

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

### Executive Summary (1 minute read)

**Conway v Mercedes-Benz Australia / Pacific Pty Ltd ACN 004 411 410** - Requests for particulars - purpose of particulars - overarching purpose of *Federal Court Rules* (I, B, C)

**Zurich Australian Insurance Ltd v GIO General Ltd** - Double insurance - equitable contribution between two insurers - proceedings dismissed (I)

**In the matter of Liverpool Hotels Pty Ltd (in liq)** - *Corporations Act* 2001 (Cth) - winding up - application for reinstatement (B)

**Australian Securities & Investments Commission v Lindberg (No 2)** - Appeal against stay order - civil penalty proceedings - appeal allowed (I, B, C)

**Maria Scaffidi (by her next friend the Public Trustee) v Scaffidi Holdings Pty Ltd** - Applications to remove trustee & appoint a new trustee (B)

**Vector Gas Ltd v Bay of Plenty Energy Ltd** - New Zealand case - contracts - interpretation - supply of gas - admissibility of extrinsic evidence - evidence concerning prior negotiations - estoppel (C)

### Summaries with links (5 minute read)

**Monday 22 February 2010**

**Conway v Mercedes-Benz Australia / Pacific Pty Ltd ACN 004 411 410 [2010] FCA 72**  
Federal Court of Australia

Katzmann J

Requests for particulars - claim for damages arising out of alleged combustion of motor vehicle when parked in garage of applicant's home - first respondent importer & deemed manufacturer of vehicle - second respondent the vendor - applicant pleading breaches of conditions of merchantable quality & fitness for purpose implied under s71 *Trade Practices Act 1974* (Cth) & its equivalent provisions under NSW legislation & common law causes of action in negligence & contract - purpose of particulars - distinction between request for particulars & request for evidence - overarching purpose of *Federal Court Rules* - United Kingdom & Australian case law considered.

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

**Zurich Australian Insurance Ltd v GIO General Ltd [2010] NSWSC 85**

Supreme Court of New South Wales

Barrett J

Double insurance - equitable contribution between two insurers - at time of relevant accident, plaintiff Zurich bound by third-party policy under *Motor Accidents Compensation Act 1999* (NSW) in respect of a bus - defendant GIO was at the time, bound by a policy of workers compensation insurance in respect of all workers employed by Tiger Tours (Management) Pty Ltd - "registered operator" of the vehicle, within the meaning *Road Transport (Vehicle Registration) Act 1997* (NSW) was Caringbah Bus Service Pty Ltd - 'owner' - no basis for operation of double insurance - proceedings dismissed - detailed consideration of case law.

[Zurich Australian Insurance](#) (I)

**In the matter of Liverpool Hotels Pty Ltd (in liq) [2010] NSWSC 72**

Supreme Court of New South Wales

Austin J

*Corporations Act 2001* (Cth) - winding up - application for reinstatement of defunct company by liquidator for purpose of investigating & taking recovery proceedings.

[Liverpool Hotels](#) (B)

**Australian Securities & Investments Commission v Lindberg (No 2) [2010] VSCA 19**

Court of Appeal of Victoria

Maxwell P; Buchanan & Weinberg JJA

Appeal against stay order - civil penalty proceedings - for decision appealed from, see 'Benchmark' B & IBC Friday 11 December 2009 & link below - appeal allowed & order that second proceeding be permanently stayed set aside.

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

[Re AWB](#) - decision 9 December 2009 - *Corporations Act* 2001 (Cth) - civil penalty proceedings - application to permanently stay second proceeding - stay ordered as second proceeding constitutes an abuse of process.

### **Scaffidi (by her next friend the Public Trustee) v Scaffidi Holdings Pty Ltd [2010] WASC 29**

Supreme Court of Western Australia

E M Heenan J

Applications to remove trustee & appoint a new trustee - entitlement of new trustee to documents, instruments of title & other records of former trustee.

[Scaffidi](#) (B)

### **From New Zealand...**

### **Vector Gas Ltd v Bay of Plenty Energy Ltd [2010] NZSC 5**

Supreme Court of New Zealand

Blanchard, Tipping, McGrath, Wilson & Gault JJ

Contracts - interpretation - supply of gas - admissibility of extrinsic evidence - evidence concerning prior negotiations - estoppel - rectification - ambiguity - commercial sense - appeal allowed - High Court judgment reinstated - extensive review of text & case law from New Zealand, The United Kingdom & Australia.

[Vector Gas](#) (C)

### **John Shaw Neilson**

*(b. Penola, South Australia 22 February, 1872*

*- d. Melbourne 12 May 1942)*

“... Yellow in all the earth and in the skies,

The world would seem

Faint as a widow mourning with soft eyes

And falling into dream.



Up the long hill I see the slow plough leave  
Furrows of brown;  
Dim is the day and beautiful : I grieve  
To see the sun go down.

But there are suns a many for mine eyes  
Day after day:  
Delightful in grave greenery they rise,  
Red oranges in May.

- from "May" (1912)

Say this for love, when the great summer time  
Is gone, and only winter wisdoms blow:  
Fiercely he burned, like some imperious rhyme,  
Burned, and he burned, but would not let me go ...

Say this for love: For all the ills in him  
I give forgiveness for the lies he told;  
Say this for love, when both the eyes are dim,  
And darkness leaves you whimpering in the cold.

- "Say This for Love" (1941)

[Neilson, John Shaw \(1872 - 1942\) Biographical Entry - Australian ...](#)