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

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Executive Summary (1 minute read)

Chubb Insurance Company of Australia Ltd v Robinson (FCAFC) - insurance - Directors and Officer's policy - separate question - professional services exclusion did not apply to claim for indemnity - appeal dismissed

Mesa Minerals Ltd v Mighty River International Ltd (FCAFC) - corporations - permission granted to inspect and make copies of appellant's books - appeal dismissed

The Recyclers (NSW) Pty Ltd v Ayoub (NSWSC) - evidence - possession - first defendant was competent to give evidence - affidavit sworn by tutor and based on information which first defendant provided to tutor was inadmissible

Aus Asia Minerals Ltd v Ball (WASCA) - security for costs - corporations - statutory demand - application by respondent for payment of security for costs by appellant - security for costs granted

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Summaries With Link (Five Minute Read)

Chubb Insurance Company of Australia Ltd v Robinson [2016] FCAFC 17

Full Court of the Federal Court of Australia

Foster, Robertson & Davies JJ

Insurance - Directors and Officer's policy - separate question - professional services exclusion clause - "[W]hether the cross-claimant's statutory declaration made on 12 December 2011 was an actual or alleged act or omission "in the rendering of, or actual or alleged failure to render any professional services to a third party", within the meaning of exclusion IV(A)(v) of the Directors' and Officers' Liability Coverage Section of the Policy of Insurance referred to in the statement of cross-claim as policy of insurance number 93301062" - primary judge answered question in the negative - issue on appeal was whether professional services exclusion applied to respondent's claim for indemnity - true construction of exclusion clause - *Building and Construction Industry Security of Payment Act 2002* (Vic) - s9 *Corporations Act 2001* (Cth) - s8 *Domestic Building Contracts Act 1995* (Vic) - s144 *Evidence Act 1995* (Cth) - rr15.13(a), 30.01 & 30.02 *Federal Court Rules 2011* (Cth) - held: Court's interpretation of clause was consistent with primary judge's interpretation - no impermissible application of *contra proferentem* rule or 'circumscription of cover' principle - exclusion did not apply in present case - appeal dismissed.

[Chubb](#)

Mesa Minerals Ltd v Mighty River International Ltd [2016] FCAFC 16

Full Court of the Federal Court of Australia

Siopis, Gilmour & Katzmann JJ

Corporations - discovery - respondent sought to inspect appellant's company books under s247A *Corporations Act 2001* (Cth) - primary judge was satisfied in all circumstances that respondent was acting in good faith and that inspection was to be for proper purpose - Court permitted access to documents - appellant contended statutory preconditions not established for exercise of Court's discretion - ss232 & 461 - held: no deficiency judge's reasoning process or findings against the evidence - no error in exercise of discretion or scope of order - appeal dismissed.

[Mesa](#)

The Recyclers (NSW) Pty Ltd v Ayoub [2016] NSWSC 144

Supreme Court of New South Wales

Stevenson J

Evidence - competence to give evidence - possession - preliminary question whether first defendant was competent to give evidence under s13 *Evidence Act 1995* (NSW) and whether affidavit based on information which first defendant provided to tutor, and sworn by tutor, was admissible - held: it was common ground that the affidavit was not admissible whether or not first defendant was competent - Court concluded that first defendant was competent to give evidence.

[The Recyclers](#)



Aus Asia Minerals Ltd v Ball [2015] WASCA 251 (S)

Court of Appeal of Western Australia

Murphy JA

Security for costs - corporations - statutory demand - appellant appealed against refusal to set aside a statutory demand - respondent sought security for costs under 1335(1) *Corporations Act 2001* (Cth) - appellant contended statutory threshold not met and that Court should dismiss application on basis it was not appropriate for party who was in effect defending an action to pay security for costs - whether reason to believe appellant would not be able to pay respondent's costs - held: not unreasonable for respondent to have applied for security at time it did - Court found that the sum of \$18 000 was reasonable - security for costs granted.

[Aus Asia Minerals](#)

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