



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

Today's Cases

Australia

Workers' Compensation – jurisdiction of commission to hear appeals/reviews – claim for psychological injury. See *Tan v National Australia Bank*

United States of America

Insurance – operation of exclusion clause for “flooding” in claim involving property damage resulting from Hurricane Katrina. See *Northorp Grumman v Factory Mutual Insurance*



Friday 22 August 2008

Sutherland v Vale [2008] FCAFC 148

Full Federal Court of Australia

Gray, Lindgren & Tracey JJ (in Melbourne, heard in Sydney)

Bankruptcy Act 1966 (Cth) – property valuation - appeal from Federal Magistrates Court setting aside notice issued pursuant to s139ZQ & dismissing application by appellant trustee for orders granting him (as trustee of bankrupt estate of Mrs. Vale) possession of three properties & for judgment against respondent Mr. Vale in sum of \$270,000.00 plus interest – three properties owned by husband & wife as joint tenants - notice alleged value of bankrupt's interest \$270,000, being half of real estate agent's estimate of reasonable asking price – subsequent lower valuation for stamp duty purposes - whether value in issue – whether transfer of property more than two years before bankruptcy – appeal dismissed.

[Sutherland](#)

[S139ZQ Bankruptcy Act 1966 \(Cth\)](#)

Australian Workers' Union of Employees, Queensland v Etheridge Shire Council [2008] FCA 1268

Federal Court of Australia

Spender J (in Brisbane)

Workplace Relations Act 1996 (Cth) - whether Council an 'employer' pursuant to s6 - workplace agreement purported to be lodged by Council - whether Council a corporation to which s51(xx) Constitution applies – corporations power – 'trading or financial corporations' – test for characterising nature of corporation - where the predominant and characteristic activity of the Council was that of a local government – Council held not to be a "trading corporation" or a "financial corporation" – held that Council therefore not "employer" & ineligible to lodge the relevant workplace agreement – an interesting judgment with extensive consideration of case law.

[Australian Workers' Union of Employees, Queensland](#)

Tan v National Australia Bank Ltd [2008] NSWCA 198

Court of Appeal of New South Wales

Basten & Bell JJA; Young CJ in Eq

Workers compensation - , ss352, 353 & 354 Workplace Injury Management & Workers Compensation Act 1998 (NSW) – claim for psychological injury - "appeal" - review" - "in point of law" – "claim" - jurisdiction of Workers Compensation Commission to resolve dispute.

[Tan](#)



McNally v Harris (No. 3) [2008] NSWSC 861

Supreme Court of New South Wales

White J

Equitable compensation – assessment of quantum - value of Oxiana shares – appropriate date for assessing equitable compensation – detailed consideration of texts & case law from UK & Australia.

[McNally](#), and

[McNally](#) - decision 30 June 2008 – see ‘Benchmark’ Wednesday 2 July 2008.

R v Tjanara Goreng-Goreng [2008] ACTSC 74

Supreme Court of the Australian Capital Territory

Refshauge J

Constitutional law – criminal law - regulation of conduct of public servants – duty not to disclose information - legitimate interests of government – constitutional guarantee of freedom of political communication - application to exclude evidence of Regulation 2.1 of Public Service Regulations 1999 (Cth) dismissed - extensive consideration of texts, legislation & case law from UK & Australia – an interesting judgment.

[Tjanara Goreng-Goreng](#)

And from the United States of America...

Northrop Grumman v Factory Mutual Ins.No. 07-56760

United States Court of Appeals for the Ninth Circuit

Hall, Rymer & McNamee JJ

Property Insurance - “all risk” – Flood Exclusion in excess policy - appeal by Factory Mutual Insurance Company – District Court had granted summary judgment in favor of Northrop - water damage at Northrop’s Mississippi subsidiary caused by Hurricane Katrina - shipyards – District Court had held exclusion was ambiguous & construed it in favor of Northrop – on appeal, Court reversed District Court’s grant of summary judgment in favor of Northrop, & remanded for determination: whether California’s efficient proximate cause doctrine mandates coverage of the damage notwithstanding the Court’s interpretation of the contractual language.

[Northrop Grumman](#)