

# QUINN & QUINN

■ LAWYERS ■

Our Ref: DEQ:KZ:040000 misc  
Contact: David Quinn

23 December 2004

The Commissioner  
Smash Repair Industry  
Productivity Commission  
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BELCOLLEN ACT 2616

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Sydney NSW 2000  
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Partner: David Quinn

Dear Sir,

## RE: PRODUCTIVITY COMMISSION – SMASH REPAIR AND INSURANCE

Further to our letter of 3 December, 2004, we advise that we have received notification from the Defendant's solicitors in respect of the "five test cases" that an appeal of the determination of Mrs Horler, LCM is not considered, and accordingly the determination stands for interpretation.

To that end, we enclose photocopies of the following:-

1. Quinn & Quinn letter dated 22 December, 2004 forwarded to the Assessor of the Local Court, Downing Centre.

We also confirm that we have forwarded a copy of our letter addressing the interpretation of the determination of Mrs Horler, LCM to the Defendants's solicitors nominated in the annexure to item 1 above.

We anticipate that Assessor Roberts will address matters the week commencing 10 January, 2005 with a view to thereafter addressing the parties' legal representatives at the adjourned Pre-Trial Review of the majority of the matters that have been stayed pending the determination of the Magistrate at 9:00 am on 14 January, 2005.

The writer would welcome the opportunity of addressing the Commission in relation to the determination of Mrs Horler, LCM, together with our interpretation of that determination at the Commission's hearing on 31 January, 2005.

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*

Q U I N N & Q U I N N  
■ L A W Y E R S ■

Our Ref: DEQ:KZ:31605  
Contact: David Quinn

23 December 2004

The Assessor  
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SYDNEY NSW 2000



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Partner: David Quinn

Dear Sir,

**RE: VARIOUS MOTOR VEHICLE QUANTUM DISPUTES**

We advise that we are the solicitors who act on behalf of a number of Plaintiffs in matters that were stood over in 2003 and again in 2004 pending the outcome of five (5) test cases that proceeded in the General Division. These cases are listed for Pre-Trial Review on 14 January, 2005.

On 18 November, 2004, Magistrate Horler handed down judgment in the five (5) test cases.

In relation to the future conduct of these matters, we suggest paragraphs 66 to 72 of Her Honour's judgment are most instructive (a copy of the judgment is enclosed).

We suggest that the principles to be extracted from the judgment are as follows:-

We contend that the principle of *Jones v Ho* and the four (4) other test cases applies to those cases that satisfy the following conditions:-

- (a) The dispute is litigated in the Small Claims Division of the Local Court; and
- (b) The Plaintiff pleads negligence as his cause of action; and
- (c) The dispute concerns the assessment of damages:
  - (1) For the tort of negligence,
  - (2) Arising out of a motor vehicle collision,
  - (3) For the repair of damage to a motor vehicle,
  - (4) When it is reasonable to repair the damage to the motor vehicle.

Having satisfied those conditions, the principle of *Jones v Ho* and the four (4) other test cases (**the First Principle**) appears to be as follows:-

1. (a) If:-
  - (1) A quote (**the Quote**) for the repair of the vehicle is in evidence; and

- (2) The Plaintiff leads evidence about the Quote from an independent motor vehicle assessor (**the Plaintiff's Assessor**); and
- (3) The Plaintiff's Assessor viewed the damaged vehicle before it was repaired; and
- (4) The Plaintiff's Assessor expressed an opinion as to the fair and reasonable repair **times**; and
- (5) The Plaintiff's Assessor expressed an opinion as to the fair and reasonable repair **rates**; and
- (6) The Plaintiff's Assessor thereby expressed an opinion as to the fair and reasonable cost of repairs (**Plaintiff's COR**);

(b) And if:-

- (1) The Defendant leads evidence about the Quote from an independent motor vehicle assessor (**the Defendant's Assessor**); and
- (2) The Defendant's Assessor viewed the damaged vehicle before it was repaired; and
- (3) The Defendant's Assessor expressed an opinion as to the fair and reasonable repair **times**; and
- (4) The Defendant's Assessor expressed an opinion as to the fair and reasonable repair **rates**; and
- (5) The Defendant's Assessor thereby expressed an opinion as to the fair and reasonable cost of repairs (**Defendant's COR**);

(c) Then:-

- (1) The measure of damages is the average of the Plaintiff's COR and Defendant's COR.

Whilst not immediately clear, a second principle (**the Second Principle**) to be extracted from the judgment is as follows:-

2. (a) If:-

- (1) The conditions in paragraph 1(a) are satisfied; but
- (2) The conditions in paragraph 1(b) are **NOT** satisfied;

(b) Then:

- (1) The measure of damages is equal to the Plaintiff's COR.

We contend that, insofar as quantum is concerned, the issues in dispute can be only one or more of the following:-

- (a) Whether or not there is a quote for the repair of the vehicle in evidence.
- (b) Whether or not the Plaintiff leads evidence from a motor vehicle assessor.
- (c) Whether or not the Plaintiff's motor vehicle assessor is independent.
- (d) Whether or not the Plaintiff's assessor viewed the damaged vehicle before it was repaired.
- (e) Whether or not the assessor expressed an opinion that is either admissible pursuant to the *Evidence Act 1995*, or one that should be accepted by the Small Claims Division bearing in mind s.23B(2) of the *Local Court (Civil Claims) Act 1970*.
- (f) Whether or not the Plaintiff's assessor determined a fair and reasonable repair time.
- (g) Whether or not the Plaintiff's assessor determined the fair and reasonable repair rate.
- (h) Similar considerations for the Defendant's assessor.

If these principles are accepted by the Court as stating the law, then we suggest that at the Pre-Trial Review of these matters, the Defendants identify which of the issues are in dispute in which of the cases.

A timetable for the placing of evidence relevant to the particular issues in dispute can be set down, with hearing dates assigned for each of the matters.

If an issue is common to a number of cases (eg. whether or not a particular motor vehicle assessor, who has provided evidence in several disputes, is appropriately qualified), then those cases that concern a common dispute can be litigated at the same time.

We have sent a copy of this letter to the solicitors for the Defendant, so as to make plain our position both to them and to the Court, and so that the time set aside before you at the Pre-Trial Review in these matters can be used to best effect.

Yours faithfully  
**QUINN & QUINN**

David Quinn

cc. Assessor Harvey, North Sydney Local Court, 94 Pacific Highway, North Sydney NSW 2060  
cc. Assessor Connolly, Parramatta Local Court, Cnr George & Marsden Streets, Parramatta NSW 2150