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

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Executive Summary (1 minute read)

Rinehart v Rinehart (FCA) - suppression - trusts - interim orders suppressing statement of claim refused (I B C)

In the matter of Aquaqueen International Pty Ltd (NSWSC) - corporations - winding up - failure to rebut presumption of insolvency - company wound up (B)

In the matter of Bestcare Foods Ltd (subject to a Deed of Company Arrangement) (NSWSC) - corporations - limited review of remuneration of administrators and deed administrators of company (B)

The Herald & Weekly Times Ltd v Jessop (VSCA) - accident compensation - serious injury - no error in loss of earning capacity analysis - appeal dismissed (I)

H & G MacDonald Carriers Pty Ltd v Carson (VSC) - accident compensation - medical panel breached rules of natural justice - panel's answers quashed (I G)

Sanrus Pty Ltd v Monto Coal 2 Pty Ltd (QSC) - pleadings - joint venture - paragraphs of statement of claim not struck out (I B C)

Doyle (WA) Pty Ltd v ING Real Estate Joondalup BV (WASCA) - work injury - trip and fall in shopping centre - employer refused indemnity from shopping centre owner (I)

Summaries with links (5 minute read)

Rinehart v Rinehart [2014] FCA 1241

Federal Court of Australia

Jacobson J

Suppression order - dispute between children of first respondent Georgina Hope Rinehart (GHR) and their mother as to GHR's alleged misconduct in administration of trust of which children were beneficiaries - respondents sought interim suppression orders under s37A1 *Federal Court of Australia Act 1976* (Cth) - respondents sought to suppress contents of originating application and statement of claim and certain associated documents - abuse of process - whether harm would be occasioned in dealings with lenders and investors - scope of arbitration agreements/releases - held: respondents failed to establish credible case that proceeding constituted an abuse of process - counter-parties sophisticated commercial organisations well able to distinguish between allegations and factual findings - substance of allegations significantly in public domain - futile to make suppression order - interim suppression orders revoked - confidential addendum to statement of claim suppressed.

[Rinehart](#) (I B C)

In the matter of Aquaqueen International Pty Ltd [2014] NSWSC 1645

Supreme Court of New South Wales

Black J

Corporations - winding up in insolvency - plaintiffs as substituted creditors sought order that company be wound up under s459P *Corporations Act 2001* (Cth) - held: plaintiffs entitled to rely on presumption of insolvency created by failure to comply with creditor's statutory demand - Court satisfied presumption of insolvency not rebutted and that company's insolvency established as matter of fact - applicable procedural requirements in respect of winding up satisfied - company wound up.

[In the matter of Aquaqueen International Pty Ltd](#) (B)

In the matter of Bestcare Foods Ltd (subject to a Deed of Company Arrangement) [2014] NSWSC 1630

Supreme Court of New South Wales

Black J

Corporations - applicant sought order pursuant to s449E(2) *Corporations Act 2001* (Cth) that Court review remuneration of administrators and deed administrators of company - delay and acquiescence - creditors' informed consent to resolutions approving remuneration - ss439A, 443D, 447E, 449E, 449E(1)(b), 449E(1A)(b), 449E(4) & 449E(6) & 1480 - held: Court not satisfied it was just for review of administrators or deed administrators' remuneration to be ordered other than in

respect of remuneration of amount approved at creditors' meeting - Court satisfied order for review should be made limited to that remuneration.

[In the matter of Bestcare Foods Ltd](#) (B)

The Herald & Weekly Times Ltd v Jessop [2014] VSCA 292

Court of Appeal of Victoria

Neave & Kyrou JJA; Ginnane AJA

Accident compensation - serious injury - assessment of pre-injury earning capacity - employer appealed from decision in which County Court judge granted leave to worker to bring proceeding against employer for damages - order made pursuant to s134AB(16)(b) *Accident Compensation Act 1985* (Vic) - necessity for worker to establish that, due to workplace injury, earning capacity decreased by 40 per cent or more - whether judge misconstrued s134AB(38)(f)(ii) in relation to loss of earning capacity analysis - held: judge correctly concluded worker satisfied statutory test in ss134AB(38)(e) & 134AB(38)(f) - appeal dismissed.

[The Herald & Weekly Times Ltd](#) (I)

H & G MacDonald Carriers Pty Ltd v Carson [2014] VSC 586

Supreme Court of Victoria

Bell J

Judicial review - accident compensation - Magistrates' Court of Victoria referred questions concerning worker's medical condition to medical panel pursuant to s45(1) *Accident Compensation Act 1985* (Vic) - employer sought review of panel's answers - current work capacity - held: panel determined worker had no current work capacity on grounds of dependence on medication - that proposition had never been put or tested - opinion of panel in this regard came 'out of the blue' - employer did not have opportunity to address determinative issues - panel breached rules of natural justice and committed jurisdictional error - answers quashed.

[H & G MacDonald Carriers Pty Ltd](#) (I G)

Sanrus Pty Ltd v Monto Coal 2 Pty Ltd [2014] QSC 282

Supreme Court of Queensland

Boddice J

Pleadings - plaintiffs sued defendants for breach of contract arising from conduct in breach of joint venture agreement - defendants sought that paragraphs of plaintiffs' proposed amended consolidated statement of claim be struck out - held: defendants did not establish paragraphs contained irrelevant allegations or would prejudice or delay fair trial - allegations not so tenuous they should be struck out - no basis to strike out claim for damages - application dismissed.

[Sanrus Pty Ltd](#) (I B C)



Doyle (WA) Pty Ltd v ING Real Estate Joondalup BV [2014] WASCA 215

Court of Appeal of Western Australia

Buss, Murphy & Mazza JJA

Work injury damages - employer pursuant to s93 *Workers' Compensation and Injury*

Management Act 1981 (WA) sought to recover amount from shopping centre owner in respect of liability to an employee for worker's compensation arising from injury suffered by employee at work - primary judge dismissed claim - significance of subsequent alterations - ss5B & 5F *Civil Liability Act 2002* (WA) - held: primary judge did not err in finding potential danger was clear to pedestrians or in weighing the elements of s5(4) *Occupiers Liability Act 1985* (WA) - appeal dismissed.

[Doyle \(WA\) Pty Ltd](#) (I)

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