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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)

Casaclang v WealthSure Pty Ltd (FCA) - corporations - financial services - conduct of previously "authorised representative" - applicants entitled to damages for losses

Reckitt Benckiser (Australia) Pty Ltd v Procter & Gamble Australia Pty Ltd (FCA) - consumer law - interim injunction restraining publication or broadcast of advertisement

Stenning v Sanig (NSWCA) - negligence - slip on steps - contributory negligence established - damages for future assistance reassessed - damages reduced

Aquatic Air Pty Ltd v Siewert (NSWSC) - contract - personal property - share agreements - security agreements - no effective exercise of Call option - breach of payment obligations - claim otherwise dismissed

Luxon v SC (Melbourne) Pty Ltd (NSWSC) - discovery - trade practices - negligence - contract - relevance - discovery ordered granted

Hardie v The Herald and Weekly Times Pty Ltd (VSC) - defamation - owner/manager of strip club defamed by statement in newspaper - damages awarded in sum of \$90,000

Innes v Commonwealth (ACTCA) - limitations - negligent misstatement - pure economic loss - separate question - determination of time at which causes of action accrued

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Summaries With Link (Five Minute Read)

Casaclang v WealthSure Pty Ltd [2015] FCA 761

Federal Court of Australia

Buchanan J

Corporations - financial services - applicants claimed damages from Wealthsure for losses caused by conduct of previously "authorised representative" of WealthSure - claims based on provisions of *Corporations Act 2001* (Cth), alternative statutory obligations, negligence and contract - Pts 7.7, 7.9 & 7.10 Corporations Act - *Australian Securities and Investments Commission Act 2001* (Cth) - Sch 2 *Competition and Consumer Act 2010* (Cth) - 'financial product' - 'credit facility' - liability of licensee for conduct of authorised representative - actual or apparent authority - liability of licensee in negligence after revocation of authority - held: applicants entitled to damages or compensation for identified loss, plus interest from date of losses, being date of transfer of funds to representative's control - applicants to bring in short minutes of order.

[Casaclang](#)

Reckitt Benckiser (Australia) Pty Ltd v Procter & Gamble Australia Pty Ltd [2015] FCA 753

Federal Court of Australia

Gleeson J

Consumer law - interim injunction - proceedings concerning television advertising campaign for respondent's Fairy Platinum dishwashing product - applicant claimed against respondent declaratory and injunctive relief and compensation for respondent's alleged contraventions of ss18, 29(1)(f) & 33 *Australian Consumer Law* - applicant sought order restraining respondent from publishing or broadcasting advertisement - *prima facie* case - balance of convenience - held: consumers and applicant would probably suffer harm as result of broadcast of advertisement if found to contravene Australian Consumer Law - balance of convenience strongly favoured grant of interim injunction - interim injunction granted.

[Reckitt](#)

Stenning v Sanig [2015] NSWCA 214

Court of Appeal of New South Wales

Macfarlan, Hoeben & Gleeson JJA

Negligence - respondent slipped on path leading from appellant's house - respondent sued appellant in negligence alleging steps on path excessively slippery - respondent succeeded in claim - appellant challenged finding of negligence, finding of no contributory negligence and award of damages for future paid assistance - held: appellant failed to establish error in finding he was negligent and that negligence caused respondent's injuries - respondent was careless as to where she placed foot when she was aware of danger - respondent's contribution to accident much less than appellant's - liability apportioned at 85% against appellant and 15% against respondent - damages for future assistance reassessed - damages reduced.

[Stenning](#)

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Aquatic Air Pty Ltd v Siewert [2015] NSWSC 928

Supreme Court of New South Wales

Brereton J

Contract - personal property - defendants owned all shares in aviation companies through which first defendant conducted aviation operations - plaintiff company claimed in its own right or as assignee of rights of subsidiary in liquidation, orders avoiding two share sale agreements for misrepresentation, damages for misrepresentation and/or breaches of warranty in connection with share sale agreements, orders avoiding a security agreement and associated securities (security agreements) for misrepresentation and damages for misrepresentation - ss9-15(2) & ss38-10(5) *A New Tax System (Goods and Services Tax) Act 1999* (Cth) - s12GM *Australian Securities and Investments Commission Act 2001* (Cth) - Sch2, s243 *Competition and Consumer Act 2010* (Cth) - s477(2)(c) *Corporations Act 2001* (Cth) - Sch 1, ss105–100 *Taxation Administration Act 1953* (Cth) - held: all claims in connection with sale share agreements and security agreements failed - however defendants breached obligation under security agreement to pay outgoings in respect of property - defendants liable to plaintiff for amounts it paid for outgoings accruing after 13/10/11 - no effective exercise of Call option - declaration - plaintiff's claim otherwise dismissed.

[Aquatic](#)

Luxon v SC (Melbourne) Pty Ltd [2015] NSWSC 1012

Supreme Court of New South Wales

Schmidt J

Discovery - plaintiffs claimed against Sony alleging a defective component in television set caused fire at their home resulting in extensive damage - plaintiffs sought order for discovery which Sony claimed was too wide - documents sought not oppressive - disagreement concerning restriction of documents in certain category to documents which came into existence before fire - relevance to material allegations relating to substance of dispute in contract, negligence and under *Trade Practices Act 1974* (Cth) - held: discovery ordered granted.

[Luxon](#)

Hardie v The Herald and Weekly Times Pty Ltd [2015] VSC 364

Supreme Court of Victoria

Whelan JA

Defamation - action arising from publication of two articles in newspaper - plaintiff owner/manager of strip club alleged she was defamed by articles which she claimed stated that she ran venue (club) regularly attended by outlaw motorcycle gang members (Outlaws) at which police gave secret tip-offs to them and that she was brothel madam running brothel at club - held: statement that members of Outlaws regularly attended club true - statement that club was venue for meetings between corrupt police and Outlaws was defamatory of plaintiff and not protected by qualified privilege - plaintiff was not brothel madam and club was not brothel but articles did not say they were - damages awarded in plaintiff's favour in sum of \$90,000 - judgment for plaintiff.

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[Hardie](#)

Innes v Commonwealth [2015] ACTCA 33

Court of Appeal of New South Wales

Murrell CJ; Penfold and Katzmann JJ

Limitations - separate question - Commonwealth employee sought damages for pure economic loss from Commonwealth for negligent misrepresentation and breach of common law duty of care to take reasonable steps to make its employees aware of eligibility for membership of Commonwealth superannuation schemes - whether for purposes of s11(1) *Limitation Act 1985* (ACT) causes of action first accrued on 5 April 1993 or on 1 July 2003 - time at which causes of action first accrued - application of principles in *Commonwealth v Cornwell* (2007) 229 CLR 519 - held: all relevant statutory contingencies "fell in" and cause of action was complete on 5 April 1993 - applicant's causes of action accrued on 5 April 1993.

[Innes](#)

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