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Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Fuller-Lyons v New South Wales (HCA) - negligence - child injured in fall from train operated by State - failure to keep proper look-out - State liable - appeal allowed

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Summaries With Link (Five Minute Read)

Fuller-Lyons v New South Wales [2015] HCA 31

High Court of Australia

French CJ; Bell, Gageler, Keane & Nettle JJ

Negligence - child passenger injured in fall from moving train after being trapped by train door - child claimed injuries caused by State's negligence - primary judge found negligence established by failure of station staff for failure to keep proper look-out to observe gap in door where child was located and those parts of his body that protruded before signalling for train to leave station - ultimate conclusion of negligence had rested on inferential fact-finding - State appealed - Court of Appeal allowed appeal - Court of Appeal held there was insufficient evidence to enable affirmative conclusion that substantial part of child's body protruding from doors when train left station and identified alternative hypotheses that did not entail negligence on the part of railway staff - held: Court of Appeal erred in overturning primary judge's ultimate factual finding which was correct notwithstanding other possible explanations could not be excluded - Court of Appeal erred in overturning findings on basis appellant failed to exclude alternative hypothesis not explored in evidence - appeal allowed.

[Fuller-Lyons](#)

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