

Friday, 24 April 2015

Weekly Insurance Law Review Selected from our Daily Bulletins covering Insurance

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Executive Summary (1 minute read)

Independent Commission Against Corruption v Cunneen (HCA) - administrative law - statutory interpretation - ICAC had no power to investigate alleged conduct as it was not *corrupt conduct* under *Independent Commission Against Corruption 1988* (NSW) - appeal dismissed

Rockdale City Council v Simmons (NSWCA) - negligence - cyclist injured in collision with boom gate - council liable - appeal dismissed - cross-appeal allowed in part

Gacic v John Fairfax Publications Pty Ltd (NSWCA) - damages - defamation - action arising out of review of restaurant - appeal and cross-appeal allowed

Benton v QBE Workers Compensation (NSW) Ltd (NSWCA) - summary dismissal - workers compensation - abuse of process - leave to appeal refused

Vincent v Woolworths Ltd and Vincent v Counterpoint Marketing & Sales Pty Ltd (NSWSC) - negligence - work injury damages - collision with trolley at supermarket - neither occupier nor employer liable

Matton Developments Pty Ltd v CGU Insurance Ltd (No 2) (QSC) - insurance policy - contractors and plants insurance policy did not respond to crane owner's claim arising from collapse of crane boom

Broznic v The Federal Capital Press Pty Ltd t/as The Canberra Times (ACTCA) - negligence - appellant injured by fire door on company's premises - company not liable

Summaries With Link (Five Minute Read)

Independent Commission Against Corruption v Cunneen [2015] HCA 14

High Court of Australia

French CJ; Hayne, Kiefel, Gageler & Nettle JJ

Administrative law - statutory interpretation - ICAC decided to investigate first respondent Deputy Senior Crown Prosecutor - Prosecutor challenged inquiry on basis allegations could not constitute *corrupt conduct* under s8(2) *Independent Commission Against Corruption 1988* (NSW) - meaning of expression *adversely affects, or that could adversely affect ... the exercise of official functions by any public official* in definition of *corrupt conduct* in s8(2) - ss2A, 8, 9, 12A - held (by majority; Gageler J dissenting): preferred meaning of *adversely affect* was “adversely affect or could adversely affect the *probity* of the exercise of an official function by a public official” - not disputed that if expression had this meaning then the alleged conduct was not *corrupt conduct* within meaning of s8(2) - Commission had no power to investigate alleged conduct - special leave to appeal granted - appeal dismissed.

[ICAC](#)

[From Benchmark 16 April 2015]

Rockdale City Council v Simmons [2015] NSWCA 102

Court of Appeal of New South Wales

Beazley P; McColl & Barrett JJA

Negligence - respondent injured while riding bicycle through carpark adjacent to club when he struck boom gate which was closed across entrance - plaintiff sued council and club - primary judge found council liable - contributory negligence assessed at 20% - s5B *Civil Liability Act 2002* (NSW) - held: primary judge did not err in finding council owed duty of care to respondent or that it breached duty of care - no error in finding of causation or in finding council was not exercising “special statutory power” under s43A - no error in refusal to find club owed duty of care to respondent - primary judge erred in finding of contributory negligence - appeal dismissed - cross-appeal allowed in part.

[Rockdale](#)

[From Benchmark 20 April 2015]

Gacic v John Fairfax Publications Pty Ltd [2015] NSWCA 99

Court of Appeal of New South Wales

McColl, Macfarlan & Barrett JJA

Damages - defamation - action arising out of review published by respondents of restaurant conducted by appellants - judgment given in respondents' favour (liability judgment) - Court of appeal upheld appellants' appeal - matter remitted for assessment of damages - appellants contended primary judge's award of damages was inadequate and that primary judge erred by not back-dating judgment to date of liability judgment - respondents contended primary judge erred in consideration of plea in mitigation of damages and that award of damages excessive - held: primary judge erred in award of aggravated damages by failing to take into account

respondents' failure to apologise and imputations' falsity - primary judge erred in failing to back-date judgment - primary judge erred by not ordering first respondent to pay exemplary damages for continuing publication of review - primary judge erred in failing to conclude certain statements by reviewer were statements of fact relevant to appellants' reputations and contextual background - compensatory damages and exemplary damages increased - damages reduced for mitigation factors - appeal allowed - cross-appeal allowed.

[Gacic](#)

[From Benchmark 20 April 2015]

Benton v QBE Workers Compensation (NSW) Ltd [2015] NSWCA 101

Court of Appeal of New South Wales

Meagher & Ward JJA; Adamson J

Workers compensation - worker sued former employer's workers' compensation insurer for damages for injuries in slip and fall while attempting to alight from cabin of prime mover - District Court summarily dismissed claim on basis proceedings were abuse of process because worker was seeking to re-litigate matters conclusively determined against him in previous proceedings he brought against truck owner - held: no error in *House v The King* sense in exercise of primary judge's discretion to summarily dismiss proceedings - appellate intervention not warranted - no error in primary judge's conclusion proceedings were abuse of process - any appeal on that basis bound to fail - leave to appeal refused

[Benton](#)

[From Benchmark 21 April 2015]

Vincent v Woolworths Ltd and Vincent v Counterpoint Marketing & Sales Pty Ltd [2015] NSWSC 435

Supreme Court of New South Wales

Campbell J

Negligence - work injury damages - plaintiff part-time merchandiser sued Woolworths and employer in separate proceedings for injuries suffered in course of employment in collision with trolley at supermarket - Woolworths and employer cross-claimed against the other - *5B Civil Liability Act 2002 (NSW)* - held: no breach of duty of care by Woolworths as occupier - collision occurred because neither customer or plaintiff looked where they were going as ordinary care usually required - employer not negligent - plaintiff's accident resulted from failure of her and customer to see each other - judgment for defendants.

[Vincent](#)

[From Benchmark 21 April 2015]

Matton Developments Pty Ltd v CGU Insurance Ltd (No 2) [2015] QSC 72

Supreme Court of Queensland

Flanagan J

Insurance policy - contractors and plants insurance - insurance company refused to indemnify crane owner for damage to crane when boom collapsed - competing hypotheses concerning circumstances in which boom collapsed - construction of policy - operation of exclusion clauses

- ss13 & 54 *Insurance Contracts Act 1984* (Qld) - held: policy did not respond to plaintiff's claim
- allegation that insurance company breached the contract of insurance failed - claim dismissed.

[Matton](#)

[From Benchmark 16 April 2015]

Brozinic v The Federal Capital Press Pty Ltd t/as The Canberra Times [2015] ACTCA 8

Court of Appeal of the Australian Capital Territory

Burns & Gilmour JJ; Cowdroy AJ

Negligence - appellant cleaning supervisor injured while entering premises of company when struck by fire door being opened by company's employee - plaintiff settled claim against employer in relation to injuries suffered in door incident and previous work injury - plaintiff alleged company negligent by not installing door with window through which persons approaching the door might be viewed - Master found no breach of duty by company - appellant appealed - held: Master correctly applied test for negligence in s 42 *Civil Law (Wrongs) Act 2002* (ACT) - mere fact that risk of injury present on company's premises not sufficient to render company liable - there was absence of evidence to justify conclusion company could have, or should have, taken measures to avoid risk of injury when risk was not significant on evidence - appeal dismissed.

[Brozinic](#)

[From Benchmark 22 April 2015]

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Swallows

By Leonora Speyer

They dip their wings in the sunset,
They dash against the air
As if to break themselves upon its stillness:
In every movement, too swift to count,
Is a revelry of indecision,
A furtive delight in trees they do not desire And in grasses
that shall not know their weight.

They hover and lean toward the meadow
With little edged cries;
And then,
As if frightened at the earth's nearness, They seek the
high austerity of evening sky And swirl into its depth.

[Leonora Speyer](#)

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