



Thursday, 19 February 2015

## Insurance

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

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## Executive Summary (1 minute read)

**Russell Gould Pty Ltd v Ramangkura (No 2)** (NSWCA) - restitution - leave to re-open appeal - no failure to make essential finding - appeal dismissed

**Smith v Marshall [No 2]** (WASC) - defamation - impugned imputations struck out

**McFadyen v Jenson** (ACTSC) - motor vehicle accident - liability admitted - credit - medical evidence - damages assessed



# Benchmark

## Summaries with links (5 Minute Read)

### **Russell Gould Pty Ltd v Ramangkura (No 2) [2015] NSWCA 14**

Court of Appeal of New South Wales

Bathurst CJ; Barrett & Ward JJA

Restitution - appellant company sought leave to re-open appeal in which judgment was given - company contended Court did not make finding essential to conclusion it reached, which was that director (Mr Gould) had company's authority to cause amount of company's money to be expended in satisfaction of indebtedness of company to director - held: Mr Gould had authority to cause company to pay amount to him by way of reduction of company's on-demand indebtedness to him and to effectuate payment by drawing on company's account with bank - leave granted to re-open - appeal dismissed.

[Russell Gould Pty Ltd](#)

### **Smith v Marshall [No 2] [2015] WASC 62**

Supreme Court of Western Australia

K Martin J

Pleadings - defamation - action arising out of publication to Australian Shareholders' Association as well as three other persons by open letter - defendants challenged natural and ordinary meaning imputations in plaintiff's amended statement of claim - popular or false innuendos - defendants claimed imputations were manifestly groundless or untenable meanings, and that they were also embarrassing - held: three of four impugned imputations struck out.

[Smith](#)

### **McFadyen v Jenson [2015] ACTSC 12**

Supreme Court of the Australian Capital Territory

Burns J

Damages - negligence - plaintiff was driving motor vehicle which was stationary in traffic when vehicle driven by first defendant collided with rear of plaintiff's vehicle - second defendant was first defendant's third party insurer - plaintiff injured as result of collision - extent of injury in dispute - defendants admitted liability - assessment of damages - medical evidence - credit - held: plaintiff was honest witness - damages assessed at \$104,447.95 - judgment for plaintiff.

[McFadyen](#)

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