



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Jemena Gas Networks (NSW) Ltd v Mine Subsidence Board - High Court of Australia - *Mine Subsidence Compensation Act 1961* (NSW) - construction of s12A(1)(b) - appeal allowed (I, C)

Commissioner of Taxation v BHP Billiton Ltd; Commissioner of Taxation v BHP Billiton Petroleum (North West Shelf) Pty Ltd; Commissioner of Taxation v The Broken Hill Proprietary Company Pty Ltd; Commissioner of Taxation v BHP Billiton Minerals Pty Ltd - High Court of Australia - Div 243 *Income Tax Assessment Act 1997* (Cth) - appeals dismissed (B, C)

Australian Securities & Investments Commission v Lanepoint Enterprises Pty Ltd (Receivers & Managers App'd) - High Court of Australia - *Corporations Act 2001* (Cth) - winding up in insolvency - appeal allowed (B, C)

Khoury v Sidhu - Appeal from order giving respondents leave to amend their defence dismissed (I, B)

Supercar International Holdings Ltd v Sommers; Tinkler Group Holdings Pty Ltd v Sommers (No 2) - Costs - final orders (B)



TQM Design & Construct Pty Ltd v Golden Plantation Pty Ltd - s459S *Corporations Act* 2001 (Cth) - winding up (B)

Magorian v Lodge - *Road Traffic Act* 1974 (WA) - dangerous driving - prosecution appeal upheld (I)

Summaries with links (5 minute read)

Thursday 2 June 2011

Jemena Gas Networks (NSW) Ltd v Mine Subsidence Board [2011] HCA 19

High Court of Australia

French CJ; Gummow, Hayne, Heydon, Crennan, Kiefel & Bell JJ

Mine Subsidence Compensation Act 1961 (NSW) - construction of s12A(1)(b) - appeal allowed - orders of NSW Court of Appeal 28 June 2010 set aside - appellant made claim for costs of preventative & mitigatory works performed on pipeline after receiving expert advice that such works would be necessary as result of certain underground longwall mining - "from a subsidence that has taken place" - appellant entitled under s12A(1)(b) to an amount from Mine Subsidence Compensation Fund to meet proper & necessary expense of preventing or mitigating that damage.

[Jemena Gas Networks](#) (I, C)

[Jemena Gas Networks](#) - decision Court of Appeal of New South Wales 28 June 2010 Spigelman CJ at 1; Allsop P at 97; Giles JA at 98; Basten JA at 99; Macfarlan JA at 188: see 'Benchmark' I, C & IBC Wednesday 30 June 2010: decision reported at 175 LGERA 16 - *Mine Subsidence Compensation Act* 1961 (NSW) - statutory regulation - doctrine of precedent - appellant owner & operator of Moomba to Sydney gas pipeline - pipeline traverses land known as Mallaty Creek, the subject of an underground coal-mining lease - longwall mining - in determining separate question, primary judge had found the works for which compensation was sought were not incurred in relation to a subsidence that had taken place, but were incurred in anticipation of a future subsidence - whether compensation could be claimed for works done to prevent or mitigate damage from anticipated subsidence - whether *Mine Subsidence Board v Wambo Coal Pty Ltd* [2007] NSWCA 137 correctly decided - appeal dismissed - "a subsidence" - "from subsidence" - "by reason of subsidence;"

[Jemena Gas Networks](#) - decision Land & Environment Court 30 June 2009 reported at 167 LGERA 308 - respondent had rejected claim made for compensation under *Mine Subsidence Compensation Act* 1961 (NSW) in the company's former name "Alinta AGN Ltd" - separate question for consideration: whether Applicant was entitled to an amount under section 12A(1)(b) *Mine Subsidence Compensation Act* 1961 (NSW) in respect of expenses that it incurred in performing work on the Sydney to Moomba Gas Pipeline in circumstances where subsidence occurred at or near Mallaty Creek near Campbelltown in or about October 2005, on the assumption that the applicant could



establish that, for the purposes of that section, the expenses incurred by it were 'proper & necessary' " - question answered 'no;'

[Mine Subsidence Board](#) - decision NSW Court of Appeal 15 June 2007

Commissioner of Taxation v BHP Billiton Ltd; Commissioner of Taxation v BHP Billiton Petroleum (North West Shelf) Pty Ltd; Commissioner of Taxation v The Broken Hill Proprietary Company Pty Ltd; Commissioner of Taxation v BHP Billiton Minerals Pty Ltd [2011] HCA 17

High Court of Australia

French CJ; Gummow, Heydon, Crennan & Bell JJ

Div 243 *Income Tax Assessment Act* 1997 (Cth) - nine appeals - allowable deductions - funds advanced for construction of plant and facilities - "capable of being limited", "capital allowance deductions", "limited recourse debt" - appeals dismissed.

[Commissioner of Taxation](#) (B, C)

[Commissioner of Taxation](#) - decision Full Court of the Federal Court of Australia 17 March 2010: see 'Benchmark' B & IBC Friday 19 March 2010 - for decision appealed from, see 'Benchmark' B & IBC Wednesday 1 April, 2009 & link below - retention loans - whether loans were 'limited recourse debt' within s243-20(1) or (2) *Income tax Assessment Act* 1997 (Cth): held they were not - appeals dismissed;

[BHP Billiton Finance](#) - decision Federal Court 30 March 2009 - *Income Tax Assessment Act* 1997 (Cth) - *Income Tax Assessment Act* 1936 (Cth) - writing off of part of two debts - whether Finance, internal financier to the BHPB Group, was in the business of lending money &, if so, whether each loan was made by Finance in the course of that business - allowable deductions - comprehensive consideration of case law.

Australian Securities & Investments Commission v Lanepoint Enterprises Pty Ltd (Receivers & Managers App'd) [2011] HCA 18

High Court of Australia

Gummow, Heydon, Crennan, Kiefel & Bell JJ

Corporations Act 2001 (Cth) - winding up in insolvency - respondent a company within the Westpoint Group of companies & in 2005 was a property developer - sub-section (3) of s459C: "except so far as the contrary is proved" - appeal allowed.

[Australian Securities & Investments Commission](#) (B, C)

[Lanepoint Enterprises](#) - decision Full Court of the Federal Court of Australia 24 May 2009: see 'Benchmark' B, C & IBC Thursday 27 May 2010 - application by ASIC to wind up company - Westpoint Group - redevelopment of a site previously used for Regency Motel on Great Eastern Highway at Rivervale W.A. into a group of strata titled residential units - whether appropriate to determine disputed debt in course of winding-up application - factors relevant to exercise of discretion - for decision appealed from, see 'Benchmark' B, C & IBC Wednesday 20 May 2009 & link below - by majority, Buchanan J dissenting, appeal allowed.



[Australian Securities & Investments Commission](#) - decision Federal Court 14 May 2009 - *Corporations Act 2001 (Cth)* - statutory presumption of insolvency - company had failed to discharge statutory presumption - order made that company be wound up.

Khoury v Sidhu [2011] FCAFC 71

Full Court of the Federal Court of Australia

Stone, Jacobson & Collier JJ (in Brisbane)

Trade Practices Act 1974 (Cth) - appellants appealing trial judge's order giving respondents leave to amend their defence - appeal dismissed.

[Khoury](#) (I, B)

[Khoury](#) - decision 30 November 2010 - s87, s82(1B) *Trade Practices Act 1974 (Cth)* - s82(1B) requires the reduction of damages with reference to "the claimant's share in the responsibility for the loss or damage" - Part VIA concerns the liability of a concurrent wrongdoer in relation to an apportionable claim - amendment of pleadings - in the principal proceedings, the applicants are seeking orders for payment of compensation by respondents of amounts of principal & interest they paid to the second & third respondents companies to secure the release of a mortgage they gave to those companies on the basis, they contend, of reliance upon representations as to future matters made by the first respondent, the director of second respondent & agent of third respondent - respondents seeking leave to amend defence - applicants seeking leave to issue subpoena - Explanatory Memorandum for *Corporate Law Economic Reform Program (Audit Reform & Corporate Disclosure) Bill 2003* - the Supplementary Explanatory Memorandum in relation to that Bill.

Supercar International Holdings Ltd v Sommers; Tinkler Group Holdings Pty Ltd v Sommers (No 2) [2011] NSWSC 496

Supreme Court of New South Wales

White J

Costs - final orders - for decision 27 April 2011, see 'Benchmark' B & IBC Friday 29 April 2011 and link below.

[Supercar International Holdings](#) (B)

[Supercar International Holdings](#) - decision 27 April 2011 - *Fair Trading Act 1987 (NSW)* - s729 *Corporations Act 2001 (Cth)* - share purchase agreement - service contracts - two proceedings heard together - alleged misappropriation - use of motor vehicles - subscription deed - alleged warranties - conversion - detinue - oppression - His Honour's conclusions set out at para. 221 of judgment.

TQM Design & Construct Pty Ltd v Golden Plantation Pty Ltd [2011] NSWSC 500

Supreme Court of New South Wales

Barrett J



s459S *Corporations Act* 2001 (Cth) - contested winding up - defendant has failed to displace the presumption of insolvency arising under s459C(2)(a) - order made that defendant company be wound up - liquidator appointed.

[TQM Design & Construct](#) (B)

Magorian v Lodge [2011] WASC 147

Supreme Court of Western Australia

Murray J

Road Traffic Act 1974 (WA) - dangerous driving - pedestrian fatality - causation - respondent had been acquitted by magistrate - prosecution appeal upheld.

[Magorian](#) (I)

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