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## Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Tanious v South Eastern Sydney Local Health District** (NSWCA) - pleadings - negligence - erroneous dismissal of proceedings - inadequate explanation for refusal of leave to replead - appeal allowed (I)

**Endeavour Energy v Precision Helicopters Pty Ltd (No 2)** (NSWCA) - helicopter crash - damages - negligence - workers compensation - apportionment - indemnity - declarations, judgments and orders made (I B C)

**Allianz Aust Insurance Ltd v Habib** (NSWSC) - judicial review - motor accidents compensation - assessment of damages - claims assessor failed to provide adequate reasons and conclusions - certificate set aside (I G)

**Rodda v Lifestyle Loans Vic Pty Ltd** (VSC) - corporations - standing - oppression - plaintiff required to establish he was member of company prior to continuing oppression proceedings (I B)

**Schoch v Mineralogy Pty Ltd** (QSC) - contract - no enforceable oral agreement for remuneration of employee - claim dismissed (I B C)

**Napier v BHP Billiton (Worsley Alumina) Pty Ltd** (WASCA) - workers compensation - entitlement to recover expenses - required nexus between compensable injury or resulting incapacity, and medical or surgical treatment - leave to appeal refused - appeal dismissed (I B C)

**Dojcinoski v Aleksovski** (ACTSC) - damages - negligence - motor vehicle accident - plaintiff passenger injured - liability admitted - damages assessed (I)

## Summaries With Link (Five Minute Read)

### **Tanious v South Eastern Sydney Local Health District [2015] NSWCA 356**

Court of Appeal of New South Wales

Basten, Meagher & Ward JJA

Pleadings - negligence - appellant sued defendants alleging harm suffered from negligent treatment of father by team at hospital - appellant claimed “exemplary compensation” - amended statement of claim struck out and proceedings summarily dismissed - review of decision was refused - appellant sought to appeal - Pt 60, r17 *Supreme Court Rules 1970* (NSW) - rr31.36 & 49.4 *Uniform Civil Procedure Rules 2005* (NSW) - held: amended statement of claim properly struck out but there was error in dismissal of proceedings without proper articulation of reasons why appellant should be refused opportunity to replead - proceedings remitted - appeal allowed.

[Tanious](#) (I)

### **Endeavour Energy v Precision Helicopters Pty Ltd (No 2) [2015] NSWCA 357**

Court of Appeal of New South Wales

Basten & Macfarlan JJA; Sackville AJA

Damages - negligence - workers compensation - plaintiff injured in helicopter crash sued employer (Endeavour Energy), owner and operator of helicopter (Precision) and Telstra - plaintiff's claims settled - claims of family members settled with some outstanding issues as to quantification and apportionment - proceedings involved apportionment of liability, claim for indemnity under *Workers Compensation Act 1987* (NSW) and whether statutory cap applied to Precision's liability - principal judgment in Court of Appeal varied trial judge's decision by finding Telstra liable for accident and that statutory cap applied - apportionment of liability - indemnity - proportionate liability principle - Pt IV, ss36 & 37 *Civil Aviation (Carriers' Liability) Act 1959* (Cth) - Pt 4, ss34 & 35 *Civil Liability Act 2002* (NSW) - s100 *Civil Procedure Act 2005* (NSW) - ss 149, 150, 151Z *Workers Compensation Act 1987* (NSW) - s64 *Workers' Compensation Act 1926* (NSW) - s6 *Workmen's Compensation Act 1906* (UK) - held: declarations, judgments and orders made.

[Endeavour](#) (I B C)

### **Allianz Aust Insurance Ltd v Habib [2015] NSWSC 1719**

Supreme Court of New South Wales

Beech-Jones J

Judicial review - motor accidents compensation - first defendant injured in motor vehicle accident - plaintiff was insurer of at fault vehicle - first defendant made “claim” for damages

under Chapter 4 *Motor Accidents Compensation Act 1999* (NSW) - plaintiff accepted liability - claims assessor assessed damages at \$221,586.10 - plaintiff sought judicial review of assessment on grounds assessor's determination of future economic loss did not conform with s126 because assessor adopted buffer approach, and otherwise did not state assumptions on which award was based as required by s126(3) - held: assessor failed to provide reasons and conclusions in accordance with s126 - assessor's certificate set aside - assessment to be undertaken again.

[Allianz](#) (I G)

## **Rodda v Lifestyle Loans Vic Pty Ltd [2015] VSC 628**

Supreme Court of Victoria

Sifris J

Corporations - standing - oppression - plaintiff claimed he was member of first defendant and entitled to claim relief pursuant to oppression provisions of *Corporations Act 2001* (Cth) - second defendant was sole registered member of first defendant - defendants denied plaintiff was member and denied they engaged in oppressive conduct - defendants contended plaintiff should first establish he was member by separate proceedings - plaintiff contended threshold issue could be determined within oppression proceeding - held: plaintiff did not fall within definition of member - oppression provisions not engaged - dispute whether plaintiff was member needed to be resolved before oppression proceeding continued - Court to hear from parties on appropriate form of order.

[Rodda](#) (I B)

## **Schoch v Mineralogy Pty Ltd [2015] QSC 326**

Supreme Court of Queensland

Bond J

Contract - plaintiff worked for Clive Palmer as employee of his corporate entities - plaintiff claimed he was part way through five year contract at time of termination, which provided for agreed remuneration made in oral agreement with Mr Palmer - plaintiff claimed damages - Mr Palmer claimed no such deal made and contended plaintiff's claim was attempt to extort money - whether plaintiff persuaded Court on balance of probabilities it should accept plaintiff's version of events - held: plaintiff failed to persuade Court there was enforceable agreement he be paid in manner on which claim depended - claim dismissed.

[Schoch](#) (I B C)

## **Napier v BHP Billiton (Worsley Alumina) Pty Ltd [2015] WASCA 230**

Court of Appeal of Western Australia

McLure P; Buss & Newnes JJA

Workers compensation - appellant sought to appeal against primary judge's refusal of leave to appeal from decision of WorkCover arbitrator - proper construction and application of cl17(1) of Sch 1. *Workers' Compensation and Injury Management Act 1981* (WA) - nature and extent of nexus required between compensable injury or resulting incapacity and medical or surgical treatment for injured worker to be entitled to recover expenses - held: appellant's case on



appeal materially different to case run below - appellant's case not supported by medical evidence or arbitrator's findings of fact - no basis to interfere with primary judge's decision - leave to appeal refused - appeal dismissed.

[Napier](#) (I B C)

**Dojcinoski v Aleksovski [2015] ACTSC 357**

Supreme Court of the Australian Capital Territory

Mossop AsJ

Damages - negligence - plaintiff passenger involved in motor vehicle accident when car driven by first defendant ran off the road and hit tree - liability admitted - hearing involved assessment of damages - s45 *Civil Law (Wrongs) Act 2002 (ACT)* - *Court Procedures Rules 2006 (ACT)* - held: damages assessed - judgment for plaintiff against second defendant in sum of \$447,450.

[Dojcinoski](#) (I)

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