



Tuesday 28 October 2014

## Insurance

# 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)

**Szajna v Australian Postal Corporation** (FCA) - workers compensation - AAT misconstrued *injury* - error of law - appeal allowed

**Kafataris v Davis** (NSWSC) - equity - trusts - patents - declaration that plaintiff was *inventor* refused - no misuse of confidential information

**Mason v Transport Accident Commission** (VSCA) - accident compensation - psychiatric injury - leave refused to bring proceedings for damages - appeal dismissed

**Ausfert Pty Ltd v Superfert Dongbu Pty Ltd** (SASC) - cross-vesting - proceedings arising out of joint venture transferred to Supreme Court of Western Australia

**Du Pradal v Petchell** (QSC) - negligence - snorkeller run over by boat - boat driver liable

**Menzie v Motor Accidents Insurance Board** (TASSC) - extension of time to serve notice of intention to bring proceedings against Motor Accidents Insurance Board

## Summaries with links (5 minute read)

### **Szajna v Australian Postal Corporation [2014] FCA 1136**

Federal Court of Australia

Rangiah J

Workers compensation - applicant's husband employed at respondent's facility as mail officer - husband died at place of work - death caused by ventricular fibrillation brought on by underlying coronary artery disease - Administrative Appeals Tribunal affirmed respondent's determination that applicant was not entitled to compensation under s14 *Safety, Rehabilitation and Compensation Act 1988* (Cth) for husband's death - applicant submitted AAT erred by misconstruing *injury* in s5A(1) - whether AAT erred in finding an inevitable consequence of an underlying disease was not an injury - held: AAT erred in law by concluding that defined term *injury* incorporated a legal principle that did not exist - AAT also erred in misconstruing *injury* in phrase *injury (other than a disease)* in s5A(1)(b) - appeal allowed.

[Szajna](#)

### **Kafataris v Davis [2014] NSWSC 1454**

Supreme Court of New South Wales

Sackar J

Equity - trusts - misuse of confidential information - plaintiffs sought relief in relation to invention subject of patent application, and relief on basis of agreements, estoppel, misleading and deceptive conduct, unconscionability and breach of copyright - plaintiffs reduced case to whether plaintiff should be regarded as an inventor within s15 *Patents Act 1990* (Cth) and whether there had been misuse of plaintiff's confidential information by defendants - material contribution to final form of invention - extent to which information confidential in nature - held: plaintiff not entitled to declaration that he was inventor or declaration of constructive trust in his favour on basis of breach of confidence - judgment for defendants.

[Kafataris](#)

### **Mason v Transport Accident Commission [2014] VSCA 267**

Court of Appeal of Victoria

Warren CJ; Ashley & Whelan JJ

Accident compensation - applicant sought leave to bring proceedings for damages pursuant to s93 *Transport Accident Act 1986* (Vic) - trial judge refused application - applicant contended trial judge erred in failing to be satisfied applicant had established any psychiatric injury from which she was suffering was caused by road traffic accident involving her mother in 2006 and her mother's death thereafter - applicant also contended trial judge's reasons were insufficient - held: trial judge did not err in assessment of applicant's medical history and causes of her various injuries and conditions - reasons sufficiently revealed applicant's claim failed because trial judge not satisfied

of reliability of applicant's account of symptoms to experts - no error in finding causation not established on evidence - leave to appeal granted - appeal dismissed.

[Mason](#)

## **Ausfert Pty Ltd v Superfert Dongbu Pty Ltd [2014] SASC 157**

Supreme Court of South Australia

Parker J

Cross-vesting - parties were involved in business of manufacturing and supplying fertiliser products - proceedings arising out of a joint venture relating to fertiliser industry - second defendant sought transfer of proceedings to Supreme Court of Western Australia under s5(2)(b)(iii) *Jurisdiction of Courts (Cross-vesting) Act 1987* (SA) - held: there was complete lack of connection with South Australia except for plaintiff's choice of solicitor - all relevant Australian connections were with Western Australia - interests of justice required transfer of proceedings.

[Ausfert Pty Ltd](#)

## **Du Pradal v Petchell [2014] QSC 261**

Supreme Court of Queensland

Mullins J

Negligence - first plaintiff injured while snorkelling when run over by motor boat driven by defendant - third party was in first plaintiff's motor boat at time of accident - defendant failed to comply with speed limit - defendant noticed plaintiff's orange dive float but failed to slow down and navigate path clear of the dive float and diver - defendant claimed first plaintiff's negligence caused or contributed to accident - defendant also claimed contribution or indemnity from third party - first plaintiff's employer brought claim for damages against defendant for action *per quod servitium amisit* - ss9, 11, 12, 23 & 59 *Civil Liability Act 2003* (Qld) - held: first plaintiff established accident was caused by defendant's breach of duty of care owed to him - no contributory negligence - defendant's claim against third party dismissed on basis that either there was no duty of care owed by third party to first plaintiff or, if there were, there was no breach - employer's claim against defendant dismissed - judgment for first plaintiff.

[Du Pradal](#)

## **Menzie v Motor Accidents Insurance Board [2014] TASSC 57**

Supreme Court of Tasmania

Holt AsJ

Insurance - motor vehicles - applicant sought to commence action against Motor Accidents Insurance Board for damages for injury suffered in motor vehicle accident - accident claimed to have been fault of driver of unidentified motor vehicle - applicant did not issue notice of intention to make claim within three month period in s16 *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas) - applicant sought order extending time for issue of notice to Board - held: applicant

had viable claim - delay in notifying Board of intention to bring claim explained - chances of a fair trial had not been lost - Court persuaded justice of the case lay with grant of the extension sought.

[Menzie](#)

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