



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Gray v Sirtex Medical Ltd - - Assessment of damages from cross-claim - appeal allowed in part (I)

Comcare v Broadhurst - *Safety Rehabilitation & Compensation Act 1988* (Cth) (I)

Combined Insurance Company of America t/a Combined Insurance Company of Australia v Trifunovski (No 3) - Amendment of pleadings (I)

Tower Australia Group Ltd, in the matter of Tower Australia Group Ltd - s411(1) *Corporations Act 2001* (Cth) - scheme of arrangement (B)

Sylvastate Ltd, in the matter of Sylvastate Ltd - s411(1) *Corporations Act 2001* (Cth) - scheme of arrangement (B)

Olesen suing in his capacity as Deputy Commissioner of Taxation (Superannuation) v MacLeod - *Superannuation Industry (Supervision) Act 1993* (Cth) (B)

Sahin & Anor v National Australia Bank Ltd & Anor - Bank loan insurance (I, B)

WAW Developments Pty Ltd v Brisbane City Council - *Integrated Planning Act 1997* (Qld) (C)



Body Corporate for Sun City Resort v Sunland Constructions Pty Ltd & Ors (No 2) - *Body Corporate & Community Management Act 1997 (Qld)* - plaintiff applying for leave to amend its claim & statement of claim (C)

Bellenjuc Pty Ltd v Kentish Council - Legal professional privilege - discovery of documents - motor vehicle accident case (I)

Summaries with links (5 minute read)

Tuesday 22 March 2011

Gray v Sirtex Medical Ltd [2011] FCAFC 40

Full Court of the Federal Court of Australia

Bennett, Gilmour & Gordon JJ (in Sydney)

Assessment of damages from cross-claim in relation to misleading or deceptive conduct in breach of s10 *Fair Trading Act 1987 (WA)* & breach of duties as a director, including statutory duties under s180 & s181 *Corporations Law 2000 (Cth)* - costs - for decision 10 June 2010 appealed from, plus links to related judgments, see links below - appeal allowed in part.

[Gray \(I\)](#)

[University of Western Australia](#) - decision 24 June 2010: see 'Benchmark' Monday 28 June 2010 - damages - for decision 10 June 2010, see 'Benchmark' Thursday 17 June 2010 & link below - orders:(1) first respondent Dr. Gray to pay second respondent Sirtex the sum of \$1,762,224.33 as damages in respect of second respondent's cross-claim against first respondent - (2) first respondent to pay second respondent sum of \$812,961.50 as interest on costs incurred by second respondent including the amount in order 1 of these orders;

[University of Western Australia](#) - decision 10 June 2010 - damages - costs - assessment of damages for loss of commercial opportunity in relation to entry of judgment on cross-claim against Dr Gray in favour of Sirtex on Sirtex's cross-claim in primary proceedings against Dr Gray - whether legal costs recoverable as damages - consideration of text & case law from the United Kingdom & Australia;

[University of Western Australia](#) - decision 17 April, 2008 - intellectual property - patents - inventions made by employees - treatment of liver cancer - trade practices - tort - defamation - contract of employment - academic staff - whether duty to invent - consideration of text & case law from the United Kingdom, Australia, United States of America & Canada.

**Comcare v Broadhurst [2011] FCAFC 39**

Full Court of the Federal Court of Australia

Downes, Tracey & Flick JJ - Sydney (heard in Canberra)

Safety Rehabilitation & Compensation Act 1988 (Cth) - Comcare Guide to Assessment of the Degree of Permanent Impairment - Edition 5 of American Medical Association's Guides to the Evaluation of Permanent Impairment - case to be remitted to Tribunal.

[Comcare](#) (I)

[Broadhurst](#) - decision 22 September 2010: see 'Benchmark' I & IBC Thursday 30 September 2010 - Guide to the Assessment of the Degree of Permanent Impairment - impairment in appellant's legs arose as neurological sequelae of an injury to her lumbar spine - decision of Administrative Appeals Tribunal set aside & matter remitted.

Combined Insurance Company of America t/a Combined Insurance Company of Australia v Trifunovski (No 3) [2011] FCA 238

Federal Court of Australia

Perram J (in Sydney)

Amendment of pleadings - proceedings as to whether five insurance agents formerly retained by applicant were employees - claims for long service leave payments & also for payments for annual holidays - applicant seeking to amend pleadings - principles applicable to grant of leave to amend.

[Combined Insurance Company of America](#) (I)

Tower Australia Group Ltd, in the matter of Tower Australia Group Ltd [2011] FCA 224

Federal Court of Australia

Stone J (in Sydney)

s411(1) *Corporations Act 2001* (Cth) - scheme of arrangement - application for orders approving company convening meeting of shareholders to consider proposed scheme of arrangement and directions as to conduct of meeting.

[Tower Australia Group Limited](#) (B)

Sylvastate Ltd, in the matter of Sylvastate Ltd [2011] FCA 211

Federal Court of Australia

Stone J (in Sydney)



s411(1) *Corporations Act* 2001 (Cth) - scheme of arrangement - application for orders approving company convening meeting of shareholders to consider proposed scheme of arrangement and directions as to conduct of meeting

[Sylvastate](#) (B)

Olesen suing in his capacity as Deputy Commissioner of Taxation (Superannuation) v MacLeod [2011] FCA 229

Federal Court of Australia

Barker J (in Perth)

Superannuation Industry (Supervision) Act 1993 (Cth) - contraventions of s62(1) & s65(1) admitted - failure to ensure Fund was maintained solely for one or more of the purposes set out in s62(1) of the Act - giving financial assistance using resources of the Fund to a member of the Fund, namely the respondent - assessment of an appropriate penalty - respondent to pay to the Commonwealth of Australia a monetary penalty in sum of \$12,500.

[Olesen](#) (B)

Sahin & Anor v National Australia Bank Ltd & Anor [2011] VSCA 64

Court of Appeal of Victoria

Harper & Hansen JJA; Hargrave AJA

Bank loan insurance - appeal allowed - order pursuant to s87(2)(b) *Trade Practices Act* 1974 varying loan insurance policy - orders should be made restoring appellants' loan account to the position it would have been in had insurer complied with its obligations under the loan insurance policy, as varied by orders & declarations made in the Court of Appeal's judgment.

[Sahin](#) (I, B)

[Sahin](#) - *Sahin v National Bank Australia & Anor* [2009] VCC 1512 - decision County Court 27 November 2009 - whether re-financing of loan caused the insurance cover to cease or be cancelled - whether plaintiffs declined offer of fresh insurance cover - whether bank records falsely created after the event - plaintiffs' claim dismissed.

WAW Developments Pty Ltd v Brisbane City Council [2011] QCA 47

Court of Appeal of Queensland

Muir & Chesterman JJA; Ann Lyons J

Integrated Planning Act 1997 (Qld) - development applications - applicant built a raised deck over footpath outside its premises & sought development approval for the use of the structure for outdoor dining - whether application was a 'properly made' one - Planning & Environment Court



had struck out the appeal- applicant seeking leave to appeal against the summary dismissal of its appeal - appeal allowed

[WAW Developments](#) (C)

[WAW Developments](#) - decision Planning & Environment Court 6 August 2010 - declaration that development application not a properly made application.

Body Corporate for Sun City Resort v Sunland Constructions Pty Ltd & Ors (No 2) [2011] QSC 42

Supreme Court of Queensland

Applegarth J

Body Corporate & Community Management Act 1997 (Qld) - plaintiff applying for leave to amend its claim & statement of claim - Sun City Resort, a forty level residential unit building on the Gold Coast - body corporate alleging water ingress - leave granted on terms with an objection to one of the proposed amendments upheld (see para. 86.)

[Body Corporate for Sun City Resort](#) (C)

Bellenjuc Pty Ltd v Kentish Council [2011] TASSC 12

Supreme Court of Tasmania

Holt AsJ

Legal professional privilege - discovery of documents - motor vehicle accident case - expert witness statement from an engineer making no reference to witness statements or an assessor's report but, in compliance with containing assumptions of fact upon which the opinion is based - defendant seeking production for inspection of the material from which those assumptions are drawn - application dismissed.

[Bellenjuc](#) (I)

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