

Wednesday 1 May 2013

## Insurance, Banking, Construction & Government

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

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#### Executive Summary (1 minute read)

**Goudappel v ADCO Constructions Pty Ltd (NSWCA)** - workers compensation – transitional provisions following 2012 amendments - meaning of *claim for compensation* – claim made prior to 19 June 2012 did not include claim for lump sum – no bar to entitlement to lump sum claim made after that date (I, G)

**Bird v Ford (No 2) (NSWSC)** - indemnity costs - plaintiffs' rejection of *Calderbank* offer and offer of compromise unreasonable (I)

**The Owners - Strata Plan No. 69567 v Baseline Constructions Pty Ltd (in external administration) (NSWSC)** - statutory warranties - owners corporation entitled to rely on statutory warranties against *developer* (I, C)

**Maxstra NSW Pty Ltd v Blacklabel Services Pty Ltd (NSWSC)** - security of payments - procedural fairness whether adjudicator ought to have considered submissions not included in payment schedule (I, C, G)



**Shannon v Gadens Lawyers Sydney** (NSWSC) - summons for preliminary discovery dismissed (I, B)

**Matthews v SPI Electricity & Ors (Ruling No 19)** (VSC) – expert evidence - court to be assisted by assessor/s (I, B, C, G)

**Commissioner of State Revenue v Westnet Rail Holdings No 1 Pty Ltd** (WASCA) – stamp duty not payable on transfer of shares by corporation – *landholder* (B, G)

## Summaries with links (5 minute read)

### **Goudappel v ADCO Constructions Pty Ltd [2013] NSWCA 94**

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Basten JA

Workers compensation - applicant's foot and ankle crushed - applicant claimed compensation from employer on 19 April 2010 - on 27 June 2012 sought lump sum compensation for permanent impairment under s66 *Workers Compensation Act 1987* (NSW) (Act) - entitlement to lump sum compensation depended on transitional provisions introduced by *Workers Compensation Legislation Amendment Act 2012* (NSW) - held: amendments to Act did not apply to claims for compensation made before 19 June 2012 whether or not claimant specifically sought compensation under s66 or s67 of the Act - leave to appeal decision of Workers Compensation Commission granted - appeal allowed.

[Goudappel](#) (I, G)

### **Bird v Ford (No 2) [2013] NSWSC 429**

Supreme Court of New South Wales

Schmidt J

Costs - indemnity costs - plaintiff failed to establish liability against defendant - defendants sought indemnity costs on basis of plaintiffs' rejection of *Calderbank* offer and offers of compromise under r20.26 *Uniform Civil Procedure Rules 2005* (NSW) – *walk away* offer can involve genuine compromise - held: plaintiffs' rejection of defendants' final offer of compromise clearly unreasonable - special costs order made.

[Bird](#) (I)



**The Owners - Strata Plan No. 69567 v Baseline Constructions Pty Ltd (in external administration) [2013] NSWSC 409**

Supreme Court of New South Wales

Stevenson J

Statutory warranties - plaintiff became registered proprietor of residential unit development on registration of strata plan thus becoming the immediate successor in title to second defendant pursuant to s18C *Home Building Act 1989* (NSW) - plaintiff alleged there were defects in common property resulting from breaches of statutory warranties under the Act - plaintiff's entitlement to rely on statutory warranties against second defendant - held: plaintiff could enforce statutory warranties because second defendant was *developer* for purpose of s3A(1) of the Act - he owned four or more dwellings in development and first defendant had performed building works *on behalf of* second defendant as a *non-contracting owner*.

[The Owners - Strata Plan No. 69567](#) (I, C)

**Maxstra NSW Pty Ltd v Blacklabel Services Pty Ltd [2013] NSWSC 406**

Supreme Court of New South Wales

Rothman J

Security of payments - judicial review - defendant carried out building works for plaintiff - adjudicator determined under *Building and Construction Industry Security of Payment Act 1999* (NSW) that plaintiff owed defendant money - plaintiff sought declaration that determination was void due to jurisdictional error because adjudicator failed to consider submissions - subject of submissions not included in payment schedule - procedural fairness - held: adjudicator did not fail to take into account a relevant consideration, to accord procedural fairness or to comply with s22(2)(d) of the Act - summons dismissed.

[Maxstra](#) (I, C, G)

**Shannon v Gadens Lawyers Sydney [2013] NSWSC 417**

Supreme Court of New South Wales

McDougall J

Preliminary discovery - plaintiff sought documents from bank, bank's solicitors and barrister for purpose of assessing whether to seek injunction restraining solicitors and barrister from acting for bank in proceedings affecting plaintiff's interests - plaintiff also sought order under s728 *Legal Profession Act 2004* (NSW) for delivery of documents by their former solicitors in relation to previous retainers - principles applicable to preliminary discovery: r5.3 *Uniform Civil Procedure*



*Rules 2005 (NSW) - held: plaintiff failed to satisfy r5.3 UCPR - summons for preliminary discovery dismissed - former solicitors to produce files on payment of outstanding fees.*

[Shannon](#) (I, B)

**Matthews v SPI Electricity & Ors (Ruling No 19) [2013] VSC 180**

Supreme Court of Victoria

J Forrest J

Evidence – expert evidence - cause or causes of conductor failure of critical importance in determining SPI's liability to plaintiff and group members – whether court should sit with an assessor or special referee to understand expert evidence on scientific and engineering issues necessary to determine cause or causes of failure – held: court to sit with one or two assessors to hear concurrent evidence of experts.

[Matthews](#) (I, B, C, G)

**Commissioner of State Revenue v Westnet Rail Holdings No 1 Pty Ltd**

**[2013] WASCA 110**

Court of Appeal of Western Australia

McLure P; Pullin & Newnes JJA

Stamp duty – appeal from decision of State Administrative Tribunal to set aside Commissioner's notice which required respondents to pay duty on transfer of shares in first respondent to second respondent – transaction was connected with disposal of rail freight business of Western Australian Government Railways Commission - assessment depended upon whether first respondent was a *landholder* within meaning of s76AP(2) of the Act *Stamp Act 1921 (WA)* – statutory construction - held: Tribunal's decision upheld - appeal dismissed.

[Commissioner of State Revenue](#) (B, G)

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