



Monday, 21 September 2015

## Daily Construction 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

**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

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

# Benchmark

## 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](#)

### **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](#)

### **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 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](#)

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