

Friday 31 October 2014

# Benchmark

## Weekly Insurance Law Review

### Our Selection from this week's Daily Bulletins

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#### Executive Summary (1 minute read)

**Szajna v Australian Postal Corporation** (FCA) - workers compensation - AAT misconstrued *injury* - error of law - appeal allowed

**Dansar Pty Ltd v Byron Shire Council** (NSWCA) - negligence - pure economic loss - delay in obtaining development approval - no duty of care owed by Council

**Jones v TCN Channel Nine Pty Ltd** (NSWSC) - defamation - defences - contextual truth - imputations struck out

**Mason v Transport Accident Commission** (VSCA) - accident compensation - psychiatric injury - leave refused to bring proceedings for damages - appeal dismissed

**Du Pradal v Petchell** (QSC) - negligence - snorkeller run over by boat - boat driver liable

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## Summaries with links (5 minute read)

### Szajna v Australian Postal Corporation [2014] FCA 1136

Federal Court of Australia

Rangiah J

Workers compensation - applicant's husband employed at respondent's facility as mail officer - husband died at place of work - death caused by ventricular fibrillation brought on by underlying coronary artery disease - Administrative Appeals Tribunal affirmed respondent's determination that applicant was not entitled to compensation under s14 *Safety, Rehabilitation and Compensation Act 1988* (Cth) for husband's death - applicant submitted AAT erred by misconstruing *injury* in s5A(1) - whether AAT erred in finding an inevitable consequence of an underlying disease was not an injury - held: AAT erred in law by concluding that defined term *injury* incorporated a legal principle that did not exist - AAT also erred in misconstruing *injury* in phrase *injury (other than a disease)* in s5A(1)(b) - appeal allowed.

[Szajna](#)

[From Benchmark 28 October 2014]

### Dansar Pty Ltd v Byron Shire Council [2014] NSWCA 364

Court of Appeal of New South Wales

Macfarlan, Meagher & Leeming JJA

Negligence - pure economic loss - Council assessed spare capacity in treatment plant and resolved to allocate capacity to new developments - company sought approval of development of property it owned - deemed refusal of application - company's appeal dismissed by Land and Environment Court - company lodged new applications which were approved - company alleged Council breached duty of care to it and claimed damages for economic loss as result of delay in approving its application - trial judge held Council did not owe posited duty of care - held (by majority): asserted duty of care incompatible with Council's unconstrained exercise of its statutory functions and obligations - no reliance or assumption of responsibility - no relevant vulnerability - at no time was company relying on assurance from Council that it would allocate available capacity in particular way and exercise reasonable care in doing so - company had no right to have any further load committed to sewerage system - company did not have any right or interest, the enjoyment of which depended on exercise of care by Council, or existence of which depended on exercise of care by Council in performance of function it was obliged to undertake - appeal dismissed.

[Dansar Pty Ltd](#)

[From Benchmark 30 October 2014]

# Benchmark

## **Jones v TCN Channel Nine Pty Ltd [2014] NSWSC 1453**

Supreme Court of New South Wales

McCallum J

Defamation - defences - contextual truth - action arising out segment on television programme - plaintiff objected to two contextual implications specified by defendants - requirement that contextual imputation be one carried in addition to the defamatory imputations complained of by plaintiff - s16 *Defamation Act 1974* (NSW) - s26 *Defamation Act 2005* (NSW) - held: one contextual imputation struck out on basis it was not capable of meeting the requirements of s26 - other contextual imputation struck out on basis it was not capable of arising.

### **Jones**

[From Benchmark 29 October 2014]

## **Mason v Transport Accident Commission [2014] VSCA 267**

Court of Appeal of Victoria

Warren CJ; Ashley & Whelan JJ

Accident compensation - applicant sought leave to bring proceedings for damages pursuant to s93 *Transport Accident Act 1986* (Vic) - trial judge refused application - applicant contended trial judge erred in failing to be satisfied applicant had established any psychiatric injury from which she was suffering was caused by road traffic accident involving her mother in 2006 and her mother's death thereafter - applicant also contended trial judge's reasons were insufficient - held: trial judge did not err in assessment of applicant's medical history and causes of her various injuries and conditions - reasons sufficiently revealed applicant's claim failed because trial judge not satisfied of reliability of applicant's account of symptoms to experts - no error in finding causation not established on evidence - leave to appeal granted - appeal dismissed.

### **Mason**

[From Benchmark 28 October 2014]

## **Du Pradal v Petchell [2014] QSC 261**

Supreme Court of Queensland

Mullins J

Negligence - first plaintiff injured while snorkelling when run over by motor boat driven by defendant - third party was in first plaintiff's motor boat at time of accident - defendant failed to comply with speed limit - defendant noticed plaintiff's orange dive float but failed to slow down and navigate path clear of the dive float and diver - defendant claimed first plaintiff's negligence caused or contributed to accident - defendant also claimed contribution or indemnity from third party - first plaintiff's employer brought claim for damages against defendant for action *per quod servitium amisit* - ss9, 11, 12, 23 & 59 *Civil Liability Act 2003* (Qld) - held: first plaintiff established accident was caused by defendant's breach of duty of care owed to him - no contributory negligence - defendant's claim against third party dismissed on basis that either there was no duty of care owed by third party to first plaintiff or, if there were, there was no breach - employer's claim against defendant dismissed - judgment for first plaintiff.

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Du Pradal

[From Benchmark 28 October 2014]

## III (from Mont Blanc)

By Percy Bysshe Shelley

Some say that gleams of a remoter world  
Visit the soul in sleep, that death is slumber,  
And that its shapes the busy thoughts outnumber  
Of those who wake and live. I look on high;  
Has some unknown omnipotence unfurl'd  
The veil of life and death? or do I lie  
In dream, and does the mightier world of sleep  
Spread far around and inaccessibly  
Its circles? For the very spirit fails,  
Driven like a homeless cloud from steep to steep  
That vanishes among the viewless gales!  
Far, far above, piercing the infinite sky,  
Mont Blanc appears - still, snowy, and serene;  
Its subject mountains their unearthly forms  
Pile around it, ice and rock; broad vales between  
Of frozen floods, unfathomable deeps,  
Blue as the overhanging heaven, that spread  
And wind among the accumulated steeps;  
A desert peopled by the storms alone,  
Save when the eagle brings some hunter's bone,  
And the wolf tracks her there - how hideously  
Its shapes are heap'd around! rude, bare, and high,  
Ghastly, and scarr'd, and riven. Is this the scene  
Where the old Earthquake-daemon taught her young  
Ruin? Were these their toys? or did a sea  
Of fire envelop once this silent snow?  
None can reply - all seems eternal now.  
The wilderness has a mysterious tongue  
Which teaches awful doubt, or faith so mild,  
So solemn, so serene, that man may be,  
But for such faith, with Nature reconcil'd;



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Thou hast a voice, great Mountain, to repeal  
Large codes of fraud and woe; not understood  
By all, but which the wise, and great, and good  
Interpret, or make felt, or deeply feel.

[Percy Bysshe Shelley](#)

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