



Monday 20 October 2014

Insurance

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Allwood v Peter Vivian Benjafield t/as Benjafield & Associates Lawyers (NSWCA) - judicial review - solicitors' fees - costs assessments not impugned on basis of beneficiaries' lack of standing

NSW v Bishop (NSWCA) - workers compensation - causal link between injury and earlier work injury - appeal dismissed

Summaries with links (5 minute read)

Allwood v Peter Vivian Benjafield t/as Benjafield & Associates Lawyers [2014] NSWCA 355

Court of Appeal of New South Wales

McColl, Ward & Emmett JJA

Judicial review - succession - solicitors' costs - legal fees rendered by solicitor to deceased - invoices paid by deceased before death - solicitor was deceased's executor - costs assessments made under *Legal Profession Act 2004* (NSW) - District Court set aside assessments on basis beneficiaries had no standing in relation to assessment applications - beneficiaries sought to set aside District Court's decision - held: determinations could not be impugned by beneficiaries' lack of standing - parties both at fault but solicitor, as executor, owed clear duty to estate and to beneficiaries to ensure its proper administration - despite clear conflict existed between solicitor's



personal interests and duties to estate, stance he adopted did not assist in proper resolution of issues - District Court appeal dismissed - determination of review panel confirmed - solicitor to pay costs of proceedings.

[Allwood](#)

NSW v Bishop [2014] NSWCA 354

Court of Appeal of New South Wales

Basten, Emmett & Gleeson JJA

Workers compensation - respondent alleged injury suffered in 2011 was result of disability caused by work injury suffered in 2004 - respondent claimed lump sum compensation for whole person impairment in Workers Compensation Commission - State disputed 2011 injury causally connected with 2004 Injury - arbitrator found in favour of State - presidential member found arbitrator erred in failing to give adequate reasons and in finding there was no causal link - ss352 & 353 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - held: no error of law by presidential member in approach to arbitrator's reasons - presidential member limited approach to identifying and correcting errors of law and fact and did not conduct review or new hearing - no error of law in examination of evidence and other materials before arbitrator or in reaching a different conclusion as to essential fact in issue - appeal dismissed.

[NSW](#)

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