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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)

Montgomery v Lanarkshire Health Board (UKSC) - medical negligence - failure to warn - baby born with disabilities following complications in delivery - doctor liable

Queensland North Australia Pty Ltd v Takeovers Panel (FCAFC) - judicial review - corporations - declaration of unacceptable circumstances by Takeover Panel - appeal allowed - matter remitted

Bajramovic v Calubaquib (NSWCA) - judgments and orders - refusal of second application for leave under s109(1) *Motor Accidents Compensation Act 1999* (NSW) - appeal allowed - matter remitted

Smart v AAI Ltd; JRK Realty Pty Ltd v AAI Ltd (NSWSC) - insurance - deregistered company's liability to plaintiffs not covered by insurance policy - proceedings dismissed

Southage Pty Ltd v Vescovi (VSCA) - restitution - borrower's signature on loan and mortgage documents forged by husband - change of position defence established

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Summaries With Link (Five Minute Read)

Montgomery v Lanarkshire Health Board [2015] UKSC 11

Supreme Court of the United Kingdom

Lord Neuberger, President; Lady Hale, Deputy President; Lord Kerr, Lord Clark, Lord Wilson, Lord Reed & Lord Hodge

Negligence - medical negligence - failure to warn - appellant gave birth to baby boy born with disabilities due to complications in delivery - appellant claimed damages in negligence against doctor employed by health board who was responsible for appellant's care during pregnancy and labour and who also delivered baby - duty of doctor towards patient in relation to advice about treatment - causation - held: had doctor advised appellant of risk of shoulder dystocia and discussed its potential consequences and alternative of elective caesarean section, appellant would probably have elected to be delivered of baby by caesarean section - not disputed that baby would then have been born unharmed - appeal allowed.

[Montgomery](#)

Queensland North Australia Pty Ltd v Takeovers Panel [2015] FCAFC 68

Full Court of the Federal Court of Australia

Dowsett, Middleton & Gilmour JJ

Judicial review - corporations - primary judge dismissed application for judicial review of Takeover Panel's declaration of unacceptable circumstances in relation to affairs of company made pursuant to s657A *Corporations Act 2001* (Cth) - appellants contended primary judge erred in failing to find application to Panel and its declaration of unacceptable circumstances were out of time, or that primary judge erred in failing to find acquisition of shares was not a breach of s606 *Corporations Act 2001* (Cth) - ss9, 601QA(a), 602, 606, 608, 610, 631, 657A, 657B, 657C & 657D - held: primary judge erred in failing to find application to Panel and its declaration of unacceptable circumstances were each made out of time - it was necessary for time to be extended in each case - appeal allowed - matter remitted - Panel should consider whether extension of time to bring application should be granted.

[Queensland](#)

Bajramovic v Calubaquib [2015] NSWCA 139

Court of Appeal of New South Wales

Emmett & Leeming JJA; Adamson J

Judgments and orders - proceedings concerning circumstances in which unsuccessful application for leave under s109(1) *Motor Accidents Compensation Act 1999* precluded making a second application on basis it was abuse of process - primary judge found second application was abuse of process - held: overriding requirement was that outcome of second application for interlocutory relief was just - primary judge erred in concluding bringing second application was abuse of process without considering potential injustice to applicant from refusal to hear merits of application for extension - refusal of leave to appeal would result in injustice - leave to appeal granted - appeal allowed - matter remitted.

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[Bajramovic](#)

Smart v AAI Ltd; JRK Realty Pty Ltd v AAI Ltd [2015] NSWSC 392

Supreme Court of New South Wales

Beech-Jones J

Insurance - corporations - two proceedings brought against insurer under s601AG *Corporations Act 2001* (Cth) - in one proceeding plaintiff transferred amount to bank account of company which was finance broker - in other proceedings plaintiff transferred amount to company's account - plaintiffs were persuaded to transfer funds by company's general manager - general manager misappropriated funds - plaintiffs did not recover funds - company wound up and deregistered but was party to claims made insurance policy underwritten by defendant insurer - plaintiffs sued insurer under s601AG - whether company liable to plaintiffs immediately before deregistration - whether policy "covered" liability - held: company liable to plaintiffs for breach of contract - insurer could not invoke contributory negligence or proportionate liability provisions of *Trade Practices Act 1974* (Cth) (TPA) or *Civil Liability Act 2002* to diminish quantum of liability - plaintiffs also established liability on company's part for engaging in false and misleading conduct contrary to former s52 TPA - however Court upheld certain of insurer's reasons for contending company's liability - liability of deregistered company to plaintiffs not "covered" - proceedings dismissed

[Smart](#)

Southage Pty Ltd v Vescovi [2015] VSCA 117

Court of Appeal of Victoria

Warren CJ, Santamaria JA & Ginnane AJA

Restitution - respondent's signature on loan and mortgage documents forged by husband - lender sought restitution of money advanced on basis it was paid by mistake of fact - trial judge held respondent had changed position on faith of receipt of money such that it would be inequitable to require her to pay it back - held: trial judge correct to find that were it not for respondent's belief deposit paid by husband, she would not have entered transaction - by time of lender's claim, respondent had suffered irreversible detriment such that she would be in worse position if ordered to repay money than had she not received loan at all - change of position defence established - trial judge correct to hold it would be inequitable to require respondent to repay money - appeal dismissed.

[Southage](#)

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