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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

St George Bank v Jin (NSWCA) - costs - exercise of discretion in multiparty litigation - leave to appeal from costs order refused (B)

Workers Compensation Nominal Insurer v Nominal Defendant (NSWCA) - motor accident - s151 Z recovery - Nominal Defendant not liable to indemnify Nominal Insurer for workers compensation payments (I)

Bindah v Carter Holt Harvey Woodproducts Australia Pty Ltd (NSWSC) - administrative law - no error in decision of Medical Appeal Panel of Workers Compensation Commission - judicial review refused (I G)



Westpac Banking Corporation v Billgate Pty Ltd (NSWSC) - loans and mortgages - default on deed of settlement - bank entitled to amount of debt and possession of properties (B)

Seirlis v Bengtson (QSC) - trade practices - negligence - purchase of apartment - misleading and deceptive conduct by vendors and independent contractor - damages (I B C)

Lamble v Howl at the Moon Broadbeach Pty Ltd (QSC) - negligence - patron assaulted by employee of nightclub - nightclub vicariously liable (I)

Barr v Farrell (WASCA) - limitation of actions - negligence - childbirth injury - extension of time for guardian to sue (I)

Summaries with links (5 minute read)

St George Bank v Jin [2013] NSWCA 306

Court of Appeal of New South Wales

Meagher & Leeming JJA

Costs - bank sought leave to appeal from orders it pay first respondent's costs of action and cross-claim - bank sought order that it and first respondent pay own costs or that second respondent pay first respondent's costs - exercise of costs discretion in multi-party litigation - conduct - held: reasonableness of bank's defence immaterial - stance of losing party not a basis for declining costs order to successful party - failure to determine bank's application for *Sanderson* order did not warrant grant of leave to appeal - difficulties of apportionment did not impact on application because costs subject of primary judge's decision were only first respondent's costs against bank - bank's allegations of *House v King* errors in exercise of discretion failed - leave refused.

[St George Bank](#) (B)

Workers Compensation Nominal Insurer v Nominal Defendant [2013] NSWCA 301

Court of Appeal of New South Wales

McColl, Basten & Leeming JJA

Negligence - workers compensation - worker injured when car he was driving was struck by another vehicle - worker made claim under *Workers Compensation Act 1987* (NSW) - appellants' scheme agents paid compensation other driver's details lost by employer - appellant sought indemnity from Nominal Defendant under s151Z(1)(d) of the Act - *due inquiry* - held: appellant



did not establish that identity of vehicle which collided with worker's vehicle could not be established after due inquiry and search - appellant failed to satisfy requirement in s34 *Motor Accidents Compensation Act 1999* (NSW) - appeal dismissed.

[Workers Compensation Nominal Insurer](#) (I)

Bindah v Carter Holt Harvey Woodproducts Australia Pty Ltd [2013] NSWSC 1290

Supreme Court of New South Wales

Harrison AsJ

Administrative law - permanent impairment - plaintiff sought to quash decision of Appeal Panel of Workers Compensation Commission - worker suffered eye injury and had surgery - complications necessitated further surgery - worker subsequently diagnosed with retinal condition - worker filed a recurrence of injury claim form - insurer declined liability for compensation arguing recurrence was not a workplace injury - Appeal Panel confirmed AMS's conclusion that plaintiff had suffered 0% whole person impairment from work injury - held: Appeal Panel posed and answered correct question - no incorrect assumption or non-jurisdictional error in relation to interpretation of arbitrator's consent orders concerning nature of plaintiff's injury - no misapplication of test of causation - no non-jurisdictional error on face of the record - application dismissed.

[Bindah](#) (I G)

Westpac Banking Corporation v Billgate Pty Ltd [2013] NSWSC 1304

Supreme Court of New South Wales

Stevenson J

Banking and finance - trade practices - contract - equity - remedies - damages - bank provided facilities to first and second defendants for payment of building expenses - third defendant was sole director of first and second defendants - defaults under both facilities - bank and defendants entered into deed of settlement - defendants agreed if they defaulted bank would be entitled to possession of properties and amount of indebtedness to bank - second payment under deed not made - common ground that bank had made out its entitlement to relief sought - determination of defendants' claims in relation to deed - undue influence - misleading and deceptive conduct - anxiety and distress - non-economic loss - unjust contract - construction of deed - held: defendants failed on claims - judgment for bank for debt owing to it by first, second and third defendants and for possession of properties.

[Westpac Banking Corporation](#) (B)

**Seirlis v Bengtson [2013] QSC 240**

Supreme Court of Queensland

P McMurdo J

Trade practices - negligence - plaintiff purchased apartment from first defendants - selling agents were second defendants - plaintiff claimed she was induced to purchase apartment by misrepresentations made by defendants about number of car parks belonging to apartment - plaintiff claimed damages for loss pursuant to s82 *Trade Practices Act 1974* (Cth) (TPA), s99 *Fair Trading Act 1989* (Qld) (FTA) and in negligence - first defendants admitted advertisements were misleading and deceptive but submitted there was no potential for them to mislead plaintiff - held: advertisements and statement by independent contractor were misleading and deceptive conduct which caused loss to plaintiff - first defendants and one second defendant liable to pay damages under TPA - second agent, who was independent contractor, liable to pay damages under FTA for statement - agents not liable in negligence - no vicarious liability of first defendants - no basis for reduction defendants' liability under proportionate liability provisions of TPA and *Civil Liability Act 2003* (Qld) - each defendant liable in same amount to plaintiff.

[Seirlis](#) (I B C)**Lamble v Howl at the Moon Broadbeach Pty Ltd [2013] QSC 244**

Supreme Court of Queensland

Douglas J

Negligence - vicarious liability - plaintiff patron assaulted by barman employed by nightclub - barman not authorised to perform security duties - principles applicable to vicarious liability where act not authorised - connection between unauthorised act and barman's employment - effect of unrelated injuries suffered by plaintiff following assault - evidence - medical evidence - provisions of *Civil Liability Act 2003* (Qld) - held: nightclub vicariously liable for actions of barman - plaintiff did not show nightclub independently failed in its duty to plaintiff - nightclub not directly liable - contributory negligence not available as a defence to action for trespass to person - damages assessed - judgment for plaintiff.

[Lamble](#) (I)**Barr v Farrell [2013] WASCA 211**

Court of Appeal of Western Australia

Pullin, Newnes & Murphy JJA

Limitation of actions - negligence - appeal against dismissal of application for extension of time to sue medical practitioner and owner of hospital group in relation to injury suffered by appellant in



childbirth - appellant's guardian obtained incorrect legal advice from solicitors about expiry of limitation period and did not sue within time - trial judge held guardian acted reasonably in relying on negligent advice - construction of s41(3) of the *Limitation Act (2005) WA* - held: (by majority, Newnes JA dissenting): primary judge erred in construction of s41(3) of the Act - on objective assessment of relevant circumstances, it was unreasonable for a guardian not to commence action within limitation period - appeal allowed - time for commencing action extended.

[Barr](#) (I)

Old Man Platypus

By A.B. 'Banjo' Paterson

Far from the trouble and toil of town,
Where the reed beds sweep and shiver,
Look at a fragment of velvet brown -
Old Man Platypus drifting down,
Drifting along the river.

And he plays and dives in the river bends
In a style that is most elusive;
With few relations and fewer friends,
For Old Man Platypus descends
From a family most exclusive.

He shares his burrow beneath the bank
With his wife and his son and daughter
At the roots of the reeds and the grasses rank;
And the bubbles show where our hero sank
To its entrance under water.

Safe in their burrow below the falls
They live in a world of wonder,
Where no one visits and no one calls,
They sleep like little brown billiard balls



With their beaks tucked neatly under.

And he talks in a deep unfriendly growl
As he goes on his journey lonely;
For he's no relation to fish nor fowl,
Nor to bird nor beast, nor to horned owl;
In fact, he's the one and only!

[A.B. 'Banjo' Paterson](#)

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