



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Bat Advocacy NSW Inc v Minister for Environment Protection, Heritage and the Arts (No 2) - Costs (I, B, C)

Australian Competition & Consumer Commission v Singtel Optus Pty Ltd (No 4) - s76E(2) Trade Practices Act 1974 (Cth) - pecuniary penalty (I, B, C)

Lewis v Lamru Pty Ltd; In the Matter of Lewis - Bankruptcy Act 1966 (Cth) (B)

Yarrabee Chicken Company Pty Ltd v Steggle Ltd (No 2) - Contracts (B)

BHP Billiton v Harwood - Jurisdiction of Courts (Cross-Vesting) Act 1987 (NSW) - proceedings commenced in Dust Diseases Tribunal of NSW transferred to Supreme Court of South Australia (I)

Symbion Medical Centre Operations Pty Ltd v Alexander - Costs (I)

Hughes by her Tutor NSW Trustee & Guardian v Hughes - Power of attorney - fiduciary duty under the power (I, B)



Earthwave Corporation Pty Ltd v Starcom Group Pty Ltd - *Corporations Act 2001 (Cth)* - application to be substituted as plaintiff (B)

Ridgepoint Corporation Pty Ltd v McCallum Donovan Sweeney (a firm) - Application by second defendant for summary judgment (I)

Dalton (resp) v Nottinghamshire County Council (app) – United Kingdom decision - personal injuries - *Highways Act 1980 (UK)* - duty of council to maintain highway - pedestrian injured - appeal dismissed (I)

Yong Sheng Goldsmith Pte Ltd v Liberty Insurance Pte Ltd - Singapore decision - jewellers' block insurance policy - application for summary judgment by plaintiff (I)

Summaries with links (5 minute read)

Monday 11 July 2011

Bat Advocacy NSW Inc v Minister for Environment Protection, Heritage and the Arts (No 2)
[2011] FCAFC 84

Full Court of the Federal Court of Australia

Emmett, McKerracher & Foster JJ (in Sydney)

Costs - in relation to appeal, appellant to pay respondents' costs - no basis for special costs order established - question of costs of first instance hearing should be determined by primary judge.

[Bat Advocacy NSW](#) (I, B, C)

[Bat Advocacy NSW](#) - decision 6 May 2011: see 'Benchmark Wednesday 11 May 2011 - *Environment Protection & Biodiversity Conservation Act 1999 (Cth)* - for Federal Court decision 17 February 2011, see 'Benchmark' Monday 21 February 2011 & link below - appeal as to validity of decision made by first respondent to give approval for second respondent, Royal Botanic Gardens & Domain Trust to take action for relocation of a colony of grey-headed flying foxes from the Royal Botanic Gardens in Sydney - appellant contending the decision was an improper exercise of power - its principal assertion that the Minister failed to take into account a relevant consideration, namely, the impact that the removal of the colony from the Gardens would have on the grey-headed flying foxes (*Pteropus poliocephalus*) as a species - appeal dismissed.



Australian Competition & Consumer Commission v Singtel Optus Pty Ltd (No 4) [2011] FCA 761

Federal Court of Australia

Perram J (in Sydney)

s76E(2) *Trade Practices Act* 1974 (Cth) - multimedia advertising campaign had been launched by respondent in 2010 concerned with sale of various broadband internet plans - 'Think Bigger' plans - nature & extent of the act or omission and of any loss or damage suffered as a result of the act or omission: s76E(2)(a) - confidentiality orders: s50 - respondent to pay Commonwealth a pecuniary penalty of \$5.26 million.

[ACCC](#) (I, B, C)

[ACCC](#) - decision 11 February 2011: see 'Benchmark' Wednesday 16 February 2010 - s52 *Trade Practices Act* 1974 (Cth) - misleading & deceptive conduct - advertising - "unlimited" broadband - whether the public interest required an early application for interlocutory relief - declaration made;

[ACCC](#) - decision 19 November 2010: see 'Benchmark' Tuesday 23 November 2010 - *Trade Practices Act* 1974 (Cth) - misleading & deceptive conduct - corrective advertising - in store advertisements - internet - letters.

[ACCC](#) - decision 2 November 2010: see 'Benchmark' Monday 8 November 2010 - *Trade Practices Act* 1974 (Cth) - advertising - broadband internet plans - injunction for three years;

[ACCC](#) - decision 29 October 2010: see 'Benchmark' Friday 5 November 2010 - advertising - *Trade Practices Act* 1974 (Cth) - misleading or deceptive conduct - on-line, billboard, print, television - broadband "Think Bigger Plans" - plans in question did not have the quantity suggested for them.

Lewis v Lamru Pty Ltd; In the Matter of Lewis [2011] FCA 758

Federal Court of Australia

Foster J (in Sydney)

Bankruptcy Act 1966 (Cth) - appeal from decision of Registrar refusing to set aside bankruptcy notice - application dismissed.

[Lewis](#) (B)

Yarrabee Chicken Company Pty Ltd v Steggle Ltd (No 2) [2011] FCA 750

Federal Court of Australia

Jagot J (in Sydney)

Contracts - claim for damages for alleged breach of clause in standard form contract between members of Hunter Valley Tunnel Group & respondent - breach of contract - method of calculating loss.

[Yarrabee Chicken Company](#) (B)

**BHP Billiton v Harwood [2011] NSWSC 680**

Supreme Court of New South Wales

Hoeben J

Jurisdiction of Courts (Cross-Vesting) Act 1987 (NSW) - proceedings commenced in Dust Diseases Tribunal of NSW - application to transfer proceedings to Supreme Court of South Australia granted - detailed examination of case law including *BHP Billiton Ltd v Schultz & Ors* [2004] HCA 61, (2004) 221 CLR 400.

[BHP Billiton](#) (I)

[BHP Billiton](#) - decision High Court of Australia 7 December 2004 - constitutional law - *lex loci delicti* - appeal allowed - proceedings commenced in Dust Diseases Tribunal of NSW transferred to Supreme Court of South Australia

Symbion Medical Centre Operations Pty Ltd v Alexander [2011] NSWSC 701

Supreme Court of New South Wales

Gzell J

Costs - defendant's "walk away" offer - plaintiff to pay costs on ordinary basis until Calderbank offer & thereafter on an indemnity basis.

[Symbion Medical Centre Operations](#) (I)

Hughes by her Tutor NSW Trustee & Guardian v Hughes [2011] NSWSC 702

Supreme Court of New South Wales

Gzell J

Power of attorney - attorney in breach of fiduciary duty under the power - declaration that defendant holds \$293,510.14 on trust for plaintiff - order that defendant pay plaintiff \$293,510.14 - United Kingdom & Australian case law considered.

[Hughes](#) (I, B)

Earthwave Corporation Pty Ltd v Starcom Group Pty Ltd [2011] NSWSC 694

Supreme Court of New South Wales

White J

Corporations Act 2001 (Cth) - application to be substituted as plaintiff in application that defendant be wound in insolvency under s465B.

[Earthwave Corporation](#) (B)



Ridgepoint Corporation Pty Ltd v McCallum Donovan Sweeney (a firm) [2011] WASC 167

Supreme Court of Western Australia

Martin J

Application by second defendant for summary judgment - as against second defendant, plaintiff alleging breaches of common law duty of care & an alternative argument under s10 *Fair Trading Act* 1987 (WA) - lodgement of caveats against certain leasehold areas at the Perth Airport - application for summary judgment dismissed - consideration of New Zealand & Australian case law including *Owston Nominees No 2 Pty Ltd v Clambake Pty Ltd* [2011] WASC 76; (2011) 248 FLR 193.

[Ridgepoint Corporation \(I\)](#)

From the United Kingdom...

Dalton (resp) v Nottinghamshire County Council (app) [2011] EWCA Civ 776

Court of Appeal of England & Wales

May LJ, President of the Queen's Bench Division; Jackson LJ; Tomlinson LJ

Personal injuries - *Highways Act* 1980 (UK) - duty of council to maintain highway - pedestrian injured on loose pavement - breach of duty - Council could not rely on statutory defence afforded by s58 - appeal dismissed.

[Dalton\[2011\] EWCA Civ 776 \(I\)](#)

s58 *Highways Act* 1980 (UK) headed 'Special defence in action against a highway authority for damages for non-repair of highway' - at s58(1): In an action against a highway authority in respect of damage resulting from their failure to maintain a highway maintainable at the public expense it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic.

From Singapore...

Yong Sheng Goldsmith Pte Ltd v Liberty Insurance Pte Ltd [2011] SGHC 156

High Court of Singapore

Fong Mian Yi Seraphina AR

Jewellers' block insurance policy - application for summary judgment by plaintiff - pursuant to insurance policy, defendant was liable to indemnify plaintiff for loss suffered as a result of a hold-



up or armed robbery up to policy limit of S\$3 million - defendant had refused to indemnify plaintiff after armed robbery took place & claimed the insurance contract was void *ab initio* due to material non-disclosure on part of plaintiff - application for summary judgment refused.

[Yong Sheng Goldsmith \(I\)](#)

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