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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)

Special Issue of the Australian Insurance Law Journal (LexisNexis) - in order to mark the 250th anniversary of Lord Mansfield's seminal judgment in *Carter v Boehm* (1766) 3 Burr 1905, the Australian Insurance Law Journal (LexisNexis) is devoting an entire issue to the case's legacy - please refer to this link for the [promo and index](#).

Australian Securities and Investments Commission v Macro Realty Developments Pty Ltd (FCA) - corporations - counselling or inducing - misleading or deceptive conduct - unlicensed financial services business - ASIC entitled to relief sought (I B C G)

Hooper v Lock (FCA) - bankruptcy and insolvency - liquidators rejected plaintiff's claims of indebtedness of company in liquidation - plaintiffs did not discharge onus to prove indebtedness - appeal dismissed (I B)

Perry v Anthony (NSWCA) - contract - currency trading - appellant required to indemnify respondent for trading losses - appeal dismissed (I B)

Rinehart v Rinehart (NSWCA) - discovery - privilege - rejection of claim of privilege by former trustee against current trustee - leave to appeal refused (I B C)

Zahed v IAG Limited t/as NRMA Insurance (NSWCA) - judicial review - motor accidents compensation - claims assessor's reasons for assessment were inadequate - assessment set aside - appeal dismissed (I B G)

Fabfloor (Vic) Pty Ltd v BNY Trust Company of Australia Ltd (VSC) - pleadings - joinder - proportionate liability - concurrent wrongdoers - refusal of leave to join additional parties as defendants under *Part IVAA Wrongs Act 1958* (Vic) and file amended defence - appeal allowed (I B C)

Sinclair v Sunshine Coast Independent Living Service Inc (QSC) - negligence - alleged workplace injury - Court did not worker's account of injury - employer not liable - judgment for employer (I)

Summaries With Link (Five Minute Read)

Australian Securities and Investments Commission v Macro Realty Developments Pty Ltd [2016] FCA 292

Federal Court of Australia

Beach J

Corporations - ASIC sought declarations and injunctions regarding defendants' conduct in relation to counselling or procuring investors' contraventions of s181(1) *Corporations Act 2001* (Cth), misleading or deceptive conduct and carrying unlicensed financial services business - defendant consented to certain orders and did not oppose some relief - trial proceeded in order for ASIC to substantiate entitlement to all sought relief - ss12DA & 12DG *Australian Securities and Investments Commission Act 2001* (Cth) - ss181, 471B, 762C, 763A, 763B, 766A, 911A, 1041H, 1324 *Corporations Act* - held: ASIC entitled to relief sought - orders made.

[ASIC](#) (I B C G)

Hooper v Lock [2016] FCA 298

Federal Court of Australia

McKerracher J

Bankruptcy and insolvency - plaintiff controlled company in liquidation - plaintiff and wife contended it owed money to them - company liquidators rejected plaintiffs' claims - plaintiffs appealed - proof of debt in administration - ss472, 477, 506, 1321 *Corporations Act 2001* (Cth) - regs 5.6.23, 5.6.47, 5.6.49, 5.6.50, 5.6.63, 5.6.65 *Corporations Regulations 2001* (Cth) - held: Court not satisfied plaintiffs discharged onus to prove indebtedness - evidence short of proving claims - contemporaneous paperwork did not persuasively record indebtedness - defendants entitled to reject claims - appeal dismissed.

[Hooper](#) (I B)

Perry v Anthony [2016] NSWCA 56

Court of Appeal of New South Wales

Beazley P, Gleeson JA & Emmett AJA

Contract - parties entered contract relating to currency trading - primary judge found appellants

required to indemnify respondent for trading losses carrying out contract - appellants contended that there was no consideration for agreement, that respondent not required to be indemnified because no loss suffered, and that distributions made were return of capital rather than profit distribution - construction of agreement - held: mutual promises were sufficient to support a contract - no general principle of no entitlement to benefit of indemnity unless there was actual loss - question was one of construction of indemnity clause - grounds of appeal in relation to actual loss rejected - Court rejected appellants' contention that sums paid were payments of capital - appeal dismissed.

[Perry](#) (I B)

Rinehart v Rinehart [2016] NSWCA 58

Court of Appeal of New South Wales

Beazley P; Leeming & Simpson JJA

Discovery - privilege - primary judge rejected claim of privilege by former trustee Gina Rinehart (applicant) against current trustee Bianca Rinehart (first respondent) - primary judge had refused to view documents requested on basis claim should have been made when documents were produced and that person claiming privilege had no power to require court to inspect documents - whether primary judge erred in concluding there was no evidence to conclude there was a privilege which belonged to applicant personally as opposed to as trustee - whether error in refusal to view documents - ss56-59 *Civil Procedure Act 2005* (NSW) - ss118, 119 & 136 *Evidence Act 1995* (NSW) - rr1.8 & 51.53 *Uniform Civil Procedure Rules 2005* (NSW) - held: applicant did not establish case warranting grant of leave - leave to appeal refused.

[Rinehart](#) (I B C)

Zahed v IAG Limited t/as NRMA Insurance [2016] NSWCA 55

Court of Appeal of New South Wales

Meagher & Leeming JJA; Emmett AJA

Judicial review - motor accidents compensation - appeal from decision in which primary judge set aside assessment of second respondent claims assessor - whether second respondent claims assessor failed to give adequate reasons regarding appellant's claim against first respondent insurer - past and future care requirements - *Interpretation Act 1987* (NSW) - s94 *Motor Accidents Compensation Act 1999* (NSW) (MAC Act) - ss69 & 101 *Supreme Court Act 1970* (NSW) - held: primary judge did not err in setting aside assessor's assessment - it was not possible to discern reasons actual path of assessor's reasoning in sufficient detail to determine whether assessor's decision was erroneous - assessor failed to comply with ss94(5) & 106 MAC Act - appeal dismissed.

[Zahed](#) (I B G)

Fabfloor (Vic) Pty Ltd v BNY Trust Company of Australia Ltd [2016] VSC 99

Supreme Court of Victoria

John Dixon J

Pleadings - joinder - proportionate liability - concurrent wrongdoers - second defendant in two

proceedings appealed against refusal of leave to join additional parties as defendants under Part IVAA *Wrongs Act 1958* (Vic) and file amended defence - r9.06(b) *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: claim by plaintiffs in each proceedings was 'apportionable claim' - primary judge erred in finding there was a positive requirement to lead evidence showing substance to proposed claims - sufficient for defendant to establish pleadings contained facts or allegations which could found alleged causes of action alleged - appeal allowed.

[Fabfloor](#) (I B C)

Sinclair v Sunshine Coast Independent Living Service Inc [2016] QSC 63

Supreme Court of Queensland

Holmes CJ

Negligence - plaintiff disability support worker sued defendant employer for back injury suffered at work when she pulled patient's wheelchair over doorway lip - defendant denied accident occurred and that if accident did occur it was not result of foreseeable risk - held: Court did not accept plaintiff's account of hurting back - if Court had accepted plaintiff's account it would have found employer negligent for failure to ensure that workers were aware of availability of front door and ramp- judgment for employer.

[Sinclair](#) (I)

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