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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)

Kubovic v HMS Management Pty Ltd (NSWCA) - negligence - work injury damages - no error in finding of contributory negligence, admission of surveillance evidence, or assessment of damages for future economic loss - appeal dismissed

Quach v Health Care Complaints Commission (No 2) (NSWCA) - costs - order against litigant in person - "delinquency" - indemnity costs ordered in Commission's favour

Gardam v WTH Pty Ltd (TASSC) - contract - insurance - vehicle rental agreement - loss damage waiver option - exclusion clause relating to blood alcohol level - hirer liable for damage to vehicle

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Summaries With Link (Five Minute Read)

Kubovic v HMS Management Pty Ltd [2015] NSWCA 315

Court of Appeal of New South Wales

McColl & Ward JJA; Adamson J

Negligence - work injury damages - contributory negligence - procedural fairness - appellant injured in accident in course of employment with respondent - appellant sued respondent in negligence for damages for injuries - primary judge found for appellant - claim confined to damages for past and future loss of earnings - damages assessed at \$107,951 taking into account 20% deduction for contributory negligence - appellant appealed - ss3B, 5B, 5D & 12 - 14 *Civil Liability Act 2002* (NSW) - ss151G, 151H & 151N *Workers Compensation Act 1987* (NSW) - held (by majority): no error in finding of contributory negligence - primary judge did not err in permitting surveillance evidence to be adduced - primary judge did not fall into error in assessing weight to be placed on opinions of appellant's medical experts, or appellant's evidence in light of surveillance evidence - no error in approach to assessment of damages for future economic loss by way of buffer - appeal dismissed

[Kubovic](#)

Quach v Health Care Complaints Commission (No 2) [2015] NSWCA 311

Court of Appeal of New South Wales

Meagher JA

Costs - notices of motion filed by practitioner dismissed with costs - practitioner was litigant in person - Health Care Complaints Commission sought payment of costs on indemnity basis - s98 *Civil Procedure Act 2005* (NSW) - competing interests to be considered when indemnity costs sought against litigant in person - held: practitioner's conduct met description of type of "delinquency" justifying indemnity costs - Commission informed practitioner of unlikelihood of success in pursuing claims for interlocutory relief - Commission informed practitioner by letter of intention to seek indemnity costs if he continued to press applications - costs incurred by Commission from date of letter and in relation to notices of motion assessed on indemnity basis.

[Quach](#)

Gardam v WTH Pty Ltd [2015] TASSC 46

Supreme Court of Tasmania

Blow CJ

Contract - insurance - dispute between vehicle rental company and customer concerning damage to rented vehicle - appellant hired van from company - vehicle broke down - appellant contacted company and arranged for replacement vehicle to be sent to him - while waiting appellant and companions consumed alcoholic drinks - appellant failed to keep replacement vehicle on sealed portion of roadway - vehicle flipped and was damaged - appellant prosecuted and pleaded guilty to a charge on basis he was driving with blood alcohol concentration of 0.053% - it was offence to drive with blood alcohol concentration exceeding .05% - company sued appellant in Magistrates Court for damage to vehicle - Magistrate held that under parties'



rental agreement appellant liable to pay company for damage - appellant appealed - loss damage waiver option - meaning of exclusion clause - applicability of s21 *Road Safety (Alcohol and Drugs) Act 1970* (Tas) - held: Magistrate correctly applied contractual provisions - Magistrate correct to find s21 did not apply to case - appeal dismissed.

[Gardam](#)

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