



## Insurance Banking & Construction

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**Gothard, in the matter of AFG Pty Ltd (Receivers & Managers app'd) (in liq) v Davey (No 2) - Costs** - application for costs by successful respondents on indemnity basis

**Century Funds Management Ltd v Opus Capital Ltd** - Applicant seeking further interlocutory relief against respondent in relation to statements made in brochure (B)

**Selway v Minister for Infrastructure, Transport, Regional Development & Local Government - Motor Vehicles Standards Act 1989 (Cth)** - importation of motor vehicle - construing statutory instruments (I, B, C)

**Onus v Telstra Corporation Ltd** - Public nuisance - private nuisance - quia timet injunction (I, C)

**Richardson v Mt Druitt Workers Club** - Personal injuries - scope of duty of care - application by defendant to strike out statement of claim granted (I)

**Kuek v Devflan Pty Ltd & Anor** - Costs - party & party costs - indemnity principle (I)

**Taverners J Pty Ltd v Saxo Bank A/S** - Pleadings - striking out application - pleading & particularisation of allegations of knowledge (I, B)



**Mowen v Queensland State Government** - Application for injunction (I, B, C)

**Brent London Borough Council & Ors (Harrow London Borough Council) (app.) v Risk Management Partners Ltd (resp.)** - Mutual insurance - transfer of risk - application of control test - appeal allowed (I, C)

## Summaries with links (5 minute read)

### Monday 14 February 2011

**Gothard, in the matter of AFG Pty Ltd (Receivers & Managers app'd) (in liq) v Davey (No 2) [2011] FCA 59**

Federal Court of Australia

Edmonds J (in Sydney)

Costs - application for costs by successful respondents on indemnity basis - applicants receivers of property of various companies - respondents joined to provide contradictors to proceedings to determine which company or companies employed respondents - application granted - detailed examination of Australian case law.

[Gothard](#) (B)

[Gothard](#) - decision 28 October 2010: see 'Benchmark' Monday 1 November 2010 - civil procedure - respondent representative proceedings - in 2008, a number of companies in the Allco Finance group were placed into voluntary administration - a number of employees of the companies in administration made claims to the receivers and managers, claiming that they were priority creditors - the receivers and managers commenced proceedings seeking directions from the Court as to which company in the group was the employees' employer - the receivers and managers named three respondents, and sought an order that the Court appoint those respondents as representatives of a number of other employees - held: different considerations apply where it is respondents, rather than applicants, that are sought to be made subject to a representative order, as the question is then whether a single determination should bind the members of the class, rather than benefit the members of the class - the Court's discretion whether to make an representative order should be exercised having regard to the facilitation of the administration of justice, by enabling parties with the same interest to receive a determination in one action - in this case representative proceedings would facilitate the administration of justice, and representative orders should be made - the Court then went on to analyse which company was the employer of the different classes of employee, and made orders resolving that issue.

**Century Funds Management Ltd v Opus Capital Ltd [2011] FCA 78**

Federal Court of Australia

Jacobson J (in Sydney)

Applicant seeking further interlocutory relief against respondent in relation to statements made in brochure - application dismissed.

[Century Funds Management](#) (B)

**Selway v Minister for Infrastructure, Transport, Regional Development & Local Government [2011] FCA 43**

Federal Court of Australia

Mansfield J (in Adelaide)

*Motor Vehicles Standards Act* 1989 (Cth) - appeal from decision of Administrative Appeals Tribunal - importation of motor vehicle - non-standard road vehicle without identification plate - Aston Martin DB9 Volante - construing statutory instruments - exercise of discretion - application by way of appeal allowed - matter remitted.

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

**Taverners J Pty Ltd v Saxo Bank A/S [2011] VSC 27**

Supreme Court of Victoria

Croft J

Pleadings - striking out application - plaintiff alleging "knowing receipt" of trust property supplied or transferred in breach of trust or fiduciary duties - pleading & particularisation of allegations of knowledge - application by defendant failed.

[Taverners J](#) (I, B)

**Mowen v Queensland State Government [2011] QSC 012**

Supreme Court of Queensland

McMeekin J

Application for injunction - recent sale of Queensland Rail - whether Court has the power to issue mandatory injunction requiring State government to call a referendum - application dismissed.

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

**Onus v Telstra Corporation Ltd [2011] NSWSC 33**

Supreme Court of New South Wales

Price J

Public nuisance - private nuisance - *quia timet* injunction\* - plaintiff contending proposed installation by defendant of thirty-five metre high tower in close proximity to his airfield a threat to public safety & constitutes a public nuisance - plaintiff had established both a public and a private nuisance - plaintiff entitled to injunctive relief - an interesting decision with detailed examination of case law from the United Kingdom, United States of America, Canada & Australia.

[Onus](#) (I, C)

\**quia timet* (Latin: 'because he fears') injunction to restrain wrongful acts which are threatened or imminent but have not yet been commenced.

**Richardson v Mt Druitt Workers Club [2011] NSWSC 31**

Supreme Court of New South Wales

Adams J

Personal injuries - scope of duty of care - s5B, s5C, s5D, s5G & s5S *Civil Liability Act* 2002 - gate of access to club locked when plaintiff attempting to use it to go home, so he climbed over it and fell - application by defendant to strike out statement of claim granted.

[Richardson](#) (I)

**Kuek v Devflan Pty Ltd & Anor [2011] VSCA 25**

Court of Appeal of Victoria

Neave, Harper & Hansen JJA

Costs - party & party costs - indemnity principle - claim in Magistrates Court in relation to repairs of motor vehicle - appeal from orders dismissing an application to review orders of Taxing Master - appeal allowed - matter remitted to Costs Judge.

[Kuek](#) (I)





## From the United Kingdom...

### **Brent London Borough Council & Ors (Harrow London Borough Council) (app.) v Risk Management Partners Ltd (resp.) [2011] UKSC 7**

Supreme Court of the United Kingdom

Lord Hope, Deputy President; Lord Rodger; Lord Walker, Lord Brown & Lord Dyson

Mutual insurance - transfer of risk - application of control test - whether Brent was entitled to enter into contracts of insurance with London Authorities Mutual Ltd without first putting those contracts out to tender in accordance with *Public Contracts Regulations* 2006 (United Kingdom) - *Teckal* exemption: a 1999 decision of the Court of Justice of the European Union - appeal allowed.

[Brent London Borough Council](#) (I, C)

[Brent London Borough Council](#)- decision Court of Appeal of England & Wales 9 June 2009 - Brent's appeals dismissed.

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