

Wednesday, 21 October 2015

## 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)

**Allianz Australia Insurance Ltd v Rutland** (NSWCA) - motor accidents compensation - psychiatric injury - denial of procedural fairness - failure to exercise statutory function - decision of Medical Review Panel set aside - appeal dismissed (I B)

**Broadlex Services v RCR Resolve FM** (NSWSC) - contract - estoppel - damages - contract for supply of cleaning services - plaintiff entitled to value of outstanding invoices - defendant entitled to verdict on cross-claim (I B C)

**Abdul-Rahman v WorkCover Authority of NSW** (NSWSC) - workers compensation insurance - Authority's cause of action barred by s18 *Limitation Act 1969* (NSW) - appeal allowed (I B G)

**NSW Trustee & Guardian; Estate of the Late Jan Szczudlik** (NSWSC) - wills and estates - intestacy - identity of persons to whom deceased's estate should be distributed - orders for distribution of deceased's estate (B)

**Nunzio Berardi v Salvatore Russo t/as Russo & Partners** (NSWSC) - solicitors fees - defendant liable to pay amount of unpaid legal fees claimed by solicitor - summons dismissed (I)

**Montclare v Metlife Insurance Ltd (No 2)** (VSC) - costs - life insurance - not unreasonable to reject joint offer of compromise or open offer - indemnity costs refused (I)

**Semmler v Todd** (VSC) - testator's family maintenance - application by domestic partner of deceased for further provision from deceased's estate - application dismissed (B)

## Summaries With Link (Five Minute Read)

### **Allianz Australia Insurance Ltd v Rutland [2015] NSWCA 328**

Court of Appeal of New South Wales

McCull & Meagher JJA; Macfarlan JA

Motor accidents compensation - respondent's younger sister killed in motorcycle accident - respondent sued insurer for psychiatric injury and nervous shock - respondent challenged decision of Medical Review Panel to set aside medical Assessor's certificate and certify that respondent's whole person impairment was not greater than 10% - primary judge found Review Panel failed to discharge its statutory function pursuant to s63 *Motor Accidents Compensation Act 1999* (NSW) because it failed to assess all matters afresh in respect of respondent's whole person impairment - primary judge found Review Panel failed to cause enquiries to be made of claimant as to what her job duties actually involved and failed to accord procedural fairness - primary judge set aside certificate of Review Panel - held: primary judge did not err in concluding that Review Panel failed to exercise its statutory function, or in concluding respondent denied procedural fairness in relation to assessment of extent of impairment - appeal dismissed.

[Allianz](#) (I B)

### **Broadlex Services v RCR Resolve FM [2015] NSWSC 1514**

Supreme Court of New South Wales

McDougall J

Contract - estoppel - damages - plaintiff contracted with defendant to supply cleaning services at centre and facility - defendant had not paid plaintiff value of invoices for services - plaintiff did not claim services not performed or not performed appropriately - defendant defended claim by confession and avoidance together with claimed set off and a cross-claim - construction of contract - conventional estoppel - "omitted services" - damages in respect of omitted services - standard of performance - loss - held: plaintiff succeeded in claim to be paid value of outstanding invoices and claim to interest - defendant entitled to verdict on cross-claim and interest.

[Broadlex](#) (I B C)

### **Abdul-Rahman v WorkCover Authority of NSW [2015] NSWSC 1483**

Supreme Court of New South Wales

Hamill J

Workers compensation insurance - appellant sought to appeal under s53(3) *Crimes (Appeal and Review) Act 2001* (NSW) from Magistrate's decision that Local Court had jurisdiction to determine statement of claim brought by WorkCover Authority of New South Wales pursuant to s156(1) *Workers Compensation Act 1987* (NSW) (Workers Compensation Act) which alleged appellant failed to maintain current policy of workers compensation insurance in breach of

s155(1) Workers Compensation Act - appellant contended cause of action statute barred by s 247 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) or 18 *Limitation Act 1969* (NSW) (Limitation Act) - time at which debt under s156(1) Workers Compensation Act accrued to Authority for purpose of s18 Limitation Act - held: cause of action accrued when appellant (allegedly) committed breach of s155(1) which was 31 March 2012 at latest - cause of action accrued to Authority more than two years prior to commencement of proceedings - cause of action barred by s18 Limitation Act - appeal upheld.

[Abdul-Rahman](#) (I B G)

## **NSW Trustee & Guardian; Estate of the Late Jan Szczudlik [2015] NSWSC 1529**

Supreme Court of New South Wales

Hallen J

Wills and estates - plaintiff sought orders as to distribution of deceased's estate - identity of persons to whom deceased's estate should be distributed - operation of intestacy rules - ss61A - 61F *Wills Probate and Administration Act 1898* (NSW) - facts going to distribution - held: Court satisfied plaintiff carried out necessary and proper investigations to determine persons entitled on intestacy to deceased's estate. - Court satisfied it was probable persons entitled on intestacy ascertained and no reasonable further inquiries could be made to improve state of evidence - orders made.

[NSW Trustee & Guardian](#) (B)

## **Berardi v Russo t/as Russo & Partners [2015] NSWSC 1520**

Supreme Court of New South Wales

Rothman J

Solicitors' fees - appellant appealed against decision of Magistrate that he was liable to pay amount claimed by defendant solicitor's firm - plaintiff had retained defendant to represent him in four matters - defendant issued several bills of costs to plaintiff pursuant to three identical costs agreements - plaintiff failed to pay - plaintiff contended he had not retained defendant to act for him and had not entered costs agreements - alternatively plaintiff alleged costs agreements "invalid for its failure to meet the requirements of Part 3.2 of the *Legal Profession Act 2004*" - sufficiency of pleadings - disclosure requirements - s309 *Legal Profession Act 2004* (NSW) - held: first and second grounds of appeal based on misapprehension that Magistrate struck out defence - no denial of procedural fairness - defence was inadequately pleaded - ground of appeal relating to Magistrate's findings that defendant's costs agreements complied with various disclosure obligations failed - summons dismissed.

[Nunzio](#) (I)

## **Montclare v Metlife Insurance Ltd (No 2) [2015] VSC 574**

Supreme Court of Victoria

Ginnane J

Costs - Court found first defendant established it was entitled to avoid contracts of insurance that Citicorp Life entered into with plaintiff and dismissed proceeding - first defendant sought indemnity costs against plaintiff for his failure to accept joint offer of compromise made by it and



second defendant - second defendant sought indemnity costs on basis of open offer or joint offer of compromise - r26.02 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - held: it was not established that it was unreasonable for plaintiff not to accept joint offer of compromise or open offer - indemnity costs refused - costs orders made.

[Montclare](#) (I)

**Semmler v Todd [2015] VSC 567**

Supreme Court of Victoria

Zammit J

Testator's family maintenance - plaintiff domestic partner of deceased sought order for further provision out of deceased's estate pursuant to Pt IV *Administration and Probate Act 1958* (Vic) - consideration of criteria under s91 - overarching test for settlement claim - legal responsibility and moral duty of deceased towards claimant and any other relevant person - freedom of testation - held: given circumstances of case including nature of relationship between deceased and plaintiff, plaintiff's financial need, size of estate and beneficiaries' financial position, Court did not consider it should interfere with freedom of testation - application dismissed.

[Semmler](#) (B)

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