

Tuesday 21 October 2014

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Health Administration Corporation v George D Angus Pty Ltd (NSWCA) - compulsory acquisition of land - *financial costs* - company entitled to compensation for financial losses - appeal dismissed (I B C)

Bateman v Fairfax Media Publications Pty Ltd (No 2) (NSWSC) - pleadings - defamation - defences - *Hore-Lacy* pleading struck out (I)

Ismail v NSW Land & Housing (NSWSC) - costs - trespass - private nuisance - defendant to pay indemnity costs from date of offer of compromise (I C)

Gruma Oceania Pty Ltd v Bakar (VSCA) - accident compensation - current work capacity - medical panel failed to give adequate reasons for opinion - appeal dismissed (I G)

Melbourne City Investments Pty Ltd v WorleyParsons Ltd (No 2) (VSC) - securities class action - permission to amend statement of claim refused - no real interest to prosecute - proceeding refused (I B)

Matton Developments Pty Ltd v CGU Insurance Ltd (QSC) - evidence - insurance - collapse of crane boom - inspection and demonstration orders (I C)

Benchmark

Langmaid v Dobsons Vegetable Machinery Pty Ltd (No 2) (TASSC) - negligence - contract - fire at industrial premises caused by hot work - damages assessed (I B C)

Summaries with links (5 minute read)

Health Administration Corporation v George D Angus Pty Ltd [2014] NSWCA 352

Court of Appeal of New South Wales

Emmett & Leeming JJA; Tobias AJA

Compulsory acquisition of land - appellant compulsorily acquired land occupied by respondent service company pursuant to statutory tenancy determinable at will - service company claimed compensation for loss attributable to disturbance for foregone income and/or profits as result of relocation necessitated by acquisition - primary judge found loss was a financial cost reasonably incurred as a natural and direct consequence of acquisition of service company's interest and compensable pursuant to s59(f) *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) - appellant contended *financial costs* in s59(f) meant only expenditure and did not include financial losses - appellant claimed any loss or potential loss of income could only be assessed as special value of land under s57 and that because interest acquired by appellant was statutory tenancy determinable at will by one month's notice, service company was only entitled to compensation for one month's income - held: *financial costs* included financial losses and was not limited to expenditure - terms of interest compulsorily acquired relevant to assessment of market value of interest at time of acquisition but not to assessment of loss attributable to post-acquisition disturbance - appeal dismissed.

[Health Administration Corporation](#) (I B C)

Bateman v Fairfax Media Publications Pty Ltd (No 2) [2014] NSWSC 1380

Supreme Court of New South Wales

McCallum J

Pleadings - defamation - defences - action for defamation and injurious falsehood arising from publication of articles in newspaper - plaintiff objected to defendants' reliance on *Hore-Lacy* meanings - s9 *Defamation Act 1974* (NSW) - ss24, 25 & 26 *Defamation Act 2005* (NSW) - whether decision in *David Syme & Co Ltd v Hore-Lacy* [2000] VSCA 24 recognised a discrete species of common law defence of justification or whether it was properly confined to matters of pleading and practice in State of Victoria - held: decision in *Hore-Lacy* had no work to do in New South Wales having regard to law and practice - appropriate course was to strike out parts of pleading objected to as having tendency to cause prejudice, embarrassment or delay in the proceedings - *Hore-Lacy* pleading struck out.

[Bateman](#) (I)

Benchmark

Ismail v NSW Land & Housing [2014] NSWSC 1434

Supreme Court of New South Wales

Button J

Trespass - private nuisance - dispute concerning broken water pipe that caused damage to home of plaintiff and family - defendant accepted it must pay plaintiff damages and repair flooding - plaintiff sought indemnity costs on basis of Calderbank offer - offer preceded statement of claim by three months - subsequent settlement was for sum substantially higher than sought in offer of compromise - held: even though defendant did not have pleadings from plaintiff at time of offer it understood claim from terms of letter - 14 days for reflection upon offer of compromise was not inappropriately short - letter had expressed desire to avoid lengthy and costly court proceedings - unreasonable for defendant to reject conceded genuine offer of compromise - judgment for plaintiff - defendant to pay indemnity costs from date of offer of compromise.

[Ismail](#) (I C)

Gruma Oceania Pty Ltd v Bakar [2014] VSCA 252

Court of Appeal of Victoria

Neave, Santamaria & Kyrou JJA

Judicial review - accident compensation - employer appealed from primary judge's decision to set aside medical panel's opinion that worker had current work capacity - primary judge set aside decision on basis of inadequacy of reasons - employer contended primary judge failed to properly apply principles recently articulated by High Court in *Wingfoot Australia Partners Pty Ltd v Kocak* [2013] HCA 43 - held: judge's conclusion that reasons were inadequate was correct - reasons failed to set out path of reasoning for its answer to question whether worker had current work capacity - failure constituted breach of s68(2) *Accident Compensation Act 1985* (Vic) which in turn constituted an error of law on the face of the record - judge correctly applied principles in *Wingfoot* - appeal dismissed.

[Gruma Oceania Pty Ltd](#) (I G)

Melbourne City Investments Pty Ltd v WorleyParsons Ltd (No 2) [2014] VSC 523

Supreme Court of Victoria

Ferguson JA

Pleadings - dismissal - group proceeding - securities class action brought against WorleyParsons by shareholder (MCI) concerning alleged inadequate disclosure of information by WorleyParsons to the market - MCI sought leave to file further amended statement of claim - WorleyParsons opposed application for leave and sought dismissal of the proceeding - held: this was fourth version of pleading that MCI had sought to rely upon - MCI ought not be given a further opportunity to plead a case - MCI had no real interest to prosecute - MCI purchased its shares before alleged nondisclosures and misleading or deceptive conduct occurred - in each of four proposed pleadings, MCI had failed to articulate a viable claim - interest of group members would not be prejudiced by dismissal as a separate group proceeding had been commenced -

Benchmark

proceeding dismissed in accordance with implementation of overarching purpose of ss7(1), 8(1) and 9 & Civil Procedure Act 2010 (Vic).

[Melbourne City Investments Pty Ltd](#) (I B)

Matton Developments Pty Ltd v CGU Insurance Ltd [2014] QSC 256

Supreme Court of Queensland

Flanagan J

Insurance - plaintiff was lessee/owner of crane – crane's boom collapsed -lessee/owner claimed indemnity from insurer - insurer denied claim - parties disputed how and where crane being operated when boom collapsed - lessee/owner sought inspection of similar crane and its load, demonstration of similar crane's manoeuvring capabilities, and operation of similar crane in manner alleged by lessee/owner - lessee/owner sought that anything observed by Court during any inspection and/or demonstration be received as evidence – r478 *Uniform Civil Procedure Rules 1999* (Qld) - held: orders granted for inspection of crane and concrete panel - inspections of crane and concrete panel not to be used as evidence but as aid to understanding evidence presented in Court - orders granted for demonstration of basic manoeuvring capabilities of crane to be videoed and video tendered so that there was record of demonstration should matter proceed to appeal - order refused for demonstration of operation of crane in manner alleged by lessee/owner - Court not satisfied such demonstration would assist Court in resolving questions or issues arising in proceeding.

[Matton Developments Pty Ltd](#) (I C)

Langmaid v Dobsons Vegetable Machinery Pty Ltd (No 2) [2014] TASSC 55

Supreme Court of Tasmania

Tennent J

Damages - negligence - fire in industrial premises - Full Court found by majority that company breached statutory duty, duty of care, and implied terms of contract by failing to comply with Australian Standard 1674 in relation to hot work - Full Court satisfied that hot work caused fire - assessment of quantum of damages to which operator of cool store business and owner of premises/equipment were entitled - certain items of damages agreed - measure and remoteness of damages in actions for breach of contract - reasonableness of claim for costs of replacing equipment as valued where actual replacement costs known - whether grading line a fixture - loss of funds - interest - held: plaintiffs entitled to total damages of \$2,315,290.16.

[Langmaid](#) (I B C)

[Click Here to access our Benchmark Search Engine](#)