No 242 of 1994, 5 May 1995) FAI had received a letter dated 1 September 1987 from Mrs Morris's solicitors which read:

> ". . . you were the insurer of the vehicle (which injured Mrs Morris). We enclose a copy of a report from Dr Bendeich . . . we have instructions to commence proceedings. Would you please let us know within the next 28 days whether it is your intention to offer a settlement . . ."

The insurer replied promptly to advise that it was "prepared to accept your client's claim for personal injuries" and to request copies of medical reports to enable the insurer "to give consideration to an offer . . .". The solicitor believed that FAI had accepted his offer to negotiate without commencing proceedings to save the costs of litigation. He advised Mrs Morris that it was not necessary for her to commence proceedings within the limitation period because the defendant had contractually committed itself to pay damages and she had six years in which to sue. No agreement was reached on quantum and after the expiration of the three year limitation period from the infliction of injury the insurer refused to negotiate any further.

[30] The primary judge held that the insurer's letter :

> "Had induced (Mrs Morris) through her solicitor to assume that the defendant would accept the obligation to pay . . . damages in circumstances where the defendant knew that if it did not give such an intimation, proceedings, and the costs thereof, would follow. That is a clear and reasonable assumption from the letter. Acting on that assumption, (Mrs Morris) . . . failed to issue proceedings within the statutory time limit and has thereby . . . acted to her detriment."

On appeal Pincus and Davies JJA said:

> " . . . once one accepts that the assumption mentioned by the primary judge was adopted by (Mrs Morris) as a result of the letter . . the question becomes whether it would be unjust and oppressive on the part of the (insurer) to depart from it. It was not necessary for (Mrs Morris) to show that every recipient of such a letter would treat it as making the institution of proceedings unnecessary; it is enough that (Mrs Morris) did so. Then the (insurer's) difficulty is that its letter . . . is well capable of conveying to a prospective plaintiff that liability will not be disputed and that it is unnecessary to institute the proceedings . . . Further it must have been evident . . . that its letter could give rise to the very assumption which the respondent adopted."

It was therefore held that a sufficient detriment had been shown and that the insurer was estopped from disputing its liability to pay Mrs Morris damages.

[31] The applicants advanced two reasons why this approach should no longer be followed. The first is the one already noted: that an admission compelled by s 41 should not be regarded as giving rise to representation capable of being acted upon to the detriment of the claimant. Again I do not see why not. An insurer does not have to admit liability. If it does it can do so on terms which make it clear that it insists upon any proceedings being commenced within three years. Not every admission of liability will give rise to an estoppel, but I do not see that, because an insurer is obliged to respond to a notice of claim, that a response admitting liability cannot constitute a representation capable of giving rise to an estoppel. The findings that the respondent, by his solicitor, acted to his detriment by not commencing proceedings within time and by endeavouring to reach a negotiated settlement is sufficient detriment to make it unconscientious for FAI to withdraw its admission.

[32] The second point argued is that *Till* has authoritatively decided that admissions made pursuant to s 41 may be withdrawn at any time and cannot, therefore, give rise to an estoppel. *Till* decided no such thing. It was a case in which an insurer had admitted liability pursuant to the provisions of Division 3. No agreement was reached at to quantum and the claimant commenced proceedings. The insurer by its defence denied liability and the claimant was unsuccessful in its attempt to have the denial struck out. The court said (para 13):

> "The general law position is that an admission of liability will be binding only where the party to whom the admission was made has acted or omitted to act in reliance on it in circumstances where it would be unconscionable to permit departure from it."

This is an express recognition that an admission of liability made pursuant to s 41 is capable of giving rise to an estoppel. Moreover the court went on (para 20):

> "In each case the plaintiff had full opportunity to give or call evidence. In neither case was it proved or even asserted that the plaintiff suffered any detriment in consequence of any act or omission in reliance on the admissions. Nor was any other evidence adduced or reason advanced which would make it unconscionable for the insurer in either case to deny liability. It is plain therefore that, in neither case under the general law could any estoppel arise."

[33] I did not understand the applicant to argue that the statutory moratorium had any relevance to whether an admission of liability had given rise to an estoppel. *Till* is against such a proposition. Where, as in *Morris*, the admission was treated as a representation that the institution of proceedings was unnecessary the statutory postponement is irrelevant. The representation is that it is unnecessary to commence proceedings at all. A temporary restraint on commencement of proceedings cannot affect such a representation being acted on to a claimant's detriment.

[34] The applicant relied also upon a decision of his Honour Judge McGill, *Croft v Francis & FAI General Insurance Company Limited* [2000] QDC 109; Plaint 2393 of 1999, 6 June 2000, another case of this type. His Honour said:

> "If liability is admitted but quantum has not been agreed there is the prospect of litigation being necessary in order to resolve . . . quantum. In these circumstances . . . a bare admission of liability may be interpreted in two ways:
>
> > Liability is admitted (but if quantum is not . . . agreed any action to enforce the claim will have to be brought within the limitation period . . .) or
> >
> > Liability is admitted (and if quantum is not also agreed it is not necessary for any action to enforce the claim to be brought within the limitation period . . .)
>
> Obviously, the correct interpretation in a particular case will depend on the context . . ."

[35] His Honour then found in the framework of the Act indications that an admission of liability ought not to be regarded as giving rise to an estoppel or a contract. His Honour noted that:

> "One of the objects of the act was 'to encourage . . . speedy resolution of personal injury claims . . .' It would be scarcely consistent with that object if every time an insurer admitted liability when complying with the statutory obligation . . . the effect was to exempt that claim from . . . the *Limitation Act*."

With respect to contract his Honour said:

> "The fact that the statute required the second defendant to say whether or not it admitted liability is, I think, an important consideration in determining whether the statement that liability was admitted was intended to be of contractual effect."

[36] For the reasons I have endeavoured to express I do not find this approach persuasive. One thing to emerge from *Till* is that s 41 does not modify the law relating to estoppel. There seems no reason why it should be construed as creating an impediment to the creation of contracts. His Honour was, with respect, quite right to point out that whether an admission has given rise to an estoppel or a contract depends upon context. An insurer who wishes to avoid its admission having either consequence can do so by the terms in which it is expressed. If it choses to admit liability unequivocally it is not, in my opinion, contrary to the objects of the Act that it is bound by the admission where a claimant takes it at its word.

[37] A number of other authorities were referred to the court but none of them has particular relevance to the points at issue.

[38] The evidence put before the learned District Court judge was capable of supporting his Honour's conclusions that FAI had agreed to pay the respondent reasonable damages and that it was estopped from disputing its liability to pay damages. His Honour's finding to that effect cannot be criticised. There is nothing in the provisions of the Act, and in s 41 in particular, which prevents the formation of those conclusions.

[39] I would refuse the applicant's leave to appeal with costs to be assessed.