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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)

Lachlan v HP Mercantile Pty Ltd (NSWCA) - deed of release and assignment - assignee entitled to amounts owing under loan agreements - appeal dismissed

Verryt v Schoupp (NSWCA) - negligence - motor accidents compensation - "skitching" accident - contributory negligence established - damages reduced - appeal allowed in part

Casey v Pel-Air Aviation Pty Ltd; Helm v Pel-Air Aviation Pty Ltd (NSWSC) - negligence - damages - doctor and nurse injured in plane crash - nurse's PTSD was "bodily injury" compensable under *Civil Aviation (Carriers Liability) Act 1959* (Cth)

Peet v NRMA Insurance Ltd (NSWSC) - judicial review - motor accidents compensation - Medical Review Panel erred on issue of causation - decision quashed

ABL Nominees Pty Ltd v Pescott (No.2) (VSC) - privilege - subpoena - client legal privilege established over documents produced by former solicitor

Summaries With Link (Five Minute Read)

Lachlan v HP Mercantile Pty Ltd [2015] NSWCA 130

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & McColl JA

Contract - appellant entered four loan agreements with company - respondent was assignee of company's rights - respondent sought to recover amounts outstanding on loans - parties entered Deed of Release and Assignment which provided appellant pay respondent amount in instalments and that respondent entitled to enter judgment for "judgment debt" under deed if unrectified default - consent orders made - appellant defaulted on final instalment and failed to rectify - appellant sought extension of time to pay final instalment - appellant submitted finding in *Paino v Hoffbauer* 13 NSWLR 193 in error and should not be followed, and that clause of deed which provided for payment of "judgement debt" unenforceable as it amounted to penalty - held: *Paino v Hoffbauer* did not impermissibly fetter Court's general discretion, and trial judge did not err in having regard to it - primary judge did not exercise discretion in manner manifestly unreasonable or plainly unjust in refusal of extension of time - clause of deed not a penalty as appellant implicitly acknowledged in deed that "judgment debt" debt was present debt - appeal dismissed.

[Lachlan](#)

Verryt v Schoupp [2015] NSWCA 128

Court of Appeal of New South Wales

Meagher & Gleeson JJA; Sackville AJA

Negligence - damages - respondent was child who sustained serious head injuries in 'skitching' (riding skateboard while towed by vehicle) - accident was a "motor accident" under *Motor Accidents Compensation Act 1999* - respondent claimed damages for negligence - appellant driver frankly conceded blame - primary judge rejected contributory negligence defence - judgment entered for respondent in amount of \$2,204,150.47 - held: it was just and equitable that respondent bear small proportion of responsibility for damage resulting from accident - sufficient allowance for respondent's lack of care for own safety was reflected in a reduction of his damages by 10% - reductions made to certain heads of damages - appeal allowed in part.

[Verryt](#)

Casey v Pel-Air Aviation Pty Ltd; Helm v Pel-Air Aviation Pty Ltd [2015] NSWSC 566

Supreme Court of New South Wales

Schmidt J

Negligence - damages - nurse and doctor employed by company - company sent nurse and doctor from Sydney to help transport seriously ill patient and husband from Samoa to Melbourne - plane operated by Pel-Air Aviation Pty Ltd (Pel-Air) - plane crashed during leg of flight - doctor and nurse seriously injured - doctor and nurse sought to recover damages from Pel-Air - Pel-Air accepted crash caused by negligence of pilot and co-pilot for which it had vicarious liability - not

in issue that doctor and nurse injured - nurse suffered psychiatric injury - Pel-Air did not concede nurse's PTSD compensable under *Civil Aviation (Carriers Liability) Act 1959* (Cth) - held: s9E provided rights to compensation for "bodily injury" under Art 17 Montreal Convention - nurse's PTSD compensable because it was a "bodily injury" - nurse also entitled to recover economic and non-economic losses under *Civil Liability Act 2002* - doctor entitled to payment for future economic losses up to retirement age of 70 and for future care needs from ages 40 to 75 - judgment for doctor and nurse.

[Casey](#)

Peet v NRMA Insurance Ltd [2015] NSWSC 558

Supreme Court of New South Wales

Hidden J

Judicial review - motor accidents compensation - causation - plaintiff claimed damages for psychological injury suffered in car accident - Medical Review Panel found plaintiff's psychological conditions not attributable to accident - plaintiff sought declaration that certificate and statement of reasons of Medical Review Panel were void and of no effect on basis Panel erred in approach to issue of causation - cl 1.7 – 1.9 Permanent Impairment Guidelines - held: Panel erred on causation issue - Panel was addressing issue of factual causation when it found plaintiff's Adjustment Disorder not attributable to accident - Court persuaded Panel's assertion that this was not a "but for" situation disclosed explicit error - decision quashed.

[Peet](#)

ABL Nominees Pty Ltd v Pescott (No.2) [2015] VSC 206

Supreme Court of Victoria

Derham AsJ

Subpoena - client legal privilege - defendant claimed documents produced by former solicitors pursuant to subpoena issued by plaintiffs were subject to client legal privilege - plaintiffs contended privilege claim should not be upheld or that privilege had been waived - held: claim for privilege upheld with respect to documents - none of the documents were relevant to issue raised - no reason to consider question of waiver under s122 *Evidence Act 2008*.

[ABL](#)

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