

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

BOND J

SC No 6593 of 2017

STEPHEN JAMES PARBERY AND MICHAEL ANDREW OWEN IN THEIR CAPACITIES AS LIQUIDATORS OF QUEENSLAND NICKEL PTY LTD (IN LIQ) ACN 009 842 068	First Plaintiffs
QUEENSLAND NICKEL PTY LTD (IN LIQ) ACN 009 842 068	Second Plaintiff
JOHN RICHARD PARK, KELLY-ANNE LAVINA TRENFIELD & QUENTIN JAMES OLDE AS LIQUIDATORS OF QUEENSLAND NICKEL PTY LTD (IN LIQUIDATION) ACN 009 842 068	Third Plaintiffs
QNI METALS PTY LTD ACN 066 656 175	First Defendant
QNI RESOURCES PTY LTD ACN 054 117 921	Second Defendant
QUEENSLAND NICKEL SALES PTY LTD ACN 009 872 566	Third Defendant
CLIVE FREDERICK PALMER	Fourth Defendant
CLIVE THEODORE MENSINK	Fifth Defendant
IAN MAURICE FERGUSON	Sixth Defendant
MINERALOGY PTY LTD ACN 010 582 680	Seventh Defendant
PALMER LEISURE AUSTRALIA PTY LTD ACN 152 386 617	Eighth Defendant
PALMER LEISURE COOLUM PTY LTD ACN 146 828 122	Ninth Defendant

**FAIRWAY COAL PTY LTD
ACN 127 220 642**

Tenth Defendant

**CART PROVIDER PTY LTD
ACN 119 455 837**

Eleventh Defendant

**COEUR DE LION INVESTMENTS PTY LTD
ACN 006 334 872**

Twelfth Defendant

**COEUR DE LION HOLDINGS PTY LTD
ACN 003 209 934**

Thirteenth Defendant

**CLOSERIDGE PTY LTD
ACN 010 560 157**

**Fourteenth
Defendant**

**WARATAH COAL PTY LTD
ACN 114 165 669**

Fifteenth Defendant

**CHINA FIRST PTY LTD
ACN 135 588 411**

Sixteenth Defendant

**COLD MOUNTAIN STUD PTY LTD
ACN 119 455 248**

**Seventeenth
Defendant**

EVGENIA BEDNOVA

Eighteenth Defendant

ALEXANDAR GUEORGUIEV SOKOLOV

Nineteenth Defendant

ZHENGHONG ZHANG

Twentieth Defendant

SCI LE COEUR DE L'OCEAN

**Twenty-first
Defendant**

DOMENIC MARTINO

**Twenty-second
Defendant**

MARCUS WILLIAM AYRES

**First Defendant
added by
counterclaim**

STEFAN DOPKING

**Second Defendant
added by
counterclaim**

BRISBANE

FRIDAY, 3 AUGUST 2018

JUDGMENT

BOND J: HIS HONOUR: By court document 296, the plaintiffs applied for orders as follows:

5 The categories of documents, document plan, and document management protocol appearing at pages 20 to 63 of Exhibit LTH-2 to the affidavit of Liam Thomas Hennessy affirmed on 6 July 2018, be the categories of documents, document plan, and document management protocol for the consolidated proceeding.

10 The application so made was consequent upon orders that I made on 19 April 2018. The orders I made on that date provided the following in relation to disclosure:

<u>Item</u>	<u>Date</u>	<u>Step or direction</u>	<u>Party responsible</u>
Disclosure			
5	By 4:00pm on 25 May 2018	The QN parties must provide the defendants with: <ol style="list-style-type: none"> a) a proposed list of categories of documents that they are seeking disclosure of from each of the defendants and by which they propose to disclose documents to the defendants; b) a proposed document plan to address the management of documents at all stages in the proceeding; and c) a proposed document management protocol which ensures that litigants describe and exchange documents consistently to improve searchability and retrieval and to minimize information management which includes potential technology assisted review (TAR) protocols. 	QN Parties
6	By 4:00pm on 22 June 2018	The defendants must: <ol style="list-style-type: none"> a) provide comments on the list of categories of documents proposed by the QN parties, defendants and propose any additional categories; b) provide comments on the document plan to address the management of documents at all stages in the proceeding; and c) provide comments on the document management protocol. 	The defendants
7	By 4:00pm on 29 June 2018	The parties are to meet to agree on: <ol style="list-style-type: none"> a) the list of categories of documents to be disclosed; b) the document plan; and c) the document management protocol, and, in the event that agreement is reached, the parties will sufficiently comply with their duty of disclosure in this proceeding by making disclosure in compliance with the agreement and any subsequent directions made by the Court.	All parties
8	By 4:00pm on 6 July 2018	The parties must either – <ol style="list-style-type: none"> a) notify the court of the terms of a proposed consent order recording the terms of their agreement reached consequent upon compliance with direction [7] and providing that the parties will sufficiently comply with their duty of disclosure in this proceeding by making disclosure in compliance with those terms; or b) file an application seeking orders in respect of the disputed aspects of the categories of 	All parties

<u>Item</u>	<u>Date</u>	<u>Step or direction</u>	<u>Party responsible</u>
		documents, document plan or document management protocol.	

5 The application first came on for hearing last Friday. I addressed what occurred in my ruling dated 27 July 2018. Reference should be made to my oral reasons for that ruling. As I there explained, the defendants had not complied with the orders I made
10 on 19 April 2018. I said in that ruling that there was much to be said for the submission advanced for the plaintiffs that I should simply make the order that they sought, together with the costs order that they sought. Mr Palmer, then appearing for himself, expressed the submissions to which I have adverted in my reasons for the ruling on 27 July 2018. He sought an adjournment so that he might direct a properly
15 informed mind to the considerations which were addressed by the plaintiffs' application. I should say that this occurred after exchanges between me and counsel, where I expressed concern that I had not been given any real assistance in grappling with whether the directions sought by the plaintiffs were appropriate or could be improved or should be changed. In any event, I acceded to the application by Mr Palmer for adjournment. That application was joined in by the other defendants.

All the defendants are now represented by counsel. Counsel had yesterday provided submissions which grappled with one aspect of the proposed orders, by suggesting that further categories ought be appropriate. That submission was contained in
20 written submissions, which were provided to me, in support of a stay application. However, shortly before the matter was called on this morning, those submissions were altered by the redaction of submissions which grappled with the disclosure application. When the application was mentioned this afternoon, as I have said, all the defendants who are active in the proceeding are now represented by the same
25 counsel, and counsel indicated that he had instructions not to advance any submissions in relation to the application, and was neither to oppose nor to consent to the orders sought by the plaintiffs. He did seek to rely on an affidavit by his instructing solicitor. My permitting him to do that was opposed by counsel for the plaintiffs on the grounds that as the person seeking to adduce evidence had already
30 clarified they had no submissions to make, they would not be permitted to adduce any evidence.

Inter partes litigation does not involve the court guessing at what ought be appropriate. I regard to be utterly extraordinary the conduct of parties who having
35 obtained an adjournment so that something could be dealt with today with their input as to the appropriateness of the orders, decide, having got the adjournment, not to do anything at all, not to make any submissions at all, but just to seek to put some material before me that I can make of what I will. That is not the appropriate course. If those parties do not seek to put any proposition before me as to why the orders
40 should or should not be made, or any proposition before me in relation to the evidence that they propose I receive, I see no reason to receive the evidence. I will not receive the evidence contained in the affidavit of Mr Iskander, which is court document 330, on the application advanced by the plaintiffs.

45 ...

HIS HONOUR: In relation to the application filed 6 July 2018, court document 296, I order:

- (a) the parties are to conduct disclosure in accordance with the disclosure plan and the list of categories for disclosure contained therein, and the document management protocol contained at pages 20 to 63 of exhibit LTH-2 to the affidavit of Mr Liam Thomas Hennessy, which is court document 297; and
- 5 (b) the defendants are to pay the first and second plaintiffs' costs of the application.