



Wednesday, 28 September 2016

Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Ansell Ltd v CGU Insurance Ltd (NSWSC) - insurance - policy issued by insurer to insured included limitation on 'the common law extension' - insured not entitled to relief claimed - summons dismissed

McManus v Murrumbidgee Local Area Health Network (NSWSC) - damages - medical negligence - nervous shock - liability admitted - damages assessed at \$1,785,498

Angeleska v State of Victoria (No 3) (VSC) - pleadings - costs - two summonses - leave to further amend statement of claim subject to conditions - Court to hear further submissions concerning whether gross sum costs order against plaintiff for payment of past costs was appropriate

Coast and Country Association of Queensland Inc v Smith (QCA) - environment and planning - dismissal of two applications for statutory orders of review - Land Court had no jurisdiction to consider impact of emissions - no error in Land Court's recommendations - appeal dismissed

Gunns Ltd v State of Tasmania (TASFC) - negligence - environment and planning - refusal of water permit - Minister did not owe duty of care to decide application within reasonable time - appeal dismissed

McMillan v The Federal Capital Press of Australia Pty Ltd (ACTSC) - pleadings - defamation - imputations struck out - leave to amend statement of claim

Summaries With Link (Five Minute Read)

Ansell Ltd v CGU Insurance Ltd [2016] NSWSC 1345

Supreme Court of New South Wales

McDougall J

Insurance - defendant's predecessor issued insurance policies to plaintiff insuring it for liabilities to its employees under *Workers Compensation Act 1926* (NSW) and liabilities independent of Act to those employees for injuries ('the common law extension') - for relevant year ending 1 July 1967 policy required to insure plaintiff under the common law extension for at least £20,000 - policy responded to worker's claim where worker recovered damages in Dust Diseases Tribunal of New South Wales in 2015 - parties were in dispute whether defendant's liability under the common law extension was capped at \$100,000, as claimed by defendant - onus - whether limitation - amount of limitation - *Workers Compensation Act 1926* (NSW) - *Workers Compensation (Amendment) Act 1953* (NSW) - *Workers Compensation Act 1987* (NSW) - held: Court satisfied on balance of probabilities that policy included limitation for the common law extension and figure was £50,000 (\$100,000) - plaintiff not entitled to relief claimed - summons dismissed.

[Ansell](#)

McManus v Murrumbidgee Local Area Health Network [2016] NSWSC 1347

Supreme Court of New South Wales

Harrison J

Damages - medical negligence - plaintiff sued defendant for nervous shock arising from its failure to properly manage labour or antenatal period and delivery resulting in death of child soon after birth - liability admitted - assessment of damages - prognosis - amenability of condition to treatment - held: damages assessed at \$1,785,498 - verdict for plaintiff.

[McManus](#)

Angeleska v State of Victoria (No 3) [2016] VSC 568

Supreme Court of Victoria

Lansdowne AsJ

Pleadings - costs - two summonses - plaintiff sought to further amend statement of claim - defendants sought orders concerning past costs orders made in relation to interlocutory costs in defendants' favour against plaintiff - defendants sought that claim's future progress depend on plaintiff's payment of past costs as gross sum - rr63.07(2)(c) & 63.20.1 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: subject to further submissions gross costs order not appropriate unless order for immediate taxation of interlocutory costs appropriate - if order for taxation would have been appropriate if sought, Court would make gross costs order - if gross costs order made, appropriate to stay proceeding pending payment - plaintiff granted leave to amend statement of claim subject to deletion of paragraphs alleging duty by police to investigate and paragraph seeking to hold State liable in tort - Court to hear further submissions.

Benchmark

[Angeleska](#)

Coast and Country Association of Queensland Inc v Smith [2016] QCA 242

Court of Appeal of Queensland

M McMurdo P; Fraser & Morrison JJA

Environment and planning - trial judge dismissed two applications for statutory orders of review - first application sought review of first respondent Land Court's decision which, while it recommended refusal of second respondent's applications for mining lease and environmental authority, included alternative recommendations that applications be granted on conditions - second application sought review of third respondent Minister's subsequent decision to grant environmental authority for proposed mine - appellant contended 'environmentally harmful emissions would result from the transportation and burning of coal after it was removed from the proposed mine' (scope 3 emissions) and that effects should be taken into account adversely to applications - ss146, 147 & 223 *Environmental Protection Act 1994* (Qld) - s75 *Environment Protection and Biodiversity Conservation Act 1999* (Cth) - *Judicial Review Act 1991* (Qld) - ss2, 6A & 269(4) *Mineral Resources Act 1989* (Qld) - held: it was outside Land Court's jurisdiction to consider impact of scope 3 emissions - Land Court's recommendations valid - no error in dismissal of Minister's decision on basis of validity of Land Court's recommendations - appeal dismissed.

[Coast and Country Association](#)

Gunns Ltd v State of Tasmania [2016] TASFC 7

Full Court of the Supreme Court of Tasmania

Blow CJ & Tennent J

Negligence - environment and planning - appellant in liquidation previously operated vineyards - appellant constructed dams on vineyards and irrigated vineyards - appellant required permit to undertake dam works under s156 *Water Management Act 1999* (Tas) and licence to take water from watercourse under s63 - appellant sought dam permit and water licence - appellant built dam while water licence application pending - appellant refused water permit to take sufficient water to make dam's construction worthwhile - appellant appealed against refusal of water licence - whether Minister owed appellant duty of care obliging Minister to make decision on water licence application within reasonable time - foreseeability - held: no error in primary judge's finding that Minister did not owe duty of care to appellant - appeal dismissed.

[Gunns](#)

McMillan v The Federal Capital Press of Australia Pty Ltd [2016] ACTSC 286

Supreme Court of the Australian Capital Territory

Mossop AsJ

Pleadings - defamation - action arising from publication of article in newspaper as well as other publications - defendants sought that pleaded imputation be struck out under r425 *Court Procedure Rules 2006* (ACT) on basis imputations not reasonably capable of arising - defendants also contended two of the imputations were embarrassing due to their form - plaintiff

Benchmark



AR CONOLLY & COMPANY
L A W Y E R S

sought to amend certain imputations - held: certain amendments struck out - plaintiff granted leave to amend statement of claim in circumstances where plaintiff may be able to plead imputations properly arising from publication - orders made.

[McMillan](#)

[Click Here to access our Benchmark Search Engine](#)