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

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Executive Summary (1 minute read)

Huatong (Asia) Pte Ltd v Lonpac Insurance Bhd (SGHC) - insurance contract - Work Injury Compensation Insurance Policy - insurer entitled to recover sum it paid to estate of deceased employee (I B C)

Australian Securities and Investments Commission v Sino Australia Oil and Gas Ltd (prov liq apptd) (FCA) - bankruptcy and insolvency - administrators' appointment valid - former administrators entitled to remuneration (B C)

Cheikho v Nationwide News Pty Ltd (No 4) (NSWSC) - defamation - determination of remaining issues by Court not jury - defence of qualified privilege failed - damages awarded in sum of \$100 000 (I)

Clarke v State of New South Wales (No 5) (NSWSC) - pleadings - plaintiff either did not understand or failed to comply with obligations in relation to pleadings - leave to file further amended statement of claim refused (I)

Mandie v Memart Nominees Pty Ltd (VSCA) - pleadings - trusts and trustees - leave to amend statement of claim in respect of 'specified beneficiary allegations' (B)

Jeffrey v Giles (No 2) (VSC) - costs - costs orders not set aside - no basis for relief pursuant to s29 *Civil Procedure Act 2010* (Vic) - plaintiffs awarded costs on indemnity basis (I B)

R Developments Pty Ltd v Forth (ACTSC) - building contract - builder not entitled to insist that

owners provide evidence of capacity to pay amount required under contract (I B C)

Summaries With Link (Five Minute Read)

Huatiang (Asia) Pte Ltd v Lonpac Insurance Bhd [2015] SGHC 326

High Court of Singapore

George Wei J

Insurance contract - appeal against decision in which District Judge allowed insurer's appeal against employer for sum paid pursuant to Work Injury Compensation Insurance Policy - construction of 'Motorcycling Exception' in 'Travelling Extension' - construction of 'Avoidance and Recovery' clause - whether insurer entitled to recover what it had paid to estate of deceased employee - public interest - statutory allocation of risk - Red hand rule - *Work Injury Compensation Act* - held: Court affirmed decision of District Judge that insurer was entitled to recover sum it paid - appeal dismissed.

[Huatiang](#) (I B C)

Australian Securities and Investments Commission v Sino Australia Oil and Gas Ltd (prov liq apptd) [2016] FCA 42

Federal Court of Australia

Davies J

Bankruptcy and insolvency - ASIC sought declaration that appointment of former administrators as administrators of first respondent was invalid - former administrators sought orders for remuneration - ss435A, 436A, 447A & 449E *Corporations Act 2001* (Cth) - whether improper purpose - held: Board gave genuine consideration to question of insolvency - administrators' appointment valid - former administrators entitled to remuneration to be determined pursuant to s449E.

[ASIC](#) (B C)

Cheikho v Nationwide News Pty Ltd (No 4) [2016] NSWSC 29

Supreme Court of New South Wales

McCallum J

Defamation - action arising from publication of articles in newspaper concerning protest in park in response to film 'Innocence of Muslims' - jury found plaintiff succeeded in relation to one article - remaining issues for determination by Court, not jury - whether article published on an occasion of qualified privilege - determination of amount of damages to be awarded - 22(3) *Defamation Act 2005* (NSW) - held: plaintiff defence of qualified privilege at common law failed - plaintiff awarded damages of \$100,000.

[Cheikho](#) (I)

Clarke v State of New South Wales (No 5) [2016] NSWSC 28

Supreme Court of New South Wales

Schmidt J

Pleadings - plaintiff sued state for wrongful arrest, false imprisonment and malicious prosecution - plaintiff also brought proceedings against magistrate for conspiracy - plaintiff sought to file further amended statement of claim pursuant to leave granted by Garling J - State contended proposed pleading did not address deficiencies identified by Garling J and Harrison AsJ - whether plaintiff satisfied onus for grant of leave - held: State had no case to meet in proceedings - plaintiff unable to understand and comply with requirements in relation to pleadings or refused to accept what obligations involved - application refused.

[Clarke](#) (I)

Mandie v Memart Nominees Pty Ltd [2016] VSCA 4

Court of Appeal of Victoria

Kyrou, Ferguson & McLeish JJA

Pleadings - trusts and trustees - applicants sought to appeal from refusal of leave to amend statement of claim - applicants also sought to challenge costs order - amendments sought to impugn respondent's declarations regarding beneficiaries' rights under trust - s63(1) *Civil Procedure Act 2010* (Vic) - prospects of success - whether application of wrong test - held: no error in application of test in refusal of leave to amend statement of claim - leave to appeal and appeal allowed in respect of 'specified beneficiary allegations' -leave to appeal refused in respect of 'conflict of interest' allegations.

[Mandie](#) (B)

Jeffrey v Giles (No 2) [2016] VSC 2

Supreme Court of Victoria

McDonald J

Costs - Court gave judgment for plaintiffs - defendant sought to set aside costs orders on basis of breaches of *Civil Procedure Act 2010* (Vic) and sought findings on matters the subject of findings, or which could have been subject of findings by judge who made original costs order - ss18, 21, 22, 23, 24, 29 *Civil Procedure Act* - s 40(2) *Defamation Act 2005* (Vic) - s60(1) *Supreme Court Act 1986* (Vic) - rr26.08(2)(b) & 46.04(1). *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - held: defendant did not establish allegations against plaintiffs and legal representatives - no basis to grant relief pursuant to s29 application - plaintiffs awarded costs on indemnity basis pursuant to s40(2)(a) *Defamation Act 2005* (Vic).

[Jeffrey](#) (I B)

R Developments Pty Ltd v Forth [2016] ACTSC 8

Supreme Court of the Australian Capital Territory

Mossop AsJ

Building contract - action arising out of written contract for construction of residence - plaintiff was builder and defendants were owners - builder terminated for alleged failure to comply with contractual requirement to supply evidence of owners' capacity to pay required amount - whether builder's termination valid - held: builder not entitled to insist that Owners provide evidence of capacity to pay amount or to rely on alternative provision to support validity of



termination of the contract - owners entitled only to nominal damages in relation to claim for damages for repudiation.

[R Developments](#) (I B C)

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