

## Delay no impediment – Plaintiff’s late expert evidence allowed

*Brown v Daniels & Anor* [2018] QSC 209

### Key Points

- Admitting non-compliant Expert evidence is at the discretion of the Court.
- The Court has an overarching obligation to “ensure a trial is fair.”<sup>1</sup>

### Background

The Plaintiff was riding his vintage Harley Davidson when he collided with the passenger side towards the rear of a Ford F250 utility which failed to give way at a T-intersection.

The Defendant attempted to exclude expert engineering evidence which showed:

- The Ford F250 was only part way through its turn and not parallel to the road
- The Plaintiff should have been in the field of view of the Ford F250
- The Plaintiff was not travelling at a very high speed.

The Defendant objected to the tender of this expert report on the basis that the Plaintiff failed to comply with Rule 429 of the Queensland UCPR, which sets a time limit for the delivery of the report.

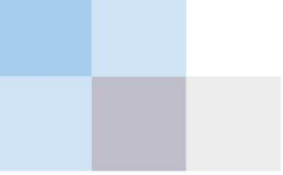
Justice Davis dismissed the Defendant’s objection based on Rule 429 for the following reasons:

- The Court can exercise discretion to allow expert evidence to be tendered despite non-compliance of Rule 429
- The Court has an overarching obligation to “ensure that a trial is fair”<sup>2</sup>
- There was no suggestion that:
  - The Defendant could not meet the Plaintiff’s expert engineering report as it had its own expert engineering report prepared and delivered
  - The experts were not prepared to give evidence as they had conferred and prepared a joint report

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<sup>1</sup> *Allianz Australia Insurance Ltd v Mashaghati* (2017) 80 MVR 305; [2017] QCA 127; BC201704427 at [56].

<sup>2</sup> *Ibid.*

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- The trial would be delayed by the delivery of the Plaintiff's expert engineering report.

## Lessons Learned

The Court's obligation to ensure a fair trial allows it to exercise discretion to permit expert evidence to be tendered in Court.

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