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Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Metaxoulis v McDonald's Australia Ltd (NSWCA) - negligence - appellant injured in slip and fall after rescuing child from play equipment - McDonalds liable

Camping Warehouse Australia Pty Ltd v Downer EDI Ltd (VSC) - group proceeding - continuous disclosure obligations - misleading or deceptive conduct - class closure orders refused

Ireland v B & M Outboard Repairs (QSC)- negligence-contract - injuries suffered in fire on boat - breach of duty of care and implied term - outboard repairers liable

Built NSW Pty Ltd v Politic Pty Ltd (NSWSC) - pleadings - contract - leave to file amended statement of cross-claim

Bodycorp Repairers Pty Ltd v Australian Associated Motor Insurers Ltd (VSCA) - contract - delay - extremely late application to add respondent and amend notice of appeal dismissed

Solarus Projects Pty Ltd (Receivers and Managers appointed) (in Liquidation) v AAI Limited Trading as Vero Insurance (No 8) (NSWSC) - insurance - Queensland floods - company was an insured for floods under project contract works insurance policy

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Summaries with links (5 Minute Read)

Metaxoulis v McDonald's Australia Ltd [2015] NSWCA 95

Court of Appeal of New South Wales

McColl, Basten & Macfarlan JJA

Negligence - child got stuck on playground equipment in McDonald's restaurant while playing in back area of playground where children were not supposed to play - appellant slipped and fell from height of about two metres after climbing over equipment and rescuing child - appellant suffered aggravation of pre-existing injury to wrist and a minor rib injury-appellant sued McDonalds-primary judge found for McDonalds and undertook hypothetical assessment of damages at \$78,911.95 - ss5B, 5D, 13, 16; Pt 8 *Civil Liability Act 2002* (NSW) - held: McDonald's breached duty of care by failing to prevent unauthorised access to back area of playground-causation established - quantification of damages for non-economic loss not manifestly inadequate-damages awarded for past economic loss for period extending beyond initial three months - damages awarded for future economic loss due to appellant's diminution in ability to pursue full-time employment-allowance awarded for domestic assistance at commercial rates-appeal allowed.

[Metaxoulis](#)

Camping Warehouse Australia Pty Ltd v Downer EDI Ltd [2015] VSC 122

Supreme Court of Victoria

Sifris J

Class closure orders - group proceeding commenced on behalf of people who acquired or held shares in defendant - claims for loss and damage caused by defendant's conduct relating to alleged breaches of its continuous disclosure obligations under s674 *Corporations Act 2001* (Cth) and alleged misleading or deceptive conduct - defendant sought class closure orders-ss332F & 332G *Supreme Court Act 1986* (Vic) - effect of earlier funded proposed class action which was compromised before proceedings commenced (Members Settlement) - held: too early for class closure orders to be made - pleadings not closed - insufficient information about nature and extent of Members' Settlement - Court did not accept defendant unable to work out range of quantum involved-summons dismissed.

[Camping](#)

Ireland v B & M Outboard Repairs [2015] QSC 84

Supreme Court of Queensland

North J

Negligence - contract - implied term-defendants were partners in business including maintenance, repair and modification of outboard marine engines-plaintiff claimed he suffered injury including psychiatric illness as a result of fire which broke out when he engaged ignition to start outboard motor of boat in 2006 - defendants had replaced fuel lines of boat and installed electric fuel pump in 2004 - plaintiff claimed fire and injury caused by defendants' breach of contract and duty of care to him - it was admitted on pleadings defendants obliged under

implied term of agreement with plaintiff to act with reasonable skill and care and diligence in performing services under agreement and that defendants owed plaintiff a duty of care to act with reasonable skill, care and diligence - by recommending and installing non-marine grade electric pump defendants breached implied term and duty of care - breaches necessary condition of plaintiff's injury, loss and suffering - judgment for plaintiff.

[Ireland](#)

Built NSW Pty Ltd v Politic Pty Ltd [2015] NSWSC 380

Supreme Court of New South Wales

Ball J

Pleadings - plaintiff claimed amounts allegedly due under contract by which it agreed to carry out refurbishment works for defendant - defendant sought to amend its cross-claim and its reply to defence to cross-claim, and to file additional evidence out of time-strength of claims - explanation for delay - whether allowing amendments would necessitate adjournment-prejudice - held: defendant permitted to file amended statement of cross-claim insofar as it pleaded floor space area term was express or implied term of the contract and rectification claim - plaintiff granted leave to make application to revoke leave to file amended statement of cross-claim insofar as it pleaded rectification claim on 48 hours' notice.

[BuiltNSW](#)

Bodycorp Repairers Pty Ltd v Australian Associated Motor Insurers Ltd [2015] VSCA 59

Court of Appeal of Victoria

Beach JA

Contract - appellant commenced proceedings in 2002 for breach of contract and alleged inducing of breaches of contract-eight defendants in proceedings including present respondents - matter came on for trial more than ten years after proceedings commenced-trial judge rejected appellant's claims - appellant appealed - appellant terminated services of solicitors and counsel - sole director sought leave to appear on appellant's behalf and sought adjournment to enable appellant to instruct new lawyers-Court granted adjournment on terms - appellant sought leave to add respondent and to amend notice of appeal - held: appellant's complaints without merit - no sufficient explanation for extremely late application to significantly expand scope of appeal - Court not persuaded appellant ought to be permitted to raise new arguments-applicant to add respondent rejected - application dismissed.

[Bodycorp](#)

Solarus Projects Pty Ltd (Receivers and Managers appointed) (in Liquidation) v AAI Ltd Trading as Vero Insurance (No 8) [2015] NSWSC 412

Supreme Court of New South Wales

Campbell J

Insurance - plaintiff sued insurer on policy of Project Contract Works Insurance in relation to works allegedly damaged by flooding during successive cyclone seasons in Queensland in 2008 and 2009 - separate determination whether plaintiff was an "Insured" within meaning of policy at the time each flood occurred - meaning of policy - whether established on balance of



probabilities plaintiff was within class covered by extended definition of “Insured” in policy - held: plaintiff was an insured during both floods by operation sub-paragraph (b) of definition of “Insured” in the schedule to the policy.

[Solarus](#)

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