



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

### Executive Summary (1 minute read)

**Advanced Arbor Services Pty Ltd v Phung** - Costs - application for interest under *s101 Civil Procedure Act 2005* (NSW) (I)

**Brown & Anor v Coal Mines Australia; Alcorn & Anor v Coal Mines Australia Pty Ltd** - *Mining Act 1922* (NSW) - conditions to be imposed on access arrangement (B, C)

**Cornell v National Australia Bank Ltd [No 3]** - Summary judgment - possession of two properties - appeal dismissed (B)

**Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd [No 9]** - Contracts - construction of contractual terms - mining tenements - Rhodes Ridge (I, B, C)

**Fullowka v Pinkerton's of Canada Ltd** - Canadian case - negligence - action for negligent failure to prevent murders - bomb planted at mine (I)

**Nattrass v Weber** - Canadian case - medical negligence - appeal by three doctors - administration of anticoagulant Heparin - test of causation (I)

### Summaries with links (5 minute read)

#### Wednesday 10 March 2010

**Advanced Arbor Services Pty Ltd v Phung [2010] NSWSC 158**

Supreme Court of New South Wales

Johnson J

Costs - application for interest under *s101 Civil Procedure Act 2005* (NSW) - for decision, see 'Benchmark' I & IBC Friday 4 December 2009 & link below -orders sought by plaintiff made.

[Advanced Arbor Services](#) (I)

[Advanced Arbor Services](#) - decision 2 December 2009 - workers compensation insurance - medical negligence - workplace injury - worker a trainee under Australian Traineeship System - worker referred to dentist for treatment - *novus actus interveniens* - plaintiff employer seeking to recover from defendant payments made under *Workers Compensation Act 1987* (NSW) relating to dental services - worker's compensation insurer of plaintiff suing under its claimed subrogated right in name of employer - whether proceedings may be brought in name of employer - subrogation - restitution/unjust enrichment - contract - misleading or deceptive conduct - verdict for plaintiff - extensive consideration of legislation, text & case law from the United Kingdom & Australia;

[Dean](#) - claim by patient against dentist - admission of liability - see judgment above in *Advanced Arbor Services Pty Ltd v Phung* [2009] NSWSC 1331.

**Brown & Anor v Coal Mines Australia; Alcorn & Anor v Coal Mines Australia Pty Ltd [2010] NSWSC 143**

Supreme Court of New South Wales

Schmidt J

*Mining Act 1922* (NSW) - whether more than one access arrangement may be entered between a licence holder & landholders - conditions to be imposed on access arrangement - compensation.

[Brown](#) (B, C)

**Cornell v National Australia Bank Ltd [No 3] [2010] WASCA 42**

Court of Appeal of Western Australia

Buss & Newnes JJA; Jenkins J

Summary judgment - appellants appealing against order of a Master that they give vacant possession of two properties in Boddington to the respondent - appeal dismissed.

[Cornell](#) (B)

[National Australia Bank](#) - decision of the Master 9 September 2009

**Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd [No 9] [2010] WASC 44**

Supreme Court of Western Australia

Murray J

Contracts - construction of contractual terms - plaintiff's entitlement to defendant's interest in partnership property comprised of mining tenements - Rhodes Ridge - judgment for plaintiff - counterclaim dismissed - order for specific performance of contract - comprehensive consideration of United Kingdom & Australian case law.

[Wright Prospecting](#) (I, B, C)

## From Canada...

### **Fullowka v Pinkerton's of Canada Ltd 2010 SCC 5**

Supreme Court of Canada

McLachlin CJ; Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein & Cromwell JJ

Negligence - action for negligent failure to prevent murders - striking members of local union committed several criminal acts against mine property & replacement miners - bomb planted - nine miners killed - post-traumatic stress disorder - whether government breached its duty to prevent murders by failing to shut down the mine during circumstances surrounding the strike - appeals dismissed.

[Fullowka \(I\)](#)

### **Nattrass v Weber 2010 ABCA 64**

Court of Appeal of Alberta

McFadyen, Slatter & Sulyma JJ

Medical negligence - appeal by three doctors - administration of anticoagulant Heparin - test of causation - by majority, appeal by two of doctors upheld & action against them dismissed ; appeal by other doctor upheld & new trial directed.

[Nattrass \(I\)](#)