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Insurance

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Davis v Halliday Financial Management Pty Ltd (NSWSC) - pleadings - accessorial liability - actual knowledge - statement of claim struck out in part - leave to replead

Essential Beauty Franchising (WA) Pty Ltd v Pilton Holdings (No 3) (SASC) - stay pending appeal granted - security for costs of appeal granted

Birla Nifty Pty Ltd v International Mining Industry Underwriters Ltd (WASCA) - insurance - property damage and business interruption insurance policy - construction of excess clause - appeal dismissed

Mander Forklift Pty Ltd v Singles (ACTCA) - work injury damages - appeal from reinstatement of proceedings allowed

Summaries with links (5 minute read)

Davis v Halliday Financial Management Pty Ltd [2014] NSWSC 1371
Supreme Court of New South Wales
Kunc J



Pleadings - accessory liability - plaintiffs sued defendants in relation to investment advice given by first defendant in relation to investment which was unsuccessful - sufficiency of allegation in pleadings that defendants had actual knowledge - held: if plaintiffs were to make out allegation of accessory liability, further pleading would need to do more than just allege that relevant defendants had actual knowledge of matters alleged - material facts required to be pleaded must extend to pleading those facts by reason of which it would be alleged defendants had relevant actual knowledge - statement of claim struck out in part with leave to replead.

[Davis](#)

Essential Beauty Franchising (WA) Pty Ltd v Pilton Holdings (No 3) [2014] SASC 148

Supreme Court of South Australia

Nicholson J

Stay - security for costs - appellants appealed against judgment ordering them to pay amount to first respondent - appellants sought stay pending outcome of appeal - respondents sought that appellants provide security for costs of appeal - respondents also sought that appeal be dismissed, or that appellants provide further and better particulars of grounds of the appeal - held: appeal not without merit - real risk that, if stay not granted, first appellant would be wound up and second appellant would enter into bankruptcy, which would render it much more difficult for appeal to proceed, if it were to proceed at all - application for stay of execution allowed - appellants impecunious - prospects of success on appeal limited - first respondent had already been put to great expense of lengthy trial and had obtained very substantial costs order in its favour - first respondent at real risk of not having its costs order at trial met by the appellants - application for security for costs allowed.

[Essential Beauty Franchising \(WA\) Pty Ltd](#)

Birla Nifty Pty Ltd v International Mining Industry Underwriters Ltd [2014] WASCA 180

Court of Appeal of Western Australia

McLure P; Buss & Newnes JJA

Insurance - appellant insured operated mines - appellant entered insurance contract with respondent insurer, on behalf of itself and other underwriters for period 31/3/08 to 31/3/09 - respondent was lead insurer - contract provided property damage cover and business interruption cover for mines' operation - during period of insurance, appellant suffered business interruption loss from interruption in supply of gas mine caused by explosion at company's gas facilities - meaning of *annual value* in excess clause - primary judge rejected both parties' construction of clause and made no final determination on meaning of clause - even if primary judge had favoured either party's interpretation, he would not have allowed insurer's claim that insured was estopped from disputing its interpretation - held: primary judge correctly identified compelling reasons for rejecting insured's constructions of excess clause - insurer's declared value construction of excess clause upheld - primary judge ought to have concluded *annual value of the site affected* meant



estimated gross profit and payroll of that mine specified as declared value in Placing Slip - appeal dismissed.

[Birla Nifty Pty Ltd v International Mining Industry Underwriters Ltd](#)

Mander Forklift Pty Ltd v Singles [2014] ACTCA 44

Court of Appeal of the Australian Capital Territory

Gilmour J; Walmsley & Robinson AJJ

Work injury damages - worker injured in 1997 when thrown from pallet truck while employed by Australia Post - appellant filed statement of claim in 2000, claiming damages from supplier of truck for failure to adequately maintain truck - proceedings stood over several times before being stood over generally by consent in 2004 with liberty to restore proceedings to active cases list - no steps taken by either party - claim dismissed - primary judge granted leave to reinstate proceedings pursuant to r76 *Court Procedures Rules 2006* (ACT) - held: primary judge set aside Master's refusal to reinstate proceedings on account of three instances concerning weight to be given to factors and one instance of overlooking a fact - however, Master was entitled in his discretion to give relevant factors such weight as he thought they deserved - judge on appeal from such a judgment had no authority to substitute his or her view as to weight to be given to the same factors - no appealable error going to exercise of Master's discretion - primary judge was in error in concluding to the contrary - appeal allowed.

[Mander Forklift Pty Ltd](#)



From "The Princess"

By Lord Alfred Tennyson

Come down, O maid, from yonder mountain height:
What pleasure lives in height (the shepherd sang),
In height and cold, the splendour of the hills?
But cease to move so near the Heavens, and cease
To glide a sunbeam by the blasted Pine,
To sit a star upon the sparkling spire;
And come, for Love is of the valley, come,
For Love is of the valley, come thou down
And find him; by the happy threshold, he,
Or hand in hand with Plenty in the maize,
Or red with spirted purple of the vats,
Or foxlike in the vine; nor cares to walk
With Death and Morning on the silver horns,
Nor wilt thou snare him in the white ravine,
Nor find him dropt upon the firths of ice,
That huddling slant in furrow-cloven falls
To roll the torrent out of dusky doors:
But follow; let the torrent dance thee down
To find him in the valley; let the wild
Lean-headed Eagles yelp alone, and leave
The monstrous ledges there to slope, and spill
Their thousand wreaths of dangling water-smoke
That like a broken purpose waste in air:
So waste not thou; but come; for all the vales
Await thee; azure pillars of the hearth
Arise to thee; the children call, and I
Thy shepherd pipe, and sweet is every sound,
Sweeter thy voice, but every sound is sweet;
Myriads of rivulets hurrying thro' the lawn,
The moan of doves is immemorial elms,
And murmuring of innumerable bees.

[Lord Alfred Tennyson](#)

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