



Thursday, 12 March 2015

## Construction

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

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## Executive Summary (1 minute read)

**The Hancock Family Memorial Foundation Ltd v Lowe** (WASCA) - professional indemnity insurance - construction and validity of condition - appeal dismissed



# Benchmark

## Summaries with links (5 Minute Read)

### **The Hancock Family Memorial Foundation Ltd v Lowe [2015] WASCA 38**

Court of Appeal of Western Australia

McLure P, Newnes JA & Beech J

Professional indemnity insurance - primary judge dismissed appellant's action against respondents under s51 *Insurance Contracts Act 1984* (Cth) - primary issue at trial was proper construction of condition in two excess professional indemnity insurance contracts between late solicitor and respondents - appeal also included challenge to the validity of the condition as construed by the trial judge - test of implied retainer - estoppel by convention - classification of policies as true excess insurance - held: purpose of condition was to make obligation to indemnify conditional on solicitor establishing both the fact and amount of fund's liability to indemnify solicitor - trial judge's construction of condition correct - condition not void under s52 - appeal dismissed.

[The Hancock Family Memorial Foundation Ltd](#)

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