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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)

Prospect Resources Ltd v Molyneux (NSWCA) - contract - subscription agreement - conditions precedent not satisfied - no waiver of satisfaction of conditions precedent by letter - appeal dismissed (I B)

Williams v Pisano (NSWCA) - building and construction - misleading representations made in connection with sale of residential premises did not constitute conduct in trade or commerce - appeal allowed (I B C)

Hoyn v NRMA Insurance Ltd (NSWSC) - administrative law - motor accidents compensation - decision to refer medical assessment for further assessment quashed (I G)

Mullin v CIC Allianz Australia Ltd (NSWSC) - administrative law - motor accidents compensation - referral of medical dispute for further assessment - 'additional relevant information' - no error by Proper Officer - summons dismissed (I G)

Kzacos v Shuangling International Development Pty Ltd (NSWSC) - freezing orders - order restraining third party from dealing with net proceeds of sale of property (B C)

Montclare v Metlife Insurance Ltd (VSC) - insurance - life insurance - fraudulent misrepresentation - insurer entitled to avoid claim (I B)

Quann v Wilson & Atkinson (A Firm) (WASC) - legal practitioners - confidential information - application to restrain lawyers from acting for plaintiffs in proceedings dismissed (I)

Summaries With Link (Five Minute Read)

Prospect Resources Ltd v Molyneux [2015] NSWCA 171

Court of Appeal of New South Wales

Beazley P; Ward & Leeming JJA

Contract - appellant company and respondent consortium entered subscription agreement under which consortium agreed to subscribe for shares in company's capital - company claimed conditions governing obligation to subscribe were satisfied and that consortium was required to pay - consortium claimed conditions were not satisfied and that it was entitled to terminate subscription agreement - primary judge found company had not reasonably satisfied consortium that conditions precedent had been satisfied and that there was no waiver of satisfaction of conditions precedent - company appealed - held: letter from company to consortium did not constitute waiver of 'conditions precedent' - provision of letter alone insufficient to meet requirement that company 'reasonably satisfy' consortium there was waiver of 'conditions precedent' - no error in exercise of primary judge's discretion to order indemnity costs warranting appellate intervention - appeal dismissed.

[Prospect](#) (I B)

Williams v Pisano [2015] NSWCA 177

Court of Appeal of New South Wales

Bathurst CJ; McColl & Emmett JJA

Building and construction - trade practices - negligence - plaintiffs purchased house from owner-builder and husband - house was profoundly defective in its construction - sale preceded by false information given by owner-builder and appellant husband to real estate agent which was then passed on with their authority to purchasers - information played significant part in purchasers' decision to buy - purchasers sought damages for reasonable cost of remedying defects - primary judge gave judgment for purchasers - primary judge satisfied sale was a transaction in trade or commerce and that conduct complained of was in trade or commerce - falsity of representations established - mis-statements made in advertising material direct and intended positively to influence reader to buy - misleading conduct induced purchasers to enter contract - reliance established - claim in negligence not made out - held: primary judge erred in concluding that representations constituted conduct engaged in by appellant in trade or commerce - no contravention on the part of appellant of either ss18 or 30 Australian Consumer Law - appeal allowed.

[Williams](#) (I B C)

Hoyn v NRMA Insurance Ltd [2015] NSWSC 814

Supreme Court of New South Wales

Adams J

Administrative law - motor accidents compensation - plaintiff injured in motor vehicle accident -

plaintiff sought assessment by Medical Assessment Service - doctor assessed permanent impairment at 12% - plaintiff examined anew by different doctor - first defendant sought and was granted further medical assessment on basis report provided additional relevant information - plaintiff contended Proper Officer misconstrued s62(1A) *Motor Accidents Compensation Act 1999* and acted outside jurisdiction referring subsisting medical assessment for further assessment - 'additional relevant information' - held: further medical opinion as to issue that merely differed with earlier opinion as to issue was not relevantly additional information - in present case, issues had been subject of earlier consideration - mere fact that two doctors differed as to significance of issues was not additional information in relevant sense - further doctor's report not capable of constituting information dealing with different issues to those already considered and subject of opinions expressed by earlier doctor - Proper Officer's decision quashed.

[Hoyn](#) (I G)

Mullin v CIC Allianz Australia Ltd [2015] NSWSC 831

Supreme Court of New South Wales

Beech-Jones J

Administrative law - motor accidents compensation - plaintiff bus passenger injured when bus stopped and arm became trapped between other passenger and railing - plaintiff obtained assessment of medical dispute by Medical Assessment Service under *Motor Accidents Compensation Act 1999* - plaintiff sought judicial review of Proper Officer's determination to refer medical dispute for another assessment - plaintiff contended proper officer wrongly construed s62 - plaintiff contended Proper Officer erred in only considering that information in possession of insurer at time of assessment was not 'additional' and in refusing to consider whether information not in insurer's possession but was reasonably available to it at that time was 'additional' - held: no error on part of Proper Officer - Act did not impose obligation on Proper Officer to inquire into whether party could have reasonably obtained certain information but failed to do so before concluding information was 'additional' - summons dismissed.

[Mullin](#) (I G)

Kzacos v Shuangling International Development Pty Ltd [2015] NSWSC 835

Supreme Court of New South Wales

Darke J

Freezing orders - plaintiffs sought freezing orders including orders restraining non-party from dealing with a property or net proceeds of any sale of the property - property was adjacent to property subject of proceedings and owned by third party - plaintiffs contended first defendant retained a beneficial interest in the property and that it was its only substantial asset - held: there was serious question to be tried whether first defendant had beneficial interest in property - plaintiffs' claim for damages against first defendant had reasonable prospect of success - order made restraining third party from dealing with net proceeds of sale of property.

[Kzacos](#) (B C)

Montclare v Metlife Insurance Ltd [2015] VSC 306

Supreme Court of Victoria

Ginnane J

Insurance - life insurance - plaintiff sued insurer claiming \$1.1 million as life insurance benefit - life insured died by suicide on 22 January 2001- insurer admitted it entered into a contract of insurance with plaintiff on the life of deceased life-insured and that, from 10 June 1999, benefit payable under insurance was \$1.1 million - however insurer contended plaintiff not entitled to payment of sum - held: life insurance cover obtained by plaintiff pursuant to contracts under which he was an insured for purposes of *Insurance Contracts Act 1984* (Cth) - insurer issued insurance and was party to contracts of insurance - life-insured made fraudulent misrepresentation to insurer concerning medical history before contracts entered - misrepresentation had effect as though it had been made by plaintiff - insurer validly avoided contracts of insurance under s29 - proceeding dismissed.

[Montclare](#) (I B)

Quann v Wilson & Atkinson [2015] WASC 229

Supreme Court of Western Australia

Le Miere J

Legal practitioners - confidential information - plaintiff instructed lawyers on two retainers - first retainer started in March 2004 and ended in August 2004 - second began about November 2006 and ended before 7 October 2008 - plaintiff sought that lawyers be restrained from acting as solicitors or counsel plaintiffs in proceedings - plaintiff invoked court's jurisdiction founded on the right of former client to protection of his confidential information - plaintiff also invoked Court's inherent jurisdiction to control its officers' conduct - held: claim based on protection of confidential information failed because plaintiff failed to establish legal advice given by firm was relevant to any issue in proceedings - fair minded, reasonably informed member of public would not conclude proper administration of justice required that firm be prevented from acting for plaintiffs in proceedings in interests of the protection of the integrity of judicial process and administration of justice - application dismissed.

[Quann](#) (I)

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