

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Dreamtech International Pty Ltd v Commissioner of Taxation - *A New Tax System (Luxury Car Tax) Act 1999* (Cth) - whether stretched Hummer a 'car' within s27-1 & therefore subject to luxury car tax - appeal dismissed (B)

DC v State of New South Wales - Personal injuries - *Child Welfare Act 1939* (NSW) - appeal against summary dismissal of applicants' claims allowed (I)

James William Doyle v Christine Maree Glass & Ors - *Motor Accidents Compensation Act 1999* (NSW) - medical assessment - certiorari (I)

Hatch v Peel Valley Exporters Pty Ltd - *Workplace Injury Management & Workers Compensation Act 1998* (NSW) - review by Appeal Panel of medical assessment - certificate issued by Appeal Panel set aside - matter remitted (I)

Forster v Hunter New England Area Health Service - Medical negligence - claim for interim payment under s82 *Civil Procedure Act 2005* (NSW) dismissed (I)

Junker v Hepburn - Agency - implied actual authority - ostensible authority - joint obligations - *Corporations Act 2001* (Cth) - authority of a single director to give a direction to pay under loan agreement where the company was borrower (I, B, C)

Mitry v Wily & Anor - *Corporations Act 2001* (Cth) - application for leave to file cross-claim against company in liquidation granted (B)

Hackett v Hackett & Anor - *Jurisdiction of Courts (Cross-Vesting) Act 1987* (SA) - application to transfer proceedings to Supreme Court of New South Wales granted (I, B, C)



Eastland Medical Systems Ltd v Sims - Application for interlocutory injunction - plaintiff contending shares held on constructive trust for plaintiff (B)

Highway Construction Pty Ltd v Commissioner of Main Roads - Costs - whether expert can determine legal costs incurred prior to appointment (I, B, C)

Alexander & Anor v Gregoriou & Ors - *Home Building Act* 1989 (NSW) - cross-claims - whether GST payable on award of damages - proportionate liability (I, B, C)

Yeend & Ors v Anglberger & Ors - Application for summary judgment - log books relating to helicopters (I, B, C)

Sabin v BRB (Residuary) Ltd - United Kingdom case - personal injuries - issue as to causation - engineers' calculation of asbestos dose - judgment for claimant in sum of £100,000 (I)

Summaries with links (5 minute read)

Wednesday 24 February 2010

Dreamtech International Pty Ltd v Commissioner of Taxation [2010] FCA 109

Federal Court of Australia

Kenny J (in Melbourne)

A New Tax System (Luxury Car Tax) Act 1999 (Cth) - whether stretched Hummer a 'car' within s27-1 & therefore subject to luxury car tax - 'limousine' - appeal from Administrative Appeals Tribunal dismissed

[Dreamtech International](#) (B)

DC v State of New South Wales [2010] NSWCA 15

Court of Appeal of New South Wales

McColl & Basten JJA; Sackville AJA

Personal injuries - *Child Welfare Act* 1939 (NSW) - applications for leave to appeal against summary dismissal of applicants' claims - non-publication orders - applicants each contending respondents breached their duty of care by failing to report sexual abuse to police, once they became aware of

the abuse in April 1983 - claim for damages for economic & non-economic loss, also aggravated & exemplary damages - appeal allowed.

[DC](#) (I)

[TB](#) - decision 28 April, 2009: see 'Benchmark' I & IBC Wednesday 6 May 2009 - negligence - application for summary dismissal - obligations of Department of Youth & Community Services in 1983 on learning of child sexual abuse - allegations of misfeasance in public office ; breach of fiduciary duty; criminal misconduct on part of defendants - any duty owed by defendants to plaintiffs did not extend to a duty to report the abuse to police - proceedings dismissed;

[DC](#) - decision 28 April 2009

Doyle v Glass & Ors [2010] NSWSC 94

Supreme Court of New South Wales

Harrison AsJ

Motor Accidents Compensation Act 1999 (NSW) - medical assessment - certiorari - where Proper Officer had made decision to refer matter for further assessment - whether error in law - decision quashed - matter remitted to MAA.

[Doyle](#) (I)

Hatch v Peel Valley Exporters Pty Ltd [2010] NSWSC 23

Supreme Court of New South Wales

Hislop J

Workplace Injury Management & Workers Compensation Act 1998 (NSW) - bilateral carpal tunnel syndrome - review by Appeal Panel of medical assessment - no error on face of record - lack of procedural fairness - certificate issued by Appeal Panel set aside - matter remitted.

[Hatch](#) (I)

Forster v Hunter New England Area Health Service [2010] NSWSC 74

Supreme Court of New South Wales

R A Hulme J

Medical negligence - claim for interim payment under s82 *Civil Procedure Act 2005* (NSW) - conflicting opinions in reports of experts as to whether breach of duty of care - detailed consideration of legislation - application dismissed.

[Forster](#) (I)

Junker v Hepburn [2010] NSWSC 88

Supreme Court of New South Wales

Hammerschlag J

Agency - implied actual authority - ostensible authority - joint obligations - *Corporations Act* 2001 (Cth) - deed of guarantee - company with two directors each of which guaranteed repayment by company of loan from plaintiffs - authority of a single director to give a direction to pay under loan agreement where the company was borrower - assumption in s129(2)(b) that director has authority - whether plaintiffs were entitled to make that assumption - verdict in favour of plaintiffs in sum of \$472,081.43 plus interest.

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

Mitry v Wily & Anor [2010] NSWSC 84

Supreme Court of New South Wales

Palmer J

Corporations Act 2001 (Cth) - application for leave to file cross-claim against company in liquidation - discretionary factors relevant to granting of leave under s471B - leave granted.

[Mitry](#) (B)

Hackett v Hackett & Anor [2010] SASC 32

Supreme Court of South Australia

Gray J

Jurisdiction of Courts (Cross-Vesting) Act 1987 (SA) - application to transfer proceedings to Supreme Court of New South Wales - whether New South Wales proceeding a related proceeding - whether transfer to New South Wales in interests of justice - application granted - detailed consideration of Australian case law.

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

Eastland Medical Systems Ltd v Sims [2010] WASC 33

Supreme Court of Western Australia

Murphy J

Application for interlocutory injunction - plaintiff contending shares held on constructive trust for plaintiff - application to restrain exercise of voting rights - undertakings.

[Eastland Medical Systems](#) (B)

Highway Construction Pty Ltd v Commissioner of Main Roads [2010] WASC 9

Supreme Court of Western Australia

Hall J

Costs - plaintiff had been contracted by first defendant to construct two portions of Ripon Hills Road - later further contracted by first defendant to undertake work on Eyre Highway - in respect of both there were disputes as to work done with parties eventually agreeing to submit the matters in dispute to expert for binding determination - agreement formalised in a document entitled 'Expert Determination Appointment Agreement' - whether expert can determine legal costs incurred prior to appointment - plaintiff contending that on a proper construction agreement only permitted expert to determine costs in relation to expert determination process & that did not include costs incurred before agreement was made - plaintiff's action dismissed.

[Highway Construction](#) (I, B, C)

In the District Court of New South Wales...**Alexander & Anor v Gregoriou & Ors [2010] NSWDC 15**

District Court of New South Wales

Hungerford ADCJ

Home Building Act 1989 (NSW) - renovation work on residence at Robertson - defective work - cost of rectification - cross-claims for indemnity &/or contribution - whether GST payable on award of damages - proportionate liability - first & second plaintiffs entitled to verdict against second & third defendants on the claim in sum of \$34,335.62 - liability of second & third defendants to be apportioned between them on judgment in sum of \$17,167.81 for each - first defendant entitled to a verdict against first & second plaintiffs on the claim - cross-defendants on each of the three respective cross-claims entitled to verdict against cross-claimants.

[Alexander & Anor](#) (I, B, C)

In the District Court of South Australia...**Yeend & Ors v Anglberger & Ors [2010] SADC 20**

District Court of South Australia

Brebner J

Application for summary judgment - plaintiffs had agreement with defendants to have their helicopters serviced & maintained by the defendants - work on two helicopters took longer than

plaintiffs expected - plaintiffs claiming delay was the fault of defendants and that they lost income as a result - plaintiffs' application for injunctions for return of log books relating to helicopters - defendants claiming Artificers Lien over log books - injunctions granted on terms: 23 November 2009 - plaintiffs' application for summary judgment dismissed.

[Yeend & Ors](#) (I, B, C)

From the United Kingdom...

Sabin v BRB (Residuary) Ltd [2010] EWHC 267 (QB)

High Court of England & Wales, Queen's Bench Division

Swift DBE J

Personal injuries - issue as to causation - expert evidence - engineers' calculation of asbestos dose - *Helsinki Criteria* 1997 - allegation that as a result of exposure to asbestos during his employment with British Railways Board, deceased contracted asbestosis from which he died - damages, subject to liability, have been agreed in the sum of £100,000 - prior to his death, deceased was suffering from diffuse interstitial pulmonary fibrosis - claimant's case that the deceased's fibrosis was caused by exposure to asbestos & was, therefore, the condition known as asbestosis - defendant's case is that the deceased's fibrosis was not related to his asbestos exposure, but was a condition known as usual interstitial pneumonia (UIP), the cause of which is unknown - judgment for claimant in sum of £100,000.

[Sabin](#) (I)