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[accident compensation]

Keeping you informed. DECEMBER 2013

Asbestos News

The latest from Australia and elsewhere

News has been running hot in the asbestos area over the last six months. Court cases and new healthcare developments also continue to surface. This d'finitive recaps these key developments including:

- >> James Hardie's claims experience deteriorates
- >> Perez claim – reduced damages at appeal for lost gratuitous services
- >> Landmark general damages award in South Australia
- >> Potential asbestos exposure from the NBN
- >> Post-earthquake asbestos exposure in New Zealand
- >> Compensation available for UK mesothelioma victims with no identified workers compensation insurer
- >> Ongoing concerns about asbestos exposure in aftermath of 2001 WTC attack.



Key:



Disease and research



Court outcomes



Compensation and insurance



Asbestos use and management

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Australia

>> **Jun 2013** – AICF receives \$185m from James Hardie



James Hardie paid \$185 million in 2012/13 to the Asbestos Injuries Compensation Fund (AICF) to reimburse sufferers of asbestos-related diseases. The company pays up to 35% of its cash flow to the fund each year. James Hardie's claim numbers and costs increased in 2012/13, and rose further in the first half of 2013/14 (see November 2013 item on page 4 for more detail).

>> **Jul 2013** – Asbestos Safety and Eradication Agency launched



The Asbestos Safety and Eradication Agency (a statutory authority within the Commonwealth Education, Employment and Workplace Relations portfolio) commenced operations on 1 July. The agency works with Australian jurisdictions and stakeholders to set a consistent Australia-wide approach to asbestos eradication, handling and education. It considers environmental and public health issues, as well as workplace safety, but not compensation. The agency is implementing the National Strategic Plan for Asbestos Awareness and Management.

>> **Jul 2013** – Perez DDT award for gratuitous services reduced



Bus depot labourer Mario Perez, 68, was awarded \$1.3 million in February in the Dust Diseases Tribunal, NSW (DDT). He acquired mesothelioma after being exposed to asbestos-containing gaskets and pipe insulation.

His mesothelioma prevented him from caring for his wife and grandchildren, which he had done regularly prior to his illness. The DDT found that under s15B of the Civil Liability Act 2002 Mr Perez was entitled to damages for his lost capacity to provide future domestic services to his family. This part of the award amounted to nearly \$1 million.

In June the NSW Court of Appeal overturned the award for lost gratuitous services and returned the matter to the DDT to reassess the award. In July the DDT awarded revised s15B damages of nearly \$613,000.

The decision should dampen the recent upswing in plaintiffs making significant claims for lost gratuitous services, notwithstanding the relatively high award in this case.

>> **Jul 2013** – Disparities in asbestos removal standards



A decision by the ACT government to demolish a house containing asbestos demonstrates the varying standards for asbestos removal across Australia.

The Federal government spent nearly \$100 million in the late 1980s and 1990s to remove asbestos insulation from 1000 homes in the ACT. However, four homes have since been found to contain asbestos. This recent discovery resulted in the ACT government planning to demolish one house at an estimated cost of \$2 million.

The ACT Work Safety Commission advised that homes which participated in the previous removal program may still contain asbestos in secluded places like wall cavities. Residents should take care when performing repairs or renovations.

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Conversely, the NSW government has not taken similar action for similarly exposed properties in NSW (near Canberra and on the south coast). In July 2013 nine homes had been identified with loose-fill asbestos insulation in Queanbeyan, NSW.

Disparities such as these will be reviewed by the Asbestos Safety and Eradication Agency.

>> **Aug 2013** – Landmark SA pain and suffering award



The family of Raymond Hamilton was awarded \$190,000 for pain and suffering (also known as general damages) by the Full Court of the Supreme Court of South Australia. Mr Hamilton died in August 2007 from mesothelioma; he had worked as an electrician for BHP at its Whyalla shipyard in the 1960s.

The District Court had earlier awarded Mr Hamilton's estate \$115,000 for pain and suffering. BHP Billiton appealed, arguing it had not breached its duty of care to Mr Hamilton nor caused the disease. Instead, the Supreme Court increased the award after comparing payments across Australian states, which indicated that South Australian awards tended to be lower. This decision follows the large pain and suffering payment in the Victorian case *Amaca v King* in 2011.

>> **Sep 2013** – Asbestos awareness mobile home on tour



A specially designed mobile home has toured the Central West of NSW, warning renovators about the dangers of asbestos. The house, christened Betty, is a joint initiative of the Asbestos Diseases Research Institute (ADRI) and the Asbestos Education Committee. The home was escorted by volunteers who advised residents on where asbestos might be found in and around homes.

>> **Oct 2013** – Hope for mesothelioma sufferers



Researchers say a new treatment is offering hope to mesothelioma victims. In October the Sydney-based ADRI published laboratory test results for a novel genetic treatment for mesothelioma.

Dr Glen Reid of the ADRI said that low levels of microRNA in mesothelioma cells may contribute to the rapid growth of the cancer. In the new treatment, bacterial cells carry microRNA into malignant tumours; this appears to halt the cancer's growth in animals. The ADRI will commence clinical trials in early 2014, but the full testing process could take more than four years.

>> **Nov 2013** – WA Labor introduces new asbestos laws



Currently in WA sufferers of asbestos related diseases (ARD) may claim compensation only once. The WA Labor opposition has introduced a bill in State Parliament to provide provisional damages for ARD sufferers, and later award further damages if a more severe disease develops.

This reform would bring WA into line with other Australian states including NSW, Victoria and SA. The bill also provides for awards for loss of the ability to provide gratuitous services to dependants.

>> **Nov 2013** – Hardie claim numbers higher than expected



James Hardie's asbestos claim reports in the six months to September 2013 (321) were higher than expectations (270); most of these were mesothelioma claims. The company has not yet identified a reason for this variation in the experience. If further analysis suggests that the higher numbers will persist, James Hardie expects its asbestos liability will increase materially.

The actuarial projection at March 2013 assessed that the peak in mesothelioma claim reports had occurred in 2010/11. If the assumed peak were revised to 2015/16, James Hardie estimates that its liability could increase by about 45%.

>> **Nov 2013** – Telstra staff to return to NBN pits



In May and June the media reported that contractors working on the NBN may have been exposed to asbestos in Telstra's communication pits and pipes at several sites around Australia; residents living nearby may have also been exposed. The amount of asbestos in Telstra's pits and pipes – of which there are millions according to the company – is unknown.

Work in the affected areas halted in June, and contractors were retrained to ensure asbestos was handled properly. Some sub-contractors resumed work in August. By November Telstra was planning for its staff to return to work on the NBN roll-out.

There are concerns that Telstra and/or the NBN may face a large liability for those exposed to asbestos; the extent of exposure is unclear. At the time Telstra rejected calls to establish a compensation fund for those who may have been exposed.

>> **Nov 2013** – Chinese trains expose Australian workers to asbestos



Railway workers have been exposed to white asbestos in trains imported from China. Rail freight company SCT imported 10 trains made by China Southern Rail in 2012. The engines were certified as asbestos free, but in November 2013 asbestos was found to have been used for insulation.

This is not the first instance of a breach of the 10 year ban on imports containing asbestos. In 2012 more than 25,000 Chinese-made cars were recalled after asbestos was found in engine gaskets and brakes. Two tugboats imported from Singapore in 2008 for the Port of Fremantle contained asbestos in engine gaskets. Transport for NSW says it is satisfied there is no asbestos in the new fleet of Waratah trains, despite the use of Chinese parts; unions have called for the NSW government to guarantee they are asbestos free.

>> **Nov 2013** – National Asbestos Forum



Comcare and the Commonwealth's Asbestos Safety and Eradication Agency co-hosted the 2013 National Asbestos Forum in Sydney on 25 November, during Asbestos Awareness Week. Presentation topics included medical research, medical treatment and recovery, asbestos handling, disposal and management and compensation. Speakers included representatives from Comcare, the Asbestos Safety and Eradication Agency, Telstra, the ADRI, Royal Prince Alfred Hospital and the Asbestos Removal Contractors Association of NSW.

>> **Dec 2013** – More nurses for asbestos-related illnesses



The Lung Foundation of Australia has paid for 10 nurses to receive specialist training in treating and caring for mesothelioma patients; the number of mesothelioma patients is expected to rise in the next few years. The trainees will lead treatment programs in the cities and regions where they are based.

New Zealand

>> **Nov 2013** – NZ asbestos policy review could save lives



An Earthquake Commission (EQC) policy of covering up asbestos in hundreds of earthquake damaged Canterbury homes could be changed by the NZ government, following concerns about health risks for construction workers.

The government said the introduction of the Health and Safety at Work Bill (expected in December) will provide clearer safety guidelines. Officials had previously raised concerns about the way asbestos is being handled in the Canterbury reconstruction.

The EQC had estimated that up to 43,000 Christchurch homes due for repair could contain asbestos, and in 10% of cases asbestos found in ceilings or walls was encased behind plasterboard instead of being removed.

However, most demolitions and home repairs are expected to be completed before the government is able to tighten regulations.

North America

>> **Jun 2013** – Pfizer fails to escape costly asbestos case



Pfizer, the multinational pharmaceutical company, contributed \$964 million to a settlement fund which covers asbestos and other claims against its subsidiary Quigley Company Inc. (acquired by Pfizer in 1968). Quigley previously produced asbestos insulation for heavy industry, but filed for bankruptcy in 2004. Pfizer had argued that bankruptcy laws protect Quigley from lawsuits. In June, a Manhattan federal bankruptcy court approved a plan for Quigley to exit bankruptcy, and Pfizer's contribution to the fund followed this.

>> **Jun 2013** – One sided bill on asbestos injuries



The US House of Representatives approved a bill which allows asbestos defendants to require the trusts (set up by the courts to pay claims) to respond to all information requests, including information about claimants. Plaintiff lawyers argue that the Furthering Asbestos Claim Transparency Act of 2013 will make it more difficult for claimants to obtain fair compensation. Defendant companies say that the measure is needed to combat fraudulent asbestos claims.

In November the US President vetoed the bill, claiming that asbestos fraud was not an issue and that the bill raised privacy concerns for claimants.

>> **Jun 2013** – US asbestos payments lower but average sizes remain high



Legal and business experts NERA Economic Consulting reviewed US companies' SEC filings of asbestos-related liabilities. It found that the average cost of resolved claims remained high in 2012, after a 75% increase in 2011. The higher average cost of the last two years is due to a higher proportion of mesothelioma payments, which are more expensive than other diseases.

The higher average costs have not increased total settlement payments. In addition, counts of pending claims have continued to decline, while new filings have been flat. Overall asbestos-related liabilities were mostly unchanged from the previous year.

>> **Sep 2013** – ADAO testifies to Congress to support asbestos ban



In September Linda Reinstein, head of the Asbestos Disease Awareness Organisation (ADAO), testified at the House of Representatives sub-committee hearing for the Toxic Substances Control Act. Campaigners for a ban on asbestos use in the US argue that the bill (which was implemented in 1976) needs to be reformed.

More than 50 countries have banned asbestos, although the US is not one of them. While asbestos consumption in the United States has declined sharply from a peak of 800,000 tonnes in 1973, around 1000 tonnes were consumed in 2012. Most of this was used in specialist processes in the chemicals industry and in roofing products.

>> **Nov 2013** – WTC asbestos crews fear lack of health cover



Workers who removed asbestos following the 11 September 2001 terrorist attack on the World Trade Center are concerned that the federal government's September 11 Victim Compensation Fund may not pay their medical bills, particularly for ARDs which may not manifest for decades.

The current fund is expected to be exhausted by 2017. Many of the 2300 asbestos workers allege that proper safety procedures were not followed in the immediate aftermath of the attack, due to the intensity of the airborne dust and lack of training.

>> **Dec 2013** – Congresswoman files asbestos lawsuit



In May Carolyn McCarthy, a congresswoman and heavy lifelong smoker, was diagnosed with lung cancer. McCarthy has since sued more than 70 companies, alleging that when she was young her father and brother worked as boilermakers, exposing her to asbestos dust from their work clothes. She also claims she visited their worksites and inhaled asbestos there. This case is an example of a growing trend in the US for plaintiffs and their representatives to sue, alleging that asbestos exposure caused their lung cancer.

United Kingdom

>> **Jun 2013** – Compensation for mesothelioma where insurer not identified



The UK government approved the Mesothelioma Bill in June. This provides compensation to victims from occupational asbestos exposure where no liable insurer or employer can be identified. However, the bill covers only mesothelioma and not other ARDs.

In July employers' liability insurers agreed to a levy on their premium income, from which mesothelioma claimants who cannot identify their insurer will be paid 75% of the compensation to which they would be otherwise be entitled. The bill also establishes processes to ensure mesothelioma claims are processed quickly and cost effectively, including the central registration of claims.

>> **Oct 2013** – New procedure improves quality of life for mesothelioma victims



At the 15th World Conference on Lung Cancer in Sydney, UK researchers described the 10 year MesoVATS study of new video-assisted surgery. The treatment led to a much improved quality of life for late-stage mesothelioma sufferers with pleural effusion (a build-up of fluid in the lining around the lungs which significantly impairs breathing ability). However, the new treatment did not appear to improve survival rates.

>> **Nov 2013** – Environmental exposure claim against Turner & Newall



A 61 year old woman is understood to be the first resident to make a successful claim against Turner & Newall (T&N), for environmental exposure from its Hindley Green asbestos plant. T&N has already paid out millions to ex-workers from the plant, near Wigan. The claimant's lawyers expect there will be more Hindley Green environmental exposure claims.

Other International

>> **Jun 2013** – Swiss billionaire jailed for asbestos deaths



An Italian appeals court extended the prison sentence for Swiss billionaire Stephan Schmindheiny from 16 to 18 years after finding him responsible for the deaths of 3000 people in asbestos-related cases. Schmindheiny was also ordered to pay €20 million to the region of Piedmont, and €31 million to Casale Monferrato – the town worst affected by Mr Schmindheiny's asbestos business.

>> **Jun 2013** – Vietnam seeks to prevent asbestos-related diseases



Asbestos experts from Vietnam met in June to discuss strategies to prevent asbestos-related diseases (ARDs). The meeting looked at the control of ARDs around the world and focused on developing control systems for Vietnamese hospitals. Vietnam is currently one of the ten largest users of asbestos. The US Geological Survey recently observed increasing asbestos use in the construction industry in Asia and the Middle East.

>> **Nov 2013** – Promising findings from mesothelioma treatment research



Medical researchers in Italy say they have achieved "excellent" tumour control and survival rates among mesothelioma victims, using treatment involving surgery, chemotherapy and radiation.

Keep your eye out for news of our second Asbestos Seminar - which we will again present jointly with Colin Biggers & Paisley lawyers.

Finity & asbestos

Finity's dedicated asbestos team advises government agencies, insurers, reinsurers and other companies on their asbestos-related liabilities.

Our experienced consultants remain at the forefront of actuarial research into compensation for asbestos-related diseases in Australia. Since 1991, we have collected and analysed data on asbestos-related disease claims arising from industrial, environmental and product-related exposures; this extensive historical database represents a key resource for the provision of our advice. We regularly update our modelling approach, responding to changes in disease incidence as well as trends in the claims and litigation environment.

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