



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

Executive Summary (1 minute read)

Commissioner of Taxation v Aid/Watch Incorporated - Taxation – charities - whether main purpose charitable or political (B)

City of Swan & Ors v Lehman Bros Australia Ltd & Ors (No 3) - Costs - power to determine costs under s1335(2) *Corporations Act* 2001 (Cth) against a party joined pursuant to r2.13(4) *Federal Court (Corporations) Rules* 2000 (I,B,C)

Rickard & Ors v Allianz Australia Insurance Ltd & Ors - Personal injuries – negligence – nuisance – determination of liability - fatal motor accident - water flowing across Riverina Highway caused one of vehicles involved to “aquaplane” - liability of RTA – public nuisance - duty owed by landowners to users of adjoining highway (I)

Owners Strata Plan No 64622 v Australand Constructions Pty Ltd - Costs - departing from the general rule (I,C)

Karamanlidis v the Nominal Defendant & the Motor Accident Commission - Personal injuries – motor accident - claim by plaintiff as passenger against his wife as driver & against Nominal Defendant pursuant to s115 *Motor Vehicles Act* 1959 (SA) - assessment of damages (I)



Summaries with links (5 minute read)

Monday 26 October 2009

Commissioner of Taxation v Aid/Watch Incorporated [2009] FCAFC 128

Full Federal Court of Australia

Kenny, Stone & Perram JJ

Taxation – whether respondent NGO charitable institution - *Income Tax Assessment Act 1997 (Cth)* , *Fringe Benefits Tax Assessment Act 1986 (Cth)* & *A New Tax System (Goods & Services Tax) Act 1999* - whether main purpose charitable or political – whether charity & political purposes mutually exclusive – "campaigning" – "charity"- held that Administrative Appeal Tribunal had erred in concluding that Aid/Watch's main purpose was not political & in holding that Aid/Watch was a charitable institution within meaning of s50 *Income Tax Assessment Act 1997 (Cth)* - Tribunal's decision set aside & in lieu applicant's reviewable objection decision affirmed.

[Commissioner of Taxation](#)

**City of Swan & Ors v Lehman Bros Australia Ltd & Ors (No 3) [2009] FCA 1190**

Federal Court of Australia

Rares J (in Sydney)

Costs - power to determine costs under s1335(2) *Corporations Act 2001* (Cth) against a party joined pursuant to r2.13(4) *Federal Court (Corporations) Rules 2000* - proceedings challenging validity of deed of company arrangement - deed found to be void - plaintiff Councils seeking their costs against each of corporate defendants, Lehman Australia, Lehman Asia & Lehman Bros - Lehman Australia contending order should apportion liability for costs severally so that each corporate defendant would be ordered to pay one-third of Councils' costs - Lehman Asia contending that since Councils had not joined it as a defendant initially & it had applied to be joined, it was an intervener, & should not be ordered to pay any costs at all or any significant costs - Lehman Bros subpoena'd before being joined - Lehman Bros seeking order for its reasonable expenses in respect of subpoena - held that defendants jointly & severally liable for costs: defendant subpoenaed before being joined liable for seventy-five percent of costs.

City of Swan

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City of Swan - decision Federal Court 2 October 2009 : see 'Benchmark' B & IBC Wednesday 14 October 2009 - appointment of liquidators - deed of company arrangement 12 June 2009 declared void - first defendant to be wound up - liquidators to be appointed on final basis.

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City of Swan - decision Full Federal Court 25 September 2009: see 'Benchmark' Wednesday 30 September 2009 - Pt 5.3A *Corporations Act 2001* (Cth) - clauses in deed of company arrangement - insurance claims - power to include releases binding on dissenting creditors - scope of s444D(1) - extrinsic aids to statutory construction - legislation affecting fundamental rights, including property rights - eight questions reserved for determination by Full Federal Court & duly answered - question 1: whether clause 7.1 of the DOCA conferred on Deed Administrators the sole conduct & control of any Insurance Claim & an absolute discretion regarding the prosecution & resolution of any Insurance Claim, which otherwise could have been conducted, prosecuted or resolved by a creditor of the company against an insurer for indemnity or other relief in respect of any insurance policy which insures or otherwise provides benefits to the Company or a Lehman Entity, excluding any claim for indemnity under any insurance policy held by Lehman Brothers Asia Holdings Ltd (in liq'n) - answer to question (1): 'yes' - held that deed of company arrangement void ; impugned clauses not severable & not capable of binding creditors in respect of their rights against persons or entities other than the company - extensive consideration of UK & Australian case law.

**Rickard & Ors v Allianz Australia Insurance Ltd & Ors [2009] NSWSC 1115**

Supreme Court of New South Wales

Hoeben J

Personal injuries – negligence – nuisance – determination of liability - fatal motor accident - water flowing across Riverina Highway caused one of vehicles involved to “aquaplane” so that driver, who was killed in the accident, lost control, drove onto wrong side of road & collided with small truck being driven by plaintiff Mr Rickard – claim against CTP insurer of deceased driver - liability of RTA – occupiers liability – public nuisance - duty owed by landowners to users of adjoining highway – causation – *Compensation to Relatives Act 1897* (NSW) claim - detailed analysis of s43A *Civil Liability Act 2002* (NSW) – for orders made, see paras 209-213 of judgment – damages to be assessed - a lengthy decision with detailed examination of legislation, text & case law.

[Rickard & Ors](#)**Owners Strata Plan No 64622 v Australand Constructions Pty Ltd [2009] NSWSC 948**

Supreme Court of New South Wales

Hammerschlag J

Costs - departing from the general rule – offer of compromise by defendants – indemnity costs order.

[Owners Strata Plan No 64622](#)

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[The Owners Strata Plan No 64622](#) - decision 9 October 2009 - high rise residential strata development known as the Altair in Rushcutters Bay - claim for damages by Owners' Corporation against defendant builders for defective construction – referee reports on liability & quantum - application by plaintiff that referee report on quantum should be rejected - application by defendants that report on quantum should be adopted - plaintiff's application refused – referee's report on quantum adopted – judgment for plaintiff in amount of damages agreed by parties.



From the District Court of South Australia...

Karamanlidis v the Nominal Defendant & the Motor Accident Commission [2009] SADC 106

District Court of South Australia

Beazley DCJ

Personal injuries – motor accident - proceedings issued by plaintiff as passenger against his wife as driver & against Nominal Defendant pursuant to s115 *Motor Vehicles Act 1959* (SA) - plaintiff alleging unidentified truck collided with rear of his wife's vehicle causing latter vehicle to collide with rear of a stationary third vehicle - independent witnesses called by defendants asserting plaintiff's wife sole occupant of car at time of accident – held that plaintiff was passenger in the rear of his wife's vehicle at the time of collision - independent witnesses mistaken - injuries sustained by plaintiff solely caused in collision between plaintiff's wife's vehicle & stationary third vehicle - unidentified truck did not immediately cause any injury sustained by plaintiff but accident caused by negligent driving of both driver of unidentified truck & plaintiff's wife - liability apportioned at fifty percent each - judgment for plaintiff against defendants in sum of \$40,786.52.

[Karamanlidis](#)