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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Marmax Investments Pty Ltd v RPR Maintenance Pty Ltd (FCAFC) - contract - franchise agreement - rights and obligations in relation to operation of franchise businesses - two appeals - one appeal allowed - other appeal allowed in part (I B C)

Caason Investments Pty Ltd v Cao (FCAFC) - pleadings - corporations - representative proceedings - primary judge should not have refused leave to amend statement of claim to include pleadings of 'market-based' causation - appeal allowed (I B)

Workers' Compensation Dust Diseases Board of NSW v Cook (NSWCA) - workers compensation - *Workers' Compensation (Dust Diseases) Act 1942* (NSW) did not permit Board to refuse claim for compensation because claimant recovered damages - appeal dismissed (I C G)

Anderson v Ausgrid (NSWSC) - negligence - fire which damaged house caused by defendant's negligent installation of replacement meter - judgment for house owners (I C)

Westpac Life Insurance Services Ltd v Guirgis (VSCA) - insurance - life insurance policy - no fraudulent non-disclosure or fraudulent misrepresentation - insurer's appeal dismissed (I C)

Thomas v Trades and Labour Hire Pty Ltd (QSC) - negligence - driver and operator of tip truck injured when tailgate attached to tip truck dislodged and fell on foot - employer and host

employer not liable (I)

Woollard -v- The Medical Board of Australia Sitting as a Performance and Professional Standards Panel (WASC) - judicial review - finding of unsatisfactory professional conduct against medical practitioner - judicial review refused (I G)

Summaries With Link (Five Minute Read)

Marmax Investments Pty Ltd v RPR Maintenance Pty Ltd [2015] FCAFC 127

Full Court of the Federal Court of Australia

Middleton, Foster & Gleeson JJ

Contract - franchise agreement - Marmax Investments Pty Ltd (Marmax) and Spanline Weatherstrong Building Systems Pty Ltd (Spanline) appealed from two decisions of single judge - dispute between Spanline, Marmax and RPR Maintenance Pty Ltd (RPR) over parties' rights and obligations in connection with Spanline franchise businesses operated by Marmax and RPR - Marmax and Spanline ordered to pay RPR damages for breach of contract - Marmax ordered to indemnify RPR for costs incurred to bring proceeding against it - Spanline to pay RPR additional damages and damages for RPR's costs of proceedings against it - held: primary judge erred in finding contractual relationship between Marmax and RPR under sub-franchise agreement after certain date - Marmax's conduct working in RPR's territory during certain period did not breach sub-franchise agreement - Marmax's "incursions" into RPR's territory did not breach transfer of business agreement - Marmax not liable to pay damages to RPR - Marmax's appeal allowed on certain grounds - primary judge erroneously found Spanline breached contractual obligations to RPR by not taking "reasonable and available" steps to ensure RPR's territory remained exclusive - Spanline did not breach obligations to RPR by failing to adequately investigate RPR's complaints about Marmax's activities - Spanline did not breach contract by failing to demand Marmax give full disclosure of work done in RPR's territory - permission given by Spanline to Marmax to perform work in RPR's territory was breach of contract which caused RPR loss - Spanline's appeal allowed in part.

[Marmax](#) (I B C)

Caason Investments Pty Ltd v Cao [2015] FCAFC 94

Full Court of the Federal Court of Australia

Gilmour, Foster & Edelman JJ

Pleadings - corporations - applicants brought representative proceeding pursuant to Pt IVA *Federal Court of Australia Act 1976* (Cth) - claim under s729 *Corporations Act 2001* (Cth) for compensation for loss or damage resulting from misstatement in or omission from disclosure document - primary judge refused leave to amend statement of claim to include pleadings of 'market-based' causation as distinct from 'reliance-based' causation (rejected amendments) - orders shut out applicants from pleading market-based causation in respect to ss 728-729 *Corporations Act* case - Group Member definition - Prospectus claims - misleading or deceptive

conduct claims - Proper Test contention - Ingot contention - Profile Statement contention - Policy contention - Group Member definition contention - held: it could not be said rejected amendments which reflected causation theory were incapable of succeeding or liable to be struck out - primary judge rejected other bases on which it was contended proposed amendments should not be allowed - no basis for rejecting proposed amendments - primary judge shouldn't have refused to grant leave to make rejected amendments - appeal allowed.
[Caason](#) (I B)

Workers' Compensation Dust Diseases Board of NSW v Cook [2015] NSWCA 270

Court of Appeal of New South Wales

Basten & Macfarlan JJA; Sackville AJA

Workers compensation - statutory interpretation - employee contracted pleural mesothelioma from exposure to asbestos in course of employment - employee sued company (Amaca) in Supreme Court of Victoria for damages for negligence - employee accepted offer of compromise served by Amaca - prior to settlement employee applied to Workers' Compensation Dust Diseases Board of New South Wales for compensation under s8 *Workers' Compensation (Dust Diseases) Act 1942* (NSW) - Board refused application on basis that awarding employee compensation under Act would "amount to a double recovery" of compensation - employee appealed to District Court but died prior to judgment - District Court allowed appeal and made awards under Act for weekly payments for total disablement and for medical and other expenses - Board appealed - held: Act did not permit Board to refuse claim for compensation because claimant had recovered damages - appeal dismissed.

[Workers'](#) (I C G)

Anderson v Ausgrid [2015] NSWSC 1308

Supreme Court of New South Wales

Adamson J

Negligence - plaintiffs owned and lived in residential house on property - while plaintiffs on holiday fire started in or around the meter box on property - fire spread and damaged house - agreed that damage amounted to \$819,676.50 (agreed figure) - about a month before fire defendant replaced one faulty meter - plaintiffs claimed agreed figure from defendant on basis of negligence - principal issue was cause of fire - ss5B, 5C, 5D, 5E & 5O *Civil Liability Act 2002* (NSW) - whether fire caused by defective installation of meter - held: more probable than not that fire caused when resistance at joint where wire screwed to replacement meter generated sufficient heat to ionise surrounding gases - plaintiffs discharged onus of proving fire caused by defendant's negligence - plaintiffs proved factual causation - if scope of liability had not been accepted by defendant Court would have found it was appropriate that responsibility for harm should be imposed on defendant - judgment for plaintiffs.

[Anderson](#) (I C)

Westpac Life Insurance Services Ltd v Guirgis [2015] VSCA 239

Court of Appeal of Victoria

Hansen, Beach & Kaye JJA

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Insurance - life insurance - respondent took out insurance policy with applicant which provided for payment of a monthly total disability benefit in event respondent suffered total disability within meaning of policy - policy also provided for payment of monthly partial disability benefit in event respondent became partially disabled under policy - respondent claimed on policy - respondent claimed she reduced working hours due to her fibromyalgia and that her arm and shoulder pain prevented her working - respondent subsequently advised applicant conditions producing asserted total disability had expanded to include 'depressed mood - applicant contended respondent failed to comply with duty of disclosure under s21 *Insurance Contracts Act 1984* (Cth) and advised applicant had avoided policy from inception in accordance with s29(2) - respondent claimed applicant breached policy - County Court gave judgment for respondent - applicant sought leave to appeal - held: no basis for attack on trial judge's finding he could not conclude respondent 'was aware of the fibromyalgia diagnosis in August 2007' - no error in trial judge's conclusion he was not satisfied there was any fraudulent non-disclosure or fraudulent misrepresentation by respondent - no error in trial judge not being satisfied applicant established no policy would have been entered into had respondent disclosed existence of fibromyalgia - leave to appeal granted - appeal dismissed.

[Westpac](#) (I C)

Thomas v Trades and Labour Hire Pty Ltd [2015] QSC 264

Supreme Court of Queensland

Burns J

Negligence - plaintiff injured during course of work as driver and operator of tip truck tailgate attached to tip truck dislodged and fell on foot - plaintiff claimed damages in negligence from employer and host employer (Council) - s5 *Civil Liability Act 2003* (Qld) - ss305C, 306N, 306F & 306H *Workers' Compensation and Rehabilitation Act 2003* (Qld) - Sch 9 *Workers' Compensation and Rehabilitation Regulation 2003* (Qld) - held: risk of injury to driver and operator not reasonably foreseeable such as to give rise to duty of care to guard against risk - even if duty of care arose claim would fail by lack of proof of causation - no alleged deficiencies in system of work alleged had any causal bearing on accident - plaintiff's claim failed.

[Thomas](#) (I)

Woollard -v- The Medical Board of Australia Sitting as a Performance and Professional Standards Panel [2015] WASC 332

Supreme Court of Western Australia

Allanson J

Judicial review - applicant was medical practitioner - patient suffered stroke during operation performed by applicant - Medical Board of Australia (Board) alleged unsatisfactory professional performance against applicant - panel of Board found applicant behaved in way constituting unsatisfactory professional conduct and cautioned him - applicant sought judicial review of finding - ss5, 23, 31, 35(1), 35(1)(c), 39, 41, 182, 182(1)(a), 184, 185, 186, 187, 189, 190, 191, 192, 192(2) & 192(3) *Health Practitioner Regulation National Law* (Western Australia) - held: reasons of panel not inadequate - open to panel to find that applicant failed to maintain appropriate records of discussions with patient - application to review dismissed.

[Woollard](#) (I G)

CRIMINAL

Executive Summary

Masri v R (NSWCCA) - criminal law - joint criminal enterprise to fraudulently import cigarettes using “piggyback” method - appeal against conviction dismissed - leave to appeal against sentence refused

R v Wooldridge (SASCFC) - criminal law - four counts of causing death by dangerous driving and one count of causing serious harm by dangerous driving - sentence manifestly excessive - appeal allowed

Summaries With Link

Masri v R [2015] NSWCCA 243

Court of Criminal Appeal of New South Wales

Simpson, R A Hulme & Bellew JJ

Criminal law - admissibility of evidence - appellant convicted of offence against s135.1(3) *Criminal Code* (Cth) for doing “anything with the intention of dishonestly causing a loss” to a Commonwealth entity - conviction arose from joint criminal enterprise to fraudulently import cigarettes using “piggyback” method - appellant sentenced to imprisonment for 16 months but ordered to be released at the expiration of 10 months - appellant appealed against conviction and sought to appeal against sentence - whether indictment duplicitous - trial judge’s admission of evidence of three prior “piggyback” importations - trial judge’s directions concerning substantial participation by appellant in prior importations - findings by trial judge that appellant motivated by financial greed and role was “not insignificant”- ss97, 137, 191 *Evidence Act 1995* (NSW) - held: grounds of appeal rejected - appeal dismissed - leave to appeal against sentence refused.

[Masri](#)

R v Wooldridge [2015] SASCFC 125

Full Court of the Supreme Court of South Australia

Gray CJ; Peek & Nicholson JJ

Criminal law - appellant pleaded guilty to four counts of causing death by dangerous driving and one count of causing serious harm by dangerous driving - appellant sentenced to imprisonment for four years and two months with non-parole period of two years - sentence not suspended - appellant disqualified from holding or obtaining driver's licence for 10 years - sentence started at



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seven years before allowances - appellant contended sentence manifestly excessive - proper test whether sentence of imprisonment should be suspended pursuant to s38 *Criminal Law (Sentencing) Act 1988* (SA) - proper approach to sentencing for an offence of causing death by dangerous driving when multiple counts of causing death or harm arising from same act of dangerous driving - held: starting point of seven years too high - sentence manifestly excessive - appeal allowed - appellant resentenced to one penalty of imprisonment for all offences - - sentence to be suspended - appellant disqualified from holding or applying for driver's licence for total period of 35 years - appeal allowed.

[Wooldridge](#)



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On First Looking into Chapman's Homer

BY John Keats

Much have I travell'd in the realms of gold,
And many goodly states and kingdoms seen;
Round many western islands have I been
Which bards in fealty to Apollo hold.
Oft of one wide expanse had I been told
That deep-brow'd Homer ruled as his demesne;
Yet did I never breathe its pure serene
Till I heard Chapman speak out loud and bold:
Then felt I like some watcher of the skies
When a new planet swims into his ken;
Or like stout Cortez when with eagle eyes
He star'd at the Pacific—and all his men
Look'd at each other with a wild surmise—
Silent, upon a peak in Darien.

[Keats](#)

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