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Insurance

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Smith & Nephew Surgical Pty Ltd v Day (NSWSC) - cross-vesting - District Court proceedings involving similar claims transferred to Federal Court

Commonwealth Bank of Australia Ltd v Klapanis (VSC) - mortgage - joinder of third party for purposes of pursuing rights under *Wrongs Act 1958* (Vic)

Kronenberg v Bridge (TASFC) - building contract - misleading conduct by builder - loss of chance to pursue more advantageous contract - damages

Summaries with links (5 minute read)

Smith & Nephew Surgical Pty Ltd v Day [2014] NSWSC 1409

Supreme Court of New South Wales

Davies J

Cross-vesting - three sets of proceedings - one in Federal Court, two in District Court - all proceedings involved similar claims regarding injury from hip replacement - defendant sought that District Court proceedings be cross-vested to Federal Court - ss5 & 8 *Jurisdiction of Courts (Cross-Vesting) Act 1987* (NSW) - held: Court satisfied District Court proceedings were related to Federal Court proceedings - same issues likely to be aired in each of the proceedings -

considerable overlap of evidence - commonality of issues and witnesses meant there would be cost saving if proceedings heard in same court at same time - in interests of justice proceedings be transferred.

[Smith](#)

Commonwealth Bank of Australia Ltd v Klapanis [2014] VSC 532

Supreme Court of Victoria

Derham AsJ

Joinder - bank sued defendant on guarantee and supporting mortgage securing payment of loan made to a company - third party (Dunemann) sought leave to join another company (Zaia) as a second third party to proceedings - sole purpose of addition of company was to enable third party to pursue its rights under Pt IVAA *Wrongs Act 1958* (Vic) - Dunemann did not pursue any claims against Zaia for financial contribution or indemnity and sought no relief from it - application made to ensure Zaia was party to proceeding in order that Court could take into account its conduct in determining what liability, if any, should be attributable to Dunemann for defendant's alleged loss - whether joinder too late - held: appropriate to allow joinder on basis of prejudice to Dunemann in denying it statutory limitation of its liability under proportionate liability of Pt IVAA - joinder allowed.

[Commonwealth Bank of Australia Ltd](#)

Kronenberg v Bridge [2014] TASFC 10

Full Court of the Supreme Court of Tasmania

Blow CJ; Porter & Pearce JJ

Building contract - appellants signed contract with respondent builder for building home - appellants contended contract contained fixed price and that they were overcharged, or that hand-written additions to contract allowed price to be varied within reasonable parameters with result they were still overcharged, or that there was no effective contract, or mutual and/or unilateral mistake, or that if court found there was a cost plus contract, they were misled by builder - s14 *Fair Trading Act 1990* (NSW) - primary judge held there was no binding contract between parties because they failed to reach agreement as to what was to be paid to builder - builder was entitled to an amount, as fair and reasonable price for work done, which was greater than amount paid by plaintiffs - court was not satisfied appellants established what if any loss they suffered as consequence of entering into arrangement with builder - claims dismissed - builder successful on counterclaim - held: Court satisfied builder engaged in misleading conduct with result appellants lost chance of entering into a more advantageous contract for construction of a house on their land - damages assessed for contravention of Fair Trading Act - builder's proportionate liability defence on basis of architect's responsibility failed - appeal allowed.

[Kronenberg](#)

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