

Friday, 2 October 2015

Weekly Insurance Law Review Selected from our Daily Bulletins covering Insurance

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Executive Summary (1 minute read)

Harbour Radio Pty Ltd v Ahmed (NSWCA) - defamation - defences - honest opinion - damages - reasonableness as to jury's findings - appeal allowed in part - retrial

Lewence Construction Pty Ltd v Southern Han Breakfast Point Pty Ltd (NSWCA) - security of payments - existence of reference date to support payment claim not a jurisdictional fact - appeal allowed

Insurance Aust v Milton (NSWSC) - administrative law - first defendant injured in motorcycle accident not eligible for scheme established by *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) - insurer's summons dismissed

NuCoal Resources Ltd v Independent Commission Against Corruption (NSWSC) - judicial review - recommendation in relation to revocation of exploration licence - Commission did not breach duty to "fully investigate" - summons dismissed

Ethnic Interpreters & Translators Pty Ltd v Sabri-Matanagh (WASCA) - workers compensation - New South Wales was State with which respondent's employment with appellant was connected - appeal allowed

Summaries With Link (Five Minute Read)

[Harbour Radio Pty Ltd v Ahmed \[2015\] NSWCA 290](#)

Court of Appeal of New South Wales

McColl, Basten & Meagher JJ

Defamation - respondent and husband ran seafood shop - husband convicted and sentenced for aggravated sexual assault of employee - respondent sought apprehended violence order against assault victim's father (Mr Y) - AVO was topic of broadcasts on radio - presenter interviewed Mr Y and made derogatory statements about plaintiff - plaintiff sued Harbour Radio Pty Ltd - Federal Court struck out certain claims but ordered transfer of defamation claims to Supreme Court - second broadcast by presenter attacking plaintiff took place - jury found some imputations conveyed by broadcasts defamatory and rejected defence of honest opinion - trial judge entered judgment for respondent - Harbour Radio and presenter (appellants) contended jury's findings unreasonable and challenged quantum of damages - s15A *Children (Criminal Proceedings) Act 1987* (NSW) - ss2, 6, 25, 26, 28, 29, 31 & 35 *Defamation Act 2005* (NSW) - held: in relation to certain imputations Court found jury acted unreasonably in failing to consider that they were expressions of opinion - retrial ordered - damages arguably excessive requiring reconsideration after determination of unresolved issues as to liability - appeal allowed in part.

[HarbourRadio](#)

[From Benchmark Monday, 28 September 2015]

Lewence Construction Pty Ltd v Southern Han Breakfast Point Pty Ltd [2015] NSWCA 288

Court of Appeal of New South Wales

Ward & Emmett JJA; Sackville AJA

Security of payments - first respondent sought declaration that adjudication determination made by adjudicator under s22 *Building and Construction Industry Security of Payment Act 1999* (NSW) in respect of payment claim made by appellant was void - first respondent submitted adjudicator wrongly determined that reference date within meaning of s8 had arisen in respect of work subject of payment claim - first respondent also submitted adjudicator denied it natural justice - primary judge found there was no reference date supporting payment claim and no denial of natural justice - primary judge found first respondent entitled to declaration sought - appellant appealed - construction of ss8 & 13 - held: appellant was person who claimed entitlement under construction contract to progress payments in general sense contemplated by Act - appellant satisfied description in s8(1)(a) & (b) - existence of reference date to support payment claim was not a jurisdictional fact and not an essential pre-condition for making valid payment claim - appeal allowed.

[Lewence](#)

[From Benchmark Tuesday, 29 September 2015]

Insurance Aust v Milton [2015] NSWSC 1392

Supreme Court of New South Wales

Beech-Jones J

Administrative law - motor accidents compensation - first defendant injured in motor cycle accident - plaintiff was insurer of at fault vehicle and admitted liability for claim for damages - plaintiff sought to have first defendant included in scheme established by *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) - NRMA sought review of determination of Review

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Panel that first defendant not eligible - NRMA contended Review Panel erred by requiring first defendant's brain injury to be sole or main cause of impaired functioning before he was eligible for scheme - NRMA also contended Review Panel's reasons were inadequate - held: any error by Review Panel in stating or applying test for connection between brain injury and impaired functioning immaterial to its decision - Review Panel set out "actual path of reasoning" - path adopted by Review Panel revealed approach consistent with its obligations - summons dismissed.

[Insurance](#)

[From Benchmark Tuesday, 29 September 2015]

NuCoal Resources Ltd v Independent Commission Against Corruption [2015] NSWSC 1400

Supreme Court of New South Wales

Rothman J

Judicial review - plaintiff sought judicial review of Independent Commission against Corruption's recommendation in relation to revocation of exploration licence - plaintiff alleged recommendation performed in breach of conditions necessary for performance - plaintiff's critical challenge related to Commission's duty to "fully investigate" - s73(2) *Independent Commission Against Corruption Act 1988* (NSW) - *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* (NSW) - held: no breach of duty to investigate - Commission did not act otherwise than in accordance with law - findings if made were not made otherwise than in accordance with law - summons dismissed.

[NuCoal](#)

[From Benchmark Wednesday, 30 September 2015]

Ethnic Interpreters & Translators Pty Ltd v Sabri-Matanagh [2015] WASCA 186

Court of Appeal of Western Australia

Buss & Newnes JJA; Mitchell J

Workers compensation - respondent claimed to have been injured while working for appellant on Christmas Island when assaulted by fellow interpreter at immigration detention centre - respondent made claim for workers' compensation under *Workers' Compensation and Injury Management Act 1981* (WA)(CI) - appellant disputed compensation payable because respondent's employment not connected to Territory of Christmas Island for purposes of Act - District Court determined Christmas Island was 'State' with which respondent's employment with appellant was connected - appellant contended primary judge erred in not concluding respondent's employment connected with New South Wales on basis appellant's 'principal place of business in Australia' was located there - whether reference to employer's 'principal place of business in Australia' in s20(4)(c) was to principal place in Australia from which employer's business activities were managed or controlled, or State or Territory in which employer's business activities principally carried out - held: reference was to principal place in Australia from which employer's business activities managed or controlled - New South Wales was State in which principal place from which appellant's business activities managed - appeal allowed - order made determining that New South Wales was State with which respondent's employment

with appellant connected.

[Ethnic-Interpreters](#)

[From Benchmark Monday, 28 September 2015]



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To An Old Mate

By Henry Lawson

Old Mate! In the gusty old weather,
When our hopes and our troubles were new,
In the years spent in wearing out leather,
I found you unselfish and true --
I have gathered these verses together
For the sake of our friendship and you.

You may think for awhile, and with reason,
Though still with a kindly regret,
That I've left it full late in the season
To prove I remember you yet;
But you'll never judge me by their treason
Who profit by friends -- and forget.

I remember, Old Man, I remember --
The tracks that we followed are clear --
The jovial last nights of December,
The solemn first days of the year,
Long tramps through the clearings and timber,
Short partings on platform and pier.

I can still feel the spirit that bore us,
And often the old stars will shine --
I remember the last spree in chorus
For the sake of that other Lang Syne,
When the tracks lay divided before us,
Your path through the future and mine.

Through the frost-wind that cut like whip-lashes,
Through the ever-blind haze of the drought --
And in fancy at times by the flashes
Of light in the darkness of doubt --
I have followed the tent poles and ashes
Of camps that we moved further out.

You will find in these pages a trace of
That side of our past which was bright,
And recognise sometimes the face of
A friend who has dropped out of sight --



I send them along in the place of
The letters I promised to write.

<http://www.poetrylibrary.edu.au/poets/lawson-henry/>

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