

Friday, 3 July 2020

Weekly Corporate Governance A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Corporate Governance Law

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Executive Summary (1 minute read)

McGuinness v Workplace Eye Protection Pty Ltd (No 2) (FCA) - costs - corporations - proceedings dismissed - defendant sought special costs order - special costs order granted

Australian Securities and Investments Commission v Letten (No 28) (FCA) - corporations - application for discharge and relief as receiver and liquidator and for dispensation with requirements of rr7.5(5) & (6) *Federal Court (Corporations) Rules 2000* (Cth) - procedural orders granted

All Class Insurance Brokers Pty Ltd (in liquidation) v Chubb Insurance Australia Limited (FCA) - security for costs - insurance - respondent sought that applicant provide security for its costs of proceedings - interlocutory application granted

Re Docklands Chiropractic Clinic Pty Ltd (VSC) - corporations - plaintiff sought winding up of company on just and equitable ground - Court not satisfied to order winding up of company

CPR Solutions Mackay Pty Ltd v Zammit Earthmoving Pty Ltd (No 2) (QSC) - costs - corporations - application to set aside statutory demand dismissed - no order as to costs

Summaries With Link (Five Minute Read)

[McGuinness v Workplace Eye Protection Pty Ltd \(No 2\) \[2020\] FCA 872](#)

Federal Court of Australia

Gleeson J

Costs - corporations - Court dismissed proceedings - defendant sought special costs order - whether indemnity costs warranted on basis of unreasonable rejection of offer of compromise - whether indemnity costs warranted on basis the offer of compromise had drawn plaintiff's attention to lack of merit of plaintiff's case - interests of justice - rr25.14, 25.14(2) *Federal Court Rules 2011* (Cth) - s1317K *Corporations Act 2001* (Cth) - held: special costs order granted.

[McGuinness](#)

[From Benchmark Monday, 29 June 2020]

Australian Securities and Investments Commission v Letten (No 28) [2020] FCA 892

Federal Court of Australia

Davies J

Corporations - 'procedural orders' - first respondent sought discharge and relief as receiver and manager of property of 'relevant entities' and managed investment schemes which the relevant entities operated - first respondent also sought release as liquidator of each relevant entity and deregistration of relevant entities by applicant - dispensation with requirements of rr7.5(5) & (6) *Federal Court (Corporations) Rules 2000* (Cth) - ss480, 601EE & 1323 *Corporations Act 2001* (Cth) - held: Court satisfied to make procedural orders.

[Australian Securities and Investments](#)

[From Benchmark Wednesday, 1 July 2020]

All Class Insurance Brokers Pty Ltd (in liquidation) v Chubb Insurance Australia Limited [2020] FCA 840

Federal Court of Australia

Allsop CJ

Security for costs - insurance - applicant sought that respondent indemnify it under insurance policy which respondent issued 'in relation to theft by employees' - respondent, by interlocutory application, sought that applicant provide security for its costs - s1335(1) *Corporations Act 2001* (Cth) - s56(1) *Federal Court of Australia Act 1976* (Cth) - r19.01 *Federal Court Rules 2011* (Cth) - claim's strength - impecuniosity - delay - 'good faith' - quantum - held: security for costs granted.

[All Class Insurance](#)

[From Benchmark Friday, 3 July 2020]

Re Docklands Chiropractic Clinic Pty Ltd [2020] VSC 364

Supreme Court of Victoria

Hetyey AsJ

Corporations - 'directors and members of' company (Docklands) 'mired in conflict' - plaintiff sought that Docklands be wound up under s461(1)(k) *Corporations Act 2001* (Cth) on basis it was 'just and equitable to do so' - oppression - *Asia Pacific Joint Mining Pty Ltd v Allways Resources Holdings Pty Ltd* (2018) 125 ACSR 22 - whether jurisdiction to wind up company

enlivened - deadlock - 'breakdown in relationship between shareholders' - failure of Company's 'original object' - 'conduct and management of Company's affairs' - misconduct allegations - 'relative justice' - 'clean hands' - 'attribution of fault' - *Civil Procedure Act 2010 (Vic)* - financial position - liquidation's utility - held: Court not satisfied to order winding up of Docklands.

[Re Docklands](#)

[From Benchmark Monday, 29 June 2020]

CPR Solutions Mackay Pty Ltd v Zammit Earthmoving Pty Ltd (No 2) [2020] QSC 197

Supreme Court of Queensland

Crow J

Costs - corporations - statutory demand - applicant sought to set aside statutory demand - application dismissed on basis 'sufficient copy of the application' not served on respondent within time under s459G *Corporations Act 2001 (Cth)* - respondent sought indemnity costs on basis it was 'wholly successful', that application "doomed to fail" and on basis of its offer to applicant to discontinue proceedings - applicant sought that, on basis of 'unusual circumstances, parties bear own costs - whether genuine dispute - COVID-19 - prejudice - *Oshlack v Richmond River Council* [1998] HCA 11 - held: no order for costs made.

[CPR Solutions](#)

[From Benchmark Tuesday, 30 June 2020]



Benchmark

Motor Bus

By: Alfred Denis Godley

What is this that roareth thus?

Can it be a Motor Bus?

Yes, the smell and hideous hum

Indicat Motorem Bum!

Implet in the Corn and High

Terror me Motoris Bi:

Bo Motori clamitabo

Ne Motore caedar a Bo—

Dative be or Ablative

So thou only let us live:

Whither shall thy victims flee?

Spare us, spare us, Motor Be!

Thus I sang; and still anigh

Came in hordes Motores Bi,

Et complebat omne forum

Copia Motorum Borum.

How shall wretches live like us

Cincti Bis Motoribus?

Domine, defende nos

Contra hos Motores Bos!

[https://en.wikipedia.org/wiki/A. D. Godley](https://en.wikipedia.org/wiki/A._D._Godley)

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