



Insurance

A Daily Bulletin listing Decisions of Superior Courts of Australia

Today's Cases

Litigation procedure (FCA) – discovery – whether burden outweighed benefit – use of confidential information – springboard doctrine. See *Austal Ships Pty Ltd v Incat Australia Pty Ltd*

Personal injury (NSW) – Motor Accidents Compensation Act 1999 (NSW) – whether injuries from tractor accident were caused by employer “in the use or operation of” the tractor – whether motor accidents or workers compensation legislation applies. Held: Matter to be assessed under workers compensation legislation – matter not a “motor accident” – defendant’s appeal successful – damages significantly reduced.” See *JA & BM Bowden & Sons Pty Ltd v Doughty*

Contract – Building and Construction Industry Security of Payment Act 1999 (NSW) – adjudicator’s decision – issue estoppel. See *Dualcorp Pty Ltd v Remo Constructions Pty Ltd*

Litigation procedure (WA) – application for stay of judgment pending appeal – exercise of discretion. See *Schreuder v Murray*

Personal injury (Canada) – restaurant patron enters restaurant while leaving her car running and her child in the car – injured in drive-by shooting – whether car insurance responded. See *Russo v. John Doe*



Wednesday 22 April 2009

Austal Ships Pty Ltd v Incat Australia Pty Ltd [2009] FCA 368

Federal Court of Australia

McKerracher J (in Perth)

Discovery of documents - applicant manufacturer of high speed ferries including catamarans & trimarans - applicant claiming two reports on sea keeping of its vessels confidential - alleged misuse of confidential information - springboard doctrine - whether burden of discovery outweighs benefit - whether fishing expedition - case law considered.

[Austal Ships](#)

JA & BM Bowden & Sons Pty Ltd v Doughty [2009] NSWCA 82

Court of Appeal of New South Wales

Giles JA; Handley & Sackville AJJA (dissenting)

Personal injuries - respondent employed by appellant as orchard hand - tractor rolled over while respondent was driving it - whether respondent's injury caused by fault of appellant employer "in the use or operation of" the tractor - by majority, not fault in the use or operation of the tractor within s122(1) *Motor Accidents Compensation Act* 1999 (NSW) & para (a) of the definition of "injury" - appeal allowed - respondent's award of damages reduced from \$535,198 to \$278,628.

[JA & BM Bowden & Sons](#)

Dualcorp Pty Ltd v Remo Constructions Pty Ltd [2009] NSWCA 69

Court of Appeal of New South Wales

Allsop P; Macfarlan JA; Handley AJA

Building & Construction Industry Security of Payment Act 1999 (NSW) - subcontract between respondent as contractor & applicant as sub-contractor for excavation & piling work at building site at Five Dock - adjudicator's determination - primary judge in District Court had declined to enter summary judgment for appellant - progress payments - finality: principles & case law - previous valuations - issue estoppel - appeal dismissed.

[Dualcorp](#)

Schreuder v Murray [2009] WASCA 75

Court of Appeal of Western Australia

Buss JA

Application for stay of judgment pending appeal - exercise of discretion - prospects of success - for decision 10 March 2009, see 'Benchmark' I, B & IBC Tuesday 17 March 2009 & link below - stay granted in relation to parts of orders (1) & (2) made on 3 April 2009.

[Schreuder](#)



[Schreuder](#) – decision 10 March 2009 - legal professional privilege – in the substantive proceedings, beneficiary under will seeking removal of defendant as executor & trustee – application by beneficiary for order that executor produce for inspection all written legal advice received by him, & copies of all accounts for professional legal services rendered to him, concerning administration of the estate – claim for privilege failed - order for production of documents for inspection - UK & Australian case law considered.

Rasch Nominees Pty Ltd & Anor v Bartholomaeus & Ors [2009] SASC 87

Supreme Court of South Australia

Bleby J

Trade Practices Act 1974 (Cth) - application by first & second defendants to dismiss proceedings brought by second plaintiff or, alternatively, to strike out portions of statement of claim – sale of land at Mount Barker – case law considered as to various allegations - fraud under section 69(a) *Real Property Act 1886* (SA) – breach of duty of care – unconscionable conduct – false representations – misleading & deceptive conduct – rolled up pleading – statement of claim not struck out – plaintiffs given opportunity to recast statement of claim.

[Rasch Nominees](#)

From Canada...

Russo v John Doe, 2009 ONCA 305

Court of Appeal for Ontario

Weiler, Juriansz & MacFarland JJA

Personal injuries – scope of insurance coverage - appellant drove her car into parking lot of restaurant, leaving motor running, & child in car, while she went in to get a snack – bullets fired into restaurant from stolen van driving through parking lot, rendering appellant paraplegic – police later determined assailants had intended to kill another restaurant patron - primary judge had accepted position of respondent, appellant's own motor vehicle insurer, concluding shooting was an independent act that broke chain of causation linking use of van & appellant's damages; consequently, her, injuries did not arise "directly or indirectly from the use or operation" of assailants' vehicle as required for entitlement to insurance coverage under the OPCF 44R Endorsement (Family Protection Coverage Endorsement) – limits of liability – appeal dismissed – appellant not entitled to coverage.

[Russo](#)