



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Wingecarribee Shire Council v Lehman Bros Australia Ltd- professional indemnity insurance cover – whether the Court should make an order for production of insurance policies - legitimate & proper purpose of the proceedings for Council to seek to discover whether insurance cover held by respondent responded to Council's claim.

Tran v The Commonwealth - 'Contravention of this Act' – automatic forfeiture of fishing vessel engaged in transportation of unauthorised persons to Australia - forfeiture confirmed

Australian Securities & Investments Commission v Lanepoint Enterprises Pty Ltd (Receiver & Manager Appointed) - Application by ASIC to wind up company – Westpoint Group – order made that company be wound up.

ING Funds Management Ltd v ANZ Nominees Ltd; ING Funds Management Ltd v Professional Associations Superannuation Ltd - Managed investments - redemptions of units in train at termination of trust not halted by such termination.

Telecom Vanuatu Ltd v Optus Networks Pty Ltd - Distinction between a claim for damages & a claim for a debt

AAGT Private Loans Pty Ltd v Ferguson & Anor – mortgage default - mortgage memorandum included Power of Attorney - plaintiff seeking order for possession – defence & counter-claim alleging exercise of powers of Attorney to register mortgages was in breach of the Attorney's fiduciary duties & unconscionable – plaintiff entitled to the relief sought.

Willshee v Westcourt Limited - Damages – plaintiff had contended defendant supplied & installed inferior & unsuitable limestone - plaintiff had succeeded before primary judge but was appealing on damages - respondent cross-appealing from determination that it breached its contractual obligations to appellant – appeal allowed - cross-appeal dismissed.



In the Matter of an Application under s73 of the Civil Law (Wrongs) Act 2002 (ACT) – s73 Civil Law (Wrongs) Act 2002 (ACT) - disclosure of documents – personal injuries – statutory provisions permitting withholding of documents if fraud suspected – meaning of “reasonable grounds to suspect a claimant of fraud” – whether applicant had satisfied test for non-disclosure order to be made.

CACI International, Inc. v St. Paul Fire & Marine Insurance Co. - Insurance cover – insurer’s obligation to defend - location of ‘event’ for insurance purposes - allegations by Iraqi detainees & survivors of abuse by employees of appellant at Abu Ghraib and other prisons by Iraqi - appellant challenging decision district court’s that its insurer had no duty to defend – by majority, district court decision affirmed

Chandran a/l Subbiah v Dockers Marine Pte Ltd (Owners of the Ship or Vessel "Tasman Mariner", Third Party) - Personal injuries – plaintiff engaged by defendant to carry on stevedoring tasks on board a docked ship – plaintiff had a fall on board ship – defendant contracted by ship’s owners or agents to carry out cargo operations - employer’s duty to provide a safe place of work for its employees - too onerous to impose general duty on stevedoring companies to inspect vessels they work on before allowing stevedoring operations to commence – plaintiff’s claim on this ground failed – claim for statutory liability under Factories Act failed – claim under occupier’s liability also failed.



Summaries with links (5 minute read)

Wednesday 20 May 2009

Wingecarribee Shire Council v Lehman Bros Australia Ltd [2009] FCA 503

Federal Court of Australia

Rares J (in Sydney)

Insurance – professional indemnity cover – whether policies respond to claim - nature or extent of entitlement to priority or security, either under s562 *Corporations Act* 2001 (Cth) or s6 *Law Reform (Miscellaneous Provisions) Act* 1946 (NSW): enforceable legal right to a charge over any insurance monies payable by insurer - whether the Court should make an order for production of insurance policies - applicant has brought proceedings against respondent arising out transactions in which Council had invested in collateralised debt obligations – respondent has gone into voluntary administration – report by administrators to creditors as to question of what insurance cover may be available to respond to claims made against respondent in respect of their financial advising & other business activities - administrators opposing grant of leave to Council to proceed on application for production of policies - legitimate & proper purpose of proceedings for Council to seek to discover whether insurance cover held by respondent responds to Council's claim.

[Wingecarribee Shire Council](#) (I, B, C)

Australian Securities & Investments Commission v Lanepoint Enterprises Pty Ltd (Receiver & Manager Appointed) [No 2] [2009] FCA 493

Federal Court of Australia

Gilmour J (in Perth)

Application by ASIC to wind up company – Westpoint Group – *Corporations Act* 2001 (Cth) – statutory presumption of insolvency – company had failed to discharge statutory presumption - order made that company be wound up.

[Australian Securities & Investments Commission](#) (B, C)

AAGT Private Loans Pty Ltd v Ferguson & Anor [2009] QSC 113

Supreme Court of Queensland

A Lyons J

Mortgage – *Trade Practices Act* 1974 (Cth) - mortgage memorandum included Power of Attorney - financing of property development at Ipswich in which first & second defendant were involved – mortgage default – powers of attorney registered – plaintiff seeking inter alia order for possession – defence & counter-claim alleging exercise of powers of Attorney to register mortgages was in breach of the Attorney's fiduciary duties & unconscionable – defendants seeking damages for breach of fiduciary duty, under s.82 - whether plaintiff had an unfair advantage as against first & second defendants – no

breach of s66 *Powers of Attorney Act* 1998 (Qld) - plaintiff entitled to the relief sought.

[AAGT Private Loans](#) (B, C)

Willshee v Westcourt Limited [2009] WASCA 87

Court of Appeal of Western Australia

Martin CJ; Buss JA; Newnes AJA

Contracts - for decision appealed from, see 'Benchmark' C & IBC Wednesday 27 February 2008 & link below - primary judge had upheld appellant's claim but awarded him damages which reflected only cost of cleaning & sealing the limestone, & some repainting necessitated by cleaning & sealing work - claim for damages in an amount equal to costs of, & associated with, replacement of inferior limestone rejected by primary judge - appellant appealing from that part of primary judge's decision - respondent cross-appealing from determination that it breached its contractual obligations to appellant - appeal allowed - cross-appeal dismissed.

[Willshee](#) (I, C)

[Willshee](#) - part one of decision 22 February 2008 - contract to build house contained specification which required external walls of house to be constructed of brick with limestone cladding - plaintiff contended defendant supplied & installed inferior & unsuitable limestone - held that no basis for plaintiff's claim for damages for breach of *Trade Practices Act* 1974 (Cth) - judgment for plaintiff in the sum of \$9,290.

[Willshee](#) - part two of decision 22 February 2008

Tran v The Commonwealth [2009] FCA 474

Federal Court of Australia

Cowdroy J (in Sydney)

'Contravention of this Act' - automatic forfeiture of fishing vessel engaged in transportation of unauthorised persons to Australia - *Migration Act* 1958 (Cth) - statutory interpretation - applicant challenging forfeiture of the ship - forfeiture confirmed - detailed consideration of case law.

[Tran](#) (I, B)

ING Funds Management Ltd v ANZ Nominees Ltd; ING Funds Management Ltd v Professional Associations Superannuation Ltd [2009] NSWSC 243

Supreme Court of New South Wales

Barrett J

Managed investments - redemptions of units in train at termination of trust not halted by such termination.

[ING Funds Management](#) (B)

[ING Funds Management](#) - decision 3 April 2009 - see 'Benchmark' B & IBC Wednesday 8 April 2009 - plaintiff "responsible entity" of each of two managed investment schemes seeking declaratory relief as to validity of amendments to constitution of each scheme - constitution in the form of a deed poll - whether instrument other than deed may modify constitution - analysis of responsible entity's limited power of modification under s601GC(1)(b) *Corporations Act* 2001 (Cth), - ascertaining corporation's state of mind - "member's rights" - distinction between rights & interests - "adversely affect" -

"reasonably considers" - claims for declaratory relief refused – extensive consideration of text & case law from UK & Australia.

Telecom Vanuatu Ltd v Optus Networks Pty Ltd (No. 3) [2009] NSWSC 401

Supreme Court of New South Wales

Bergin CJ in Eq.

Distinction between a claim for damages & a claim for a debt – interest - Her Honour agreed with defendant's submission that what plaintiff was seeking was payment of a debt – case law considered.

[Telecom Vanuatu](#) (B)

In the Matter of an Application under s73 of the Civil Law (Wrongs) Act 2002 (ACT) [2009] ACTSC 53

Supreme Court of the Australian Capital Territory

Refshauge J

s73 *Civil Law (Wrongs) Act 2002 (ACT)* - disclosure of documents – personal injuries – regime of full & frank disclosure & negotiation prior to commencement of legal proceedings - statutory provisions permitting withholding of documents if fraud suspected – applicant an insurer for motor vehicles in the ACT under compulsory third party insurance scheme - meaning of “reasonable grounds to suspect a claimant of fraud” – whether applicant had satisfied test for non-disclosure order to be made.

[Application under Civil Law \(Wrongs\) Act 2002 \(ACT\)](#) (I)

From the United States of America...

CACI International, Inc. v St. Paul Fire & Marine Insurance Co., No. 08-1885

United States Court of Appeals for the Fourth Circuit

Wilkinson & Shedd, Circuit Judges; Faber, Senior United States District Judge for Southern District of West Virginia (sitting by designation)

Insurance cover – insurer's obligation to defend - place of alleged injury – location of ‘event’ for insurance purposes - "Commercial General Liability Protection" policy – allegations by Iraqi detainees & survivors of abuse by employees of appellant at Abu Ghraib & other prisons - appellant challenging district court's decision that its insurer had no duty to defend insured - appellant acknowledged insurance policies limited coverage to the United States & Canada – appellant arguing that some of the underlying claims implicated events that happened in the United States, & that other claims fell under an exception to coverage provision for employees who were away from home for a "short time" - by majority, district court decision affirmed – dissenting opinion by Shedd J.

[CACI International](#) (I)



From Singapore...

Chandran a/l Subbiah v Dockers Marine Pte Ltd (Owners of the Ship or Vessel "Tasman Mariner", Third Party) - [2009] SGHC 109

High Court of Singapore

Judith Prakash J

Personal injuries – plaintiff fell from height of about ten metres onto top of cargo container in the hold of a vessel - defendant was carrying on stevedoring business contracting services & was contracted by ship's owners or agents to carry out cargo operations whilst it was docked at wharf - plaintiff was freelance stevedore engaged by defendant to carry out stevedoring tasks on board vessel - defendant unable to serve owners with third party claim & action proceeded between plaintiff & defendant only - 'occupier' - employer's duty to provide a safe place of work for its employees - whether this duty extended to ensuring that premises of a third party were safe in the case where premises a vessel & employer and its workers were only invitees with no control over the same - too onerous to impose general duty on stevedoring companies to inspect vessels they work on before allowing stevedoring operations to commence – plaintiff's claim on this ground failed – claim for statutory liability under Factories Act failed – plaintiff alleging defendant occupier of vessel - claim under occupier's liability also failed – detailed consideration of case law including case law from UK.

[Chandran](#) (I)

Key: (I) Insurance, (B) Banking, (C) Construction