

Tuesday 1 October 2013

## Insurance, Banking, Construction & Government

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

#### Important Announcement



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#### Executive Summary (1 minute read)

**Liddy v Bazley (NSWCA)** - professional negligence - work injury damages - solicitors' breach of duty of did not cause loss to client - appeal allowed (I)

**Simmons v Rockdale City Council (NSWSC)** - negligence - cyclist injured in collision with boom gate - council liable (I)

**Insurance Australia Ltd v Motor Accidents Authority of New South Wales (NSWSC)** - motor accident - claim not unsuitable for assessment - summons dismissed (I G)



**AAMI Limited v Cirevska** (NSWSC) - motor accident compensation - assessor's error of law not material to independent conclusion - summons dismissed (I G)

**Suncorp Staff Pty Ltd v Larkin** (QCA) - negligence - employee injured at call centre - no breach of duty by employer - appeal allowed (I)

**Regional Power Corporation -v- Pacific Hydro Group Two Pty Ltd [No 2]** (WASC) - contract - power purchase agreement - preliminary issues - relief for breach - exclusion clause (I B C G)

**Romaldi Constructions Pty Ltd v Adelaide Interior Linings Pty Ltd** (SASCFC) - security of payments - permission to appeal from decision discharging injunction (C)

## Summaries with links (5 minute read)

### **Liddy v Bazley [2013] NSWCA 319**

Court of Appeal of New South Wales

Basten, Emmett & Leeming JJA

Professional negligence - prison officer injured in prison riot in 1987 claimed damages from solicitors he consulted in 2005 for failing to sue his former employer for work-injury damages - solicitors accepted they breached duty but that respondent suffered no loss from breach - solicitors argued that if primary judge had correctly identified advice they would have given had they made necessary inquiries, respondent would not have commenced proceedings - solicitors also argued that if financial circumstances were properly assessed, trial judge would have concluded respondent would have been better off on workers compensation payments and would not have pursued proceedings - comparison between possible damages in hypothetical proceedings and workers' compensation benefits lost if those damages obtained - ss151D(2), 151G, 151H, 151Z(1)(b) *Workers Compensation Act 1987* (NSW) - s34 *Victims Compensation Act 1987* (NSW) - held: competent and responsible solicitor would have advised respondent not to take proceedings - without conceded breach of duty of care respondent would not have brought proceedings - appeal allowed - claim dismissed.

[Liddy](#) (I)

**Simmons v Rockdale City Council [2013] NSWSC 1431**

Supreme Court of New South Wales

Hall J

Negligence - plaintiff injured while riding bicycle through carpark adjacent to club when he struck boom gate which was closed across entrance - plaintiff sued council and club - expert evidence - contributory negligence - ss5B(1), 5B(2), 5F, 5G, 5K, 5L, 42(a) & 43A *Civil Liability Act 2002* (NSW) - obvious risk - dangerous recreational activity - precautions against risk of harm - causation - resources of public authorities - special statutory powers - held: council owed duty of care to cyclists - council's failure to protect cyclists by implementing system that ensured gate would be open at specified time and failure to take steps to reduce risk of accident or to provide safe alternative access constituted failures to exercise reasonable care to avoid foreseeable injury - council's negligence a necessary condition for occurrence of harm suffered by plaintiff - club subject to duty of care but duty limited - plaintiff did not establish club failed to exercise reasonable care - plaintiff's contributory negligence 20% - verdict for plaintiff against council.

[Simmons](#) (I)**Insurance Australia Ltd v Motor Accidents Authority of New South Wales****[2013] NSWSC 1439**

Supreme Court of New South Wales

R A Hulme J

Motor accidents - judicial review claimant injured in motor vehicle accident - insurer admitted liability for at-fault driver - insurer contended claim for compensation should be resolved by common law proceedings - three applications for determination that claim unsuitable for assessment by CARS rejected by claims assessor - insurer sought judicial review - exemption of claims from assessment - s92(1)(b) of the Act - held: assessor's decision not attended by patent error - decision did not lack an evident and intelligible justification - decision not manifestly unreasonable or plainly unjust - summons dismissed.

[Insurance Australia](#) (I G)**AAMI Limited v Cirevska [2013] NSWSC 1438**

Supreme Court of New South Wales

R A Hulme J

Motor accident - judicial review - insurer admitted liability for at-fault driver - insurer applied for judicial review of assessor's assessment of damages - insurer argued assessor erred in law in deciding that medical certificate was conclusive evidence of fact claimant's asthma was



exacerbated by accident - held: court satisfied assessor erred in concluding that he was bound by medical assessment certificate and it was not open to him to find claimant's asthma exacerbation was not caused by accident - error of law not material to assessor's independent conclusion that accident caused exacerbation - sufficient evidence for assessor to be satisfied, notwithstanding whether medical certificate was conclusive - not open to insurer to challenge award for gratuitous care - summons dismissed.

[AAMI Limited](#) (I G)

## **Suncorp Staff Pty Ltd v Larkin [2013] QCA 281**

Court of Appeal of Queensland

Holmes & Muir JJA; Phillipides J

Negligence - worker injured at appellant's call centre when he struck his knee on handle of cupboard under workbench - worker sued employer for breach of duty not to expose him to risk of injury of which employer knew or ought to have known - employer argued there was no breach of duty of care as risk of injury and likely extent of injury were slight - held: likelihood of employee being injured by subject door handles particularly low as was risk that any injury inflicted would be serious - court did not accept that reasonable employer would have foreseen that failure to remove subject handles or take remedial action would have involved risk that employees using bench could sustain injury more severe than minor bruising - court did not accept reasonable employer would have changed handles or taken other remedial action - employer did not breach duty of care - appeal allowed.

[Suncorp Staff](#) (I)

## **Regional Power Corporation -v- Pacific Hydro Group Two Pty Ltd [No 2]**

[2013] WASC 356

Supreme Court of Western Australia

K Martin J

Contract - plaintiff sought relief for breach of power purchase agreement between its predecessor, State Energy Commission of Western Australia and operator of power station - plaintiff claimed defendants failed to operate power station in accordance with terms or implied term of agreement, causing outage and flooding - determination of preliminary issues - held: agreement did not set down an exclusive code of relief for breach - contractually framed remedies and outcomes functioned to augment parties' subsisting common law remedies for breach - provision of replacement power in emergency was a direct economic loss to plaintiff.

[Regional Power Corporation](#) (I B C G)



**Romaldi Constructions Pty Ltd v Adelaide Interior Linings Pty Ltd**

[2013] SASCFC 99

Full Court of the Supreme Court of South Australia

Sulan, Kelly & Blue JJ

Security of payments - injunction - applicant entered into subcontract with respondent to supply and install - payment dispute arose - adjudicator made determination under *Building and Construction Industry Security of Payment Act 2009* (SA) - applicant commenced proceeding against subcontractor for breach of contract - applicant applied for interlocutory injunction preventing subcontractor from obtaining adjudication certificate, filing it as judgment or enforcing judgment - District Court judge granted injunction - subcontractor appealed from grant of injunction - Supreme Court held District Court had no power to grant injunction, that criteria for grant of injunction would have been the same as for grant of stay and that criteria were not satisfied - applicant sought leave to appeal from decision discharging injunction - held: question of general principle and public importance arose as to criteria for and onus of proof in respect of application for stay of execution of judgment based upon adjudication under the Act - appropriate to grant permission to appeal.

[Romaldi Constructions](#) (C)

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