



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

ABB Grain Ltd, in the matter of ABB Grain Ltd - *Corporations Act 2001 (Cth)* -scheme of arrangement (B)

JYVW & Australian Securities & Investments Commission - *Corporations Act 2001 (Cth)* - directors & officers - disqualification - decision under review set aside (B)

Singler v Ferguson - Personal injuries - motor accident - by majority, appeal allowed (I)

Bauen Constructions v Westwood Interiors - *Building & Construction Industry Security of Payment Act 1999 (NSW)* (C)

Cardinal Project Services v Hanave – s26(1)(b) *Building & Construction Industry Security of Payment Act 1999 (NSW)* (C)

Coshott v Barry & Board – s372 *Legal Profession Act 2004 (NSW)* - costs certificates (I, B, C)

Inspector Nicholson v Pymble No 1 Pty Ltd & Molinara (no 2) - *Occupational Health & Safety Act 2000 (NSW)* - “has control of premises” (I, C)



Linfox Resources Pty Ltd v The Queen; Downer EDI Mining Pty Ltd v The Queen; Thiess Pty Ltd v The Queen - *Occupational Health & Safety Act 2004* (Vic) - mining joint venture - appeal allowed (I, C)

Allen v State of Queensland - *Personal Injuries Proceedings Act 2002* (Qld) - legal professional privilege (I)

Shire of Manjimup v Cheetham - Personal injuries - *Occupiers' Liability Act 1985* (WA) - contributory negligence (I)

AON Risk Services Australia Ltd v Australian National University - "Interlocutory judgment or order" (I)

Summaries with links (5 minute read)

Wednesday 1 December 2010

ABB Grain Ltd, in the matter of ABB Grain Ltd [2010] FCA 1309

Federal Court of Australia

Besanko J (in Adelaide)

Corporations Act 2001 (Cth) - application under s411(1) for an order that a meeting of its members be convened to consider scheme of arrangement between company & its members involving company becoming wholly owned subsidiary of another company - application granted.

[ABB Grain](#) (B)

JYV & Australian Securities & Investments Commission [2010] AATA 936

Administrative Appeals Tribunal of Australia

Deputy President DG Jarvis & Senior Member RW Dunne

Corporations Act 2001 (Cth) - directors & officers - delegate of ASIC decided to disqualify applicant from managing corporations for a period of two years - Tribunal not satisfied disqualification of applicant under s206F justified - decision under review set aside - discretion under s206F not to be exercised.

[JYV](#) (B)

**Singler v Ferguson [2010] NSWCA 325**

Court of Appeal of New South Wales

Beazley and Young JJA; Handley AJA

Personal injuries - motor accident - credit findings - whether party under duty to disclose relevant medical evidence obtained during course of trial - MRI scan - by majority, appeal allowed - matter remitted.

[Singler](#) (I)

[Singler](#) - District Court decision 15 May 2009: see 'Benchmark' I & IBC Tuesday 19 May 2009 - verdict for defendant.

Bauen Constructions v Westwood Interiors [2010] NSWSC 1359

Supreme Court of New South Wales

McDougall J

Building & Construction Industry Security of Payment Act 1999 (NSW) - judicial review - adjudication determination quashed.

[Bauen Constructions](#) (C)

Cardinal Project Services v Hanave [2010] NSWSC 1367

Supreme Court of New South Wales

McDougall J

s26(1)(b) *Building & Construction Industry Security of Payment Act 1999* (NSW) - whether plaintiff could make second adjudication application - whether second application made within time allowed by s26(3) - "fails to determine the application within the time allowed by s21(3)."

[Cardinal Project Services](#) (C)

Coshott v Barry & Board [2010] NSWSC 1324

Supreme Court of New South Wales

Garling J

Costs assessments – s372 *Legal Profession Act 2004* (NSW) - costs certificates - directions for case management.

[Coshott](#) (I, B, C)



Inspector Nicholson v Pymble No 1 Pty Ltd & Molinara (no 2) [2010] NSWIRComm 151

Industrial Court of New South Wales

Marks J

Occupational Health & Safety Act 2000 (NSW) - prosecution of first defendant company & second defendant director under s10 [headed "Duties of controllers of work premises, plant or substances"] - first defendant had engaged another company as its principal contractor to carry out certain construction works at premises owned by first defendant - working at heights - fall prevention - proceedings brought against each defendant dismissed - "has control of premises" - detailed examination of the United Kingdom & Australian case law in an interesting decision.

[Inspector Nicholson](#) (I, C)

Linfox Resources Pty Ltd v The Queen; Downer EDI Mining Pty Ltd v The Queen; Thiess Pty Ltd v The Queen [2010] VSCA 319

Court of Appeal of Victoria

Maxwell P; Weinberg & Mandie JJA

Occupational Health & Safety Act 2004 (Vic) - mining joint venture - trial judge had rejected application by defendants that charges be dismissed - safety duty imposed on 'employer' & on persons having 'management or control of workplace' - absence of evidence to prove individual companies were employers or had management or control - whether inference of employment or control reasonably open - whether safety duties imposed on 'unincorporated association' - no case to answer - appeal allowed - charges dismissed.

[Linfox Resources](#) (I, C)

Allen v State of Queensland [2010] QSC 442

Supreme Court of Queensland

Applegarth J

Personal Injuries Proceedings Act 2002 (Qld) - applicant had been diagnosed as suffering severe brain damage following cardiac catheterisation procedure in hospital at age sixteen months - whether respondent obliged to disclose certain documents held by it about medical services provided to applicant on December 2003, particularly reports prepared as a result of investigation undertaken in early 2004 about the medical incident involving the applicant - whether documents protected from disclosure by legal professional privilege - whether the reports had to be disclosed (possibly with the omission of passages consisting only of statements of opinion) by force of s30(2) even though otherwise protected by legal professional privilege because they were "investigative reports" - application granted.

[Allen](#) (I)



Shire of Manjimup v Cheetham [2010] WASCA 225

Court of Appeal of Western Australia

Buss & Newnes JJA; Mazza J

Personal injuries - *Occupiers' Liability Act 1985 (WA)* - respondent fell into culvert at night while crossing holiday site - respondent was using torch - whether appellant negligent in failing to erect barricade around culvert - whether contributory negligence by respondent in failing to keep proper lookout - appeal against liability dismissed - appeal against finding that no contributory negligence by respondent allowed: liability apportioned two-thirds to appellant & one-third to respondent.

[Shire of Manjimup \(I\)](#)

[Cheetham](#) - *Cheetham v Shire of Manjimup* [2009] WADC 169: decision District Court 10 November 2009

AON Risk Services Australia Ltd v Australian National University [2010] ACTCA 28

Court of Appeal of the Australian Capital Territory

Higgins CJ; Mansfield and Foster JJ - Sydney (via video link to Canberra)

"Interlocutory judgment or order" - meaning of the phrase - damage to buildings & contents in fire on university campus - AON's application for an advance evidentiary ruling had been dismissed - whether rejection of application an interlocutory order within s37E(4) *Supreme Court Act 1933 (ACT)* - application for leave to appeal that decision dismissed - application for leave to appeal incompetent - even if, contrary to the Court's conclusion, application for leave to appeal in the present case was competent, leave to appeal should be refused.

[AON Risk Services Australia \(I\)](#)

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