

EMMA MURPHY

Barrister, List A Barristers

emma.murphy@vicbar.com.au

Room 23.03 Aickin Chambers

200 Queen Street, MELBOURNE, 3000

CLASS ACTIONS

Banksia Securities Limited – Acting for **insurance broker** in defence of third party claim by Banksia Securities in context of a securities class action by Mr Bolitho against Banksia. Included consideration of misleading or deceptive conduct claims relating to publication of prospectus and alleged breaches of directors' duties (Supreme Court of Victoria).

OZ Minerals Limited – Acting for **directors** (including CEO and CFO) in claims stemming from the merger of Oxiana Limited and Zinifex Limited, including appearing at return of application for approval of settlement of representative proceeding: *Mitic v OZ Minerals Limited (No 2)* [2017] FCA 409.

COMMERCIAL LAW

Contract:

Amcor Ltd v Barnes & Ors – Acting for **plaintiff** in breach of contract and estoppel claim and related subsequent applications: *Amcor Ltd v Barnes & Ors* [2016] VSC 707; *Amcor Ltd & Ors v Barnes & Ors (Ruling No 1)* [2018] VSC 21; *Amcor Ltd & Ors v Barnes & Ors (Ruling No 2)* [2018] VSC 137; *Amcor Ltd & Ors v Barnes & Ors (Ruling No 3)* [2019] VSC 393.

Orora Limited v Lindsay Australia Limited – Acting for **Orora** in application for interlocutory injunctive relief to prevent termination of distribution agreement: *Orora Limited v Lindsay Australia Limited* [2015] VSC 197.

Regal Cream Products Pty Ltd (t/as Bulla Dairy Foods) v Murray Goulbourn Co-operative Co Limited – Acting for **Murray Goulburn** in defence of claim of alleged repudiation of supply agreement and estoppel (Supreme Court of Victoria; no published judgment).

Restraint of trade:

Monash IVF Pty Ltd v Burmeister – Acting for **Dr Lynn Burmeister** in proceedings challenging restraints of trade and proceedings seeking to enforce restraints of trade, including *Monash IVF Pty Ltd v Burmeister* [2017] NSWSC 849 (Supreme Court of Victoria and New South Wales Supreme Court).

TI Asia Pacific Pty Ltd & Anor v Treofan Germany GmbH & Co KG – Acting for **vendor** of business in proceedings for alleged breaches of restraint of trade provision and patent licence consequent upon sale of business, including commencement of trial (Federal Court of Australia; no published judgment).

Misleading or deceptive conduct and/or estoppel:

Banksia Securities Limited – Acting for **insurance broker** in defence of third party claim by Banksia Securities Limited in context of a securities class action by Mr Bolitho against Banksia. Included consideration of misleading or deceptive conduct claims relating to publication of prospectus and alleged breaches of directors’ duties (Supreme Court of Victoria).

Ka Lung Cheng & Ors v Mirvac Victoria Pty Ltd – Acting for **Mirvac** in defence of alleged misleading or deceptive conduct relating to the sale of land in the Waverley Park Development, Victoria (Federal Court of Australia; no published judgment).

OZ Minerals Limited – Acting for **directors** (including CEO and CFO) in claims stemming from the merger of Oxiana Limited and Zinifex Limited, including appearing at return of application for approval of settlement of representative proceeding: *Mitic v OZ Minerals Limited (No 2)* [2017] FCA 409.

Pentridge Village Pty Ltd (in liq) v Capital Finance Australia Ltd – Acting for **Capital Finance** in defence of misleading or deceptive conduct claims relating to lending, including interlocutory argument about assignability of statutory causes of action and leave to issue derivative action: *Pentridge Village Pty Ltd (in liq) v Capital Finance Australia Ltd* (2018) 339 FLR 358.

R-Mechanical Services Pty Ltd v AGL Energy Limited – Acting for **AGL Energy** in defence of alleged misleading or deceptive conduct relating to franchise agreement (Federal Court of Australia; no published judgment).

Regal Cream Products Pty Ltd (t/as Bulla Dairy Foods) v Murray Goulbourn Co-operative Co Limited – Acting for **Murray Goulburn** in defence of claim of alleged repudiation of supply agreement and estoppel (Supreme Court of Victoria; no published judgment).

Directors’ duties:

Banksia Securities Limited – Acting for **insurance broker** in defence of third party claim by Banksia Securities Limited in context of a securities class action by Mr Bolitho against Banksia. Included consideration of misleading or deceptive conduct claims relating to publication of prospectus and alleged breaches of directors’ duties (Supreme Court of Victoria).

Acting for **non-executive chairman** in s 19 examination by Australian Securities and Investments Commission.

Construction:

Melbourne Water Corporation v Aurecon Australia Pty Ltd & Ors – Acting for **Structural Systems** in defence of third-party claims by Tenix relating to the construction of the Eastern Treatment Plant (Supreme Court of Victoria; no published judgment).

Miscellaneous:

Acting for time charterer in arbitration proceeding for breach of time charter.

Advice to receivers regarding defence of injunction to prevent sale of secured property.

EMPLOYMENT LAW AND DISCRIMINATION

Just Group Limited v Nicole Peck – Acting for **Just Group** in proceedings seeking to enforce post-employment restraints: *Just Group Limited v Nicole Peck* [2016] VSC 614 (first instance); *Just Group Limited v Nicole Peck* (2016) 344 ALR 162 (appeal).

Petrou v Bupa Aged Care Australia Pty Ltd – Acting for **Bupa Aged Care** in successful defence of indirect discrimination claim: *Petrou v Bupa Aged Care Australia Pty Ltd* [2017] VCAT 1706 (primary judgment); *Petrou v Bupa Aged Care Australia Pty Ltd (Costs) (Human Rights)* [2018] VCAT 104 (costs).

Advice to company regarding enforcement of post-employment restraint and potential breaches of other obligations such as fiduciary and statutory obligations that may have existed during employment relationship.

PROPERTY LAW**Compulsory acquisition:**

Formware Pty Ltd v Roads Corporation – Acting for **Roads Corporation** in defence of claim for disturbance loss under the *Land Acquisition and Compensation Act 1986* (Vic) (Supreme Court of Victoria; at interlocutory stage).

Estate agents:

Giannakidis v Trukeel Pty Ltd & Anor – Acting for **vendor** in defence of claim by real estate agent for commission up to commencement of trial, including consideration of provisions of *Estate Agents Act 1989* (Vic) (no published judgment; Supreme Court of Victoria).

Restitution:

Ironbridge Holdings Pty Ltd (administrators appointed) (receivers and managers appointed) v O'Grady – Acting for **vendor** in defence of restitution claim following termination of contract of sale (Supreme Court of Victoria; judgment reserved).

Miscellaneous:

Applications for possession and the removal of caveats.

Advice relating to alleged breach of covenant of quiet enjoyment.

PUBLIC LAW / JUDICIAL REVIEW

Caligiuri & Anor v Attorney General (on behalf of the State of Victoria) & Ors – Acting for **Melbourne Water Corporation** and **Yarra Valley Water Corporation** in defence of judicial review for alleged failure to afford procedural fairness relating to land acquisition: *Caligiuri & Anor v Attorney General (on behalf of the State of Victoria) & Ors (No 2)* [2019] VSC 365 (primary judgment) and *Caligiuri & Anor v Attorney General (on behalf of the State of Victoria) & Ors (No 3)* [2019] VSC 516 (costs).

Essendon Football Club v Chief Executive Officer of the Australian Sports Anti-Doping Authority – Acting for **Essendon Football Club** in proceedings challenging the validity of ASADA's investigation into Essendon: *Essendon Football Club v Chief Executive Officer of the Australian Sports Anti-Doping Authority* (2014) 227 FCR 1.

ROYAL COMMISSION

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Advice and guidance relating to notices to produce and witness statements.