

Tuesday 29 November 2011

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

McCluskey v Wieselmann, in the matter of Westmeats (Export) Pty Ltd (Receivers and Managers Appointed) (In Liq) - Liquidator's remuneration (B)

Helal v McConnell Dowell Constructors (Aust) Pty Ltd (No 3) - *Building & Construction Industry Improvement Act 2005* (Cth) - construction of sub-section 45(1) (I, B, C, G)

Redline Contracting Pty Ltd v MCC Mining (Western Australia) Pty Ltd - Contracts - application for interlocutory injunction dismissed (I, B, C, G)

Coe v Roth - Construction contracts - application for default judgment (C)

ACN 074 971 109 (as Trustee for the Argot Unit Trust) & Pegela Pty Ltd v The National Mutual Life Association of Australasia Ltd - Life insurance policies - interpretation of clause in prosperity bond policy (I, B)

Surmon v Herald & Weekly Times (Ruling No 2) - Personal injuries - Regulation 15(1) *Occupational Health & Safety (Manual Handling) Regulations 1999* (Vic) (I)



London v Gates - Personal injuries - motor accident - assessment of damages (I)

Summaries with links (5 minute read)

McCluskey v Wieselmann, in the matter of Westmeats (Export) Pty Ltd (Receivers and Managers Appointed) (In Liq) [2011] FCA 1340

Federal Court of Australia

Dodds-Streeton J

Liquidator's remuneration - whether liquidators entitled to payment of categories of costs, fees & expenses from amount set aside from fund as stakeholders or under principle in *Re Universal Distributing Co Ltd (in liq)* (1933) 48 CLR 171 - liquidators entitled to payment of their remuneration, costs and expenses from fee escrow for work & expenses claimed reasonably done or reasonably incurred, in a reasonable quantum - case to be referred to a Registrar for fixing of liquidators' remuneration, costs & expenses - detailed analysis of United Kingdom & Australian case law.

[McCluskey](#) (B)

Helal v McConnell Dowell Constructors (Aust) Pty Ltd (No 3) [2011] FCA 1344

Federal Court of Australia

Tracey J

Building & Construction Industry Improvement Act 2005 (Cth) - construction of sub-section 45(1) - applicant inspector alleging respondent had discriminated against a company which supplied labour to one of its sub-contractors because those employees' employment was not regulated by an industrial agreement - application dismissed - Australian case law considered - "on the ground that."

[Helal](#) (I, B, C, G)



Redline Contracting Pty Ltd v MCC Mining (Western Australia) Pty Ltd [2011] FCA 1337

Federal Court of Australia

Siopis J

Contracts - contract for construction & installation of three pipelines for Sino Iron Project in Western Australia - application for interlocutory injunction restraining respondent from calling upon any or all of four unconditional undertakings given by Swiss RE International SE to respondent - application for interlocutory injunction dismissed.

[Redline Contracting Pty Ltd](#) (I, B, C, G)

[Clough Engineering Limited](#) - decision Full Court of the Federal Court of Australia 22 July 2008 reported at (2008) 249 ALR 458: see Benchmark Friday 25 July 2008 - International construction contract - development of oil & gas fields off the coast of India - *Trade Practices Act* - see Benchmark Banking, Construction & IBC Monday 7 January, 2008 & link below for primary judgment - appeal arising out of claim by Australian company, Clough, for interlocutory injunctive relief to restrain Indian company, Oil & Natural Gas Corporation Ltd (ONGC) & 3 Australian banks from calling upon, or paying under, performance guarantees issued by banks - guarantees were furnished by Clough pursuant to its obligations under the contract - primary judge had rejected Clough's submissions as to construction of contract & found ONGC had not engaged in unconscionable conduct by invoking the performance guarantees - primary judge had found Clough was in breach of its obligations under the contract in relation to extension of performance guarantees & its failure to deliver copies of policies of insurance & certificates of insurance to cover extended completion date & warranty period - appeal dismissed - case law considered as to principles in construing performance guarantees.

Coe v Roth [2011] NSWSC 1427

Supreme Court of New South Wales

Rein J

Construction contracts - application for default judgment - plaintiff had entered into shipbuilding contract with a shipbuilder for construction of vessel - defendant the guarantor of payments due from shipbuilder - default judgment for plaintiff against defendant.

[Coe](#) (C)



ACN 074 971 109 (as Trustee for the Argot Unit Trust) & Pegela Pty Ltd v The National Mutual Life Association of Australasia Ltd [2011] VSC 519

Supreme Court of Victoria

Croft J

Life insurance policies - interpretation of clause in prosperity bond policy headed "Large Withdrawals" - Secure portfolio - Cash portfolio - cut-off time for receipt of switch notices - revocation of a notice - unit pricing - s13 *Insurance Contracts Act* 1984 (Cth) - s52 *Trade Practices Act* 1974 (Cth) - "working day", "revoke" - extensive consideration of Australian case law.

[ACN 074 971 109](#) (I, B)

Surmon v Herald & Weekly Times (Ruling No 2) [2011] VSC 607

Supreme Court of Victoria

Kaye J

Personal injuries - claim for damages for injury arising out of plaintiff's employment with defendant - issue as to correct construction of Regulation 15(1) *Occupational Health & Safety (Manual Handling) Regulations* 1999 (Vic): "risk of a musculoskeletal disorder" - "risk" in Regulation 15(1) not tied to a risk deriving from a hazardous manual handling task.

[Surmon](#) (I)

London v Gates [2011] ACTSC 190

Supreme Court of the Australian Capital Territory

Master Harper

Personal injuries - motor accident - assessment of damages - front seat passenger in a car struck from behind while stationary - judgment for plaintiff in sum of \$246,912.68 which does not include expenses already paid by insurer of \$5,861.00.

[London](#) (I)

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