



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Aon Risk Services Australia Limited v Australian National University - High Court of Australia - *Court Procedure Rules 2006 (ACT)* – discretion of a court to allow a party to amend its pleadings - Canberra bushfire - *Queensland v JL Holdings Pty Ltd* considered - appeal allowed – order that respondent’s application for leave to amend further amended statement of claim be dismissed [plus links to two earlier decisions in same case] (I,B,C)

ACQ Pty Limited v Cook; Aircair Moree Pty Limited v Cook - High Court of Australia – personal injuries – claim under *Damage by Aircraft Act 1999 (Cth) s.10* – whether injury "caused by something that is a result of an impact" with an aircraft in flight [plus links to two earlier decisions plus legislation] (I)

El-Helou v Smith - Motor accident – defendant seeking access to documents held by Centrelink concerning plaintiff – s207 *Social Security (Administration) Act 1999* (I)

Hunter & New England Area Health Service v A - Advance care directives - right of a capable adult to refuse medical treatment - Health Service had commenced proceedings seeking declarations to effect that document was a valid "Advance Care Directive" given by patient (I,B,C)

Meshlawn Pty Ltd & Anor v The State of Queensland & Anor - Negligence – misfeasance in public office - nightclubs at Surfers Paradise - plaintiffs alleging loss suffered as a result of not being able to trade between certain hours – judgment for defendants (I)

Ergon Energy Corporation Limited v Rice-McDonald & Ors - *Workers' Compensation and Rehabilitation Act 2003 (Qld)* - medical evidence - General Medical Assessment Tribunal _Thoracic found employment had been "significant contributing factor" to employee’s lung cancer – application for review dismissed (I)

Summaries with links (5 minute read)

Friday 7 August 2009

Aon Risk Services Australia Limited v Australian National University [2009] HCA 27

High Court of Australia

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

Court Procedure Rules 2006 (ACT) – discretion of a court to allow a party to amend its pleadings – legal history – Canberra bushfire 18 January 2003 - *Queensland v JL Holdings Pty Ltd* considered - for decision ACT Court of Appeal 25 August 2008, see 'Benchmark' I, C & IBC Tuesday 26 August 2008 & link below: ACT Court of Appeal had dismissed Aon's appeal from primary judge except on the question of costs – for decision of primary judge, see 'Benchmark' I & C Monday 15 October 2007 & link below – at commencement of a four week trial of an action against its insurers & its insurance broker Aon, the respondent University settled with the insurers & consent orders were made – respondent then applied for an adjournment of the trial to make substantial amendments to its statement of claim against respondent Aon – primary judge had granted amendment application - "all necessary amendments", "avoiding multiple proceedings", "just resolution", "real issues in the proceeding" – appeal allowed – order that respondent's application for leave to amend further amended statement of claim be dismissed.

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

[Aon](#) – decision ACT Court of Appeal 25 August 2008 - Canberra bushfire 18 January, 2003 - application for leave to appeal from interlocutory decision of trial judge as to practice & procedure – leave granted to respondent to file second further amended statement of claim – costs – proceedings commenced by respondent for loss or damage suffered when its buildings at Mount Stromlo were damaged or destroyed as a result of the bushfire – separate judgments by each member of the Court - tactical decisions - *State of New South Wales v Mulcahy & State of Queensland v JL Holdings Pty Ltd* considered – by majority Penfold J & Higgins CJ : amendment properly allowed – Penfold J. held that appeal should be upheld, but only to extent necessary to replace costs order made by trial judge – Lander J dissenting, held that appeal should be allowed, orders of trial judge set aside & order made dismissing respondent's application to amend its statement of claim; &

[The Australian National University](#) – decision ACT Supreme Court 12 October 2007 - Industrial Special Risks Policy – claim made by plaintiff ANU under insurance policy for loss or damage to building & contents at Mt Stromlo as consequence of bush fire - plaintiff sought leave to amend its statement of claim – leave granted - detailed consideration of principles & case law as to application for amendment – relevant provisions of *Civil Procedure Act* 2005 (NSW) examined - case management - plaintiff had claimed initially against Chubb, CGU & ACE Insurance Ltd - ANU joined Aon, ANU's insurance broker, alleging failure to exercise reasonable care, skill & diligence in arranging renewal of insurance cover.



ACQ Pty Limited v Cook; Aircair Moree Pty Limited v Cook [2009] HCA 28

High Court of Australia

French CJ, Gummow, Heydon, Crennan & Bell JJ

Personal injuries – claim under *Damage by Aircraft Act 1999* (Cth) s10 – for decision appealed from, see ‘Benchmark’ I, C & IBC Friday 18 July 2008 & link below - crop dusting aircraft collided with conductor in cotton field – plaintiff electrical linesman dispatched to repair conductor tripped or fell near it – injury occurring after electric arc – whether injury "caused by ... something that is a result of an impact" with an aircraft in flight - "something", "caused by" – appeal dismissed – application for special leave to cross-appeal dismissed.

[ACQ \(I\)](#)

[ACQ](#) – NSW Court of Appeal decision 16 July 2008 - negligence – duty of care – *Damage by Aircraft Act 1952* (NSW) (“DAA”) – Second Reading Speech - whether duty of care owed by employer – whether duty of care owed by pilot of aircraft – statutory liability of owner & operator of aircraft for personal injury caused by aircraft in flight - construction of expression “caused by” in s10(1)(d) of DAA – whether voluntary assumption of risk available as defence to action for damages under s11 DAA - whether contributory negligence available as complete defence or defence to action for damages under s11 – whether circumstances falling within s10(1) of Act amount to a “wrong” within s 8(a) *Law Reform (Miscellaneous Provisions) Act 1965* – whether s5A, s5R, s5S *Civil Liability Act* (NSW) 2002 applicable to proceedings - whether owner & operator of aircraft can recover contribution from employer of linesman towards their liability to pay damages –s5(1)(c) *Law Reform (Miscellaneous Provisions) Act 1946* – whether provisions as to contributory negligence under State legislation applicable by State court exercising federal jurisdiction – comprehensive consideration of legislation & case law in judgment of Campbell JA;

[Cook](#) – NSW District Court decision 14 May, 2007

Damage by Aircraft Act (Cth) 1999 - ss [3](#) [10](#) [11](#)

El-Helou v Smith [2009] NSWSC 741

Supreme Court of New South Wales

Harrison J

Access to documents - motor accident – plaintiff claiming damages for personal injury – s 56 *Civil Procedure Act 2005* - plaintiff made applications to Centrelink for assistance at various times – defendant seeking access to documents held by Centrelink concerning plaintiff – s 207 *Social Security (Administration) Act 1999* prevents production of documents to defendant directly – whether material relevant – order made that plaintiff provide defendant an executed authority to enable her to obtain any information from Centrelink held or maintained by Centrelink in relation to the plaintiff.

[El-Helou \(I\)](#)

**Hunter & New England Area Health Service v A [2009] NSWSC 761**

Supreme Court of New South Wales

McDougall J

Advance care directives - right of a capable adult to refuse medical treatment, here dialysis – Health Service had commenced proceedings seeking declarations to effect that document was a valid “Advance Care Directive” given by patient, & that it would be justified in complying with his wishes as expressed in that directive - unconscious patient - whether directive was a valid indication of patient's desire - whether patient had capacity to decide to refuse treatment when directive made - competent adult's right of autonomy or self-determination: the right to control his or her own body - the interest of the State in protecting and preserving the lives & health of its citizens – vitiation of consent – declarations made as sought – an interesting decision with case law considered from UK, USA, Canada & Australia.

[Hunter](#) (I,B,C)**Accom Finance v Coghlan [2009] NSWSC 759**

Supreme Court of New South Wales

Slattery J

Legal incapacity - approval of settlement between plaintiff/cross-defendant & first defendant/cross-claimant - first defendant/cross-claimant a person under legal incapacity – plaintiff company in liquidation had advanced monies secured by mortgage of first defendant's commercial real estate at Clovelly - amongst other orders, settlement approved under s 76(1) *Civil Liability Act* 2005 (NSW)

[Accom Finance](#) (B)**Meshlawn Pty Ltd & Anor v The State of Queensland & Anor [2009] QSC 215**

Supreme Court of Queensland

Applegarth J

Negligence – misfeasance in public office - nightclubs at Surfers Paradise - plaintiffs claiming damages against second defendant Chief Executive of the Liquor Licensing Division & her employer (“the State”) for losses plaintiffs alleging they suffered as a result of not being able to trade between three & five am from 1 April 2004 until decision of Commercial & Consumer Tribunal on 13 August 2004 granting extended hours permits to plaintiffs subject to a lockout condition being imposed - whether as Chief Executive administering *Liquor Act* 1992 (Qld) second defendant owed duty of care to plaintiffs - whether the State owed plaintiffs a duty of care to ensure Chief Executive acted in accordance with her obligations under the *Act* – judgment for defendants – detailed consideration of UK & Australian case law.

[Meshlawn](#) (I)



Ergon Energy Corporation Limited v Rice-McDonald & Ors [2009] QSC 213

Supreme Court of Queensland

McMurdo J

Workers' Compensation and Rehabilitation Act 2003 (Qld) - medical evidence - employee had applied for workers' compensation for lung cancer alleged to have been contracted during employment – General Medical Assessment Tribunal_Thoracic found employment had been “significant contributing factor” to employee’s lung cancer – where, in its written decision, Tribunal noted contrary opinions of two oncologists & favoured opinion of one – application for review dismissed.

[Ergon Energy](#) (I)

Key: (I) Insurance, (B) Banking, (C) Construction