



## HIGH COURT OF AUSTRALIA

13 December 2012

### NEWCREST MINING LIMITED v THORNTON

[2012] HCA 60

Today a majority of the High Court of Australia held that s 7(1)(b) of the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (WA) ("the Act"), which provides that a person bringing more than one action in respect of damage suffered as the result of a tort cannot recover more than "the amount of the damages awarded by the judgment first given", does not apply to a consent judgment entered to give effect to an agreement to settle a proceeding.

In 2004 the respondent injured his knee in the course of his employment at a mine site in Western Australia. The respondent claimed workers' compensation payments and common law damages from his employer. The claim was settled in 2007 by way of a consent judgment entered in the District Court of Western Australia, with no admission as to liability in respect of any cause of action. In 2008, the respondent commenced proceedings for negligence against the appellant, which owned and operated the mine site where the respondent had been injured. The appellant invoked s 7(1)(b) of the Act. A Deputy Registrar of the District Court dismissed the respondent's action, and a Judge of that Court dismissed an appeal from that decision. The Court of Appeal allowed the respondent's appeal. The appellant appealed, by special leave, to the High Court.

A majority of the High Court dismissed the appeal, holding that the consent judgment did not fall within the terms of s 7(1)(b) because there had been no judicial determination of liability and no consequent award of damages. Instead, the consent judgment was a means of giving effect to a settlement agreement between the parties. The majority observed that excluding consent orders from the operation of s 7(1)(b) was not inconsistent with the intended purpose of the provision.

- *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.*