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

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Executive Summary (1 minute read)

Grego v Copeland & Ors - s232 *Corporations Act* 2001 (Cth) - oppression (B)

TRA Global Pty Ltd v Kebakoska - Costs (I, B, C)

Sutton (respondent) v Syston Rugby Football Club Ltd (appellant) – United Kingdom decision - personal injuries - duty of care - football - pitch inspection - causation - appeal allowed (I)

Societe Generale SA v Saad Trading & Anor - United Kingdom decision - facility letter - guarantee (B, C)

All Leisure Holidays Ltd v Europaische Reiseversicherung AG & Ors – United Kingdom decision - passenger protection insurance policy - interpretation (I, B)

Zaki & Ors v Credit Suisse (UK) Ltd - United Kingdom decision - financial products - advice & recommendations - duty of care - statutory duties - claim dismissed (I, B)

City Index Ltd (t/a Finspreads) v Balducci - United Kingdom decision - financial products - spread betting - claimant had proved its case - counterclaim dismissed (B)



Summaries with links (5 minute read)

Grego v Copeland & Ors [2011] VSC 521

Supreme Court of Victoria

Osborn J

Corporations Act 2001 (Cth) – defendant’s application for leave to appeal from decision of Associate Judge – plaintiff together with three defendants shareholders in fourth defendant company – plaintiff contended defendants had conducted affairs of company in a manner oppressive to him for purposes of s232 - defendants’ application dismissed.

[Grego \(B\)](#)

TRA Global Pty Ltd v Kebakoska [2011] VSC 524

Supreme Court of Victoria

Osborn J

Costs – successful respondent seeking their costs on a solicitor & client basis – application granted.

[TRA Global \(I, B, C\)](#)

[TRA Global](#) – decision 27 September 2011: see Benchmark Friday 30 September 2011 - employment law - appellant the former employer of respondent - redundancy payment paid to her - subsequently, employee sued company for contractual bonus entitlements - company counterclaimed seeking restitution of redundancy payment on the basis that it was made as the result of a mistake as to the employee’s entitlements – Magistrate had upheld the claim & dismissed counterclaim - company appealing magistrate’s decision in respect of the counterclaim on questions of law - Magistrate had held that redundancy payment was made by mistake, but that employee had a partial defence to the counterclaim by reason of change of position & a complete defence of estoppel by representation – appeal dismissed – detailed consideration of case law from UK & Australia.

From the United Kingdom...

Sutton (respondent) v Syston Rugby Football Club Ltd (appellant) [2011] EWCA Civ 1182

Court of Appeal of England & Wales

Longmore & Rimer LJJ; Warren J

Personal injuries – duty of care - accident while playing aged sixteen in pre-season training system - fall onto right knee which was gashed by a plastic object, found by primary judge to have been a broken off part of a cricket boundary marker, which had been left behind by members of a cricket club who had used the area a few days earlier – pitch inspection – causation - appeal allowed.

[Sutton \(I\)](#)



Societe Generale SA v Saad Trading & Anor [2011] EWHC 2424 (Comm)

High Court of England & Wales, Commercial Court

Teare J

Facility letter - guarantee - letters of credit - claim for an indemnity pursuant to the facility - claimant, through its Australian Branch, had provided a credit facility to first Defendant in connection with the purchase of gold by first defendant - that facility was terminated in 2008 - claimant was obliged to reimburse National Australia Bank - claimant entitled to judgment against first defendant under facility & against second defendant under guarantee.

[Societe Generale SA](#) (B, C)

All Leisure Holidays Ltd v Europaische Reiseversicherung AG & Ors [2011] EWHC 2629 (Comm)

High Court of England & Wales, Commercial Court

Teare J

Passenger protection insurance policy – ship “Hebridean Princess” owned & operated by a company that went into administration - administrators sold ship to claimant – sale disabled the company in administration from being able to perform contracts it had entered into with its clients to provide them with cruises on board the ship – claimant continued to run same cruise programme & offered clients opportunity to participate in cruises on board “Hebridean Princess” but operated by claimant rather than by company in administration - in return, claimant required clients to claim from defendants an indemnity under the policy entered into by company in administration on behalf of their clients in respect of the monies they had paid to company in administration, & to pay the proceeds to claimant - clients assigned their claims against defendants to claimant - claimant, as assignee, seeking judgment against defendants for an indemnity in aggregate sum of £1,971,900.48 in respect of sums paid to company in administration in respect of the 2009 cruises which took place after 22 April 2009 - defendants denying liability - whether passengers' cruises cancelled within meaning of the policy - whether passengers had suffered loss within meaning of the policy - whether passengers were only entitled to claim under the policy if they had completed a claim form - the three points of principles determined in favour of the claimant.

[All Leisure Holidays](#) (I, B)

**Zaki & Ors v Credit Suisse (UK) Ltd [2011] EWHC 2422 (Comm)**

High Court of England & Wales, Commercial Court

Teare J

Financial products – advice & recommendations – duty of care – suitability – degree of risk - statutory duties - Conduct of Business Rules known from November 2007 as the Conduct of Business Sourcebook Rules: made by Financial Services Authority pursuant to *Financial & Services Markets Act 2000* (UK) – “CDIs” - "trigger" notes – a reverse convertible note - businessman held structured financial products which he had bought from defendant - defendant issued a margin call which was not met - as a result defendant liquidated certain of the products causing businessman to suffer a loss of US\$ 69.4m - businessman claimed loss was responsibility of defendant & along with members of his family who were joint account holders with him, commenced proceedings against defendant – claim continued by those family members after his death - no breach of duty in relation to some of the notes - although breach of duty with regard to three of the notes, claimants had not established that such breach caused them loss - claim dismissed.

[Zaki](#) (I, B)

City Index Ltd (t/a Finspreads) v Balducci [2011] EWHC 2562 (Ch)

High Court of England & Wales, Chancery Division

Proudman J

Financial products - spread betting: claimant offers its customers spread bets in financial derivative products; claimant's financial products margined: customer only required to deposit a percentage of full value of the position that is opened - risk warning notice - counterclaim contending defendant's spread betting losses were wrongfully incurred owing to claimant's fault – claimant had proved its case – counterclaim dismissed.

[City Index](#) (B)

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