

Transcript of Proceedings

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Date 17/10/02

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Claim No 7 of 1999

CAIRNS PORT AUTHORITY

Respondent (Plaintiff)

and

MMI GENERAL INSURANCE LTD

Applicant (Defendant)

and

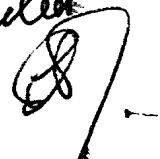
AON FINANCIAL PLANNING LTD

Third Party

CAIRNS

..DATE 14/10/2002

JUDGMENT

As corrected


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HIS HONOUR: This is an application for removal of this matter from the Cairns registry to the Brisbane registry. The application is made on behalf of the first defendant and it requires the exercise of the discretion which arises pursuant to section 289 of the Supreme Court Act which discretion is echoed in R.49 of the Uniform Civil Procedure Rules.

For such an order to be made it must be, "made appear to the Judge that such cause or matter could be tried or heard more expeditiously, cheaply, conveniently or advantageously in the district in which the other registry is constituted." Each one of those adverbs has been addressed in the submissions by either side.

On behalf of the applicant the basis for the transfer to Brisbane has been largely centred upon the increased cost of running the trial in Cairns, particularly the costs of the lawyers, who are mainly Brisbane based, their transport and accommodation in Cairns and the costs of the solicitors or parties having to set up offices in Cairns for the duration of the trial.

The estimate for the length of the trial is for three weeks, that is made by Mr Ashton in his affidavit and it is an estimate which is not challenged by any of the other parties. The increased costs calculated in the submission of Mr Amerena of Counsel, appearing for the plaintiff, but they seem to me to be somewhat of an underestimate in any event, having regard to the likelihood of lawyers returning to Brisbane over the

weekends and also the likelihood of witnesses coming to Cairns on some occasions and not being heard as expected.

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Mr Applegarth, Senior Counsel for the first defendant, points to the fact that one has to consider the impact of costs on the party that is unsuccessful in the proceedings and it means that those estimates of costs would be multiplied perhaps by three.

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The question of such costs, however, is a matter that has to be looked at in terms of the amount at stake. The combined claim and counterclaim exceeds \$2,000,000. There is an interest component, which means any delay in the finalisation of the case is likely to add to the bill of the unsuccessful party something of the order of \$20,000 a month.

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Thus, it seems to me that the question of expedition probably is of more significance than the raw costs associated with trialling the matter in Cairns.

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The other questions of convenience and advantage must also be taken into account. Most of the witnesses who will be giving evidence in this case are based in Brisbane. There will be some witnesses who are based in Cairns, some eight witnesses, I think, are suggested on behalf of the plaintiff authority.

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There is the question of the disruption to the businesses which those witnesses otherwise run. I am not sure how many witnesses are outside the employ of the parties, and it would

seem to me that it is only the witnesses outside the employ of the parties who will be inconvenienced, and that is why I specifically asked what is the likelihood of the level of expert witnesses who will be called. It seems that it is not a matter in which any number of expert witnesses will be particularly high.

Other matters which have been argued before me, do not seem to lead to an advantage one way or another.

The most telling question, it seems to me, is in which place the matter is most likely to be heard earliest, in other words, the expeditious requirement. If the matter were to be tried in Cairns, it is unlikely that the matter would start before the sittings in March, which is of two weeks, and without other arrangements being made, it would not conclude until May 2003.

The opportunities for this case to be heard in Brisbane at an earlier time and to be completed before May 2003 seem to me to be somewhat higher. I have had the advantage of looking at the current version of the calendar for the Supreme Court trial division in Brisbane, which indicates that between the commencement of the year and May there are approximately 21 Judge weeks of civil hearings for which no allocation has yet been made. The prospects of this case being allocated a date of hearing within that period of time available rather depends, I suspect, on the number of other long cases which has to be managed by the senior Judge administrator. But on

balance and on the basis that this matter is, in all respects, ready for trial and would most likely receive a Court allocation at the first review hearing, there is a much higher likelihood of obtaining a hearing date suitable to the parties in Brisbane.

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There is a great deal more flexibility in listing in Brisbane where there are some seven Judges appointed to conduct civil sittings between the commencement of the Court year and May next year.

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So, taking those matters into account and having regard to the need to fix a trial date suiting the availability of counsel and the availability of witnesses, I believe that the flexibility that is available in Brisbane, compared to the constrained potential hearing dates in Cairns is such that the matter can be more expeditiously and advantageously determined in Brisbane.

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I am satisfied that the matter can be more expeditiously, conveniently and advantageously and therefore more cheaply heard in Brisbane than in Cairns, and I will order that the matter be transferred to the Brisbane registry.

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HIS HONOUR: In my view I think the costs should be costs in the cause. I think each of the parties - I mean you have rightly brought the application, you are ultimately

successful, but equally the other side, I think, would have justified in putting up the resistance that they did and the better course, it seems to me, is that costs should be in the cause.

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HIS HONOUR: The other matters requiring direction will be adjourned to the supervised case manager.
