



Friday, 9 May 2025

Weekly Banking Law Review Selected from our Daily Bulletins covering Banking

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Executive Summary (One Minute Read)

Lendlease Corporation Limited v Pallas (HCA) - NSW Supreme Court has power in representative proceedings to order notation that group members who did not register with the plaintiffs' law firm, or opt out in accordance with Court orders, would remain group members but would not receive any benefit from any settlement without leave of the Court

Metal Manufactures Pty Limited t/as TLE Electrical v WesTrac Pty Limited (NSWCA) - Court upheld judgment of primary judge under the *Personal Property Securities Act 2009* (Cth)



HABEAS CANEM

New puppy - 2018

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Summaries With Link (Five Minute Read)

Lendlease Corporation Limited v Pallas [2025] HCA 19

High Court of Australia

Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot, & Beech-Jones JJ

Class actions - plaintiffs commenced representative proceedings against Lendlease alleging breach of continuous disclosure obligations and misleading or deceptive conduct - Lendlease wanted notice to group members to include class closure notation that group members who did not register with the plaintiffs' law firm, or opt out in accordance with Court orders, would remain group members but would not receive any benefit from any settlement without leave of the Court - NSW Court of Appeal authority held Court had no power to order such notation - Full Court of Federal Court had held this NSW authority was plainly wrong and should not be followed - the trial judge referred question to Court of Appeal whether the Court had power - Court of Appeal answered 'no' (see Benchmark 22 April 2024) - appeal to High Court - held (by Gordon and Steward JJ, other justices agreeing with the orders to be made in various reasons for judgment): important not to conflate whether the power exists with whether it should be exercised - notice would not affect group member's rights - language of s175(5) of the *Civil Procedure Act 2005* (NSW) supported the power - purpose of s175(5) is to allow Court to order notice other than the notices specifically provided for in other subsections of s175 - contrary to this purpose if the Court had power to approve settlement excluding unregistered group members, but not to inform group members of intention to seek such settlement - power not precluded by any 'fundamental precept' that a group member need not do anything to obtain the benefit of any settlement or favourable judgment - there is no such absolute precept, and the Court of Appeal had made too much of comments by judges of the High Court in a previous case - power not precluded by possibility of future conflict of interest - appeal allowed and question answered 'yes'.

[Lendlease Corporation Limited](#)

[From Benchmark Thursday, 8 May 2025]

Metal Manufactures Pty Limited t/as TLE Electrical v WesTrac Pty Limited [2025] NSWCA 97

Court of Appeal of New South Wales

Gleeson & Mitchelmore JJA, & Basten AJA

Security interests - WesTrac contracted Verdia to design, supply, and install a solar photovoltaic system - Verdia subcontracted SES in respect of all or part of that project - MM sold solar panels to SES - terms included retention of title until payment of purchase price and restriction on selling or disposing of the panels except in the ordinary course of business - SES contracted to supply the panels to Verdia at the site, subject to retention of title until payment of the invoice relevant to the panels - Verdia failed to pay SES and SES failed to pay MM - common ground that panels subject to a security interest under the *Personal Property Securities Act 2009* (Cth) (PPSA) and that MM's purchase money security interest had been perfected by registration of a financing statement on the PPS Register - MM sought declaration that any interest held by

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WesTrac was subject to its first ranking security interest and either delivery up of the panels or damages - primary judge rejected MM's claim - MM appealed - held: SES's right to repayment under its contract with Verdia was a chose in action and therefore personal property, and SES had an 'interest' in that chose of action within the meaning of s31(3)(a)(i) of the PPSA - 'dealing' in s31(1)(a) means an exchange of collateral for other property, and so SES acquiring the chose in action against Verdia in exchange for the supply of the panels was a dealing - s32(1)(a) therefore effectively extinguished MM's security interest, as MM had expressly authorised the disposal of the panels by SES - no error by primary judge in finding that the payment made by WesTrac to Verdia was traceable personal property that was derived directly or indirectly from a dealing with panels to which s32 applied - s46 is not restricted to circumstances where there is a sale of goods - s46 also applied here, so that Verdia had taken free of MM's security interest over the panels in the hands of SES - appeal dismissed.

[View Decision](#)

[From Benchmark Friday, 9 May 2025]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Mousse v Commission Nationale de L'Informatique et des Libertes (CNIL), SNCF Connect (EUCJ1C) - The practice of the French national railway SNCF of requiring online ticket purchasers to indicate their title as either Monsieur (Mr) or Madame (Ms) was in violation of the *European Union General Data Protection Regulation (GDPR)* because the collection of this information was not necessary for the performance of the contract for passenger travel and violated the principle of minimisation of data collection

Summaries With Link (Five Minute Read)

Mousse v Commission Nationale de L'Informatique et des Libertes (CNIL), SNCF Connect, Case C-394/23

European Court of Justice

Lenaerts P, von Danwitz VP, Arastey Sahún, Kumin, & Ziemele JJ

When purchasing a ticket online, patrons of the French national rail, the SNCF, were required to tick a box designating gender identity: either Monsieur or Madame. Arguing that this practice violated the *European Union General Data Protection Regulation (GDPR)*, Mousse, an association, filed a complaint with the French data protection authority - the Commission Nationale de L'Informatique et des Libertes (CNIL). After the CNIL rejected the claim, Mousse brought an action before the highest administrative body in France, the Council of State, to have the CNIL determination annulled. In response, the Council of State referred the matter to the European Court of Justice for a preliminary ruling. Under the GDPR, data collection must be limited to what is necessary for the performance of a contract and the legitimate interests of the party collecting the data (the data controller). Here, the SNCF argued that it collected the data because it facilitated personal communication with ticket purchasers. The European Court disagreed with the SNCF, and stated that the collection of personal data must be objectively indispensable in order to enable the proper performance of the contract or necessary for the legitimate interests of the data collector. The Court found that personalisation of commercial communications based on gender as indicated in a purchaser's title did not appear to be objectively indispensable to enable the proper performance of rail transportation. Nor was the data strictly necessary for the legitimate interests of the SNCF. The Court found that the SNCF could instead communicate with patrons by means of generic expressions that have no correlation with gender identity. Under EU law, the matter now reverts to the French Council of State to dispose of the matter in accord with the decision made by the European Court of Justice.

[Mousse](#)



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Poem for Friday

Warm Summer Sun

By Mark Twain (1835-1910)

Warm summer sun,
Shine kindly here,
Warm southern wind,
Blow softly here.
Green sod above,
Lie light, lie light.
Good night, dear heart,
Good night, good night.

Mark Twain, was the pen name of American writer and essayist Samuel Langhorne Clemens. Clemens was born in Florida, Missouri, on 30 November 1835, the sixth of seven children, only four of whom survived into adulthood. His father was a lawyer. Clemens was raised in Hannibal, Missouri. His father, by then a Judge, died when Clemens was 11 years old. After leaving school at age 11 he was an apprentice typesetter to a printer, writing articles, and educating himself in the evening in the public libraries in the cities he lived in. He was later a riverboat pilot, and then a miner for Orion in Nevada. Through his wife Olivia Langdon, Twain became friends with Frederick Douglass, Harriet Beecher Stowe, and William Dean Howells. He part-owned the Buffalo Express. He had a love of science, but lost substantial sums investing in new inventions. Mark Twain's famous novels included the *Adventures of Tom Sawyer* and the *Adventures of Huckleberry Finn*. Ernest Hemingway wrote that "*All modern American literature comes from one book by Mark Twain called Huckleberry Finn*". Mark Twain suffered a deep depression after his son Langdon died at 19 months, in 1872, and then his daughter Susy died in 1896, wife Olivia died in 1904, daughter Jean died on Christmas Eve 1909, and his good friend Henry Rogers died on 20 May 1909. Mark Twain died at the age of 74, on 21 April 1910 of a heart attack. Halley's Comet had passed the earth in the year of his birth in 1835, and passed the earth again in the year of his death in 1910. Mark Twain has been called "*The father of American Literature*".

Mark Twain's very quotable observations include:

"Only two things we'll regret on deathbed – that we are a little loved and little travelled."

"Twenty years from now you will be more disappointed by the things you didn't do than by the ones that you did do"

"Man is the only animal that blushes. Or Needs to."

"A full belly is little worth where the mind is starved."



"Travel is fatal to prejudice"

"The secret of getting ahead is getting started"

"Always do right, it will gratify some people and astonish the rest,"

"Kindness is the language which the deaf can hear and the blind can see"

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