

better off settled than litigated. My guess, however, is that we will be in for another round of lawyer and judge bashing courtesy of the MDOs.

I would have thought that by now the medical profession in Australia would be getting tired of the old rhetoric. Maybe this time the profession will urge their MDOs to get out of the courtroom and into the negotiating room where difficult

problems can be solved earlier, more cheaply and with far less risk. ■

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**Notes:**

- 1 (1992) 175 CLR 479
- 2 [1998] HCA 55 2 September 1998

- 3 *Wilsher v Essex Area Health Authority* [1988] AC 1074
- 4 *March v Stramare (E & MH) Pty Ltd* (1991) 171 CLR 506
- 5 *Environment Agency (formerly National Rivers Authority) v Empress Car Co (Abertillery) Ltd* [1998] 2 WLR 350
- 6 *Supra* a page 356
- 7 *Supra* at page 358
- 8 *Chappel v Hart* p 41-42
- 9 *Chappel v Hart* at page 15
- 10 *Chappel v Hart* at page 56

## Prosecutions under QLD Motor Accident Insurance Act

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Recently the Insurance Commissioner prosecuted a plaintiff for an alleged offence under section 93 of the Motor Accident Insurance Act 1994.

Plaintiff lawyers need to be aware of section 93 and should warn clients of its existence. The plaintiff, who was referred to me by his solicitor in the personal injuries action, was charged under section 93 (3) which states:-

"A person must not in connection with a motor vehicle accident claim give someone else a document containing information that the person knows is false, misleading or incomplete in a material particular without-

- (a) telling the other person that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information to the other person if the person has, or can reasonably obtain, the correct information.

Maximum penalty- 150 penalty units or imprisonment for 1 year."

The plaintiff had brought an action in the District Court in Brisbane against

Suncorp Insurance Ltd. claiming damages for personal injuries arising out of a motor vehicle accident in 1996. Proceedings were commenced in early 1997.

Briefly, the allegation was that the plaintiff had provided a letter to his solicitor, a copy of which had been passed to Suncorp's solicitors. The Insurance Commissioner, who brought the prosecution pursuant to section 98 of the Act, called evidence from the accused's former employers - a cleaning business operated by a husband and wife partnership- who said that the letter had been forged- including the signature of the wife- and that the contents were false. The Plaintiff was charged with giving the document to Suncorp's solicitors in that he procured his solicitors to give it to them.

The letter stated that the plaintiff had left their employment on 17 July, 1997 because of continuing back and neck problems whereas the employers swore this was untrue and that he had been sacked for poor work performance. The letter was faxed to the plaintiff's solicitors two days before a settlement conference was to take place and a copy provided to the defendant's solicitors the day before

the conference. The contents were clearly relevant to his claim for economic loss.

Fortunately for the plaintiff, the Magistrate, at the conclusion of the prosecution case, found that he had no case to answer and discharged him. He did so on two bases. First, that the prosecution had failed to prove an essential element of the offence and second, that the prosecution witnesses (with the exception of the solicitor for Suncorp) had been so thoroughly discredited in cross-examination that a court could not accept their evidence.

Nevertheless, this won't be the last prosecution brought under this section. Clients should be advised of the contents of the section and the necessity to comply. Plaintiff lawyers also need to be careful because a charge could be laid against a legal representative who passes on a 'false, misleading or incomplete' document without complying with section 93(3) (a) and (b). ■

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