



Friday 17 October 2014

Weekly Insurance Law Review

Our Selection from this week's Daily Bulletins

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

AF Concrete Pumping Pty Ltd v Ryan (NSWCA) - work injury damages - worker injured while constructing pool - subcontractor which employed worker not liable

Grima v RFI (Aust) Pty Ltd (NSWCA) - negligence - worker injured unloading goods from truck - apportionment of liability between joint tortfeasors

Warren v Maclean-Lower Clarence Services Club Ltd (NSWSC) - damages - assault causing brain injury - damages assessed at \$1,708,309

Sims v Jooste [No 2] (WASC) - defamation - failure to prove publication of words in internet chat room to third party - action dismissed



Summaries with links (5 minute read)

AF Concrete Pumping Pty Ltd v Ryan [2014] NSWCA 346

Court of Appeal of New South Wales

Meagher & Leeming JJA; Sackville AJA

Work injury damages - worker injured while constructing swimming pool in building - worker sued two subcontractors (Reliance Pools and AF Concrete) in negligence - worker employed by Reliance Pools - subcontractors cross-claimed against employer's workers compensation insurer - insurer claimed reimbursement of compensation payments from subcontractors - subcontractors sought indemnity from insurer under *Workers Compensation Act 1987* (NSW) - primary judge found AF Concrete liable and Reliance Pools not liable - primary judge found subcontractors not entitled to indemnity and insurer entitled to reimbursement of workers compensation payments - AF Concrete appealed - held: no error in finding that Reliance Pools was not negligent - Reliance Pools did not breach duty which it owed to ensure reasonable care would be taken for safety of its employees - no error in assessment of permanent impairment for purposes of s151H, or error in exercise of discretion as to costs - appeal dismissed except in relation to costs order on which AF Concrete was successful.

[AF Concrete Pumping Pty Ltd](#)

[From Benchmark 14 October 2014]

Grima v RFI (Aust) Pty Ltd [2014] NSWCA 345

Court of Appeal of New South Wales

Meagher, Barrett & Emmett JJA

Negligence - joint tortfeasors - worker injured while unloading goods from truck which been loaded by RFI - worker alleged RFI loaded truck incorrectly and unsafely - RFI denied negligence and alleged worker negligently contributed to his own loss - RFI cross-claimed against worker's employer alleging it failed to provide safe workplace or to instruct worker in proper methods of unloading truck - primary judge held RFI's failure to provide restraining brace to prevent fall of goods breached duty to load truck properly - employer also breached duty by failing to formulate adequate system and instructions - responsibility apportioned 50% to RFI and 50% to employer - no contributory negligence - finding of negligence by RFI not challenged - held: finding of negligence by employer was correctly made but primary judge's equal apportionment plainly unreasonable - appropriate apportionment was 75% to RFI and 25% to employer - no error in finding no contributory negligence or contribution in respect of costs - appeal allowed in part - cross-appeal dismissed.

[Grima](#)

[From Benchmark 16 October 2014]

**Warren v Maclean-Lower Clarence Services Club Ltd [2014] NSWSC 1374**

Supreme Court of New South Wales

Schmidt J

Damages - plaintiff suffered brain injury when assaulted by second and third defendants at first defendant club - claim against first defendant not pursued - other defendants did not defend claim - plaintiff received default judgment for unliquidated damages - plaintiff sought damages in circumstances where neither defendant was in a financial position which would enable any orders made in plaintiff's favour to be satisfied - held: Court satisfied on the evidence that an order for substantial damages must be made in plaintiff's favour - Court satisfied that assault fell within exception in s3B *Civil Liability Act 2002* (NSW) which excludes application of the Act to intentional acts done with intent to cause death or injury, apart, relevantly, from s18 interest on damages - plaintiff sought no order as to interest - damages assessed - defendants ordered to pay plaintiff damages in sum of \$1,708,309.

[Warren](#)

[From Benchmark 13 October 2014]

Sims v Jooste [No 2] [2014] WASC 373

Supreme Court of Western Australia

K Martin J

Defamation - self-represented plaintiff claimed he was defamed by defendant by words appearing in internet chat forum - plaintiff had previously been executive director of company - words complained of concerned reckless disregard for shareholders' interests - publication - justification defence - s184(2) *Corporations Act 2001* (Cth) - held: plaintiff did not establish that words complained had been read and understood by at least one other person - establishing publication was essential ingredient of a cause of action in defamation against defendant - need for plaintiff to show publication of words to third person other than himself was clearly explained to plaintiff - plaintiff did not establish publication of the words - action dismissed.

[Sims](#)

[From Benchmark 15 October 2014]



Aedh Wishes for the Cloths of Heaven

By W. B. Yeats

Had I the heavens' embroidered cloths,
Enwrought with golden and silver light,
The blue and the dim and the dark cloths
Of night and light and the half light,
I would spread the cloths under your feet:
But I, being poor, have only my dreams;
I have spread my dreams under your feet;
Tread softly because you tread on my dreams.

[W. B. Yeats](#)

[**Click Here to access our Benchmark Search Engine**](#)