

Friday, 27 November 2015

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

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### Executive Summary (1 minute read)

**Endeavour Energy v Precision Helicopters Pty Ltd (No 2)** (NSWCA) - helicopter crash - damages - negligence - workers compensation - apportionment - indemnity - declarations, judgments and orders made

**Ashton Coal Operations Pty Ltd v Hunter Environment Lobby Inc** (NSWCA) - environment and planning - conditional approval of open-cut coal mine project - appeal dismissed

**North Coast Conveyancing Pty Ltd v Bradbury** (NSWCA) - negligence - conveyancing - failure to make critical findings of fact in relation to causation - appeal allowed

**Rexel Electrical Supplies Pty Ltd v Morton (as liquidator of South East Queensland Machinery Manufacturing and Distribution (Mining No. 1) (in liq))** (QCA) - corporations - winding up - unfair preferences transactions voidable - leave to appeal refused

**Napier v BHP Billiton (Worsley Alumina) Pty Ltd** (WASCA) - workers compensation - entitlement to recover expenses - required nexus between compensable injury or resulting incapacity, and medical or surgical treatment - leave to appeal refused - appeal dismissed

**Gunns Ltd v State of Tasmania** (TASSC) - negligence - claim against State in relation to handling of water licence application - causes of action in negligence, negligent misstatement and estoppel failed

# Benchmark

## Summaries With Link (Five Minute Read)

### **Endeavour Energy v Precision Helicopters Pty Ltd (No 2) [2015] NSWCA 357**

Court of Appeal of New South Wales

Basten & Macfarlan JJA; Sackville AJA

Damages - negligence - workers compensation - plaintiff injured in helicopter crash sued employer (Endeavour Energy), owner and operator of helicopter (Precision) and Telstra - plaintiff's claims settled - claims of family members settled with some outstanding issues as to quantification and apportionment - proceedings involved apportionment of liability, claim for indemnity under *Workers Compensation Act 1987* (NSW) and whether statutory cap applied to Precision's liability - principal judgment in Court of Appeal varied trial judge's decision by finding Telstra liable for accident and that statutory cap applied - apportionment of liability - indemnity - proportionate liability principle - Pt IV, ss36 & 37 *Civil Aviation (Carriers' Liability) Act 1959* (Cth) - Pt 4, ss34 & 35 *Civil Liability Act 2002* (NSW) - s100 *Civil Procedure Act 2005* (NSW) - ss 149, 150, 151Z *Workers Compensation Act 1987* (NSW) - s64 *Workers' Compensation Act 1926* (NSW) - s6 *Workmen's Compensation Act 1906* (UK) - held: declarations, judgments and orders made.

[Endeavour](#)

[From Benchmark Monday, 23 November 2015]

### **Ashton Coal Operations Pty Ltd v Hunter Environment Lobby Inc [2015] NSWCA 358**

Court of Appeal of New South Wales

Beazley P; Macfarlan & Gleeson JJA

Environment and planning - Minister conditionally approved appellant's open-cut coal mine project - first respondent appealed against approval - in first judgment primary judge found approval should be granted with conditions to be determined - second judgment determined conditions - appellant appealed pursuant to s57 *Land and Environment Court Act 1979* (NSW) against condition that it must not carry out development work on site until it had purchased, leased or licensed property from owner - held: imposition of condition not an unreasonable exercise of power on basis of inconsistency between the two judgments - condition not inconsistent with s8F(1)(c) *Environmental Planning and Assessment Regulation 2000* (NSW) - primary judge's reason for imposing condition was proper and reasonable planning purpose fairly related to development approved in conformity with Newbury test - appeal dismissed.

[Ashton](#)

[From Benchmark Tuesday, 24 November 2015]

### **North Coast Conveyancing Pty Ltd v Bradbury [2015] NSWCA 361**

Court of Appeal of New South Wales

Basten & Leeming JJA; Emmett AJA

Negligence - conveyancing - respondents entered deed of option for purchase of property - option fee was 10% of purchase price - deed required option to be exercised by certain date and time - option not exercised - respondents forfeited fee - respondents had occupied

premises subject of option for weekly fee - respondents also incurred expenditure by improving property - respondents sued appellant which acted for them with respect to deed of option and proposed agreement for sale, seeking to recover option fee, interest, fees, disbursements and amount spent on improvements - trial judge gave judgment for respondents - trial judge rejected claim for expenditure by improvements - appellants appealed - appellant contended trial judge failed to make necessary findings with respect to causation- held: appeal allowed in light of respondents' concessions - it was ultimately common ground trial judge did not make critical findings of fact on causation - judgment in favour of respondent set aside.

[North Coast Conveyancing](#)

[From Benchmark Wednesday, 25 November 2015]

**Rexel Electrical Supplies Pty Ltd v Morton (as liquidator of South East Queensland Machinery Manufacturing and Distribution (Mining No. 1) (in liq) [2015] QCA 235**

Court of Appeal of Queensland

Fraser & Philippides JJA; A Lyons J

Corporations - winding up - applicant sought to appeal against order that applicant pay respondent amount representing unfair preference transactions which were voidable pursuant to s588FE *Corporations Act 2001* (Cth) - s95A, 588C, 588E, 588FA, 588FC, & 588FG - s118 *District Court of Queensland Act 1967* (Qld) - s4 *Magistrates Courts Act 1921* (Qld) - proposed appeal concerned trial judge's findings that company insolvent at time of payments and that they were not part of a running account for purposes of s 558FA(3) - held: primary judge's reasons not inadequate - applicant did not succeed in contending primary judge erred in finding company insolvent - no error in findings as to running account - leave to appeal refused

[Rexel](#)

[From Benchmark Tuesday, 24 November 2015]

**Napier v BHP Billiton (Worsley Alumina) Pty Ltd [2015] WASCA 230**

Court of Appeal of Western Australia

McLure P; Buss & Newnes JJA

Workers compensation - appellant sought to appeal against primary judge's refusal of leave to appeal from decision of WorkCover arbitrator - proper construction and application of cl17(1) of Sch 1. *Workers' Compensation and Injury Management Act 1981* (WA) - nature and extent of nexus required between compensable injury or resulting incapacity and medical or surgical treatment for injured worker to be entitled to recover expenses - held: appellant's case on appeal materially different to case run below - appellant's case not supported by medical evidence or arbitrator's findings of fact - no basis to interfere with primary judge's decision - leave to appeal refused - appeal dismissed.

[Napier](#)

[From Benchmark Monday, 23 November 2015]

**Gunns Ltd v State of Tasmania [2015] TASSC 52**

Supreme Court of Tasmania

Pearce J



Negligence - plaintiff applied under *Water Management Act 1999* (Tas) to build dam on to irrigate a planned vineyard development for its business - plaintiff sought licence to take water for dam from watercourse - dam permit was approved - dam constructed - plaintiff notified that without further information it would be allocated less water than amount it had applied - plaintiff claimed damages against State arising from the manner in which water licence application dealt with - held: defendant did not owe duty of care to plaintiff - causes of action in negligence, negligent misstatement and estoppel failed - action dismissed.

[Gunns](#)

[From Benchmark Thursday, 19 November 2015]

## **Modern Love: XXII**

BY GEORGE MEREDITH

What may the woman labour to confess?  
There is about her mouth a nervous twitch.  
'Tis something to be told, or hidden:—which?  
I get a glimpse of hell in this mild guess.  
She has desires of touch, as if to feel  
That all the household things are things she knew.  
She stops before the glass. What sight in view?  
A face that seems the latest to reveal!  
For she turns from it hastily, and tossed  
Irresolute, steals shadow-like to where  
I stand; and wavering pale before me there,  
Her tears fall still as oak-leaves after frost.  
She will not speak. I will not ask.  
We are League-sundered by the silent gulf between.  
Yon burly lovers on the village green,  
Yours is a lower, and a happier star!

[GEORGE MEREDITH](#)

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