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

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Executive Summary (1 minute read)

Michigan v Environmental Protection Agency (Supreme Court of the United States) - administrative law - EPA erred in deeming cost irrelevant to decision to regulate power plants - judgment of Court of Appeals for D. C. Circuit reversed (I B C G)

Templeton v Australian Securities and Investments Commission (FCAFC) - corporations - fixing of receivers' remuneration - appeal upheld in part - application for review remitted (B)

Deputy Commissioner of Taxation v Sibai (FCA) - freezing order - taxation - variation of freezing order refused (B)

Selth in a Representative Capacity for the Members of the Australian Bar Association v Australasian Barrister Chambers Pty Ltd (FCA) - joinder - bias - trademarks - order for joinder of ABA Australian Bar Association Ltd to proceedings granted (I)

Dionisatos (for the Estate of the late George Dionysatos) v Acrow Formwork & Scaffolding Pty Ltd (NSWCA) - negligence - dust diseases - erroneous deduction of compensation under *Workers' Compensation (Dust Diseases) Act 1942* (NSW) from damages awarded under s15B *Civil Liability Act 2002* (NSW) - appeal allowed - cross-appeal dismissed (I C G)

ERA Polymers Pty Limited v Pacific Urethanes Pty Ltd (NSWCA) - contract - confidential information - no error in construction of deed - summons dismissed (I C)

Quinlan v Catholic Regional College Sydenham (VSC) - accident compensation - worker's proceedings not validly commenced in accordance with mandatory steps of s134AB(12) - proceedings dismissed (I G)

Hulanicki v Walton (No 2) (ACTCA) - costs - Calderbank offer made at trial not renewed on appeal - successful appellant awarded costs on party and party basis - indemnity costs refused (I)

Summaries With Link (Five Minute Read)

Michigan v Environmental Protection Agency

Supreme Court of the United States: Docket 14-26.

Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ. Administrative law - Clean Air Act directed Environmental Protection Agency to regulate emissions from power plants if it concluded "regulation is appropriate and necessary" after studying hazards to public health posed by emissions - EPA found power-plant regulation appropriate and necessary and refused to consider cost when making decision - Agency estimated cost of regulations would be \$9.6 billion a year but quantifiable benefits \$4 to \$6 million a year - petitioners sought review - D. C. Circuit upheld Agency's refusal to consider costs - held (by majority): EPA erred when it deemed cost irrelevant to decision to regulate power plants - EPA must consider cost before deciding whether regulation appropriate and necessary - Court reversed judgment of Court of Appeals for the D. C. Circuit and remanded cases for further proceedings consistent with its opinion.

[Michigan](#) (I B C G)

Templeton v Australian Securities and Investments Commission [2015] FCAFC 137

Full Court of the Federal Court of Australia

Besanko, Middleton & Beach JJ

Corporations - first and second appellants were joint and several receivers and managers of property of unregistered managed investment schemes - receivers challenged primary judge's orders concerning review of fixing of receivers' remuneration - ss425, 449E, 473, 504, 601EE & 1323 *Corporations Act 2001* (Cth) - s35A *Federal Court of Australia Act 1976* (Cth) - rr14.21, 14.24 *Federal Court Rules 2011* (Cth) - held: Court not satisfied appropriate proportionality analysis was adopted - reduction made by primary judge not justified by delay referred to between pooling orders and application for directions for distribution- primary judge erred in making discount for inefficiency - appeal upheld in part - application for review remitted.

[Templeton](#) (B)

Deputy Commissioner of Taxation v Sibai [2015] FCA 1035

Federal Court of Australia

Gleeson J

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Freezing order - taxation - applicant obtained freezing order and ancillary orders against respondent - respondent sought variation of freezing orders granting weekly amount for living expenses, initial amount and continuing funding for reasonable legal expenses, and amount for business expenses - respondent sought that source of funds be from sale of two properties - held: Court satisfied respondent had access to substantial funds overseas sufficient to meet current reasonable expenses - Court not satisfied respondent needed or should have access to proceeds of sale of properties to meet expenses -

[Sibai](#) (B)

Selth in a Representative Capacity for the Members of the Australian Bar Association v Australasian Barrister Chambers Pty Ltd [2015] FCA 1008

Federal Court of Australia

Nicholas J

Joinder - bias - applicant commenced proceeding in representative capacity on behalf of members of Australian Bar Association (ABA) - applicant claimed misleading and deceptive conduct against respondents arising out of alleged use of various trademarks. - applicant sought orders for joinder of ABA Australian Bar Association Ltd (ACN 605 949 148) (ABA Ltd) as applicant - respondent sought that judge disqualify himself on basis he was or was likely to become member of ABA Ltd and it would not be appropriate for him to hear interlocutory application - held: Court not satisfied fair-minded observer with knowledge of circumstances might reasonably apprehend judge might not bring impartial mind to resolution of any interlocutory application - no good reason to refused order for joinder- joinder granted.

[Selth](#) (I)

ERA Polymers Pty Limited v Pacific Urethanes Pty Ltd [2015] NSWCA 283

Court of Appeal of New South Wales

Beazley P; Macfarlan & Meagher JJA

Contract - applicant sought declaration it was sole beneficial owner of formulations (confidential information) - applicant alleged respondent used confidential information - applicant sought orders restraining respondent from continuing to use the confidential information - applicant sought leave to appeal from refusal of leave to amend statement of claim and summarily dismissing proceedings - whether primary judge erred in construing deed of settlement and release, and an attached Toll manufacturing deed which was part of the deed of settlement and release - held: primary judge correct in construction of clauses of deed of settlement and release and manufacturing deed - in effect applicant had sought to vindicate rights anterior to deed - primary judge correct to dismiss proceedings - summons dismissed.

[ERA](#) (I C G)

Dionisatos(for the Estate of the late George Dionysatos) v Acrow Formwork & Scaffolding Pty Ltd [2015] NSWCA 281

Court of Appeal of New South Wales

Basten, Macfarlan & Gleeson JJA

Negligence - dust diseases - statutory interpretation - worker employed by first respondent on

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construction of Sydney Opera House - worker suffered from mesothelioma and died in 2012 - .before death worker brought claim in Dust Diseases Tribunal against employer claiming illness caused by exposure to asbestos dust and fibres and that employer negligent by permitting his exposure - worker also alleged employer breached statutory duties and contractual obligations. - Tribunal upheld estate's claim against employer and awarded damages including component pursuant to s15B *Civil Liability Act 2002* (NSW) for worker's loss of capacity to provide gratuitous domestic services for his wife - Tribunal deducted amount from s15B damages to reflect value of compensation to widow under *Workers' Compensation (Dust Diseases) Act 1942* (NSW) - parties appealed - held: .employer's cross-appeal with respect to liability dismissed - Tribunal erred in deducting from s15B damages compensation paid or payable to widow under Dust Diseases Act - primary judge erred in assessment of s15B damages - matter remitted to Tribunal for determination of damages under s15B.

[Dionisatos](#) (I C)

Quinlan v Catholic Regional College Sydenham [2015] VSC 463

Supreme Court of Victoria

Zammit J

Workers compensation - accident compensation - plaintiff allegedly injured in course of employment with defendant - plaintiff sought leave to commence proceedings under s134AB *Accident Compensation Act 1985* (Vic) which were initially brought outside time under s134AB(12) - statutory construction - held: Court did not have power to cure failure to adhere to s134AB(12) - failure to comply with s134AB(12) had effect that cause of action was extinguished - consent was never provided by Authority under ss134AB(20A)(a)(ii) or (b) to bring proceeding out of time - plaintiff's cause of action extinguished as result of failure to comply with s134AB(12)(e) - worker's proceedings dismissed on ground they were not validly commenced in accordance with mandatory steps of s134AB(12)

[Quinlan](#) (I G)

Hulanicki v Walton (No 2) [2015] ACTCA 45

Court of Appeal of the Australian Capital Territory

Murrell CJ; Refshauge & Penfold JJ

Costs - appellant successfully appealed against primary judge's assessment of damages associated with severe traumatic brain injury arising from motor vehicle accident - appellant sought indemnity costs on basis outcome of appeal substantially more favourable to her than amount in Calderbank offer made at trial - s370 *Supreme Court Act 1933* (ACT) - rr1721(1), 1751 & 5001 *Court Procedures Rules 2006* (ACT) - held: claim for indemnity costs undermined by appellant's failure to remake Calderbank offer or make amended offer during appeal - taking all matters into account, appellant to be awarded costs on party and party basis - indemnity cost refused.

[Hulanicki](#) (I)



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