

Monday, 22 February 2016

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

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### Executive Summary (1 minute read)

**Lowden v Elliott Harvey Securities Ltd** (FCA) - discovery - corporations - directors' duties - informal applications to inspect documents held by non- parties refused

**T & T Investments Australia Pty Ltd v CGU Insurance Ltd** (NSWCA) - adjournment - costs - vacation of hearing granted - appellant to pay respondent's costs thrown away - further security ordered - appeal stayed pending provision of security

**AFP v Dong Hua International** (VSCA) - proceeds of crime - refusal to vacate trial date or make examination order sought - leave to appeal refused

**Martin v Andrews** (QSC) - damages - plaintiff injured in motor vehicle accident - liability admitted - damages assessed at \$1,282,572.10

**Sean Rose Holdings Pty Ltd v LWP Technologies Ltd** (QSC) - injunction - environmental nuisance - noise emissions from machinery on plant - interlocutory injunction refused

### Summaries With Link (Five Minute Read)

**[Lowden v Elliott Harvey Securities Ltd \[2016\] FCA 18](#)**

Federal Court of Australia

Edelman J

Discovery - corporations - directors' duties - applicants applied informally for permission to

inspect books and records or discovery of documents from non-parties - ss9, 486 & 511(1)(b) *Corporations Act 2001* (Cth) - rr5.22, 5.23, 5.23(2) & 20.23(1) *Federal Court Rules 2011* (Cth) - held: Court could not resolve applications - it would not be just to decide informal application against party not present - application had been brought without sufficient notice - springing order granted - applications refused.

[Lowden](#)

## **T & T Investments Australia Pty Ltd v CGU Insurance Ltd [2016] NSWCA 16**

Court of Appeal of New South Wales

Beazley P, Meagher JA & Sackville AJA

Adjournment - costs - corporations - appellant sought that hearing of appeal be adjourned so it could obtain legal representation - appellant's previous solicitors had filed notice of ceasing to act - respondent sought that matter proceed - if Court granted adjournment respondent sought costs thrown away by adjournment on indemnity basis - respondent also sought lump sum order - respondent sought that costs be paid forthwith and provision for further security for costs - held: Court granted adjournment sought - appellant ordered to pay respondent's costs thrown away on ordinary basis - appellant directed to pay further security for costs into Court - appeal stayed pending provision of security.

[T & T](#)

## **AFP v Dong Hua International [2016] VSCA 15**

Court of Appeal of Victoria

Redlich, Priest & Beach JJA

Proceeds of crime - applicant Commissioner sought examination orders in respect of proposed examinees and vacation of trial date to allow examinations to be conducted - trial judge ordered examination of one examinee and refused order in respect of other proposed examinees - trial judge refused to vacate trial date - Commissioner appealed - ss5, 49, 180, 180A, 180B & 180E *Proceeds of Crime Act 2002* (Cth) - held: no basis to interfere with exercise of discretion by trial judge to refuse to vacate trial date or examination order - leave to appeal refused.

[AFP](#)

## **Martin v Andrews [2016] QSC 20**

Supreme Court of Queensland

McMeekin J

Damages - plaintiff injured in motor vehicle accident - liability admitted - assessment of damages - *Civil Liability Act 2003* (Qld) - *Civil Liability Regulation 2003* (Qld) - level of plaintiff's pain - economic loss - pain and suffering - level of pain - special damages - held: damages assessed at \$1,282,572.10.

[Martin](#)

## **Sean Rose Holdings Pty Ltd v LWP Technologies Ltd [2016] QSC 16**

Supreme Court of Queensland



A Lyons J

Interlocutory injunction - nuisance - equity - parties were occupiers of adjoining properties - respondent built plant on its leased premises - applicant sought interlocutory injunction restraining respondent from causing environmental nuisance from noise emissions - whether damages would be adequate remedy - value of applicant's undertaking - held: on consideration of acoustics reports and affidavits Court satisfied applicant had prima facie case - however Court not satisfied balance of convenience favoured injunction - application refused.

[Sean Rose Holdings](#)

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