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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)

Orthotech Pty Ltd v Minister for Health (FCA) - administrative law - health insurance - application for review of decision to revoke listing of prosthetic device - application dismissed (I, G)

Hannover Life Re of Australasia Ltd v Dargan (NSWCA) - insurance - interpretation of policy - appeal from decision entitling respondent to total and permanent disablement benefit - appeal allowed (I)

Perpetual Trustee Company Ltd v CTC Group Pty Ltd (No 2) (NSWCA) - damages - apportionment - claim for contractual indemnity for loss suffered by breach of contract - respondent's liability not limited by apportionment legislation - notice dismissed (I, B)

In the matter of Plaza West Pty Ltd (in liquidation) (subject to deed of company Arrangement) (NSWSC) - corporations - application to stay or terminate winding up of company in order to implement deed of company arrangement - interests of creditors - public interest - orders made (B)



In the matter of O'Neill v Advantage Hearing Pty Ltd (NSWSC) - corporations - applicant sought to restrain director from appointing administrator and injunctive relief restraining defendants' conduct - no serious question to be tried - balance of convenience - relief not granted (B, G)

Colquhoun & Ors v Capitol Radiology Pty Ltd & Ors (VSCA) - damages - non-economic loss - significant injury - judicial review of decisions of medical panel - panel performing medical, not judicial, function - no obligation to give reasons - appeals dismissed (I)

Matthews v SPI Electricity Pty Ltd & Anor (No 3) (VSC) - discovery - evidence - client legal privilege - application for production of documents which were subject of privilege claim - orders made (I, B, C, G)

Summaries with links (5 minute read)

Orthotech Pty Ltd v Minister for Health [2013] FCA 230

Federal Court of Australia

Collier J

Administrative law - health insurance - application by distributor of prosthetic device for judicial review of delegate's decision to revoke listing of device in Prostheses List forming part of *Private Health Insurance (Prostheses) Rules 2012 (No 2)* (Cth) - listing revoked on basis device was high risk, should have been supported by clinical data, and should not have been approved for listing - inclusion of device on list allowed patients to claim insurance in respect of cost of device - applicant claimed delegate not empowered by *Private Health Insurance Act 2007* (Cth) (**Act**) to make decision - applicant also contended delegate erred in manner of making decision with result that decision should be set aside - construction of Act - application dismissed.

[Orthotech](#) (I, G)

Hannover Life Re of Australasia Ltd v Dargan [2013] NSWCA 57

Court of Appeal of New South Wales

Bathurst CJ; Macfarlan, Meagher & Hoeben JJA; Tobias AJA

Insurance - contract - interpretation of policy - appeal from decision that respondent was entitled to payment for Total and Permanent Disablement under terms of Group Life Policy of which first



appellant was trustee and second appellant was insurer - appellants contended primary judge incorrect to conclude respondent not *fitted by education, training or experience* to carry out work as taxi driver - respondent contended his ability to undertake part-time employment did not mean he was not totally and permanently disabled within meaning of policy - construction of definitions in policy of *Total and Permanent Disablement* and *Regular Remuneration Work* - appeal allowed.

[Hannover](#) (I)

Perpetual Trustee Company Ltd v CTC Group Pty Ltd (No 2) [2013] NSWCA 58

Court of Appeal of New South Wales

Macfarlan, Meagher & Barrett JJA

Damages - apportionment of liability - concurrent wrongdoers - claim for contractual indemnity for loss suffered as result of breach of contract - principal judgment found respondent liable in damages for breach of obligation of care under mortgage origination deed - respondent requested court deal with its notice of contention pleading that any liability was limited by apportionment provisions in s35 *Civil Liability Act 2002* (NSW) (**Act**) - inconsistency of deed with apportionment provisions in Pt4 of the Act - express provision contained in deed for rights and liabilities of appellant and respondent - held: in interests of justice to consider notice of contention - notice of contention dismissed.

[Perpetual](#) (I, B)

In the matter of Plaza West Pty Ltd (in liquidation) (subject to deed of company Arrangement) [2013] NSWSC 168

Supreme Court of New South Wales

Black J

Corporations - winding up - plaintiffs sought order under s482(1) *Corporations Act 2001* (Cth) (**Act**) that winding up of company be stayed indefinitely or terminated - application arose in context of entry into deed of company arrangement - applicable principles: Pt5.3A of the Act, *Mercy & Sons Pty Ltd v Wanari Pty Ltd* [2000] NSWSC 756 - held: present creditors' interests served by terminating winding up in order to facilitate implementation of deed - no reason to consider there would be risk to future creditors or to public interest - orders made terminating winding up of company.

[Plaza West](#) (B)

**In the matter of O'Neill v Advantage Hearing Pty Ltd [2013] NSWSC 175**

Supreme Court of New South Wales

Black J

Corporations - plaintiff sought order under s1324 *Corporations Act 2001* (Cth) (**Act**) that director of company be restrained from appointing administrator or voluntary administrator under Pt5.3 of the Act and other injunctive relief restraining defendants' conduct - held: no serious question to be tried whether it would be improper to appoint an administrator as company not insolvent or not likely to be insolvent - balance of convenience did not favour grant of injunctive relief.

[O'Neill](#) (B)

Colquhoun & Ors v Capitol Radiology Pty Ltd & Ors [2013] VSCA 58

Court of Appeal of Victoria

Maxwell P; Weinberg JA & Ferguson AJA

Accident compensation - judicial review - claims for damages for non-economic loss - respondent referred *significant injury* question to medical panel - appellants sought to set aside determinations of medical panel that degree of impairment did not satisfy threshold level in s28LF(1)(b) *Wrongs Act 1958* (Vic) - appellants contended panel's reasons were inadequate constituting error of law on face of record - held: panel was performing medical, not judicial, function so it had no obligation to give reasons - appeals dismissed.

[Colquhoun](#) (I)

Matthews v SPI Electricity Pty Ltd & Anor (No 3) [2013] VSC 116

Supreme Court of Victoria

Derham AsJ

Discovery - evidence - privilege - application for production of documents under s29 *Civil Procedure Act 2010* (Vic) and r34.01 *Supreme Court (Civil Procedure) Rules 2005* (Vic) subject of a claim of client legal privilege - plaintiff sought production of evidence of consent or permission of landowners to enter land for purposes of establishing trespass as step in loss of privilege claim under s125 *Evidence Act 2008* (Vic) - held: orders sought would advance *the just, efficient, timely and cost effective resolution of the real issues in dispute* - orders made for production.

[Matthews](#) (I, B, C, G)



Acquainted with the Night

By Robert Frost

I have been one acquainted with the night.
I have walked out in rain—and back in rain.
I have outwalked the furthest city light.

I have looked down the saddest city lane.
I have passed by the watchman on his beat
And dropped my eyes, unwilling to explain.

I have stood still and stopped the sound of feet
When far away an interrupted cry
Came over houses from another street,

But not to call me back or say good-bye;
And further still at an unearthly height,
One luminary clock against the sky

Proclaimed the time was neither wrong nor right.
I have been one acquainted with the night.

<http://www.poetryfoundation.org/bio/robert-frost>

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