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## Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Ashton v Pratt** (NSWCA) - contract - no binding legal relations between escort and late Richard Pratt - appeal dismissed

**Nationwide News Pty Ltd v Hibbert** (NSWCA) - pleadings - defamation - refusal to strike out imputations - leave to appeal refused

**Tomanovic v One Australia Pty Ltd** (NSWCA) - evidence - oppression - valuation of shares in company - appeal dismissed

**Akron Roads Pty Ltd (in liq) v Crewe Sharp** (VSC) corporations - joinder of third party insurer as defendant in proceedings

**Field Deployment Solutions Pty Ltd v SC Projects Australia Pty Ltd** (WASC) - security of payments - error of law did not vitiate decision to dismiss adjudication application

**Mercer v Allianz Australia Insurance Ltd (No 4)** (TASSC) - judgments and orders - Court empowered to order entry of backdated interest-bearing judgment

# Benchmark

## Summaries with links (5 Minute Read)

### **Ashton v Pratt [2015] NSWCA 12**

Court of Appeal of New South Wales

Bathurst CJ; McColl & Meagher JJA

Contract - appellant provided deceased with escort services - in 2003 appellant and deceased had conversations in which he stated he would pay appellant certain allowances, give her a car and set up trust for each of her children - primary judge found conversations not intended to create legal relations, that contract if made it was void against public policy, that executor not estopped from denying conversations were legally binding, and that any binding obligations had been released - appellant's children joined proceedings seeking to enforce term in conversations to create trust - held: parties did not intend to create legal relations and - estoppel claim against executor failed - correspondence constituted an accord and satisfaction - 2005 document effective to release deceased from appellant's claims - appeal dismissed.

[Ashton](#)

### **Nationwide News Pty Ltd v Hibbert [2015] NSWCA 13**

Court of Appeal of New South Wales

Barrett & Emmett JJA; Sackville AJA

Pleadings - defamation - action arising out of articles published in newspaper and on website - applicants sought leave to appeal from trial judge's refusal to strike out certain imputations pleaded by respondent - applicants contended imputations did not differ in substance - held: applicants did not demonstrate either that proposed appeal raised issue of principle or that refusal to grant leave would create risk of significant injustice to them - application did not justify grant of leave to appeal - leave to appeal refused.

[Nationwide News Pty Ltd](#)

### **Tomanovic v One Australia Pty Ltd [2015] NSWCA 11**

Court of Appeal of New South Wales

Bathurst CJ; Barrett & Emmett JJA

Evidence - valuation of shares - oppression suit brought under s232 *Corporations Act 2001* (Cth) - appeal against valuation of shares in company to determine price to be paid by One Australia to Australian Financial Services Corporation in consequence of orders - appellants contended primary judge erred in arriving at valuation of shares at \$1,870,043 and that primary judge should have determined valuation in order of \$12,500,000 - expert opinion - conflicting evidence - methodology of valuation - book value of company - held: primary judge proceeded according to objectively reasonable method of valuation and reached conclusion that did not exhibit error - appeal dismissed.

[Tomanovic](#)

### **Akron Roads Pty Ltd (in liq) v Crewe Sharp [2015] VSC 34**

Supreme Court of Victoria

# Benchmark

Judd J

Joinder - insurance - first plaintiffs were liquidators of company - second plaintiff was company - liquidators claimed compensation from former directors of company for loss resulting from insolvent trading by company - plaintiffs also claimed related corporation was shadow director which failed to prevent company from trading while insolvent - liquidators sought to join insurer of director and related corporation as defendant - s562 *Corporations Act 2001* (Cth) - true legal controversy - held: Court persuaded there was proper basis under r9.06(b)(ii) *Supreme Court (General Civil Procedure) Rules 2005* (Vic) to join insurer - proposed case to be advanced by plaintiffs was not hopeless, bound to fail or fanciful without any reasonable prospect of success - joinder granted.

[Akron Roads Pty Ltd \(in liq\)](#)

## **Field Deployment Solutions Pty Ltd v SC Projects Australia Pty Ltd [2015] WASC 60**

Supreme Court of Western Australia

Mitchell J

Judicial review - construction contract - security of payments - appellant and respondent were parties to contract for appellant to supply, maintain and operate vehicles to haul material to designated works locations - payment dispute arose - appellant sought to engage provisions of *Construction Contracts Act 2004* (WA) - appellant sought review of State Administrative Tribunal's decision that agreement was not a construction contract for purpose of Act and that adjudication application was not prepared and served in accordance with s26 - Tribunal affirmed adjudicator's dismissal of adjudication application - held: Tribunal erred in law in concluding agreement was not a construction contract - however error was capable of affecting only one of the two alternative grounds on which Tribunal's decision was based - grounds of appeal did not challenge other alternative ground - error of law did not vitiate Tribunal's decision - Tribunal's decision affirmed.

[Field Deployment Solutions Pty Ltd](#)

## **Mercer v Allianz Australia Insurance Ltd (No 4) [2015] TASSC 2**

Supreme Court of Tasmania

Blow CJ

Judgments and orders - work injury damages - plaintiff entitled to judgment against Allianz for a substantial sum - dispute between parties as to how much money, date of judgment and date from which post-judgment interest would run - whether Court had power to order entry of backdated interest-bearing judgment - ss165 & 201(1). *Supreme Court Civil Procedure Act 1932* (Tas) - r573(1) *Supreme Court Rules 2000* (Tas) - held: Court had power to make order for backdated interest-bearing judgment to be entered for original sum less amount that had already been paid - interest on judgment to run from date of on which action determined.

[Mercer](#)

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