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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)

Siegwerk Australia Pty Ltd (in liq) v Nuplex Industries (Aus) Pty Ltd (No 1) (FCAFC) - insurer granted extension of time to appeal decision it was liable to bear manufacturer's costs (I)

Mungekar v Hermes Precisa Pty Ltd (NSWCA) - work injury damages - appeal allowed from quantification of damages (I)

McMahon v John Fairfax Publications Pty Ltd (No 7) (NSWSC) - defamation - standing - bankrupt's right to bring proceedings did not vest in trustee in bankruptcy (I)

Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd (NSWSC) - expert evidence - experts personally responsible for compliance with Court's directions as to when reports are to be provided (I, B, C)

Department of Human Services v Kotzman (VSC) - judicial review - medical panel erred in deciding employee had no current working capacity - decision quashed (I, G)



Klein v SBD Services Pty Ltd (QSC) - work injury damages - employer liable for coal miner's injury - consequences not as serious as claimed - contributory negligence 25% - damages assessed (I, C)

Mercer v Allianz Australia Insurance Ltd (No 2) (TASSC) - work injury damages - insurer liable to injured employee of company for amount equal to company's vicarious liability prior to deregistration (I, C)

Summaries with links (5 minute read)

Siegwerk Australia Pty Ltd (in liq) v Nuplex Industries (Aus) Pty Ltd (No 1) [2013] FCAFC 76

Full Court of the Federal Court of Australia

Perram J

Insurance - appeal – insurer lost claim that it was required to indemnify insured but insured defended the claim against it – no utility in appeal until another party lodged appeal against insured - held: appeal by insurer would have little commercial effect unless other party appealed - that party appealed on 5 April 2013, leaving only four remaining days of 21-day notice period - adequate explanation for delay - insurer's contentions concerning relevant *occurrence* and nature of *property damage* not devoid of merit - extension of time granted.

[Siegwerk Australia \(in liq\) \(I\)](#)

Mungekar v Hermes Precisa Pty Ltd [2013] NSWCA 225

Court of Appeal of New South Wales

Meagher JA, Tobias AJA & Simpson J

Work injury damages - contributory negligence - economic loss - appellant claimed damages for injury sustained in workplace accident - primary judge found respondent liable in negligence and appellant contributorily negligent to extent of one-third of damage suffered - appellant appealed in respect of quantification of damages - held: appeal allowed - primary judge's approach to contributory negligence erroneous - no basis for finding of contributory negligence - appellant obeyed culture and practice of plant to work at fast pace - primary judge erred in reliance on expert evidence in assessing economic loss - damages for past and future economic loss and domestic assistance reassessed.

[Mungekar \(I\)](#)



McMahon v John Fairfax Publications Pty Ltd (No 7) [2013] NSWSC 933

Supreme Court of New South Wales

McCallum J

Bankruptcy - defamation - standing - damages – plaintiff was a bankrupt solicitor - proceedings for defamation and injurious falsehood arising from publication of magazine articles - defamation claim partly successful - defendants sought to re-open their case – alleged plaintiff’s right to sue was property which vested in trustee in bankruptcy - held: decision in *Moss v Eaglestone* [2011] NSWCA 404 not binding or determinative - defendants’ contention either wrong or of no practical significance in relation to defamation claim and - contention raised too late in relation to injurious falsehood and could have no bearing on outcome except arguably as to costs - further submissions refused - damages determined.

[McMahon](#) (I)

Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation Ltd [2013] NSWSC 970

Supreme Court of New South Wales

Kunc J

Expert evidence - non-compliance with orders for filing of experts’ reports - nature and extent of experts’ responsibility in relation to filing and service of reports - ss56(3) & 61(2)(c) *Civil Procedure Act 2005* (NSW) - rr31.17 & 31.23(1) *Uniform Civil Procedure Rules 2005* (NSW) - directions made extending time for filing experts’ reports – orders made to ensure experts understood that, when they accepted brief to provide expert evidence, they became personally responsible for compliance with directions as to when reports must be provided, to explain any non-compliance which was due to their fault, and potentially subject to costs orders for non-compliance with directions.

[Macquarie International Health Clinic](#) (I, B, C)

Department of Human Services v Kotzman [2013] VSC 360

Supreme Court of Victoria

Kyrou J

Judicial review - employee injured knee in course of employment with plaintiff - plaintiff terminated payments under *Accident Compensation Act 1985* (Vic) on basis employee had *current working capacity* - employee suffered subsequent injuries and made claim for shoulder surgery which plaintiff rejected on basis injury was not work related - employee brought proceedings challenging plaintiff’s decisions - plaintiff sought judicial review of medical panel’s decision employee had no current working capacity - held: panel took into account plaintiff’s non-



compensable injuries when making decision - panel erred in law by failing to confine itself to knee injury and its consequences - decision quashed - medical questions remitted for determination.

[Department of Human Services](#) (I, G)

Klein v SBD Services Pty Ltd [2013] QSC 134

Supreme Court of Queensland

McMeekin J

Work injury damages - negligence - plaintiff coal miner claimed damages from employer for back injury with, at most, 6% permanent impairment, suffered in workplace - liability and quantum in issue - credit - identity and weight of object moved - extent of injuries - *Blatch v Archer* inferences from failure to call witnesses - Kraus-Weber Tests - held: court satisfied on balance of probabilities that plaintiff suffered injury in course of employment and that defendant liable for consequences of injury - 25% apportionment for plaintiff's contributory negligence - post accident employment relevant - consequences not as serious for plaintiff as claimed - damages assessed.

[Klein](#) (I, C)

Mercer v Allianz Australia Insurance Ltd (No 2) [2013] TASSC 35

Supreme Court of Tasmania

Blow CJ

Work injury damages - plaintiff was an employed managing director who was rendered a quadriplegic when struck by packages that fell from forklift operated by fellow employee - plaintiff - company deregistered - company had workers compensation insurance policy with defendant - plaintiff sued defendant pursuant to s601AG *Corporations Act 2001* (Cth) - s28(1) *Civil Liability Act 2002* (Tas) - relevance of other courts' decisions in relation to determination of general damages - held: plaintiff's injuries resulted from fellow employee's negligence and company was vicariously liable - as result of company's deregistration, plaintiff was entitled to recover from insurer amount equal to company's previous liability - plaintiff's contributory negligence assessed at 25% - damages assessed.

[Mercer](#) (I, C)

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