

Insurance Banking & Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Richards v Cornford - Personal injuries - jurisdictional limit - *District Court Act 1973* (NSW) - statutory interpretation - "amount claimed" - "jurisdictional limit" - appeal allowed (I)

Forster v Hunter New England Area Health Service - Medical negligence - application for interim payment - appeal allowed (I)

McDonnell v Northern Sydney & Central Coast Area Health Service - Medical negligence - application to separate issues of liability & causation from issues of quantum - s5D(3) *Civil Liability Act 2005* (NSW) - appeal dismissed (I)

Allpro v Micos - *Building & Construction Industry Security of Payment Act 1999* (NSW) - application for interlocutory injunction restraining enforcement of the determination of an adjudicator (C)

In the matter of Trio Capital Ltd (admins app'd) - Application to set aside order for production of documents dismissed (B)

Byrne v Macquarie Group Services Australia Pty Ltd - Employment contracts - determination of separate questions (I, B, C)

Atkinson v Consumer Trader & Tenancy Tribunal - Substituted service (I, C)

Maser Technology Group Pty Ld v Edmondson - Preliminary discovery - r5.3 *Uniform Civil Procedure Rules 2005* (NSW) (I, B, C)

Matthews v Dent & Anor - *Motor Accidents Compensation Act 1999* (NSW) - assessment of damages (I)

Summaries with links (5 minute read)

Monday 17 May 2010

Richards v Cornford [2010] NSWCA 99

Court of Appeal of New South Wales

Allsop ACJ; McColl & Basten JJA

Personal injuries - jurisdictional limit - *District Court Act 1973* (NSW) - statutory interpretation - ambiguous provisions - whether notice of a claim in excess of jurisdictional limit must be given in statement of claim - "amount claimed" - "jurisdictional limit" - appeal allowed - judgment for plaintiff in sum of \$959,670.

[Richards](#) (I)

[Richards](#) - decision 7 May 2009 - unloading accident - "engaged under a contract of service" - "caused by a defect in the vehicle" - "obvious risk" - "inherent risk" - requirement to plead defences in Division 4 *Civil Liability Act 2002* (NSW) - District Court extended jurisdiction - verdict for plaintiff in sum of \$772,818.

Forster v Hunter New England Area Health Service [2010] NSWCA 106

Court of Appeal of New South Wales

McColl & Macfarlan JJA; Sackville AJA

Medical negligence - application for interim payment - for decision appealed from, see 'Benchmark' I & IBC Wednesday 24 February 2010 - s82(3)(c) *Civil Procedure Act 2005* (NSW) - burden of proof - expert evidence - appeal allowed - respondent to pay applicants sum of \$20,000 by way of an interim payment pursuant to s82 .

[Forster](#) (I)

[Forster](#) - decision 19 February 2010 - claim for interim payment - conflicting opinions in reports of experts as to whether breach of duty of care - application dismissed.

McDonnell v Northern Sydney & Central Coast Area Health Service [2010] NSWSC 376

Supreme Court of New South Wales

Davies J

Medical negligence - appeal from Associate Justice - application to separate issues of liability & causation from issues of quantum - s5D(3) *Civil Liability Act 2002* (NSW) - need for all credibility evidence to be available in one hearing - appeal dismissed.

[McDonnell](#) (I)

[McDonnell](#) - decision 8 December 2009: see 'Benchmark I & IBC Thursday 10 December 2009 - medical negligence - application for separate determination of liability & causation from other issues in the trial - r28.2 *Uniform Civil Procedure Rules* 2005 (NSW) - application refused.

Allpro v Micos [2010] NSWSC 453

Supreme Court of New South Wales

McDougall J

Building & Construction Industry Security of Payment Act 1999 (NSW) - application for interlocutory injunction restraining enforcement of the determination of an adjudicator made under the Act - injunction granted.

[Allpro](#) (C)

In the matter of Trio Capital Ltd (admins app'd) [2010] NSWSC 454

Supreme Court of New South Wales

Ward J

Application to set aside order for production of documents addressed to ASIC requiring disclosure of documents provided to it by Hong Kong Securities & Futures Commission - whether secrecy provisions in s127 *Corporations Act* 2001 (Cth) prevented disclosure under order for production - whether public interest immunity privilege available to restrain production - application dismissed.

[In the matter of Trio Capital](#) (B)

Byrne v Macquarie Group Services Australia Pty Ltd [2010] NSWSC 417

Supreme Court of New South Wales

Tamberlin AJ

Employment contracts - determination of separate questions - whether "ceases" employment includes termination by employer - whether employee entitled to retained profits & unvested options in circumstances where employment is terminated by employer - strike-out application - s6(2) *Contracts Review Act* 1980 (NSW) - whether "trade, business or profession" includes a reference to the trade, business or profession of an employee - s16 *Workplace Relations Act* 1996 (Cth) - r1.4 *Workplace Relations Regulations* 2006 (Cth) - whether s16 & r1.4 operate to exclude an employment contract claim under *Contracts Review Act* 1980 (NSW) - governing law of employment contract - whether s16 has extraterritorial effect - construction questions answered in favour of the defendant - both strike out applications dismissed.

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

Atkinson v Consumer Trader & Tenancy Tribunal [2010] NSWSC 426

Supreme Court of New South Wales

Smart AJ

Substituted service - second & third defendants had purchased recently renovated Castle Cove residential property from plaintiffs - plaintiffs seeking order in nature of certiorari to set aside decision of CTTT which ordered plaintiffs to pay 2nd & 3rd defendants \$42,700.00 - difficulties in serving plaintiffs with CTTT application - Chairperson had directed substituted service - plaintiffs did not appear at CTTT hearing - application dismissed.

[Atkinson](#) (I, C)

Maser Technology Group Pty Ltd v Edmondson [2010] NSWSC 458

Supreme Court of New South Wales

Hamilton AJ

Preliminary discovery - r5.3 *Uniform Civil Procedure Rules* 2005 (NSW) - appeal against dismissal of application for preliminary discovery allowed - orders for preliminary discovery made against first, third and fourth defendants.

[Maser Technology Group](#) (I, B, C)

In the District Court of New South Wales...**Matthews v Dent & Anor [2010] NSWDC 68**

District Court of New South Wales

Levy SC DCJ

Motor Accidents Compensation Act 1999 (NSW) - assessment of damages - physical & psychological injuries - judgment for plaintiff in sum of \$715,687.

[Matthews](#) (I)