



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

LED Technologies Pty Ltd v Roadvision Pty Ltd - Torts - intellectual property - two designs registered under *Designs Act 2003* (Cth) - allegation that respondents induced a breach of contract application & cross-claim dismissed (I, B, C)

Channel Seven Sydney Pty Ltd v Mahommed (No 2) - Costs - meaning of "settlement offer" (I)

Amaca Pty Ltd & Ors v McGrath & Anor as liquidators of HIH Underwriting & Insurance (Australia) Pty Ltd - s562A *Corporations Act 2001* (Cth) - reinsurance - insolvent insurer - application of certain monies received by the liquidators (I, B, C)

Asbestos Injuries Compensation Fund Ltd - *James Hardie Former Subsidiaries (Winding Up & Administration) Act 2005* (NSW) (I, B, C)

Lois Nominees Pty Ltd v Hill - Joinder - application by plaintiffs seeking leave to join, as second defendants insurers of existing defendant (I)

Snyder v Phelps et al - United States case - torts - intentional infliction of emotional distress - intrusion upon seclusion - picketing near funeral service - First Amendment (I)

Sweden, The judicial authority of v Assange – United Kingdom case - *Extradition Act 2003* (UK) (I, B)

Summaries with links (5 minute read)

Friday 4 March 2011

LED Technologies Pty Ltd v Roadvision Pty Ltd [2011] FCA 146

Federal Court of Australia

Finkelstein J (in Melbourne)

Torts - intellectual property - two designs registered under *Designs Act 2003* (Cth) in relation to a rear combination lamp for vehicles - applicant contending that respondents infringed its monopoly in the designs by importing & offering for sale tail lamps which embody each design - applicant also alleging that respondents induced a breach of contract - cross-claim by respondents seeking to have design registrations revoked - application & cross-claim dismissed.

[LED Technologies](#) (I, B, C)

[Keller](#) - decision Full Court of the Federal Court 9 June 2010: see 'Benchmark' Friday 11 June 2010 - s65C *Trade Practices Act 1974* (Cth) - torts - infringement of designs - secondary liability of directors as joint tortfeasors - rear combination LED lights - two appeals, two cross-appeals & two notices of contention - quantum of damages under s82 - *Designs Act 2003* (Cth) - *Motor Vehicle Standards Act 1989* (Cth) - costs - comprehensive consideration of text & case law from the United Kingdom, Canada & Australia;

[LED Technologies](#) - decision 24 February 2009

Channel Seven Sydney Pty Ltd v Mahommed (No 2) [2011] NSWCA 6

Court of Appeal of New South Wales

Spigelman CJ; Beazley & McColl JJA; McClellan CJ at CL; Bergin CJ in Eq

Costs - defamation proceedings - meaning of "settlement offer" - whether offer to settle genuine offer to settle proceedings - reasonableness of offer as regards prospects of success - offer of compromise - detailed examination of legislative framework.

[Channel Seven Sydney](#) (I)

[Channel Seven Sydney](#) - decision 7 December 2010: see 'Benchmark' I & IBC Thursday 9 December 2010 - *Defamation Act 1974* (NSW) - defences - substantial truth - mitigation of damages - whether *Rochfort v John Fairfax & Sons Ltd* [1972] 1 NSWLR 16 wrongly decided - appeal allowed in part - comprehensive consideration of text & case law from the United Kingdom & Australia;

[Mahommed](#) - decision 9 July 2009: see 'Benchmark' I & IBC Friday 10 July 2009 - defamation - defences of justification - substantial truth & contextual truth - assessment of damages.



Amaca Pty Ltd & Ors v McGrath & Anor as liquidators of HIH Underwriting & Insurance (Australia) Pty Ltd [2011] NSWSC 90

Supreme Court of New South Wales

Barrett J

s562A *Corporations Act* 2001 (Cth) - reinsurance - insolvent insurer - whether the Court should exercise statutory power to change the manner of application of certain monies received by the liquidators of HIH Underwriting & Insurance & available to be applied in the insolvent winding up of that company - whether the statutory power is exercisable prospectively, so that the Court can change the manner in which monies yet to be received by the liquidators are to be applied if and when received - Court did not have the power to make the order plaintiffs seeking as to payments received in the future - relief granted in relation to sums actually received under reinsurance for the two policy years in question.

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

Asbestos Injuries Compensation Fund Ltd [2011] NSWSC 97

Supreme Court of New South Wales

Gzell J

James Hardie Former Subsidiaries (Winding Up & Administration) Act 2005 (NSW) - first plaintiff is the Trustee under the Asbestos Injuries Compensation Fund Amended & Restated Trust Deed ("*SPF Trustee*") - second plaintiff Amaca Pty Ltd (Under NSW Administered Winding Up) has been sued in the Dust Diseases Tribunal of NSW by two claimants for damages for nervous shock or psychiatric illness developed as the result of the deaths of their respective fathers who had been exposed to and inhaled asbestos dust & fibre - whether liability under Part 4 of the Act is limited to claims for personal injury sustained by persons who has exposure to asbestos or asbestos products - the Trustee justified in refusing to make payment in respect of the claims.

[Asbestos Injuries Compensation Fund](#) (I, B, C)

Lois Nominees Pty Ltd v Hill [2011] WASC 53

Supreme Court of Western Australia

Beech J

Joinder - application by plaintiffs seeking leave to join, as second defendants, the insurers of the existing defendant - defendant a solicitor - whether plaintiffs have arguable claim for declaration against defendant's insurer that insurer obliged to indemnify insured defendant against plaintiffs' claim - defendant & his trustees in bankruptcy have not joined the insurers as third parties -



plaintiffs' application based solely on Rules of the Supreme Court 1971 (WA) Order 18 rule 4 - whether O18 r4 empowers the Court to join additional defendants after the commencement of the action - plaintiffs' application dismissed - detailed examination of the United Kingdom & Australian case law.

[Lois Nominees \(I\)](#)

From the United States of America...

Snyder v Phelps et al, No. 09-751

United States Court of Appeals for the Fourth Circuit

Roberts CJ, delivered the opinion of the Court in which Scalia, Kennedy, Thomas, Ginsburg, Breyer, Sotomayer, Kagan JJ joined; Breyer J filed a concurring opinion; Alito J filed a dissenting opinion

Torts - intentional infliction of emotional distress - intrusion upon seclusion - a jury had held members of Westboro Baptist Church liable in damages for picketing near a soldier's funeral service whether First Amendment shielded church members from tort liability in this case - answer 'yes.'

[Snyder \(I\)](#)

From the United Kingdom...

Sweden, The judicial authority of v Assange [2011] EW Misc 5 (MC)

City of Westminster Magistrates' Court

Howard Riddle Senior District Judge (Chief Magistrate)

Extradition Act 2003 (UK) - authority to issue European Arrest Warrant - allegation of abuse of process - *Human Rights Act* 1998 (UK) - order made that Mr. Assange be extradited to Sweden.

[The Judicial Authority of Sweden \(I, B\)](#)

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