



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Digital Cinema Network Pty Ltd v Omnilab Media Pty Ltd (No 2) - Directors' duties - fiduciary obligations - "Virtual Print Fees" agreements (I, B)

Farache v Motor Accident Authority of NSW [2011] - s63 *Motor Accidents Compensation Act 1999* (NSW) - medical assessment (I)

QBE Insurance (Australia) Ltd v Kalead Etri [2011] - Subpoenas (I, B, C)

KF By Her Tutor RF v Royal Alexandra Hospital for Children known as the Children's Hospital Westmead & Anor - Medical negligence claim - reconvening experts' conference (I)

Dwyer v Browning - Medical negligence claim - application for further interim payment granted (I)

Healthscope (Tasmania) Pty Ltd & Anor v Australian Hospital Care Pty Ltd & Anor (No 2) - Interest pursuant to s58(1) *Supreme Court Act 1986* (Vic) (B)

Alder v Khoo & Anor - Medical negligence claim - stay imposed pending medical testing lifted (I)



Atkins & Anor v Atkins & Ors - Family provision - plaintiff seeking litigation guardian be appointed for a defendant (B)

DAB v Capes - *Criminal Code* (WA) - defendant charged with damaging property by fire - appeal allowed - conviction quashed (I)

Bunnings Group Ltd v Resource Management & Planning Appeal Tribunal - Development applications - appeal from Tribunal dismissed (C)

Outback Civil Pty Ltd v Francis - Personal injuries - application for summary judgment had been dismissed - appeal dismissed (I)

Summaries with links (5 minute read)

Tuesday 24 May 2011

Digital Cinema Network Pty Ltd v Omnilab Media Pty Ltd (No 2) [2011] FCA 509

Federal Court of Australia

Gordon J (in Melbourne)

Directors' duties - fiduciary obligations - "knowing assistance" - accessory liability - *Trade Practices Act* 1974 (Cth) - *s1317H Corporations Act* 2001 (Cth) - "Virtual Print Fees" agreements - liability hearing - Australian & United Kingdom case law considered.

[Digital Cinema Network](#) (I, B)

Farache v Motor Accident Authority of NSW [2011] NSWSC 446

Supreme Court of New South Wales

Hislop J

s63 Motor Accidents Compensation Act 1999 (NSW) - certiorari & mandamus sought - medical assessment - not demonstrated that proper officer erred in concluding there was reasonable cause to suspect medical assessment incorrect in a material respect having regard to the particulars in application.

[Farache](#) (I)

**QBE Insurance (Australia) Ltd v Etri [2011] NSWSC 468**

Supreme Court of New South Wales

Bergin CJ in Eq

Subpoenas - application by third defendant to set aside subpoenas issued by plaintiff - no abuse of process - application refused.

[QBE Insurance](#) (I, B, C)

KF By Her Tutor RF v Royal Alexandra Hospital for Children known as the Children's Hospital Westmead & Anor [2011] NSWSC 399

Supreme Court of New South Wales

Johnson J

Medical negligence claim - plaintiff's application for appointment of facilitator to attend reconvened breach of duty experts' conference - application by plaintiff for leave to rely on a report from paediatric endocrinologist for purposes of issue of causation - applications granted.

[KF](#) (I)

[KF](#) - decision 10 August 2010: see 'Benchmark' I & IBC Friday 13 August 2010 - application for medical examination of plaintiff - claim for damages against hospital & paediatrician - alleged negligence in failing to diagnose & treat hypoglycaemia & hyperinsulinism in infancy - second defendant seeking order that plaintiff undergo genetic testing - applicable principles on interlocutory application for medical examination - order for medical examination made.

Dwyer v Browning [2011] NSWSC 445

Supreme Court of New South Wales

Harrison J

Medical negligence claim - s82 *Civil Procedure Act* 2005 (NSW) - application for further interim payment granted.

[Dwyer](#) (I)

Healthscope (Tasmania) Pty Ltd & Anor v Australian Hospital Care Pty Ltd & Anor (No 2) [2011] VSC 209

Supreme Court of Victoria

Sifris J

Interest pursuant to s58(1) *Supreme Court Act* 1986 (Vic) - date from which interest should be calculated.

[Healthscope](#) (B)



[Healthscope](#) - decision 7 April 2011: see 'Benchmark' B & IBC Monday 11 April 2011 - contracts - terms of Novation Deed - privatisation of Queen Alexandra Hospital - clause entitled first plaintiff to recover from first defendant for liabilities & debts incurred before completion date - meaning of 'incur' - whether second plaintiff could recover from second defendant under guarantee for debt paid on behalf of first plaintiff.

Alder v Khoo & Anor [2011] QSC 126

Supreme Court of Queensland

Dalton J

Medical negligence claim - stay imposed pending medical testing lifted - plaintiff's application for plaintiff to undergo blood testing refused - application to strike out parts of defences of first & second defendants dismissed.

[Alder](#) (I)

[Alder](#) - decision 17 December 2010: see 'Benchmark' Thursday 23 December 2010 - civil procedure - appellant claimed to suffer cerebral palsy as a result of mismanagement of his mother's labour - the respondents claimed appellant suffered from Angelman's Syndrome, a genetic condition - the trial judge set aside a subpoena for production filed by the appellant, dismissed the appellant's application that one of the respondents be held in contempt, and stayed the proceedings until the appellant submitted to the taking of a blood sample for the purpose of testing for Angelman's Syndrome - held: the trial judge had the power to make the order for the proceedings to be stayed unless the appellant submitted to blood testing - the trial judges order in this respect should stand - the other orders made by the trial judge correct - appeal dismissed.

Atkins & Anor v Atkins & Ors [2011] SASC 85

Supreme Court of South Australia

Judge Lunn a Master of the Supreme Court

Family provision - plaintiff seeking a litigation guardian to be appointed for a defendant - plaintiff to apply for an inquiry by a Master as to whether the defendant was a person under disability for the purposes of the action.

[Atkins](#) (B)

DAB v Capes [2011] WASC 137

Supreme Court of Western Australia

Murray J

Criminal law - arson - *Criminal Code* (WA) - defendant charged with damaging property by fire - fire extinguished before damage occurred - spontaneous combustion followed - whether resultant damage was wilfully caused by defendant - appeal allowed - conviction quashed

[DAB](#) (I)



Bunnings Group Ltd v Resource Management & Planning Appeal Tribunal [2011] TASSC 24

Supreme Court of Tasmania

Crawford J

Development applications - land at Burnie zoned Industrial - like the Council, the Resource Management & Planning Appeal Tribunal concluded proposed use was prohibited under Burnie Planning Scheme - appeal from Tribunal dismissed.

[Bunnings Group](#) (C)

Outback Civil Pty Ltd v Francis [2011] NTCA 3

Court of Appeal of the Northern Territory

Mildren, Southwood & Blokland JJ

Personal injuries - allegation that accident occurred when respondent was directed by second appellant to unload front-end loader from a truck at Garden Point on Melville Island - appeal from decision of a Master who dismissed application for summary judgment by appellants who were defendants in the action - appeal dismissed.

[Outback Civil](#) (I)

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