

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

### Executive Summary (1 minute read)

**Prynew Pty Ltd & Anor v Nemeth & Ors** - s1335 *Corporations Act* 2001 (Cth) - security for costs (I, C)

**The Owners of Strata Plan 62658 v Black No Sugar Pty Ltd** - s601AH(2) *Corporations Act* 2001 (Cth) - reinstatement & winding up orders made (I, C)

**McGrath v WorkCover WA** - s116(3) *Insurance Act* 1973 (Cth) - winding up of insurance company (I, B)

**McGrath & Anor re HIH Insurance Ltd & Ors** - *Corporations Act* 2001 (Cth) - winding up - for judgment from 2005 & 2007 - various applications by liquidators - litigation funding (I, B, C)

**Onefone Australia Pty Ltd v One.Tel Ltd** - *Corporations Act* 2001 (Cth) - application by special purpose liquidator of One.Tel Ltd concerning remuneration (B)

**Application of NSFT Pty Ltd** - *Trusts Act* 1973 (Qld) - order amending trust deed (B)

**CC No 1 v Reed** - s13 *Building & Construction Industry Security of Payment Act* 1999 (NSW) - progress claims (C)

**Hutchinson & Anor v Equitour Pty Ltd & Ors** - *Limitation of Actions Act* 1974 (Qld) - - whether summary judgment should have been given in favour of defendants on basis claim statute barred - - appeal dismissed (I)

**Nestorovic v Milenkovic t/a Zoro Express** - *Limitation of Actions* - personal injuries - leave to commence proceeding granted (I)

**Etemovic v Boulderstone Hornibrook Qld Pty Ltd** - *Personal Injuries Proceeding Act 2002 (Qld)* - joinder - limitation of actions (I)

**R v McClelland** - Criminal law - application to reject expert opinion evidence - opinion as to whether death related to motor accident (I)

## Summaries with links (5 minute read)

### Monday 10 May 2010

#### **Prynew Pty Ltd & Anor v Nemeth & Ors [2010] NSWCA 94**

Court of Appeal of New South Wales

Beazley JA

s1335 *Corporations Act* 2001 (Cth) - security for costs - proceedings had involved claim in relation to damage to property - excavation work carried out on adjoining property - order for security in sum of \$50,000 - detailed consideration of Australian case law.

[Prynew](#) (I, C)

#### **The Owners of Strata Plan 62658 v Black No Sugar Pty Ltd [2010] NSWSC 408**

Supreme Court of New South Wales

Barrett J

s601AH(2) *Corporations Act* 2001 (Cth) - deregistered company - insurance - application for order directing reinstatement of registration of two companies - application by owners corporation - Renzo Piano building in Macquarie Street, Sydney - owners corporation plaintiff in District Court proceedings arising out of flooding in basement said to have been caused by malfunctioning & faulty design of hydraulic system - whether insurance responsive so as to remove need for reinstatement - whether limitation defences would defeat plaintiff - reinstatement & winding up orders made as sought.

[The Owners of Strata Plan 62658](#) (I, C)

**McGrath v WorkCover WA [2010] NSWSC 384**

Supreme Court of New South Wales

Barrett J

s116(3) *Insurance Act 1973* (Cth) - winding up - winding up by the Court - winding up of insurance company - plaintiffs "scheme administrators" of scheme of arrangement which, by virtue of an order made under s411(4) *Corporations Act 2001* (Cth) in 2006, became binding on creditors, liquidators & contributories of HIH Casualty & General Insurance Ltd ("C & G") - WorkCover WA assumed obligations of C&G to meet claims in respect of workers' compensation upon insolvency of C&G, WorkCover WA creditor of C & G in sum of \$47,261,394.25 - whether certain money received by C & G pursuant to litigation funding agreement under which it provided financial accommodation are meaning of the scheme's definition of "asset in Australia" - amount received by C&G as "Funders' Premium", is part of C&G's "assets in Australia" for the purposes of s116(3) & accordingly an "asset in Australia" as defined by the scheme arrangement - scheme administrators' claim for declaration to the contrary effect dismissed.

[McGrath](#) (I, B)

**McGrath & Anor re HIH Insurance Ltd & Ors [2010] NSWSC 404**

Supreme Court of New South Wales

Barrett J

*Corporations Act 2001* (Cth) - winding up - winding up by the Court - reasons for judgment from 2005 & 2007 - various applications by liquidators - powers of liquidators to provide litigation funding - where litigation funding arrangements involve granting of mortgage.

[McGrath & Anor re HIH Insurance & Ors](#) (I, B, C)

**Onefone Australia Pty Ltd v One.Tel Ltd [2010] NSWSC 401**

Supreme Court of New South Wales

Barrett J

*Corporations Act 2001* (Cth) - application by special purpose liquidator of One.Tel Ltd concerning his remuneration - ASIC to be given an opportunity to consider issues arising from application & to decide whether it wishes to exercise its s1330(1) power to intervene or, perhaps, to claim the status of "any other interested person" under Rule 2.13(1)(c) *Supreme Court (Corporations) Rules 1999* & on that basis to seek leave to be heard without becoming a party.

[Onefone Australia](#) (B)

**Application of NSFT Pty Ltd [2010] NSWSC 380**

Supreme Court of New South Wales

Biscoe AJ

*Trusts Act 1973 (Qld)* - order amending trust deed to empower trustee of family discretionary trust to separately identify & classify trust property & income & to vary trust deed to better manage & administer trust property.

[Application of NSFT](#) (B)

**CC No 1 v Reed [2010] NSWSC 294**

Supreme Court of New South Wales

Macready AsJ

*Building & Construction Industry Security of Payment Act 1999 (NSW)* progress claims - Chatswood Chase retail redevelopment - s13 & in particular subsections (5) & (6) - detailed analysis of Australian case law.

[CC No 1](#) (C)

**Hutchinson & Anor v Equitour Pty Ltd & Ors [2010] QCA 104**

Court of Appeal of Queensland

Muir & Chesterman JJA; Lyons J

*Limitation of Actions Act 1974 (Qld)* - appellants entered contract to purchase a unit from first respondent in a development then being carried out described as Radisson Palm Meadows Resort & Conference Hotel - whether summary judgment should have been given in favour of defendants on basis claim statute barred - appellants bore onus of proving a critical issue - appeal dismissed.

[Hutchinson & Anor](#) (I)

**Nestorovic v Milenkovic t/a Zoro Express [2010] QSC 143**

Supreme Court of Queensland

Wilson J

*Personal Injuries Proceedings Act 2002 (Qld)* - applicant sustained injury in fall from truck - three-year limitation period prescribed in s11 *Limitation of Actions Act 1974 (Qld)* about to expire - leave to commence proceeding granted.

[Nestorovic](#) (I)

**Etemovic v Baulderstone Hornibrook Old Pty Ltd [2010] QSC 141**

Supreme Court of Queensland

Mullins J

*Personal Injuries Proceeding Act 2002 (Qld)* - joinder - plaintiff a contractor who suffered injury on Gold Coast building site - plaintiff's application to join third party as second defendant - application brought after limitation period for commencing a proceeding against third party had expired - whether plaintiff's non-compliance with pre-court procedures under the Act precludes joining third party.

[Etemovic \(I\)](#)

**R v McClelland [2010] ACTSC 40**

Supreme Court of the Australian Capital Territory

Refshauge J

Criminal law - application to reject expert opinion evidence - motor vehicle collision between car driven by accused & motorcycle - motorcyclist died nine months after collision - accused charged under *Road Transport (Safety Traffic Management) Act 1999 (ACT)* with negligent driving - aspiration pneumonia - opinion as to whether death related to accident - "the basis rule", namely, requirement for disclosure & evidence of factual basis of an admissible opinion - s79 *Evidence Act 1995 (Cth)* - doctor's evidence not rejected.

[R \(I\)](#)