

Friday 16 December 2011

## Insurance, Banking, Construction & Government

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

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#### Executive Summary (1 minute read)

**Amaca Pty Ltd v Booth; Amaba Pty Ltd v Booth [2011] HCA 53** - High Court of Australia - mesothelioma - causation - by majority, appeals dismissed (I)

**Whiteman v Australian Postal Corporation** - *Safety, Rehabilitation & Compensation Act 1988* (Cth) - whole person impairment (I)

**Mitsui & Co (Australia) Ltd v Commissioner of Taxation - Income Tax Assessment Act 1997 (Cth) Div 40 - s52 Petroleum (Submerged Lands) Act 1967** (Cth) (B)

**Public Transport Ticketing Corporation v Integrated Transit Solutions Ltd** - Discovery of documents - public interest immunity (I, B, C, G)

**The Owners of Strata Plan 75633 v Axiom Property Consulting Pty Ltd - Strata Schemes Management Act 1996** (NSW) - detinue - conversion (I, B, C, G)

**Sydney Water Corporation v Paul Makucha** - Contracts - agency - actual authority - ostensible authority - fiduciary duty (I, B)



**In the matter of Kirby Street (Holding) Pty Ltd - s579E Corporations Act 2001 (Cth) - "pooled group" (B)**

**In the matter of Statewide Developments Pty Ltd - ss465B(1) & 465B(2) Corporations Act 2001 (Cth) (B)**

**In the matter of Proficient Building Company Pty Ltd - s564 Corporations Act 2001 (Cth) (I, B, C, G)**

**City of Ryde v AMFM Constructions Pty Ltd & Anor - Building & Construction Industry Security of Payment Act 1999 (NSW) (I, B, C, G)**

**Denis McFadden & Anor v Daniel John Turnbull & Anor - s7(2)(b) Building & Construction Industry Security of Payment Act 1999 (NSW) (I, B, C, G)**

## Summaries with links (5 minute read)

### **Amaca Pty Ltd v Booth; Amaba Pty Ltd v Booth [2011] HCA 53**

High Court of Australia

French CJ; Gummow, Hayne, Heydon & Crennan JJ

Personal injuries - mesothelioma - risk of harm - causation - expert evidence - by majority, appeals dismissed - "causation", "cause and consequence", "epidemiological evidence", "manifest error", "mesothelioma" - detailed examination of UK & Australian case law.

[Amaca](#) (I)

[Amaba](#) - decision Court of Appeal of New South Wales 10 December 2010: see Benchmark I & IBC Tuesday 14 December 2010 - personal injuries - civil procedure - Mr Booth suffered from mesothelioma, and had been exposed to asbestos during four periods of his youth - the trial judge had found that the appellants had been responsible for 70% of the asbestos fibres to which Mr Booth had been exposed in the third and fourth periods of exposure - the appellants argued that expert evidence called by the plaintiff at trial should not have been admitted - held: the admissibility of expert evidence should be assessed in light of the expert's expertise - the evidence here was admissible - the appellants contended that causation had not been established - held: proof on the balance of probabilities permits a gap between completely understanding of the processes whereby exposure to asbestos causes mesothelioma and a sufficient understanding that such a process occurs - the appellants argued that the contraction of mesothelioma was not foreseeable - held: the trial judge correctly identified the class of persons to whom a duty was owed, and the risk of exposure to asbestos in an industrial setting was known in 1953 - held: further, the appellants had breached their duty of care to Mr Booth, and the trial judge had correctly found that this breach had caused Mr Booth's mesothelioma - appeal dismissed.



[John William Booth](#) - decision Dust Diseases Tribunal of New South Wales 10 May 2010 - judgment for plaintiff against both defendants in sum of \$326,640

**Whiteman v Australian Postal Corporation [2011] FCA 1427**

Federal Court of Australia

Foster J

*Safety, Rehabilitation & Compensation Act 1988 (Cth) - Guide to the Assessment of the Degree of Permanent Impairment* - arthroplasty procedure - assessment & calculation of total whole person impairment (WPI) rating - *American Medical Association's Guides - Comcare guide - AMA guide* - question of law set out at par 14 of judgment - answer "no" - appeal from Administrative Appeals Tribunal dismissed with costs.

[Whiteman](#) (I)

**Mitsui & Co (Australia) Ltd v Commissioner of Taxation [2011] FCA 1423**

Federal Court of Australia

Siopis J

*Income Tax Assessment Act 1997 (Cth)* - sale & purchase agreement - joint operating agreement - whether, in acquiring its 40% interest in production licence, Mitsui acquired, for the purposes of Div 40, two separate depreciating assets by reason of the fact that the holder of a production licence entitled pursuant to s52 *Petroleum (Submerged Lands) Act 1967 (Cth)* to produce petroleum from the licence area & also, to explore for petroleum within the licence area - application dismissed.

[Mitsui & Co](#) (B)

**Public Transport Ticketing Corporation v Integrated Transit Solutions Ltd [2011] NSWSC 1558**

Supreme Court of New South Wales

Rein J

Discovery of documents - public interest immunity - report of independent external consultant to be produced to defendants.

[Public Transport Ticketing](#) (I, B, C, G)

**The Owners of Strata Plan 75633 v Axiom Property Consulting Pty Ltd [2011] NSWSC 1542**

Supreme Court of New South Wales

Hoeben J

*Strata Schemes Management Act 1996 (NSW)* - detinue - conversion - claim by owners corporation against its former compulsory strata manager - plaintiff asserting right to damages in relation to failure to return books & records when properly requested to do so, also for alleged failure to properly maintain those books and records - breach of strata management agency agreement alleged & breach of common law duty to plaintiff - defendant should be required to render accounts to the Court & plaintiff as to how monies received by it on behalf of plaintiff have been disbursed.

[Strata Plan 75633](#) (I, B, C, G)

**Sydney Water Corporation v Paul Makucha [2011] NSWSC 1411**

Supreme Court of New South Wales

Sackar J

Contracts - agency - actual authority - ostensible authority - fiduciary duty - plaintiff seeking declaration that it did not enter into valid & binding agreement/s - plaintiff also seeking enquiry & accounts & directions for purposes of ascertaining what sum or sums owing - restraining orders sought - declaration sought against first & third defendant of copyright infringement - equitable compensation.

[Sydney Water Corporation](#) (I, B)

**In the matter of Kirby Street (Holding) Pty Ltd [2011] NSWSC 1536**

Supreme Court of New South Wales

Barrett J

*Corporations Act 2001 (Cth)* - statutory interpretation - application under s579E(1) for order determining that forty companies constitute a "pooled group" for purposes of s579E - detailed examination of legislation & case law from UK & Australia.

[Kirby Street](#) (B)

**In the matter of Statewide Developments Pty Ltd [2011] NSWSC 1537**

Supreme Court of New South Wales

Barrett J

ss465B(1) & 465B(2) *Corporations Act* 2001 (Cth) - application for substitution as plaintiff in proceedings for winding up in insolvency granted - whether defendant had discharged onus of proving solvency - onus not discharged.

[Statewide Developments](#) (B)

**In the matter of Proficient Building Company Pty Ltd [2011] NSWSC 1540**

Supreme Court of New South Wales

Barrett J

s564 *Corporations Act* 2001 (Cth) - application by liquidator that creditor be given advantage over other creditor.

[Proficient Building Company](#) (I, B, C, G)

**City of Ryde v AMFM Constructions Pty Ltd & Anor [2011] NSWSC 1469**

Supreme Court of New South Wales

Brereton J

*Building & Construction Industry Security of Payment Act* 1999 (NSW) - plaintiff seeking order that adjudication determination void - summons dismissed - monies paid into court to credit of proceedings to be paid out to first defendant - detailed examination of Australian case law.

[City of Ryde](#) (I, B, C, G)

**Denis McFadden & Anor v Daniel John Turnbull & Anor [2011] NSWSC 1294**

Supreme Court of New South Wales

Brereton J

*Building & Construction Industry Security of Payment Act* 1999 (NSW) - construction of s7(2)(b) - adjudication determination void.

[Denis McFadden](#) (I, B, C, G)

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