



Banking

A Daily Bulletin listing Decisions of Superior Courts of Australia

Today's Cases

Exclusive distribution agreement – Credit insurance – Whether ambiguity existed in agreement – See *Electra Air Conditioning v Seeley International*

Professional indemnity insurance – Exclusion of liability – Whether grant of indemnity an admission of liability – See *Boulderstone Hornibrook Engineering v Gordian Runoff*

Stamp duty – Insurance duty – See *Qantas Airways v Chief Commissioner of State Revenue*

Incorporated associations – Application for winding up – See *Workers Compensation Nominal Insurer v Doonside Community Activities Group*

Succession – testamentary capacity - *Zorbas v Sidiropoulos*

Building & Construction Industry Security of Payment Act – Procedural fairness – Whether report constituted a submission made in support of payment schedule – See *Broad Construction Services v Vadasz*



Monday 13 October 2008

Electra Air Conditioning BV v Seeley International Pty Ltd [2008] FCAFC 169

Full Federal Court of Australia

Gray, Branson & Lander JJ (in Adelaide)

Trade Practices Act 1974 (Cth)- Commercial Arbitration Act 1984 (Vic) - International Arbitration Act 1974 (Cth) – for primary judgment 29 January 2008 see ‘Benchmark’ Tuesday 5 February 2008 & link below - exclusive distribution agreement whereby Electra appointed Seeley its exclusive distributor of Airwell brand products in Australia & New Zealand for at least three years - appellant was obliged to accept purchase orders from respondent – credit insurance could not be obtained as required – whether appellant required to accept purchase orders regardless of insufficient credit insurance being available – held that primary judge correct in finding no ambiguity in agreement regarding requirement that appellant accept purchase orders – appeal dismissed.

[Electra Air Conditioning BV](#), and

[Seeley International Pty Ltd v Electra Air Conditioning](#) – 29 January 2008 decision appealed from - arbitration clause – International Arbitration Act 1974 (Cth) – respondent’s application to stay proceedings – application refused – applicant sought declaration that respondent obliged to accept all purchase orders submitted by applicant pursuant to Exclusive Distribution Agreement between the parties whereby respondent appointed applicant its exclusive distributor in Australia & New Zealand of air conditioners for three years - respondent incorporated in Netherlands – Agreement provided for arbitration of disputes but did not prevent party from applying for declaratory or injunctive relief in certain circumstances - respondent conveyed to applicant it was experiencing difficulties with credit insurance – respondent informed applicant it would not accept purchase orders due to withdrawal of credit insurance – held that withdrawal of credit insurance did not relieve respondent from its obligations under Agreement .[International Arbitration Act gave effect to 1958 New York Convention on Recognition & Enforcement of Arbitration Awards .]

Kronen v Commercial Motor Industries Pty Ltd (CMI Toyota) [2008] FCAFC 171

Full Federal Court of Australia

Gray, Branson & Lander JJ (in Adelaide)

Employment - award – overtime – whether business manager entitled to overtime payments – remuneration by retainer & commissions – claim for underpayment of superannuation contributions – jurisdiction of Industrial Relations Court of South Australia – appeal dismissed.

[Kronen](#)

Baulderstone Hornibrook Engineering Pty Ltd v Gordian Runoff Ltd & Ors [2008] NSWCA 243

Court of Appeal of New South Wales

Allsop P; Beazley & Campbell JJA

Professional indemnity insurance – reinforced earth walls forming perimeter of third runway at Sydney Airport, & adjacent area known as Millstream Channel Diversion – Federal Airports Corporation had put in place program of insurance for the benefit of all consultants undertaking responsibilities in design & construction of third runway - HIH Casualty & General Insurance Ltd (in



liq'n) insuring first \$20 million - whether loss arose out of design fault or construction work – exclusion of liability - whether grant of indemnity an admission of liability - whether payment under co-ordinate policy extinguished rights against underlying insurer -“paid” – appeal dismissed – comprehensive consideration of case law from UK, Australia, New Zealand & Canada in judgment of Allsop P.

[Boulderstone Hornibrook Engineering](#), and

[Boulderstone Hornibrook Engineering](#) – decision 12 April 2006.

Tasman Capital Pty Ltd v Sinclair & Anor [2008] NSWCA 248

Court of Appeal of New South Wales

Giles & McColl JJA; Young CJ in Eq

Contract – wrongful dismissal – damages – onus of proof - respondent financial planners bringing clients when they went to work for appellant, a holding company in group carrying on business of providing financial planning services - respondents' client files taken to appellant's premises & client data entered in business records - comprehensive review of case law in judgment of Giles JA – an interesting decision.

[Tasman Capital](#)

Zorbas v Sidiropoulos: Estate of Kriezis [2008] NSWSC 1041

Supreme Court of New South Wales

Debelle AJ

Succession – testamentary capacity - testatrix gravely ill in hospital - while in hospital made will changing previous will – held that testatrix had testamentary capacity at time of making second will – UK & Australian case law considered.

[Zorbas](#)

Workers Compensation Nominal Insurer v Doonside Community Activities Group Inc [2008] NSWSC 1062

Supreme Court of New South Wales

Barrett J

Incorporated associations - application for winding up order on grounds of insolvency - non-payment of one debt only proved - insufficient to establish insolvency - reliance also on just & equitable ground - substratum dissipated – Association wound up.

[Workers Compensation Nominal Insurer](#)

Qantas Airways Ltd v Chief Commissioner of State Revenue [2008] NSWSC 1049

Supreme Court of New South Wales

Handley AJ

Stamp duty – Duties Act 1997 (NSW) – aviation risks insurance - insurance duty -premiums paid to London underwriters – underwriters not registered or authorised under Insurance Act 1973 (Cth) –



case law considered as to principles of statutory construction – held that duty not payable.

[Qantas Airways](#)