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Insurance

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Comcare v John Holland Pty Ltd (FCA) - occupational health and safety - employee fatally injured - early admission of breaches - contrition - penalties

Smith bht Smith v NRMA Insurance Ltd (NSWSC) - negligence - van collided with car, injuring passenger - Court not satisfied van driver conscious - NRMA not liable

Norman v Cowell (NSWSC) - defamation - pleadings - defence struck out - leave to replead - application to set aside subpoena stood over

Hodder v Hamilton & Fitzpatrick (VSCA) - accident compensation - refusal to discharge jury - refusal of permission to adduce evidence - appeal dismissed

Summaries with links (5 minute read)

Comcare v John Holland Pty Ltd [2014] FCA 1191

Federal Court of Australia

Siopis J

Occupational health and safety - employee fatally injured while working on engineering site - applicant commenced proceeding alleging breaches of duties under *Occupational Health and Safety Act 1991* (Cth) - parties agreed statement of facts and terms of proposed declarations -

penalties which should be imposed in respect of admitted breaches - whether respondents should get 25% discount in respect of early admission of contraventions - held: task of Court was to impose penalty which reflected objective seriousness of contravention, gave effect to objects of Act and would maintain public confidence in Act - Court placed weight on fact respondents cooperated during investigation and admitted contraventions at very early stage - Court also took into account contrition - however Court did not accept respondents' contention that it should have 25% discount in respect of early plea and an additional 10% to 15% discount in respect of other factors - such an approach would be antithetical to flexible approach to the imposition of penalties endorsed by the Full Court - penalties imposed.

[Comcare](#)

Smith bht Smith v NRMA Insurance Ltd [2014] NSWSC 1518

Supreme Court of New South Wales

Button J

Negligence - plaintiff child was passenger in motor vehicle - van drove onto wrong side of road colliding with motor vehicle - plaintiff injured - van driver pronounced dead at scene of accident having suffered heart attack - plaintiff sued NRMA as insurer of van driver - separate determination of liability - parties agreed that if van driver was conscious and in control of the van at the time of the collision, he was undoubtedly negligent, and, if unconscious or otherwise very incapacitated, he was not negligent - time at which van driver suffer the heart attack - held: Court not satisfied on balance of probabilities that van driver was conscious and driving at time of collision - separate question of liability determined in favour of NRMA.

[Smith bht Smith](#)

Norman v Cowell [2014] NSWSC 1575

Supreme Court of New South Wales

McCallum J

Defamation - pleadings - subpoena - self-represented litigant - action arising in respect of series of cartoons with captions allegedly published by defendant on her Facebook page - plaintiff sought to strike out defence and set aside subpoena - held: defence filed in relevant Court form but attached pages of typed response which did not conform to requirements of pleading defence - not inappropriate to allow defendant to seek production of documents relevant to issues raised by way of subpoena to plaintiff - defence struck out - application in respect of subpoena stood over until amended defence filed - defendant referred to registrar for referral to a barrister or solicitor on pro bono panel for legal assistance in settling an amended defence.

[Norman](#)

**Hodder v Hamilton & Fitzpatrick [2014] VSCA 279**

Court of Appeal of Victoria

Santamaria, Beach & Kyrou JJA

Accident compensation - occupiers liability - appellant injured at premises occupied by respondents - appellant sued respondents claiming they were negligent and that they breached occupiers' duties of care - County Court jury returned verdict for respondents - held: no error in primary judge's refusal to permit appellant to adduce a DVD showing a re-enactment of actions giving rise to accident as appellant believed they had occurred, or in refusal of permission to adduce opinion evidence as to the ease with which it was possible to perform the actions shown in the DVD - no error in primary judge's refusal to discharge the jury - appeal dismissed.

[Hodder](#)

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