

Monday 22 September 2014

## Insurance

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

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#### Executive Summary (1 minute read)

**Goldsmith v Bissett** (NSWSC) - conclave of experts - defendant's solicitors did not agree parties should formulate questions for experts - Practice Note required they do so - questions formulated by Court

**Chidiac v Bhatt, Vaidya and Rosybarb Pty Ltd** (NSWSC) - corporations - purported transfer of shares and replacement of director - changes ineffective - breach of contract

**Vasco Investment Managers Ltd v Morgan Stanley Australia Ltd** (VSC) - confidential information - Morgan Stanley used Vasco's confidential information in formulating recapitalisation plan - payment of quantum meruit ordered

**Moran v Schwartz Publishing Pty Ltd** (WASC) - injunction sought against book allegedly accusing Moran of murdering girlfriend - balance of convenience - public interest in freedom of speech - injunction refused

## Summaries with links (5 minute read)

### **Goldsmith v Bissett [2014] NSWSC 1272**

Supreme Court of New South Wales

Garling J

Expert evidence - Goldsmith -seriously injured when struck by a car driven by Bissett while riding her bicycle - Registrar ordered that expert witnesses on the issue of liability were to confer and report on matters agreed and disagreed, setting out the reasons for disagreement - plaintiff's solicitors prepared a draft letter of instructions to the experts - defendant's solicitors disagreed with the letter, and said there was no need to ask specific questions of the experts - held: *Practice Note No SC Gen 11* required parties to agree on questions to be answered by experts at conclave - open to experts to consider any other question they believe is appropriate - defendant's solicitors had ignored the Practice Note - an expert witness generally should not be asked to consider two accounts and indicate which he or she prefers - Court formulated questions that should be put to the experts.

[Goldsmith](#)

### **Chidiac v Bhatt, Vaidya and Rosybarb Pty Ltd [2014] NSWSC 1253**

Supreme Court of New South Wales

Black J

Corporations - Chidiac acquired all the shares in Rosybarb and was appointed a director - shares were later purportedly transferred to Hastas, who was purportedly appointed a director - Chidiac said he still owned the shares - held: no transfer shown to have been executed or provided to Rosybarb - Chidiac still owned the shares - purported decision at Board meeting not effective to transfer the shares - Chidiac had not resigned as a director - directors can only be appointed in compliance with the company's constitution and the *Corporations Act 2001* (Cth) - Hastas not validly appointed as director - Chidiac had not given authority to Bhatt and Vaidya to amend Rosybarb's share register and ASIC's database - in any event, such authority would not excuse factually incorrect amendments - orders that register of members and directors of Rosybarb be corrected - breach of contract also established - parties to have an opportunity to agree on quantum of loss.

[Chidiac](#)

### **Vasco Investment Managers Ltd v Morgan Stanley Australia Ltd [2014] VSC 455**

Supreme Court of Victoria

Vickery J

Confidential information - Morgan Stanley recapitalised Orchard, a large fund manager - Vasco shared details of its own Orchard recapitalisation plan with Morgan Stanley - Vasco claimed it was entitled to be paid - held: Vasco's plan was sufficiently developed and complete to attract equitable

protection of confidentiality -Vasco's plan possessed the required quality of confidence - Vasco's plan was disclosed to Morgan Stanley in circumstances which imported an obligation of confidence - Morgan Stanley had no permission to use Vasco's plan without payment - Morgan Stanley used Vasco's plan as the starting point for its recapitalisation - Morgan Stanley's changes to Vasco's plan did not prevent equity protecting Vasco's confidential information - Morgan Stanley made unauthorised use of Vasco's confidential information - evidence was insufficient to support any entitlement to equitable compensation or an account of profits - however, it was unjust for Morgan Stanley to accept Vasco's services without payment - payment of quantum meruit ordered.

[Vasco Investment Managers Ltd](#)

### **Moran v Schwartz Publishing Pty Ltd [2014] WASC 334**

Supreme Court of Western Australia

Kenneth Martin J

Defamation - Moran sought an urgent injunction to restrain publication of book about the death of his former girlfriend - Moran contended book carried a clear imputation he had murdered girlfriend - previous media reports had asserted Moran had murdered girlfriend - foreshadowed defence was that publisher would justify lesser imputation that there were reasonable grounds to suspect Moran had murdered girlfriend - held: not possible to mop up all the reputational spilt milk flowing from other media reports accusing Moran of murder - Moran retained the right to seek damages at trial after publication - publisher would suffer a potentially non-recoupable economic loss if publication were restrained - balance of convenience favoured refusing injunction - in the light of the foreshadowed defence of justification, public interest in freedom of speech also an important consideration - application for injunction dismissed.

[Moran](#)

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