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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)

**Barnes v Forty Two International Pty Ltd** (FCAFC) - contract - trade practices - damages erroneously awarded on basis of case not pleaded - appeal allowed (I B)

**Hodges v Sandhurst Trustees Ltd** (FCA) - corporations - representative proceedings - trust deed for debentures - strike out of pleadings refused (I B)

**Eptec Pty Ltd v Alae** (NSWCA) - negligence - motor accidents compensation - worker's injuries not caused by driving of vehicle - employer not liable (I C)

**Leach v The Nominal Defendant (QBE Insurance (Australia) Ltd) (No 2)** (NSWCA) - costs - not unreasonable to refuse offer of compromise - indemnity costs refused (I)

**Huni v Allianz Australia Insurance Ltd** (NSWSC) - motor accidents compensation - Proper Officer erred in refusing to grant review of medical assessment (I G)

**In the Matter of Dennis** (SASC) - Wills - testatrix lacked testamentary capacity - order authorising making of statutory Will (B)

**P J Elliot Holdings Pty Ltd v Baker** (ACTSC) - workers compensation - State or territory of connection was not ACT - appeal upheld (I C)

## Summaries with links (5 minute read)

### **Barnes v Forty Two International Pty Ltd [2014] FCAFC 152**

Full Court of the Federal Court of Australia

Siopis, Flick & Beach JJ

Contract - trade practices - damages - company sought damages against appellants arising out of transactions under a share purchase agreement and later dealings - company alleged breaches of various contracts, breaches of statutory and fiduciary duties, and misleading or deceptive conduct - primary judge dismissed all claims except claim for breach of implied term of share purchase agreement and claim for misleading or deceptive conduct - primary judge awarded damages on basis of loss of company's opportunity to negotiate termination payment - appellants appealed - held: primary judge's award of damages to company should be set aside - amount and basis for damages award based on lost opportunity neither pleaded nor opened - as primary judge did not find in favour of company on its pleaded case on damages, primary judge should have dismissed proceedings - appeal allowed.

[Barnes](#) (I B)

### **Hodges v Sandhurst Trustees Ltd [2014] FCA 1223**

Federal Court of Australia

Gleeson J

Corporations - representative proceedings - claim arising out of defendant's role as trustee of trust deed for debentures issued by company under Ch 2L *Corporations Act 2001* (Cth) - plaintiff sought order under s283F(1)(a) that defendant pay compensation to group members for loss or damages suffered because it breached trustee's duty in s283DA(b)(ii) - defendant sought to strike out allegations of breaches before certain date, on ground pleading failed to disclose a reasonable cause of action or was otherwise an abuse of process - defendant claimed that allegations of 'historical events' were irrelevant to pleaded claim and if they remained had potential to prolong and increase costs of proceedings - held: Court not satisfied allegations of conduct prior to plaintiff's acquisition of debentures could not have bearing on alleged loss, so that they should be struck out simply on basis they pre-dated acquisition - statement of claim pleaded sufficiently facts relied upon - plaintiff required to supply further particulars of one paragraph of statement of claim - application dismissed.

[Hodges](#) (I B)

### **Eptec Pty Ltd v Alae [2014] NSWCA 390**

Court of Appeal of New South Wales

McColl & Macfarlan JJA; Sackville AJA

Negligence - motor accidents compensation - worker and co-worker inside bucket of cherry picker - co-worker operating cherry picker - worker injured when bucket began to shake causing him to

collide with pipe - primary judge found worker's injuries were within s3A(1) *Motor Accidents Compensation Act 1999* (NSW) and thus employer was liable in negligence - employer contended primary judge erred in holding it was liable, or that the award of damages for past and future economic loss was excessive and should be set aside - held: primary judge erred in finding worker's injuries were the result of and caused during the driving of the cherry picker - requirements of s3A(1) not satisfied - appeal allowed.

[Eptec Pty Ltd](#) (I C)

## **Leach v The Nominal Defendant (QBE Insurance (Australia) Ltd) (No 2) [2014] NSWCA 391**

Court of Appeal of New South Wales

McColl & Gleeson JJA; Sackville AJA

Costs - Court dismissed appeal - respondent sought indemnity costs on the basis of offer of compromise which was refused by appellant - appellant contended that, even if the offer constituted a genuine offer of compromise, it was reasonable for him not to accept it as it was a 'walk-away' offer which merely invited his capitulation - held: although the offer used a different form of words to those found in r20.26(3)(a)(i) *Uniform Civil Procedure Rules 2005* (NSW), the effect of the words used was that intended by the current rule - the fact that time for acceptance appeared in covering letter rather than in body of its text did not render the offer inefficacious - offer was a genuine offer of compromise - liability case not frivolous or vexatious so as to trigger indemnity costs mechanisms - case involved substantial claim for damages - offer did involve an element of compromise but only on costs and nothing by way of damages on account of injuries - offer did not serve public policy of encouraging settlement - not unreasonable for appellant not to accept offer - indemnity costs refused.

[Leach](#) (I)

## **Huni v Allianz Australia Insurance Ltd [2014] NSWSC 1584**

Supreme Court of New South Wales

Garling J

Judicial review - motor accidents compensation - permanent impairment - plaintiff injured in motor vehicle accident - plaintiff challenged Proper Officer's decision to refuse her application for review of a medical assessment on basis he was not satisfied that there was reasonable cause to suspect that medical assessment was incorrect in a material respect - plaintiff submitted medical assessor erred because she did not proceed in accordance with Guidelines to make clinical assessment of impairment of left upper limb on all available evidence - plaintiff submitted that error was so obvious that Proper Officer could only have concluded that he had reasonable suspicion of material error in accordance with s63 *Motor Accidents Compensation Act 1999* (NSW) - held: Court satisfied Proper Officer erred in failing to have reasonable suspicion that medical assessor had fallen into error - whole person assessment of plaintiff undertaken by medical assessor was erroneous and in a material respect - Proper Officer ought to have referred matter to a review panel for a further medical assessment - decision of Proper Officer set aside.



[Huni \(I G\)](#)

**In the Matter of Dennis [2014] SASC 158**

Supreme Court of South Australia

Gray J

Wills - testamentary capacity - application for order authorising making of will pursuant to s7 *Wills Act 1936* (SA) - testatrix had advanced Alzheimer's disease - son sought to rectify her Will which, due to a drafting error, would not have disposed of estate according to her intentions - application developed to include other proposed changes to Will - held: testatrix lacked testamentary capacity although she had ability to express general views concerning testamentary wishes - numbering error in existing Will should be corrected to reflect testatrix's intention at time of making Will, which remained her likely intention if she had capacity - other proposed changes to Will were consistent with testatrix's intentions at time of making her last will, consistent with testamentary wishes she was currently able to express and consistent likely intentions if she had testamentary capacity - proposed order reasonable in the circumstances.

[In the Matter of Dennis \(B\)](#)

**P J Elliot Holdings Pty Ltd v Baker [2014] ACTSC 308**

Supreme Court of the Australian Capital Territory

Burns J

Workers compensation - worker claimed he sustained injury in course of employment as bobcat driver with appellant - injury said to have occurred in Australian Capital Territory (ACT) - appellant appealed from Magistrate's decision that ACT was State or Territory of connection as determined by s36D *Workers Compensation Act 1951* (ACT) - held: evidence did not establish worker usually worked in ACT as opposed to usually working in ACT and NSW - evidence established that approximately 10 per cent of jobs worker undertook in employment with appellant were in NSW - worker's regular attendance in NSW not for work-related duties, but to undertake the work itself - Court satisfied worker regularly, albeit infrequently, undertook his employment NSW - Magistrate erred in determining worker's employment was connected with ACT by virtue of test in s36B(2)(a) - appeal upheld.

[P J Elliot Holdings Pty Ltd \(I C\)](#)

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