



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

### Executive Summary (1 minute read)

**Westport Insurance Corporation, in the matter of Westport Insurance Corporation** - Insurance - intra-group transfer of insurance and reinsurance businesses (I)

**Tucker, in the matter of Aero Inventory (UK) Limited v Aero Inventory (UK) Ltd** - UNCITRAL Model Law on Cross-Border Insolvency (B)

**Parker, In the matter of Purcom No 34 Pty Limited (In Liq)** - *Corporations Act 2001* (Cth) - approval sought by receiver to enter into agreement (B)

**McDonald v Roads & Traffic Authority of NSW** - *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (C)

**Transport Accident Commission v Estate of Ewer** - Personal injuries - application by Transport Accident Commission for indemnity under s104 *Transport Accident Act 1986* (Vic) (I)

**Talacko & Ors v Talacko** - Equitable compensation - principles of construction of contract - penalties (B)

**Re Reef Cove Resort Limited** - *Corporations Act 2001* (Cth) - winding up in insolvency (B)

**Reid v Mt. Thebarton Snow & Ice Pty Ltd** - *Limitation of Actions Act 1936* (SA) - personal injuries - s21 *Civil Liability Act 1936* (SA) - obligation to plead material facts (I)

## Summaries with links (5 minute read)

### Thursday 26 November 2009

#### **Westport Insurance Corporation, in the matter of Westport Insurance Corporation [2009] FCA 1357**

Federal Court of Australia

Lindgren J (in Sydney)

Insurance - intra-group transfer of insurance and reinsurance businesses - Swiss Re International SE - application for dispensation with compliance with requirement that all "affected policyholders" be notified of scheme for transfer - considerations going to exercise of discretion.

[Westport Insurance Corporation \(I\)](#)

#### **Tucker, in the matter of Aero Inventory (UK) Limited v Aero Inventory (UK) Ltd [2009] FCA 1354**

Federal Court of Australia

Lindgren J (in Sydney)

UNCITRAL Model Law on Cross-Border Insolvency - *Cross-Border Insolvency Act 2008 (Cth)*, Schedule 1 (Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law), Article 19 - provisional relief pending decision on application for recognition of foreign proceeding.

[Tucker \(B\)](#)

#### **Parker, In the matter of Purcom No 34 Pty Limited (In Liq) [2009] FCA 1359**

Federal Court of Australia

Gordon J (in Melbourne)

*Corporations Act 2001 (Cth)* - approval sought by receiver to enter into agreement - exercise of the Court's power under s477(2B) - succinct consideration of principles & case law.

[Parker \(B\)](#)

**McDonald v Roads & Traffic Authority of NSW [2009] NSWLEC 105**

Land & Environment Court of New South Wales

Biscoe J

*Land Acquisition (Just Terms Compensation) Act 1991 (NSW) - Aboriginal Land Rights Act 1983 (NSW) - Land Tax Management Act 1956 (NSW)* - respondent compulsorily acquired part of rural land between Taree & Port Macquarie owned by applicant for purpose of an upgrade to Pacific Highway - estimate of market value - disturbance costs - solatium - compensation assessed at \$781,669 - an appeal has been lodged.

[McDonald](#) (C)

**Transport Accident Commission v Estate of Ewer [2009] VSC 488**

Supreme Court of Victoria

Robson J - 28 October 2009

Personal injuries - fatal motor accident - application by Transport Accident Commission for indemnity under s104 *Transport Accident Act 1986 (Vic)* - motor vehicle registered in South Australia - injured occupant of vehicle not a party to the proceedings - injured occupant of vehicle unable to recall accident or who was driving - whether passenger obliged to make inquiries of driver as to their consumption of alcohol - defence of *volenti non fit injuria* - admissibility of statements made by injured occupant to police & ambulance driver immediately after accident about who was driving - His Honour determined that the proportion plaintiff was entitled to be indemnified for under s104 was ninety per cent of plaintiff's liability to make payments to or for injured occupant of vehicle.

[Transport Accident Commission](#) (I)

**Talacko & Ors v Talacko [2009] VSC 533**

Supreme Court of Victoria

Kyrou J

Equitable compensation - principles of construction of contracts - extensive consideration of case law in relation to assessing equitable compensation for breach of fiduciary duty - law of penalties - contract settling litigation - admissibility of evidence on the question of penalty.

[Talacko & Ors](#) (B)

**Re Reef Cove Resort Limited [2009] QSC 378**

Supreme Court of Queensland

White J

*Corporations Act 2001 (Cth)* - winding up in insolvency - respondent a foreign company registered under Part 5B.2 Division 2 - company wound up - liquidator appointed.

[Reef Cove Resort](#) (B)

**In the District Court of South Australia...****Reid v Mt. Thebarton Snow & Ice Pty Ltd [2009] SADC 130**

District Court of South Australia

McIntyre DCJ

*Limitation of Actions Act 1936 (SA)* - personal injuries - s21 *Civil Liability Act 1936 (SA)* - obligation to plead material facts - plaintiff slipped & fell at premises known as "Snow Dome" - she issued proceedings just prior to expiration of limitation period in which only one of the present four defendants, the first defendant, was named as a defendant - orders were subsequently made enabling plaintiff to join present second, third & fourth defendants - second, third & fourth defendants sought summary judgment & disjoinder - Master declined - appeal from Master's decision dismissed.

[Reid](#) (I)