

BENCHMARK

A Daily Bulletin listing Decisions of Superior Courts of Australia Compiled for those in Insurance

Monday 11 February 2008

Gypsy Jokers Motorcycle Club Incorporated v Commissioner of Police
[2008] HCA 4

High Court of Australia

Gleeson CJ, Gummow, Kirby, Hayne, Heydon, Crennan & Kiefel JJ

Constitutional law (Cth) - Chapter III - judicial power - integrity of State Supreme Courts – issue of fortification removal notice - whether s76(2) Corruption & Crime Commission Act 2003 (WA) impaired Supreme Court's character as independent & impartial or otherwise improperly controlled exercise of its jurisdiction contrary to Ch III of the Constitution - appellant contended s76(2) was invalid, but that remainder of section was valid - respondent argued that s76 was wholly valid but, if that were not so, then it was wholly invalid: that if s76(2) were invalid, it was not severable – appeal dismissed – held that decision of the majority of Court of Appeal of Western Australia was correct - challenge to validity of s76(2) failed. [Gypsy Jokers Motorcycle Club Incorporated](#);

Court of Appeal of Western Australia judgment, see Benchmark Tuesday 14.8.07 - [\[2007\] WASCA 49 - Part I](#); [\[2007\] WASCA 49 - Part II](#)

Granitgard Pty Ltd ACN 007 427 590 v Termicide Pest Control Pty Ltd [2008]
FCA 55

Federal Court of Australia

Logan J (at Brisbane)

Summary judgment – trade practices - applicant instituted proceedings against respondent seeking declaratory & injunctive relief - alleged breaches of ss 52 & 53 Trade Practices Act 1974 (Cth) (TPA) arising from sale &

promotion of termite barrier product - parties competitors in market for supply to Australian building industry of physical termite barriers for new buildings – application by respondent for summary dismissal of action on basis Court should be satisfied that applicant had no reasonable prospect of successfully prosecuting proceeding – case law considered - Australian Standard 3660.1-2000 ‘Termite management – New building work’ - held that there was a genuine controversy of fact, which included a controversy of opinion – application dismissed. [Granitgard](#)

Liberty Grove (Concord) Pty Ltd v Mirvac Projects Pty Ltd [2008] NSWSC 48

Supreme Court of New South Wales
Einstein J

Practice and procedure - security for costs – succinct consideration of principles & case law - significance of delay in seeking security for costs - importance of legal practitioners’ clarity in communications with one another as to whether or not undertakings are sought & if so, given – application for security for costs dismissed. [Liberty Grove \(Concord\)](#)

Bahonko v Moorfields Community & Ors [2008] VSCA 6

Court of Appeal of Victoria
Buchanan, Nettle & Redlich JJA

Guardianship & Administration Act 1986 – question as to whether appeal from order under s66 of the Act governed by s52 Accident Compensation Act 1985. [Bahonko](#)

WP Kidd Pty Ltd & Anor v Panwell Pty Ltd & Ors (No 2) [2008] QSC 8

Supreme Court of Queensland
McMeekin J

Indemnity costs – principles & case law considered – see Benchmark Monday 21 January, 2008: judgment 18 December, 2007 – statements made in course of negotiation concerning sale of hotel business - application for indemnity costs by fourth defendant - plaintiffs had settled with fourth defendant prior to trial - plaintiffs had filed Notice of Discontinuance against fourth defendant - first, sixth, & seventh defendants & eighth & ninth defendants had contended it would be inappropriate to permit fourth defendant to be discharged from the action in circumstances where there were claims made against the fourth defendant by them - plaintiffs’ claim against fourth defendant had been

catalyst for bringing of proceedings by first, sixth & seventh defendants against fourth defendant – fourth defendant had made offers to settle to those defendants and eighth & ninth defendants which were refused – two costs orders made in which fourth defendant to be paid indemnity basis from dates in January, 2007. [WP Kidd](#);

[WP Kidd \(No 1\)](#) - in Benchmark Monday 21 January, 2008

& One from the UK...

Palmer v The Estate of Kevin Palmer Deceased & Ors [2008] EWCA Civ 46

Court of Appeal of England & Wales

Pill, Sedley & Rimer LJJ

Costs orders against non-parties – case law considered as to exercise of discretion – where insurers have funded unsuccessful defence of litigation & there is a costs inclusive policy limit that would be exceeded by the award of costs & damages - claimant Kylie Palmer had been severely injured aged six in motor accident that killed her father Kevin, an unmedicated epileptic – she had sued her father's estate for damages in negligence, but his motor insurers successfully avoided liability under his policy on grounds that the policyholder, his wife, had failed to disclose her own medical condition of epilepsy to them - appeal by Royal & Sun Alliance Insurance PLC ("RSA") against primary judge's order that RSA personally pay the costs that he had earlier ordered third defendant, PZ Products Limited pay claimant Kylie Palmer, (ii) first defendant (estate of Kevin Palmer deceased) & (iii) second defendant Motor Insurers' Bureau, those costs being incurred in claims against PZP - judge's order was limited to the costs incurred by receiving parties after 1 September 2003 – RSA not an original party to the proceedings: PZP was insured under a product liability policy & it had financed PZP's unsuccessful defence of claims – the limits of RSA's liability was five hundred thousand pounds - on appeal, RSA asserted that contrary to judge's findings, it was defending case in mutual interests of both itself & PZP — on appeal held that the only real interest being protected was RSA's – RSA was funding, controlling & directing the defence of the litigation in its own interests – appeal dismissed. [Palmer](#)