



HIGH COURT OF AUSTRALIA

Public Information Officer

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ALINTA LGA LIMITED (formerly the Australian Gas Light Company) and ALINTA AGN LIMITED (formerly AGL Gas Networks Limited) v MINE SUBSIDENCE BOARD

Alinta had no right of appeal to the Land and Environment Court (LEC) against the refusal of the NSW Mine Subsidence Board to entertain its claim to compensation for mine subsidence, the High Court of Australia held today.

Alinta owns the natural gas pipeline running from Wilton, south of Sydney, to Horsley Park, in Sydney's west. The pipeline passes through the Appin Mine Subsidence District, south of Sydney. Alinta alleged that coal mining between May 1998 and July 2003 caused subsidence that required works costing almost \$2.4 million to prevent damage to the pipeline. The *Mine Subsidence Compensation Act* established a scheme whereby claims could be made to the Board for payment of compensation from a statutory fund for damage caused by subsidence or the expense of preventing or mitigating such damage. Alinta made a claim to the Board in September 2004 for costs incurred to protect the pipeline. The Board rejected the claim in 2005.

Under the Act, erecting any "improvement" (including a pipeline) in a subsidence district without Board approval was an offence. In the event of a contravention, the Act provided that the Board could not entertain a compensation claim unless a certificate was issued under section 15B(3A). Certificates could be granted if the Board was satisfied that an improvement would have complied with the Act had approval been obtained earlier, and that it was appropriate to issue the certificate. Alinta applied for a certificate under section 15B(3A) in April 2003. In July 2005, the Board advised Alinta that the certificate was refused because of Alinta's failure to obtain approval for the pipeline at the time of construction (around 1975), delay in applying for certification, and the Board's belief that issue of a certificate would allow a compensation claim to be entertained. In October 2005, the Board advised Alinta that, without a certificate, Alinta's claim to compensation could not be entertained.

Alinta sought to appeal to the LEC under section 12B of the Act. This provided a right of appeal to the LEC on a compensation claim under sections 12 or 12A against the Board's decision as to whether damage had arisen from subsidence or could reasonably have been anticipated or as to the amount of payment from the fund. The Board argued that the LEC lacked jurisdiction to hear the appeal as the Board's decision to refuse to entertain the claim was not a decision under sections 12 or 12A nor a decision as to the matters in section 12B. Justice Peter Biscoe held that the LEC did have jurisdiction. On appeal by the Board, the Court of Appeal, by majority, held that it did not. Alinta appealed to the High Court. This appeal did not concern the merits of Alinta's compensation claim or the correctness of the Board's decision. Alinta has never conceded that its pipeline was constructed without the Board's approval. However, the sole question for the High Court was whether the LEC had jurisdiction to hear Alinta's appeal under section 12B.

The High Court unanimously dismissed the appeal. It held that the right of appeal to the LEC was restricted to appeals against decisions of the Board as to the subject matter in section 12B. The Court rejected Alinta's submission that the Board had made an appealable decision under section 12B as to the amount of payment from the fund. No such decision had been made. Rather, the Board had found the pipeline to be erected without its approval and applied the statutory requirement that no claim be entertained in the absence of a certificate. It followed that Alinta had no right of appeal against the Board's decision to the LEC.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*