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Insurance

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Gray v Richards (HCA) - damages - motor vehicle collision - fund management damages to include amount to offset trustee's cost of managing them - appeal allowed in part

Marsh Pty Ltd v Vickery (No 2) (FCA) - pleadings - alleged breach of employment contract - amendment of statement of claim to add lost clients allowed

Lu v Heinrich (NSWCA) - damages - motor vehicle accident - inadequacy of reasons - substantial wrong or injustice - new trial

William Hare UAE LLC v Aircraft Support Industries Pty Ltd (NSWSC) - international commercial arbitration - breach of natural justice - partial enforcement of foreign award

Summaries with links (5 minute read)

Gray v Richards [2014] HCA 40

High Court of Australia

French CJ, Hayne, Bell, Gageler & Keane JJ

Damages - negligence - appellant suffered brain injury in collision with motor vehicle driven by respondent - appellant sued driver in negligence - proceedings compromised on terms that driver pay appellant \$10 million (compromise money) plus damages to cover expenses associated with managing compromise money (fund management damages) - appellant declared incapable of managing own affairs - private trustee appointed to manage estate - trustee charged management fees on funds under management comprising both compromise money and fund management damages - Supreme Court of New South Wales determined fund management damages should include amount to offset cost of managing the fund management damages and further amount to offset cost of managing fund's predicted future income - Court of Appeal reversed decision - held: Court of Appeal erred in deciding no allowance should be made for cost of managing fund management damages but was correct in deciding no allowance should be made for cost of managing fund's predicted future income - appeal allowed in part.

[Gray](#)

Marsh Pty Ltd v Vickery (No 2) [2014] FCA 1100

Federal Court of Australia

Besanko J

Pleadings - applicant operated insurance brokerage business - applicant employed respondent in business - applicant gave respondent notice that employment would end by reason of redundancy - applicant claimed respondent obtained information about its business and clients and that he has used information in breach of various obligations owed to applicant - applicant claimed it lost clients due to respondent's wrongful conduct and that conduct caused applicant to suffer loss and damage - applicant sought to amend statement of claim by adding five clients to list of lost clients - held: Court satisfied applicant would suffer fairly substantial prejudice if amendment not allowed - applicant had proffered explanation for delay - respondent had not filed affidavit outlining any prejudice - only prejudice which might be inferred was that respondent may require additional time to file evidence - relevant factors favoured grant of leave to amend - leave to amend allowed.

[Marsh Pty Ltd](#)

Lu v Heinrich [2014] NSWCA 349

Court of Appeal of New South Wales

McColl & Basten JJA; Sackville AJA

Damages - motor vehicle accident - appellant injured when motor vehicle he was driving was struck from behind by a motor vehicle driven by respondent - appellant's vehicle stationary at the

time of the collision - driver admitted breach of duty of care but pleaded contributory negligence - primary judge found no contributory negligence - primary judge found appellant suffered soft tissue injury as result of accident and that, while he may suffer "some psychotic condition", it was not caused by accident - primary judge awarded damages of \$5,296.30 representing one month lost wages and medical expenses which he found were reasonably referable to treatment for minor injury caused by accident - held (by majority): appellant established primary judge failed to give adequate reasons - process of fact-finding miscarried - appellant had arguable case of both physical and psychiatric conditions caused by accident which was not adequately considered - there had been substantial wrong or miscarriage requiring a new trial - appeal allowed - new trial ordered limited to damages.

[Lu](#)

William Hare UAE LLC v Aircraft Support Industries Pty Ltd [2014] NSWSC 1403

Supreme Court of New South Wales

Darke J

International commercial arbitration - plaintiff was company incorporated under laws of Abu Dhabi in United Arab Emirates - defendant was Australian company - plaintiff sought order under s8(2) *International Arbitration Act 1974* (Cth) for enforcement of arbitral award made in the United Arab Emirates - dispute arising from payment of retention monies under agreement for construction works - agreement governed by laws of UAE - clause of agreement provided for arbitration of disputes to be governed by rules of Abu Dhabi Chamber of Commerce and Industry and take place in Abu Dhabi - decision of such arbitration stated to be final and binding upon the parties - held: there had been breach of rules of natural justice in respect of one aspect of arbitration - parts of award affected by breach severed - balance of award enforced in accordance with s8(7) *International Arbitration Act 1974* (Cth) - judgment for plaintiff.

[William Hare UAE LLC](#)



Aedh Wishes for the Cloths of Heaven

By W. B. Yeats

Had I the heavens' embroidered cloths,
Enwrought with golden and silver light,
The blue and the dim and the dark cloths
Of night and light and the half light,
I would spread the cloths under your feet:
But I, being poor, have only my dreams;
I have spread my dreams under your feet;
Tread softly because you tread on my dreams.

[W. B. Yeats](#)

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