

Friday, 12 October 2018

Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Australian Securities and Investments Commission v One Tech Media Limited (No 4) (FCA) - contempt - agreement reached between ASIC and defendants concerning contempt application - determination of penalties and costs (B C I G)

Morris v McConaghy Australia Pty Ltd (No 4) (FCA) - service - application for deemed service on second respondent under r10.48 *Federal Court Rules 2011* (Cth) - application declined (B C I G)

Talifero v Asbestos Injuries Compensation Fund Limited as Trustee for the Asbestos Injuries Compensation Fund (NSWCA) - trusts and trustees - judicial advice - dust diseases - claim was a "Proven Claim" in Final Funding Agreement - respondent obliged to pay judgment debt - appeal allowed (B C I G)

Eades v Endeavour Energy (NSWSC) - pleadings - negligence - leave to amend statement of claim including to add new negligence ground granted (B C I G)

Re Giurina (VSC) - wills and estates - two applications - executors of deceased estate removed - State Trustees appointed as administrator and trustee - pseudonym orders refused (B)

Re Wood (VSC) - wills and estates - probate - testamentary capacity - application for approval of compromise in accordance with terms of settlement - application dismissed (B)

Brown v Daniels & Anor (No 2) (QSC) - costs - Court found in plaintiff's favour in proceedings - indemnity costs conceded - second defendant to pay plaintiff's costs on indemnity basis except costs associated with 'obtaining or leading' witness's evidence (I B C G)

Summaries With Link (Five Minute Read)

Australian Securities and Investments Commission v One Tech Media Limited (No 4) [2018] FCA 1533

Federal Court of Australia

Moshinsky J

Contempt - Australian Securities and Investments Commission (ASIC) and five defendants reached agreement concerning contempt application - 'Eustace', 'Transcomm' and 'Cameron' admitted guilt for contempt of court on a number of charges - ASIC withdrew charges against 'Allianz' and 'Bianco' - statements of agreed facts prepared and annexed to 'Liability Reasons' - in Liability Reasons Court was satisfied to make declarations and orders substantially in proposed terms - determination of penalties and costs - held: Court satisfied that penalties which Eustace, Transcomm and Cameron proposed were appropriate - orders made. [ASIC](#) (B C I G)

Morris v McConaghy Australia Pty Ltd (No 4) [2018] FCA 1516

Federal Court of Australia

Perram J

Service - application for deemed service on second respondent incorporated in Cayman Islands under r10.48 *Federal Court Rules 2011* (Cth) - whether not practicable to serve document under Hague Convention - whether documents had been brought to second respondent's attention - *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* - held: Court not satisfied to grant application for deemed service - application dismissed.

[Morris](#) (B C I G)

Talifero v Asbestos Injuries Compensation Fund Limited as Trustee for the Asbestos Injuries Compensation Fund [2018] NSWCA 227

Court of Appeal of New South Wales

Beazley P; Sackville & Emmett AJJA

Trusts and trustees - judicial advice - Mr Francis Talifero (Mr Talifero) sued Amaca Pty Ltd (Amaca) for damages for injuries he due to exposure to asbestos and obtained judgment in Dust Diseases Tribunal - respondent Asbestos Injuries Compensation Fund Limited as Trustee of Asbestos Injuries Compensation Fund (Trustee) sought 'advice and direction' under s55 *James Hardie Former Subsidiaries (Winding Up and Administration) Act 2005* (NSW) - question was whether Trustee justified 'in not paying so much of the damages awarded in

favour of Mr Talifero in the proceedings in the Tribunal as reflects the extent to which Mr Talifero's exposure to asbestos or asbestos products occurred outside Australia' - primary judge granted advice - appellant contended primary judge erroneously failed to find that whole claim was a 'Proven Claim' that Trustee was obliged to pay under Final Funding Agreement - construction of Asbestos Injuries Compensation Fund Trust Deed and Final Funding Agreement - held: claim was a "Proven Claim" in Final Funding Agreement, notwithstanding Mr Talifero's overseas exposure to asbestos - respondent obliged to pay judgment debt - appeal allowed.

[View Decision](#) (B C I G)

Eades v Endeavour Energy [2018] NSWSC 1524

Supreme Court of New South Wales

Adamson J

Pleadings - negligence - claim arose from fire which destroyed plaintiff's property - plaintiff sued three defendants in negligence - plaintiff sought to amend statement of claim including to add further negligence ground - defendants opposed proposed amendment adding new negligence ground - parties' conduct - extent to which parties' conduct had necessitated application - 'interests and dictates of justice' - ss56, 58, 59 & 64 *Civil Procedure Act 2005* (NSW) - held: Court satisfied to allow amendments - leave to amend statement of claim granted.

[View Decision](#) (B C I G)

Re Giurina [2018] VSC 599

Supreme Court of Victoria

McMillan J

Wills and estates - two applications - plaintiff sought removal of executors of deceased's estate pursuant to ss34(1)(b) & 34(1)(c) *Administration and Probate Act 1958* (Vic) and s48(1) *Trustee Act 1958* (Vic) - plaintiff sought that independent administrator be appointed in place of executors - defendant sought 'pseudonym orders' and that Court file not be inspected by anyone not party to proceeding - held: pseudonym orders refused - plaintiff and defendant removed as deceased estate's executors and trustees - State Trustees appointed as administrator and trustee.

[Re Giurina](#) (B)

Re Wood [2018] VSC 597

Supreme Court of Victoria

McMillan J

Wills and estates - approval of compromise - plaintiff sought grant of probate of deceased's last will (2016 will) - caveator was deceased's niece - caveator as litigation guardian for infant beneficiary of estate contended deceased lacked testamentary capacity when making 2016 will and did not know or approve of 2016 will's contents - plaintiff and caveator executed terms of settlement conditional upon Court's approval - caveator sought approval of compromise - rr15.08 & 54.02(2)(c)(i) *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: Court not satisfied to approve compromise - application dismissed.

[Re Wood](#) (B)

Brown v Daniels & Anor (No 2) [2018] QSC 232

Supreme Court of Queensland

Davis J

Costs - plaintiff sued defendants for injuries suffered in accident - Court found in plaintiff's favour - plaintiff awarded judgment in sum of \$2,098,590.33 - determination of costs - indemnity costs conceded - whether costs of expert evidence which was inadmissible were recoverable - whether plaintiff should receive any costs associated with witness's evidence - held: second defendant to pay plaintiff's costs on indemnity basis except costs associated with 'obtaining or leading' witness's evidence.

[Brown](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

Evening Song

By: Sherwood Anderson

MY song will rest while I rest. I struggle along. I'll get back to the corn and the open fields. Don't fret, love, I'll come out all right.

Back of Chicago the open fields. Were you ever there—trains coming toward you out of the West—streaks of light on the long gray plains? Many a song—aching to sing.

I've got a gray and ragged brother in my breast—that's a fact. Back of Chicago the open fields—long trains go west too—in the silence. Don't fret, love. I'll come out all right.

https://en.wikipedia.org/wiki/Sherwood_Anderson

[Click Here to access our Benchmark Search Engine](#)