

Thursday 17 May 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Gothard v Fell; in the matter of Allco Finance Group Ltd (receivers & managers app'd) (in liq) - Corporations Act 2001 (Cth) - application to release receivers & managers from confidentiality undertakings (B)

Construction, Forestry, Mining & Energy Union v Mirage Industries Pty Ltd - Fair Work Act 2009 (Cth) - interlocutory relief granted (I, C)

Carpathian Resources Ltd v Hendriks - Costs - s43 Federal Court Act 1976 (Cth) (I, B, C, G)

Blazai Pty Ltd v Christopher Paul Maley t/as Maclarens Solicitors & Attorneys - Costs - solicitor's lien - Legal Profession Act 2004 (NSW) (I, B, C, G)

Ashrafinia v Ashrafinia; Fakhrabadi v Ashrafinia - ss128, 129 & 601AH Corporations Act 2001 (Cth) - challenge to solicitor's retainer (B)

Rural Bank Ltd v Merriba Pty Ltd & Ors - Farm Debt Mediation Act 1994 (NSW) - mortgage - application for summary judgment against second defendant (I, B)



Gilford v Freshmore (Vic) Pty Ltd - *Accident Compensation Act 1985* (Vic) - appeal from Associate Judge dismissed (I)

Jenkins v State of Tasmania - *s63 Workers Rehabilitation & Compensation Act 1988* (Tas) - appeal dismissed (I)

Summaries with links (5 minute read)

Gothard v Fell; in the matter of Allco Finance Group Ltd (receivers & managers app'd) (in liq) [2012] FCA 495

Federal Court of Australia

Jacobson J

Corporations Act 2001 (Cth) - application to release receivers & managers from confidentiality undertakings - orders sought by receivers in the interlocutory process to be made.

[Gothard](#) (B)

Construction, Forestry, Mining & Energy Union v Mirage Industries Pty Ltd [2012] FCA 490

Federal Court of Australia

Dodds-Streeton J

Fair Work Act 2009 (Cth) - application by CFMEU for interlocutory relief restraining respondent from conducting, until hearing & determination of originating application, a ballot of members of the CFMEU to vote on approval of proposed enterprise agreement - interlocutory relief granted - parties to participate in mediation.

[Construction, Forestry, Mining and Energy Union](#) (I, C)

Carpathian Resources Ltd v Hendriks [2012] FCA 496

Federal Court of Australia

McKerracher J

Costs - *s43 Federal Court Act 1976* (Cth) - consideration of circumstances when the Court will exercise its discretion to award costs against non-party - legal professional privilege - application for costs against non-party not granted - extensive consideration of UK & Australian case law.

[Carpathian Resources](#) (I, B, C, G)

[Carpathian Resources](#) - decision Federal Court of Australia 2 February 2011



Blazai Pty Ltd v Christopher Paul Maley t/as Maclarens Solicitors & Attorneys [2012] NSWSC 489

Supreme Court of New South Wales

Harrison AsJ

Costs - solicitor's lien - dispute over type of lien - which party terminated the retainer - *Legal Profession Act 2004 (NSW)* - security for costs - Australian case law considered.

[Blazai](#) (I, B, C, G)

Ashrafinia v Ashrafinia; Fakhrabadi v Ashrafinia [2012] NSWSC 500

Supreme Court of New South Wales

Slattery J

Ss128, 129 & 601AH *Corporations Act 2001 (Cth)* - s135: the replaceable rules - *Indoor Management Rule* - challenge to solicitor's retainer - onus of proof - costs.

[Ashrafinia](#) (B)

Rural Bank Ltd v Merriba Pty Ltd & Ors [2012] NSWSC 498

Supreme Court of New South Wales

White J

Farm Debt Mediation Act 1994 (NSW) - mortgage - guarantee & indemnity - application for summary judgment against second defendant - plaintiff also seeking to strike out various parts of Amended Commercial List Response of first defendant - judgment for plaintiff against second defendant in sum of \$2,036,799.11 with execution of judgment to be stayed for 21 days or further order.

[Rural Bank](#) (I, B)

Gilford v Freshmore (Vic) Pty Ltd [2012] VSC 191

Supreme Court of Victoria

Hargrave J

Accident Compensation Act 1985 (Vic) - serious injury certificate granted to plaintiff - application to amend Statement of Claim had been dismissed by Associate Judge - appeal from that decision dismissed.

[Gilford](#) (I)

[Georgopoulos](#) - decision Supreme Court of Victoria 27 February 2012: see Benchmark I & IBCG Wednesday 29 February 2012 - s134AB(2) *Accident Compensation Act 1985 (Vic)* - statutory interpretation - plaintiff alleging injury in



fall from scaffolding as painter in employ of first defendant - also joined, as second defendant, the builder, &, as third defendant, person responsible for erection of scaffolding at the premises at Malvern - serious injury certificate granted pursuant to s134AB(16)(a) in respect of psychological but not physical/organic injuries - whether plaintiff entitled to claim damages for physical injuries - submission of first defendant upheld, that plaintiff only entitled to plead & rely on such injury or injuries as have been held, certified or deemed to be a serious injuries or injuries as defined by s134AB;

[Kruisselbrink](#) - decision Supreme Court of Victoria 18 June 2010: see Benchmark I & IBC Tuesday 22 June 2010 - *Accident Compensation Act* 1985 (Vic) - injury arising out of or in course of employment - serious injury - entitlement to sue - certificate granted by Authority - application to amend Statement of Claim - ambit of serious injury certificate granted pursuant to s134(AB)(16)(a) - leave to amend statement of claim given - leave to amend defence refused, but leave to replead defence granted.

Jenkins v State of Tasmania [2012] TASSC 22

Supreme Court of Tasmania

Tennent J

S63 Workers Rehabilitation & Compensation Act 1988 (Tas) - appellant had been volunteer with State Emergency Service - injury to neck in motor accident when responding to emergency call - appeal from decision of a Commissioner in Workers Rehabilitation & Compensation Tribunal - causation - Tasmanian Workers Compensation Guidelines for Assessment of Permanent Impairment - meaning of fracture - whether impairment resulted from accident injury - appeal dismissed.

[Jenkins](#) (I)

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