



Friday, 5 June 2015

Weekly Insurance Law Review Selected from our Daily Bulletins covering Insurance

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Executive Summary (1 minute read)

Fogg v Kane Constructions (NSW) Pty Ltd; Fogg v Les Quatre Musketeers Pty Ltd (t/as Plastamasta South Coast) (No. 5) (NSWSC) - negligence - plaintiff injured while delivering building materials to worksite - subcontractor liable - contributory negligence 15%

Carangelo v State of New South Wales (NSWSC) - negligence - psychiatric injury suffered by police officer - State negligent - factual causation not established

Goldsmith by her tutor the New South Wales Trustee and Guardian v Bisset (No 3) (NSWSC) - negligence - developmentally disabled child not wearing helmet struck by motor vehicle while riding pushbike into traffic lane - driver liable - no contributory negligence

Insurance Australia trading as NRMA v Ural (NSWSC) - motor accidents compensation - erroneous refusal to issue certificate of exemption - decision quashed

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Summaries With Link (Five Minute Read)

Fogg v Kane Constructions (NSW) Pty Ltd; Fogg v Les Quatre Musketeers Pty Ltd (t/as Plastamasta South Coast) (No. 5) [2015] NSWSC 648

Supreme Court of New South Wales

Johnson J

Negligence - limitations - plaintiff injured in fall while delivering building materials to worksite - plaintiff sued head contractor at site (Kane), subcontractor contracted by Kane and employer with whom Hutchison contracted, for damages in negligence - held: plaintiff's claim not statute-barred - Hutchison breached duty of care to take reasonable care to ensure deliveries made at location and in manner that did not carry unreasonable risk of injury - breach caused plaintiff's injuries - Hutchison liable - liability not established against Kane or employer - plaintiff failed to take reasonable care for his own safety - contributory negligence assessed at 15% - damages assessed - parties to bring in short minutes of order.

[Fogg](#)

[From Benchmark Tuesday, 2 June 2015]

Carangelo v State of New South Wales [2015] NSWSC 655

Supreme Court of New South Wales

Adamson J

Negligence - psychiatric injury - chronic adjustment disorder - plaintiff sued State for psychiatric injury due to breaches of duty by Commissioner of Police for which State was vicariously liable - plaintiff claimed Commissioner failed to take reasonable precautions against risks of psychiatric injury at two points in his service - Sch 1 cl 2, ss5B, 5D, 5E, 5R, 13, 16 & 42 *Civil Liability Act 2002* - held: State negligently failed to refer plaintiff to Police Medical Officer and a private psychiatrist - State negligently failed to forewarn plaintiff of impending Police Integrity Commission inquiry or to support him through inquiry and subsequent action under s 181D *Police Act 1990* - factual causation not established - judgment for State.

[Carangelo](#)

[From Benchmark Tuesday, 2 June 2015]

Goldsmith by her tutor the New South Wales Trustee and Guardian v Bisset (No 3) [2015] NSWSC 634

Supreme Court of New South Wales

Campbell J

Negligence - plaintiff child with development disabilities and not wearing a helmet was riding bike out of parking lane and into traffic lane when she was struck by defendant's car - plaintiff suffered head and brain injuries - separate determination of issue of liability - whether plaintiff's injuries caused by defendant's negligence - whether plaintiff guilty of contributory negligence - s138 *Motor Accidents Compensation Act 1999* - ss5D & 5R *Civil Liability Act 2002* - held: risk was foreseeable - defendant failed to keep proper look-out - had defendant kept proper lookout accident could have been avoided - defendant's negligence was necessary condition of

plaintiff' injury - no contributory negligence - judgment for plaintiff - damages to be assessed.

[Goldsmith](#)

[From Benchmark Tuesday, 2 June 2015]

Insurance Australia trading as NRMA v Ural [2015] NSWSC 620

Supreme Court of New South Wales

Young AJA

Motor accidents compensation - plaintiff was insurer of party to motor vehicle accident - first defendant made claim pursuant to *Motor Accidents Compensation Act 1999* (NSW) - insurer failed to give notice whether it admitted or denied liability within time under s81 - insurer sought to have claim treated as exempt - Principal Claims Assessor declined to issue certificate on basis that after deemed denial insurer paid money on claimant's behalf that amounted to admission of liability - held: in *Smalley v Motor Accidents Authority of New South Wales* [2013] NSWCA 318 Court of Appeal found that, apart from s81(4), the deeming effect of s81 could not be displaced - further, Court of Appeal found that s81(4) was not an empowering section and did not purport to detract from deeming provision in s81 - anything that happened after denial in deemed s81 notice was irrelevant - no course open to Principal Claims Assessor but to issue certificate of exemption - decision quashed.

[Insurance](#)

[From Benchmark Tuesday, 2 June 2015]



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Song: "Under the greenwood tree"

BY William Shakespeare
(from As You Like It)

Under the greenwood tree
Who loves to lie with me,
And turn his merry note
Unto the sweet bird's throat,
Come hither, come hither, come hither:
 Here shall he see
 No enemy
But winter and rough weather.

Who doth ambition shun
And loves to live i' the sun,
Seeking the food he eats,
And pleased with what he gets,
Come hither, come hither, come hither:
 Here shall he see
 No enemy

[William Shakespeare](#)

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