

WALSH HALLIGAN DOUGLAS

CASE UPDATE – 5

WALSH HALLIGAN DOUGLAS
LAWYERS



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Supreme Court of Queensland Jones v Mollking Holdings Pty Ltd [2010] QSC 134

The plaintiff claimed to have suffered injuries when she slipped and fell at her place of employment.

The Court was satisfied that the slippery condition of the floor and the risk that someone might fall and suffer injury was known to the employer.

The Court was satisfied that the plaintiff's injuries were caused by the defendant's failure, in breach of section 28 of the *Workplace Health and Safety Act*, to ensure the health and safety of the plaintiff.

Damages were assessed in the vicinity of \$463,000 with an allowance of \$60,000 for general damages and \$280,000 for future economic impairment.

Supreme Court of Queensland Nestorovic v Milenkovic [2010] QSC 143

The applicant brought an application seeking leave to commence proceedings pursuant to section 43 of the *Personal Injuries Proceedings Act* and for a declaration that the applicant had given a reasonable excuse for the delay in giving a part one notice of claim.

The applicant claimed to have sustained injuries when he fell from the trailer of a truck on 26 January 2007.

There was evidence showing that the applicant had consulted various medical experts since suffering the injury and participated in rehabilitation.

The applicant gave evidence that he saw an orthopaedic surgeon on 10 July 2009 who indicated that the applicant would require surgery and that he may be left with a permanent disability.

The applicant first consulted lawyers on 28 July 2009 and served a notice of claim in mid October 2009.

The Court gave leave and declared that the applicant had given a reasonable excuse for delay.

**Supreme Court of Queensland
Van der Merwe v Arnott's Biscuits Limited
[2010] QSC 145**

The plaintiff claimed to have suffered injury on 19 October 2001 whilst working as a laundry processor at the first defendant's premises.

On 23 October 2001 the plaintiff lodged a claim for workers' compensation which was accepted.

The plaintiff returned to light duties some four to six weeks after the index incident.

The plaintiff claimed to have suffered an aggravation of her injury while at work in January 2003.

The plaintiff's subsequent application for workers' compensation was rejected and such decision was confirmed by Q-Comp. After receiving the decision of Q-Comp the plaintiff did not take any further steps.

The plaintiff filed a Claim and Statement of Claim on 23 May 2008 against the defendants.

The plaintiff gave evidence that she first became aware that her condition was due to the initial incident on 19 October 2001, that she required surgery as a result and that her condition would have an impact on her ability to work, when she consulted Dr Kahler on 29 May 2007.

The plaintiff successfully applied for an extension of the limitation period to 29 May 2008.

**Supreme Court of Queensland
Corkery & Ors v Kingfisher Bay Resort
Village Pty Ltd & Anor
[2010] QSC 161**

The first plaintiff claimed to have suffered injury when he fell down the steps of a villa at the Kingfisher Bay Resort on 25 January 2002.

Expert evidence was given as to the condition of the steps.

The Court was satisfied that the plaintiff's injury was caused as a result of the negligence of the defendants.

The first plaintiff was the principal person employed by R W Corkery & Co Pty Ltd, the third plaintiff. The second plaintiff, was the wife of the first plaintiff and was the business manager for the third plaintiff. The company conducted a geological and environmental consultancy business.

The first plaintiff continued to be employed and paid by the third plaintiff after the accident. The Court concluded that there was no reason to believe that this would not continue for the balance of the first plaintiff's working life and that there was no reason to think that the company would not continue to be successful. The Court did not award any amount to the first plaintiff for economic loss or future economic impairment.

The first plaintiff's damages were assessed in the vicinity of \$143,000 with an allowance of \$60,000 for general damages and \$50,000 for care.

The second plaintiff's claim for damages for loss of consortium was assessed in the sum of \$12,000.

The third plaintiff claimed damages for economic loss as a result of the injuries suffered by the first plaintiff including a loss resulting from the discontinuance of geological work; loss of other work which was alleged

would have followed from the undertaking of the geological work; costs of engaging assistance due to the first plaintiff's injuries and loss suffered while the first plaintiff was unable to work.

Expert evidence from forensic accountants engaged by each party was before the court.

The third plaintiff's damages were assessed in the vicinity of \$747,000 which included \$490,000 for past and future loss of income from geological work.

**Supreme Court of Queensland
Etemovic v Baulderstone Hornibrook Qld
Pty Ltd
[2010] QSC 141**

The plaintiff claimed to have suffered injuries whilst working as a contractor on 3 May 2005 when he came into contact with a piece of protruding pipe.

A notice of claim was given to the defendant on 13 December 2007 alleging that the building site at which the incident occurred was controlled by the defendant and if the scaffolding had been adequately inspected by the defendant, the problem with the protruding pipe would have been identified and rectified prior to the plaintiff suffering injury.

On 30 July 2008 the defendant's solicitors advised the plaintiff's solicitors that the scaffolding was installed by WACO.

On 7 November 2008 the defendant gave a contribution notice to WACO. The plaintiff's solicitors agreed to the joinder of WACO as a contributor.

A copy of the contribution notice was provided to the plaintiff's solicitors.

On 3 July 2009 a compulsory conference was held with the participation of the plaintiff, the defendant and WACO.

On 3 August 2009 a Claim and Statement of Claim was filed.

The defendant filed a defence and issued a third party notice against WACO.

The plaintiff applied to join WACO as a second defendant.

Prior to issuing proceedings, the plaintiff had not served any notices on WACO.

The Court held that the power to add a defendant under rule 69 of the *Uniform Civil Procedure Rules* could not be relied on to avoid compliance with the pre-court procedures under the *Personal Injuries Proceedings Act*.

The Court held that the application could not succeed on the basis on which it was argued, however the application was adjourned to enable the plaintiff to decide whether it wished to amend its application to seek an order pursuant to section 59(2)(b) of the *Personal Injuries Proceedings Act*.

**High Court of Australia
Amaca Pty Ltd v Ality Ellis;
State of South Australia v Ellis;
Millennium Inorganic Chemicals Ltd v Ellis
[2010] HCA5**

Mr Cotton, a smoker, who inhaled between 15 and 20 cigarettes per day for about 26 years, died of lung cancer.

In the course of his employment with two employers, he was exposed to asbestos fibres.

His executors bought proceedings alleging the asbestos exposure was a cause of the lung cancer.

At first instance and on appeal to the Full Court of the Supreme Court of Western Australia, the claim was successful.

Special leave was granted to the Appellants to appeal to the High Court of Australia.

The central question was whether the exposure to asbestos was more probable than not the cause of Mr Cotton's death.

Expert evidence was given about the relative risk of exposure to smoking and to asbestos, however there was no expert evidence that the cause of the cancer in Mr Cotton's case was asbestos.

The High Court was not satisfied that the plaintiff had established causation against any of the defendants.

The evidence did not establish that it was more probable than not that the negligence of any of the defendants was the cause of Mr Cotton's cancer.

The appeal was allowed with costs.

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