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Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Allan J Heasman Pty Ltd v Commissioner of Taxation (FCAFC) - taxation - income tax - objections to assessment of tax and penalties dismissed - appeal dismissed

Panos v FSS Trustee Corporation (NSWSC) - insurance - superannuation - plaintiff not entitled to total and permanent disablements benefit under policy issued by insurer to trustee - claim dismissed

BHP Billiton Mitsui Coal Pty Ltd v Isdale (No 2) (QSC) - costs - successful applicant in judicial review proceedings to have costs paid by unsuccessful respondents

Absolute Analogue Inc v Sundance Resources Ltd (WASCA) - contract - oral contract - erroneous credibility findings - appeal allowed - retrial

Frigger v Professional Services Of Australia Pty Ltd (WASCA) - application for leave to appeal by non-parties to primary decision - Court not empowered under s471 *Corporations Act 2001* (Cth) to grant leave - application dismissed

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Summaries With Link (Five Minute Read)

Allan J Heasman Pty Ltd v Commissioner of Taxation [2015] FCAFC 119

Full Court of the Federal Court of Australia

Siopis, Davies & Wigney JJ

Taxation - income tax - Administrative Appeals Tribunal affirmed Commissioner's decision to disallow appellant taxpayer's objection to assessments of tax and penalties for 1998 and 1999 income years - Tribunal rejected taxpayer's claim that assessments issued out of time, challenge to disallowance of amounts taxpayer claimed were deductible business expenses, and challenge to imposition of additional tax for intentional disregard of the law - taxpayer appealed against Federal Court's affirmation of Tribunal's decision and against its dismissal of related application under s39B *Judiciary Act 1903* (Cth) for declaration assessments invalid (s39B application) - deductibility of contributions to employee welfare fund under s8-1 *Income Tax Assessment Act 1997* (Cth) - held: contention rejected that Court erred in finding Tribunal reviewing objection to original assessments not amended assessments - contention rejected that assessments not legally effective because it was beyond Commissioner's power - no error in finding that taxpayer was not entitled to deduction for claimed amounts - Tribunal did not err in holding taxpayer had not discharged burden under s14ZZK *Taxation Administration Act 1953* (Cth) of proving additional tax imposed was excessive - appeal against rejection of s39B application failed - appeal dismissed.

[AllanJHeasman](#)

Panos v FSS Trustee Corporation [2015] NSWSC 1217

Supreme Court of New South Wales

Robb J

Insurance - accident and sickness insurance - plaintiff claimed to be entitled to total and permanent disability benefit (TPD benefit) under insurance policy issued by insurer to trustee in respect of superannuation fund of which plaintiff was member - whether plaintiff entitled to order that insurer pay trustee total and permanent disability benefit - medical evidence - credit - held: plaintiff failed to establish he was incapacitated within definition of TPD in policy - plaintiff failed to establish he was entitled to TPD benefit trustee had claimed on his behalf under policy - claim dismissed.

[Panos](#)

BHP Billiton Mitsui Coal Pty Ltd v Isdale (No 2) [2015] QSC 248

Supreme Court of Queensland

P McMurdo J

Costs - Court made statutory order of review under *Judicial Review Act 1991* (Qld) - applicant successful and sought costs on basis they should follow event - second respondents sought that each side should bear own costs - s49 - identification of "the relevant applicant" - financial resources of relevant applicant - public interest - held: proceeding resulted from second respondents' stance in Land Court which resulted in Land Court making reviewable error of law

- second respondents' case reasonably arguable but applicant had had to bring proceeding and should have its costs paid by the unsuccessful parties.

[BHP](#)

Absolute Analogue Inc v Sundance Resources Ltd [2015] WASCA 168

Court of Appeal of Western Australia

McLure P; Buss & Mazza JJA

Contract - trial judge held that respondent (Sundance) not contractually obliged to issue 30 million options in Sundance to second appellant - alleged oral contract made between second appellant on appellants' behalf and two others on Sundance's behalf - trial judge made adverse general credibility findings against second appellant and did not accept his uncorroborated evidence where contradicted by other evidence or unlikely - general credibility findings challenged on appeal - appellants contended trial judge's failure to accept second appellant's evidence concerning crucial conversations was against weight of evidence and compelling inferences - appellants also challenged individual findings of fact - held: trial judge erred in findings as to credibility and factual findings - appeal allowed - retrial ordered.

[Absolute](#)

Frigger v Professional Services Of Australia Pty Ltd [2015] WASCA 167

Court of Appeal of Western Australia

Buss & Murphy JJA

Corporations - applicants sought leave pursuant to s471C *Corporations Act 2001* (Cth) to appeal against primary decision concerning costs orders - applicants were not parties to primary decision - held: s471C did not confer power on Court to enable a person who was not party to orders made in curial decision in proceedings in which person was not party to commence appeal - Court would also refuse to grant leave in exercise of its discretion in any event - application dismissed.

[Frigger](#)

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