SUPREME COURT OF QUEENSLAND

CITATION:	*Suncorp Metway Insurance Ltd v Brown* [2004] QCA 325
PARTIES:	**SUNCORP METWAY INSURANCE LIMITED** ACN 075 695 966 (applicant/applicant) **v** **ALAN LAWSON BROWN** (respondent/respondent)
FILE NO/S:	Appeal No 6453 of 2004 DC No 2146 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	10 September 2004
DELIVERED AT:	Brisbane
HEARING DATE:	27 August 2004
JUDGES:	McPherson and Williams JJA and Holmes J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Leave to appeal granted** **2. Allow the appeal** **3. Set aside the order of the District Court of 28 June 2004, and in lieu thereof order that the respondent execute an authority directed to Centrelink requesting the release to the solicitors for the applicant of documents on the respondent's Centrelink file relating to payments by Centrelink to the respondent during the period of three years immediately preceding 2 December 2000 and thereafter** **4. Order the applicant pay the respondent's costs of and incidental to the application and appeal, with allowance for Senior Counsel, to be assessed on an indemnity basis**
CATCHWORDS:	INSURANCE – THIRD-PARTY LIABILITY INSURANCE – MOTOR VEHICLES – COMPULSORY INSURANCE LEGISLATION – RIGHTS AND LIABILITIES OF INSURER IN RESPECT OF DEFENCE AND COMPROMISE – QUEENSLAND – where respondent made

claim for damages for personal injury from a motor vehicle accident – where respondent had received payments from Centrelink – where respondent refused to sign further authority directed to Centrelink enabling applicant to obtain information from Centrelink's file – whether respondent obliged to sign further authority

Motor Accident Insurance Act 1994 (Qld), s 3, s 37, s 45, s 50
Motor Accident Insurance Regulation 1994 (Qld), reg 10

Attard v Hore & Anor [2002] QSC 437; SC No 530 of 2002, 30 August 2002, considered
Esso Australia Resources v Plowman (1995) 183 CLR 10, cited
Gitsham v Suncorp Metway Insurance Ltd [2003] 2 Qd R 251, cited
King v A G Australia Holdings Ltd (2002) 121 FCR 480, cited
Suncorp Metway Insurance Ltd v Hill [2004] QCA 202; Appeal No 9790 of 2003, 11 June 2004, cited

COUNSEL: R J Douglas SC for the applicant
M Grant-Taylor SC for the respondent

SOLICITORS: Jensen McConaghy for the applicant
Carter Capner for the respondent

[1] **McPHERSON JA:** I agree with the views stated by Williams JA in his reasons in this matter and with the orders he proposes. I think it should also be borne in mind that there is now a good deal of authority that documents, and the information they contain, discovered or disclosed in civil proceedings may be used only for the purposes of that litigation and not otherwise. For a recent application of this principle, see *King v A G Australia Holdings Ltd* (2002) 121 FCR 480, 504-505. There is every reason why a similar duty should be regarded as applying to documents and information disclosed in the course of the pre-litigation procedures imposed by the *Motor Accident Insurance Act 1994* and regulations: cf *Esso Australia Resources v Plowman* (1995) 183 CLR 10, 36. When this consideration is brought into account, the objection to requiring a claimant to facilitate the production of the information sought by the insurer, in this case from Centrelink, loses much of its force. Restricted in the way proposed by Williams JA, it falls fairly within the duty of co-operation mandated by s 45(1)(b)(iv).

[2] **WILLIAMS JA:** By notice of claim pursuant to s 37 of the *Motor Accident Insurance Act* 1994 ("the Act") the respondent, Alan Lawson Brown, gave notice of intention to claim damages for personal injury arising out of a motor vehicle accident which occurred on 2 December 2000. The applicant, Suncorp Metway Insurance Ltd, was the insurer pursuant to the Act of the motorcycle involved.

[3] In the notice the respondent disclosed that he had previously made a claim for social security benefits with respect to a significant disability which "may be relevant to the assessment of the extent of the injury suffered by the injured person in the accident".

[4] As the matter has progressed through the pre-litigation stages envisaged by the Act it has become obvious that the respondent is making a claim for significant past and future economic loss. In material provided by the respondent to the applicant it was stated that the respondent had received payments from Centrelink, including sickness benefits from 2 December 2000 to 4 April 2001.

[5] In the notice complying with s 37 of the Act immediately above the signature of the respondent the following relevant clauses appeared:

> "The signing of this form constitutes the injured person's written permission to allow the insurer to obtain records or information that may affect his/her claim (including information on his/her pre-accident circumstances). Persons and entities from whom information may be obtained are:
>
> …
>
> - a department, agency or instrumentality of the Commonwealth … administering … social welfare laws.
>
> …
>
> I hereby authorise the insurer against whom this claim is made … to contact those persons and entities aforementioned and to obtain information and documents relevant to the claim.
>
> I hereby authorise those persons or entities listed in this section … to provide information and documents to the insurer … against whom this claim is made."

[6] The applicant sought information from Centrelink pertaining to the respondent pursuant to the provisions contained in the s 37 notice, but Centrelink did not regard that as sufficient authority authorising or justifying it to make that information available to the applicant.

[7] Section 37(1) of the Act provides that the notice therein prescribed must authorise "the insurer to have access to records and sources of information relevant to the claim specified under a regulation". Then s 45(1) of the Act imposes on a claimant a duty to "cooperate with the insurer". The section goes on to particularise certain things the claimant must do in order to provide that cooperation. Relevantly for present purposes a claimant:

> "(b) must give information reasonably requested by the insurer about –
>
> …
>
> (iv) the claimant's medical history (as far as it is relevant to the claim), and any other claims for compensation for personal injury made by the claimant."

[8] Regulation 10 of the *Motor Accident Insurance Regulation* 1994 ("the Regulation") expands on those provisions. Relevantly paragraph (5) thereof provides:

> "The notice must include written permission allowing the insurer to have access to, and to make copies of, records about the claimant and relevant to the claim in the possession of the following –
>
> …
>
> (c) a department, agency or instrumentality of the Commonwealth … administering … welfare laws".

[9] Section 37 of the Act is found in Division 3 and s 45 in Division 4. Section 50(1) then provides:

> "If a claimant fails to comply with a duty imposed under division 2, 3 or 4, the court may, on the insurer's application, order the claimant to take specified action to remedy the default within a time specified by the court."

[10] The section also empowers the court to make "consequential or ancillary orders".

[11] On Centrelink declining to recognise the clauses contained in the s 37 notice as evidencing an appropriate authority for it to release to the applicant material relating to the respondent, the applicant, pursuant to s 45(1)(b) of the Act, requested the respondent to sign a further authority directed to Centrelink enabling the applicant to obtain the relevant information. The respondent refused to cooperate by signing the requested authority. In consequence the applicant filed an application in the District Court seeking an order that the respondent "execute an authority provided to him by the solicitors for the Applicant directed to Centrelink requesting the release to those solicitors of the Centrelink file". McGill DCJ declined to make the order sought and the applicant seeks leave pursuant to s 118(3) of the *District Court of Queensland Act* 1967 to appeal to this court against that refusal. On the hearing of the application for leave to appeal the court heard argument on the merits.

[12] The learned judge at first instance construed s 45 of the Act narrowly. Relevantly he said that the "form of words used by the legislature" in s 45 "means literally that the duty is to co-operate with the insurer in the particular ways specified in paragraphs (a) and (b)." In other words the introductory requirement that a "claimant must cooperate with the insurer" is limited to the particular ways subsequently set out.

[13] In this court Senior Counsel for the respondent submitted that the construction placed on the provisions at first instance was correct. He also contended that material on Centrelink's file concerning the respondent was confidential, and the court should not compel disclosure unless the language of the statute clearly revealed an intention to empower the court to make such an order. By signing the s 37 notice it was contended that the respondent had done all that the legislation required of him.

[14] When regard is had to the objects of the legislation set out in s 3, and in particular the object "to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents", the intent of the legislature, in my view, was to impose a broad general duty on a claimant to cooperate with the insurer. To that end the claimant is obliged by s 37 and s 45, amongst others, to provide very detailed information to the insurer at an early stage. There is, albeit impliedly, a

clear obligation on the claimant to do all things necessary to provide the insurer with the information referred to in those two sections.

[15] The decisions of this court in *Gitsham v Suncorp Metway Insurance Ltd* [2003] 2 Qd R 251 and *Suncorp Metway Insurance Ltd v Hill* [2004] 2 Qd.R. 680 support that approach.

[16] A similar application came before Dutney J in *Attard v Hore* [2002] QSC 437; he ordered the claimant to execute an authority directed to Centrelink requesting the release of the Centrelink file. Subject to one matter to which I will refer later, I agree with all that his Honour said in his reasons, and in particular with the following statement:

> "I am not persuaded that the civil liberties argument can be sustained in a case where a party comes to the Court seeking an order from the Court that she be paid a substantial sum of money as a result of injuries which she says she has suffered. It seems to me that the price of seeking such an order from the Court is disclosure of a great deal of material which in other circumstances would be considered confidential. Unfortunately for plaintiffs, that is the price they pay if they want to receive a substantial damages award."

[17] The concern I have with the order in *Attard*, and with the order initially sought here, is that the reference is to the claimant's Centrelink file. Centrelink may have opened a file on a claimant many, many years before the incident giving rise to the claim for damages, and the file may contain highly sensitive material about the claimant entirely irrelevant to the claim for damages. Section 37 and s 45 of the Act and reg 10 of the Regulation limit the obligation on the claimant to provide information "relevant to the claim". In many instances the information supplied in the s 37 notice and other material provided by the claimant to the insurer will enable the insurer to identify with some precision the matters of possible relevance in a Centrelink file. Further, as evidenced by rules relating to provision of particulars of loss and damage, a period of three years prior to the accident is generally regarded as a reasonable period within which information relevant to quantum of damages should be supplied. Of course, in a particular case it may be obvious that the duty to cooperate would require steps being taken outside those parameters. Also, information obtained pursuant to an initial request may well provide a basis for the insurer making a second, and wider, request for information (cf. s 37A of the Act). But, importantly in my view, it would rarely be appropriate for the insurer to demand the production of the whole of a Centrelink file on the claimant in the first instance.

[18] When those issues were raised with Mr Douglas SC who appeared for the applicant he intimated that the applicant would be prepared to limit its request to "documents on the Centrelink file for the respondent relating to payments made by Centrelink to the respodent within the period of three years immediately preceding the date of the accident, namely 2 December 2000, and subsequent thereto." In my view, that is an appropriate limitation to impose at this stage.

[19] The issue raised by the application is an important one because it affects virtually all claims made pursuant to the Act and it is desirable that claimants and insurers know the extent of the duty imposed on a claimant to make available to an insurer material such as is requested here. In consequence leave should be granted but, as conceded

by counsel for the applicant, the applicant should pay the costs of the application and appeal.

[20] The orders of the court should therefore be:

(i) Leave to appeal granted;

(ii) Allow the appeal;

(iii) Set aside the order of the District Court of 28 June 2004, and in lieu thereof order that the respondent execute an authority directed to Centrelink requesting the release to the solicitors for the applicant of documents on the respondent's Centrelink file relating to payments by Centrelink to the respondent during the period of three years immediately preceding 2 December 2000 and thereafter;

(iv) Order the applicant pay the respondent's costs of and incidental to the application and appeal, with allowance for Senior Counsel, to be assessed on an indemnity basis.

[21] **HOLMES J:** I agree with the reasons for judgment of both McPherson JA and Williams JA and with the orders proposed.