



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Watson v Deputy Commissioner of Taxation - *Income Tax Assessment Act 1997* (Cth) - deferral of losses from non-commercial business activities - income protection insurance policy - appeal dismissed (I, B)

Canberra Residential Developments Pty Ltd v Brendas - Costs - apportionment of costs (I, B, C)

Peterson v Merck Sharpe & Dohme (Aust) Pty Ltd - Torts - negligence - product liability - representative proceeding - Vioxx (I, B)

P Dawson Nominees Pty Ltd v Brookfield Multiplex Ltd (No 2) - Shareholder class action - discovery - Wembley Stadium (I, B, C)

John Nelson Developments Pty Ltd. v Focus National Developments Pty Ltd. - Joint venture agreement - failed property development in Port Macquarie - whether two separate expert determinations made during course of dispute resolution process binding (I, B, C)

Rickard v State of NSW - Negligence - duty of care - special relationships & duties - police officers (I)

AMP Capital Investors Ltd & Ors v Parsons Brinckerhoff Australia Pty Ltd & Ors - *Corporations Act 2001* (Cth) - reinstatement - whether identifying the existence of an insurance policy is a proper & practical purpose of reinstating de-registered company (I)

Compass Resources Ltd v Sherman - Loan facility agreement- test for necessary intention to create a trust (B)

Maria Vittoria Fazari as executrix of the estate of Domenico Antonio Consentino (dec'd) v Cosentino - Wills - whether transfer of property by survivor calculated to defeat intention of mutual wills agreement (B)

Summaries with links (5 minute read)

Tuesday 9 March 2010

Watson v Deputy Commissioner of Taxation [2010] FCAFC 17

Full Court of the Federal Court of Australia

Dowsett, Stone & Bennett JJ - Brisbane (via video link to Adelaide) (heard in Adelaide)

Income Tax Assessment Act 1997 (Cth) - deferral of losses from non-commercial business activities - appellant runs business as financial planner - appellant became partially disabled and ran business at a loss - whether benefit paid under income protection insurance policy for partial disability was assessable income from business activity - benefit under insurance policy not "from" business - appeal dismissed.

[Watson](#) (I, B)

[Watson](#) - decision 8 August 2008

Canberra Residential Developments Pty Ltd v Brendas [2010] FCA 169

Federal Court of Australia

Stone J - Sydney (heard in part via video link to Canberra)

Costs - apportionment of costs - each party partially successful.

[Canberra Residential Developments](#) (I, B, C)

[Canberra Residential Developments](#) - decision 30 January 2009: see 'Benchmark' B, C & IBC Tuesday 3 February 2009 - joint venture deed - fiduciary duties owed by director of a trustee company developing land on behalf of a syndicate of builders who formed a joint venture to do so - held: no breach of fiduciary duty by director - detailed consideration of United Kingdom & Australian case law.

Peterson v Merck Sharpe & Dohme (Aust) Pty Ltd [2010] FCA 180

Federal Court of Australia

Jessup J (in Melbourne)

Torts - negligence - product liability - representative proceeding - *Trade Practices Act 1974* (Cth) - *Therapeutic Goods Act 1989* (Cth) - Vioxx - prescription medication for relief of arthritic pain

associated with doubling of risk of heart attack - no warning provided to doctors - whether medicine not as fit for purpose for which goods of that kind commonly bought as was reasonable to expect - negligence - duty of care - entitlement to compensation - a lengthy decision with extensive consideration of case law.

[Peterson](#) (I, B)

P Dawson Nominees Pty Ltd v Brookfield Multiplex Ltd (No 2) [2010] FCA 176

Federal Court of Australia

Finkelstein J - Melbourne (heard in Sydney)

Shareholder class action - where discovery sought to enable defendant to ascertain quantum of potential group member claims & to aid settlement discussions - losses suffered on Wembley Stadium construction project.

[P Dawson Nominees](#) (I, B, C)

John Nelson Developments Pty Ltd v Focus National Developments Pty Ltd [2010] NSWSC 150

Supreme Court of New South Wales

Ward J

Joint venture agreement - failed property development in Port Macquarie - whether two separate expert determinations made during course of dispute resolution process binding - restitution - basis on which an expert determination may be impugned - detailed consideration of United Kingdom & Australian case law.

[John Nelson Developments](#) (I, B, C)

Rickard v State of NSW [2010] NSWSC 151

Supreme Court of New South Wales

R. A. Hulme J

Negligence - duty of care - special relationships & duties - police officers - costs - departing from the general rule - appeal from magistrate dismissed - extensive consideration of United Kingdom & Australian case law.

[Rickard](#) (I)

AMP Capital Investors Ltd & Ors v Parsons Brinckerhoff Australia Pty Ltd & Ors [2010] NSWSC 129

Supreme Court of New South Wales

Palmer J

Corporations Act 2001 (Cth) - reinstatement - whether identifying the existence of an insurance policy is a proper & practical purpose of reinstating de-registered company - application granted.

[AMP Capital Investors](#) (I)

Compass Resources Ltd v Sherman [2010] WASC 41

Supreme Court of Western Australia

Beech J

Loan facility agreement- test for necessary intention to create a trust - whether necessary intention established - declaration that no trust was created.

[Compass Resources](#) (B)

Maria Vittoria Fazari as executrix of the estate of Domenico Antonio Consentino (dec'd) v Cosentino [2010] WASC 40

Supreme Court of Western Australia

Le Miere J

Mutual wills agreement - transfer of property by survivor - whether transfer calculated to defeat intention of mutual wills agreement - answer 'no.'

[Fazari](#) (B)