

SUPREME COURT OF  
VICTORIA  
COMMERCIAL COURT  
BULLETIN  
**No. 4/2011**



**Matter: Re S&D International Pty Ltd (No 5)**

**Judge:** Robson J

**Date:** 14/2/2011

**Citation:** [2011] VSC 30

**Subject:** CORPORATIONS – application by liquidator of trustee company for directions as to priority of claims over trust assets held by the company in liquidation

COSTS – trustee bringing proceedings for benefit of the beneficiaries of the trust estate

**Continued next slide ...**

## Matter: Re S&D International Pty Ltd (No 5) continued

WINDING UP – liquidator’s lien under principle in *Universal Distributors* (1933) 48 CLR 171 - costs incurred after realisation of property in preserving and protecting property - cost and expenses encompassed by lien

TRUSTEES – right of trustee to be indemnified for costs and expenses out the trust estate – costs incurred by trustee in pursuing action to benefit the beneficiaries – r 65 *Supreme Court (General Civil Procedure) Act 2005* – nature of trustee’s lien – comparison with liquidator’s lien under *Universal Distributors*

[Click here for full text of judgment](#)

**Matter:** CCPI Holdings Pty Ltd v Joan Hose and Ronald Hose

**Judge:** Davies J

**Date:** 17/2/2011

**Citation:** [2011] VSC 34

**Subject:** TAKEOVERS – Compulsory acquisition – Application for Court approval – Expert report – Whether Court concludes fair price offered – *Corporations Act 2001* (Cth) ss 664F, 667C.

[Click here for full text of judgment](#)

**Matter:** **Metalicus Pty Ltd v Metwholesale Pty Ltd & Anor**

**Judge:** Croft J

**Date:** 22/2/2011

**Citation:** [2011] VSC 2

**Subject:** CONTRACT – Construction of commercial contracts – Sale of business – Earn out clause – Purpose of an earn out clause – Dispute in relation to the calculation of normalised earnings before interest, tax depreciation and amortisation (“EBITDA”) – Whether the purchaser must strictly comply with the 2008 Budget – meaning of ‘budget’ – Whether purchaser must notify vendors of certain costs – adjusting for unrealised profit in any stock – Declarations regarding the interpretation of the contract.

**[Click here for full text of judgment](#)**

**Matter:** Australian Incentive Plan Pty Ltd v Babcock & Brown International Pty Ltd & Anor (No. 2)

**Judge:** Croft J

**Date:** 22/2/2011

**Citation:** [2011] VSC 43

**Subject:** **TRUSTS AND TRUSTEES** – Necessary parties in an application to vary trusts – *Trustee Act 1958 (Vic) s 63A - Re Whigham's Settlement Trusts* [1971] WLR 372; *Re Longmans Settlement Trusts* [1962] 2 All ER 193.

**CHARITABLE TRUSTS** – Nomination of charities as beneficiaries - Role of Attorney-General *Bradshaw v University of Wales, Aberystwyth* [1988] 1 WLR 190; *Wallis v Solicitor-General for New Zealand* [1903] AC 173 (PC).

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## **Australian Incentive Plan Pty Ltd v Babcock & Brown International Pty Ltd & Anor (No. 2) continued ...**

**COSTS** – Trustee entitled to costs incurred in having a question determined in relation to the administration of the trust – *Re Buckton* [1907] 2 Ch 406; *Elders Trustee and Executor Co Ltd v Eastoe* [1963] WAR 36 – Party pursuing a contentious claim in the course of litigation properly pursued by a trustee subject to usual costs rules – Trustee not entitled, without reference to the court, to decide to agree to pay party costs of such a contentious claim – *Wendt v Orr* [2004] WASC 28.

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