



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Chief Commissioner of State Revenue v Qantas Airways Ltd - *Duties Act 1997* (NSW) - meaning of "insurer" – whether Part 1 of Chapter 8 of the Act operates in relation to all general insurers or only those defined in s247 - appeal dismissed (I, B)

Ross v Cook - Determination of separate question - negligence – valuation - Part 4 *Civil Liability Act 2002* (NSW) - proportionate liability provisions relied on by defendants – proportionate liability provisions operate in respect of claims where liability arose before 26 July 2004 - answer to separate question: each cause of action set out in the statement of claim against first & second defendants accrued subsequent to 26 July 2004 (I, B, C)

Steffen v ANZ Banking Group - Application for preliminary discovery - plaintiffs & other investors claiming to have invested substantial sums of money in fraudulent "Ponzi" scheme – plaintiffs entitled to preliminary discovery with limitations imposed (I, B, C)

McMaster v Wagga Wagga City Council - Appeal against Council's refusal of development consent – consideration of what constitutes a motor vehicle (I)

Etemovic v Gold Coast City Council - Personal injuries – plaintiff struck by jet ski under control of lifeguard at Currumbin Beach – hearing on liability - proceedings dismissed (I)

Lyschrome P/L t/a JAT Refrigerated Road Services v Swire Cold Storage P/L - s51A *Trade Practices Act 1974* (Cth) – representations as to future conduct – lease agreement evidenced by letters between parties – breach of s52 - appropriate remedy (B, C)

Summaries with links (5 minute read)

Monday 20 July 2009

Chief Commissioner of State Revenue v Qantas Airways Ltd [2009] NSWCA 163

Court of Appeal of New South Wales

Ipp, Campbell & Macfarlan JJA

Duties Act 1997 (NSW) - meaning of "insurer" – for decision appealed from, see 'Benchmark' I, B & IBC Monday 13 October 2008 & link below - whether Part 1 of Chapter 8 of the Act operates in relation to all general insurers or only those defined in s247 - whether provisions of the Act in force at the relevant time operated to charge duty only on those non-life insurance premiums which were paid to insurers registered under *Insurance Act* 1973 (Cth) – answer 'yes' - appeal dismissed.

[Chief Commissioner of State Revenue](#) (I, B)

[Qantas Airways](#) - decision 8 October 2008 - stamp duty – *Duties Act* 1997 (NSW) – aviation risks insurance - insurance duty - premiums paid to London underwriters – underwriters not registered or authorised under *Insurance Act* 1973 (Cth) – case law considered as to principles of statutory construction – held that duty not payable.

Ross v Cook [2009] NSWSC 671

Supreme Court of New South Wales

Davies J

Negligence – valuation - Part 4 *Civil Liability Act* 2002 (NSW) - proportionate liability provisions relied on by defendants – proportionate liability provisions found in the Act operate in respect of claims where liability arose before 26 July 2004 - determination of separate question - plaintiff alleging breaches of s42 *Trading Act* 1987 (NSW) & s52 *Trade Practices Act* 1974 (Cth) – limitation of actions - defendants have identified other parties who, it is alleged, are also liable in respect of matters pleaded in statement of claim -whether each cause of action set out in statement of claim against first & second defendants accrued subsequent to 26 July 2004 – answer to separate question: each cause of action set out in the statement of claim against first & second defendants accrued subsequent to 26 July 2004 - [Kenny & Good Pty Limited v MGICA](#) (1999) 199 CLR 413 relied upon by the defendants ; claim by a mortgage insurer - [Valuers \(Central Old\) Pty Ltd v Astonland Pty Ltd](#) (2004) 217 CLR 640 relied on by plaintiff – detailed analysis of both cases, also [Key Nominees Pty Ltd v Ace Insurance Ltd](#) [2008] NSWDC 62.

[Ross](#) (I, B, C)

[Key Nominees](#) – District Court decision 5 March 2008 reported at 6 DCLR (NSW) 357 – see 'Benchmark' I, B & IBC Wednesday 23 April 2008 - professional negligence – insurance – determination of separate question – applicability of insurance policy - negligent valuation of property taken as security by lender which exercised its power of sale & sold property at public auction - net proceeds were insufficient to meet borrower's indebtedness - claim for shortfall brought

by lender directly against the insurer under s6 *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) – question for determination answered in negative.

Steffen v ANZ Banking Group [2009] NSWSC 666

Supreme Court of New South Wales

McDougall J

Application for preliminary discovery - plaintiffs & other investors claiming to have invested substantial sums of money in fraudulent “Ponzi” scheme – exercise of discretion - whether preliminary discovery available for proposed representative action - plaintiffs entitled to preliminary discovery with limitations imposed – detailed analysis of legislation & case law.

[Steffen](#) (I, B, C)

McMaster v Wagga Wagga City Council [2009] NSWLEC 1237

Land & Environment Court of New South Wales

Moore SC

Appeal against Council’s refusal of development consent – consideration of what constitutes a motor vehicle - applicant seeking development consent for construction of buildings at Gumly Gumly – whether business proposed to be conducted was permitted within zone where site located - agricultural equipment – what, if any, of products proposed to be sold by applicant constitute either a motor vehicle or a motor vehicle accessory - appeal dismissed.

[McMaster](#) (I)

Etemovic v Gold Coast City Council [2009] QSC 185

Supreme Court of Queensland

Mullins J

Personal injuries – plaintiff struck by jet ski under control of lifeguard at Currumbin Beach – hearing on liability - jet ski not under power at time of incident, but moved when hit by a wave – despite designation of beach at the time as a “Danger No Swimming” area, other people swimming there – no breach of duty established, but damages assessed – proceedings dismissed.

[Etemovic](#) (I)

Lyschome P/L t/a JAT Refrigerated Road Services v Swire Cold Storage P/L [2009] QSC 187

Supreme Court of Queensland

Dutney J

s51A *Trade Practices Act 1974* (Cth) – representations as to future conduct – plaintiff conducts refrigerated road transport business & occupies premises owned by defendant - lease agreement evidenced by letters between parties – whether three year lease had further option of three years – whether representation that further term would be offered - breach of s52 - appropriate remedy – application of s87 - term of original lease extended for set period for completion of new cold store; margin given for delays. [Lyschome](#) (B, C) **Key: (I) Insurance, (B) Banking, (C) Construction**