

Monday, 9 March 2015

## Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Hassoun v Wesfarmers General Insurance Ltd t/a Lumley General** (NSWCA) - insurance - order for security for costs - stay (I C)

**Lam v Rolls Royce PLC (No 3)** (NSWSC) - class action - discovery refused - "class closure" orders (I)

**Wesfarmers v Linfox Australia Pty Ltd** (VSC) - accident compensation - indemnity proceeding - psychological condition caused by work injury - Factor X calculated (I)

**Zealley v Liquorland (Aust) Pty Ltd** (VSC) - work injury damages - worker injured while unloading truck - employer's liability 40% - truck owner-operator's liability 60% (I)

**Oliver Hume (Australia) Pty Ltd v Land Source Australia Pty Ltd** (VSC) - pleadings - claim for unpaid real estate commission - leave granted to file amended writ and statement of claim (I B)

**Thompson v Cavalier King Charles Spaniel Rescue (Qld) Inc** (QCA) - discovery - defendants not required to disclose categories of documents - appeal dismissed (I)

**Baptist Community Services v ACT Planning and Land Authority** (ACTCA) - planning and development - refusal of application to build units to replace aged care facility - inconsistency with zone objectives - matter remitted (C G)

## Summaries with links (5 Minute Read)

### **Hassoun v Wesfarmers General Insurance Ltd t/a Lumley General [2015] NSWCA 33**

Court of Appeal of New South Wales

McColl & Gleeson JJA; Beech-Jones J

Stay - security for costs - insurance - premises destroyed by deliberately lit fire - applicant claimed damages against insurer for refusing to indemnify applicant under insurance policy - insurer denied claim on basis it was fraudulently made - applicant sought leave to appeal against order that he provide amount as security for insurer's costs and that proceedings be stayed until security given - restraint on appellate intervention - cause of impecuniosity - whether case management irrelevant consideration - prospects of success - burden of proof for allegation of fraudulent claim - history of delay and non-compliance with directions - held: no error by primary judge - conclusion not unreasonable or plainly unjust - appeal dismissed.

[Hassoun](#) (I C)

### **Lam v Rolls Royce PLC (No 3) [2015] NSWSC 83**

Supreme Court of New South Wales

Beech-Jones J

Class action - plaintiff sought orders for discovery against defendant - defendant sought orders to effect "class closure" and requiring potential class members to provide basic particulars of loss for purpose of advancing settlement discussions - ss60, 162, 175 & 183 *Civil Procedure Act 2005* (NSW) - held: Court not satisfied mediation process exhausted - Court declined to order discovery, and instead to take whatever steps could reasonably be undertaken to promote mediation - revised orders for sending of opt out notices, a scheme for registration and proposed schedule of questions to be sent to potential members of the class - plaintiff to provide to defendant a definitive list of persons whom plaintiff contends were aboard flight.

[Lam](#) (I)

### **Wesfarmers v Linfox Australia Pty Ltd [2015] VSC 63**

Supreme Court of Victoria

J Forrest J

Accident compensation - indemnity proceeding - plaintiff self-insurer sought to recover from defendant payments of compensation made to worker for workplace injury - s138 *Accident Compensation Act 1985* (Vic) - proportion of liability under Factor X of formula contained in s138(3) - whether assessment of damages payable by defendant as Factor A of s138(3) formula limited by reason of subsequent event unrelated to its tortious conduct - held: Court accepted that worker's psychological condition (including the pseudo seizures) remained causally related to injuries sustained by her in workplace accident and their sequelae - chain of causation not broken - Factor X assessed at 60% and amount of damages under Factor A at \$1,307,590.

[Wesfarmers](#) (I)

## **Zealley v Liquorland (Aust) Pty Ltd [2015] VSC 62**

Supreme Court of Victoria

J Forrest J

Work injury damages - negligence - worker injured when unloading truck - worker developed psychiatric condition in which she continued to experience pseudo epileptic fits described as pseudo seizures - worker settled claims against employer and owner-operator of delivery truck - contribution dispute arose - responsibility of each defendant injuries pursuant to Part IV *Wrongs Act 1958 (Vic)* - held: truck owner-operator should bear lion's share of responsibility for injuries - its acts and omissions both greater in culpability and causal potency than those employer - there was some substance to truck owner-operator's allegation that part of worker's damage related to employer requiring her to carry out work beyond certified medical capacity when she returned to work - however allegation was of minor significance when compared to injury and damage suffered as result of unloading accident - parties apportioned 40% to employer and 60% to truck owner-operator.

[Zealley \(I\)](#)

## **Oliver Hume (Australia) Pty Ltd v Land Source Australia Pty Ltd [2015] VSC 77**

Supreme Court of Victoria

Cameron J

Pleadings - claim by estate agent for unpaid commission - agent sought leave to file and serve an amended writ and an amended statement of claim - proposed pleading contained rectification claims - agent sought to plead that even if Court found it failed to comply with *Estate Agents Act 1980 (Vic)*, under equitable doctrine of rectification Court could order that agreement be rectified to accord with common intention - ss49A & 50 *Estate Agents Act 1980 (Vic)* - whether Act precluded Court from granting leave - held: agent should not be denied opportunity to file amended writ and amended statement of claim, including claims based on rectification of sales agreement, in face of provisions of the Act.

[Oliver Hume \(Australia\) Pty Ltd \(I B\)](#)

## **Thompson v Cavalier King Charles Spaniel Rescue (Qld) Inc [2015] QCA 010**

Court of Appeal of Queensland

Carmody CJ, Gotterson & Morrison JJA

Discovery - applicant was former member of charitable organisation - applicant brought proceedings for damages and injunction against charitable organisation arising from termination of membership - applicant sought disclosure of documents beyond those disclosed by defendants - primary judge found defendants not required to disclose categories of documents - held: no point of legal principle raised in appeal - no error of law shown - no denial of procedural fairness - appeal dismissed.

[Thompson \(I\)](#)

## **Baptist Community Services v ACT Planning and Land Authority [2015] ACTCA 3**

Court of Appeal of the Australian Capital Territory

Refshauge, Penfold & Burns JJ

# Benchmark

Planning and development - appellant sought development approval to build units to replace aged care facility- Tribunal affirmed ACTPLA's refusal of application - whether Tribunal, in error, saw itself as obliged to affirm refusal of development application purely because it did not meet one or more zone objectives - correct approach to s120 *Planning and Development Act 2007* (ACT) with regard to s50 -difference in parties' interpretations of RZ1 zone objective - held: Court rejected appellant's submission that a proposal must be approved if it was code-compliant - Court rejected ACTPLA's submission that a proposal must not be approved if it was inconsistent with a "relevant" zone objective - consistency with zone objectives properly considered in exercise of s120 discretion to approve development in merit track - inconsistency with zone objectives may also provide basis for discretionary rejection of code-compliant development - appeal allowed - matter remitted to Tribunal to reconsider development application in light of Court's explanation.

[Baptist Community Services](#) (C G)

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