

MAGISTRATES COURTS

PRACTICE DIRECTION

NO 1 OF 2001

Magistrates Court proceedings for damages for personal injuries arising out of motor vehicle accidents, against FAI General Insurance Company or CIC Insurance Limited: substitution of the Nominal Defendant

1. The Insurance Commission published notifications in the Queensland Government Gazette of 23 March 2001 that each of the abovenamed companies ("FAI", "CIC") became insolvent on 15 March 2001. For purposes of the *Motor Accident Insurance Act 1994*, each is therefore presumed to have become insolvent on that date: s91(1).
2. Consequently, because of s33(2) of the *Motor Accident Insurance Act*, the Nominal Defendant "becomes" the insurer under compulsory third party policies in force under the Act for which either of those companies was the insurer, unless the policies have been transferred to another licensed insurer.
3. Policies issued by FAI which had not expired as at midnight 31 December 2000 (including any policies written by FAI on or after 1 January 2001 by reason of renewals or offers of insurance made prior to that date) have, with the consent of the Insurance Commission, been transferred to another licensed insurer, FAI Allianz Limited ACN 094 802 525. Claims under those policies are therefore not affected by this Practice Direction
4. An action for damages for personal injuries arising out of a motor vehicle accident must be brought against the insured person and the insurer as joint defendants: s52(1) *Motor Accident Insurance Act*. In such proceedings currently before the Court, and subject to paragraph 3, it will therefore be necessary to substitute the Nominal Defendant for FAI or CIC, as the case may be. Ordinarily that would be done by application to the Court, preferably utilising rule 666 of the Uniform Civil Procedure Rules. But because of the large number of cases in this category, even though the substitution would likely be non-contentious, the numerous necessary applications would unduly consume resources.
5. Parties in these cases are encouraged to proceed if possible in the following way.
 - (a) In the document next filed in the Court, the party filing the document should amend the title of the proceeding by deleting FAI/CIC and substituting the Nominal Defendant, and include a notation on the side of the document reading: "Amended pursuant to Practice Direction No. 2 of 2001".
 - (b) Before doing so, that party should notify the other party or parties of the intention to make the amendment.
 - (c) When filing the amended document, the party doing so should attach to the document a written confirmation, which may be in the form of a letter, to the following effect: "On _____ by letter/telephone communication/email I advised _____ on behalf of the Plaintiff/Nominal Defendant that I intended to amend these proceedings by substituting, in the title of the proceedings, the Nominal Defendant for FAI/CIC."

Magistrates Court Practice Direction No. 1 of 2001

(2)

- (d) If the Plaintiff is the party filing the document, the confirmation should also say: "I have received written confirmation from _____ on behalf of the Nominal Defendant that the claim is made under a policy in respect of which the Nominal Defendant has become the insurer in place of FAI/CIC".
 - (e) The Registrar is hereby authorised to receive and file such document recording the Nominal Defendant as substituted defendant on the basis that it records an effectual amendment of the proceedings.
 - (f) The party filing the document should then furnish a copy of the document to all other parties and confirm that it has been filed.
6. In cases where no further document need be filed prior to judgment, where an appeal is pending, or where there is perceived difficulty in adopting the foregoing procedure, the parties should file a consent order providing for the substitution, utilising rule 666 of the Uniform Civil Procedure Rules; and in the absence of consent, an application should be made to the Court.

(DM Fingleton)
Chief Magistrate

12 April 2001