

## Insurance Banking & Construction

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**Pharm-a-Care Laboratories Pty Ltd v Commonwealth of Australia (No 4)** - Representative proceedings - fixing a date for opting out - form of notice to be given (I, B)

**In the matter of Fortescue Metals Group Ltd** - *Railways (Access) Act 1998* (WA) -: Reasons for Determination - access to services provided by "essential facilities" - s44H(2) *Trade Practices Act 1974* (Cth) criteria (I, B, C)

**R v Stephenson** - Criminal law - sentencing - insider trading (I, B)

**Sujuk v Ilvari Pty Ltd t/a Craftsman Homes** - Personal injuries - *Occupational Health & Safety Act 2000* (NSW) - liability of builder/occupier to employee of sub-contractor - assessment of damages (I, C)

**Kell & Rigby Holdings Pty Ltd v Lindsay Bennelong Developments Pty Ltd** - Building contracts - guarantees - *Trade Practices Act 1974* (Cth) - Advance Payment Deed - Certificate of Practical Completion (I, C)

**ASIC v Sigalla (No 2)** - *Corporations Act 2001* (Cth) - whether evidence improperly obtained pursuant to invalid notices - scope of ASIC's investigative powers (I, B, C)

**Re LPD Corporation Pty Ltd** - ss459G & 459H *Corporations Act* 2001 (Cth) - application to set aside statutory demand dismissed (I, B, C)

**Rutledge v Sheridan** - Gifts inter vivos (B)

**GPC (WA) Pty Ltd v Investec Bank (Australia) Ltd** - *Corporations Act* 2001 (Cth) - plaintiff's application to set aside statutory demands - requirements for affidavits (B)

**Quinn Direct Insurance Ltd v The Law Society of England & Wales** – United Kingdom decision - professional indemnity insurance - client confidentiality - privilege - appeal dismissed (I)

## Summaries with links (5 minute read)

### Wednesday 21 July 2010

#### **Pharm-a-Care Laboratories Pty Ltd v Commonwealth of Australia (No 4) [2010] FCA 749**

Federal Court of Australia

Flick J (in Sydney)

Representative proceedings - fixing a date for opting out - alleged negligence in requesting product recall - regulatory action taken against Pan Pharmaceuticals Ltd - Part IVA *Federal Court of Australia Act* 1976 (Cth) - adequate time to be given - form of notice to be given - need for Court approval - amendments to notice.

[Pharm-a-Care Laboratories](#) (I, B)

#### **In the matter of Fortescue Metals Group Ltd [2010] ACompT 2**

Australian Competition Tribunal

Finkelstein J (President), Mr Grant Latta & Professor David Round (in Melbourne)

*Railways (Access) Act* 1998 (WA) - *Trade Practices Act* 1974 (Cth) ["TPA"]: four applications under Part IIIA - Summary only included in 'Benchmark' B, C & IBC Friday 9 July 2010: link to Reasons for Determination below - access to services provided by "essential facilities" - mining company operating in the Pilbara - service applied for was use of railway track & associated infrastructure - s44H(2) TPA criteria - detailed consideration of legislation - extensive consideration of United States & Australian case law.

[In the matter of Fortescue Metals Group](#) (I, B, C)

**R v Stephenson [2010] NSWSC 779**

Supreme Court of New South Wales

Fullerton J

Criminal law - sentencing - insider trading - breach of s1043A *Corporations Act* 2001 (Cth) - recognisance & \$20,000 pecuniary penalty.

[Stephenson](#) (I, B)**Sijuk v Ilvari Pty Ltd t/a Craftsman Homes [2010] NSWSC 354**

Supreme Court of New South Wales

Hall J

Personal injuries - *Occupational Health & Safety Act* 2000 (NSW) - liability of builder/occupier to employee of sub-contractor - plaintiff employed as a brick cleaner by his wife in her business - defendant head contractor involved in construction of residential dwelling at Cherrybrook - brick-cleaning work - plaintiff fell through gap in scaffolding which had not been present when inspected three days before - whether specific notice given by sub-contractor of plaintiff's intention to attend site - s151Z *Workers Compensation Act* 1987 (NSW) - whether before plaintiff started work, he ought to have carried out inspection of scaffolding or seen the gap/hole as he progressed with his work - fifteen percent contributory negligence - notional liability of wife/employer assessed at ten percent - liability of defendant ninety percent - assessment of damages.

[Sijuk](#) (I, C)**Sijuk v Ilvari Pty Ltd t/a Craftsman Homes [2010] NSWSC 793**

Supreme Court of New South Wales

Hall J

Personal injuries - damages - judgment entered for plaintiff in sum of \$600,615.

[Sijuk](#) (I, C)**Kell & Rigby Holdings Pty Ltd v Lindsay Bennelong Developments Pty Ltd [2010] NSWSC 777**

Supreme Court of New South Wales

Hammerschlag J

Building contracts - *Trade Practices Act* 1974 (Cth) - plaintiff builder, defendant property developer - contract under which plaintiff was to build for defendant a mixed commercial & residential development at Rushcutters Bay - Advance Payment Deed amended contract - implied negative

stipulation - variation which the Notice of Variation to Works purported to bring about unauthorised & of no force or effect - Practical Completion not reached - Certificate of Practical Completion vitiated - defendant not entitled to call on guarantees.

[Kell & Rigby Holdings](#) (I, B, C)

**ASIC v Sigalla (No 2) [2010] NSWSC 792**

Supreme Court of New South Wales

White J

*Corporations Act 2001* (Cth) - admissibility of evidence - *voir dire* - plaintiff had brought charges of contempt against defendant in respect of orders made restraining defendant from dealing with his assets - evidence objected to under s138 *Evidence Act 1995* (NSW) - whether evidence improperly obtained pursuant to invalid notices - scope of ASIC's investigative powers - whether notice invalid for failing to set out effect of s68 *Australian Securities & Investments Commission Act 2001* (Cth) - weighing up of desirability of admitting evidence against undesirability of admitting evidence obtained pursuant to invalid notices.

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

**Re LPD Corporation Pty Ltd [2010] VSC 313**

Supreme Court of Victoria

Davies J

ss459G & 459H *Corporations Act 2001* (Cth) - application to set aside statutory demand - property development - whether genuine dispute about existence of debt - whether genuine offsetting claim - appeal against order dismissing plaintiff's application unsuccessful.

[Re LPD Corporation](#) (I, B, C)

**Rutledge v Sheridan [2010] QSC 257**

Supreme Court of Queensland

Daubney J

Gifts *inter vivos* - applicant contending deceased had made a gift of funds in a specified account to her before his death even though funds were not formally transferred into her name - application dismissed.

[Rutledge](#) (B)



**GPC (WA) Pty Ltd v Investec Bank (Australia) Ltd [2010] WASC 171**

Supreme Court of Western Australia

Acting Master Chapman

*Corporations Act 2001 (Cth)* - plaintiff's application to set aside statutory demands - requirements for affidavits - demands not invalid, but genuine dispute regarding interest.

[GPC \(WA\)](#) (B)

## From the United Kingdom...

**Quinn Direct Insurance Ltd v The Law Society of England & Wales [2010] EWCA Civ 805**

Court of Appeal of England & Wales

Morrison, Rimer & Jackson LJJ

Professional negligence - professional indemnity insurance - client confidentiality - privilege - appeal dismissed.

[Quinn Direct Insurance](#) (I)

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