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Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

BHP Billiton Ltd v Dunning (NSWCA) - workers compensation - worker contracted mesothelioma during employment - employer liable

Rinehart v Rinehart (NSWSC) - preliminary discovery - subpoena issued to third party not set aside - notice of produce set aside

Goldus Pty Ltd v Australian Mining Pty Ltd (SASC) - joint venture - joint venturer not required to give notice of proposed sale of shares

Avopiling (WA) Pty Ltd v Central Systems Pty Ltd (WASC) - contract - enforceable agreement to settle dispute

Summaries with links (5 Minute Read)

BHP Billiton Ltd v Dunning [2015] NSWCA 42

Court of Appeal of New South Wales

Basten, McFarlane & Meagher JJA

Workers compensation - worker suffering from mesothelioma claimed illness caused by inhalation of asbestos dust and fibre in course of employment with BHP - worker claimed BHP was negligent and breached its statutory duties - Tribunal found in worker's favour - s3B(1)(b) *Civil Liability Act 2002* (NSW) - held: primary judge did not err in finding BHP breached duty of care because it did not take available practical alternative measures which would have reduced worker's exposure to asbestos - no error in admission of former employee's evidence, in finding worker exposed to asbestos dust and fibre during course of employment or in findings concerning available practical alternative measures - appeal dismissed.

[BHP Billiton Ltd](#)

Rinehart v Rinehart [2015] NSWSC 205

Supreme Court of New South Wales

Darke J

Preliminary discovery - applications to set aside subpoena and notice to produce - plaintiffs had sought orders that defendants provide preliminary discovery pursuant to r5.3 *Uniform Civil Procedure Rules 2005* (NSW) - plaintiffs issued subpoena directed to non-party - second defendant issued notice to produce directed to plaintiffs - overlap between documents sought - abuse of process - held: plaintiffs in this case, in issuing the subpoena, have done so for the legitimate purpose of assisting their case under r5.3(1)(a) - no abuse of process - subpoena not set aside - notice to produce failed to comply with Equity Division Practice Note 11 - there were defects in form of notice - notice set aside.

[Rinehart](#)

Goldus Pty Ltd v Australian Mining Pty Ltd [2015] SASC 32

Supreme Court of South Australia

Parker J

Joint venture agreement - plaintiff and first defendant were joint venturers - second defendant sole shareholder of first defendant contracted to sell shares to third party - plaintiff contended that, under agreement, first defendant required to give notice of proposed sale and that plaintiff had pre-emptive right to purchase first defendant's participating interest in joint venture on the terms of sale - plaintiff also contended implied term of agreement required joint venturer could not sell interest to unrelated party incapable of discharging rights and obligations required of joint venture - evidence of prior negotiations - *it goes without saying* - held: clauses of joint venture uncertain, void and severed from agreement - first defendant not required to give notice of share sale - no term implied in agreement - action dismissed.

[Goldus Pty Ltd](#)



Avopiling (WA) Pty Ltd v Central Systems Pty Ltd [2015] WASC 82

Supreme Court of Western Australia

Allanson J

Contract - parties disputed amounts owing under construction contract - plaintiff issued writ - in exchange of phone text messages, defendant offered and plaintiff accepted an amount 'in full and final settlement' - whether parties formed enforceable agreement to settle dispute which included settlement foreshadowed counterclaim by defendant - held: parties demonstrated intention to make legally binding agreement - agreement in full and final settlement of dispute - declarations made.

[Avopiling \(WA\) Pty Ltd](#)



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Passers-by

by Carl Sandburg

Passers-by,
Out of your many faces
Flash memories to me
Now at the day end
Away from the sidewalks
Where your shoe soles traveled
And your voices rose and blent
To form the city's afternoon roar
Hindering an old silence.

Passers-by,
I remember lean ones among you,
Throats in the clutch of a hope,
Lips written over with strivings,
Mouths that kiss only for love,
Records of great wishes slept with,
Held long
And prayed and toiled for:

Yes,
Written on
Your mouths
And your throats
I read them
When you passed by.

[Carl Sandburg](#)

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