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## Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Woodlawn Capital Pty Ltd v Motor Vehicles Insurance Ltd** (NSWCA) - contract - proceedings arising from termination of agreements for provision of investment and asset management services - appeal allowed in part - cross-appeal dismissed

**Nitro Circus Touring Australia Pty Ltd v Ilaria Lenzoni** (NSWSC) - service - contract - service on defendant in Italy - Italian Authority's certificate of service substantially complied with approved form - plaintiff entitled to default judgment

**Investec v Butterss** (VSC) - banking - facility agreement - assignment - plaintiff entitled to judgment against first defendant for payment of amount owing pursuant to guarantee

**Tull v Wolfe** (WASC) - summary judgment - defamation - plaintiff pursuing claims against defendants which were subject of absolute privilege - summary judgment granted to defendants

## Summaries With Link (Five Minute Read)

### **Woodlawn Capital Pty Ltd v Motor Vehicles Insurance Ltd [2016] NSWCA 28**

Court of Appeal of New South Wales

Macfarlan, Ward & Gleeson JJA

Contract - insurance - appellant provided investment and asset management services to respondent - appellant contended agreements' early termination entitled it to retain funds held on trust for respondent for repayment of early termination fees and accrued fees - primary judge held that while there was a statutory right of rescission in respondent's favour, respondent had lost statutory right by not exercising it within a reasonable time and by affirming agreements - primary judge also found agreements validly terminated for default and appellant entitled only to certain accrued fees - appellant challenged orders in relation to pre-judgment interest and costs - respondent contended it had not lost right to rescind agreements - held: appeal dismissed except in relation to operation of indemnity clause to release costs concerning certain issues - cross-appeal dismissed.

[Woodlawn](#)

### **Nitro Circus Touring Australia Pty Ltd v Ilaria Lenzoni [2016] NSWSC 178**

Supreme Court of New South Wales

Hammerschlag J

Service - default judgment - contract - plaintiff sued defendant for amount owing under agreement in which plaintiff granted defendant right to present and promote show - plaintiff sought default judgment - defendant resided in Italy - whether defendant validly served with process by post effected by Italian Authority - Arts 3 - 6 *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* - s80 *Interpretation Act 1987* (NSW) - s17 *Civil Procedure Act 2005* (NSW) - Pt 6 r 6.9(1), Pt 11 rr 11A.1, 11A.3(1), 11A.4(1), (2), 11A.5(1), 11A.6(1), (2), (3), 11A.8, 11A.10 *Uniform Civil Procedure Rules 2005* (NSW) - held: certificate of service provided by Italian Authority diverged from approved form but substantially complied with it - process validly served - plaintiff entitled to default judgment.

[Nitro Circus](#)

### **Investec v Butterss [2016] VSC 80**

Supreme Court of Victoria

Digby J

Banking - facility agreement - plaintiff sought recovery from first defendant under guarantee and indemnity - novation of facility agreement - assignment of facility agreement, novated facility agreement and guarantee from company to plaintiff - held: plaintiff's demand made to first defendant in accordance with guarantee was properly made - first defendant had failed to make payment in accordance with demand - judgment for plaintiff.

[Investec](#)



**Tull v Wolfe [2016] WASC 65**

Supreme Court of Western Australia

K Martin J

Defamation - two summary judgment applications by defendants in actions brought by common plaintiff - defendants were company and employee of company - actions arising from statement by statements allegedly made by employee - defendants contended actions were hopeless and unarguable - absolute privilege - s27 *Defamation Act 2005* (WA) - plaintiff's grievance concerned defendant employee's witness statement prepared for use in unfair dismissal proceedings brought by plaintiff against defendant company in Fair Work Commission - held: Fair Work Commission was an "Australian Tribunal" under s4 - plaintiff was hopelessly pursuing claims which were subject of absolute privilege under s27 - summary judgment granted.

[Tull](#)

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