

Friday, 7 August 2015

Weekly Construction Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Zurich Insurance PLC UK Branch v International Energy Group Ltd (UKSC) - negligence - insurance - employee with mesothelioma - insurer's liability to indemnify employer - rule of proportionate recovery - appeal allowed

BRB Modular Pty Ltd v AWX Constructions Pty Ltd (QSC) - security of payments - contractual precondition did not prevent reference date for payment claim arising under *Building and Construction Industry Payments Act 2004* (Qld) - application dismissed

Summaries With Link (Five Minute Read)

Zurich Insurance PLC UK Branch v International Energy Group Ltd [2015] UKSC 33

Supreme Court of the United Kingdom

Lord Neuberger, Lord Mance, Lord Clarke, Lord Sumption, Lord Reed, Lord Carnwath & Lord Hodge

Negligence - insurance - employee was negligently exposed to asbestos dust by employer - employee contracted mesothelioma - before his death from mesothelioma employee sued respondent as successor in title of employer and recovered compensation - during the 27 years of employee's exposure employer had two identifiable liability insurances one of which was with Midland Assurance Ltd - appellant (Zurich) was successor to Midland - appellant maintained it was only liable to meet 22.08% of respondent's loss and defence costs because Midland only insured employer for 6/27ths of 27 year period - trial judge ordered Zurich to meet 22.08% of compensation but 100% of defence costs - Court of Appeal ordered Zurich to pay 100% of both

compensation and defence costs - Zurich appealed - appeal was from Guernsey where there was no equivalent of *Compensation Act 2006*, which had reversed ruling in *Barker v Corus* [2006] UKHL 20 that each employer was only liable pro rata to period which exposure by it bore to total of all periods of exposure - held: rule of proportionate recovery established in *Barker* remained part of common law in Guernsey - Zurich's appeal allowed in respect of compensation but dismissed in relation to defence costs - trial judge's order restored.

[Zurich](#)

[From Benchmark Monday, 3 August 2015]

BRB Modular Pty Ltd v AWX Constructions Pty Ltd [2015] QSC 218

Supreme Court of Queensland

Applegarth J

Security of payments - applicant and first respondent were parties to a construction contract - applicant claimed first respondent's payment claim not made from valid reference date - adjudicator decided contract provided for working out of reference date and that by application of s99 *Building and Construction Industry Payments Act 2004* (Qld) the contractual precondition did not affect a reference date arising for purpose of making payment claim - applicant sought to quash decision on basis no reference date for making of payment claim under the Act arose - contractual precondition to reference date arising under contract was provision of statutory declaration - precondition not complied with by first respondent - held: applicant's argument that no reference date for making of payment claim arose due to non-compliance with precondition not established - contractual provision impeded the objects of the Act - application dismissed.

[BRB](#)

[From Benchmark Wednesday, 5 August 2015]



Snow flakes. (45)

BY EMILY DICKINSON

I counted till they danced so
Their slippers leaped the town –
And then I took a pencil
To note the rebels down –
And then they grew so jolly
I did resign the prig –
And ten of my once stately toes
Are marshalled for a jig!

[Emily Dickinson](#)

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