

Friday, 12 October 2018

## Weekly Banking Law Review Selected from our Daily Bulletins covering Banking

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Commissioner of Taxation v Sharpcan Pty Ltd** (FCAFC) - administrative law - taxation - amounts incurred for gaming machine entitlements' acquisition were 'on revenue account' and allowable as deduction under s8-1 *Income Tax Assessment Act 1997* (Cth) - appeal dismissed

**Hyder v McGrath Sales Pty Ltd** (NSWCA) - consumer law - dismissal of claim by appellant purchaser of property against respondent Agent - Agent did not engage in misleading and deceptive conduct - appeal dismissed - notice of contention upheld

**Talifero v Asbestos Injuries Compensation Fund Limited as Trustee for the Asbestos Injuries Compensation Fund** (NSWCA) - trusts and trustees - judicial advice - dust diseases - claim was a "Proven Claim" in Final Funding Agreement - respondent obliged to pay judgment debt - appeal allowed

**Susan Buswell v TAL Life Limited** (NSWSC) - insurance - income protection insurance policy - settlement sum received by plaintiff in respect of work injury damages claim against employer was not 'Other Disability Income' under policy - insurer not entitled to deduct settlement sum from monthly income benefits - declaration and orders

**Re Wood** (VSC) - wills and estates - probate - testamentary capacity - application for approval of compromise in accordance with terms of settlement - application dismissed

# Benchmark

## Summaries With Link (Five Minute Read)

### **Commissioner of Taxation v Sharpcan Pty Ltd [2018] FCAFC 163**

Full Court of the Federal Court of Australia

Greenwood ACJ, McKerracher & Thawley JJ

Administrative law - taxation - applicant contended Administrative Appeals Tribunal erroneously found amounts incurred by Trustee for gaming machine entitlements' acquisition were 'on revenue account' and allowable as deduction under s8-1 *Income Tax Assessment Act 1997* (Cth) - respondent, by notice of contention, contended that even if Tribunal erred in relation to expenditure's deduction under s8-1 of the Act, respondent's objection should be affirmed on basis of deductibility under s40-880(2) of the Act - whether outgoing was 'on revenue account' - whether outgoing was 'on capital account' which was 'deductible over five years' under s40880 - held: appeal dismissed.

[Commissioner of Taxation](#)

[From Benchmark Tuesday, 9 October 2018]

### **Hyder v McGrath Sales Pty Ltd [2018] NSWCA 223**

Court of Appeal of New South Wales

McCull & Macfarlan JJA; Emmett AJA

Consumer law - appeal concerned whether respondent (Agent), by making representations to appellant concerning parking availability at property, engaged in misleading or deceptive conduct in contravention of s18 Australian Consumer Law - Agent acted on behalf property's seller - appellant bought property for \$9.4 million - appellant contended she suffered loss due to Agent's misleading and deceptive conduct and that she would not have purchased property at price of \$9.4 million if the representations were not made - primary judge dismissed appellant's claim, finding Agent had engaged misleading and deceptive conduct but was not satisfied appellant suffered loss or damage by conduct - whether primary judge erred in finding appellant would have proceeded with purchase - causation - whether erroneous rejection of 'mere conduit' argument - whether erroneous acceptance of respondent's valuation evidence - whether erroneous finding of contributory negligence - held: appeal dismissed - Agent did not engage in misleading or deceptive conduct - Agent's notice of contention upheld.

[View Decision](#)

[From Benchmark Wednesday, 10 October 2018]

### **Talifero v Asbestos Injuries Compensation Fund Limited as Trustee for the Asbestos Injuries Compensation Fund [2018] NSWCA 227**

Court of Appeal of New South Wales

Beazley P; Sackville & Emmett AJJA

Trusts and trustees - judicial advice - Mr Francis Talifero (Mr Talifero) sued Amaca Pty Ltd (Amaca) for damages for injuries he due to exposure to asbestos and obtained judgment in Dust Diseases Tribunal - respondent Asbestos Injuries Compensation Fund Limited as Trustee of Asbestos Injuries Compensation Fund (Trustee) sought 'advice and direction' under

# Benchmark

s55 *James Hardie Former Subsidiaries (Winding Up and Administration) Act 2005* (NSW) - question was whether Trustee justified 'in not paying so much of the damages awarded in favour of Mr Talifero in the proceedings in the Tribunal as reflects the extent to which Mr Talifero's exposure to asbestos or asbestos products occurred outside Australia' - primary judge granted advice - appellant contended primary judge erroneously failed to find that whole claim was a 'Proven Claim' that Trustee was obliged to pay under Final Funding Agreement - construction of Asbestos Injuries Compensation Fund Trust Deed and Final Funding Agreement - held: claim was a "Proven Claim" in Final Funding Agreement, notwithstanding Mr Talifero's overseas exposure to asbestos - respondent obliged to pay judgment debt - appeal allowed.

[View Decision](#)

[From Benchmark Friday, 12 October 2018]

## **Susan Buswell v TAL Life Limited [2018] NSWSC 1507**

Supreme Court of New South Wales

White J

Insurance - income protection insurance policy - plaintiff was entitled to monthly benefits under income protection insurance policy which defendant provided - plaintiff received sum in settlement of work injury damages claim she brought against employer for psychological injury arising from employment (sum) - question in proceedings was whether defendant entitled to deduct the sum from monthly income benefits - construction of policy - whether sum was within definition of 'Other Disability Income' - held: Court not satisfied that sum was income or a 'benefit under workers' compensation legislation' - Court not satisfied sum was 'income payment' - sum was not within definition of 'Other Disability Income' - declaration and orders made.

[View Decision](#)

[From Benchmark Thursday, 11 October 2018]

## **Re Wood [2018] VSC 597**

Supreme Court of Victoria

McMillan J

Wills and estates - approval of compromise - plaintiff sought grant of probate of deceased's last will (2016 will) - caveator was deceased's niece - caveator as litigation guardian for infant beneficiary of estate contended deceased lacked testamentary capacity when making 2016 will and did not know or approve of 2016 will's contents - plaintiff and caveator executed terms of settlement conditional upon Court's approval - caveator sought approval of compromise - rr15.08 & 54.02(2)(c)(i) *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: Court not satisfied to approve compromise - application dismissed.

[Re Wood](#)

[From Benchmark Friday, 12 October 2018]

## CRIMINAL

# Benchmark

**Executive Summary**

**Summaries With Link**



# Benchmark

## Evening Song

**By:** Sherwood Anderson

MY song will rest while I rest. I struggle along. I'll get back to the corn and the open fields. Don't fret, love, I'll come out all right.

Back of Chicago the open fields. Were you ever there—trains coming toward you out of the West—streaks of light on the long gray plains? Many a song—aching to sing.

I've got a gray and ragged brother in my breast—that's a fact. Back of Chicago the open fields—long trains go west too—in the silence. Don't fret, love. I'll come out all right.

[https://en.wikipedia.org/wiki/Sherwood\\_Anderson](https://en.wikipedia.org/wiki/Sherwood_Anderson)

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