



12 February 2018

SUPREME COURT TRIAL JUDGEMENT

NSL Consolidated Ltd ("NSL or Company") is very pleased to announce that on 9 February 2018, her Honour Justice Banks-Smith handed down her judgment.

NSL feels vindicated by the Supreme Court of Western Australia decision, and will now make an application to seek a contribution to its legal costs from Coal Hub, Subiaco Capital and its two directors, pursuant to a personal undertakings as to costs.

Background

Birmanie alleged NSL repudiated the Coal Acquisition Agreement dated 15 June 2011 (Agreement) with Birmanie Nominees Pty Ltd relating to 4 coal EPCs in Queensland and Birmanie accepted the repudiation and terminated the Agreement and commenced Supreme Court proceedings against NSL.

By these Supreme Court proceedings Birmanie sought damages including for the loss of opportunity to receive further payments. The damages sought were \$2.5 million plus costs and interest.

NSL has always maintained that as it did not obtain unfettered access, it had no obligation to undertake drilling and in any event, it would not have established Inferred or Indicated coal resources of 500 or 250 million tonnes respectively (which would have given rise to the further payments). Accordingly, NSL has maintained that even if it breached the Agreement there was no loss to Birmanie (Birmanie later assigned its interests in the litigation to Coal Hub. NSL denied the validity of that assignment).

Orders Made

The full decision will be found in the Supreme Court of Western Australia portal under "Judgments" (Coal Hub Pty Ltd v NSL Consolidated Ltd [No 4] [2018] WASC 41).

Her Honour Justice Banks-Smith found that NSL did not repudiate the Agreement, and whilst NSL breached an implied term by certain delays on its part in the circumstances its conduct was not of the nature of a repudiatory breach, therefore Coal Hub is entitled to nominal damages in the sum of \$1,000.

Coal Hub's claim is otherwise dismissed.

The issue of costs is to be referred to a judge to be determined in chambers on a date to be fixed.

This announcement lifts the current trading halt over the Company's securities.

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