



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Today's Cases

Motor Accident (NSW) – plaintiff's appeal from District Court Judgment in which there was entered a verdict for the defendant – defendant the owner of the motor vehicle driven by the plaintiff – plaintiff alleged the tyres on the vehicle were bald – state of plaintiff's knowledge of balding tyres – held: appeal upheld and new trial ordered. See *Hare v Harmer* (I)

Reckoning of Time (NSW) – recovery proceedings by liquidator – whether application brought "within three years after relevant date". Held: Yes. See *Application of Paul Weston; Employers Mutual Indemnity (Workers Compensation) v Omni Corporation* (I, B, C)

Freedom of Information (Vic) – remitter from High Court of Australia – criminal prosecution and unsuccessful petition for mercy – whether advices relied upon by Attorney General ought to be disclosed – held: decision of Tribunal at first instance in which access to the documents granted reversed – access refused. See *Secretary, Department of Justice v Osland (No.2)* (I, B, C)

Statutory Compensation (Vic) – protest activities – claim for compensation for removal of protestors who had chained themselves to forest machinery – claims dismissed at first instance – claimants' appeals dismissed. See *Breguet v Hammerton* (I, B, C)

Costs (Qld) – plaintiff's application for indemnity costs refused – whether unreasonable for defendant to have refused to accept plaintiff's *Calderbank* offer. Held: costs ordered on ordinary basis. See *AGL Sales (Qld) v Dawson Sales & Ors (No.2)* (I, C)

Trusts (SA) – Deeds of Settlement establishing trusts – interpretation – trustee sought directions as to whom it should distribute settled funds following the death of a beneficiary of that fund. Held: sisters of deceased beneficiary entitled to life interests – trustee to hold funds on trust. See *Australian Executor Trustees v Currie & Ors* (B)



Coronial Inquest (ACT) – Canberra Bushfires (2003) – claims by members of emergency services to have allegedly unfair comments published by Coroner concerning their conduct quashed. Held: claims dismissed save for one comment that was held to have overstated the evidence to an impermissible degree. See *Lucas-Smith & Ors v Coroner’s Court of the ACT & Ors* (I)

From the United Kingdom

Insurance – principal & agent – binders - dispute arising from underwriting agency agreement – appellant insurance broker specialising in legal expenses insurance – whether insurer entitled to retain all claims handling for “run-off”. Held: appeal dismissed – insurer entitled to manage run-off claims. See *Temple Legal Protection Limited v QBE Insurance (Europe) Limited*. (I, B)



Thursday 9 April 2009

Hare v Harmer [2009] NSWCA 68

Court of Appeal of New South Wales

Macfarlan J; Handley & Sackville AJJA

Personal injuries – motor vehicle accident at Wagga Wagga – appellant the plaintiff in District Court proceedings where verdict had been entered for defendant - appellant driver of vehicle belonging to respondent – appellant had contended crash occurred because rear tyres were bald causing vehicle to slide on wet road surface – respondent filed notice of contention that crash caused by manner in which appellant had driven the vehicle & not caused or contributed to by state of tyres – findings of fact - appellant's knowledge of state of tyres - whether court should make findings of fact on disputed matters or order new trial – appeal allowed.

[Hare](#)

Application of Paul Weston; Employers Mutual Indemnity (Workers Compensation) Ltd v Omni Corporation Pty Ltd [2009] NSWSC 264

Supreme Court of New South Wales

Barrett J

Computation of time – statutory interpretation - winding up - recovery proceedings by liquidator - whether application “made” within period stated in s588FF(3)(a)(1) *Corporations Act* 2001 (Cth) - computation of time - whether 16 January 2009 within period of three years after 16 January 2006 – answer ‘yes’ – an interesting judgment.

[Weston Application](#)

Secretary, Department of Justice v Osland (No 2) [2009] VSCA 69

Court of Appeal of Victoria

Maxwell ACJ; Ashley JA; Bongiorno AJA

Freedom of Information Act 1982 (Vic) - remitter by High Court of Australia - exempt documents – documents subject to legal professional privilege – criminal prosecution - unsuccessful petition for mercy – whether public interest required disclosure of advices relied on by Attorney-General - announcement of decision referred to only one of numerous advices - whether political accountability required disclosure of all advices – public interest – appeal allowed – decision of Tribunal (granting access to the exempt documents) set aside, & in lieu thereof order that decision under review, refusing request for access, be affirmed.

[Secretary, Department of Justice](#)

**Breguet v Hammerton [2009] VSC 135**

Supreme Court of Victoria

Bongiorno J

Protest activities - legislation creating statutory right to compensation for expenses incurred by Secretary of the Government Department which administers *Conservation, Forests & Lands Act 1987* (Vic) - compensation sought for expenses said to have been incurred removing respondents from forest locations in which they had committed offences, including costs of removing them from machinery to which they had chained various parts of their bodies – magistrate had dismissed claims – appeals dismissed.

[Breguet](#)**AGL Sales (Qld) P/L v Dawson Sales P/L & Ors (No 2) [2009] QSC 075**

Supreme Court of Queensland

McMurdo J

Costs – application for indemnity costs - for decision appealed from, see 'Benchmark' Insurance & IBC & link below - no demonstrated basis for departing from ordinary rule.

[AGL Sales](#)

[AGL Sales](#) – decision 9 February 2009 – contract - plaintiff purchased coal seam gas from defendant- defendant relied on force majeure clause to vary contract – Good Engineering & Operating Practice - whether geology constitutes force majeure event - held that first defendant not entitled to curtail supply of gas.

Australian Executor Trustees v Currie & Ors [2009] SASC 81

Supreme Court of South Australia

Gray J

Trusts - application by trustee for declaration & directions concerning construction of Deeds of Settlement establishing Trusts – Deed of Settlement one of six inter-related Deeds - Trustee sought directions as to whom it should distribute settled fund of one of the Deeds of Settlement following death of beneficiary of that fund – case law considered.

[Australian Executor Trustees](#)**The Legal Practitioners Act 1981 (S.A.) re Lindquist [2009] SASC 93**

Supreme Court of South Australia

Gray J

Application pursuant to *Legal Practitioners Act 1981* (SA) for authority to practise as a legal practitioner - practitioner entering into a Personal Insolvency Agreement - application granted subject to conditions.

[The Legal Practitioners Act](#)

**Lucas-Smith & Ors v Coroner's Court of the ACT & Ors [2009] ACTSC 40**

Supreme Court of the Australian Capital Territory

Higgins CJ

Canberra bush fire – coronial inquiry - application on behalf of plaintiffs to have certain adverse comments concerning them quashed - comments were contained in report by Coroner - adverse comments all related to activities of plaintiffs as part of team of persons whose responsibility it was to control or suppress rural fires in Australian Capital Territory - Chief Fire Control Officer for the ACT - Executive Director of the ACT Emergency Services Bureau - acting manager of the Risk Management Unit at the E.S.B. - Operations Manager within the ACT Bushfire & Emergency Services Section of the E.S.B. - plaintiffs' applications, save as relates to comment n.25, dismissed – as to comment n.25, statement that plaintiffs “knew” that fire “would burn into Canberra” overstated evidence to an impermissible degree.

[Lucas-Smith](#)**From the United Kingdom...****Temple Legal Protection Ltd v QBE Insurance (Europe) Ltd [2009] EWCA Civ 453**

Court of Appeal of England & Wales

Rix & Moore-Bick LJ; Bennett J

Binders – principal & agent – authority to manage run-off - dispute arising from Underwriting Agency Agreement – for decision appealed from, see link below - appellant insurance broker specialising in legal expenses insurance – market for insurance of this kind resulting from statutory provisions allowing lawyers to enter into conditional fee arrangements for conduct of litigation – appeal dismissed – an interesting decision.

[Temple Legal Protection](#)

[Temple Legal Protection](#) - decision Beatson J, 23 April 2008, High Court of Justice, Queen's Bench Division – common law principles of agency - appeal pursuant to Arbitration Act 1996 U.K. against arbitrator's Award made in 2007 determining preliminary issue - underwriting agency agreement, "the Binder" entered into between Temple and QBE commenced on 1 January 2006 and, following a deterioration in relations between the parties, was terminated with effect from at the latest 2 December 2006 - arbitration hearing solely concerned with the "run-off", the business of dealing with & resolving claims arising out of business written during currency of the Binder but not notified or resolved until after its termination - arbitrator had held QBE was free to terminate Temple's authority to conduct the run-off by unilateral notice and had, in a letter 4 January 2007, validly brought Temple's authority to an end "within the powers contained in the Binder" – at para. 125 of judgment:

"I have concluded that, while the approach of the Arbitrator was not justified, on the proper construction of the Binder, Temple is not entitled to conduct the run-off. Accordingly, notwithstanding the reasoning, the Arbitrator's decision was correct. The question of law is thus determined in favour of QBE, and this appeal is dismissed."

..... on this day in 1806, Birth Day of 'the Little Giant'

Isambard Kingdom Brunel
(9 April, 1806 – 15 September, 1859)

English engineer, born at Portsmouth - son of French engineer Marc Brunel, who had fled the Revolution – from 1833 to 1846, chief engineer of the Great Western Railway, with the responsibility of devising a route from Bristol to London – Paddington station was designed by Brunel & opened in 1854 – designed & built 'the Great Western' steamship which crossed the Atlantic on her maiden voyage in 1838 - designed & built 'The Great Britain' Atlantic liner in 1843. 'The Great Eastern', at that time the world's biggest ship, was launched in 1858: initially named 'Leviathan', she proved to be a magnificent failure - Robert Howlett took the famous 1857 photograph of Brunel: "Isambard Kingdom Brunel & the Launching Chains of 'the Great Eastern' – Brunel designed the Royal Albert Bridge near Plymouth, opened by Prince Albert on 2 May 1859 – the Clifton Suspension Bridge at Bristol was completed in 1864.

<http://www.npg.org.uk/collections/search/largerimage.php?linkID=mp00608&page=1&role=sit&rNo=1>

[Isambard Kingdom Brunel – the Little Giant](#)

[Brunel 200: Home](#)

Due to the Easter break, the next edition of 'Benchmark' will be published on Tuesday 14 April, 2009

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