



Tuesday, 2 December 2014

## Insurance

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

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## Executive Summary (1 minute read)

**Quintano v Minister for Finance and Deregulation** (FCAFC) - administrative law - applicant injured in fight in nightclub - act of grace payment refused - appeal dismissed

**State of Queensland v Moon** (NSWSC) - transfer of proceedings - medical negligence - proceedings transferred from New South Wales to Queensland

**Lawlor (nee Latta) v NSW** (NSWSC) - work injury damages - limitations - leave to commence proceedings out of time granted

**Miller v Lithgow City Council** (NSWSC) - negligence - student injured attempting dive into shallow end of pool - school liable

## Summaries with links (5 minute read)

### **Quintano v Minister for Finance and Deregulation [2014] FCAFC 159**

Full Court of the Federal Court of Australia

Edmonds, McKerracher & Katzmann JJ

Administrative law - applicant injured in fight at nightclub - sued owner of nightclub - NSW Supreme Court awarded applicant \$4,063,802.50 - owner went into liquidation during proceeding - owner insured by insurer through its agent - insurer and agent wound up - applicant sought act of

grace payment under s33 *Financial Management and Accountability Act 1997* (Cth) on basis ASIC and Australian Prudential Regulation Authority failed to act against insurer or agent despite being aware they were unable to meet liabilities and may have engaged in criminal activity - primary judge dismissed application - held: grounds of appeal not made out - no error in primary judge's conclusion that applicant's circumstances were not special or sufficiently special to warrant exercise of discretion to authorise payment - appeal dismissed.

[Quintano](#)

## **State of Queensland v Moon [2014] NSWSC 1698**

Supreme Court of New South Wales

Button J

Medical negligence - plaintiff alleged she was injured in obstetric procedure in hospital procedure in Queensland - State sought brought pursuant to ss5(2)(b) & 8 *Jurisdiction of Courts (Cross-Vesting) Act 1987* (NSW) to have proceedings brought by plaintiff in District Court of New South Wales transferred to Supreme Court of New South Wales and thereafter to Supreme Court of Queensland - held: circumstances argued strongly for transfer to Queensland - tort allegedly occurred in Queensland - no dispute law of Queensland would apply at trial - plaintiff and vast majority of treating medical professionals resided in Queensland - apart from fact that plaintiff's solicitors were based in Sydney, dispute had no connection with New South Wales - Queensland was the natural forum for the resolution of the litigation - application granted.

[State of Queensland](#)

## **Lawlor (nee Latta) v NSW [2014] NSWSC 1659**

Supreme Court of New South Wales

Hidden J

Limitations - work injury damages - plaintiff sued NSW for damages for psychological injury suffered as result of duties as a police officer between 1996 and 2002 - plaintiff sought modified common law damages under *Workers Compensation Act 1987* (NSW) - statement of claim filed after expiration of 3 year limitation period set by s151D(2) - plaintiff sought leave to commence proceedings - held: Court satisfied there was reasonable explanation for delay and that fair trial could be had - plaintiff entitled to exercise of discretion in her favour - leave to commence proceedings out of time granted.

[Lawlor \(nee Latta\)](#)

## **Miller v Lithgow City Council [2014] NSWSC 1579**

Supreme Court of New South Wales

RS Hulme AJ

Negligence - plaintiff injured when she attempted to perform 'track-start dive' into shallow end of swimming pool run by Council - first defendant was Council - second defendant conducted school - plaintiff sued defendants for breach of duty of care - s5D *Civil Liability Act 2002* (NSW) - held:



immediate cause of plaintiff's injury was slippage of foot - unreasonable for school to encourage plaintiff to dive into shallow end of pool with lack of gripping facilities - no breach of duty by Council - school liable for failure to warn plaintiff of risks of what she was doing and because it actively encouraged plaintiff to do what she was doing - school's negligence caused plaintiff's injuries - judgment for plaintiff - damages to be assessed.

[Miller](#)

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