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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Jordan v HLB Mann Judd Wealth Management (NSW) Pty Ltd (FCA) - professional negligence - misleading or deceptive conduct - financial advisors sued for losses from failed hedge fund investments - application dismissed (I, B)

O'Brien v Bank of Western Australia Ltd (NSWCA) - contract - guarantee - summary judgment - primary judge erred in finding no real or arguable defence - appeal allowed (B)

Insurance Australia Group Ltd t/as NRMA Insurance v Motor Accidents Authority of NSW (NSWSC) - administrative law - judicial review of decision of Motor Accidents Authority - error of law - decision quashed - matter remitted (I, G)

AMC Commercial Cleaning (NSW) Pty Ltd v Coade & Anor; Rockcliffs Solicitors & IP Lawyers v Condon as liquidator of AMC Commercial Cleaning (NSW) (No 2) (NSWSC) - costs - application that costs be paid by liquidator personally - liquidator *initiated* proceedings - application granted (I, B, C)



Dowdon Civil Contractors Pty Ltd v Workers Compensation Nominal Insurer; Hansen Yuncken Pty Ltd v Workers Compensation Nominal Insurer (NSWSC) - corporations - winding up – cross-claims - leave to proceed against company which had been wound up (I, B, C)

Forster v Legal Services Board (ABN 82 518 945 610) (VSCA) - administrative law - issue estoppel - appeal from Tribunal's order upholding Legal Services Board's decision not to renew practising certificate - application dismissed (I, G)

Bailey v Lend Lease Funds Management Limited t/as Woden Plaza and anor (ACTSC) - negligence - occupiers' liability - slip and fall injury - no negligence by owner or cleaner (I)

Summaries with links (5 minute read)

Jordan v HLB Mann Judd Wealth Management (NSW) Pty Ltd [2013] FCA 315

Federal Court of Australia

Foster J

Professional negligence - misleading or deceptive conduct - financial advice - financial advisors sued for losses arising from failed hedge fund investments - held: applicant had not established no ordinary skilled financial advisor should have recommended investment - no liability of advisors - unnecessary to consider damages - application dismissed.

[Jordan](#) (I, B)

O'Brien v Bank of Western Australia Ltd [2013] NSWCA 71

Court of Appeal of New South Wales

Beazley P; Macfarlan & Ward JJA

Contract - misleading and deceptive conduct – plaintiff guaranteed performance of obligations of company under bank facility - dispute concerning operation and validity of *suspension* and *preservation* clauses in guarantees - appeal from summary judgment in favour of bank - held: primary judge erred in finding no real or arguable defence to bank's claim - clauses did not preclude claims for misleading and deceptive, or unconscionable, conduct - summary judgment should not have been granted - paragraphs relating to guarantors' breach of contract claim should not have been struck from cross-claim - leave to appeal granted and appeal allowed.

[O'Brien](#) (B)



Insurance Australia Group Ltd t/as NRMA Insurance v Motor Accidents Authority of NSW [2013] NSWSC 318

Supreme Court of New South Wales

Harrison AsJ

Administrative law - judicial review - first defendant injured in motor vehicle accident - plaintiff was compulsory third party insurer of vehicle at fault - plaintiff sought to quash certificate issued by Motor Accidents Authority CARS assessor under *Motor Accidents Compensation Act 1999* (NSW), on grounds certificate was affected by error of law on the face of the record or jurisdictional error - held: assessor failed to take into account relevant consideration, being Medical Assessment Service's certificate of determination of need for domestic assistance - failure to mention certificate was failure to give adequate reasons - decision vitiated by error of law - decision quashed - matter remitted to Motor Accidents Authority.

[Insurance Australia Group](#) (I, G)

AMC Commercial Cleaning (NSW) Pty Ltd v Coade & Anor; Rockcliffs Solicitors & IP Lawyers v Condon as liquidator of AMC Commercial Cleaning (NSW) (No 2) [2013] NSWSC 332

Supreme Court of New South Wales

Rein J

Costs - equity - Court ordered money held in controlled monies account be paid to applicant - applicant sought that liquidator personally pay costs of application because liquidator *initiated* proceedings as described in *Re Wilson Lovatt & Sons* [1977] 1 All ER 274 - held: liquidator forced applicant to come to court to obtain money which was, on its face, clearly due to it - no *unfairness* in requiring liquidator to pay applicant's costs - liquidator must pay applicant's cost of application.

[AMC Commercial Cleaning](#) (B)

Dowdon Civil Contractors Pty Ltd v Workers Compensation Nominal Insurer; Hansen Yuncken Pty Ltd v Workers Compensation Nominal Insurer [2013] NSWSC 304

Supreme Court of New South Wales

Brereton J

Corporations - winding up - applicant/defendants in work injury damages proceedings sought leave pursuant to s601AG *Corporations Act 2001* (Cth) either to issue cross-claim against Nominal Insurer in common law proceedings, or to file cross-claim under s6 *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) against Nominal Insurer in respect of the liability of a sub-contractor



which had been would up - held: s601AG not applicable - s 6 application should be dealt with in substantive proceedings.

[Dowdon Civil Contractors](#) (I, B)

Forster v Legal Services Board (ABN 82 518 945 610) [2013] VSCA 73

Court of Appeal of Victoria

Weinberg & Harper JJA; Kyrou AJA

Administrative law - issue estoppel - appeal from order of Victorian Civil and Administrative Tribunal upholding decision of Legal Services Board to refuse renewal of appellant's practising certificate - Board's decision relied on judgment in receivership proceedings brought by Board against appellant - VCAT ruled that issue estoppel applied to findings in receivership proceedings but based its decision not to renew practising certificate on its own findings - held: appellant's challenge to correctness of estoppel ruling not made out - no error of law by VCAT - no failure to make independent factual findings or carefully weigh evidence - application dismissed.

[Forster](#) (I, G)

Bailey v Lend Lease Funds Management Limited t/as Woden Plaza and Anor [2013] ACTSC 56

Supreme Court of the Australian Capital Territory

Master Harper

Negligence - occupiers' liability - plaintiff sued owner of shopping centre for damages arising from slip and fall - defendant joined supplier of cleaning services - held: defendant was not occupier of property - no evidence of negligence of defendant - claim by defendant against cleaner failed - no contract between defendant and cleaner, so claim for indemnity could not have succeeded regardless of outcome of plaintiff's claim - no evidence capable of establishing negligence by cleaner - judgment for defendant - judgment for cleaner.

[Bailey](#) (I)

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