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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)

Nominal Defendant v Smith (NSWCA) - motor accidents compensation - issue whether unidentified vehicle involved in collision - miscarriage of fact process - outstanding matters remitted to District Court

Jubb v Insurance Australia Ltd t/as NRMA Insurance (NSWSC) - judicial review - motor accidents compensation - psychological injury - whole person impairment - no error in decision of Proper Officer to refer matter for further assessment, or in decision of medical assessor - no denial of procedural fairness - summons dismissed

Kencian v Watney (QCA) - defamation - trial to proceed as trial by jury at appellants' election - appeal allowed

Department of Health & Ageing v Buckett (SASC) - workers compensation - injured worker was carrying out duties of employment while making journey to place of work - leave to appeal from decision of Workers Compensation Tribunal refused

Summaries With Link (Five Minute Read)

Nominal Defendant v Smith [2015] NSWCA 339

Court of Appeal of New South Wales

Basten, Leeming & Simpson JJA

Motor accidents compensation - first respondent passenger injured when driver of vehicle (Mr Harris) lost control and vehicle collided with another vehicle - issue was whether an unidentified "black car" had cut in front of Mr Harris so he lost control when he applied brakes - trial judge accepted there was such vehicle, which driver of other vehicle (Ms Callister) did not see and that driver of unidentified vehicle bore 60% of responsibility for accident - basis of Mr Harris' 40% responsibility unclear. - Nominal Defendant challenged finding there was an unidentified vehicle involved - Mr Harris challenged apportionment of liability to him - ss34 & 145 *Motor Accidents Compensation Act 1999* (NSW) - held: primary judge erred in summarily dismissing Ms Callister's evidence, failed to weigh competing evidence of first respondent and Ms Callister on balance of probabilities and failed to assess reliability of first respondent's evidence - primary judge used Mr Harris' police statement for purpose contrary to ruling on which it was admitted - fact process had miscarried - outstanding issues remitted to District Court.

[Nominal Defendant](#)

Jubb v Insurance Australia Ltd t/as NRMA Insurance [2015] NSWSC 1617

Supreme Court of New South Wales

Harrison AsJ

Judicial review - motor accidents compensation - psychological injury - plaintiff involved in motor vehicle accident - first defendant accepted liability - medical assessor found plaintiff suffering psychiatric injuries and assessed him as having 13% whole person impairment - plaintiff sought to quash decision of Proper Officer to refer matter for further assessment and further decision of medical assessor that plaintiff's whole person impairment was less than 10% - interrelationship between s62 *Motor Accidents Compensation Act 1999* (NSW) and Ch14 *MAA Medical Assessment Guidelines* - held: no jurisdictional errors or errors of law in either decision - no denial of procedural fairness - summons dismissed.

[Jubb](#)

Kencian v Watney [2015] QCA 212

Court of Appeal of Queensland

Carmody CJ; Morrison JA & Boddice J

Defamation - election and procedure for trial by jury - respondent was school principal at school attended appellants' children - respondent claimed he was defamed by appellants in letter sent they sent to school authorities - appellants sought to challenge dismissal of application for orders relating to election and procedure for trial by jury under *Defamation Act 2005* (Qld) - whether a party who elected for trial by jury abandoned that election by refusal to pay jury fees, in absence of a court order - whether trial by jury should have been ordered under r475 *Uniform Civil Procedure Rules 1999* (Qld) - held: primary judge erred in dismissing application - test to

be applied was whether Court satisfied proceeding could appropriately be tried by jury - proceeding could be appropriately tried by jury - just and expeditious resolution of proceedings not likely to be frustrated - appeal allowed - trial to proceed as trial by jury at appellants' election pursuant to r475(1).

[Kencian](#)

Department of Health & Ageing v Buckett [2015] SASC 173

Supreme Court of South Australia

Sulan J

Workers compensation - respondent injured when travelling to medical centre where she worked - respondent claimed compensation under *Workers Rehabilitation and Compensation Act 1986 (SA)* - Department rejected claim on ground travel to work was not in course of carrying out official duties of employment under s30(5)(a) - Workers Compensation Tribunal found respondent was carrying out duties of employment in undertaking relevant journey - Department unsuccessfully appealed to Full Bench of Workers Compensation Tribunal - Department sought to appeal - held: there were factors supporting application but case raised no question of principle and was confined to own particular facts - no obvious error and interests of justice did not require a grant of permission to appeal - leave to appeal refused.

[Buckett](#)

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