

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

Executive Summary (1 minute read)

Strong Wise Ltd v Esso Australia Resources Pty Ltd - *Admiralty Act 1988* (Cth) - limitation of liability - "claims arising on any distinct occasion" (I, C)

La Trobe Capital & Mortgage Corporation Ltd v Hay Property Consultants Pty Ltd - *s52 Trade Practices Act 1974* (Cth) - loan agreement (I, B)

Nelson v The Hollard Insurance Company Pty Ltd - *Insurance Contracts Act 1984* (Cth) - statutory construction - plaintiff claiming to be indemnified by insurer in respect of damage suffered to yacht (I)

J P Morgan Australia Ltd v Consolidated Minerals Ltd - Contracts - Incentive fee - defence of accord & satisfaction (I, B)

Frazer v National Mutual Life Association - *Insurance Contracts Act 1984* (Cth) - accident & sickness insurance - whether plaintiff in breach of his duty of disclosure (I)

Welzel & Anor v Francis - Practice Notes (I)

ASIC v Oswyn Indra de Silva - Contempt of court - sentencing (B)

R v Momcilovic - *Charter of Human Rights & Responsibilities Act 2006* (Vic) - criminal law - *Drugs, Poisons & Controlled Substances Act 1981* (Vic) - declaration of inconsistent interpretation (I, B, C)

Rogers v Vasicek & Suncorp Metway Insurance Ltd - Personal injuries - motor vehicle accident - judgment for defendants (I)

Jordan & Ors v Gunns Ltd & Anor - s51A *Trade Practices Act* 1974 (Cth) - discovery & inspection of documents (I, B, C)

Day v Yuendumu Social Club Inc & Anor - *Workers Rehabilitation & Compensation Act* 1986 (NT) - application for judicial review - refusal of application for interim payments of workers compensation (I)

Summaries with links (5 minute read)

Monday 22 March 2010

Strong Wise Ltd v Esso Australia Resources Pty Ltd [2010] FCA 240

Federal Court of Australia

Rares J (in Melbourne)

Admiralty Act 1988 (Cth) - application under s25 by shipowner to limit liability under *Limitation of Liability for Maritime Claims Act* 1989 (Cth) & the *Convention on Limitation of Liability for Maritime Claims* 1976 as affected by the 1996 Protocol to amend that Convention - "claims arising on any distinct occasion" - MV "APL Sydney" dragged at anchor during a gale in Port Phillip Bay - fracture of submarine gas pipeline - Vienna Convention on the Law of Treaties of 1969 - comprehensive consideration of legislation, text & case law from Australia, the United Kingdom, the United States of America & New Zealand in an interesting decision.

[Strong Wise](#) (I, C)

La Trobe Capital & Mortgage Corporation Ltd v Hay Property Consultants Pty Ltd [2010] FCA 250

Federal Court of Australia

Marshall J (in Melbourne)

Trade Practices Act 1974 (Cth) - whether applicant suffered loss or damage as a result of respondent's breach of s52 & whether this conduct induced it to enter into a loan agreement that it would otherwise not have entered into - application dismissed.

[La Trobe Capital & Mortgage Corporation](#) (I, B)

Nelson v The Hollard Insurance Company Pty Ltd [2010] NSWSC 199

Supreme Court of New South Wales

Einstein J

Insurance Contracts Act 1984 (Cth) - statutory construction - s46 (2) construed in the context of Act as a whole - plaintiff claiming to be indemnified by insurer in respect of damage suffered to yacht while being slipped & cradled at Royal Sydney Yacht Club in Kirribilli - "Private Pleasure Boat Insurance Policy" - proceedings dismissed.

[Nelson \(I\)](#)

[Asteron Life](#) - decision 5 March 2004 referred to at para 7 of above judgment.

J P Morgan Australia Ltd v Consolidated Minerals Ltd [2010] NSWSC 100

Supreme Court of New South Wales

Hammerschlag J

Contracts - Incentive fee - defendant retained plaintiff to advise on takeover defence strategy - engagement provided for payment of different fees depending on outcome of takeover offers - defence of accord & satisfaction - plaintiff's claim did not succeed.

[J P Morgan Australia \(I, B\)](#)

Frazer v National Mutual Life Association [2010] NSWSC 45

Supreme Court of New South Wales

Gzell J

Insurance Contracts Act 1984 (Cth) - accident & sickness insurance - whether plaintiff in breach of his duty of disclosure - whether in answering a question in application form plaintiff made a misrepresentation to the defendant - whether defendant was entitled to terminate contract under s29(3) *Insurance Contracts Act 1984 (Cth)* - whether income protection policy was a contract of life insurance - defendant had validly terminated the contract of insurance.

[Frazer \(I\)](#)

Welzel & Anor v Francis [2010] NSWSC 75

Supreme Court of New South Wales

Einstein J

Practice Notes - order that Court defendant take no step to enforce any assessment of costs made by consent on 28 August 2009 unless & until otherwise ordered.

[Welzel \(I\)](#)



ASIC v Oswyn Indra de Silva [2010] NSWSC 200

Supreme Court of New South Wales

Palmer J

Contempt of court - sentencing - defendant detained at airport attempting to leave - guilty plea - custodial sentence required.

[ASIC](#) (B)

R v Momcilovic [2010] VSCA 50

Court of Appeal of Victoria

Maxwell P; Ashley & Neave JJA

Charter of Human Rights & Responsibilities Act 2006 (Vic) - criminal law - *Drugs, Poisons & Controlled Substances Act 1981* (Vic) - declaration of inconsistent interpretation made - an interesting review of cases from the United Kingdom, Hong Kong & New Zealand relating to principles of statutory interpretation.

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

Rogers v Vasicek & Suncorp Metway Insurance Ltd [2010] QSC 72

Supreme Court of Queensland

Jones J

Personal injuries - motor vehicle accident - damages agreed but liability contested - plaintiff alleging he lost control of his vehicle taking evasive action - judgment for defendants.

[Rogers](#) (I)

Jordan & Ors v Gunns Ltd & Anor [2010] TASSC 10

Supreme Court of Tasmania

Holt AsJ

s51A *Trade Practices Act 1974* (Cth) - statements as to future matters - discovery & inspection of documents.

[Jordan & Ors](#) (I, B, C)

Day v Yuendumu Social Club Inc & Anor [2010] NTSC 7

Supreme Court of the Northern Territory

Martin (BR) CJ



Workers Rehabilitation & Compensation Act 1986 (NT) - application for judicial review - refusal of application for interim payments of workers compensation - certiorari - plaintiff submitting that Judicial Registrar sitting as Work Health Court erred in construing s65 (2) as a provision which deemed plaintiff to possess an earning capacity which she did not possess - application dismissed.

[Day](#) (I)