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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)

Fairfield City Council v Arduca (NSWCA) - workers compensation - worker suffered hernias in work injury - employer liable - leave to appeal refused (I G)

Watpac Construction NSW Pty Limited v Taylor Thompson Whitting (NSW) Pty Ltd (NSWSC) - contract - specific performance - defendant required to submit dispute to expert determination in accordance with dispute resolution procedure (B C)

Shuetrim v FSS Trustee Corporation (NSWSC) - insurance - costs - calculation of interest - determination of outstanding questions (I)

CGU Insurance Ltd v Blakeley (VSCA) - joinder - corporations - joinder of defendants' insurer by plaintiffs - insurer's appeal dismissed (I B)

Flegg v Hallett (QSC) - defamation - action arising from media conference announcement, conference and radio interview - defamation established - damages assessed (I)

Auto Parts Group Pty Ltd v Cooper (QSC) - trade and commerce - employment contracts - restraint of trade clause enforceable - injunction - orders (I B)

Moran v Schwartz Publishing Pty Ltd [No 3] (WASC) - pleadings - defamation - action arising out of publication of book - paragraphs of statement of claim struck out (I)

Summaries With Link (Five Minute Read)

Fairfield City Council v Arduca [2015] NSWCA 166

Court of Appeal of New South Wales

McColl & Meagher JJA; Sackville AJA

Workers compensation - worker suffered hernias in work injury - worker returned to work and performed 'light duties' as proposed by injury management plan - worker resigned "due to ill health" - employer disputed liability for injury on basis worker unreasonably elected to retire rather than comply with injury management plan as required by s47 *Workplace Injury Management and Workers Compensation Act 1998* - Workers Compensation Commission found in worker's favour - decisions were affirmed by Presidential member - employer sought leave to appeal - held: no denial of procedural fairness by Arbitrator in decision that s57 did not disentitle worker to weekly compensation payments - letter from employer's solicitors to worker's solicitors did not comply with s74 as it did not raise worker's alleged failure to comply with s254 in respect of provision of notice of injury - no constructive failure to address employer's argument as to letter's efficacy and entitlement to rely on non-compliance with s254 - leave to appeal refused.

[Fairfield](#) (I G)

Watpac Construction NSW Pty Limited v Taylor Thompson Whitting Pty Ltd [2015] NSWSC 780

Supreme Court of New South Wales

Ball J

Contract - specific performance - dispute resolution clause - defendant agreed to provide consultancy services to plaintiff in connection with construction of building, television studios and facilities - plaintiff sought orders requiring defendant to submit dispute between them to expert determination in accordance with dispute resolution clause in agreement - held: parties did not abandon dispute resolution procedure - meeting was not pre-condition to expert determination procedure - no jurisdictional error by expert - complaints in relation to expert determination agreement failed - plaintiff entitled to orders sought in summons.

[Watpac](#) (B C)

Shuetrim v FSS Trustee Corporation [2015] NSWSC 795

Supreme Court of New South Wales

Stevenson J

Insurance - costs - calculation of interest under s57 *Insurance Contracts Act 1984* - Court gave judgment in proceedings - determination of outstanding questions - whether the one issue in relation to 'constructive denial' on which successful plaintiff did not succeed was dominant or separable - whether plaintiff should be deprived of costs for that issue - held: second and third defendants to pay 80% of plaintiff's costs - third defendant trustee refused costs thrown away in respect of subpoenas to produce served by second and third defendants on third parties - no order in respect of trustee's costs - interest to run under s57 against second and third

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defendants from date on which it was unreasonable for second and third defendants to withhold payment to plaintiff - orders.

[Shuetrim \(I\)](#)

CGU Insurance Ltd v Blakeley [2015] VSCA 153

Court of Appeal of Victoria

Ashley, Beach & McLeish JJA

Joinder - corporations - claim under s588M *Corporations Act 2001* (Cth) in which plaintiffs were liquidators and company in liquidation who alleged company's directors breached s588G by failing to prevent company from incurring debts when it was insolvent - defendants' insurer sought leave to appeal against order joining it as a defendant - jurisdiction - state of authorities regarding appropriateness of joinder of an insurer at instance of party other than insured - held: possibility of separate proceedings between current parties and later proceedings between relevant liquidator or trustee in bankruptcy and insurer could not be countenanced - trial judge's analysis correct - orders should not be disturbed - question whether there were ultimately grounds for declaration against insurer was matter for trial - leave to appeal granted on basis it had prospect of success - appeal dismissed

[CGU \(I B\)](#)

Flegg v Hallett [2015] QSC 167

Supreme Court of Queensland

P Lyons J

Defamation - defendant announced to journalists he would be holding media conference - plaintiff held conference and participated in a radio interview - plaintiff alleged defendant defamed him on each of the three occasions - defendant alleged that he had defence of privilege at common law as each publication related to government or political matters in which community had an interest - defended also contended the making of each publication was reasonable - defendant also relied on statutory defence in s30 *Defamation Act 2005* - reasonableness of defendant's conduct - held: Court concluded that, by reference to imputations found, each of the relevant publications contained defamatory matter - Court not satisfied defendant's conduct in making publications was reasonable - Court concluded defendant actuated by malice in making publications - defendant defamed plaintiff on each of the three occasions - damages assessed.

[Flegg \(I\)](#)

Auto Parts Group Pty Ltd v Cooper [2015] QSC 155

Supreme Court of Queensland

Bond J

Trade and commerce - restraint of trade - injunction - applicant sought to enforce restraint clauses in respective employment contracts of first and second respondents - applicant also sought declarations and injunctions against first and second respondents aimed at preventing possibility of their misuse of applicant's confidential information - held: restraint clause was enforceable against first and second respondents - first and second respondents should be

should be subject of injunctions restraining them in appropriate manner - orders made.

[Auto](#) (I B)

Moran v Schwartz Publishing Pty Ltd [No 3] [2015] WASC 215

Supreme Court of Western Australia

K Martin J

Pleadings - defamation - plaintiff claimed he was seriously defamed by publication of second defendant's book - plaintiff sought to strike out two paragraphs of defendants' amended defence - ss29 & 34 *Defamation Act 2005* - one paragraph pleaded to engage under statutory defence of 'fair report of proceedings of public concern' against certain passages of book - other paragraph 'prior publications' plea - mitigation - distress and annoyance - held: defendants' effort to raise confined plea of fair report was pointless exercise and irrelevant distraction to true issues - prior publications plea struck out for failure to disclose arguable defence and for being embarrassing - both paragraphs struck out.

[Moran](#) (I)

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