

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Jarra Creek Packing Shed Pty Ltd v Amcor Ltd (No 2) - Application for further discovery of documents (B)

Andrew Goodman v Impact Hire Australia Pty Ltd & Ors - Personal injuries – liability & assessment of damages - plaintiff suing first defendant former employer & second defendant manufacturer of a road signage trailer (I)

Kiem Dang Investment Pty Ltd v Jewel Food Stores Pty Ltd & Ors - Fire damage – building repair work – insurance - mitigation of loss - plaintiff claiming loss arising from breach of covenants in lease (I,C)

Blue Mountains Conservation Society Inc v Delta Electricity - Costs - r 42.4 *Uniform Civil Procedure Rules 2005* - application by plaintiff for protective costs order limiting costs recoverable by either party - *Protection of the Environment Operations Act 1997* (NSW) (I,B,C)

MC Projects Pty Ltd v Nigel Farah Trading as The Tiling Crew v Graydon Kline & Kilne Industries International Pty Ltd - *Building & Construction Industry Payments Act 2004* (Qld) - application to set aside enforcement warrant granted (C)

Leader Computers Pty Ltd v Hakim & Wilson - Guarantee & indemnity - legal burden of proof - evidential or provisional burden (I,B)

Summaries with links (5 minute read)

Friday 11 September 2009

Jarra Creek Packing Shed Pty Ltd v Amcor Ltd (No 2) [2009] FCA 1005

Federal Court of Australia

Jacobson J (in Sydney)

Application for further discovery of documents – applicants seeking eight categories, six of which sought upon basis that they are necessary for their expert witness to complete his report – construction of economic model to arrive at true price of corrugated fibreboard packaging & pulp paper products but for cartel - discovery of data for a wider period than with previous order - further discovery not warranted in relation to other two categories of documents, comprising documents filed or served in proceedings in the Victorian Registry of the Court, Cadbury Pty Ltd v Amcor & Ors, in relation to issues of liability & damages.

[Jara Creek Packing Shed Pty Ltd](#)

Andrew Goodman v Impact Hire Australia Pty Ltd & Ors [2009] NSWSC 868

Supreme Court of New South Wales

Patten AJ

Personal injuries – liability & assessment of damages - plaintiff suing first defendant former employer & second defendant, the manufacturer of a road signage trailer - working on or adjacent to Warringah Expressway in Sydney – action against employer governed by the *Workers Compensation Act 1987* (NSW) & against second defendant by *Civil Liability Act 2002* (NSW) – breach of duty by employer - the task which plaintiff was directed to undertake inherently extremely hazardous : to manoeuvre & set in place a sign attached to a trailer weighing at least 1,500 kilograms, the sign to be established on a narrow island between an on ramp & very busy expressway - obvious danger trailer might roll into the traffic lanes of expressway or the on ramp – direct correlation between breach & injury – expert evidence – characteristics of handbrake – second defendant's failure to warn – no contributory negligence – if plaintiff had failed to apply handbrake correctly, that was because of its defective manufacture or design – damages assessed against employer at damages are assessed against first defendant employer in sum of \$800,667 - damages against second defendant in sum of \$1,384,176 – adjustments to be made to reflect provisions of s151 Z *Workers Compensation Act 1987* (NSW).

[Andrew Goodman](#)

Kiem Dang Investment Pty Ltd v Jewel Food Stores Pty Ltd & Ors [2009] NSWSC 870

Supreme Court of New South Wales

Patten AJ



Fire damage – building repair work – insurance - mitigation of loss - plaintiff claiming loss arising from breach of covenants in lease – cross-claims - premises owned by plaintiff at Berkeley – previous owner had leased premises to first defendant for a term of twelve years – first defendant assigned balance of term of lease to second & third defendants, husband & wife by Deed of Assignment to which plaintiff was party – plaintiff’s insurer had accepted plaintiff’s insurance claim & had appointed firm of insurance assessors to view, approve & oversee repair works – abatement of rent -determination of date by which premises were fit for occupation by second & third defendants following the fire – no failure by plaintiff to minimise loss.

[Kiem Dang Investment Pty Ltd](#)

Blue Mountains Conservation Society Inc v Delta Electricity [2009] NSWLEC 150

Land & Environment Court of New South Wales

Pain J

Costs - r 42.4 *Uniform Civil Procedure Rules 2005* - application by plaintiff for protective costs order limiting costs recoverable by either party - *Protection of the Environment Operations Act 1997* (NSW) – plaintiff seeking declarations in relation to alleged polluting of Cox’s River near Lithgow – assessment of likely costs – expert evidence - public interest litigation - protective costs order made – an interesting decision with comprehensive & detailed analysis of case law from UK, Canada & Australia.

[Blue Mountains Conservation Society Inc](#)

From the District Court of Queensland...

MC Projects Pty Ltd v Nigel Farah Trading as The Tiling Crew v Graydon Kline & Kilne Industries International Pty Ltd [2009] QDC 288

District Court of Queensland

Wall QC DCJ

Building & Construction Industry Payments Act 2004 (Qld) - application to set aside enforcement warrant granted.

[MC Projects Pty Ltd](#)

From the District Court of South Australia...

Leader Computers Pty Ltd v Hakim & Wilson [2009] SADC 94

District Court of South Australia

Smith J

Guarantee & indemnity - first defendant claiming signature on guarantee was a forgery - rule in Jones v Dunkel - legal burden of proof - evidential or provisional burden – plaintiff had satisfied



legal burden & had proved on balance of probabilities that first defendant had signed guarantee & indemnity - plaintiff entitled to an order enforcing guarantee & indemnity – an interesting review of UK & Australian case law, including as to inferences.

[Leader Computers Pty Ltd](#)