



Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

CSR Limited, in the matter of CSR Ltd - *Corporations Act 2001* (Cth) - scheme of arrangement under Pt 5.1 - effect on current & future asbestos-related claims - application dismissed (I, B, C)

Jack Brabham Engines Limited v Beare - Application to set aside a subpoena (I)

Clifford v Vegas Enterprises Pty Ltd (No 2) - Discovery - litigation privilege - legal professional privilege - waiver (I, B, C)

CSR Ltd v Amaca Pty Ltd (No 2) - Costs - indemnity basis (I, C)

Kenan Berk v Westpac Securities Administration Ltd & Anor - *Insurance Contracts Act 1984* (Cth) - term life policy - held that Westpac entitled to avoid the policy under s29(2) (I)

Tim Barr Pty Ltd v Narui Gold Coast Pty Ltd - Leases & tenancy agreements - held that first plaintiff not entitled to specific performance by defendant of any contract for sale & purchase of Cudgen Paddock (B)

Rainbowforce Pty Ltd v Skyton Holdings Pty Ltd & Ors - Easements - imposition of easement by Court (C)

Thiess Pty Ltd v FLSMIDTH Minerals Pty Ltd - *Trade Practices Act 1974* (Cth) - insurance - design & construction of calciners - rectification of Side Deed of settlement (I, B, C)

Reed v Amaca Pty Ltd formerly James Hardie & Co Pty Ltd - Personal injuries - plaintiff's claim for further & better discovery dismissed (I, B, C)

Liddell & Anor v Southern Area Health Service - Personal injuries - application to transfer action from District Court to Supreme Court allowed (I)

Summaries with links (5 minute read)

Monday 8 February 2010

CSR Limited, in the matter of CSR Ltd [2010] FCA 33

Federal Court of Australia

Stone J (in Sydney)

Corporations Act 2001 (Cth) - scheme of arrangement under Pt 5.1 - effect on current & future asbestos-related claims - application dismissed.

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

Jack Brabham Engines Limited v Beare [2010] FCA 35

Federal Court of Australia

Jagot J (in Sydney)

Application to set aside a subpoena - whether subpoena issued for a legitimate forensic purpose - Australian case law considered.

[Jack Brabham Engines](#) (I)

Clifford v Vegas Enterprises Pty Ltd (No 2) [2010] FCA 36

Federal Court of Australia

Barker J (in Perth)

Discovery - litigation privilege - legal professional privilege - waiver - whether the Court should make an order that upon second & third respondents' lawyers undertaking to pay costs of same, the Registrar request Family Court of Western Australia to produce & send transcript of evidence in Family Court proceedings - copies of affidavits in Family Court proceedings - detailed consideration of case law including [Australian Competition and Consumer Commission v Cadbury Schweppes Pty Ltd \(2009\)](#) 174 FCR 547; 254 ALR 198; [2009] FCAFC 32.

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

CSR Ltd v Amaca Pty Ltd (No 2) [2009] NSWCA 426

Court of Appeal of New South Wales - 23.12.09

Allsop P; Hodgson & Basten JJA

Costs - appellants seeking order that respondent pay its costs in Dust Diseases Tribunal on an indemnity basis - application successful in part.

[CSR](#) (I, C)

[CSR](#) - decision 19 October 2009 - personal injuries - cross-claims - challenge to finding of duty of care - pleural mesothelioma - crocidolite asbestos - "blue asbestos" - "transitory exposure" - appeal allowed;

[Amaca](#) - decision Dust Diseases Tribunal 25 June 2008 - cross-claims - foreseeability - duty of care - causation *Law Reform (Miscellaneous Provisions) Act 1946*.

Berk v Westpac Securities Administration Ltd & Anor [2010] NSWSC 28

Supreme Court of New South Wales

Nicholas J

Insurance Contracts Act 1984 (Cth) - term life policy - claim for benefit - whether defendants entitled to avoid policy for fraudulent non-disclosure or fraudulent misrepresentation - whether condition of total & permanent disability established - held that Westpac was entitled to avoid the policy under s29(2) of the Act.

[Berk](#) (I)

Tim Barr Pty Ltd v Narui Gold Coast Pty Ltd [2010] NSWSC 29

Supreme Court of New South Wales

Barrett J

Leases & tenancy agreements - land known as Cudgen Paddock at Kingscliff - option to purchase included in lease - option exercisable within five year term of lease - whether option survived earlier termination of lease - mistake - equitable remedies - rectification - "existing use" rights - estoppel by convention - election - principles discussed - relief against forfeiture - principles discussed - whether court should grant relief against forfeiture to lessee - fraudulent and innocent misrepresentation - causation & reliance - specific performance - unclean hands - whether fiduciary duties existed - constructive trust - first plaintiff not entitled to specific performance by defendant of any contract for sale & purchase of Cudgen Paddock - comprehensive review of text & case law from the United Kingdom, the United States of America, New Zealand & Australia.

[Tim Barr](#) (B)

Rainbowforce Pty Ltd v Skyton Holdings Pty Ltd & Ors [2010] NSWLEC 2

Land & Environment Court of New South Wales

Preston CJ

Easements - imposition of easement by Court - high density residential development at North Rocks - right of carriageway - whether easement reasonably necessary for effective use or development of dominant tenement - quantum of compensation - valuation approach - disturbance - injurious affection - costs - detailed consideration of Australian case law.

[Rainbowforce](#) (C)

Thiess Pty Ltd v FLSMIDTH Minerals Pty Ltd [2010] QSC 006

Supreme Court of Queensland

McMurdo J

Trade Practices Act 1974 (Cth) - insurance - design & construction of calciners - dispute concerning extent to which Thiess's rights to recover damages as claimed in proceedings was preserved - professional indemnity insurance - Main Deed of settlement was reached between plaintiff, defendant, QAL & other owners of plant operated by QAL at Gladstone, & a Side Deed of settlement was reached between plaintiff & defendant - plaintiff claiming rectification of Side Deed on the basis of common or alternatively unilateral mistake - whether the Side Deed should be rectified - order that Side Deed be rectified.

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

Reed v Amaca Pty Ltd formerly James Hardie & Co Pty Ltd [2010] WASC 14

Supreme Court of Western Australia

Le Miere J

Personal injuries - discovery of documents - basis of plaintiff's claim: mesothelioma contracted while working as self-employed bricklayer on building sites in Perth - the Reid Family Papers - whether documents within power of Amaca - plaintiff's claim for further & better discovery dismissed.

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



Liddell & Anor v Southern Area Health Service [2010] SASC 11

Supreme Court of South Australia

Bleby J

Personal injuries - application to transfer action from District Court to Supreme Court - whether prejudice to defendant - transfer allowed.

[Liddell & Anor \(I\)](#)