

Liquidation of FAI and CIC:



With the widely publicised collapse of HIH Insurance and related entities (including FAI and CIC) recently most practitioners will have been inundated with queries from concerned clients.

As far as motor vehicle accident claims are concerned in Queensland, there is no real need for concern for plaintiffs.

Nominal Defendant

On 15 March 2001, FAI General Insurance Company and CIC Insurance Limited became insolvent.

Fortunately, s 33(2) of the *Motor Accident Insurance Act 1994* ("MAIA") provides that the Nominal Defendant becomes the insurer in place of any insolvent CTP insurer. Claims will simply proceed on the basis the Nominal Defendant is the relevant insurer with all settlements, negotiations, etc. continuing with them.

Importantly, in accidents involving Queensland vehicles interstate, the Nominal Defendant also becomes the insurer in place of FAI and CIC in motor vehicle accidents which occur outside Queensland.

Settlements

In any matters settled with FAI or CIC prior to the date of insolvency, settlement cheques will simply be issued by the Nominal Defendant. In some instances, plaintiffs are first being requested to execute a fresh Discharge, in the usual terms, releasing the Nominal Defendant from any future liability.

New Claims

For any new claims it will be necessary to determine the relevant insurer of the vehicle at fault.

A new entity, FAI Allianz Limited (ACN 094 802 525), has been created which is responsible for any claims against FAI policies which were current on and from 1 January 2001.

Claims against FAI policies which expire prior to this time will proceed against the Nominal Defendant.

In other words, when results of Queensland Transport searches are undertaken it is important to note when the FAI policy expired. The expiration date of the policy determines

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effect on

CTP CLAIMS in Queensland

which insurer will be responsible for the liability of the claim, on the following basis:

- Policies issued by FAI which had expired as at 31 December 2000 - the Nominal Defendant becomes the insurer in place of FAI.
- Policies issued by FAI which were current on and from 1 January 2001 - FAI Allianz Limited is the relevant insurer.

For example, a motor vehicle accident may occur on 1 December 2000 but the FAI policy of insurance (as identified in the Queensland Transport search) does not expire until 30 January 2001. In that case, FAI Allianz Limited is the relevant insurer to proceed against.

Accordingly, all relevant Notice of Claim forms should be directed to either FAI Allianz or the Nominal Defendant depending on the expiration of the policy of insurance.

Litigated Claims for Accidents between 1 October 1994 and present

In litigated claims for accidents arising throughout this period it is necessary to name the CTP insurer as a joint defendant in any legal proceedings (s 52(1) MAIA).

If the Nominal Defendant has now become the insurer in place of FAI or CIC it will be necessary to substitute the Nominal Defendant for either of those insurers in any legal proceedings already on foot.

Because of the vast number of applications which would become necessary to effect this change, the Queensland Courts have issued Practice Directions identifying the steps which can be taken to avoid the need to proceed with an Application (Supreme Court Practice Direction No. 4 of 2001 and District Court Practice Direction No. 2 of 2001).

The procedure to adopt under these Practice Directions is as follows:

- Amend the title of the action to substitute "Nominal Defendant" as a defendant and deleting "FAI" or "CIC".
- Notify the opposing party of your intention to make the relevant amendment before taking that step.
- Identifying on the document that the amendment is being made pursuant to the relevant Practice Direction eg

- "Amended pursuant to Practice Direction No. 4 of 2001".
 - When filing the amended document, attaching correspondence to the Registrar confirming written confirmation has been received from the Nominal Defendant that it has become an insurer in place of FAI or CIC (the Practice Direction provides the terms in which the correspondence should be written at paragraphs 5(c) and (d)).
- In any other matters where no other documents are required to be filed prior to judgment (or if an appeal is pending) then it will be necessary to file a Consent Order. The ▶

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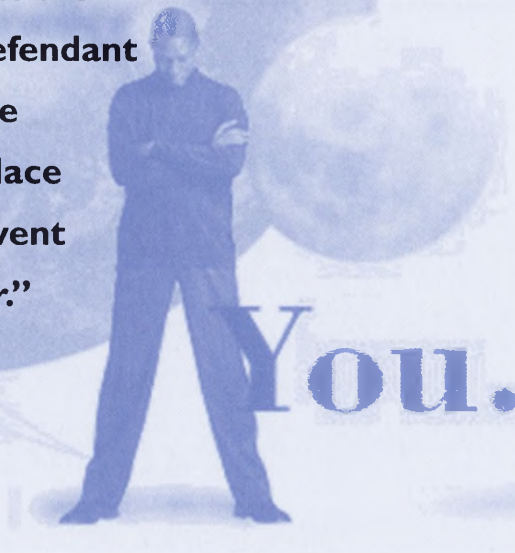
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“Fortunately, the Motor Accident Insurance Act 1994 (“MAIA”) (s 33(2)) provides that the Nominal Defendant becomes the insurer in place of any insolvent CTP insurer.”



Court has recommended making use of Rule 666 of the *Uniform Civil Procedure Rules* in this regard (a further Practice Direction has been issued by the Supreme Court in respect of these Consent Orders - see Supreme Court Practice Direction No. 3 of 2001).

If consent orders cannot be entered then it will be necessary to make an application to the Court to substitute

“Nominal Defendant” in place of FAI or CIC.

The Practice Directions can be found on the Queensland Court website www.courts.qld.gov.au/practice/praccir

Litigated Claims for Accidents Prior to 30 September 1994

These claims involve the previous motor vehicle legislation, the *Motor Vehicles Insurance Act 1936* (as amended).

That legislation did not require the CTP insurer to be identified as a defendant.

Accordingly, there will be no procedural difficulties in pursuing those claims. All future negotiations will simply take place with the Nominal Defendant or their representatives. The Nominal Defendant assumes the relevant insolvent insurer's liabilities in these matters (see s 106(2) MAIA).

Pleadings

In actions in which the Nominal Defendant is now in place of FAI or CIC, the Motor Accident Insurance Commission has suggested incorporating the following allegations in the Statement of Claim:

- 1 FAI General Insurance Company Limited A.C.N. 327 855 (Provisional Liquidators appointed) became insolvent on 15 March 2001.
- 2 Notice to that effect was published by the Motor Accident Insurance Commission pursuant to Section 91(1) of the *Motor Accident Insurance Act 1994* (“the Act”) in the Government Gazette on 23 March 2001;
- 3 In the premises pursuant to the said Section 91(1) of the Act FAI is presumed, for the purposes of the Act, to have become insolvent on 15 March 2001;
- 4 Upon FAI becoming insolvent by reason of Section 33(2) of the Act, the Nominal Defendant became the insurer of the motor vehicle;
- 5 At all material times the Nominal Defendant was and is a corporation sole capable of being sued.

Claims Management

The Motor Accident Insurance Commission have indicated that interim arrangements have been made for Allianz Australia to manage claims on behalf of the Nominal Defendant. Apparently, long-term arrangements are yet to be negotiated.

Future Developments

The following web sites may assist in the monitoring of future developments

Motor Accident Insurance Commission (Qld)
www.maic.qld.gov.au

Queensland Law Society www.qls.com.au

Minister for Financial Services and Regulation
www.minfsr.treasury.gov.au

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