

Wednesday 10 April 2013

## Insurance, Banking, Construction & Government

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

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#### Executive Summary (1 minute read)

**Comcare v Heffernan** (FCA) - workers compensation - judicial review - statutory interpretation - appeal from Tribunal's finding that applicant was liable to pay costs of provision of modified motor vehicle - appeal allowed (I, G)

**Poole v Hargraves Secured Investments Ltd** (NSWCA) - equity - loans and mortgages - application for stay of mortgagee's auction of properties pending appeal - application dismissed (B)

**Chand v Zurich Australian Insurance Limited** (NSWSC) - insurance - subrogation - motor vehicle accident - appeal from decision to set aside consent judgment - summons dismissed (I)

**Currie v Motor Accidents Authority of NSW** (NSWSC) - judicial review - application for orders quashing decision of Motor Accidents Authority Review Panel that injuries unrelated to motor accident - denial of natural justice - decision quashed (I, G)



**ML v Australian Securities and Investments Commission (NSWSC)** - powers of court - inherent jurisdiction - application for stay of civil proceedings pending determination of any criminal charges - summons and proceedings dismissed (B)

**Matthews v SPI Electricity & Ors (Ruling No 17) (VSC)** - evidence - application to tender article containing alleged prior inconsistent statement – hearsay – material not germane to alleged statement - article inadmissible (I, B, C, G)

**H'var Steel Services Pty Ltd v Matthew Craig Pty Ltd t/as M 'n' M Rigging Services (WASC)** – corporations – application to set aside statutory demand – plaintiff established off-setting claim – application granted (I, B, C)

## Summaries with links (5 minute read)

### **Comcare v Heffernan [2013] FCA 299**

Federal Court of Australia

Edmonds J

Workers compensation - judicial review - appeal from decision of Administrative Appeals which found Tribunal that applicant liable to pay costs of provision of modified motor vehicle to respondent under s16 *Safety, Rehabilitation and Compensation Act 1988* (Cth) - proper interpretation of *medical treatment* and *curative apparatus* in ss4 & 4(h) of the Act - held: statutory context strongly against *use and result* test applied by AAT in determining that provision of modified motor vehicle constituted *medical treatment* - AAT's decision erroneous - appeal allowed.

[Comcare](#) (I, G)

### **Poole v Hargraves Secured Investments Ltd [2013] NSWCA 69**

Court of Appeal of New South Wales

Ward JA

Equity - loans and mortgages - stay - application for stay of mortgagee's auctions of properties pending hearing of appeal from decision refusing stay of writ of possession and consent judgment - test to be applied on application for stay: *Adeels Palace Pty Ltd v Moubarak* [2009] NSWCA 130 - held: court not satisfied that, if leave to appeal were granted, outcome of appeal would be rendered nugatory - stay should not be granted - application dismissed.

[Poole](#) (B)

**Chand v Zurich Australian Insurance Limited [2013] NSWSC 102**

Supreme Court of New South Wales

Adams J

Insurance - motor vehicle accident - subrogation - appeal under ss39(1) & 40(1) *Local Court Act 2007* (NSW) from decision to set aside consent judgment - plaintiff contended Magistrate erred in construction or application of r36.15(1) *Uniform Civil Procedure Rules 2005* (NSW) and in application of principle in *Morganite Ceramic Fibres Pty Ltd v Sola Basic Australia Ltd* (1988) 5 ANZ Ins Cas 60-883 in relation to subrogation rights - held: Magistrate correct to apply *Morganite* principle - in applying principle, Magistrate had made implicit finding that consent judgment was irregularly obtained and against good faith in satisfaction of r36.15 of the Rules - summons dismissed.

[Chand](#) (I)

**Currie v Motor Accidents Authority of NSW [2013] NSWSC 83**

Supreme Court of New South Wales

Adams J

Administrative law - judicial review - plaintiff by-stander injured while attempting to free driver from car involved in accident with truck – plaintiff sought orders under s69 *Supreme Court Act 1970* (NSW) quashing decision of Motor Accidents Authority Review Panel that plaintiff's injuries were not related to motor accident - held: Panel's conclusion far-fetched and unreasonable – Panel erroneously assumed plaintiff had opportunity to report injury - denial of natural justice - unfairness to plaintiff - decision quashed - plaintiff's claim remitted to Medical Assessment Service.

[Currie](#) (I, G)

**ML v Australian Securities and Investments Commission [2013] NSWSC 283**

Supreme Court of New South Wales

Rothman J

Powers of court - inherent jurisdiction - stay - applicant sought stay of proceedings against him to cancel or suspend registration as liquidator until further order or determination of any criminal charges against him - court's discretion to exercise jurisdiction in relation to interchange between civil and criminal proceedings concerning same or similar subject matter - considerations relevant to exercise of discretion: *McMahon v Gould* (1982) 7 ACLR 2020 - held: criminal charges were *on the cards* - court ought not exercise its discretion to issue stay to prevent disciplinary proceeding - summons and proceedings dismissed.

[ML](#) (B)



**Matthews v SPI Electricity & Ors (Ruling No 17) [2013] VSC 146**

Supreme Court of Victoria

J Forrest J

Evidence - sample group member claimed he suffered economic loss and downturn in business caused by Black Saturday bushfires - State parties sought to tender newspaper article on basis it contained alleged *prior inconsistent statement* by group member and was therefore admissible under s45 *Evidence Act 2008* (Vic) - court's discretion to admit document - held: no evidence group member made statement - unfair to permit untested assertions of author of article to become evidence even if for a limited purpose - balance of article replete with hearsay and material not germane to alleged prior inconsistent statement - article inadmissible and should be rejected

[Matthews](#) (I, B, C, G)

**H'var Steel Services Pty Ltd v Matthew Craig Pty Ltd t/as M 'n' M Rigging Services [2013] WASC 106**

Supreme Court of Western Australia

Master Sanderson

Corporations – statutory demand – application to set aside statutory demand in relation to money owing for rigging services regarding erection of crane – plaintiff contended defendant performed faulty rigging and that it had an off-setting claim equal to or greater than amount of the statutory demand - held: plaintiff's first affidavit in support of application satisfied jurisdictional requirements of s459(3)(a) *Corporations Act 2001* (Cth) - plaintiff's second affidavit did not offend *Graywinter principle: Graywinter Properties Pty Ltd v Gas & Fuel Corp Superannuation Fund* (1996) 70 FCR 452 – held: plaintiff had established it had an off-setting claim – statutory demand set aside.

[H'var Steel Services](#) (I, B, C)

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