

Wednesday 23 November 2011

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Sanofi-Aventis Australia Pty Ltd v Apotex Pty Ltd (No 4) - *Therapeutic Goods Legislation Amendment (Copyright) Act 2011 (Cth)* - *s44BA Copyright Act 1968 (Cth)* - statutory interpretation (I, B)

Parker v Minister for Sustainability, Environment, Water, Population and Communities - *Environment Protection & Biodiversity Conservation Act 1999 (Cth)* - statutory interpretation - delegated legislation - amendment to live import list by legislative instrument made by Minister (I, B, C, G)

Steve Masselos & Co v Young - Damages (I)

Save Our Figs Inc v General Manager Newcastle City Council - Interlocutory injunction granted (I, C)

St Marys Land Ltd v Valuer General - *s14K Valuation of Land Act 1916 (NSW)* - statutory interpretation (B, C)



Summaries with links (5 minute read)

Sanofi-Aventis Australia Pty Ltd v Apotex Pty Ltd (No 4) [2011] FCA 1307

Federal Court of Australia

Jagot J

Therapeutic Goods Legislation Amendment (Copyright) Act 2011 (Cth) - s44BA Copyright Act 1968 (Cth) - statutory interpretation - "a work that is product information approved under s25AA of the *Therapeutic Goods Act 1989* in relation to medicine."

[Sanofi-Aventis Australia Pty Ltd](#) (I, B)

[Sanofi-Aventis Australia Pty Ltd](#) - decision 29 July 2011 reported at (2011) 92 IPR 320 - extensive consideration of case law from United Kingdom, United States of America & Australia.

Parker v Minister for Sustainability, Environment, Water, Population and Communities [2011] FCA 1325

Federal Court of Australia

Bromberg J

Environment Protection & Biodiversity Conservation Act 1999 (Cth) - statutory interpretation - delegated legislation - amendment to live import list by legislative instrument made by Minister - preclusion of Savannah Cats - hybrid cross - "including an item in the list" - ss13(1)(a) & 13(1)(b) *Legislative Instruments Act 2003 (Cth)* - status of a Note in a legislative instrument: see par 72 of judgment & continuing - status of Explanatory Statement to legislative instrument: see par 75 of judgment & continuing - judicial review principles of "unreasonableness" & lack of proportionality - applicants' application for declaration that instrument invalid & for an injunction restraining Minister from implementing it dismissed.

[Parker](#) (I, B, C, G)

Steve Masselos & Co v Young [2011] NSWCA 352

Court of Appeal of New South Wales

McCull JA, Handley & Sackville AJJA

Damages - professional negligence claim - common law damages claim statute barred - primary judge's assessment of damages based on notional trial date in February 2006 & notional judgment date of 1 May 2006 - past economic loss - loss of future earning capacity - calculation of interest -



appeal allowed in part - cross-appeal allowed - judgment of District Court set aside & in lieu, judgment for plaintiff for \$18,278 with effect from 13 October 2010.

[Steve Masselos](#) (I)

[Young](#) - decision 13 August 2010 District Court of New South Wales: see Benchmark I & IBC Tuesday 17 August 2010 - professional negligence - legal practitioners - failure to advise plaintiff of potential common law right to claim damages for personal injury in the workplace -related failure to institute timely proceedings - whether the barred claim would have succeeded if litigated - measure of damages - judgment for plaintiff in sum of \$67,344.75 including interest

[Firth](#) - decision Court of Appeal of New South Wales 30 April 2010: see Benchmark I & IBC Wednesday 5 May 2010 - professional negligence - *Workers Compensation Act 1987* (NSW) - election to be made for damages under *Workers Compensation Act* or damages at common law - assessment of comparative worth of proceedings under *Workers Compensation Act* & common law - calculation of value of loss of a lump sum payment should include interest;

[Firth](#) - decision Court of Appeal of New South Wales 14 May 2010: see Benchmark I & IBC Tuesday 18 May 2010 - damages - professional negligence - workplace injury claim - whether as part of calculation of loss, interest should accrue on value of lost common law claim - appeal & cross-appeal allowed - calculation of compensation for comparatively worse position of not having a lump sum payment under lost common law action should not only take into account what benefit under the *Workers Compensation* legislation was received, but also when it was received.

Save Our Figs Inc v General Manager Newcastle City Council [2011] NSWLEC 207

Land & Environment Court of New South Wales

Biscoe J

Interlocutory injunctions - urgent interim injunction sought to stop removal of trees - general manager taking steps to implement Council's resolution to remove trees - issue as to public liability insurance: see par 12 & par 60 & continuing - interlocutory injunction granted.

[Save Our Figs Inc](#) (I, C)

St Marys Land Ltd v Valuer General [2011] NSWLEC 1330

Land & Environment Court of New South Wales

Dixon C

s14K *Valuation of Land Act 1916* (NSW) - statutory interpretation - 972.9 hectares at Llandilo - Development Serving Plan levies - "the manner in which the land, and any other land, may be used" - appeal dismissed - valuation of \$62,750,000 confirmed - Australian & New Zealand case law considered.

[St Marys Land Limited](#) (B, C)

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