

Friday, 12 June 2015

Weekly Insurance Law Review Selected from our Daily Bulletins covering Insurance

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Executive Summary (1 minute read)

Jetivia SA and another v Bilta (UK) Ltd (in liq) (UKSC) - insolvency - pleadings - unlawful means conspiracy to injure - claim not struck out - appeal dismissed

Sims v Chong (FCAFC) - legal practitioners - advocate's immunity - erroneous summary dismissal of claim - appeal allowed

Fairfax Media Publications Pty Ltd v Bateman (NSWCA) - defamation - no error in striking out 'Hore-Lacy' pleading - appeal dismissed

Commonwealth Bank of Australia v ACN 076 848 112 Pty Ltd (NSWSC) - corporations - voluntary administration - leave to proceed against company - access to documents relating to company's insurance arrangements refused

Nicholas v Astute Hire Pty Ltd (NSWSC) - negligence - work injury - leave granted to join insurer under s601G *Corporations Act 2001* (Cth)

James v Maxwell (QSC) - negligence - motorcyclist injured in collision with motor vehicle on bend in dirt road - driver of motor vehicle and insurer liable

Summaries With Link (Five Minute Read)

[Jetivia SA and another v Bilta \(UK\) Ltd \(in liq\) \[2015\] UKSC 23](#)

Supreme Court of the United Kingdom

Lord Neuberger, President; Lord Mance, Lord Clarke, Lord Sumption, Lord Carnwath, Lord Toulson & Lord Hodge

Insolvency - pleadings - Bilta (UK) Ltd was English company compulsorily wound up - Bilta's liquidators sued its two former directors, one of which was sole shareholder - liquidators also sued a Swiss company and its chief executive resident in France - the four appellants were alleged to be parties to unlawful means conspiracy to injure Bilta by fraudulent scheme - appellants sought to strike out Bilta's claim on ground Bilta could not maintain proceedings in view of 'ex turpi causa non oritur actio' principle, or that appellants were bound to defeat claims on basis of illegality defence - appellants also claimed insofar as claims based on s213 *Insolvency Act 1986* it could not be invoked as it did not have extra-territorial effect - held: Court of Appeal right to hold that illegality could not be raised by Jetivia or chief executive as defence to Bilta's claim because wrongful activity of Bilta's directors and shareholder could not be attributed to Bilta in proceedings - Court of Appeal right to hold that s213 had extra-territorial effect - appeal dismissed.

[Jetivia](#)

[From Benchmark Tuesday, 9 June 2015]

Sims v Chong [2015] FCAFC 80

Full Court of the Federal Court of Australia

Mansfield, Siopis & Rares JJ

Summary dismissal - legal practitioners - advocate's immunity - appellant claimed against respondent concerning quality of professional legal services rendered in conduct of District Court proceedings and Supreme Court proceedings (WA claim) - WA claim ultimately struck out - primary judge summarily dismissed appellant's claim against respondent on bases claim was abuse of process and that in any event it was doomed to fail because respondent's conduct protected by advocate's immunity - whether erroneous to summarily dismiss claim under s31A *Federal Court of Australia Act 1976* because not all claims fell within immunity's shadow or because state of authorities did not justify exercise of power under s31A - whether Court satisfied appellant had no reasonable prospect of successfully prosecuting claim - held: Court disagreed with primary judge's conclusions that case as expressed was not reasonably arguable - appeal allowed.

[Sims](#)

[From Benchmark Wednesday, 10 June 2015]

Fairfax Media Publications Pty Ltd v Bateman [2015] NSWCA 154

Court of Appeal of New South Wales

McColl, Basten & Macfarlan JJA

Defamation - respondent alleged defamatory imputations arising from articles published by applicants in newspaper and on websites - applicants sought to plead in reliance on *David Syme & Co Ltd v Hore-Lacy* [2000] 1 VR 667 (Hore-Lacy) as alternative way of pleading defence of justification - primary judge found that Hore-Lacy established a separate form of pleading not available in New South Wales and struck out Hore-Lacy defence - applicants

sought leave to appeal - rr14.30-14.32 *Uniform Civil Procedure Rules 2005* (NSW) - 'the general law' - ss6 & 24 *Defamation Act 2005* (NSW) - held : in absence of binding authority to contrary, primary judge correct to strike out defence as not complying with pleading practice and procedures in NSW - Court need not consider correctness of reasoning in *Setka v Abbott* [2014] VSCA 287 - appeal dismissed.

[Fairfax](#)

[From Benchmark Tuesday, 9 June 2015]

Commonwealth Bank of Australia v ACN 076 848 112 Pty Ltd [2015] NSWSC 666

Supreme Court of New South Wales

Ball J

Corporations - bank sought and was granted leave under s444E(3) *Corporations Act 2001* (Cth) to proceed against first defendant subject of deed of company arrangement - bank also sought access to documents disclosing details of first defendant's professional indemnity insurance - bank had also served notice to produce and subpoena seeking access to the documents - first defendant sought to set aside notice - ss56-61 *Civil Procedure Act 2005* - held: production of documents relating to first defendant's insurance arrangements not justified by modern case management principles - not in interests of justice for insurance policies to be disclosed - notice set aside - balance of amended notice of motion dismissed.

[Commonwealth](#)

[From Benchmark Thursday, 4 June 2015]

Nicholas v Astute Hire Pty Ltd [2015] NSWSC 711

Supreme Court of New South Wales

Hall J

Joinder - negligence - work injury - plaintiff employed by defendant in relation to railway station upgrade - plaintiff injured when struck in legs by steel beam and trapped underneath it - plaintiff sued defendant in negligence - principal of project had engaged company (QMC) as main subcontractor - QMC engaged another subcontractor (Ontrack) - defendant sought leave to cross-claim against Ontrack's insurer - insurer opposed application - insurer denied Ontrack had "a liability" within meaning of s601AG *Corporations Act 2001* - insurer also denied insurance contract issued by it to Ontrack Pty Ltd covered any liability that arose immediately before Ontrack's deregistration - held: there was considerable evidence which could establish liability in Ontrack on proposed second cross-claim - it appeared at prima facie level that Ontrack held relevant insurance from insurer at relevant time - leave granted to file and serve on insurer proposed cross-claim.

[Nicholas](#)

[From Benchmark Wednesday, 10 June 2015]

James v Maxwell [2015] QSC 149

Supreme Court of Queensland

Henry J

Negligence - motorcyclist sought damages for injuries to leg in collision on bend in dirt road with



motor vehicle driven by first defendant - held: evidence compelled inference that first defendant was travelling too fast to manoeuvre vehicle around bend without encroaching into path of oncoming traffic - collision was entirely due to first defendant's negligent driving - no contributory negligence - second defendant insurer also liable in respect of damages - judgment for motorcyclist.

[James](#)

[From Benchmark Thursday, 4 June 2015]



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Doreen

by C.J. Dennis

“I WISH’T yeh meant it, Bill.” Oh, ’ow me ’eart
Went out to ’er that ev’nin’ on the beach.
I knoo she weren’t no ordinary tart,
My little peach!
I tell yeh, square an’ all, me ’eart stood still
To ’ear ’er say, “I wish’t yeh meant it, Bill.”

To ’ear ’er voice! Its gentle sorter tone,
Like soft dream-music of some Dago band.
An’ me all out; an’ ’oldin’ in me own
’Er little ’and.
An’ ’ow she blushed! O, strike! it was divine
The way she raised ’er shinin’ eyes to mine.

’Er eyes! Soft in the moon; such boshter eyes!
An’ when they sight a bloke...O, spare me days!
’E goes all loose inside; such glamour lies
In ’er sweet gaze.
It makes ’im all ashamed uv wot ’e’s been
To look inter the eyes of my Doreen.

The wet sands glistened, an’ the gleamin’ moon
Shone yellor on the sea, all streakin’ down.
A band was playin’ some soft, dreamy choon;
An’ up the town
We ’eard the distant tram-cars whir an’ clash.
An’ there I told ’er ’ow I’d done me dash.

“I wish’t yeh meant it.” ’Struth! And did I, fair?
A bloke ’ud be a dawg to kid a skirt
Like ’er. An’ me well knowin’ she was square.
It ’ud be dirt!
’E’d be no man to point wiv ’er, an’ kid.
I meant it honest; an’ she knoo I did.

She knoo. I’ve done me block in on ’er, straight.
A cove ’as got to think some time in life
An’ get some decent tart, ere it’s too late,
To be ’is wife.
But, Gawd! ’Oo would ‘a’ thort it could ‘a’ been



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My luck to strike the likes of 'er?...Doreen!

Aw, I can stand their chuckin' off, I can.
It's 'ard; an' I'd delight to take 'em on.
The dawgs! But it gets that way wiv a man
When 'e's fair gone.
She'll sight no stoush; an' so I 'ave to take
Their mag, an' do a duck fer 'er sweet sake.

Fer 'er sweet sake I've gone and chucked it clean:
The pubs an' schools an' all that leery game.
Fer when a bloke 'as come to know Doreen,
It ain't the same.
There's 'igher things, she sez, for blokes to do.
An' I am 'arf believin' that it's true.

Yes, 'igher things—that wus the way she spoke;
An' when she looked at me I sorter felt
That bosker feelin' that comes o'er a bloke,
An' makes 'im melt;
Makes 'im all 'ot to maul 'er, an' to shove
'Is arms about 'er...Bli'me? but it's love!

That's wot it is. An' when a man 'as grown
Like that 'e gets a sorter yearn inside
To be a little 'ero on 'is own;
An' see the pride
Glow in the eyes of 'er 'e calls 'is queen;
An' 'ear 'er say 'e is a shine champeen.

"I wish't yeh meant it," I can 'ear 'er yet,
My bit o' fluff! The moon was shinin' bright,
Turnin' the waves all yellor where it set—
A bonzer night!
The sparklin' sea all sorter gold an' green;
An' on the pier the band—O, 'Eil!...Doreen!

[C. J. Dennis](#)

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