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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Bronkhorst v Lloyd (NSWSC) - pleadings - equity - defence struck out - defendant to provide written account of dealings as attorney or agent for plaintiff - orders and directions (I B)

Golden v V'Landys (NSWSC) - evidence - loss of income - misfeasance in public office - permission refused to file and rely on evidence at very late stage in proceedings (I)

Omni Care v Koumouris (VSC) - judicial review - workers compensation - psychiatric condition attributable to work-related injury - no error in medical panel's decision - judicial review refused (I G)

Whyte v LM Investment Management Ltd (in liq)(rcvrs & mgrs apptd) (QSC) - legal costs - corporations - applicant not a "non-associated third party payer" in respect of legal costs payable by company to law practice - applicant not entitled to notice of costs assessment or to make submissions (I B)

Digby v The Compass Institute Inc (QSC) - negligence - employer liable for injuries to employee suffered during course of presentation by police officer - State not liable - damages limited by extent of injuries established by plaintiff (I B)

JW v John Siganto as Litigation Guardian for AW and CW (QSC) - Wills and estates - succession - testamentary capacity - order granted authorising making of Will on behalf of applicant's son (B)

Ross & Anor as Joint & Several Administrators Of GNC Homes P/L (Admin Apptd) v GNC Homes P/L (Admin Apptd) (SASC) - corporations - confirmation of validity of appointment of administrators of company - declaration (B C)

Summaries With Link (Five Minute Read)

Bronkhorst v Lloyd [2015] NSWSC 1618

Supreme Court of New South Wales

Slattery J

Pleadings - equity - plaintiff mother sought orders that defendant daughter provide written accounts of her dealings as attorney or agent for plaintiff; opportunity to examine daughter in respect of written accounts and that daughter pay mother sum and interest as may seem just - plaintiff sought that daughter's defence be struck out and part of final relief be granted - defendant sought another adjournment of hearing - s61 *Civil Procedure Act 2005* (NSW) - held: no justification for adjournment - no rational basis to allow matter to be adjourned - defendant had failed without adequate explanation to comply with Court's orders her to answer request for particulars - defence only pleaded general issue - defence did not identify true matters defendant proposed to put in issue - defence struck out - Court satisfied defendant should provide verified detailed written account of dealings as attorney or agent for plaintiff during questioned period - orders and directions made.

[Bronkhorst](#) (I B)

Golden v V'Landys [2015] NSWSC 1589

Supreme Court of New South Wales

Button J

Evidence - plaintiff was horse trainer "warned off" by first defendant - plaintiff claimed damages for loss of income and funds due to inability to work as horse trainer - plaintiff claimed second defendant Licencing Committee of Racing New South Wales acted beyond powers and first defendant committed tort of misfeasance in public office - plaintiff sought leave to file and rely on further evidence above and beyond evidence filed and served - hearing date set for 10/11/15 - held: there was force in plaintiff's submission that defendants could not point to prejudice but plaintiff had not demonstrated basis for receipt of evidence at very late stage - no reasonably persuasive explanation why timetables should be overridden - application refused.

[Golden](#) (I)

Omni Care v Koumouris [2015] VSC 603

Supreme Court of Victoria

Bell J

Judicial review - workers compensation - defendant employee injured during course of employment with plaintiff employer and in receipt of weekly payments of compensation - plaintiff terminated payments - questions referred to medical panel - employer sought judicial review of

medical panel's opinion that employee was suffering from knee injury and major depressive disorder attributable to that injury - Div 3, Pt 6. *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) - 'novus actus interveniens' - causation - held: panel took into account whether psychiatric condition caused by work-related injury or independently caused - panel's findings and opinions legally available - no inconsistency between findings and opinions - no error of law in panel's reasons, which fully disclosed path of reasoning - application for judicial review dismissed.

[Omni Care](#) (I G)

Whyte v LM Investment Management Ltd (in liq)(rcvrs & mgrs apptd) [2015] QSC 303

Supreme Court of Queensland

Jackson J

Legal costs - corporations - respondent company in liquidation was responsible entity and trustee of managed investment scheme - respondent or liquidators was client of law firm - Court directed respondent to wind up scheme - respondent then ordered to be wound up in insolvency - applicant appointed as person to take responsibility for ensuring scheme wound up in accordance with constitution and appointed receiver of property of scheme - Court ordered invoices for legal costs alleged to be payable under *Legal Profession Act 2007* (Qld) as between client law practice to be assessed - client was respondent or liquidators of respondent - applicant sought directions whether he was entitled to notice of application, to be served with copy of application for costs assessment, and entitled to notice of costs assessment - whether applicant was a "non-associated third party payer" within meaning of s301(3) - whether costs assessment subject to r720 *Uniform Civil Procedure Rules 1999* (Qld) - whether "the costs are payable out of a fund and applicant was "the person having charge of the fund" - held: applicant was not a "non-associated third party payer" in respect of legal costs payable by respondent to the law practice - r720 did not entitle applicant to notice of costs assessment or to make submissions in relation to it - application dismissed.

[Whyte](#) (I B)

Digby v The Compass Institute Inc [2015] QSC 308

Supreme Court of Queensland

Atkinson J

Negligence - first defendant provided disability services to young people - plaintiff employed by first defendant - second defendant State employed police officer who attended first defendant's premises - police officer gave presentation and turned on siren as part of it - client with disabilities became startled and fell - plaintiff injured trying to arrest client's fall - extent of respective liabilities of employer and State for plaintiff's injuries - extent of plaintiff's injuries - held: no breach of duty by police officer - first defendant breached duty in tort and contract to take reasonable care to avoid exposing plaintiff to risk of injury - first defendant was liable for plaintiff's injuries - plaintiff failed to persuade Court she suffered more than mild shoulder injury, minor somatic symptom disorder in injury's immediate aftermath and consequent addiction to painkillers - damages limited to \$158,045 - judgment for plaintiff against first defendant.

[Digby](#) (I B)

JW v John Siganto as Litigation Guardian for AW and CW [2015] QSC 300

Supreme Court of Queensland

McMeekin J

Wills and estates - succession - testamentary capacity - applicant sought leave under s22 *Succession Act 1981* (Qld) to bring further application under s21 for order authorising Will to be made on behalf of his son - son had no testamentary capacity, no current Will and no prospect of regaining capacity - whether applicant the Appropriate Person - whether all persons who may have interest were represented - approval "that the person would make" - held: Court satisfied that requirement in s24 were satisfied - it was appropriate to grant leave and to grant order sought.

[JW](#) (B)

Ross & Anor as Joint & Several Administrators Of GNC Homes P/L (Admin Apptd) v GNC Homes P/L (Admin Apptd) [2015] SASC 168

Supreme Court of South Australia

Dart J

Corporations - plaintiffs appointed as administrators of defendant company following passing of resolution by sole director of company (Burrows) - four days after appointment solicitors of defendant shareholders advised administrators that shareholders had resolved to remove Burrows and that he had no authority to appoint administrators - plaintiffs sought declaration or order confirming validity of appointment - ss128, 129, 447A & 447C *Corporations Act 2001* (Cth) - indoor management rule - whether Burrows removed as director of company - held: in circumstances the appointment of the administrators was valid because company not entitled to dispute Burrows was sole director validly exercising powers - plaintiffs entitled to declaration.

[Ross](#) (B C)

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