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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Austcorp Project No 20 Pty Ltd v LM Investment Management Ltd, in the matter of Bellpac Pty Ltd (rec & man appted) (in liq) (No 2) (FCA) - professional indemnity insurance - joinder - commercial list response in Supreme Court proceedings not a *claim* under policies (I B)

In the matter of HIH Underwriting and Insurance (Australia) Pty Ltd (in liq and subject to scheme of arrangement) (NSWSC) - corporations - winding up - insolvency - orders granted concerning proceeds of contracts of reinsurance (I B)

Andonovski v Park-Tec Engineering Pty Ltd; Andonovski v East Realisations Pty Ltd Formerly t/as Westbus (NSWSC) - medical evidence - doctor unavailable for cross-examination - evidence admitted (I)

Attorney-General v Kowalski (SASC) - vexatious proceedings - compensation - professional negligence - solicitors' duties - estoppel - res judicata - proceedings stayed (I G)



In the Estate of Bannon (deceased) (SASC) - wills and estates - administration of estate - dispensation order made (B)

Kalaf v Grimanis (WASC) - wills and estates - testamentary capacity - true copy of lost will - presumption of revocation rebutted - probate granted (B)

Blackley Investments Pty Ltd v Burnie City Council (No 3) (TASFC) - sale of land - assessment of damages in lieu of specific performance - appeal allowed (B C)

Summaries with links (5 minute read)

Austcorp Project No 20 Pty Ltd v LM Investment Management Ltd, in the matter of Bellpac Pty Ltd (receivers and managers appointed) (in liq) (No 2) [2014] FCA 44

Federal Court of Australia

Jacobson J

Insurance contract – professional indemnity insurance – joinder - separate question - court granted leave for plaintiffs to join professional indemnity insurers of company as defendants conditional on determination of issues of construction arising on joinder application - insurers contended plaintiffs' *claim* against company was first made in a Commercial List Response in Supreme Court of New South Wales proceedings filed in year prior to *period of insurance* in policies and thus policies would not respond in event plaintiffs succeeded against company - plaintiffs contended Commercial List Response was not a *claim* as defined in policies or that it was not the same as claim now made under policies – proper construction of insuring clause in contracts of insurance between company and insurers – held: Commercial List Response not a *claim* or *counter-claim* – even if it was a claim, claim made in present proceeding was not the same claim such that insurer was not required to indemnify – preliminary question answered in plaintiffs' favour.

[Austcorp Project No 20](#) (I B)

In the matter of HIH Underwriting and Insurance (Australia) Pty Ltd (in liquidation and subject to a scheme of arrangement) [2013] NSWSC 2014

Supreme Court of New South Wales

Black J

Corporations - winding up - insolvency - proceeds of contracts of reinsurance - plaintiff companies sought orders under s562A(4) *Corporations Act 2001* (Cth) concerning amounts of reinsurance



received in respect of contract of reinsurance between HIH Group of companies and Union Atlantique de Reassurances SA - held: justification to make orders turned on circumstances in which relevant cover obtained - court satisfied amount received was to be treated in same manner as previous receipts - orders made under s562A(4) *Corporations Act 2001* (Cth).

[In the matter of HIH Underwriting and Insurance \(Australia\)](#) (I B)

Andonovski v Park-Tec Engineering Pty Ltd; Andonovski v East Realisations Pty Ltd Formerly t/as Westbus Pty Ltd [2013] NSWSC 1926

Supreme Court of New South Wales

Campbell J

Evidence - admissibility - plaintiff tendered bundle of medical reports - defendants sought order under s136 *Evidence Act 1995* (NSW) limiting use which could be made of histories recorded by doctors - defendants sought to exclude ordinary operation of s60 of the Act which provided that evidence admissible for one purpose may be taken as admitted for all purposes - defendants objected to tender of surgeon's reports as being contrary to r31.26(5) *Uniform Civil Procedure Rules 2005* (NSW) and also on basis that surgeon was required but unavailable for cross-examination - operation of rr31.24, 31.25 & 31.26 of the Rules - s63 of the Act - held: excluding evidence would deprive plaintiff of forensic opportunity present case - appropriate to grant leave for admission of surgeon's reports under r31.26(5) - court satisfied surgeon physically unable to give evidence - not reasonably practicable to overcome unavailability by granting an adjournment - evidence admitted.

[Andonovski](#) (I)

Attorney-General v Kowalski [2014] SASC 1

Supreme Court of South Australia

Blue J

Vexatious proceedings - workers' compensation - professional negligence - solicitors' duties - estoppel - res judicata - Attorney-General claimed defendant persistently instituted vexatious proceedings within meaning of s39 *Supreme Court Act 1935* (SA) and sought orders prohibiting him from instituting future proceedings without permission of Court - Attorney-General also sought stay of existing proceedings - defendant had brought claims in Workers Compensation Appeals Tribunal, Workers Compensation Tribunal, Legal Practitioners Disciplinary Tribunal, Industrial Court, Magistrates Court, District Court and Supreme Court - held: of 109 matters instituted by defendant within meaning of s39 of the Act, 63 instituted without reasonable ground and 11 of those instituted for ulterior purpose - defendant should be prohibited from instituting



future proceedings without permission of court - existing proceedings other than those not found to be vexatious stayed.

[Attorney-General](#) (I G)

In the Estate of Bannon (deceased) [2014] SASC 12

Supreme Court of South Australia

Stanley J

Wills and estates - succession - administration of estate - deceased died intestate - deceased was survived by his three sons, the eldest of whom was administrator of estate - two younger sons yet to reach majority - net proceeds of the estate were to be distributed to three sons in equal shares - deceased estate included house - administrator was obliged to transfer share of estate belonging to the two sons who had not yet reached majority to Public Trustee pursuant to s65 *Administration and Probate Act 1919* (SA) however there was insufficient cash assets to pay Public Trustee share in estate due to them - administrator sought orders ss64 & 67 of the Act postponing realisation of property and dispensing with requirement to pay over money to Public Trustee - held: order sought were meritorious and expedient - beneficiaries of estate were appropriately protected - dispensation order made.

[In the Estate of Bannon](#) (B)

Kalaf v Grimanes [2013] WASC 327

Supreme Court of Western Australia

Allanson J

Wills and estates - probate - court declared 2010 will of deceased to be invalid for want of testamentary capacity - plaintiff sought orders that earlier 2009 will be pronounced as last will and be admitted to probate in solemn form - executor claimed that after death of deceased the 2009 will could not be found, that she had a copy of the 2009 will and that copy had force and effect as will - held: court satisfied deceased made 2009 will - 2009 will revoked all prior wills - copy tendered by executor was a true copy - due execution in accordance with s8 *Wills Act 1970* (WA) established - deceased had testamentary capacity when she made 2009 will - presumption of revocation rebutted - orders granted.

[Kalaf](#) (B)

**Blackley Investments Pty Ltd v Burnie City Council (No 3) [2013] TASFC 12**

Full Court of the Supreme Court of Tasmania

Blow CJ; Wood & Estcourt JJ

Contract for sale of land - specific performance - equitable remedies - council contracted to sell land to company – plaintiff sought specific performance but damages awarded in lieu - company appealed against rejection of claim for expectation damages and damages for loss of chance - council cross-appealed against award of reliance damages and interest - held: associate judge erred in concluding company failed to establish that land in question was worth any more than \$1 million - associate judge impermissibly arrogated to himself role of second expert in reconstructing valuer's valuation of the land as residential land and erroneously rejected valuer's expert evidence - associate judge erred in determination of likely chance of land being rezoned for a higher and better use - appeal allowed - cross-appeal dismissed.

[Blackley Investments](#) (B C)

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