



## Banking

# A Daily Bulletin listing Decisions of Superior Courts of Australia

### Executive Summary (1 minute read)

**National Australia Bank Ltd v Norman** - *Corporations Act 2001* (Cth) – provisions regarding managed investment schemes – bankruptcy – administration of deceased person's estate

**Austin, Nichols & Co Inc v Lodestar Anstalt** - Application by respondent for security for costs granted – applicants overseas residents

**Sahab Holdings Pty Limited v Registrar-General & Anor** – Real property – restrictive covenants – proceedings to review Registrar-General's decision removing a right of way from folio of register for servient tenement

**Adelaide Bank Ltd v Property Builders Pty Ltd & ors** - Discovery & inspection of documents

**Tulip Investments Pty Ltd & Anor v Edwards & Anor** - Proportionate liability – Part IVAA *Wrongs Act 1958* (Vic) – whether bankrupt defendant had standing to make a claim for contribution or indemnity against an alleged concurrent wrongdoer – whether bankrupt defendant may join alleged concurrent wrongdoer as a defendant for purposes of invoking proportionate liability regime

**Andrews v Queensland Racing Ltd** – Selection of directors – challenge by plaintiff retiring director to process



## Summaries with links (5 minute read)

### Tuesday 3 November 2009 - Melbourne Cup Day

#### **National Australia Bank Ltd v Norman [2009] FCAFC 152**

Full Federal Court of Australia

Spender, Graham & Gilmour JJ – Perth (heard in Adelaide)

*Corporations Act* 2001 (Cth) – provisions regarding managed investment schemes - bankruptcy – administration of deceased person's estate – vesting of divisible property of estate in Official Trustee or registered trustee – what constitutes divisible property of estate – exclusion of property held in trust for another person - definition of managed investment scheme in s9 of the Act – "to be pooled" – not a managed investment scheme - appeal allowed.

[National Australia Bank](#)

#### **Austin, Nichols & Co Inc v Lodestar Anstalt [2009] FCA 1228**

Federal Court of Australia

Lindgren J (in Sydney)

Application by respondent for security for costs – trademarks; alcoholic beverages - applicants overseas residents - whether they had "assets in Australia" against which a costs order in favour of respondent might be enforced applicants had no bank account in Australia – order for security made.

[Austin, Nichols & Co](#)

#### **Sahab Holdings Pty Limited v Registrar-General & Anor [2009] NSWSC 1143**

Supreme Court of New South Wales

Slattery J

Real property - restrictive covenants – parcels of land at Sailor's Bay Rd, Northbridge - proceedings to review decision Registrar-General's decision removing a right of way from folio of register for servient tenement - reasons for decision of Registrar-General ordered to be provided pursuant to duty under s121 *Real Property Act* 1900 (NSW.)

[Sahab Holdings](#)



**Adelaide Bank Ltd v Property Builders Pty Ltd & ors [2009] NSWSC 1147**

Supreme Court of New South Wales

Hulme J

Discovery & inspection of documents – for decision see ‘Benchmark’ B, C & IBC Thursday 10 September 2009 & link below - application by first & second defendants for stay of proceedings or further discovery dismissed - application by plaintiff to set aside notice to produce granted.

[Adelaide Bank](#)

[Adelaide Bank](#) – decision 7 September 2009 - mortgages – guarantee & indemnity – application for summary judgment – whether debt assigned – whether guarantee assigned – detailed consideration of case law – application refused.

**Tulip Investments Pty Ltd & Anor v Edwards & Anor [2009] VSC 492**

Supreme Court of Victoria

Hargrave J

Proportionate liability – Part IVAA *Wrongs Act* 1958 (Vic) – whether bankrupt defendant had standing to make a claim for contribution or indemnity against an alleged concurrent wrongdoer – held that bankrupt defendant had no standing in absence of consent of bankruptcy trustee – whether bankrupt defendant may join alleged concurrent wrongdoer as a defendant for purposes of invoking proportionate liability regime – held that alleged concurrent wrongdoer may be joined as a defendant.

[Tulip Investments](#)

**Andrews v Queensland Racing Ltd [2009] QSC 338**

Supreme Court of Queensland

Wilson J

Selection of directors - challenge by plaintiff retiring director to process which has been employed to fill vacancies on the board of the defendant - whether director selection process undertaken in accordance with defendant's Constitution – declaration that shortlist not prepared in compliance with Constitution – injunctive relief.

[Andrews](#)



## The first Tuesday in November

### How the Melbourne Cup was Won

by

Henry Kendall

*(b. 18 April 1839 near Ulladulla on the South Coast of NSW – d. 1 August, 1882)*

In the beams of a beautiful day,  
Made soft by a breeze from the sea,  
The horses were started away,  
The fleet-footed thirty & three;  
Where beauty, with shining attire,  
Shed more than a noon on the land,  
Like spirits of thunder & fire  
They flashed by the fence & the stand.

And the mouths of pale thousands were hushed  
When Somnus, a marvel of strength,  
Past Bowes like a sudden wind rushed,  
And led the bay colt by a length;  
But a chestnut came galloping through,  
And, down where the river-tide steals,  
O'Brien, on brave Waterloo,  
Dashed up to the big horse's heels.

But Cracknell still kept to the fore,  
And first by the water bend wheeled,  
When a cry from the stand, & a roar  
Ran over green furlongs of field;  
Far out by the back of the course—  
A demon of muscle & pluck—  
Flashed onward the favourite horse,  
With his hoofs flaming clear of the ruck.



But the wonderful Queenslander came,  
And the thundering leaders were three;  
And a ring, & a roll of acclaim,  
Went out, like a surge of the sea:  
"An Epigram! Epigram wins!" —  
"The Colt of the Derby" — "The bay!"  
But back where the crescent begins  
The favourite melted away.

And the marvel that came from the North,  
With another, was heavily thrown;  
And here at the turning flashed forth  
To the front a surprising unknown;  
By shed and by paddock & gate  
The strange, the magnificent black,  
Led Darebin a length in the straight,  
With thirty & one at his back.

But the Derby colt tired at the rails,  
And Ivory's marvellous bay  
Passed Burton, O'Brien, & Hales,  
As fleet as a flash of the day.  
But Gough on the African star  
Came clear in the front of his "field",  
Hard followed by Morrison's Czar  
And the blood unaccustomed to yield.

Yes, first from the turn to the end,  
With a boy on him paler than ghost,  
The horse that had hardly a friend  
Shot flashing like fire by the post.  
When Graham was "riding" 'twas late  
For his friends to applaud on the stands,  
The black, through the bend & "the straight",  
Had the race of the year in his hands.



In a clamour of calls & acclaim,  
He landed the money — the horse  
With the beautiful African name,  
That rang to the back of the course.  
Hurrah for the Hercules race,  
And the terror that came from his stall,  
With the bright, the intelligent face,  
To show the road home to them all!

*The 1881 Melbourne Cup was won by “the horse with the beautiful African name” – “Zulu” – ridden by Jim Gough & bred at Bathurst, N.S.W. Second came “Czar” & third place went to “Sweetmeat,” described by Kendall as “Ivory’s marvellous bay,” because bred by Sydney innkeeper Thomas Ivory, who had stables in Bourke Street, Surry Hills & a thoroughbred stud at Eastern Creek near Windsor. Zulu’s only notable win was the 1881 Melbourne Cup. During the race a dog ran onto the track causing one of the horses, AJC Derby winner “Wheatear,” to fall. Another horse, “Suwarrow,” was forced into the rails; Suwarrow’s jockey was injured & later died in hospital.*

<http://nla.gov.au/nla.pic-an9653838>