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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)

Clasul Pty Ltd v Commonwealth of Australia (FCA) - representative proceedings arising from equine influenza outbreak - amendments to pleadings allowed (I)

Firebird Global Master Fund II Ltd v Republic of Nauru (NSWCA) - registration of foreign judgment against Nauru invalid (I B)

Douglas Aerospace v Indistri Engineering Albury (NSWSC) - security of payments - challenges to adjudicator's determination failed (B C)

Farr v Insurance Australia Ltd t/as NRMA Insurance Ltd (NSWSC) - motor accidents compensation - no error in assessment by medical assessor (I G)

Villella v Telstra Corporation Ltd (VSCA) - negligence - legal practitioners - competency of appeal - security for costs (I B C)

Brazis v Rosati (VSCA) - arbitration - leave to appeal against stay of part of proceeding and referral of dispute to arbitration (I B)

Dale v Clayton Utz (a firm) (No 2) (VSC) - partnership - privileges against self-incrimination - rule of practice in *Protean Holdings* - proceedings split (I B)

Summaries with links (5 minute read)

Clasul Pty Ltd v Commonwealth of Australia [2014] FCA 1133

Federal Court of Australia

Gleeson J

Representative proceedings - pleadings - applicants claimed damages from Commonwealth for financial losses following outbreak of equine influenza - applicants alleged Commonwealth had both direct and vicarious liability - applicants sought leave to amend originating application and statement of claim - applicants conceded new cause of action in 'Turner' amendments time-barred but contended it arose out of substantially same facts as causes of actions currently pleaded - Commonwealth contended 'New Procedure' amendments should not be allowed because they did not contain any allegations material to pleaded causes of action - held: 'Turner' amendments arose out of substantially same facts as already pleaded - discretionary factors favoured amendments - Court satisfied 'New Procedures' amendments should be treated as material facts - amendments allowed.

[Clasul Pty Ltd \(I\)](#)

Firebird Global Master Fund II Ltd v Republic of Nauru [2014] NSWCA 360

Court of Appeal of New South Wales

Bathurst CJ; Beazley P & Basten JA

Judgments and orders - sovereign immunity - Firebird obtained judgment against Nauru in Japan - Firebird sought to register Japanese judgment in NSW Supreme Court pursuant to *Foreign Judgments Act 1991* (Cth) - application was by summons - summons not served on Nauru - Japanese judgment registered - Firebird obtained garnishee order - primary judge held judgment should not have been registered and garnishee order should be set aside - held: service requirements set out in *Foreign Judgments Act* and *Foreign States Immunities Act 1985* (Cth) could be read harmoniously so that the former did not impliedly repeal requirements in the latter - failure to adhere to service requirements set out in *Immunities Act* meant registration of Japanese judgment should be set aside - *proceeding* in s9 of the *Immunities Act* covered application to register a foreign judgment and therefore immunity operated - Nauru did not waive its immunity - exception to immunity did not apply because proceedings concerned application to register foreign judgment not a commercial transaction - appeal dismissed.

[Firebird Global Master Fund II Ltd \(I B\)](#)

Douglas Aerospace v Indistri Engineering Albury [2014] NSWSC 1445

Supreme Court of New South Wales

McDougall J

Security of payments - plaintiff sought to quash determination made by adjudicator pursuant to *Building and Construction Industry Security of Payment Act 1999* (NSW) in respect of construction

contract made between first defendant and plaintiff (Stage 2 contract) - plaintiff contended there was no construction contract and that first defendant did not give plaintiff notice pursuant to s17(2)(a) of intention to seek adjudication - plaintiff also claimed first defendant had not served copy of adjudication application as required by s17(5) - held: contracting parties were plaintiff and first defendant - it had not been suggested that Stage 2 contract was anything other than a construction contract and such suggestion could not be sustained - plaintiff had received s17(2)(a) notice - no jurisdictional error in making adjudication application after time for provision of payment schedule in accordance with s17(2)(b) had expired - adjudication application was made within ten business days after end of the s17(2)(b) period - even if requirements of s17(5) regarded as jurisdictional they had not been infringed - challenges to determination failed.

[Douglas Aerospace](#) (B C)

Farr v Insurance Australia Ltd t/as NRMA Insurance Ltd [2014] NSWSC 1435

Supreme Court of New South Wales

Adamson J

Motor accidents compensation - plaintiff sought judicial review of assessment of medical assessor appointed under *Motor Accidents Compensation Act 1999* (NSW) - plaintiff claimed assessor ignored relevant material and that reasons were inadequate - relevance of dietary restrictions - held: Court not persuaded any challenges to assessment made out - making of assessment was open to assessor - assessor was an independent medical expert in his field - assessment made within expert professional judgment - assessor took an oral history, undertook an examination, reviewed documentation provided, set out findings, and made an assessment - sufficient reasons provided for assessment - no error of law established - summons dismissed.

[Farr](#) (I G)

Villella v Telstra Corporation Ltd [2014] VSCA 263

Court of Appeal of Victoria

Kyrou JA & Ginnane AJA

Negligence - legal practitioners - security for costs - competency of appeal - appellant was proprietor of house - appellant received insurance payments in respect of water damage to property - appellant complained to respondent about water damage allegedly caused by works negligently performed - respondent denied it carried out the works and denied liability - County Court judge found in favour of respondent - respondent sought dismissal of appellant's appeal for incompetence and security for costs - appellant's solicitors sought leave to file notice that firm had ceased to act for appellant - held: certain grounds of appeal dealt with interlocutory rulings in respect of which appellant had not sought leave to appeal - notice of appeal also raised substantive grounds of appeal - application to dismiss appeal as incompetent referred for hearing by Court constituted to hear appeal - application to file notice of ceasing to act granted - there was risk that appellant's financial obligations would deplete her net assets and render her incapable of meeting future costs order - security for costs granted.



[Vilella](#) (I B C)

Brazis v Rosati [2014] VSCA 264

Court of Appeal of Victoria

Kyrou JA & Ginnane AJA

Arbitration - applicants sought relief under oppression and derivative action provisions of *Corporations Act 2001* (Cth) - applicants sought leave to appeal against trial judge's order staying claim pursuant to s8 *Commercial Arbitration Act 2011* (Vic) - trial judge held parties to proceeding who were also parties to a Shareholders' and Unitholders' Agreement containing an arbitration clause could not continue oppression claim because it fell within arbitration clause - held: application for leave to appeal raised important questions of law relating to interrelationship between Corporations Act and Commercial Arbitration Act - on basis of nature and importance of matters raised in proposed notice of appeal, Court satisfied trial judge's decision attended with sufficient doubt to justify grant of leave to appeal - inappropriate for Court to analyse parties' submissions on correctness of judge's reasoning and on grounds of appeal - leave to appeal granted.

[Brazis](#) (I B)

Dale v Clayton Utz (a firm) (No 2) [2014] VSC 517

Supreme Court of Victoria

Croft J

Partnership - privileges against self-incrimination - former partner of firm sought to challenge decision made by Board requiring plaintiff to leave partnership - plaintiff made claim for breach of partnership agreement - plaintiff sought orders for split of proceedings on basis of principle in *Protean Holdings* - reasonable likelihood of criminal or civil penalty proceedings - held: Court satisfied orders sought by plaintiff to split proceedings should be granted - defendant directly alleged serious professional misconduct which could lead to obvious civil penalties and also serious criminal conduct which could lead to criminal charges - privileges available even though it was a non-penalty proceeding - privilege against witness being compelled to answer questions which may tend to incriminate witness extended to pleadings and other interlocutory process - orders made.

[Dale](#) (I B)

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