



Friday 14 November 2014

## Weekly Insurance Law Review

Our Selection from this week's Daily Bulletins

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### Executive Summary (1 minute read)

**Coote v S & P Jackson Pty Ltd** (NSWCA) - negligence - worker injured when workbox in which he was standing fell from crane - provider of equipment not liable

**McFarlane v Nationwide News Pty Ltd** (NSWSC) - defamation - three articles published in newspaper - plaintiff entitled to choose mode of pleading - strike-in of fourth article refused

**Thelander v Sydney Ferries Corporation** (NSWSC) - negligence - ferry worker injured foot when he tripped over sill - employer failed to paint sill to show height - employer liable

**Smith bht Smith v NRMA Insurance Ltd** (NSWSC) - negligence - van collided with car, injuring passenger - Court not satisfied van driver conscious - NRMA not liable

**Hodder v Hamilton & Fitzpatrick** (VSCA) - accident compensation - refusal to discharge jury - refusal of permission to adduce evidence - appeal dismissed

## Summaries with links (5 minute read)

### **Coote v S & P Jackson Pty Ltd [2014] NSWCA 385**

Court of Appeal of New South Wales

Macfarlan, Barrett & Leeming JJA

Negligence - appellant worker employed by Boral as plant operator at asphalt batching plant - Boral contracted with respondent to provide crane and related equipment - worker injured when workbox in which he was standing fell to ground while suspended from crane - appellant sued respondent in negligence - primary judge concluded respondent not liable - held: evidence did not establish that any step a reasonable person in respondent's position would have taken would have avoided accident - causative negligence not proved - challenge to rejection of application to amend particulars of negligence failed - appeal dismissed.

[Coote](#)

[From Benchmark 11 November 2014]

### **McFarlane v Nationwide News Pty Ltd [2014] NSWSC 1574**

Supreme Court of New South Wales

McCallum J

Defamation - strike-in application - action arising out of publication of series of three articles in newspaper on same day - defendant contended that a further article appearing on the same page as a number of the articles sued on ought also be included as part of the matter complained of - defendant sought order striking that material in - defendant contended additional article would have been read by ordinary reasonable reader in conjunction with matter complained of - defendant also submitted additional article was capable of affecting the sense of the matter complained of - plaintiff's entitlement to choose mode of pleading - held: it would have been open to plaintiff to add additional article to matter complained of as a single publication but it could not be concluded that plaintiff's chosen mode of pleading only three of the four articles was untenable - plaintiff could not be compelled to include article in the matter complained of - strike-in application refused.

[McFarlane](#)

[From Benchmark 12 November 2014]

### **Thelander v Sydney Ferries Corporation [2014] NSWSC 1530**

Supreme Court of New South Wales

Adams J

Negligence - plaintiff worked for Sydney Ferries as general purpose hand on Manly ferries - plaintiff injured his foot when moving into crew's mess from a vestibule tripped on a raised sill forming part of the doorway - plaintiff thought the vessel was Queenscliff, but it was in fact Narrabeen, on which relevant sill was significantly higher than that on Queenscliff - plaintiff

claimed sill should have been marked to draw attention to its height - Sydney Ferries claimed sill sufficiently marked and that it was not reasonably foreseeable that experienced crew member such as plaintiff would not be aware that sills were of various heights throughout vessels - held: Court satisfied Sydney Ferries was in breach of its duty to the plaintiff by not painting the step in a way which made its height evident, even on a passing glance - plaintiff's injury resulted from Sydney Ferries' negligence - no contributory negligence - judgment for plaintiff.

[Thelander](#)

[From Benchmark 10 November 2014]

### **Smith bht Smith v NRMA Insurance Ltd [2014] NSWSC 1518**

Supreme Court of New South Wales

Button J

Negligence - plaintiff child was passenger in motor vehicle - van drove onto wrong side of road colliding with motor vehicle - plaintiff injured - van driver pronounced dead at scene of accident having suffered heart attack - plaintiff sued NRMA as insurer of van driver - separate determination of liability - parties agreed that if van driver was conscious and in control of the van at the time of the collision, he was undoubtedly negligent, and, if unconscious or otherwise very incapacitated, he was not negligent - time at which van driver suffer the heart attack - held: Court not satisfied on balance of probabilities that van driver was conscious and driving at time of collision - separate question of liability determined in favour of NRMA.

[Smith bht Smith](#)

[From Benchmark 13 November 2014]

### **Hodder v Hamilton & Fitzpatrick [2014] VSCA 279**

Court of Appeal of Victoria

Santamaria, Beach & Kyrou JJA

Accident compensation - occupiers liability - appellant injured at premises occupied by respondents - appellant sued respondents claiming they were negligent and that they breached occupiers' duties of care - County Court jury returned verdict for respondents - held: no error in primary judge's refusal to permit appellant to adduce a DVD showing a re-enactment of actions giving rise to accident as appellant believed they had occurred, or in refusal of permission to adduce opinion evidence as to the ease with which it was possible to perform the actions shown in the DVD - no error in primary judge's refusal to discharge the jury - appeal dismissed.

[Hodder](#)

[From Benchmark 13 November 2014]



## Autumn

By John Clare

1

I love the fitfull gusts that shakes  
The casement all the day  
And from the mossy elm tree takes  
The faded leaf away  
Twirling it by the window-pane  
With thousand others down the lane

2

I love to see the shaking twig  
Dance till the shut of eve  
The sparrow on the cottage rig  
Whose chirp would make believe

That spring was just now flirting by  
In summers lap with flowers to lie

3

I love to see the cottage smoke  
Curl upwards through the naked trees  
The pigeons nestled round the coat  
On dull November days like these  
The cock upon the dung-hill crowing  
The mill sails on the heath agoing

4

The feather from the ravens breast  
Falls on the stubble lea  
The acorns near the old crows nest  
Fall pattering down the tree  
The grunting pigs that wait for all  
Scramble and hurry where they fall

[John Clare](#)

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