

Friday, 17 July 2015

Weekly Insurance Law Review Selected from our Daily Bulletins covering Insurance

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Executive Summary (1 minute read)

Carey v Laikin (SCC) - contempt - Mareva injunction - return of money to client - lawyer in contempt - erroneous permission to relitigate initial finding - appeal dismissed

Allianz Australia Insurance Ltd v Haddad (NSWCA) - insurance - expiry of home insurance policy - denial of claim - insurer did not breach contract or engage in misleading or deceptive conduct - appeal allowed

Glen v Sullivan (NSWCA) - damages - motor vehicle accident - no error in assessment of damages - appeal dismissed

Zwambila v Wafawarova (ACTSC) - defamation - publication of article defamatory of Zimbabwean ambassador to Australia - damages - aggravated damages

Summaries With Link (Five Minute Read)

Carey v Laikin 2015 SCC 17

Supreme Court of Canada

McLachlin CJ; Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ

Contempt - respondent brought contempt proceedings against appellant lawyer alleging he breached terms of Mareva injunction by returning money to client for whom he was holding it in trust - injunction issued in course of litigation between respondent, client and related parties and enjoined any person with knowledge of order from disposing or dealing with assets of various

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parties, including client's - motions judge found lawyer in contempt - lawyer moved to reopen contempt hearing and filed new evidence - motions judge set aside previous finding of contempt - Court of Appeal allowed appeal and restored initial contempt finding - held: lawyer was in contempt - Court of Appeal correctly held motions judge erred in exercising discretion to permit lawyer to relitigate initial contempt finding, and erred in setting finding aside - appeal dismissed.

[Carey](#)

[From Benchmark Thursday, 9 July 2015]

Allianz Australia Insurance Ltd v Haddad [2015] NSWCA 186

Court of Appeal of New South Wales

Beazley P; Meagher & Ward JJA

Insurance - Australian Consumer Law - respondent insured by appellant insurer under annual contracts of home insurance - 2008-2009 policy expired in July 2009 and not renewed - insurer did not send renewal notice to respondent and did not indicate it did not intend to renew policy - respondent believed policy extended or renewed - in September 2010 respondent made claim for damage to property that occurred in August 2010 - insurer denied claim on basis there was no current home insurance policy - primary judge found insurer breached 2008-2009 contract and engaged in misleading and deceptive conduct and gave judgment for respondent - ss20, 21, 22 *Competition and Consumer Act 2010* - held: no breach or repudiatory conduct by insurer - no misleading or deceptive conduct - insurer's conduct did not justify expectation policy would automatically be renewed - "statutory" policy arose as result of insurer's failure to comply with s58(2) *Insurance Contracts Act 1984* by not providing notice of expiry of 2008-2009 policy - statutory policy only continued until July 2010 - malicious damage subject of respondent's claim occurred after expiry of statutory policy - appeal allowed.

[Allianz](#)

[From Benchmark Friday, 10 July 2015]

Glen v Sullivan [2015] NSWCA 191

Court of Appeal of New South Wales

Beazley P, Ward JA & Sackville AJA

Damages - motor vehicle accident - appellant claimed damages for injuries sustained when struck by vehicle driven by respondent - liability admitted - assessment of damages reflected primary judge's findings that although accident caused some physical and psychological injuries those injuries had resolved long before trial - credit - pre-accident health - medical evidence - onus of adducing evidence - s5D *Civil Liability Act 2002* - s131 *Motor Accidents Compensation Act 1999* - held: respondent discharged its onus of adducing evidence probative of fact that any causal relationship between accident and psychiatric disabilities had ceased well before trial - primary judge appreciated differing evidentiary burdens borne by parties - no error in primary judge's approach - appeal dismissed.

[Glen](#)

[From Benchmark Friday, 10 July 2015]

Zwambila v Wafawarova [2015] ACTSC 171

Supreme Court of the Australian Capital Territory

Penfold J

Defamation - plaintiff was Zimbabwean ambassador to Australia - plaintiff claimed second defendant published defamatory article in Zimbabwean newspapers and republished allegations on his website - Div. 9.4.3, ss123, 139G & 139K *Civil Law (Wrongs) Act 2002* , s15(1) *Service and Execution of Process Act 1992* (Cth) - *Civil Law (Wrongs) Non-economic Loss Declaration 2015* - choice of law - cultural significance of allegations - assessment of damages - aggravated damages - held: second defendant was publisher of defamatory material - identification of defamatory imputations not challenged by second defendant - having regard to nature of defamation, nature and extent of the original publication, personal hurt, significance of plaintiff's reputation and the need to vindicate her position Court considered plaintiff should receive \$160,000 damages with additional \$20,000 aggravated damages having regard to further harm done by defendant's approach to requests for apology or retraction.

[Zwambila](#)

[From Benchmark Tuesday, 14 July 2015]



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Winter: A Dirge

By Robert Burns

The wintry west extends his blast,
And hail and rain does blow;
Or, the stormy north sends driving forth
The blinding sleet and snaw:
While tumbling brown, the burn comes down,
And roars frae bank to brae;
And bird and beast in covert rest,
And pass the heartless day.

The sweeping blast, the sky o'ercast,
The joyless winter-day,
Let others fear, to me more dear
Than all the pride of May:
The tempest's howl, it soothes my soul,
My griefs it seems to join;
The leafless trees my fancy please,
Their fate resembles mine!

Thou Pow'r Supreme, whose mighty scheme
These woes of mine fulfil,
Here, firm, I rest, they must be best,
Because they are Thy will!
Then all I want (O, do Thou grant
This one request of mine!)
Since to enjoy Thou dost deny,
Assist me to resign.

[Robert Burns](#)

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