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

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Executive Summary (1 minute read)

May v Military Rehabilitation and Compensation Commission (FCAFC) - administrative law - workers compensation - 'injury' - appeal allowed - matter remitted

Cassegrain v Gerard Cassegrain & Co Pty Ltd (in liq) (NSWSC) - equitable compensation - transfer of shares at undervalue - Referee's report adopted - defendants to pay equitable compensation

Health Administration Corporation v C JL Haulage Pty Ltd (NSWSC) - motor vehicle accident - collision between ambulance and truck - ambulance driver negligent - appeal dismissed

Break Fast Investments v Rigby Cooke Lawyers (VSC) - legal practitioners - application to restrain firm from acting in proceedings dismissed

Summaries With Link (Five Minute Read)

May v Military Rehabilitation and Compensation Commission [2015] FCAFC 93

Full Court of the Federal Court of Australia

Allsop CJ; Kenny, Besanko, Robertson & Mortimer JJ

Administrative law - workers compensation - appellant joined Royal Australian Air Force (RAAF) and shortly after suffered from symptoms or condition - Administrative Appeals Tribunal concluded appellant had not suffered an 'injury' for purposes of s14 *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRC Act) and that respondent Military Rehabilitation and Compensation Commission was not liable to pay him compensation under the SRC Act - primary judge found appellant had not identified any legal error in the AAT's decision - appellant appealed from primary judge's decision and sought judicial review - held: appellant established error in primary judge's decision - certain questions of law identified by appellant should be answered favourably to appellant - appropriate for another Tribunal to consider whether appellant had suffered injury within meaning of s4 SRC Act and whether injury arose out of or in the course of his employment - appeal allowed.

[May](#)

Cassegrain v Gerard Cassegrain & Co Pty Ltd (in liq) [2015] NSWSC 851

Supreme Court of New South Wales

Bergin CJ in Eq

Equitable compensation - Referee's report - parties disagreed whether report of referee should be adopted - report concerned inquiry into existence and quantum of loss to company due to transfer of shares at undervalue for purposes of making orders for equitable compensation - Referee determined that defendants were required to pay \$2,596,039 in equitable compensation - liquidator sought order that report be adopted pursuant to r20.24 *Uniform Civil Procedure Rules 2005* and sought orders including order for payment of compensation - held: Court not satisfied there was any requirement imposed on Referee by Court in respect of date for assessment of equitable compensation - contentions concerning market for shares failed - no error in valuation of property - complaints regarding Referee's analysis and conclusions in respect of evidence not made out - Referee's approach to loss to company not a reason to reject report - Court not satisfied Referee erred in exercise of discretion - report adopted - defendants to pay equitable compensation.

[Cassegrain](#)

Health Administration Corporation v CJL Haulage Pty Ltd [2015] NSWSC 858

Supreme Court of New South Wales

Button J

Motor vehicle accident - collision between truck and ambulance - truck driver and ambulance driver each alleged the other was negligent - Magistrate found ambulance driver negligent and that truck driver not negligent - held: contention rejected that there was failure to determine pleaded issues of negligence and contributory negligence rejected - not incumbent upon

Magistrate, having found siren was not on, to provide affirmative hypothesis as to how that came to be - parties had been content for Magistrate to decide establishment of negligence based on *Road Rules 2008* - contention rejected that to extent Magistrate made adverse evaluation of ambulance driver's driving, Magistrate should have put adverse proposition to ambulance driver for comment - no error in finding no evidence about details of emergency to which ambulance driver travelling - contention rejected that Magistrate erred in finding ambulance vehicle's siren was not activated shortly prior to the collision - appeal dismissed.

[Health](#)

Break Fast Investments v Rigby Cooke Lawyers [2015] VSC 305

Supreme Court of Victoria

Bell J

Legal practitioners - third defendant sought order restraining solicitors' firm from acting for plaintiff in proceeding - third defendant contended firm should be restrained because it previously acted for and gave advice to it in relation to relevant matters - whether material risk of misuse of confidential information obtained by firm from third defendant - whether continuing to act would involve a breach of firm's continuing duty of loyalty to third defendant - whether administration of justice required firm to cease acting - held: third failed to establish Court should exercise jurisdiction to restrain party from being represented in legal proceeding by lawyer of choice - application dismissed.

[BreakFast](#)



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from Beachy Head

By Charlotte Smith

On thy stupendous summit, rock sublime!
That o'er the channel reared, half way at sea
The mariner at early morning hails,
I would recline; while Fancy should go forth,
And represent the strange and awful hour
Of vast concussion; when the Omnipotent
Stretched forth his arm, and rent the solid hills,
Bidding the impetuous main flood rush between
The rifted shores, and from the continent
Eternally divided this green isle.
Imperial lord of the high southern coast!
From thy projecting head-land I would mark
Far in the east the shades of night disperse,
Melting and thinned, as from the dark blue wave
Emerging, brilliant rays of arrowy light
Dart from the horizon; when the glorious sun
Just lifts above it his resplendent orb.
Advances now, with feathery silver touched,
The rippling tide of flood; glisten the sands,
While, inmates of the chalky clefts that scar
Thy sides precipitous, with shrill harsh cry,
Their white wings glancing in the level beam,
The terns, and gulls, and tarrocks, seek their food,
And thy rough hollows echo to the voice
Of the gray choughs, and ever restless daws,
With clamor, not unlike the chiding hounds,
While the lone shepherd, and his baying dog,
Drive to thy turfy crest his bleating flock.

The high meridian of the day is past,
And Ocean now, reflecting the calm Heaven,
Is of cerulean hue; and murmurs low
The tide of ebb, upon the level sands.
The sloop, her angular canvas shifting still,
Catches the light and variable airs
That but a little crisp the summer sea,
Dimpling its tranquil surface.

[Charlotte Smith](#)

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