



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Norddeutsche Landesbank Girozentrale v The Ship "Beluga Notification" (No 2) - *Admiralty Act* 1988 (Cth) - ship mortgage - valuation - manner of sale (I, B)

Opensoft Australia Pty Ltd v Miller Street Pty Ltd - s459G(3)(b) *Corporations Act* 2001 (Cth) - service of application to set aside statutory demand (I, B, C)

McClymont v Critchley - *Trade Practices Act* 1974 (Cth) - *Fair Trading Act* 1987 (NSW) - misleading or deceptive conduct - proceedings dismissed (I, B, C)

Somerville Retail Services Pty Ltd v Victorian WorkCover Authority - *Accident Compensation (WorkCover Insurance) Act* 1993 (Vic) - insurance premiums (I)

Henderson's Automotive Technologies Pty Ltd (in liq) v Flaton Management Pty Ltd - Restitution - unjust enrichments - set-off - appeal allowed (B, C)

Morris v Resi Corporation & Babcock Australia Pty Ltd - *Dust Diseases Act* 2005 (SA) - particulars (I)

Fidler v Resi Corporation - Discovery of documents - legal professional privilege - no waiver (I)



Geary v JD Wetherspoon Plc – United Kingdom case - personal injuries - duty of care - whether voluntary assumption of obvious & inherent risk (I)

Whittaker v Kinnear – United Kingdom case - proprietary estoppel - constructive trusts (B, C)

Summaries with links (5 minute read)

Thursday 16 June 2011

[Norddeutsche Landesbank Girozentrale v The Ship "Beluga Notification" \(No 2\) \[2011\] FCA 665](#)

Federal Court of Australia

Rares J - Sydney (via video link to Brisbane)

Admiralty Act 1988 (Cth) - action *in rem* under s16 - Bank seeking to enforce ship mortgage - application for valuation & sale of ship under r69(1) *Admiralty Rules* 1988 (Cth) - manner of sale - whether mortgagee can purchase - judgment for plaintiff in sum of EUR 11,471,537.13 plus interest.

[Norddeutsche Landesbank Girozentrale](#) (I, B)

[Opensoft Australia Pty Ltd v Miller Street Pty Ltd \[2011\] FCA 653](#)

Federal Court of Australia

Jagot J (in Sydney)

s459G(3)(b) *Corporations Act* 2001 (Cth) - service of application to set aside statutory demand - application & supporting affidavit filed via eLodgement - copies of application & supporting affidavit served in form omitting seal of Court, proceeding number & return date - where application and supporting affidavit later served in filed form via email - application & supporting affidavit not served within required twenty-one day period - application to set aside the statutory demand not valid - Australian case law considered.

[Opensoft Australia](#) (I, B, C)

[McClymont v Critchley \[2011\] NSWSC 493](#)

Supreme Court of New South Wales

Biscoe AJ



Trade Practices Act 1974 (Cth) - Fair Trading Act 1987 (NSW) - misleading or deceptive conduct - investment in development application - detailed examination of case law in relation to existence of a fiduciary duty from Australia, the United Kingdom, the United States of America & New Zealand - proceedings dismissed.

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

Somerville Retail Services Pty Ltd v Victorian WorkCover Authority [2011] VSCA 166

Court of Appeal of Victoria

Neave, Mandie & Harper JJA

Accident Compensation (WorkCover Insurance) Act 1993 (Vic) - insurance premiums - whether predominant activity at appellant's workplace was properly to be characterised as the manufacturing of meat or meat products - appeal dismissed.

[Somerville Retail Services](#) (I)

[View Full Text](#) - *Victorian WorkCover Authority v Somerville Retail Services Pty Ltd* [2010] VCC 181- decision County Court 30 March 2010 - plaintiff alleging unpaid insurance premiums - issue as to predominant activities of defendant's workplace - finding that predominant activity of defendant's workplace was meat manufacturing within Division C Subdivision 21 Group Class 211 of the Premiums Orders - assessments made by the plaintiff had been based on such a classification.

Henderson's Automotive Technologies Pty Ltd (in liq) v Flaton Management Pty Ltd [2011] VSCA 167

Court of Appeal of Victoria

Ashley, Neave & Tate JJA

Restitution - unjust enrichments - set-off - novation - purchase of a business, & purchase of land on which business conducted - appeal allowed - matter remitted - a lengthy judgment with detailed consideration of Australian case law.

[Henderson's Automotive Technologies](#) (B, C)

[View Full Text](#) - *Henderson's Automotive Technologies Pty Ltd v Flaton Management Pty Ltd* [2009] VCC 0834 - County Court decision 29 May 2009 - plaintiff alleging defendant had unjustly enriched itself at the plaintiff's expense & seeking declaration that it had an equitable lien over the property at North Geelong registered in the name of the defendant - judgment for defendant.

From the District Court of South Australia...

Morris v Resi Corporation & Babcock Australia Pty Ltd [2011] SADC 70

District Court of South Australia



Parsons DCJ

Dust Diseases Act 2005 (SA) - first & second defendants seeking further particulars - extent of particulars required for exposure to asbestos, foreseeability & scope of duty of care - second defendant's application dismissed - first defendant's application allowed in limited respect only.

[Morris](#) (I)

Fidler v Resi Corporation [2011] SADC 77

District Court of South Australia

Farrell DCJ

Discovery of documents - defendant seeking order that plaintiff make further & better discovery of all documents evidencing disclosure to him of opinion expressed in written report of physician - legal professional privilege - whether plaintiff waived privilege by allegations in Statement of Claim - answer 'no' - defendant's application dismissed.

[Fidler](#) (I)

From the United Kingdom...

Geary v JD Wetherspoon Plc [2011] EWHC 1506 (QB)

High Court of England & Wales, Queen's Bench Division

Coulson J

Personal injuries - duty of care - causation - claimant & work colleagues attended pub owned & operated by defendant in Newcastle - grand open staircase in the centre of the building - claimant hoisted herself onto banister and fell - tetraplegia - whether voluntary assumption of an obvious & inherent risk by claimant, in circumstances which would negate any liability on defendant's part - whether assumption of responsibility by defendant to claimant - no relevant duty of care owed by defendant to claimant.

[Geary](#) (I)

Whittaker v Kinnear [2011] EWHC 1479 (QB)

High Court of England & Wales, Queen's Bench Division

Bean J

Proprietary estoppel - constructive trusts - appellant had entered agreement with respondent property developer & a partner for sale of land registered under two title numbers - pre-emption clause - overage deed - tenancy - mortgage default - notice to quit - appeal allowed - order for



possession set aside - case remitted to Colchester County Court - an interesting review of United Kingdom case law.

[Whittaker](#) (B, C)

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