

QUINN & QUINN

■ LAWYERS ■

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The Commissioner
Smash Repair Industry
Productivity Commission
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Dear Sir,

RE: PRODUCTIVITY COMMISSION – SMASH REPAIR AND INSURANCE

We advise that we registered our interest to receive the draft reports and subsequent final report during the currency of the Commission into the smash repair inquiry, and confirm that we did receive the draft report.

We advise that our firm was involved in litigation in the Local Court, Downing Centre which culminated in a decision being given by Mrs Horler, LCM on 17 November, 2004, relating to “five test cases” which were selected to ventilate all issues pertaining to a reasonable rate for hourly labour services provided by the smash repair industry as concerns third party claims (see copy of extract of Paint & Panel magazine March/April, 2004).

The concept of the third party claims is where the “not at fault” driver makes a claim upon the “at fault” driver and subsequently his insurer where liability is by and large not in issue, and only the quantum of the not at fault driver’s cost of repairs is the only “live” issue.

We enclose herewith photocopies of the following:-

1. Plaintiff’s written submissions together with index of authorities only.
2. Defendant’s written submissions together with index of authorities only.
3. Plaintiff’s written submissions in reply together with supplementary index of authorities only.
4. Defendant’s written submissions in reply.
5. Determination and reasons of Mrs Horler, LCM dated 17 November, 2004.

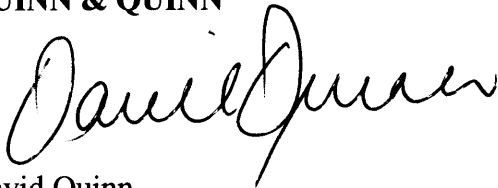
Whilst the submissions are somewhat voluminous, we would recommend that a relevant senior officer of the Commission consider carefully the ramifications of the determination made by Mrs Horler, LCM on 17 November, 2004, noting that there is a large backlog of civil claims disputes between not at fault third party claimants against the majority of the insurance companies acting pursuant to subrogated rights for the at fault drivers, namely NRMA

Insurance Limited (IAG), AAMI Limited, GIO/Suncorp, Lumley Insurance and CGU Insurance.

By way of providing a synopsis we enclose a copy of the newsletter which was recently published to not at fault drivers who are our clients, together with their associated repairers, which provides a summary of the determination of Mrs Horler, LCM.

We note that the Commission is due to take oral evidence, and further submissions on 13 December, 2004 (or such later date in the New Year depending upon the health of Commissioner Fitzgerald), and we confirm that the writer would be prepared to appear before the Commission for the purpose of giving oral evidence and making submissions in relation to those matters flowing from the determination of Mrs Horler as concerns some of the parameters of the scope of the inquiry by the Commission.

Yours faithfully
QUINN & QUINN



David Quinn



This office will close for the Christmas/New Year vacation from 12 noon on Thursday 23 December 2004 and re-open at 8:30 am on Monday, 10 January 2005

We extend to you our best wishes for a merry Christmas and a happy and prosperous New Year

In Brief

INCHCAPE DIRECTOR

Dealer group Inchcape has announced the appointment of Michael Wemms as a non-executive director. Wemms, who was an executive board director for Tesco between 1989 and 2000, is also the non-executive chairman for House of Fraser and sits on the board of Australian retailer Coles Myer.

SCRAP IN UK

HBC Vehicle Services, a motor salvage company, has launched a nationwide service in the UK for the safe disposal of scrapped cars with vehicle dismantle business, Charles Trent. HBC said it was the first time an independent salvage and a dismantling company had come together to provide a disposal process that met the End of Life Vehicle (ELV) directives. Combined, the companies expect to handle over 70,000 cars a year.

SPEEDY WRITE-OFFS

The European arm of AXA Insurance has dramatically reduced the time taken for car total loss claims to be settled, according to customer services director Andy Fairchild. He said that the average customer service cycle time from accident date to settlement cheque had been around 30 days. But a pilot study launched through the Ipswich claims centre in December 2003 had cut that down to 10-12 days. The concept was to centralise all of the claims processing. Some cases can now be settled in four days.

SKY EYE

UK insurer Esure is to use 'eye in the sky' photography to speed up claims handling and cut fraud on motor claims. The insurer has signed up with ActiveGeo to use its electronic location viewing system to assess the validity of claims where there is a dispute or the possibility of fraud. The system will give claims handlers access to high resolution digital photographs of the UK's road system enabling them to get a detailed view of where an accident took place, without leaving their desks. ActiveGeo is reported to be in talks with a number of other UK motor insurers about using the product.

Third party test case



WHILE THIS year's highly publicised court battle between the CARA and the NRMA is proceeding, another case which has received much less attention could turn out to be just as far reaching in its effect.

The case concerns third party claims where the no-fault driver seeks repair costs from the at-fault driver under common law. Several agents and panel shops concentrate on acting for no-fault owners and drivers. The agents receive a fee or commission for their guidance while the panel shops can expect to be paid at rates fixed by independent assessors – without being screwed down, by various insurance company pricing practices.

It is estimated by Sydney third party specialist repairer Maroubra Automotive Refinishers, that motor accidents produce about 30 per cent of no-fault parties. This results in panel shops seeking repair costs from insurance companies at rates that do not compare favourably with those allowed to shops doing regular at-fault repair work. Consequently, insurers are in the habit of disputing independently sourced third party claims on the grounds that they are excessive.

This resistance, which often leads to the third party having to take the insurer to court, is clogging up the local court system

throughout Australia. In one instance, Sydney solicitors Quinn & Quinn were asked to handle the outstanding NSW third party claims from 'Claims Made Easy', a Melbourne-based third party agent. There were nearly 400 files to be processed – mostly through the Local Court, small claims division.

In the interests of speeding up the processing of these claims, and the thousands like them around Australia, it was decided to select five test cases against the NRMA and run them in a concurrent hearing so that a precedent of 'what is fair and reasonable' could be established. Once that was accomplished, those claims that insurers believed fell outside the precedent could then go through an arbitrator. Only a few would warrant the court's time.

The cases are now in the process of being heard in the general division of the Local Court – which handles claims of up to the \$60,000 – but will automatically apply to the small claims division which goes up to \$10,000. The last of the five cases is due to finish hearing by mid-April, after which a judgement will be handed down and

Repairers generally get a better deal doing third party work.

become a precedent applicable nationally subject, of course to any appeals that may arise.

Apart from the de-clogging of the system, the case has some consequences which could shake the foundations of 'funny time, funny money' upon which the repair industry is currently based. The evidence in the hearing, for the sake of clarity, has been expressed in real time and real money. The plaintiffs have put the proposition that a third party claim is a simple sequence of: a repair quote from an independent repairer, an assessment from a qualified independent assessor, an adjustment by the repairer if the quote exceeds the assessment, and the carrying out of the repair. The costs are based upon real shop labour recovery rates and real time taken to carry out the repair.

For its part, NRMA is relying an industry 'standard' rate of \$30.90 an hour.

If the court finds are in favour of the plaintiffs, it will mean that a legal precedent exists in which real time and real money are the basis for repair costs, and therefore could be applied to settlements of up to 30 per cent of all motor accident claims.

Those who are trying to bring 'real time, real money' back into the Australian smash repair industry will see this as a great boost to their cause.



David Quinn, partner in Sydney solicitor Quinn and Quinn.

QUINN & QUINN NEWSLETTER
CLAIMS MANAGEMENT AND RECOVERY LAWYERS

STOP THE PRESS – ATTENTION SMASH REPAIR INDUSTRY

SUMMARY OF MAGISTRATE HORLER'S DECISION DATED 17 NOVEMBER,
2004

On 17 November, 2004 New South Wales Local Court Magistrate Lilian Horler delivered a judgment as a result of four hearing days being 11 and 12 December, 2003 and 13 and 14 April, 2004 concerning five cases limited primarily to the quantum of the cost of repairs. These cases became known as “the test cases”.

The determination was reached after the conclusion of evidence and lengthy submissions by Quinn & Quinn Lawyers (acting for the “not at fault” drivers/owners of the vehicles damaged) and Maguire & McNerney, solicitors for NRMA Insurance Limited, the insurer for the “at fault” drivers pursuant to subrogated rights.

The delay in the delivery of the judgment was a result of lengthy written submissions being made, in accordance with previously imposed Court directions.

In summary, the “not at fault” drivers/owners won the cases with orders for costs on a party/party basis, together with interest from the date of the motor vehicle collision at 9% p.a. to be paid by NRMA Insurance Limited.

The five individual repairers in each of the five “test cases” charged an hourly rate for labour for remove and replace and repair and align in the range of \$50.00 to \$70.00 per hour, and for painting between \$70.00 and \$95.00 depending on the economics of each individual repair shop and the type of motor vehicle being repaired. NRMA Insurance Limited was prepared to allow \$30.90 per hour for remove, replace, repair and align, and \$55.90 for painting and refinishing, being the labour rates it pays its Preferred and Associated Repairers.

The learned Magistrate arrived at a formula for determining the cases, based on the following key findings:-

1. She concluded that the hourly rates charged by each of the five repairers for non-insurance or private business work was realistic and commercially arrived at, and thus was ***a reasonable rate***, neither extravagant nor excessive.
2. She concluded that the times allowed for the various services in each job were ***reasonable*** and necessary to effect proper repairs, based on the MTA repairs manual where available (if not available, then based on the repairer’s long experience), and assessed and adjusted amounts from the independent loss assessors who viewed the damaged vehicles prior to the repair process.
3. In the absence of the “not at fault” driver/owner not obtaining a second quotation from another repairer, she took the NRMA Insurance Limited labour rates of \$30.90 and \$55.90 respectively to be a nominal second quotation, based on the following:-

“If I were faced with..... two quotes, unadjusted, and the repair work not yet effected, I would split the difference.”

The Formula

1. To calculate the number of hours, the independent loss assessor's adjusted total monetary amount was divided by the rate applicable to the type of work in each category.
2. To calculate the appropriate rate, the NRMA rate and the repairer rate were added together and divided by two to get an average.
3. A final figure was obtained by multiplying the appropriate rate reached in (2) by the number of hours reached in (1).
4. To the resultant amount was added parts and GST for a final total.

An illustrative example of the formula (based on Test Case 2)

Original Report of Plaintiff's Loss Assessor before submission to "at fault driver's insurer:

Remove and replace	\$330.00
Repair and align	\$225.00
Refinish	<u>\$900.00</u>
Total labour	\$1,455.00
Parts	\$483.70
GST	<u>\$193.87</u>
TOTAL:	\$2,132.57

On application of the Horler Formula:

Remove and Replace:

1. $\frac{\$330.00 \text{ (adjusted amount)}}{\$50.00 \text{ per hour}} = 6.6 \text{ hours}$
2. $\frac{\$50.00 \text{ per hour} + \$30.90 \text{ per hour}}{2} = \40.45 per hour
3. $\$40.45 \text{ per hr} \times 6.6 \text{ hrs} = \mathbf{\$266.97}$

Repair and Align:

1. $\frac{\$225.00 \text{ (adjusted amount)}}{\$50.00 \text{ per hour}} = 4.5 \text{ hours}$
2. $\frac{\$50.00 \text{ per hour} + \$30.90 \text{ per hour}}{2} = \40.45 per hour
3. $\$40.45 \text{ per hr} \times 4.5 \text{ hrs} = \mathbf{\$182.25}$

Refinish:

1.	$\frac{\$900.00 \text{ (adjusted amount)}}{\$70.00 \text{ per hour}}$	= 12.86 hours
2.	$\frac{\$70.00 \text{ per hour} + \$55.90 \text{ per hour}}{2}$	= \$62.95 per hour
3.	\$62.95 per hr x 12.86 hrs	= \$809.54
	Total labour \$266.97 + \$182.25 + \$809.54	= \$1,258.76
	Plus parts of \$483.70	= \$1,742.46
	Plus GST of \$174.25	= \$1,916.71

- You will see that the application of the Horler Formula results in the original adjusted quotation for labour services being reduced from \$1,455.00 to \$1,258.76, being a difference of \$196.24 or 13.5%.
- If the NRMA conceded labour rates of \$30.90 and \$55.90 were applied with the MTA Times Manual, the labour services (based on Plaintiff's loss assessor's adjusted times) would be reduced from \$1,455.00 to \$740.36 being a difference of \$714.64 or 49%.
- If the NRMA labour rates of \$30.90 and \$48.30 (in this instance less than \$55.90) were applied with the NRMA Times Manual, the labour services (based on the NRMA's loss assessor's desk audit adjusted times) would reduce from \$1,455.50 to \$545.34 being a difference of \$910.16 or 63%.

Conclusion

When the determination of the "test cases" is considered in its entirety, you will appreciate the impact that the determination will have on the Smash Repair Industry.

Please note that although the determination has been delivered, NRMA Insurance Limited has a period of 28 days from 17 November, 2004 in which to file an appeal, in which case the determination cannot be enforced until that appeal is heard. We are yet to receive any notice of an appeal from NRMA Insurance Limited's solicitors, and cannot take further action until the deadline has passed.

Should you wish to discuss any matters of relevance to the current or future operation of your business or in your dealings with any or all of the insurance companies then please contact our office, since we will be in the best position to advise you as we are responsible for the conducting of the litigation on behalf of the "not at fault" drivers.

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