



## Insurance

# A Daily Bulletin listing Decisions of Superior Courts of Australia

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## Executive Summary (1 minute read)

**Darlaston v Parker** - *Workplace Relations Act 1996* (Cth) - rights of entry - occupational health & safety

**Owners Corporation SP 72357 v Dasco Constructions Pty Ltd & Ors** - Proportionate liability provisions of *Civil Liability Act 2002* (NSW)

**OAMPS Insurance Brokers Ltd v Peter Hanna** - Employment law - confidentiality obligations - restraint covenants

**Australasian Medical Insurance Ltd & Anor v CGU Insurance Ltd** - Insurance - whether policies of first appellant & respondent covered the same risk - whether respondent's policy responded to claim

**Wright & Ors v Westpac Banking Corporation** - Contracts - financial services - facility agreement - s12DA *Australian Securities & Investments Commission Act 2001* (Cth) - appeal dismissed

## Summaries with links (5 minute read)

### Thursday 29 July 2010

#### **Darlaston v Parker [2010] FCA 771**

Federal Court of Australia

Flick J (in Sydney)

*Workplace Relations Act* 1996 (Cth) - alleged contraventions at building site in Manly - privilege against self-incrimination - rights of entry - hindrance, obstruction - ss9 & 57 *Building & Construction Industry Improvement Act* 2005 (Cth) - occupational health & safety - comprehensive consideration of legislation & case law from New Zealand & Australia.

[Darlaston](#)

#### **Owners Corporation SP 72357 v Dasco Constructions Pty Ltd & Ors [2010] NSWSC 819**

Supreme Court of New South Wales

Einstein J

Proportionate liability provisions of *Civil Liability Act* 2001 (NSW) - statutory interpretation - application by plaintiff for order that a paragraph of first defendant's list response be struck out - plaintiff contending that defence of proportionate liability as provided by Part 4 *Civil Liability Act* not available to those defending claims brought under Part 2C *Home Building Act* 1989 (NSW) - application dismissed.

[Owners Corporation SP 72357](#)

#### **OAMPS Insurance Brokers Ltd v Peter Hanna [2010] NSWSC 781**

Supreme Court of New South Wales

Hammerschlag J

Employment law - defendant resigned from plaintiff to work for a competitor - Post Employment Restraint Deed - plaintiff seeking to enforce confidentiality obligations undertaken & restraint covenants given by defendant - so-called cascading, ladder or step clause - held covenant not void for uncertainty - twelve months reasonably required to protect plaintiff's legitimate business interest.

[OAMPS Insurance Brokers](#)

**Australasian Medical Insurance Ltd & Anor v CGU Insurance Ltd [2010] QCA 189**

Court of Appeal of Queensland

Muir & Chesterman JJA; Atkinson J

Insurance - second appellant was a partnership of fifteen pathologists - first appellant the partners' professional indemnity insurer - respondent insurer issued second appellant with policy covering certain risks associated with the practice - where first appellant indemnified second appellant in respect of a claim and sought contribution from respondent - respondent's policy included a clause excluding liability where partners were entitled to indemnity under another professional indemnity insurance policy - primary judge had struck down clause as void under s45(1) *Insurance Contracts Act 1984* (Cth) - whether the policies of first appellant & respondent covered the same risk - whether respondent's policy responded to the claim - appeal dismissed.

[Australasian Medical Insurance](#)

[Australasian Medical Insurance](#) - decision 26 August 2009 - alleged double insurance - whether policies cover same risk - identity of parties to defendant's policy - whether exclusion of cover avoided by s45 *Insurance Contract Act 1984* (Cth) - estoppel by convention - proceedings dismissed.

**Wright & Ors v Westpac Banking Corporation [2010] QCA 190**

Court of Appeal of Queensland

Holmes & Fraser JJA; Ann Lyons J

Contracts - financial services - facility agreement - for decision appealed from, see 'Benchmark' B & IBC Thursday 29 October 2009 & link below - whether respondent had engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive in contravention of s12DA *Australian Securities & Investments Commission Act 2001* (Cth) - appeal dismissed.

[Wright](#)

[St George Bank](#) - decision 26 October 2009 - guarantee & indemnity - loan facility agreement - 'Miami One' development - *Australian Securities & Investments Commission Act 2001* - judgment for plaintiff in sum of \$47,763,997.46.



## Henry Kendall

*(b. 18 April 1839 at 'Kirmington' near Ulladulla on the South Coast of NSW  
- d. 1 August 1882 at Redfern in Sydney)*

Be his rest the rest he sought:  
Calm and deep.  
Let no wayward word or thought  
Vex his sleep...

Care that lays her heavy hand  
On the best,  
Bound him with an iron hand;  
Let him rest.

Life, that flieth like a tune,  
Left his eyes,  
As an April afternoon  
Leaves the skies.

Peace is best ! If life was hard  
Peace came next.  
Thus the scholar, thus the bard,  
Lies unvext...

All the wilful waifs that make  
Beauty's face,  
Let them sojourn for his sake  
Round this place.

Flying splendours, singing streams,  
Lutes & lights,  
May they be as happy dreams:  
Sounds & sights;

So that Time to Love may say,  
"Wherefore weep ?  
Sweet is sleep at close of day !  
Death is sleep."



*From a poem by Henry Kendall for his friend & fellow writer James Lionel Michael*

[JAMES LIONEL MICHAEL by Henry Kendall \(1839 - 1882\)](#)

[Michael, James Lionel \(1824 - 1868\) Biographical Entry ...](#)

[Henry Kendall \(poet\) - Wikipedia, the free encyclopedia](#)

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