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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Cabport Pty Ltd v Marinchek (No 2) (NSWCA) - indemnity costs - offer of compromise - prospects of success - interests of justice - application refused (I, B, C)

Kucera v Lemalu (NSWCA) - negligence - plaintiff struck by motorcycle - 20% assessment of contributory negligence increased to 40% (I)

Doppstadt Australia Pty Ltd v Lovick & Son Developments Pty Ltd (NSWCA) - evidence - stay - failure to take into account evidence in previous unsuccessful application for stay - judgment reopened - stay granted (B)

Solarus Projects v Vero Insurance [No 3] (NSWSC) - insurance - separate representation granted - application for extension of time for payment of security for costs granted - application for stay adjourned (I, C)

Sumiseki Materials Co Ltd v Wambo Coal Pty Ltd (NSWSC) - contract - corporations - plaintiff entitled to declaratory relief and monetary verdict for unpaid dividends (B, C)



Gold and Copper Resources Pty Ltd v Minister for Resources and Energy (NSWLEC) - judicial review - evidence - no requisite satisfaction on part of delegate of special circumstances to justify renewal of exploration licence - renewal invalid (I, B, C, G)

Mineralogy Pty Ltd v Sino Iron Pty Ltd (WASC) - mining contracts - obligation to pay plaintiff royalties - power to terminate - construction of word *taken* in contractual clause - declaration granted (I, B, C)

Summaries with links (5 minute read)

Cabport Pty Ltd v Marinchek (No 2) [2013] NSWCA 131

Court of Appeal of New South Wales

Meagher & Barrett JJA; Tobias AJA

Indemnity costs - appellant submitted respondent's conduct in maintaining cross-claim and in rejecting offer of compromise justified order for indemnity costs - held: interests of justice did not require departure from ordinary rule - respondent did not maintain proceedings which had no real prospects of success or act unreasonably in rejecting offer which was far less than amount of judgment entered and approximately 30% less than amount recovered following second appeal - indemnity costs not awarded - costs orders made.

[Cabport](#) (I, B, C)

Kucera v Lemalu [2013] NSWCA 127

Court of Appeal of New South Wales

Basten JA, Preston CJ of LEC & Simpson J

Negligence - contributory negligence - damages - plaintiff struck by motorcycle while crossing pedestrian crossing - plaintiff sued appellant driver of motorcycle claiming damages in negligence - plaintiff obtained judgment with 20% reduction for contributory negligence - appellant did not challenge finding of breach of duty but contended plaintiff bore 60% responsibility for injuries - held: evidence indicated plaintiff must have started to cross after pedestrian lights had started to flash red, had lost and returned for a shoe and then continued across almost to middle of street before turning back and being hit by motorcycle - appeal allowed - judgment reduced by 40% for contributory negligence.

[Kucera](#) (I)

**Doppstadt Australia Pty Ltd v Lovick & Son Developments Pty Ltd****[2013] NSWCA 133**

Court of Appeal of New South Wales

Barrett JA

Evidence - stay - defendants' previous application seeking stay of substantial money judgment dismissed - applicants sought order re-opening judgment on ground of apprehension that judge failed to take into account evidence of applicants' solicitor in original application - apprehension well-founded - judgment reopened - held: evidence showed likely financial capacity of one applicant warranting continuation of stay - stay granted.

[Doppstadt Australia](#) (B)**Solarus Projects v Vero Insurance [No 3] [2013] NSWSC 603**

Supreme Court of New South Wales

Campbell J

Insurance - separate representation - security for costs - stay - proceedings relating to claim on insurance policy arising from damage to development in course of construction - first plaintiff sought orders for separate representation and leave to file amended statement of claim - second plaintiff sought extension of time for payment of security costs and stay of proceedings while it advanced claim against former solicitors from Legal Practitioners' Fidelity Fund - held: first plaintiff's application granted - extension of time granted to second plaintiff - motion for stay stood over for mention or direction.

[Solarus Projects](#) (I, C)**Sumiseki Materials Co Ltd v Wambo Coal Pty Ltd [2013] NSWSC 235**

Supreme Court of New South Wales

Hammerschlag J

Contract - corporations - rectification - estoppel - minority oppression - remedies - dispute concerning plaintiff's rights and entitlements as holder of B Class shares in first defendant - second defendant held all ordinary shares in the first defendant - held: first defendant's denial of plaintiff's expectation to payment of B Class dividend oppressive and unfairly prejudicial to plaintiff - plaintiff entitled to declaratory relief with respect to construction of Restructure Agreement and Constitution and to monetary verdict in respect of unpaid dividends - Constitution modified under s233(1)(b) *Corporations Act 2001* (Cth).

[Sumiseki Materials Co](#) (B, C)



Gold and Copper Resources Pty Ltd v Minister for Resources and Energy

[2013] NSWLEC 66

Land and Environment Court of New South Wales

Pain J

Judicial review - evidence - plaintiff sought declaration that seventh renewal of exploration licence to Newcrest Mining Ltd was invalid - court had jurisdiction to decide matter under s293(1)(q) *Mining Act 1992* (NSW) and s21C *Land and Environment Court Act 1979* (NSW) - plaintiff raised four grounds of review - held: plaintiff succeeded on one ground of review - plaintiff had established to civil standard that delegate was not satisfied as required by s114(6) *Mining Act* of the existence of special circumstances justifying renewal of exploration licence - renewal invalid.

[Gold and Copper Resources](#) (I, B, C, G)

Mineralogy Pty Ltd v Sino Iron Pty Ltd [2013] WASC 194

Supreme Court of Western Australia

Edelman J

Contract - plaintiff held mining tenements and lease over land in Pilbara - defendants contracted with plaintiff to conduct mining operations and construct facilities - plaintiff issued notices of default to defendant and Korean Steel and sought declaration it could exercise power to terminate contracts - issue was contextual meaning of contractual clause in identical contracts between plaintiff and defendant and plaintiff and Korean Steel - *taken - pay to Mineralogy a royalty ... in respect of Magnetite Ore taken by [Sino Iron/Korean Steel] pursuant to the exercise of its Mining Right* - held: best interpretation of *taken* was that proposed by plaintiff - royalty became payable by either defendant or Korean Steel or by them jointly when relevant person took possession or control of magnetite ore - court to hear from parties on appropriate wording of declaration and consequential orders.

[Mineralogy](#) (I, B, C)

The Kraken

By Alfred, Lord Tennyson

Below the thunders of the upper deep;
Far, far beneath in the abysmal sea,
His ancient, dreamless, uninvaded sleep
The Kraken sleepeth: faintest sunlights flee
About his shadowy sides: above him swell



Huge sponges of millennial growth and height;
And far away into the sickly light,
From many a wondrous grot and secret cell
Unnumber'd and enormous polypi
Winnow with giant arms the slumbering green.
There hath he lain for ages and will lie
Battening upon huge seaworms in his sleep,
Until the latter fire shall heat the deep;
Then once by man and angels to be seen,
In roaring he shall rise and on the surface die.

[Alfred, Lord Tennyson](#)

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