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## Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Dallas Buyers Club LLC v iiNet Ltd (No 4)** (FCA) - discovery - copyright - stay of preliminary discovery order not lifted (I B)

**Hatziandoniou v Ruddy** (NSWCA) - negligence - motor vehicle accident - erroneous exclusion of expert opinion evidence - new trial (I)

**Smith v Jones** (VSC) - testator's family maintenance - family provision orders in favour of daughter and grandson of deceased (B)

**Intralot Australia Pty Ltd v State of Victoria** (VSC) - discovery - inspection - State's objection to production of documents not upheld (B)

**Dowling v Dowling** (VSC) - client legal privilege - conceded privilege in documents had not been waived - applications to inspect documents declined (I)

**Steelfab Engineering Pty Ltd v BMS Group Australia Pty Ltd** (WASC) - corporations - statutory demand - plaintiff established off-setting claim greater than that of demand - demand set aside (B C)

**R v Pettersson; ex parte Fenshaw Pty Ltd** (TASSC) - security of payments - stay of hearing and determination of general order to show cause until prosecutor paid amount into Court (B C)

# Benchmark

## Summaries With Link (Five Minute Read)

### **Dallas Buyers Club LLC v iiNet Ltd (No 4) [2015] FCA 838**

Federal Court of Australia

Perram J

Discovery - copyright - owner of copyright in film sought preliminary discovery of documents - internet service providers were respondents to application - applicant sought to lift stay of preliminary discovery order - applicant had proffered to Court versions of what it would say to account holders with undertaking only to communicate in those terms - s115 *Copyright Act 1968* (Cth) - s31A(2) *Federal Court of Australia Act 1976* (Cth) - r7.22 *Federal Court Rules 2011* (Cth) - held: certain claims made by applicant untenable - Court declined to lift stay at this stage - Court would lift stay if Court received written undertaking only to use information obtained under preliminary discovery orders for purposes in relation to permissible claims - application dismissed.

[Dallas](#) (I B)

### **Hatziandoniou v Ruddy [2015] NSWCA 234**

Court of Appeal of New South Wales

Basten, Leeming & Simpson JJA

Negligence - motor vehicle accident - appellant motorcyclist injured when motorcycle collided with truck driven by respondent - primary judge dismissed appellant's claim - ss55, 76 & 79 *Evidence Act 1995* (NSW) - s126 *Motor Accidents Compensation Act 1999* (NSW) - opinion evidence - held: expert's opinion evidence was wrongly excluded by trial judge with result that verdict and judgment must be set aside - new trial required because on exclusion of expert's evidence, he was not cross-examined and respondent's counsel forbore to tender report obtained on respondent's behalf - it was necessary for competing expert evidence to be properly evaluated in new trial - appeal allowed - new trial limited to questions of respondent's liability and contributory negligence.

[Hatziandoniou](#) (I)

### **Smith v Jones [2015] VSC 398**

Supreme Court of Victoria

McMillan J

Testator's family maintenance - first plaintiff sought further provision from deceased mother's estate pursuant to s91 *Administration and Probate Act 1958* (Vic) - second plaintiff was first plaintiff's adult son and deceased's grandson - second plaintiff also sought provision from deceased's estate - claims by adult children and grandchildren - deceased's knowledge of sexual abuse of plaintiffs by her husband - wise and just testator - held: in all circumstances, Court satisfied deceased had responsibility to make further provision for proper maintenance and support of plaintiffs, and had failed to make adequate provision for their proper maintenance and support- provision orders made.

[Smith](#) (B)

## **Intralot Australia Pty Ltd v State of Victoria [2015] VSC 407**

Supreme Court of Victoria  
Hargrave J

Discovery - plaintiff claimed damages against State arising from tendering process State conducted for licences to conduct public lotteries in Victoria - plaintiff sought discovery of documents - State objected to production of certain documents (Tatts documents) - whether objection to production of Tatts documents made under Div 6 Pt 1 Ch 10 *Gambling Regulation Act 2003* (Vic) could be maintained - held: on proper construction s10.1.30(1) prohibited State from providing inspection of Tatts documents to plaintiff and s10.1.31 prohibited Court from requiring State to produce Tatts documents in Court or disclose protected information in documents to Court - however these prohibitions were ineffective by due to s85(5) *Constitution Act 1975* - Court to make orders made requiring State to provide inspection of Tatts documents - Tatts to be given opportunity to make submissions why inspection by plaintiff should not be allowed or subject to limitation - parties to be heard on form of orders.

[Intralot](#) (B)

## **Dowling v Dowling [2015] VSC 412**

Supreme Court of Victoria  
Ierodiasconou AsJ

Client legal privilege - seventh defendant sought inspection of documents and declaration any privilege over documents waived - first to fifth defendants also sought order for production of documents for inspection - ss55 & 122 *Evidence Act 2008* (Vic) - r29.01.1 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - s26 *Civil Procedure Act 2010* (Vic) - held: it was conceded that documents were privileged - privilege had not been waived in respect of documents - applications to inspect documents declined.

[Dowling](#) (I)

## **Steelfab Engineering Pty Ltd v BMS Group Australia Pty Ltd [2015] WASC 299**

Supreme Court of Western Australia  
Master Sanderson

Corporations - statutory demand - plaintiff sought to set aside statutory demand for money owing for goods and services provided by defendant - whether plaintiff had quantified its offsetting claim as required by s459H(2) *Corporations Act 2001* (Cth) - whether plaintiff established 'the amount of that claim' under definition of 'offsetting total' - held: plaintiff established it had offsetting claim greater than amount of demand - demand set aside.

[Steelfab](#) (B C)

## **R v Pettersson; ex parte Fenshaw Pty Ltd [2015] TASSC 33**

Supreme Court of Tasmania  
Porter J

Security of payments - prosecutor sought to quash adjudicator's determination under Pt 5 *Building and Construction Industry Security of Payment Act 2009* (Tas) - adjudicator had



determined prosecutor obliged to pay amount to respondent - respondent sought stay of hearing and determination of order to show cause until amount due under judgment was paid into Court or to it - held: order made that hearing and determination of general order to show cause be stayed until prosecutor paid unpaid amount of adjudicated judgment into Court.

[Pettersson](#) (B C)

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