

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

Executive Summary (1 minute read)

TMAC Pty Ltd t/a Northstar Property Services v Thomas Ford Trading Pty Ltd t/a Fresh Telecoms - Representative proceedings - s86A(4) *Trade Practices Act 1974* (Cth) (B)

Brightstar Logistics Pty Ltd v Australian Securities & Investments Commission (No 2) - *Corporations Act 2001* (Cth) - financial disclosure exemption (B)

Plaza Carpark Pty Ltd v Chor Shing Ma - Fiduciary duty - breach - undisclosed borrowing from bank - nature of remedies to which investors or shareholders might be entitled (B)

Firth v Sutton (No 2) - Damages - professional negligence - workplace injury claim - whether as part of calculation of loss, interest should accrue on value of lost common law claim - appeal & cross-appeal allowed (I)

Richards v Cornford (No 2) - Costs (I)

Power Technologies Pty Ltd v Energy Australia - *Dust Diseases Tribunal Regulation 2001* (NSW) - contributions assessment - appeal allowed (I)

Gudelj v Motor Accidents Authority of New South Wales - *Motor Accidents Compensation Act 1999* (NSW) - operation of s73(3)(c) - entitlement to make late claim (I)

Coco v Westpac Banking Corporation - Contracts - meaning & extent of guarantee provision in investment scheme (B)

Guthrie v News Ltd - Employment law - action for wrongful dismissal (I, B)

John Holland Pty Ltd v Schneider Electric Buildings Australia Pty Ltd - *Building & Construction Industry Payments Act 2004 (Qld)* - applicant seeking injunction to restrain respondent from serving upon it any adjudication application (C)

Lockwood & Lockwood v Insurance Australia Ltd (t/a SGIC Insurance) - Motor vehicle insurance - appellants' motor vehicle taken by their son without consent & written off - insurer refused claim - unlicensed exclusion clause - appeal allowed (I)

Ilic v the City of Adelaide & Anor - Environment & planning - proposed demolition of a dwelling designated as Local Heritage Place by the Adelaide Development Plan (C)

Jackson & Ors v Johnson & Ors & Scott v Johnson & Ors - Application by newspaper for access to statements of claim (I)

Development Consent Authority v Denise Phelps - Northern Territory Planning Scheme - whether proposed restrictive covenants would in fact amount to "special circumstances" justifying development consent (C)

Summaries with links (5 minute read)

Tuesday 18 May 2010

TMAC Pty Ltd t/a Northstar Property Services v Thomas Ford Trading Pty Ltd t/a Fresh Telecoms [2010] FCA 445

Federal Court of Australia

Cowdroy J (in Sydney)

Representative proceedings - alleged breaches of rental agreement by each defendant as lessee or as guarantor of such agreement - s33N *Federal Court of Australia Act 1976* (Cth) - whether proceedings should continue as representative proceedings - answer 'yes' - s86A(4) *Trade Practices Act 1974* (Cth) - whether proceedings should be transferred from Local Court of New South Wales to the Federal Court of Australia - answer 'yes.'

[TMAC trading as Northstar Property Services](#) (B)

Brightstar Logistics Pty Ltd v Australian Securities & Investments Commission (No 2) [2010]

FCA 435

Federal Court of Australia

Emmett J (in Sydney)

Corporations Act 2001 (Cth) - application for financial disclosure exemption - ASIC had declined to make order under Part 2M.6 - appeal from Administrative Appeals Tribunal dismissed.

[Brightstar Logistics](#) (B)**Plaza Carpark Pty Ltd v Chor Shing Ma [2010] FCA 449**

Federal Court of Australia

Mansfield J (in Adelaide)

Fiduciary duty - breach - investment in carpark - disclosure - undisclosed borrowing from bank - nature of remedies to which investors or shareholders might be entitled - whether undisclosed commissions gave rise to any entitlement to a remedy, & if so the nature of that remedy - rate of interest.

[Plaza Carpark](#) (B)**Firth v Sutton (No 2) [2010] NSWCA 109**

Court of Appeal of New South Wales

Allsop P; Macfarlan & Young JJA

Damages - professional negligence - workplace injury claim - whether as part of calculation of loss, interest should accrue on value of lost common law claim - appeal & cross-appeal allowed - calculation of compensation for comparatively worse position of not having a lump sum payment under lost common law action should not only take into account what benefit under the Workers Compensation legislation was received, but also when it was received.

[Firth](#) (I)

[Firth](#) - decision Court of Appeal 30 April 2010; see 'Benchmark' I & IBC Wednesday 5 May 2010 - professional negligence - *Workers Compensation Act 1987* (NSW) - election to be made for damages under *Workers Compensation Act 1987* (NSW) or damages at common law - assessment of comparative worth of proceedings under *Workers Compensation Act* & common law - calculation of value of loss of a lump sum payment should include interest;

[Sutton](#) - decision District Court 12 March 2009; see 'Benchmark' I & IBC Wednesday 8 April 2009 - professional negligence - workplace injury - loss of an opportunity to take common law proceedings - assessment of damages - receipt of workers compensation benefits - failure to advise - common law rights lost on acceptance of workers compensation permanent loss lump sum - expiration of limitation period to bring common law action - chances of success of common law claim - system of work - whether employer negligent - whether defendant negligent &/or in breach of retainer - expert evidence - verdict of \$81,896.38;

[Sutton](#) - decision District Court 17 March 2009: see 'Benchmark' I & IBC Monday 20 April 2009 - interest - rate of interest on judgment - whether under *Civil Liability Act* 2002 (NSW) or *Uniform Civil Procedure Rules* 2005 (NSW) - *Civil Liability Act* 2002 (NSW) applies - stay pending appeal - costs.

Richards v Cornford (No 2) [2010] NSWCA 112

Court of Appeal of New South Wales

Allsop P; Basten JA

Costs - for decision 10 May 2010, see 'Benchmark' I & IBC Monday 17 May 2010 & link below - variation made to costs order.

[Richards](#) (I)

[Richards](#) - decision Court of Appeal 10 May 2010 - 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](#) - decision District Court 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 - District Court extended jurisdiction - verdict for plaintiff in sum of \$772,818.

Power Technologies Pty Ltd v Energy Australia [2010] NSWCA 107

Court of Appeal of New South Wales

Allsop P, Beazley JA & Sackville AJA

Dust Diseases Tribunal Regulation 2001 (NSW) - contributions assessment - appeal allowed - matter remitted to DDT - detailed analysis of legislation & case law.

[Power Technologies](#) (I)

[\(re Millard\) Energy Australia](#) - decision Dust Diseases Tribunal 6 February 2009

Gudelj v Motor Accidents Authority of New South Wales [2010] NSWSC 436

Supreme Court of New South Wales

McDougall J

Motor Accidents Compensation Act 1999 (NSW) - operation of s73(3)(c) - entitlement to make late claim - challenge to rejection of each of two applications for assessment - 'referred only for a certificate of exemption from assessment' - 'referred for assessment under Part 4.4' - summons dismissed.

[Gudelj](#) (I, B)

Coco v Westpac Banking Corporation [2010] NSWSC 457

Supreme Court of New South Wales

Tamberlin AJ

Contracts - Guaranteed Portfolio Service Asset Allocation Advisory Agreement - meaning & extent of guarantee provision in investment scheme - "Fixed Income Portfolio Value" - determination of separate question.

[Coco](#) (B)

Guthrie v News Ltd [2010] VSC 196

Supreme Court of Victoria

Kaye J

Employment law - action for wrongful dismissal - plaintiff employed as editor-in-chief of daily newspaper for three years - whether defendant entitled to terminate appointment during that term - whether defendant breached any obligation of good faith - damages - loss of opportunity for renewal of contract or redeployment in comparable position - alternative claim for damages for termination payment stipulated by contract - judgment for plaintiff in sum of \$580,808.

[Guthrie](#) (I, B)

John Holland Pty Ltd v Schneider Electric Buildings Australia Pty Ltd [2010] QSC 159

Supreme Court of Queensland

Applegarth J

Building & Construction Industry Payments Act 2004 (Qld) - applicant seeking injunction to restrain respondent from serving upon it any adjudication application - whether payment claim sought to re-agitate issues decided by previous adjudicator - issue estoppel - thorough analysis of case law including *Dualcorp Pty Ltd v Remo Constructions Pty Ltd* (2009) 74 NSWLR 190 considered in an interesting decision.

[John Holland](#) (C)

[Dualcorp](#) - decision NSW Court of Appeal 15 April 2009 reported at 74 NSWLR 190: see 'Benchmark' Wednesday 22 April 2010 - *Building & Construction Industry Security of Payment Act 1999* (NSW) - subcontract between respondent as contractor & applicant as sub-contractor for excavation & piling work at building site at Five Dock - adjudicator's determination - primary judge in District Court had declined to enter summary judgment for appellant - progress payments - finality: principles & case law - previous valuations - issue estoppel - appeal dismissed.

Lockwood & Lockwood v Insurance Australia Ltd (t/a SGIC Insurance) [2010] SASC 140

Supreme Court of South Australia

Kourakis J

Motor vehicle insurance - appellants' motor vehicle taken by their son without consent & written off - insurer refused claim - unlicensed exclusion clause - appellants appealing Magistrate's decision upholding respondent's refusal of claim - appeal allowed, magistrate's order set aside - judgment for plaintiffs in sum of \$14,400.

[Lockwood & Lockwood \(I\)](#)

Ilic v the City of Adelaide & Anor [2010] SASC 139

Supreme Court of South Australia

Kourakis J

Environment & planning - proposed demolition of a dwelling designated as Local Heritage Place by the Adelaide Development Plan - whether first defendant's refusal of development approval invalid - answer 'no.'

[Ilic \(C\)](#)

Jackson & Ors v Johnson & Ors & Scott v Johnson & Ors [2010] SASC 133 (11)

Supreme Court of South Australia

White J

Application by newspaper for access to statements of claim in proceedings - open justice - "any process relating to proceedings."

[Jackson & Ors \(I\)](#)

Development Consent Authority v Denise Phelps [2010] NTCA 03

Court of Appeal of the Northern Territory

Martin CJ; Mildren & Reeves JJ

Northern Territory Planning Scheme - whether proposed restrictive covenants would in fact amount to "special circumstances" justifying development consent - appeal from Supreme Court - original appeal to Supreme Court against decision of Lands Planning & Mining Tribunal - appeal on a question of law only - consideration of level of satisfaction required that error of law vitiated Tribunal's decision - Supreme Court properly satisfied that error of law vitiated decision - appeal dismissed.

[DCA \(C\)](#)