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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)

Nadarajapillai v Naderasa (No 2) (NSWCA) - costs - solicitor's misconduct incurred costs improperly and without reasonable cause - costs order against solicitor

Jojeni Investments Pty Ltd v Mosman Municipal Council (No 2) (NSWCA) - costs - offers of compromise - indemnity costs refused

Dean v Phung (NSWSC) - costs - damages - defence conducted by insurer - no improper conduct by insurer warranting costs order against it

Winky Pop v Mobil (VSC) - damages - petroleum leak - basis for measurement of damages - plaintiffs entitled to sum for costs incurred in investigating leak

Baboolal v Fairfax Digital Australia and New Zealand Pty Ltd (No 2) (QSC) - costs - defamation - defendants' application to strike out imputations partially successful - plaintiff to pay 50% of defendants' costs

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Summaries With Link (Five Minute Read)

Nadarajapillai v Naderasa (No 2) [2015] NSWCA 209

Court of Appeal of New South Wales

McColl, Macfarlan & Emmett JJA

Costs - legal practitioners - solicitors duties - application for costs against legal representative - Court ordered dismissal of appeal - respondent Lender sought order that solicitor for appellant Borrower, who appeared for Borrower on hearing of appeal, pay Lender amount of costs Borrower was ordered to pay - Court's general power to order a legal representative to personally pay opposing party's costs directly - ss56 & 99 *Civil Procedure Act 2005* (NSW) - held: solicitor's conduct in instituting and maintaining appeal with no prospects of success and no merit constituted serious incompetence as a legal practitioner - costs had been incurred improperly and without reasonable cause in circumstances for which solicitor was responsible - solicitor should bear costs that Borrower was ordered to pay to Lender.

[Nadarajapillai](#)

Jojeni Investments Pty Ltd v Mosman Municipal Council (No 2) [2015] NSWCA 208

Court of Appeal of New South Wales

Macfarlan, Gleeson & Leeming JJA

Costs - offer of compromise - Court allowed appeal in proceedings - appellant sought order for indemnity costs on basis of offers of compromise - rr20.26, 42.14 & 51.47 *Uniform Civil Procedure Rules 2005* (NSW) - held: offers complied with Rules - Council not shown to be unreasonable in refusing offers of compromise in circumstances where subject matter of proceeding was declaratory relief, point was of general importance, acceptance of offer would have deprived Court of benefit of argument and Council was only appropriate contradictor - special costs order refused.

[Jojeni](#)

Dean v Phung [2015] NSWSC 816

Supreme Court of New South Wales

Beech-Jones J

Costs - defendant performed dental services on plaintiff that were grossly excessive - plaintiff succeeded in negligence claim against defendant and obtained judgment for damages - trial judge rejected plaintiff's claim in trespass to person and for award of damages including exemplary damages - Court of Appeal found plaintiff succeeded in battery and entitled to damages including exemplary damages not calculated in accordance with *Civil Liability Act 2002* (NSW) - insurer declined to further indemnify defendant - plaintiff sought that insurer pay his costs of proceedings at first instance - plaintiff contended lawyers on insurer's behalf effectively represented to him that insurance cover would be afforded to defendant even if finding of fraud or deliberate misconduct made against him, which induced him to maintain allegations in his pleading - held: lawyers did not make alleged representation - defendant did not establish any aspect of insurer's conduct of proceedings on behalf of defendant warranted

costs order being made against it - notice of motion dismissed.

[Dean](#)

Winky Pop v Mobil [2015] VSC 348

Supreme Court of Victoria

Digby J

Damages - negligence - nuisance - claim arising from petroleum leak (Mobil leak) which created plume of petroleum hydrocarbon in groundwater underneath plaintiffs' land - plaintiffs claimed against Mobil in negligence, nuisance, and for compensation under s151 *Pipelines Act 2005* (Vic) - plaintiffs also claimed against State in negligence - Mobil admitted it contaminated plaintiffs' land and conceded responsibility for leak and clean up - appropriate form of relief - held: proper basis for measurement of damages was diminution in value of plaintiffs' land - plaintiffs did not establish they had or but for Mobil leak would have had opportunity to develop plaintiffs' land residentially - plaintiffs had not lost opportunity to develop plaintiffs' land because of Mobil leak - opportunity to develop plaintiffs' land residentially had no real prospect of being successfully pursued - Mobil leak would not prevent or impair plaintiffs' ability to develop land for residential purposes - plaintiffs are entitled to be paid sum of \$104,273.93 with interest by Mobil in relation to their costs incurred in investigating the Mobil leak.

[Winky](#)

Baboolal v Fairfax Digital Australia and New Zealand Pty Ltd (No 2) [2015] QSC 203

Supreme Court of Queensland

Flanagan J

Costs - defamation - defendants partly successful in application to strike out plaintiff's imputations - defendants sought order that plaintiff pay their costs of application or 75% of their costs - plaintiff sought that defendants pay its cost of application or 75% of its costs of application - whether defendants failed to facilitate just and expeditious resolution of real issues in proceedings - held: prior to defendants delivering submissions they did not identify objections to statement of claim as requested - meaningful response from defendants may have shortened hearing - given defendants only partially successful in strike-out application and wholly unsuccessful in relation to striking out certain imputations, appropriate that plaintiff pay 50% of defendants' costs.

[Baboolal](#)

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