

**SUPREME COURT**  
**Respondent's Notice**

Supreme Court record number	2017/000079
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<b>THE HIGH COURT</b>		Record No. 2012/1540P
<b>QUINN INSURANCE LIMITED (UNDER ADMINISTRATION)</b>	v	<b>PRICEWATERHOUSECOOPERS (A FIRM) PLAINTIFF</b>
<b>DEFENDANT</b>		

Date of filing	7 June 2017
Name of respondent	Quinn Insurance DAC (formerly Quinn Insurance Limited) (under administration)
Respondent's solicitors	Maples & Calder
Name of appellant	PricewaterhouseCoopers
Appellant's solicitors	Eugene F. Collins

**1. Respondent Details**

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name	N/A
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The respondent was served with the application for leave to appeal and notice of appeal on date
25 May 2017

The respondent intends :	
<input type="checkbox"/>	to oppose the application for an extension of time to apply for leave to appeal
<input type="checkbox"/>	not to oppose the application for an extension of time to apply for leave to appeal
<input checked="" type="checkbox"/>	to oppose the application for leave to appeal
<input type="checkbox"/>	not to oppose the application for leave to appeal
<input checked="" type="checkbox"/>	to ask the Supreme Court to dismiss the appeal
<input checked="" type="checkbox"/>	to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court
<input type="checkbox"/>	Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of

appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal:	<input checked="" type="checkbox"/>
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**Respondent's Representation**

<b>Solicitor</b>			
Name of firm			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode		Ref.	
How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

<b>Counsel</b>			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

<b>Counsel</b>			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

## 2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused

N/A

## 3. Information about the decision that it is sought to appeal

*Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:*

Subject to one matter, the Respondent does not dispute anything set out in Section 4 of the Application for Leave and Notice of Appeal.

The Respondent takes issue with paragraph 11(2) if and insofar as it is intended to suggest that the Court of Appeal determined the appeals before it as if the proceedings involved a claim for personal injuries. As is evident from the Court of Appeal's judgment, it was well aware of the nature of the proceedings and of the issues arising in them.

In addition, the Respondent draws attention to the following findings made by the Court of Appeal which are not referred to by the Applicant:

- (1) The Respondent had already provided extensive particulars of losses which it had claimed to have suffered (§35);
- (2) The Respondent had provided "*elaborate details and comparisons*" of the original Milliman/QIL estimates and the subsequent Mazars re-estimations for each relevant year (*ibid*); and
- (3) The Respondent had defined the extent and scope of the claim in respect of the alleged under-provision "*in, it must be said, elaborate detail for each of the relevant years*" (§41).

See also Section 4 below.

#### 4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

*In the case of an application for leave to appeal to which Article 34.5.3° of the Constitution applies (i.e. where it is sought to appeal from the Court of Appeal)-*

1. **The proposed appeal involves no matter of general public importance.**

- 1.1 The proposed appeal involves no matter of general public importance unless it is a point of law of such importance. No such point of law arises here. The present application involved only the application of well-settled principles to the particular facts in these proceedings.
- 1.2 The role of particulars has been well explained by this Honourable Court: e.g. *Mahon v Celbridge Spinning Co. Ltd* [1967] I.R. 1, *Cooney v Browne* [1985] 1 I.R. 185 *McGee v O'Reilly* [1996] 2 I.R. 229.
- 1.3 There was and is no material controversy as to the applicable legal principles. As Hogan J. noted in the judgment of the **Court of Appeal ([2017] IECA 94)** (§10), “[t]he applicable principles regarding the delivery of particulars are not really in dispute and may be lightly summarised here.” In the judgment of the **High Court ([2015] IEHC 303)**, Costello J. observed (§22) “[t]he parties are largely in agreement in relation to the relevant principles to be applied in determining this issue”. In its own submissions to the Court of Appeal (§30), the Applicant commented that “[i]n terms of the legal principles which apply ... it cannot be doubted that the learned Judge’s review is comprehensive and detailed. That this is the case is confirmed by the fact that the Plaintiff does not appear to take issue with the learned Judge’s summary of the legal principles ...” (and that was so).
- 1.4 At section 6(4) of its Application for Leave and Notice of Appeal, the Applicant confirms that there were no issues of law before the Court of Appeal relevant to the issues now on appeal, and the proposed grounds of appeal (section 6(1)) do not contend that the Court of Appeal misidentified the applicable legal principles in any way.
- 1.5 Judicial criticism of practice in requesting particulars (e.g. *Armstrong v Moffatt* [2013] 1 I.R. 417, §19) does not imply any lack of clarity as to the applicable principles; to the contrary, such criticism is premised on the fact that the principles are clear: it is because of that clarity that practitioners ought to know better, refraining from “habitual and indiscriminate use of the notice for particulars”.
- 1.6 As has been noted “the distinction between what is a matter for pleadings on the one hand and what is a matter for evidence on the other is often a fine one and it is also

*one which is sometimes difficult to apply consistently in practice*” (Hogan J. *Burke v Associated Newspapers* [2010] IEHC 477, §17), but that practical difficulty does not take from the clarity of the relevant legal principles.

- 1.7 Nor is there a conflict of authority on the role of particulars in complex litigation. That question engages no new principle, but involves rather the application of the settled principles to a particular circumstance. Further, far from diverging from *Playboy Enterprises International Ltd v Entertainment Media Network Works Ltd* [2015] IEHC 102, Hogan J. in his decision for the Court of Appeal in the present case (§16) explicitly cites that decision with approval.
  - 1.8 Again, the involvement of witness statements changes the factual context within which the principles of pleading fall to be applied, but does not change those well-established principles.
  - 1.9 Nor is there controversy as to the interaction between particulars and discovery. As discussed in *Thema International Fund plc v HSBC Institutional Trust Services (Ireland)* [2010] IEHC 19 (§4.6), the greater the definition to the opposing claims, the easier it is likely to be to say what categories of documents are relevant for discovery, but obviously there is a balance to be struck where it would be unreasonable to compel a party to provide particulars unavailable to it absent discovery. Again, the principles are clear, notwithstanding that their application to the facts is not always straightforward. In any event in the present application in the High Court, Costello J. (§35) rejected the Defendant’s invitation to rely on the narrowing of discovery to order particulars, finding that the Defendant’s affidavits “*do not really assist in assessing the extent to which the granting of any particular request for particulars would result in the reduction of any particular category of discovery documents. ... I have been unable to take into account the possible impact of directing or not directing replies to the particulars sought on the future scope of discovery to be made in this case in deciding whether or not to grant the order requested.*” Where the Defendant has not been able to demonstrate that the issue of discovery has in fact been engaged, it is asking this Honourable Court to adjudicate upon a moot.
  - 1.10 The essential complaint made by the Applicant – namely that the Court of Appeal should have directed further particulars in the particular circumstances of these proceedings - is a complaint that any applicant for particulars in any Court could make and raises no issue of general public importance.
  - 1.11 In the circumstances, the Applicant has failed to demonstrate that the determination by this Court of the issues sought to be raised on appeal would be have any general public importance and/or extend beyond the scope of the existing dispute between the parties.
2. **The interests of justice do not demand that there be an appeal.**

- 2.1 Notably, the Applicant does not attempt to identify any factors or considerations under this heading that transcend the scope of the proceedings or which involve the interests of anyone other than the Applicant.
- 2.2 In particular, the Applicant does not (and could not) contend that the proposed appeal involves any issue of law the determination of which would be in the interests of justice.
- 2.3 The law being uncontroversial, this application turned on the facts. The factual controversy was foreshadowed by the exchange of 10 lengthy substantive affidavits, involving 6 deponents, much of which testimony was given to setting the issues in the proper context of the operation and auditing of an insurance undertaking.
- 2.4 Those highly fact-specific controversies were exhaustively ventilated for four days before the High Court and for two days before the Court of Appeal, and both courts delivered substantial reserved judgments.
- 2.5 In the circumstances, the parties have been afforded a very full opportunity to present their respective cases within an agreed framework of legal principles, and their submissions have been carefully considered and adjudicated upon. Far from the interests of justice demanding a further appeal, justice favours finality in the circumstances presented here so that the proceedings can be progressed in the ordinary way.
- 2.6 The Applicant puts the issue in this appeal thus: "*Ought QIL be directed to identify what was wrong with QIL's own Technical Provisions?*".
- 2.7 In the Court of Appeal, Hogan J. found (§35) that the Plaintiff has furnished "*elaborate details*" of the understatements in the Technical Provisions, and that the furnished particulars "*supply a detailed estimate and re-estimate under 14 separate headings of insurance business written by QIL [based on which] QIL estimate that the deficit in provisioning was (with rounding) that the deficit in provisioning was (with rounding) €167m. in 2005, €331m. in 2006, €579m. in 2007 and €671m. in 2008*".
- 2.8 Given the detailed information furnished, the Plaintiff has met the requirement to adequately particularise its claim.
- 2.9 Seeking leave to appeal, the Applicant relies on the magnitude, complexity and value of the litigation and level of documentation that it may involve, but none of these factors touches immediately upon the issue at hand, as to whether the Applicant is entitled to the particulars now sought. Were those factors to warrant an appeal to this Honourable Court on the present issue, they would conceivably warrant such an appeal on every issue, militating against the interests of justice in having this case

proceed to trial.

- 2.10 Again in seeking leave to appeal the Applicant relies upon substantive grounds of appeal. However, and as demonstrated at section 5 below (which addresses the Applicant's grounds of appeal), the Applicant has failed to demonstrate colourably either that the Court of Appeal erred or that the interests of justice are such as to demonstrate a potential injustice such that an appeal to this Honourable Court should be allowed notwithstanding that no issue of general public importance is raised
- 2.11 As the Applicant has emphasised throughout (see: the judgment of Costello J. in the High Court, §25, and the Applicant's Submissions to the Court of Appeal §§27, 30), the decision in the court below involved the exercise of a discretionary jurisdiction under RSC O.19, r.7 (1). The exercise of that discretionary jurisdiction in the court below is unexceptionable and should not lightly be upset, and the Defendant has demonstrated no grounds for doing so.

#### **5. Respondent's reasons for opposing appeal if leave to appeal is granted**

Please list (as 1, 2, 3 etc. in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

##### **1. Response to the Asserted Specific Grounds of Appeal and Errors of Law**

- 1.1 The Court of Appeal did not err in law or in fact or in any mixed question of law and fact in not directing the Respondent to furnish the particulars the subject of the requests at issue in this appeal (the "**Relevant Particulars**").
- 1.2 The Respondent's case, at a high level, is that the Technical Provisions were grossly understated, and that there were warning signs which should have alerted the Applicant in the course of the audits not to accept the Technical Provisions without further inquiry and without obtaining satisfactory and plausible explanations. While the steps that the Applicant actually took or failed to take must await sight of the Applicant's audit working papers, which the Applicant has not disclosed to the Respondent and which must therefore await discovery, there is no evidence of which the Respondent aware that the Applicant properly took account of those warning signs or made the appropriate inquiries or received the necessary satisfactory and plausible explanations.
- 1.3 The Applicant's requests for particulars the subject of this appeal are misconceived in the following circumstances.
- (a) As pleaded at paragraph 56 of the Statement of Claim, the Respondent did not have an actuarial staff, and so outsourced to Milliman the actuarial work

involved in the estimation of its Technical Provisions. Today, the Respondent does not have access to Milliman's working papers, and so does not know how Milliman arrived at its figures. Nor is the necessary detail contained in the Milliman Reports (which both the Applicant and the Respondent have).

- (b) In order to quantify the understatement of the Technical Provisions, the Respondent engaged Mazars to make its own estimates of the Technical Provisions based on contemporaneous data, and comparing the results with the originally stated Technical Provisions, and not by re-examining the workings of the original estimates. In its work, Mazars identified a list of factors (the "**Relevant Factors**") that should have been taken into account in the estimation of the Technical Provisions and which should have informed the audits carried out by the Applicant.
- (c) As shown in the Appendix to the Applicant's Application for Leave and Notice of Appeal, the requests now pursued by the Applicant ask for:
  - (i) the reasons for the understatement; and
  - (ii) the financial effect of each reason.
- (d) The first of those enquiries (§1.3(c)(i) above), asking why the understatements came to be, would require the Respondent to prove its case at the point of pleading, ignoring the fact that these proceedings fall to be determined at trial with oral evidence and cross-examination, in which expert evidence in particular will play a significant role.
- (e) Furthermore in relation to the first of those enquiries (§1.3(c)(i) above), and as a matter of simple practicality, without sight of the Milliman's working papers (as to which, see §1.3(a) above), the Respondent cannot know why Milliman underestimated the Technical Provisions save to say that the "Relevant Factors" should have influenced the judgment of Milliman in its calculations in a way in which it would seem they did not.
- (f) The second of those enquiries (§1.3(c)(ii) above) is based on an incorrect assumption that the Respondent has identified individual reasons for each understatement in each class of business in each different geographic area for each year, and that it has identified a financial effect which is attributable to each such reason broken down as described. This is not so. That is not the case the Respondent is making and it is not the way the Respondent has presented its case. Mazars did not seek to identify or quantify the effect of each "Relevant Factor" on the proper calculation of the Technical Provisions. Instead it treated the "Relevant Factors" as influencing the proper calculation of Technical Provisions "in the round." This important point was accepted by



Costello J. in the High Court judgment (§14).

- 1.4 In the circumstances, the Respondent's claim in relation to the underestimation of the Technical Provisions has been properly particularised. The first limb of the request now pursued raises a matter for evidence, and the second does not arise out of the Plaintiff's pleaded case but rather out of a misconception of that case.
- 1.5 The Applicant complains that it does not know which of its audit processes it will have to defend, but it is plain that the Applicant will have to defend its conduct in the audit of the Technical Provisions. The Applicant's audit working papers (if properly kept) will provide a comprehensive account of what it in fact did, which will be measured against the benchmark provided by the applicable auditing standards, general law and expert evidence.
- 1.6 Furthermore and without prejudice to the foregoing, the Court of Appeal did not err in law or in fact or in any mixed question of law and fact where:
- (a) the Respondent has adequately particularised its case in relation to the understatement of the Technical Provisions;
  - (b) the Applicant has (and has demonstrated) the necessary understanding of the Respondent's case and is well equipped to engage with and defend itself against that case, and no inequity arises;
  - (c) the request for the Relevant Particulars does not arise out of the Respondent's pleaded case (and mischaracterises that case), for the reasons at Section 5, §1.3 above);
  - (d) the Respondent does not have the capacity to furnish the Relevant Particulars, because it does not have access to the Milliman working papers as noted at Section 5, §1.3 above.
  - (e) in the circumstances, no procedural unfairness arises;
  - (f) in the circumstances, the Relevant Particulars are not necessary for the reasons alleged or at all;
  - (g) there is no "*imperative of the conservation of resources of the parties*" such as to override the application of the ordinary principles relating to particulars, or otherwise on the basis of which to impugn the decision of the Court of Appeal;
  - (h) the import of the observations of Hogan J. at §36 of the judgment in the Court of Appeal is to the effect that the Relevant Particulars are in truth matters for evidence, and not appropriate to a request for particulars, and the same are accordingly unexceptionable;

- (i) the Court of Appeal correctly applied the well-established legal principles to the facts of this case; and
- (j) further, or in the alternative, the Court of Appeal's exercise of the relevant discretionary jurisdiction under RSC O.19, r.7(1) is unexceptionable and should not lightly be upset, and the Defendant has demonstrated no grounds for doing so.

1.7 The Respondent will rely on such further or other grounds as may be adduced with leave of the Court.

**2. Legal Principles**

The legal principles relevant to the application of Order 19, rule 7, Rules of the Superior Courts

**3. Specific provisions of the Constitution, Acts of the Oireachtas, Statutory Instruments and other legal instruments**

Order 19, rule 7, Rules of the Superior Courts

**4. Issues of Law before the Court Appealed from to the extent relevant to the issues on appeal**

N/A

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Garvan Corkery BL  
 Caren Geoghegan BL  
 Maurice G. Collins SC  
 Michael M. Collins SC  
 Paul Gallagher SC

**6. Additional grounds on which decision should be affirmed**

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

See Section 5.

**Are you asking the Supreme Court to:**

depart from (or distinguish) one of its own decisions?

Yes

No

If Yes, please give details below:

make a reference to the Court of Justice of the European Union?

Yes

No

If Yes, please give details below:

Will you request a priority hearing?

Yes

No

If Yes, please give reasons below:

Signed:

*Made and Calder*

Solicitors for the Respondent

**Please submit your completed form to:**

The Office of the Registrar to the Supreme Court

The Four Courts

Inns Quay

Dublin

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.