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# Weekly Insurance Law Review

## Selected from our Daily Bulletins covering Insurance

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## Executive Summary (1 minute read)

**May v Military Rehabilitation and Compensation Commission** (FCAFC) - administrative law - workers compensation - 'injury' - appeal allowed - matter remitted

**Hockey v Fairfax Media Publications Pty Ltd** (FCA) - defamation - Sydney Morning Herald poster and tweets published by The Age defamatory of Federal Treasurer - damages

**State of New South Wales v Sticker** (NSWCA) - negligence - vicarious liability - teacher injured in fall at school when child pulled her back through doorway by the hand - appeal allowed - judgment against State set aside - retrial

**Cavric v Willoughby City Council** (NSWCA) - highways - negligence - customer injured in shopping centre - car park did not constitute a public road - appeal allowed

**Casey v Pel-Air Aviation Pty Ltd; Helm v Pel-Air Aviation Pty Ltd (No 3)** (NSWSC) - costs - offer did not comply with new r20.26 *UCPR 2005* (NSW) but offered real compromise - offer capable of admission under s131 *Evidence Act 1995* (NSW) - unreasonable rejection of offer - indemnity costs granted

**Cassegrain v Gerard Cassegrain & Co Pty Ltd (in liq)** (NSWSC) - equitable compensation - transfer of shares at undervalue - Referee's report adopted - defendants to pay equitable compensation

**Health Administration Corporation v CJL Haulage Pty Ltd** (NSWSC) - motor vehicle accident - collision between ambulance and truck - ambulance driver negligent - appeal

dismissed

**Ransley v Chubb Insurance Company of Australia Ltd** (NSWSC) - contract - insurance - Directors and Officers Liability policy - insurer's maximum liability - maximum aggregate liability - separate questions answered

## Summaries With Link (Five Minute Read)

**May v Military Rehabilitation and Compensation Commission [2015] FCAFC 93**
Full Court of the Federal Court of Australia
Allsop CJ; Kenny, Besanko, Robertson & Mortimer JJ
Administrative law - workers compensation - appellant joined Royal Australian Air Force (RAAF) and shortly after suffered from symptoms or condition - Administrative Appeals Tribunal concluded appellant had not suffered an 'injury' for purposes of s14 *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRC Act) and that respondent Military Rehabilitation and Compensation Commission was not liable to pay him compensation under the SRC Act - primary judge found appellant had not identified any legal error in the AAT's decision - appellant appealed from primary judge's decision and sought judicial review - held: appellant established error in primary judge's decision - certain questions of law identified by appellant should be answered favourably to appellant - appropriate for another Tribunal to consider whether appellant had suffered injury within meaning of s4 SRC Act and whether injury arose out of or in the course of his employment - appeal allowed.
May
[From Benchmark Friday, 3 July 2015]

**Hockey v Fairfax Media Publications Pty Ltd [2015] FCA 652**
Federal Court of Australia
White J
Defamation - action arising from articles published by newspapers in print and online regarding Federal Treasurer - Federal Treasurer sued publishers of newspapers alleging that articles and Sydney Morning Herald (SMH) poster conveyed defamatory imputations - publishers denied articles conveyed pleaded imputations and contended defence of qualified privilege was applicable in any event - Pt XX *Commonwealth Electoral Act 1918* (Cth) - s22 *Defamation Act 1974 (*NSW) - s30 *Defamation Act 2005* - *Defamation Amendment Act 2002* - held: Federal Treasurer's claim that SMH poster and two matters published on Twitter by The Age with words "Treasurer for Sale" and "Treasurer Hockey for Sale" were defamatory - publishers did not make out claims of qualified privilege - even if defence of qualified privilege had been available it would have been defeated by malice actuating publication - remaining claims not established - damages awarded to Federal Treasurer in sum of $120,000 for SMH poster and $80,00 in respect of the two tweets.
Hockey

[From Benchmark Thursday, 2 July 2015]

**State of New South Wales v Sticker [2015] NSWCA 180**
Court of Appeal of New South Wales
McColl, Gleeson & Leeming JJA
Negligence - vicarious liability - teacher was leading 7 year old student by the hand through door - teacher fell and was injured when student pulled her back - primary judge gave judgment for teacher - primary judge found child should have been either suspended or removed from school and that teacher would not have been injured had that occurred - State challenged findings of breach and causation and contended primary judge failed to give adequate reasons - State also challenged award of damages - held: primary judge made material error in findings of primary fact leading to erroneous findings of breach - some matters left unresolved by primary judge could not be resolved on appeal - there were also errors in assessment of damages - retrial necessary unless parties could otherwise resolve dispute - appeal allowed - judgment set aside - matter remitted for determination in accordance with law.
StateofNewSouthWales
[From Benchmark Thursday, 2 July 2015]

**Cavric v Willoughby City Council [2015] NSWCA 182**
Court of Appeal of New South Wales
Basten, Meagher & Emmett JJA
Highways - negligence - real property - appellant wheeling trolley laden with shopping and child - front wheel on trolley hit “pothole” - trolley tilted - appellant inured when she fell seeking to stop trolley overturning - appellant sued Council for negligent maintenance of car park - trial judge dismissed claim on basis car park was public road by operation of s249(1) *Roads Act 1993* with result Council protected by s45 *Civil Liability Act 2002* - if car park did not constitute public road appeal must be upheld - statutory scheme - continued operation of common law - whether conveyance effected dedication of a road - evidence of public use - ‘is evidence that the place is or forms part of a public road’ - held: trial judge misunderstood s249(1) as providing freestanding test as to whether place was public road - s249 was no more than an evidentiary provision describing evidence which was admissible to prove a place was or formed part of that public road - s249 was subject to constraint imposed by s178 *Conveyancing Act 1919* - in circumstances where there was no other evidence besides public use, trial judge should have found status of place where accident occurred as a public road was not established - appeal allowed.
Cavric
[From Benchmark Tuesday, 7 July 2015]

**Casey v Pel-Air Aviation Pty Ltd; Helm v Pel-Air Aviation Pty Ltd (No 3) [2015] NSWSC 857**
Supreme Court of New South Wales
Schmidt J
Costs - Court made orders in favour of doctor - doctor sought order for costs and also indemnity

costs on basis of offer of compromise - Pel-Air claimed offer did not comply with r20.26 *Uniform Civil Procedure Rules 2005* - doctor claimed words of offer made on his behalf were words 'uniformly used in a judgment' and could be used in a judgment disposing of claim - held: proposed orders for disposal of doctor's claim not specified in order made as r20.26 required - r20.26 did not apply - however this did not mean offer could not be relied on - offer did not technically comply with requirements of new r20.26 but it offered a real compromise accompanied by reasonable period for acceptance - offe capable of acceptance and admissible under s131 *Evidence Act 1995* on a costs application - rejection of offer was unreasonable - indemnity costs granted
Casey
[From Benchmark Thursday, 2 July 2015]

**Cassegrain v Gerard Cassegrain & Co Pty Ltd (in liq) [2015] NSWSC 851**
Supreme Court of New South Wales
Bergin CJ in Eq
Equitable compensation - Referee's report - parties disagreed whether report of referee should be adopted - report concerned inquiry into existence and quantum of loss to company due to transfer of shares at undervalue for purposes of making orders for equitable compensation - Referee determined that defendants were required to pay $2,596,039 in equitable compensation - liquidator sought order that report be adopted pursuant to r20.24 *Uniform Civil Procedure Rules 2005* and sought orders including order for payment of compensation - held: Court not satisfied there was any requirement imposed on Referee by Court in respect of date for assessment of equitable compensation - contentions concerning market for shares failed - no error in valuation of property - complaints regarding Referee's analysis and conclusions in respect of evidence not made out - Referee's approach to loss to company not a reason to reject report - Court not satisfied Referee erred in exercise of discretion - report adopted - defendants to pay equitable compensation.
Cassegrain
[From Benchmark Friday, 3 July 2015]

**Health Administration Corporation v CJL Haulage Pty Ltd [2015] NSWSC 858**
Supreme Court of New South Wales
Button J
Motor vehicle accident - collision between truck and ambulance - truck driver and ambulance driver each alleged the other was negligent - Magistrate found ambulance driver negligent and that truck driver not negligent - held: contention rejected that there was failure to determine pleaded issues of negligence and contributory negligence rejected - not incumbent upon Magistrate, having found siren was not on, to provide affirmative hypothesis as to how that came to be - parties had been content for Magistrate to decide establishment of negligence based on *Road Rules 2008* - contention rejected that to extent Magistrate made adverse evaluation of ambulance driver's driving, Magistrate should have put adverse proposition to ambulance driver for comment - no error in finding no evidence about details of emergency to which ambulance driver travelling - contention rejected that Magistrate erred in finding

ambulance vehicle's siren was not activated shortly prior to the collision - appeal dismissed.
Health
[From Benchmark Friday, 3 July 2015]

**Ransley v Chubb Insurance Company of Australia Ltd [2015] NSWSC 854**
Supreme Court of New South Wales
Ball J
Contract - insurance - plaintiff was former director of company required to give evidence at public inquiry by ICAC into grant to company of licence coal mining tenement - plaintiff sought declaration that insurer was liable to indemnify him for legal costs incurred under Directors and Officers Liability policy issued to company - insurer did not dispute it was liable to indemnify director but claimed that its maximum aggregate liability for all claims for costs under Policy was $2,000,000 of which it had already paid $1,248,377.83 leaving $751,622.17 to meet all outstanding claims, including director's - determination of separate questions - insurer's maximum liability under Policy in respect of each claim made by Insured under Insuring Clause 1D of Policy? - maximum aggregate liability under Policy in respect of claims made by Insureds under Insuring Clause 1D of Policy - held: insurer's maximum liability depended on extent to which Limit of Liability specified in Schedule had been eroded by claims for Legal Representation Expenses already paid by insurer - insurer's liability did not exceed $1 million in aggregate - separate questions answered.
Ransley
[From Benchmark Monday, 6 July 2015]

**From: Auguries of Innocence**
By William Blake

To see a World in a Grain of Sand
And a Heaven in a Wild Flower
Hold Infinity in the palm of your hand
And Eternity in an hour

William Blake

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