

PLAINTIFF'S
EXHIBIT

10249.0

PLAINTIFF'S
EXHIBIT

WV-03992

(Wittenoom)

A long time ago, in the wild north-west of Australia, a prospector stumbled on a seam of one of the world's rarest minerals — blue asbestos. He pegged a claim, dug a mine, and began a rush that would lead to the building of a boom town out in the desert, a place called Wittenoom.

Fifty years later, that town is dying and so are the men, women and children who lived and worked there. Two thousand people — more than the toll from the terrible chemical explosion at Bhopal — will eventually die or be disabled because of their exposure to the deadly dust of Wittenoom. It is the world's greatest industrial disaster.

And it could all have been prevented. Long lost documents prove that the men who ran that mine — one of Australia's largest public companies — were aware from the start of the terrible dangers of blue asbestos. They did too little, too late, to protect their workers, as did the government, which should have been the watchdog. It was a conspiracy of silence.

Blue Murder tells the story of the mine, the migrants who were press-ganged into working there, the danger warnings that were ignored, the export of the lethal blue asbestos all over the world. And it documents the long fight for justice for the Wittenoom survivors, a fight that is still not over.

BLUE MURDER

BEN HILLS



ISBN 0-7251-0581-8



9 780725 105815

TWO WOMEN HEARD
the shocking truth
WITTENOOM

BLUE MURDER

Ben Hill is one of Australia's best-known investigative reporters. In a 30-year career he has worked in Australia and as a foreign correspondent covering the Middle East and Africa out of London, and reporting Asia from Hong Kong. He spent many years with the *Age* in Melbourne, the *Sydney Morning Herald* and the Melbourne *Herald*, and was a producer with the current affairs program '60 Minutes'. His investigations have included the Loans Affair that triggered the downfall of the Whitlam Government, ivory smuggling in Kenya, a racket selling stolen babies in Taiwan, and the Dalgon Shield FUD disaster. He has been reporting on asbestos disease — particularly the tragedy of the Wittenoom miners — for five years.

Ben Hill is 47, the father of two sons, and lives in Melbourne. This is his first book.

The whole establishment is a whited, poisoned sepulchre, I tell you, a most serious danger to health ... we live by peddling filth and corruption. The whole of the town's prosperity is rooted in a lie.
— Dr Thomas Blackman, in Henrik Ibsen's play *An Enemy of the People*.

BITE MURDER

Two thousand doomed to die —
the shocking truth about
Wittenoom's deadly dust

B E N H I L L S

Ⓢ
S U N
M

For the men, the women and the children of Wittenoom who will die because CSN Ltd put its profits before their lives.

Copyright © Ben Hills 1989

First published 1989 by Sun Books

The Macmillan Company of Australia Pty Ltd

107 Murray Street, South Melbourne 3205

Clarke Street, Crown Point 3003

Associated companies throughout the world

National Library of Australia

cataloguing in publication data

Hills, Ben.

Blue murder : Two thousand doomed to die, the shocking story of Wittenoom's deadly dust

Includes index.

ISBN 0 7251 0581 X

1. Asbestos dust -- Environmental aspects -- Western Australia -- Wittenoom. 2. Asbestos mines and mining -- Health aspects -- Western Australia -- Wittenoom. 3. Environmental health -- Western Australia -- Wittenoom. I. Title.

363.1 79099413

Set in 9 pt New Century Schoolbook on an Apple Macintosh 8030.

Printed in Australia.

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed upon the subsequent purchaser.

Contents

Acknowledgements

Prologue

1 A town like Hancock	vii
2 The 'magic mineral'	1
3 The new Kinnake	9
4 All the young men	17
5 Toothless watchdogs	29
6 The third horseman	42
7 Death on the courtroom steps	58
8 The conspiracy	76
9 The galloping Gordons	88
10 The maxi-trials	103
11 'Aussie Blue'	116
12 Lies, damn lies and statistics	128
13 The last hurrah	140
14 Industrial homicide	155
15 'Malingers'	168
Chronology	171
Index	194
	198

Acknowledgements

Without the dedication of a few doctors, the plight of the victims of Wittenoom would never have come to light. Without Robert Vojakovic and his Asbestos Diseases Society, no one would have cared. Without the law firm Slater and Gordon, the victims would not have finally won justice. And without these people, this book could not have been written.

In particular, I would like to thank Dr Bill Muuk and his team at the Sir Charles Gairdner Hospital in Perth for their help; Robert Vojakovic for putting me in touch with more than 100 of the survivors interviewed for this book; and John and Peter Gordon and Bernard Murphy, from Slater and Gordon, for their encouragement and access to their library of litigation.

In addition, I am especially grateful for the guidance of the late Professor Eric Selin, Dr Jim McNulty, Professor Stephen Jones of Nottingham City Hospital, Professor Irving Selikoff of New York's Mt Sinai Hospital, and the US attorneys Jane Cantor and Steven Kazan, who have done so much to help American asbestos victims in their fight for compensation.

The sources I have used for background include Barry Castleman's book *Asbestos - Medical and Legal Aspects*, Paul Brodeur's *Outrageous Misconduct - the Asbestos Industry on Trial*; Russell Makhimer's *Corporate Crime and Violence - Big Business Power and the Abuse of Public Trust*; a paper by Lawrence Layman, of the University of Western Australia; and the files of the *West Australian*, *Perth Daily News*, *Melbourne Herald*, and *Sydney Morning Herald*. These have been acknowledged where appropriate.

My warm thanks for their help and hospitality to Fermo Dotti of Bergamo in Italy, Dorothy Byrne in Manchester, and Kirsty Hamilton in New York; and to all the Wittenoom survivors who gave me their time - in some cases some of their last few precious hours - to help me tell the story of Wittenoom.

A portion of the profits of this book will be dedicated to research into asbestos disease.

Prologue

You knew she knew, even before the silent sobs started and tears began to dribble down her pale, concave cheeks.

The doctors had made reassuring noises! She had been a strong, resilient woman ... hardly a day's illness in her life. There were new treatments available, they promised her, new drugs, radiation therapy; all the high-tech resources of one of the country's best-equipped hospitals. And anyway, even the experts understood so little about this weird, new disease that was chewing her up. Don't give up hope, they told Val Doyle.

But she knew better. You could see it in her eyes as she sat there on a bedside sofa in her quiet lounge room, the clock clicking on the wall, surrounded by the framed family photos, the china cabinet full of the accumulated knick-knacks of life in the suburbs. One by one she had watched her family die of the same sinister sickness - both her parents, her husband, two brothers-in-law. Val Doyle knew she would be the next to go.

Outside, in the scalding heat of a Perth midsummer, someone was tipping corn into little bowls for the wild doves cooing in the bushes. A cleaning lady from a home help group was vacuuming the carpets. Val Doyle was so weak and wasted now that she hardly had the strength to lift her arms above her head, let alone look after the housework. 'They just don't know. No one can tell me. It might be five years ... it might be six months.' Her voice dropped to a wheezing whisper. The only certainty was that at the age of 49, in what should have been the full bloom of middle life, Val Doyle, wife and mother, was dying. The only uncertainty was when.

In fact, her death was only 23 days away. On Saturday 4 February 1989, as the other citizens of Western Australia trooped to the polling booths to elect a State government, Val Doyle died in a ward of the hospital that carried the name of another great battler, the war hero and former State Governor, Sir Charles Gairdner.

She was interred in the Karrakatta cemetery, the arch member of her family killed by this terrible man-made disease whose name

THE BLUES MURDER

she could hardly pronounce. Her last words to me were: 'They have committed genocide on my family.'

Around the time Val Doyle died, a group of people was trudging through thigh-deep snow in the streets of Vermiglio, a chocolate box little village perched on the mountains of the Italian Alps. Under their heavy woolen topcoats the men were wearing black suits, and the women black dresses. Their breath was steaming in the cold Sunday air, and they stopped from time to time, leaning on thick wooden sticks and staring down at the snowy slopes splined with black pine trees and the lakes clad with aluminous ice. They were on their way to the cemetery.

Eventually, they found the grave they were looking for. Vito Mascione, says the inscription, died 1985 aged 67. Much loved by his wife and his eight children. *Requiescat in Pace.*

They brush the snow from the stone, and while the men stand around with their heads bowed, two of the women place small bunches of flowers in ornamental vases. They are both widows. One, Vito's sister-in-law, stumbles as she steps back from the grave, and falls in the snow. She says she always feels haunted when she comes here, to the place where so many men were laid to rest before their time, dead in mysterious circumstances. She will not speak the name of the molatius that kills them, and hurries back to her house for a cup of warming wine. She makes the sign of the cross. It is spooky here, an evil place.

The locals have an odd name for this little corner of the cemetery. A name from another country, another time. They call it Wittenoom.

Across the Atlantic, in the frostbelt city of New Brunswick, it's a busy Tuesday morning in the Midwestern County Court. On the street outside, New Jersey's finest are decanting the night's harvest of disappearances from a convoy of police wagons — mostly tough-looking young blacks from The Projects, the public housing ghettos down the road, charged on the usual counts of robbery, assault and drugs. They bounce through the corridors in their Reeboks and black leather bomber jackets with their lawyers in tow. 'Yo' they go, waving to their buddies.

Up on the fifth floor, outside Court 304 (Circuit Judge Thomas Manion presiding) George and Francis Komenda, of South Hackensack, New Jersey, sit waiting for the jury to come back. He is balling a tissue in his hands. 'I ain't countin' on nothin', says Mr Komenda, 'but it would be sort of nice if, before I die, I could get something for the children. Sort of a farewell present.'

PROLOGUE IN

George Komenda has neither a long life ahead of him, nor a plan sent out behind him. For half his 67 years he has been suffering from a cancer eating out his insides. Three times he has faced major surgery, three times the doctors tore out large pieces of his plumbing, which Mr Komenda sort of thought he needed. Back in the 1980s, they had given him only five years to live, but George Komenda had beaten the odds. Now had come the day when he hoped to prove that the malignancy was no mystery, no act of God, but the fault of his bosses who 30 years ago had deliberately exposed him to a product they knew could kill.

In the dock, waiting with equal nervousness, are the Oxford-shirted lawyers representing half a dozen of America's most powerful public corporations. It isn't the first time that they have been here, accused of conspiring to kill and cripple their workers, nor even the 101st. In fact, it's been something of a routine for the last 10 years or more. I ask the clerk how many cases like this have been filed at the Middlesex County Court. He gives an open-palm shrug. 'Five hundred, 1000 ... who knows?'

Mr Komenda sits waiting for judgment, case number who-knows-what, in the greatest avalanche of toxic tort litigation the world has ever seen.

There are great expectations at the home of Klaus Rabenault, a townhouse in the Melbourne suburb of Caulfield. Christmas Eve is here, and in Bavaria, where he was born, this is the time for presents. The tree is sparkling with tinsel, and Klaus is decked out as Santa for his son, his daughter and his three darling grandchildren. The presents are passed around with equals, and squeezes of the parallel. 'What could this be?' says Klaus, trying to diagnose with his fingers the contents of a long, thin package. 'I know ... wings, that's what it is. So when I got to heaven I can say to St Peter 'Look, I brought my own, all you have to find now is the halo.''

The kids are suddenly quiet. His wife, Elizabeth, slips out to the laundry to weep. Suddenly they all know this is Klaus Rabenault's way of saying goodbye. He will not see another Christmas. He has defied all the odds of medical science by surviving as long as he has. A few years ago he used to entertain customers of his furniture shop by running up flights of stairs balancing a three-seater couch on his head. Today, he can't even swing his grandchildren around, so weak has he become. The man who used to laugh when he was offered an anaesthetic to have a tooth extracted will soon become familiar with the terminal agony of an illness that not even morphine can blunt. It is little consolation for him to remember the day a few months

BLIND MURDER

earlier when he sat in court and heard a jury award him \$500,000 for his suffering. Little consolation to read the words of the judge who delivered a public thrashing to the company that caused his death because of its continuing, conscious and continuous disregard for Klaus Raibensault's safety. Retribution may be sweet, but the price put on all those lost years of his life comes to just \$350 a week.

In a shoebox flat in an old folk's block, a grey-haired man sits looking out on the darkness falling on the streets of Nottingham, England. There are tears running down the creases in his face as he holds an old photograph of a happy crowd of people in Bomby Bay bathers romping on the beach at the Bullin's holiday camp at Scarborough. There's Arthur, Arthur Redgate, and his young wife, Annie, the love of his life. A great couple they were, everyone said so. At card nights she was a champion, and ballroom dancing ... oh, the fun they used to have. Arthur is now 73, and he keeps himself busy enough around the place, helping the other old folk with their shopping. But it wasn't the kind of retirement he had in mind when he married on the eve of the Second World War. It would have been their golden wedding anniversary next year, but Annie is now lying in the cemetery, and Arthur is alone.

During the war Annie was one of the hundreds of women conscripted to work in the local garment factory. Just doing her bit, thought nothing of it, really. Not until 1961 when she began to feel poorly and started the rounds of the doctors and hospital. Her weight went down from nine and a half stone to under six; she couldn't breathe, she couldn't even eat a biscuit that Arthur softened in a cup of tea for her. The doctors couldn't work out what was wrong ... or if they did, they didn't tell Annie Redgate. Not long before she died, she said to me: "Arthur, I think I've got TB".

But, of course, it wasn't TB. It was a disease as mysterious, as preventable, and so inevitably fatal, that the doctors chose to lie to a dying woman.

A housewife dies in a hospital in Perth ... widows mourn around a grave in Italy ... a man goes to court in New Jersey ... a last Christmas in Melbourne ... a widower sitting at his window in Nottingham. Five freeze-frames, five vignettes of misery and mourning around the world. But what do these people have in common, these strangers united only in their grief and anger? What is the sinister thread that binds their lives to a ramshackle little town in the blasted heartlands of Western Australia, and to the dark and desolate mountains of slag that loom over it?

A town like Hancock

Wittenoom town Australia's industrial Belshazzar...

Asbestos widower John Doyle.

No one living there now even remembers how the place got its name. Some say Wittenoom was a word stolen, along with the land, from the nomadic bands of Aborigines who roamed across the country 30,000 years before the white men arrived with their Winchesters and bullock wagons. Sorry Dreamtime, but that is rubbish. The spectacular gorge, and the shabby little town that was built nearby, were named after the pioneering pastoralist and Member of Parliament Edward Harris Wittenoom, who today must be splashing in his grave. The place that carries his name will go down in the history of this poisoned planet alongside Chernobyl, Bhopal, and Minamata.

The town itself, or what is left of it, is a ghostly place of abandoned tin-roofed buildings and symmetrical concrete slabs where long-demolished houses once stood. A few kilometres away, down a dark ravine, a tangle of rusty, rattling iron sheds is all that is left of the mines and the mill that were once the engine of the town's economy. From the air, Wittenoom looks like a chess-board mysteriously abandoned in the middle of a game, offering no obvious clue as to why it was ever built there in the first place, out in the echoing emptiness of the West Australian outback. Nor what unimaginable menace drove away its inhabitants.

What is that still and crossbones sign doing there? Why are the kids told not to play on that great landslide of indigo rubble? Why are those pretty geological specimens in the souvenir shop kept under glass, by order of the Health Department? Why are the tourist buses that occasionally trundle through the town mostly empty? Why has the whole area been declared off-limits even for the Army, which used to conduct counter-insurgency exercises here? And what are those strange tufts, like blue thickets, stuck to the bushes?

There is nothing left now to hint that for the 23 years of its short life, Wittenoom was a thriving little mining community. Val Doyle played here as a child in the long deserted little schoolyard. This was

2 BLUR MURDER

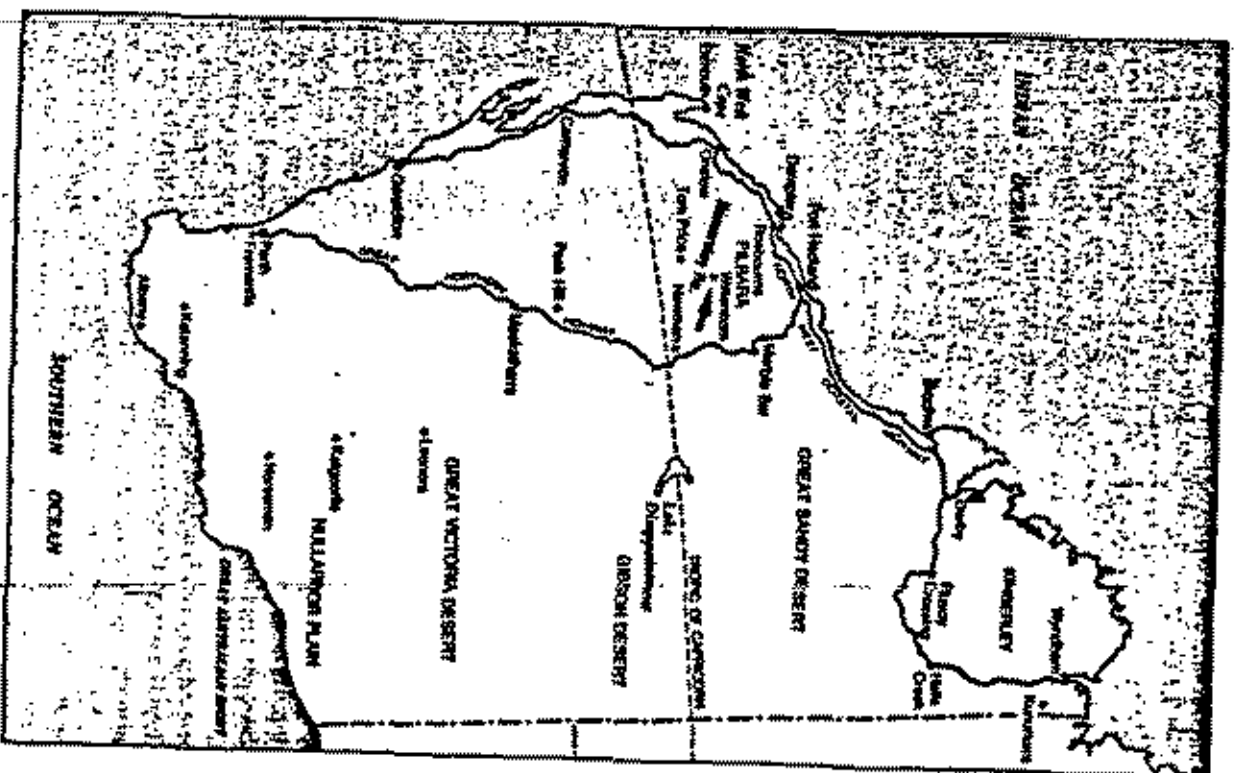
young Vito Moscone's first home in Australia, and the place to which Klaus Habermann would come to live and work. The name would have meant nothing to Annie Rodgata, bent over her production line in Nottingham, nor to George Kamanda going about his work in far-away frosty New Jersey ... but Wittenoom would reach out many years later to also lap them on the shoulder with a skeletal finger.

Over the years, perhaps 20,000 people passed through this near-deserted little town, some snared for life by the wild beauty of the red cliffs that loom overhead, others spitting good riddance after just one day. Uncounted thousands more around the world owed their livelihood to the mineral gouged from the rocks of Wittenoom. All would have reason to damn the name for the rest of their lives, and their children's lives after them.

It is a macabre and pointless exercise to attempt a Guinness Book of World Records on an industrial disaster as enormous as that which engulfed this little town in the desert. The toll from the one night in 1984 when a factory in the city of Bhopal in central India spewed tons of deadly methyl isocyanate over the sleeping population was 1,700; and people are still dying by the day. The radioactive eruption at the Soviet nuclear reactor at Chernobyl will, some scientists believe, be responsible for more than 10,000 deaths from cancer over the next two or three generations. And who wants to produce a balance sheet on the thousands of children born dead or hideously deformed because of that horror drug thalidomide, or the petrochemical poisons dumped in Japan's Minamata Bay?

But include Wittenoom in that list, even if not at the top. The intact and most expert scientific analysis of the tragedy that occurred there predicts that, by the second decade of the next century, nearly 20,000 people will die because of Wittenoom — one in three of the men who worked at the mine. And that is just the workers. No one has attempted to forecast the toll among the people whose only crime was that they just happened to live there. No forensic detective is prepared to even guess what will happen to the tens of thousands of people around Australia and across the world to whom Wittenoom exported its deadly, dusty mineral.

Even the cemetery on the outskirts of the town offers no clue to the disaster that is still unfolding. The poison of Wittenoom acts so slowly that it can take 50 years to kill, long after its victims have left the town, when many have almost forgotten that they were ever there. There are 20 or 30 graves here ... it's impossible to tell exactly



Map of Western Australia with Wittenoom annotated.

4 BLUE MURDER

because most are no more than overgrown bumps in the earth, marked only by rusty drilling bits. Burials were not popular in Wittenoom; the ground is so iron-hard that the gravediggers had to use explosives to blast a hole. The dead of Wittenoom are buried far away in Perth, in Melbourne and Sydney, in Nottingham and Vermiglio, and a hundred other cemeteries around the world. There is no war cemetery for the unknown, uncaptured workers of Wittenoom, although some of the victims would like to see one.

Val Doyle's widower John, for a start. 'I think the town and the mine should be preserved just as they are, as a memorial. There should be photographs on display, schoolchildren should be taken there as a warning for the next generation, just like the Jews in Germany. Wittenoom was Australia's industrial Belgium. It should never be forgotten.'

Not that there's much left to preserve. Wittenoom today resembles one of those claphart puddle Western settlements deserted in the deserts of southern Spain when Hollywood moved on to richer, greener pastures. In a way, that is not a bad metaphor, because the only reason Wittenoom is marked on the map at all is because a long time ago a powerful corporation decided there was money to be made there. Like so many other settlements built across the country—the logging camps of Gippsland, the tin mines of Tasmania, the construction towns for the workers on the mighty Snowy Mountains hydro-electric scheme—it was very badly it was never meant to last. Wittenoom existed to exploit the mineral riches of the land, and was abandoned when there was no longer a buck to be made.

The hinterland, now that is something else: a place of remote and forbidding beauty, the ancient tableland of the Hamersley plateau, fringed with deep red gorges like some geological open-heart operation. Its isolation, a burn-numbing 1450 kilometres north of Perth in the early peckhammer days, meant that until the Second World War there were not even any detailed maps of the area, no names for those eroded peaks and rushing creeks. It is closer in kilometres to Jakarta than the national capital in Canberra, and closer too in its ferocious climate.

Up there, north of the Tropic of Capricorn, the temperature reaches 40 degrees Celsius on a cool winter's day. In the blazing heat of summer, cats collapse in the shade, waiting for the sky to fill with the great purple swirl clouds of a tropical storm. Cyclones rear in from the Indian Ocean, ripping away roofs, and sending five-metre walls

A TOWN LIKE HANCOCK 5

of water crashing through the canyons. Few of the thousands of people who eventually came to live here would agree with former Western Australian Premier Sir Charles Court, who once predicted: '...this area has a wonderful tourist potential. If Ayers Rock can earn \$5 million a year for Alice Springs, the great attractions of Wittenoom ... can be worth much more.'

But that was all in the future. For a century and a half after the white conquest of Australia, the cruel climate of the place that would be called Wittenoom conspired with its isolation to preserve the region as Australia's last great frontier. You would have to go to Siberia or the Amazon to find anything remotely approaching the north-west. When at last the men and machines moved in to exploit the region's staggering mineral wealth, it became the Wild West 100 years on, thickly stocked with horny-handed, fast-shooting, hard-drinking pioneers who survived on dumper and kangaroo stew. And you should have seen the men! Even after the Second World War there were fewer than 10,000 white people (the blacks were not even counted in the Census) living in an area of more than a million square kilometres, larger than all of Europe.

Among the first white settlers was a family named Hancock. One of Wittenoom's inland gorges is actually called Hancock Gorge, but some say this is not enough; it should be carved in giant letters on the cliff face above the town as a memorial to all those who lived and worked and died because of Wittenoom. Without Langley George Hancock, scion of that pioneering family, there probably would not have been a Wittenoom.

Hancock, now a cantankerous dinosaur of a man in his eighties, grew up on Murrumbidgee Downs sheep station, an enormous property—1,600,000 hectares—even by Australian standards. It was a few kilometres away from the spinifex paddock that would become the township of Wittenoom. Hancock left school early; he says he has no regrets. 'For a few packets of jollies, you can buy a professor to work for you, so I'm very glad I didn't waste my time at university.' He returned to the Pilbara, and to his real love, prospecting for minerals. In the half-century since then, Hancock has achieved fame (two biographies) and fortune (in the 1970s he was receiving a royalty cheque for \$250,000 every month) as the man who discovered the greatest iron ore deposits on earth, up there in the Pilbara. Mountain of ore, which he boasts could on their own support the world's steel industry for a century.

BLUE MURDER

Like much of what Lang Hancock says, this should be taken with a grain of salt. It is hard to know where the jumbo capitalism ends and the sick comedy begins. This is the man who advocated using nuclear weapons to mine the Pilbara, and who once said on television that the Aboriginal land rights 'problem' could be solved by making dollar cheques for 'half-castes' payable only at the town of Port Hedland; the theory being that once the Aborigines had gathered there for their handouts, they would be sterilised by having chemicals put in their drinking water. He detests 'eco-nut' and regards unions as a communist conspiracy; he once suggested feeding one particularly militant union leader feet-first through a chaff-cutter. Not, to complete a thumbnail sketch of this curious and contradictory man, that he is entirely unsympathetic to centrally-planned economies, when it suits him. One of his most recent deals was a billion-dollar barter to help prop up the crumbling economy of Rumania, and the loathsome Stalinist dictator Nicolai Ceausescu.

But that's by the by. What there can be no doubt about is the man's single-minded dedication throughout his long and prosperous life to finding, mining, and selling asbestos ... at almost any cost. So observed is Hancock, the 'Man of Iron' as one of his biographers called him, that when he recently married a Filipino model half his age, the wedding cake was fed with a touching scene of a crane emptying iron ore into a truck. This was the man whose boyhood fossilising expeditions half a century ago were to light the fuse of Wittenoom. The way Hancock tells the story, it was back in 1938 when he was out hunting dingoes on Melega Downs station that he first noticed a curious rock formation streaking through the deposits of banded ironstone that make up the skeleton of the Pilbara. The deposit was a layer a few centimetres thick of an odd fibrous material that crumbled into hair-like fragments when you rubbed it. It was blue, the colour of an evening in the tropics, and it was everywhere, veining the canyon cliff sides around Wittenoom like blueberry jam in a slice of sponge cake. If you know where to look, you can still see it glittering in the sunshine deep in the canyon. Look, but don't touch. What Lang Hancock had stumbled on was one of the rarest and strangest of minerals: asbestos. And not just any asbestos, it was a form of iron silicate found in only one other place on earth — crocidolite, to the scientists; blue asbestos to you and me, to distinguish it from its cousin, the vastly more abundant white (crocidolite) and brown (amosite) varieties.

A TOWN LIKE HANCOCK

Well, that's the authorised version, and who would take the credit away from Lang Hancock for the disaster that Wittenoom was to become, for the sake of a few facts? Fact number one: the existence of asbestos in the Hamersley Range had been known for many years, and the Mines Department down in Perth had been officially notified of this in 1917, when Lang was a boy of eight. Fact number two: asbestos had been reported in 1924 at Yampile Gorge, where Hancock made his 'discovery' a decade or so later. Fact number three: the first asbestos mining lease in this area was pegged around 1930 by an explorer who was led to the spot by a native named 'Wesno', according to the records. Records, schmecords ... If he wasn't the discoverer of blue asbestos, Hancock was certainly the man who put it on the map.

Young Lang Hancock (again, we have only his word for this) sent a sample of the blue asbestos he had found to the mineralogists at the Western Australian Mines Department, down in Perth. He was bitterly disappointed a few weeks later when the experts told him it was interesting, but commercially not worth a crumple. They said the world price was then only £18 a ton, and it would cost £30 a ton just to freight the stuff down from Wittenoom. Hancock lost interest, and cast his chunk of asbestos aside to use as doortop. If only it had stayed there.

Some time later, to resume the Gospel According to Lang: a fellow from an asbestos company in England passed through the station — I don't remember why now — and he expressed great interest in the doortop. I told him the sad story, but he shook his head and said: 'It's worth £70 a ton.' I suggested to him that he was talking rubbish, and then he said that he'd pay me £70 a ton. Of course, I pegged out the best of it, and went into asbestos mining. 'The original' lease, in fact, was in the name of his sister, who died recently in her eighties after living the last years of her life as an eccentric recluse in the dying township.

By the following year, undeterred by the fact that he had never done any mining in his life, Lang Hancock was in business, and Wittenoom (factually, it was a nearby asbestos seam at a place called Yampile Gorge) was on its way. Word soon spread, and an asbestos rush was soon under way as prospectors pegged out little leases around the gorge, backed the stuff out by hand, and managed by 1940 to produce 364 tons of blue asbestos that was carried to the coast by horse and cart, utility truck — even by flying fox. The primitive

A BLUE MURDER

methods used by Hancock and the other miners, and the enthusiastic ignorance with which the whole project was tackled, were to have echoes down the years.

At first, the asbestos was simply gouged out of the hillsides by hand, taken to a 'sort of Heath Robinson affair' of a crushing plant that Hancock had built in a shed on his property, put in sacks and taken by horse and dray to the nearest docks, 240 miles away at Port Blansdon. It was hobby mauling at its crudest, and with the one-third price around £5 for each 100-pound bag, no one was going to get very rich out of it. In fact, it was to be another five or six years before two sets of circumstances on opposite sides of the globe – the war in Europe, and the expansion of a large corporation across the continent in Sydney – came together to make mining the blue asbestos an economic proposition, and to put the little town of Wyllemton on the map.

But first you have to understand a little more about this asbestos, this 'magic mineral' of the 20th century now cursed as the cause of a man-made plague of industrial diseases that will eventually claim more lives than Korea, Vietnam and all the small wars of post-independence Africa put together.

2 The 'magic mineral'

'It's like having your lungs slowly filled with wet concrete.'

— Asbestos victim

It really lived up to its advertising hype: it was the 'magic mineral'. It was resistant to fire, to acid, to corrosive seawater. You could spin its hair-fine fibres into fireproof fabrics, you could mix it with cement to make building materials lighter and stronger than anything ever seen, you could insulate warships with it, you could finely filter anything from beer to poison gas – you could do everything with asbestos, and a global industry with a turnover of billions made sure of that. By the time most Western countries began outlawing it in the 1960s, it was used in more than 3000 different products in just about every country on earth. And by the time the clean-up began, it was too late: uncountable quadrillions of invisible asbestos fibres had polluted the planet. Asbestos is now part of the global ecosystem, from Siberian steppes to the desert air of the Sahel.

In fact, asbestos was not really a 20th century product. It had been known since pre-history. Archaeologists in Finland have dug up bowls dating back more than 6000 years in which the clay was reinforced with asbestos. The 8th century Carolingian Emperor Charlemagne is said to have had a tablecloth woven from the stuff, and used to delight his guests by throwing it on to the fire after a meal to clean up the food scraps. The wicks of the oil lamps carried by the vestal virgins were made of asbestos. It was used by the ancient Greeks, who mined it on the island of Cyprus, marvelled at its fireproof qualities, and gave it its name: asbestos, meaning 'unquenchable'.

Although it was used during the mid-19th century in a few odd products like Italian banknotes – which may tell you something about confidence in the lira 150 years ago, if they had to try to stop people burning them – the modern asbestos industry did not really crank up until the last two decades of the century when huge deposits were found in South Africa and in Canada. An asbestos industry sprang up, spearheaded by the great multinationals that were to dominate the global trade for nearly a century: in the UK,

Cape Asbestos, and Turner and Newall were the two major companies; and in the USA the Johns Manville Corporation, which became the biggest asbestos miner and manufacturer in the world. Hundreds of other companies also were eventually involved in mining, milling, weaving and fabrication, but the Big Three dominated the industry that was to put tens of millions of tons (an estimated 20 million tons in the US alone) of asbestos into ships and planes, office blocks and suburban homes, cars and kitchens, railway carriages and waterpipes on every continent, even Antarctica.

It was used in predictable as well as in unsuspected ways. Because of its heat-resistant properties, nearly every car in the world used to have asbestos in its brake linings. But who would expect it to turn up in play-dough, once modelled by kindergarten children? It was used to insulate power stations and warships (some of it had to be ripped out of the Royal yacht *Britannia* in the 1980s), but it also turned up in condoms, mixed with the talcum powder with which they were once dusted. We are familiar with the work gangs, mixed up like astronauts in their protective gear, removing asbestos from city buildings; but what happened to all those ironing boards, oven gloves, fire curtains in theatres, ropes and conveyor belts, flares in fruit juice factories, gas masks, planes padded with asbestos, even that patent for its use as a cigarette filter?

Why did the 'magic mineral' become so popular? One of the arguments mounted even today by the asbestos industry is that there was nothing else available that could have done the job. In fact, Lang Hancock, the founder/father of Wittenoom, claims constantly that asbestos saved more lives than it will cost, and was specified in government contracts. In the US this is known as the 'Dorville made me do it' argument, and it has been demolished effectively by the distinguished American environmental scientist Dr Barry Castleman, whose book *Asbestos: the definitive medical/legal text on the subject*. Other products like magnesia had been used in insulation from the late 1800s. By the time asbestos began flooding on to the market, newer materials, ranging from fibreglass to vermiculite and mineral wool - products that have not been shown to be hazardous - were available and could have done the job at least as well as asbestos - that is in every respect but one: they would not have made huge profits for the asbestos industry. From 1888, more than 70 patents were taken out in the US for products that could have been used instead of asbestos. Few of them succeeded, and that is hardly sur-

prising considering that they were either registered by - or quickly bought up by - Johns Manville and other corporations that had so much to lose if a rival product came on the market. In any case, does anyone seriously argue that a modern car with asbestos-free brakes takes longer to stop than a 'T-model Ford'?

So asbestos became part of our daily lives, and Australia quickly embraced the 'magic mineral'. Until the Second World War it was mostly imported from South Africa and Canada, although there were small mines at Zeehan, on Tasmania's west coast, and near Gundagai in New South Wales. The James Hardie Corporation, which has now dropped the dreaded word asbestos from the sign on its Sydney building, became the leader among a dozen local manufacturers, making insulation, building panels, pipes and a range of other products. You only have to drive around those western industrial suburbs of Sydney and Melbourne to see how popular it was; whole suburbs of 'fibro' bungalows, each built with the traditional 'fibro' dummy on the back. One house in 10 built in Australia from the 1950s through to the 1970s had asbestos cement wall panels, and as many as 70 per cent of all office buildings contain some of it. The bill put to strip asbestos out of Commonwealth Government buildings has been put at \$9 billion.

This was the bandwagon that Lang Hancock and his partners were eager, too eager, to jump on. The Australian market for asbestos, even before the Second World War, was worth \$1 million a year; and then there was the export potential. Hancock had already had promising talks with the British, who were desperate for asbestos to use as filters in gas masks. And his partners had started negotiations with Johns Manville in the United States. The price was about to jump to £50 a ton. Wittenoom could become a great little garner ... except there was one little problem.

We had come a long way from the ancient Greeks, but just as there was nothing new about the extraordinary properties of asbestos, there was no modern mystery about its hazard to health. The dangers had been known as long as the mineral itself. Dr Barry Castleman has discovered that as far back as the first century AD slaves involved in weaving asbestos had been protected from breathing in the dust by using the transparent skins from animal bladders as respirators.

The Romans may well have found that slaves weaving asbestos were becoming disabled to the point that they first could not exert

12 BLUE MURDER

themselves in their work, and then died as their breathing difficulties became severe. (They) instituted the use of respirators in order to extend the lives of these slaves, much as one might oil a machine to keep it from wearing out too quickly." Dr Casselman wrote.

But by the latter years of the last century, when asbestos mining began to boom and asbestos sweatshops were springing up from Nottingham to New Jersey, this ancient warning had been forgotten -- or, more outrageous still, ignored.

Nearly half a century before asbestos mining began at Wittenoom, the health authorities in England's industrial north became concerned about the ill-health of workers in factories spinning and carding asbestos, making it into pipe insulation, even stuffing it into mattresses. Most of these 'mill slaves' were women, many of them girls, and some as young as 12. Even by the rough, tough, neo-Dickensian standards of the day, conditions in the asbestos factories of Manchester and Birmingham were becoming a public scandal, as the workers began to sicken and die as young as their early thirties. In 1898, the Lady Inspectors of Factories (who must have been the industrial Florence Nightingales of their day, and worth a book on their own) commented on the 'vill effects' of the dust to which the workers were exposed. A few years later one of them reported: 'Of all the injurious, dusty processes of which I have... received complaints, none, I believe, surpasses in injuriousness to the workers... asbestos manufacture.'

By 1906 the public outcry had forced the British Government to establish a Parliamentary Commission to investigate, and the full horror of conditions in the industry began to be exposed. The prominent public health doctor H. Montague Murray gave evidence of an autopsy on a man who had worked in that dust-thick carding room of an asbestos textile plant, and who had died at the age of 28. It was the first scientifically proven death from asbestos in medical literature, a landmark that has been quoted down the years in thousands of cases in which the asbestos industry has tried to show that no one knew the dangers of asbestos. Even more alarmingly, that man claimed he was the last survivor of 10 people who had all been working in the carding room when he started at the factory just 14 years before. There could never again be any doubt that asbestos dust was a killer more deadly than any industrial disease that had ever been known. By 1927 it had a name: asbestosis.

It is not a pleasant disease. One victim has described his worsen-

THE 'MAGIC MINERAL' 13

ing asbestosis as like having your lungs slowly filled with wet concrete. What happens is that as the asbestos dust is inhaled, millions of the minute fibres lodge between the cells of the lungs, building up scar tissue like a spider's web, until the lung is strangled. It is exposure-related, although even after nearly a century of scientific study no one knows how much dust you have to breathe to contract it. There is no 'safe' level of exposure to asbestos. The disease is progressive. There is no treatment. The victims never get better. They always die, often of a 'complication' like bronchitis, pneumonia or the heart failing as it battles to pump blood through the clogged-up network of blood vessels in the lungs.

What does it feel like? First you notice a shortening of breath; you can't play sport any more, you struggle with the stairs. You develop a dry, rasping cough, and when you go to the doctor he hears crackling in your lungs through his stethoscope, the sinister signature tune of asbestosis. As the years go by, the disease gets worse. You have to give up work, even sex. You don't have the oxygen; you don't have the energy. As you approach death, your lips may turn blue, and you may develop a strange thickening, 'clubbing' the doctors call it, at the tips of your fingers. By now your lungs are nearly dead, and so are you. Your last lingering days or weeks or months are spent in bed with an oxygen mask strapped to your face. The only thing to look forward to is a hospital compassionate and skilled enough in pain-killing drugs to dull your final agony.

This medical horror story was widely known by the 1930s, when young Lang Hancock was fossilising around on Murgoo Downs station in search of minerals. In fact, 1930 was the year the most comprehensive and conclusive study of the disease was published in England. A Home Office doctor named Merewether and a ventilation engineer named Price examined workers and workplaces in the asbestos industry: 363 men and women were examined, and gave detailed histories of their occupational exposure to the dust; 35 per cent were found to have asbestosis, more than one in three. The two investigators found that the disease could develop after as little as six months' exposure, and after 20 years in the industry, four out of five workers could expect to develop the chronic symptoms of cyanosis (blue lips), dyspnea (shortage of breath), lungs that crackled like cornflakes, and a racking cough.

Even more alarmingly, this study found that it made no difference whether the workers in the meantime had escaped from the dust. At

14 BLUE MURDER

one factory a tarter kept to catch rats contracted asbestosis and, pathetically panting for breath, was destroyed to put it out of its misery.

The UK Minsters' response to this devastating report was the traditional 'Yes, Sir Humphrey'. 'Guidelines' were introduced recommending damping things down in the factories, enclosing machinery, and improving ventilation to try and cut down on the dust levels. The dying continued. By 1946 - three years after full scale mining began at Wittenoom - there were 235 known asbestos deaths in Britain alone, and the alarm bells were beginning to ring across industrial Europe. France: 16 workers dead of pulmonary fibrosis at one factory alone; Italy: 30 dead in the mining and milling industry. But it was in the USA, the boiler room of the world asbestos industry, that the first great wave of litigation was beginning. landmark cases with asbestos in the dock: cases that should have served as a warning to the world.

In 1927, the same year asbestosis got its name, the first case for compensation was fought - and won - before the Massachusetts Industrial Accident Board. A man who had been the foreman of the weaving department in an asbestos factory got compensation for the lung disease he had contracted. Over the next three years, hundreds more claims were filed with the courts and compensation committees across the country, and the asbestos industry faced the first major crisis. Companies were threatened with a damages payout of the then astronomical sum of \$US1.00 million. And the giant Johns Manville Corporation was at the head of the queue: as far back as 1929 the company had been served with writs claiming \$US50,000 for each of 11 employees suffering from asbestos-related disease. They claimed that Manville had been negligent in not providing a safe workplace, breathing masks for its workers, or a proper ventilation system.

Manville's response became a blueprint the asbestos industry around the world was to follow as retribution pursued it down the decades: not clean up or close its mines and factories, but hire lawyers, buy insurance, and medical experts to support their cause, lobby for legislation to protect them, use every legal device to frustrate and delay the inevitable day of legal reckoning. In those first cases in 1929, they pulled one more trick out of the bag: Manville eventually agreed to pay the 11 plaintiffs, although the final figure was \$US30,000 each, not the \$50,000 they had claimed. But, and

THE MAGIC MINERAL: 15

here's the extraordinary bit, they extracted a promise from the plaintiffs' lawyer that he would never again take a case against Manville. The litigation subsided to a ripple that broke harmlessly against the rocks of the asbestos industry. No one foresaw the tidal wave over the horizon.

It was not to emerge publicly for nearly half a century that while one branch of corporate America was denying liability for the workers dying in its mines and factories, the dangers were clearly recognised by another, the insurance industry. In 1918, a man named Hoffman, a statistician with the mighty Prudential Insurance Company, had done an analysis of the workers employed by one of the asbestos companies for which Prudential carried liability insurance. What he discovered would cause much chewing of pencils throughout the industry: nine of the 13 workers his company insured had died before reaching the age of 45. It made no actuarial sense, but Hoffman became convinced that asbestos mining and manufacturing unquestionably involve a considerable hazard. Within a few years, the rate of the insurance industry had heeded the warning. Two major insurance companies responded by increasing their premiums on asbestos workers by 50 per cent, and a number of other companies were refusing to insure asbestos workers at all.

Medical understanding of the terrible toll of asbestos was advancing by leaps and bounds. By the time the Second World War started, several hundred papers had been published warning of the dangers. They were as diverse as the International Labor Office ('All processes, from extraction onward, unquestionably involve a considerable hazard') to the *Asbestos Worker*, the industry's own monthly trade journal, which reprinted a report on a 'new form of chronic pulmonary fibrosis' among asbestos workers. By 1938 there was even a textbook (*Silicosis and Asbestosis* by A. J. Luzzo), which stayed in print for 20 years and became the standard reference at university medical schools in Australia and around the world on pneumoconiosis: the umbrella term for dust-caused lung diseases, which, of course, include asbestosis.

So several hundred people were already dead or dying. Companies were refusing to insure asbestos workers. Governments were laying down (admittedly inadequate) standards for dust levels in mines and factories. Asbestosis had been accepted as an industrial disease that qualified for compensation. Hundreds of medical papers and a textbook were in the libraries. Asbestos companies had nar-

16 BLUE MURDER

never avoided litigation that would have sunk the entire industry for its negligence. This was the state of knowledge of the dangers of the 'magic mineral' when the Second World War came, when suddenly asbestos was in hot demand for the war machine, for the tanks and planes, the battleships, helmets and gasmasks needed to defeat Hitler and Tojo.

And this was the level of knowledge when, one day in the early 1940s, a man named Hancock knocked on the door of the Colonial Sugar Refining Company's head office in Sydney and asked if it was interested in an investment. It was a mine he had at a place called Wittenoom.

In the Hamersley Ranges?

Yes, Western Australia, that's right.

What does it produce?

Asbestos. Not just any old asbestos, this is the blue stuff. Longer, stronger, finer than anything you have seen outside South Africa.

The answer was yes, and by 1943 Lang Hancock had a rich corporate partner. The little mine in the desert was about to become a major industry, and the padlock called Wittenoom a boom town.

3 The new Kankaks

From the human angle, conditions had retrogressed 100 years.

— Mines Department Inspector

My first memory was the heat, the heat and the dust. As soon as you stepped off the plane it hit you. It must have been 120 degrees ... you had to drink water all the time, eat salt tablets. The men slept naked in the tents, that's how hot it was.

It could be some Saharan explorer talking, but this is a familiar voice, a familiar face. Those flat Australian vowels, that cheerful glee. Where have I seen that scrubby black beard before, watched those supple hands waving about? Of course, it's Rolf Harris, delight of every Aussie kid's TV childhood, the man who could paint a passable Namajivra landscape with half a dozen sweeps of his decorator's brush, play the didgeridoo standing on his head.

Rolf's over in England for the Christmas parties and working on a book at his beautiful balcony house balanced over the Thames not far from Windsor Castle. Willow trees weep. Ducks glide by in the watery winter afternoon. It's a long way from the molten heat of Wittenoom, and a long, long time ago.

It was 1948, to be precise. That's when young Rolf was looking for something to do during the end of year break from the University of Western Australia, where he was officially studying to be a teacher, but actually majoring in table tennis. His mother had read a magazine article about the faraway mining settlement that was being built in the Hamersley Ranges, and was raving about the scenic beauty of the landscape she had never seen. Rolf, whose real ambition was to become a serious impressionist, decided to spend a couple of months there, earn a few pounds and do a spot of painting.

The company that owned the mine and ran the town was called Australian Blue Asbestos (ABA), the joint venture set up five years earlier by Lang Hancock and the Colonial Sugar Refining Company to mine the asbestos he had 'discovered' in the ranges. Hancock, dissatisfied with the conduct of the operation, he said, had resigned that year from his job as assistant manager of the mine. He sold his

18 BLUE MURDER

share to CSR, and the mine was to remain the property of CSR's wholly-owned subsidiary (which later changed its name to Midalco) until the day it closed.

ABA's office in 1948 was in the then graceful boulevard of St George's Terrace, the canyon of commerce that divides Perth, and it was there that young Rolf Harris, and thousands of other workers like him down the years, went to inquire about a job. To say that they were desperate for men, even at this early stage in the mine's history, would be an understatement. Word had already spread among the tight-knit professional mining communities like Kalgoorlie about the appalling conditions at the mine. According to Frank Solar, the unofficial mayor of what's left of the township, ABA even had talent scouts at the Perth courts where men arrested for vagrancy (insufficient means of lawful support) the charge used to read) would be offered the choice: jail, or go and work at Wittenoom.

Rolf Harris was welcomed with open arms, although he'd never clapped eyes on a mine in his life. Two arms, two legs, two eyes — those were about the only qualifications required. Within a day or two, he was flying north on the old MacRobertson Miller plane that used to do the daily milk run.

The miners, around 100 of them from Rolf's memory, were living in tents then; the little town was still under construction. The water was pumped from a nearby creek. The food was foul, thick sandwiches of greasy salt beef for their lunchtime 'toby'. It was a rough, tough frontier town; no place for a nice young man like Rolf Harris.

'It was the law of the jungle. They were a real bunch of desperados, fighting all the time. I remember one fight, it involved an Italian guy called Luigi who had apparently been in a mental institution and the men were always picking on him, calling him names. One day he attacked his mate termener, a man named Sam ... bashed him with a shovel. When Sam shaped up to retaliate, Luigi threw himself on his back on the ground and started calling out 'Tavallid ... invalid'. He wouldn't get up, so Sam lay down on the ground next to him and started laying into him, punching him, until the fight was broken up. They had no mercy. That's the sort of place it was. It was rough.'

When the time came for Rolf to start work, even fitting him out with his boots and workless lamp and helmet was a problem; he had a large head (seven and three quarters in the old currency) and the biggest helmet they could find just perched on top like a pineapple on a pumpkin. His first, and last, attempt at underground mining lasted only a few days:

THE NEW KANARA 19

The first time I walked into the mine, I crashed into the roof and knocked myself out. You were working in these tunnels so low you couldn't straighten up. There was dust everywhere ... around the shed where they crushed the asbestos, it was like a grey-blue haze. It was murder. Eventually the man I was shovelling the rock with said he wouldn't work with me any more because I wasn't pulling my weight. Thank God for that ... I was transferred to laying water pipes.'

Rolf spent a couple of months at Wittenoom, working the night shift so that he could have the day free for painting. That was quite a difficult exercise; it was so hot that the paint dried solid the moment it hit the canvas. He was happy to get back to Perth when his 'holiday' was over, and thought nothing of his time at Wittenoom until many years later when he noticed in the newspapers that the men of Wittenoom were coming down with asbestos disease. He went for a check-up, and was relieved when the doctors told him he had no ill-effects from his time at the mine. But, by a bitter irony, his father, who had been a turbine driver at the East Perth power station, died a few years ago from asbestosis caused by the dust shaken loose from insulation.

What Rolf Harris didn't know was that the reason conditions at Wittenoom were so primitive was that the men who designed and ran the mine didn't know much more about it than he did. Like Lang Hancock's original Heath Robinson plant, it was cobbled together: the rathole stopper a metre high where men worked all day bent double; the crushing plant that was always breaking down; the tin shed where these most tragic of all Wittenoom's eventual victims, the 'grey ghosts', worked in a fog of dust packing the asbestos into jute sacks. Safe working conditions cannot just be patched on to an existing dump like this (a mining expert was to later testify). They have to be designed from the start. At Wittenoom, through ignorance or avarice or both, that never happened.

It had been five years earlier, in 1943, that CSR and Lang Hancock shook hands over an agreement to build the mine. Hancock always had been a prospector at heart, not a miner. CSR likewise had very little experience, although it had made one unsuccessful attempt to mine asbestos at Zeehan in Tasmania. The company was actually, as its name says, a plantation owner and sugar refiner. In fact, the sugar refiner, with a long-standing monopoly in Australia. For generations the sugarbag in every jar in the country carried the distinctive purple logo of CSR. Its oligarchy in the industry was

so complete that there was serious talk of nationalising the company, and a Royal Commission was held.

It was an old corporation, one of the oldest in the country, founded in 1855 by Sir Edward Knox, a stern, frock-coated businessman with moustachios and whiskers who was born in Denmark but descended from Scottish Presbyterianism. He inherited their ethic of thrift, hard work and rectitude, and founded a dynasty that was to control the company until the 1950s. Although CSR was nominally a public company with a wide range of investors, it was dominated by the Knox family, father, son, and grandson, for nearly a century and a Knox was chairman at the time of Whittemore. By the turn of the century they had built it into the greatest industrial company in the country — only one or two of the banks had more assets — with sugar plantations and crushing plants up and down the eastern seaboard of Australia, in New Zealand and Fiji. It is still the eleventh largest corporation in the country, with assets of more than \$4 billion.

So what sort of a company was it that was embarking on mining this highly toxic mineral out in the West Australian desert? What was the corporate ethos? It had a conservative, paternalistic tradition and made much of its integrity. CSR supported free trade — except when imported asbestos undercut its price and it went to the government for a tariff handout — and it did not believe in compulsory unionism. In fact, until the early 1890s, CSR had used Kanak labour on its sugar plantations in Queensland — South Sea Islanders kidnapped by 'blackbirders' who behaved 'with a callousness and brutality equalling anything that happened during the course of the African slave trade', according to one writer. Smoking was banned in the offices, and drinking would not even have been considered. No women were employed by CSR, not even as a secretary, until 1938. The company's official history sums up its corporate philosophy like this: 'A fundamental object of the company is to make good profits for its many shareholders. Profit must be the arbiter; it is the practical measure of social utility.' A critic, quoted aptly in the book, put it more pithily: CSR was 'rough as goats' knees, but honest'.

So why would a company like this, a company that knew a lot about sugar, but not much about anything else, be talking to Lang Hancock about a mine in the wilds of the Hamersley Ranges? The answer appears to be that CSR was in a massive expansion and diversification phase and was keen to start a building materials division. In 1935 it had built a pilot plant in Queensland to manufac-

ture wallboards using bagasse, the crushed cane husks from its mills. It also had some experience with asbestos. In 1941 CSR had bought an asbestos factory at Alexandria in Sydney, and two years later it opened a small white asbestos mine in Tasmania. So when Lang Hancock walked in the door with his leases in his hand, CSR saw a golden opportunity. 'The embarkation of the company into mining typifies the pioneering spirit on which the company was founded,' guesses the official account. They are words that must be returning to haunt today's directors.

Unfortunately for CSR shareholders, someone hadn't done his sums. In an internal report recommending the mine's closure in 1966, one of CSR's own executives admitted: '... no thorough investigation of the deposit at Whittemore was made'. For most of the years CSR mined asbestos, the operation lost money. It struggled into profit only for the five years from 1956, and then only by thrashing its workforce to work two and even three shifts a day. The pace, at times, was so frantic that workers jammed rocks into the machinery to bring the plant to a grinding halt. Still, it never managed to tear more than 10,000 to 15,000 tons of asbestos a year out of the flanks of those great red cliffs. When it closed, the mine had accumulated a loss of around \$2.5 million. The miners, of course, were to lose their lives.

In 1938, CSR had sent one of its senior executives, a man named Malcolm George King, around the world to study asbestos mining, beginning a relationship with the Johns Manville corporation that was to last for 20 years. He looked at mines in Canada and in South Africa, and he inspected factories in New Jersey and Europe. When he reported to CSR, the company decided to try to copy Manville's success and start an asbestos-based building products division.

There were other overseas trips by CSR executives, in 1947 and 1952, and John Merrill, the world's largest asbestos company, became Whittemore's biggest customer. Later, much later, CSR was to ask the courts to believe that no one had brought to its attention the then overwhelming documentation of the dangers of the mineral it was to mine. Certainly, CSR never learned how to operate a mine safely, or even profitably.

The original plan was to drive a shaft horizontally into the cliff-side, chasing the elusive two-inch-thick vein of blue asbestos, then drill and blast stopes off the sides of the main tunnel. What CSR hadn't taken into account was the toughness of the silica rock in

which the asbestos was locked. The wrong equipment was bought, drill broke, the original mining engineers, who had only experience of soft coal mining in England, couldn't cope. Eventually, they had to settle for cramped slopes, some only 39 inches high, in which even a dwarf would have to stoop. A visiting doctor noticed with interest some years later that, as well as all their other problems, many of the men had developed a rare and nasty muscular condition known as Raynaud's Phenomenon from working all day bent almost double. It was the worst mine I have ever been down, wrote a miner with years of experience at Raigorth. And an early report from a Mines Department Inspector came to this devastating conclusion: 'From the human angle, (working) conditions had retrogressed 100 years, and it was (reasonable) to assume that this alone would cause the complete (failure) of the experiment.'

The asbestos-bearing rock was trundled out of the mine on a little wagon train, picked over by hand and smashed with hammers on a rack called a grizzly. The rubble was then tipped into a series of tin sheds that staggered up the hillside, to be progressively crushed, to have the asbestos fibres extracted, and finally to be emptied down a chute to the bagging mill where the 'grey rocks' tumbled into 100-pound sacks with sticks like baseball bats. Everything was second-hand: machinery was trucked in from all over the place and somehow patched together. The mill had been used at a gold mine, the powerhouse came from Whim Creek, the crusher all the way from Melbourne. It was a miracle the contraption worked at all.

By 1969 the ore from that original shaft was exhausted and a new mine was dug into the hillside a kilometre or so away. But in the construction of the new plant, CSR showed that it had learned nothing from the terrible conditions it was inflicting on its workers. The new mill — and that turned out to be the most dangerous place to work — was just as ramshackle, just as filthy as the old one just abandoned.

Down the mine the dust from drilling and blasting the asbestos was bad enough, but in the mill it was blinding. One hundred-watt light bulbs hanging from the ceiling of the tin shed looked like candles, one worker recalls. When you walked in, you had to get within a couple of feet of a man to recognise him, because their faces were coated with dust like pancake make-up. In later years the management did provide little masks for the workers, but the men couldn't wear them because within minutes the filters would choke

up with dust and breathing would become impossible. They didn't know, of course, that the dust they were breathing could kill them. So ignorant were they of the dangers that one worker recalls his mates using strands of asbestos as dental floss after they had eaten their lunch on a table so coated with dust you could write your name in it. CSR never told its workers what it knew of the dangers of eating and breathing those lethal fibres ... a pattern that was to continue down the years as knowledge of even more terrible diseases than asbestosis came to light.

I am very angry about that, very bitter. CSR knew about it all along. If they had done the right thing then and told us about the danger, we would have had the option as to whether or not we wanted to take the risk. But they never said a thing. I'd like to shoot the lot of them.'

It's a refrain you hear over and over from the survivors of Wittenoom. If only they'd known. This man is Eric Mercer, a chirpy little chap of 48 who had a rough enough upbringing without having to live the last years of his life with the threat of asbestos death daily in his mind. He was born during the war and abandoned to an orphanage from which he was plucked at the age of 12 by his father who was out of the RAAF and had found a regular place to work — Wittenoom.

At 15 he left the little Wittenoom school and took a job with the only employer in town, the mine. He was put to work in the mill, where for two years his job was to attend the destinations of the asbestos on the sides of the sacks. 'It was unreal. You couldn't see a foot in front of you at times. The dust was piled up that high (he holds his hand two feet above the floor) around the machines. We used to throw handfuls of the stuff at each other for fun, we'd use the air hose to blast the dust into each other's faces. It was so dusty the conveyor belts used to seize up all the time, and the electric motors would burn out. It was unreal.'

Not long after Eric and his father — who also worked at the mine — moved on to the greener pastures of Geraldton, they began to realise just what it was they had been exposed to. Eric Mercer Senior, still in his thirties, noticed the first warning signs of asbestosis: the breathlessness, the coughing. His condition got worse, oh so slowly, until in 1975, after nearly two decades as a deep-cripple, he died aged just 67. And the tragedy had still not run its course.

A few years later, Eric's older brother, Ray — who had also worked at Wittenoom — began to sicken. For his last 10 years he was unable

to work, barely able to walk, in and out of hospital and plugged into an oxygen bottle. In 1967 he died. He was 54. The city of Perth had another Wittenoom widow.

And now Eric himself has the disease that has killed two of his family. He has been diagnosed 80 per cent lung dead. He knows the disease can get only worse. Already he has the dry, hacking cough, and finds it hard to get about. He works out daily with a Bullworker in his little flat in Perth to try to expand his shrinking lungs. But he's no fool. 'I try to have a positive attitude, but I know that one day it will probably get me. It will get us all. If only those bastards had listened.'

Listened to whom?

For a start, let's meet Eric Gailton Saint, Professor Saint, a wise and courtly man who was known as the father of academic medicine in Western Australia. He is also one of the few genuine heroes of the Wittenoom victims, the one man of all those corporate managers, union officials and government inspectors — those people who failed so miserably in their duty to protect the miners — who not only foresaw the disaster and tried to prevent it, but who lived long enough to become the most devastating witness against CSR when the company was finally put in the dock to answer for its actions.

Eric Saint, as he preferred to be called, died early in 1969 at the age of 70, and the last interview he gave was for this book. He was working as a geriatric consultant at the Sir Charles Gairdner Hospital in Perth. He was a tall, grey-haired man, familiar around the wards and to his patients who would stop him in the corridor and grasp his hand and thank him for the care he had given mum or dad or Auntie Doris. That sort of doctor. It's a relief when he closes the door of his little office and, in the middle of a major respiratory disease hospital shift with no obvious signs and enormous warning DON'T POISON MY LUNGS, lights up a cigarette. That sort of man.

Dr Saint first set eyes on Wittenoom in the summer of 1943. He had graduated from Durham University at Newcastle in England, where industrial chest disease was an all too common sight among the miners and shipbuilding workers of Tyne-side. He served as a medical officer with the Royal Air Force in Burma during the war and, after his discharge, returned to a rather mundane public health practice. One day, glancing through the medical journal *The Lancet*, young Dr Saint saw an advertisement for a government medical officer to cover north-west Australia. 'That'll do me for a couple of

years,' he thought. Forty years later he was to die in Australia after a distinguished career in which he was to become the foundation professor of the University of Western Australia's new medical school, Dean of Medicine at Queensland University, and for a decade a member of the 'Supreme Soviet' of Australian medicine, the National Health and Medical Research Council.

Within a fortnight of arriving in Australia, Dr Saint (he was then 29) was on his way to Wittenoom, which to him was just a name on the map in his enormous 'practice' that covered the swaths of Outback from Marble Bar to Roeburn, Onslow ... and Wittenoom, which by then had become the biggest inland town in the region. Even bumping along over that great empty landscape in a pre-war biplane (it had been flown by Flynn, the original Flying Doctor) it was easy to find the place. From 20 miles away you could spot the great plume of blue-grey dust that towered over the asbestos mill. Pilots used it as a navigation aid.

When he landed, Dr Saint walked into a place like nothing he had seen on earth. 'It was hideous, absolutely hideous. There were no amenities, people were still living in tents and shekks. There were fights and mayhem going on everywhere ... It had all the worst features of a US mining town in the 1880s. 'The medical facilities (Dr Saint wrote in the first of many critical reports to the Public Health Department in Perth) were barbaric: "... wounds go septic for no other reason than the fact that all they have is this ghastly room with filthy dressings, in which a badly-trained orderly (a filthy-nailed son-of-a-bitch with a St John's tickle) tries his best to give all his patients septicemia, tetanus and gangrene.' Plus, of course, there was the dust that lay like a shroud over the mine, the mill and the town itself, where tailings had been spread by the ton. He called the place 'this dump of dumps', and wrote to his boss in Perth: '... to send anyone there would be to drive a good man to suicide and/or drink'.

Dr Saint was horrified at the conditions in which the men were working. He performed medical examinations and found that many of them were already showing signs of developing chest disease. He went to see the manager, a man called Joe Broadhurst, whom Dr Saint later described in correspondence as 'a species of ex-army pocket dictator, a miniature Coochey, and I think as nasty, who may be good technically with asbestos, but has as much idea of personnel management as Donito Munnah'. Dr Saint told this man, CSR's manager, in unmistakable terms what the company was doing to the

to sick. Two years earlier — only three years after the mine had opened — a man named Ian Dignam had become the first name on a list that would eventually number more than 2000. His widow, Peggy, a well-preserved woman of 62 now living in the suburbs not far from Perth's port of Fremantle, recalls that her husband had been one of the pioneers of Willemoon. He went north originally to work as a prospector with Lang Hancock, and he helped build the first asbestos mill. 'Conditions there were pretty primitive in the early days,' she says. 'He and his mother lived in a tent, and they always used to joke about how the floods came through one day and swept all their possessions away. They found the kero fridge years later, buried in mud miles away up the river.'

Ian Dignam had taken a job at the mill, but after only a couple of years volunteered for an X-ray. Asbestos was suspected, and the A.B.A. head office in Perth received the first clear warning of the dangers to which it was exposing its men. In a letter posted in 1946, which turned up many years later, mine manager Joe Broadhurst wrote to his boss: 'When examined by the travelling laboratory some months ago, Dignam showed signs of asbestosis, and it is probably advisable to get him away from the dust, if at all practicable.'

Ian Dignam left the mine, and took up running the local garage in Willemoon. In 1963 Ian, Peggy and their two children left the town for good. But it was too late. X-rays showed that he had already lost 30 per cent of his lung function. Ian Dignam lingered on in declining health for another 30 years before he died in bed one morning in 1976. The doctor, even though Mr Dignam was receiving compensation for chronic asbestosis, refused to put the word on the death certificate. But that made no difference: the epidemic that Dr Salati had predicted had begun.

4 All the young men

They were just using us as cannon-fodder ...

— Willemoon survivor Sperto Delpero

There they are, in the cracked old sepia-coloured snapshot, posing in front of the basilica of St Peter's in Rome: nine young men with their shaggy boots and bristled hair, the pride of their little village, on the eve of a great adventure. They have come to Rome for a blessing from the Pope. They will need all the help they can get from Above. Tomorrow they will be on their way to start a new life in a new country far away. How could they know that they were going, instead, to meet death in the desert?

Sperto Delpero wrinkles his forehead as he examines the picture, trying to remember the names of his friends of nearly 40 years ago. 'That's Attilio ... he's dead now ... lung cancer got him ... Giuseppe ... he died of cancer too ... Zeffirino ... he hasn't got long to go ... asbestosis ...' Of the nine young men in the photo, four are now dead, and two are crippled by the terrible disease they contracted at the end of that long-ago voyage. Sperto himself, now living in retirement in the suburbs of Perth, has chronic asbestosis and has been subsisting on an invalid pension for the past 20 years. 'If we had known where we were going we would never have gone. They were just using us as cannon-fodder,' he says.

The place they had all been recruited to work in, recruited with the lure of money and lies about conditions, was of course Willemoon. A place much like Italy, CSR's agents had told them, where they would be working on a hydro-electricity project. 'If they had told people what it was really like, no one would have gone there, not even the *formigati* (fanciers),' says another Italian survivor.

By 1960, seven years after it opened, CSR's problems in recruiting people to work at the struggling little mine had become chronic. Even without knowing about the terrible dangers of asbestos, no one would go there. The company was prepared to pay double what a miner could earn in, say, the goldfields of Kalgoorlie, and they offered almost unlimited overtime. But word about the appalling working

conditions at Wittenoom had got around, particularly among the professional Australian mining community, that it was no place for a white man. What to do?

Aboriginal labour was the obvious answer across the continent at Baraguld in New South Wales. Aborigines had been conscripted to another asbestos mine that also was in wreck a terrible toll of lives. Even there Wittenoom was to play a part: two of the men are believed to have died from the blue dust they inhaled while shaking out the recycled CSR sacks that the mining company was using. But at Wittenoom, for some reason, CSR did not take that road. Aborigines were employed on some labouring jobs, but they were not even allowed into the cabins of the trucks that carried the asbestos to the coast; they had to ride on top, sitting on the dusty jute sacks. Even so, they were also to contribute to the eventual toll from that lethal dust: a few years ago, an Aboriginal named Ignatious (Dick) Danna died of asbestosis disease that he had contracted while working on a road gang.

Early in 1961, with the labour problem becoming chronic, CSR wrote to the Department of Immigration asking for help. The Australian Government was already in the middle of its great drive to recruit more than a million immigrants from postwar Europe, and was only too happy to oblige. These were the Mendos years when the catchery was 'populate or perish', and election posters showed Asians with pointed teeth and bayonets marching down the Malay Peninsula, smashing babies under their boot-heeled boots on their way to conquer the empty wastes of northern Australia. The government was keen to colonise the north and exploit its mineral heritage, and CSR at that stage had the only viable enterprise there. It could not be allowed to fail. The immigration department agreed to cooperate.

One weekend in March that year, Oscar Penzance pedalled his bicycle at full tilt into a construction camp in northern Italy. Oscar and many of the young men of the region had been building a dam on a lake called Santa Cristina, but the construction was almost complete and the men had been told to look around for other work. Oscar was shouting and waving a copy of the local newspaper, *romella Sperto* Delpezzo. There was an advertisement offering work, and work was impossible to find, even for the young men like these. They would be interviewing in Trento next week.

Sperto and most of the other men in that faded snapshot came from

one little town, a place called Vermiglio, two hours' drive into the Italian Alps along a switchback road from the city of Bergamo. It is a pretty place of steep-pitched roofs and carved wooden balconies, perched on the side of a mountain. Men must deer and wild boar among the black pine trees, search for fox, wild porcupine mushrooms in the autumn, and fish for trout when the ice melts and the swift streams begin to rush in the spring.

But you can't see the scenery, and Vermiglio's only industry, apart from a trickle of tourists, is still its little peasant farms, and a cottage trade in goat's milk cheese. Work has always been hard to find for the young men of Vermiglio — and a thousand other little villages like it the length of Italy — and emigration offered many their only hope. Over the years the population has dropped by nearly half. Vermiglianos have been packed off to start a new life in Switzerland, America, Brazil and Argentina, and especially Australia. Nearly every family has a relative Down Under — and nearly every family has been touched by the tragedy of Wittenoom.

The advertisement in the newspaper had been placed by Alfa's general manager, a man named Reagan, whom CSR had sent to Europe on a last-hope recruiting mission. It succeeded beyond his wildest dreams. From towns and tiny villages around the region, men jumped on their bicycles and rode like the wind to the town of Trento. When the recruiters opened the doors of the town hall in the morning, around 700 were already waiting there, begging to be employed. The selection process began, akin to culling sheep, to choose the very best, the very brightest, the very fittest men for the abattoir of Wittenoom.

There was a team of doctors there, and they examined everyone for the slightest defect. They looked in your mouth, and if you had one tooth missing, you were out. If you had a toenail off, if you wore glasses, they didn't want you. They only wanted the most perfect specimens, Sperto recalls. It took days and in the end, Sperto, Vito and Giuseppe Moscone, Attilio Elenti, Mario Zambelli and 23 of their friends got the job; 25 out of 700 were signed up and given a week to pack their bags. They were needed in Australia. Urgently.

But what exactly was the work? Maria Moscone gives a bitter laugh when you ask her. She is sitting on the balcony of her house in Vermiglio, a widow now for many years, and in her sixties... but she remembers well what the men were told at the town hall in Trento. On that first consignment of labour to Wittenoom went her husband

Giuseppe and her brother-in-law, Vito Moscone. They told the men that it would be the same sort of work they were doing here, building hydro-electric dams or something like that. They said the climate was good, like here. They said the conditions were good, and the pay was good. At last, they never mentioned, I tried to tell Giuseppe that this couldn't be true, but he wouldn't listen. When I got there I found out ... they lied about everything except the money.

Giuseppe and Vito—and the other men, nearly 1000 of them eventually, recruited from all over Italy—were signed up on a two-year contract, bondage from which they could not escape unless they paid CSR back the cost of their fares. Since most of them hardly had two lire to rub together, this wasn't really an option. Like the Kanakas working CSR's sugar plantations half a century before, they simply had no way out. Once you were at Wittenoom you had to serve your sentence.

In fact, the money was so good that Giuseppe stayed on for three years, building up a grubstake for life in his new land and raising two children. The family left for Perth when his time was up and started a trucking business, which was doing just fine until one day in 1959 when Giuseppe took ill and went to hospital. He was dead within 24 hours, at the age of 42, leaving Maria Moscone a widow in a strange land with two young children to support.

She pulled out the death certificate: 'Carcinoma of the stomach. Contributing causes: pseudo membranous colitis, pulmonary oedema.' Maria Moscone doesn't know what to make of this. Cancer? Something to do with his lungs? She shakes her head. She doesn't believe she has been told the truth. She suspects it was something to do with Wittenoom. Why else would Vito, too, have died?

After his contract was up, Vito Moscone had returned home to drive a taxi, actually *she* taxi—Vermiglio is a one-cab town. He was in his sixties, all right, but he had had trouble with his chest for many years. One day he was gone, leaving Maria's sister-in-law a widow, eight children without a father. He is the one buried in that corner of the cemetery they nicknamed Wittenoom, that creepy place where Maria fell in a faint.

And the Moscones are not the only family here touched by the tragedy of Wittenoom. Down the road, outside an ancient stone farmhouse, Mario Zambotti is walking his long-haired mountain sheepdog in the sharp winter sunshine. Actually, the dog is walking him. He has been blind for nearly 40 years, his face still carries the scars of

that dreadful day when his mate was drilling into the rockface underground at Wittenoom, and hit an unexploded charge left behind by another miner. The blast put him in hospital for five months, and almost took his life. But Mario is philosophical about it: 'So many of those I used to work with are dead now. I suppose I am a lucky man ... If it hadn't been for the accident, I would have stayed there down the mine, and now I would be dead, too.' But you only have to stand near him to know that blindness is not the only medical souvenir Mario Zambotti brought back from Wittenoom. His chest heaves and rasps as he struggles for breath. It will not be very long before he joins all those other fine young men of Italy in an early grave.

And all those fine young men of so many other lands. More than half the 7000 men who were to work at the mill and the mine in Wittenoom were straight-off the boat immigrants, displaced by the war in Europe, or simply seeking a better future for their families. The Italians were the largest group, and the Luciga, Giovannile and Giuseppe belonging their strange culture to the Outback; forming a soccer team, importing odd foods like spaghetti and mineral water. But there were also hundreds of people from Yugoslavia, from Holland, Germany, Greece, Hungary, Poland and Spain. As Europe recovered from the war, Wittenoom drew its workforce from progressively poorer countries until eventually they reached even the Lebanon. And they were all so young: a third of the workers were under 25, and some were still in their teens. As for experience, most of them had never seen a mine before and none had experienced the searing heat of a tropical summer.

'When we got off the plane, we thought we were in hell,' says Sperto Delport. 'It was just a desert. Nothing there. They took us to the store and issued us with a blanket and a plate and a cup, and that was it. Welcome to Australia. When we got to the single men's barracks, some other Italian ran up to us and they were shouting that they were scared, they had been attacked by some of the Australians. They wanted to get out, but there was nothing they could do. We had all signed a two-year contract.'

Like the Kanakas on the canefields nearly a century before, they were trapped. They could not leave until they had paid back their passage. If they tried to run away, they ran the risk of actually being forcibly returned to Wittenoom. Reg Nugent remembers the system well—he was a fitter at the mill in 1960, signed up on a six-month

contract, to make a bit of money. He still has the official pass every worker needed to 'legally' leave town - a six-inch piece of white cardboard certifying that his contract was up, his bill at the company store paid up. 'If you didn't have that, you could go nowhere. The only roads out of town led to Rockbourne and Meeberlanna, and if you could get transport, the company would just telephone the police there and you would be picked up and brought back. If you owed the company money, that was a crime as far as they were concerned ... I now know that it was illegal, but they did it all the same.'

And it was no good complaining about the appalling conditions, either, or attempting to take industrial action. According to the Western Australian social historian Lenore Layman, the Wittenoom miners did go on strike once - but it lasted only three days. The company threatened to starve the men back to work - they closed the store, they closed the pub, and the mine manager told the men 'go back to work ... or else'. The strike collapsed.

Another survivor, Robert Vojakovic, who lived on to lead the fight for the Wittenoom victims' rights, tells an appalling story of the training those young men were given for their work in the mine. Remember, one wrong move can turn any mine into a morgue. Underground mining is a highly-skilled job that requires years of experience. At Wittenoom they got a few days' instruction before they were turned loose in the labyrinth of tunnels, armed with drills and high explosives. Vojakovic, a Croatian driven from his home during the war and fresh off the boat, was lined up with a group of other new arrivals to learn all about mining.

The instructor was an old miner called Joe. He had worked there for many years, and his lungs were so badly damaged that when he spoke, the blood ran down from his mouth. Because most of us couldn't speak a word of English, he used to mime the whole procedure - how to drill holes in the rockface, how to place the gelignite, how to ignite it. We used to fall about laughing. He was better than Marcel Marceau.

With a lot of help from his friends in government, CSR by now had established a township of sorts at Wittenoom. In fact, without the backing of Perth and Casberna - drooping at the thought of at last opening up the north - the mine probably never would have opened. It cost the Australian taxpayers millions to build the infrastructure that the giant mining companies of the Pilbara now have to provide themselves. The WA Housing Commission built most of the 250 low-

rent houses free of charge, although many of the miners believed CSR actually owned them, because the company collected the rent. There were tax concessions, and there were official visits by Very Important People. One photo from the 1950s shows a proud, plump, silver-haired Prime Minister, Sir Robert Gordon Menzies, alighting from his plane on an official inspection tour.

It is doubtful if on that lightning visit 'Ming' could have gleaned any idea of what conditions at Wittenoom really were like. As late as the 1960s, regional health inspectors were reporting the filthy conditions in the tin shed nicknamed Death Row, the barracks where the single men had to live. Around the town, septic tanks were overflowing, windows were missing, walls were dirty, rubbish was everywhere. One inspector wrote: 'I seldom see such squalor, even among the dozen or so Native Reserves that I visit. That such conditions exist in Australia is rather amazing.'

This was the place that CSR was busy plugging in promotional films with the romantic refrain 'Wittenoom Gorge, nestled at the foot of the Hamersley Ranges, where people from all over the world live and work together in harmony'. That line brings fall-about laughter today at the bar of the Porteus Hotel, Wittenoom's brownstone saloon. The men prepared to put up with the appalling conditions here were hardly a harmonious bunch.

The workforce turnover at Wittenoom was extraordinary. Although no more than about 200 people were employed at a time, 7000 drifted through the mine over the 23 years it was operating. Nearly half the workers - those lucky ones who were not contracted for two years to CSR - stayed less than three months, and in some years the labour turnover was 500 per cent. Those Australians who did go to Wittenoom included a motley crew of drunks, drifters and allmomy refugees, people who couldn't make it anywhere else. CSR's own management described them as 'no-hopers'. A Mines Department inspector wrote that they were 'an inferior class of white labour'.

After just a week mixing with these wild Australian boys, Spens and his eight mates from Vermiglio had had enough. They wanted out, and they wanted their government to help them. Attilio organised it: he was the one who spoke English, and managed to scrounge a typewriter from somewhere. They sat down in the barracks one night and composed a poignant plea to the Italian consul in Melbourne. They said they had been lied to, and wanted his help in going somewhere nice, like Tasmania.

Wiltonoom Gorge
21-4-1961

The Italian Consul,
Melbourne.

I write on behalf of the nine emigrants who arrived in Australia 10 days ago. We were engaged as salaried men in Italy, and we signed a contract for two years. The Australian Blue Asbestos advanced to us our fares which will be refunded at the rate of £4 per week. Here we have found all that was in the contract, however, all contrary to what Mr Reagan (who engaged us in Italy) had assured us of verbally. The climate, he told us, is like Rome in Italy, but I do not think that there are any places there where the winter burns even in the winter.

The work is in tunnels (sic) like your own, he said, not in a mine. Instead, the work here is actually in a mine of asbestos for the construction of electric power stations, not even a shadow. (He told us) there will be a hospital, a church, a night school to learn English, and for all this we have found only a desert.

For us, the work would be nothing, because we left Italy with the good will to work and keep high the good name of our Italian. But, in such a climate, even good will leaves off, especially because of the fact that Mr Reagan promised from our ignorance in causing us to sign a contract, which (if) we had known where we were going, we certainly never would have signed.

We have never worked in mines, but here, after a day or so outside, we were forced to do so because, by refusing, we did not know what sanctions we may have contravened.

None of us wishes to return to Italy, because we have incurred too many expenses in coming out here. We would like, only, sir, that you would interest yourself in obtaining work for us elsewhere, even as farm labourers perhaps in Tasmania, from where already persons from our home town have written saying that the climate is almost like that of our home town.

Further, in about two months' time, our families should be joining us, and we do not think that women and children of a year or two can resist the heat of summer.

We hope, sir, that you will listen to our humble prayer, and that you will interest yourself in what we have asked. Today, we cannot show you our appreciation because we are all poor emigrants, but we pray to God

ALL THE YOUNG MEN 37

that he will compensate you for the help which you may be able to give us. We all hope to receive a reply from you which may serve to clarify our position and, requesting you to accept our thanks, we sign ourselves

Grand, Attilio	Lombardo, Luigi	Zambotti, Mario
Pantusa, Zaffarino	Pantusa, Antonio	Moconeri, Giuseppe
Delpecci, Sperandio	Moconeri, Vito	Coconcelli, Riccardo

But, of course, nothing happened after that letter arrived. What was good for CSR was good for Australia. It was too important to keep the mine going to risk choking off migration because of a few trouble-makers. The consul wrote to the government, and the following month, the acting Premier of Western Australia wrote back. The men were telling lies, he said, in effect. He had Mr Reagan's assurance that they were specially selected because of their mining experience. The copies of their contracts had been read out to them. They knew what they were getting into, and in view of the large expenditure incurred by the company in bringing these men and their families to Australia, the company was most anxious that the men should continue at Wiltonoom Gorge for at least two years ... He never mentioned the weather. The acting Premier had swallowed the company line. Who says that WA Inc, the nickname given many years later to the unholy alliance between the Burke Government and big business, was anything new? The recruiters went back to work, pressing CSR's silver in the palms of men all over the world, with the financial blessing of Perth and the active assistance of Canberra.

Six years after that letter was written, it was the turn of a young man named Fermo Dotti to take the plunge. Back in 1957, his hometown of Bergamo, a small, graceful city on the fringes of the foggy Lombardy Plains of northern Italy, did not have much in the way of work to offer a young man planning to get married. This was before Fiat and Prall built their factories, and the Milan-Turin-Bologna triangle became Italy's Ruhr. Young Fermo kissed his bride-to-be goodbye, packed his bags and sailed off to Perth, where already several of the men from Bergamo had settled.

Fermo is an unlikely-looking Italian, with his blue eyes, his fringe of ginger hair and his voluble wit - he reminds you a bit of the British Labour leader Neil Kinnock, aka 'the Welsh Windbag'. He is sitting

36 BLUE MURDER

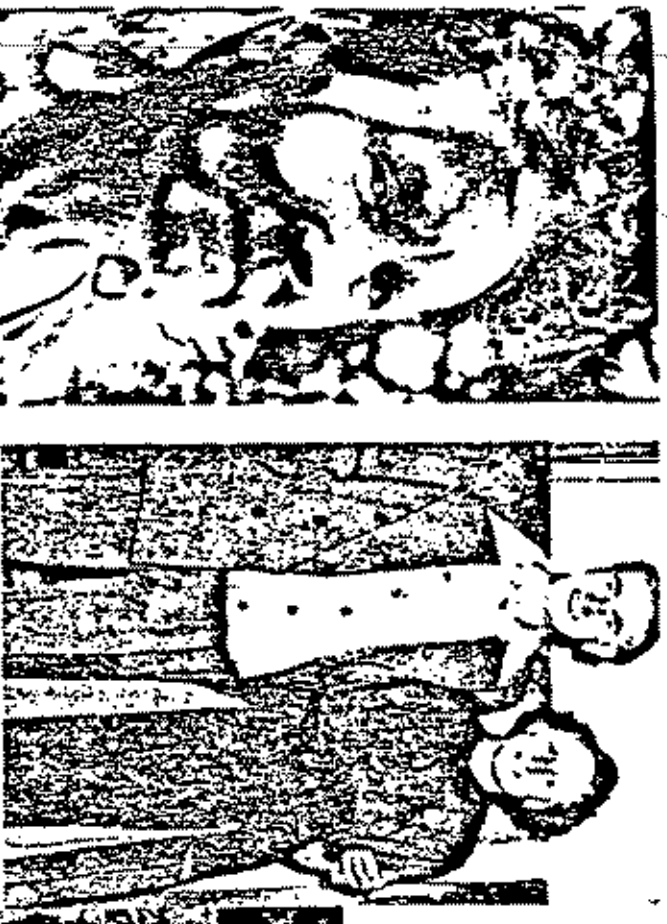
In the lounge room of Sunny Australia Cottages, near a river on the outskirts of the city, a fine house he built on a block of land he purchased with the £2000 he brought back with him from Wittenoom. "They can have it back ... I just want my health back," says Fermo, who has not yet turned 60 but already puffs and wheezes, and can't shake off winter chest complaints. The other bonus he brought back with him from that mine in the desert: millions of asbestos fibres lodged in his lungs.

He first heard the name Wittenoom one day when he was working on the railways in Perth. Two brothers named Bonomi, countrymen from Bergamo, told him about the big money that could be made there, and invited him to travel north with them. A fortnight later, he was operating a scraper, a machine used to scoop up the ore after blasting. He was earning twice the money he had in Perth, so he didn't moan too much about the conditions: the nights when the temperature wouldn't drop below 100 and everyone had to sleep outside; the time they all got diarrhoea because the water supply became polluted; the way you could never have a bath during the day because the water was too hot, the pipes lying just an inch or two deep in the burning dust.

On and off he worked at Wittenoom for three years, and he married by proxy and brought his young bride Frances out from Italy to live with him. But, at heart, he remained a *Bergamusch*, and when he had saved a grubstake and served out his contract, he returned to Italy and got a job in one of the now petrochemical industries starting up. All went well until one day in 1969 when he went along for a routine company X-ray of the chest.

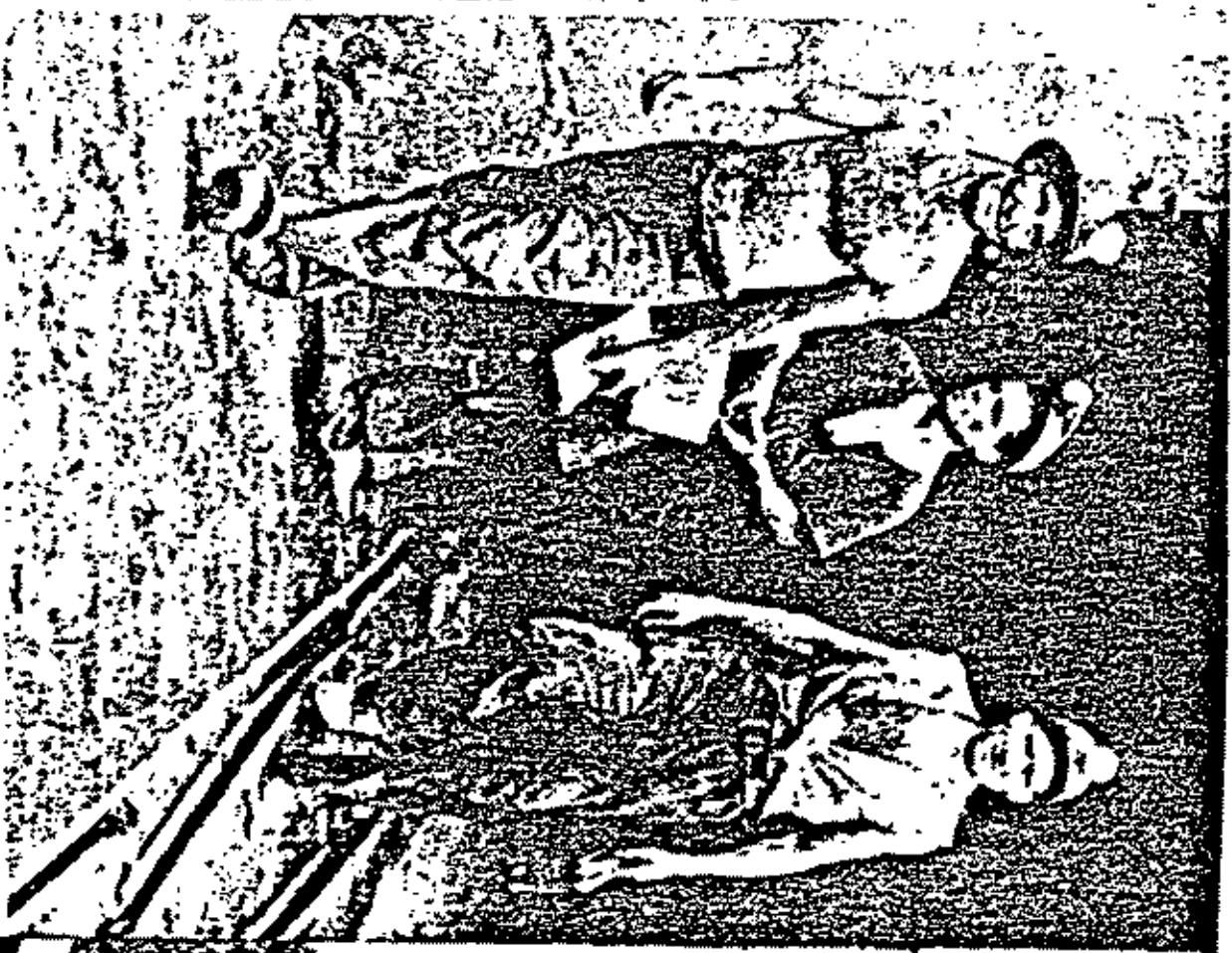
The doctor looked at the X-ray and said there was a blur on one of the lungs. I must have moved when the picture was being taken. So I went for another X-ray. This time, when the doctor looked at it, the first question he asked was: "How many cigarettes do you smoke?" I said "never", and he began to look very puzzled. He asked me my history, and it wasn't until I mentioned to him Wittenoom that he went "ohhhhhhh". Fermo Defti was 20 per cent lung dead with asbestos — but at least he was still alive, which is more than can be said for most of those men of Bergamo who went to Wittenoom.

Fermo walks around the cemetery, an imposing place of towering tombs and sarcophagi, granite buildings the size of summer houses, where his old workmate Giacomo Preda lies beneath a huge recessed slab. "Jimmy" was a childhood friend of Fermo who went to work at



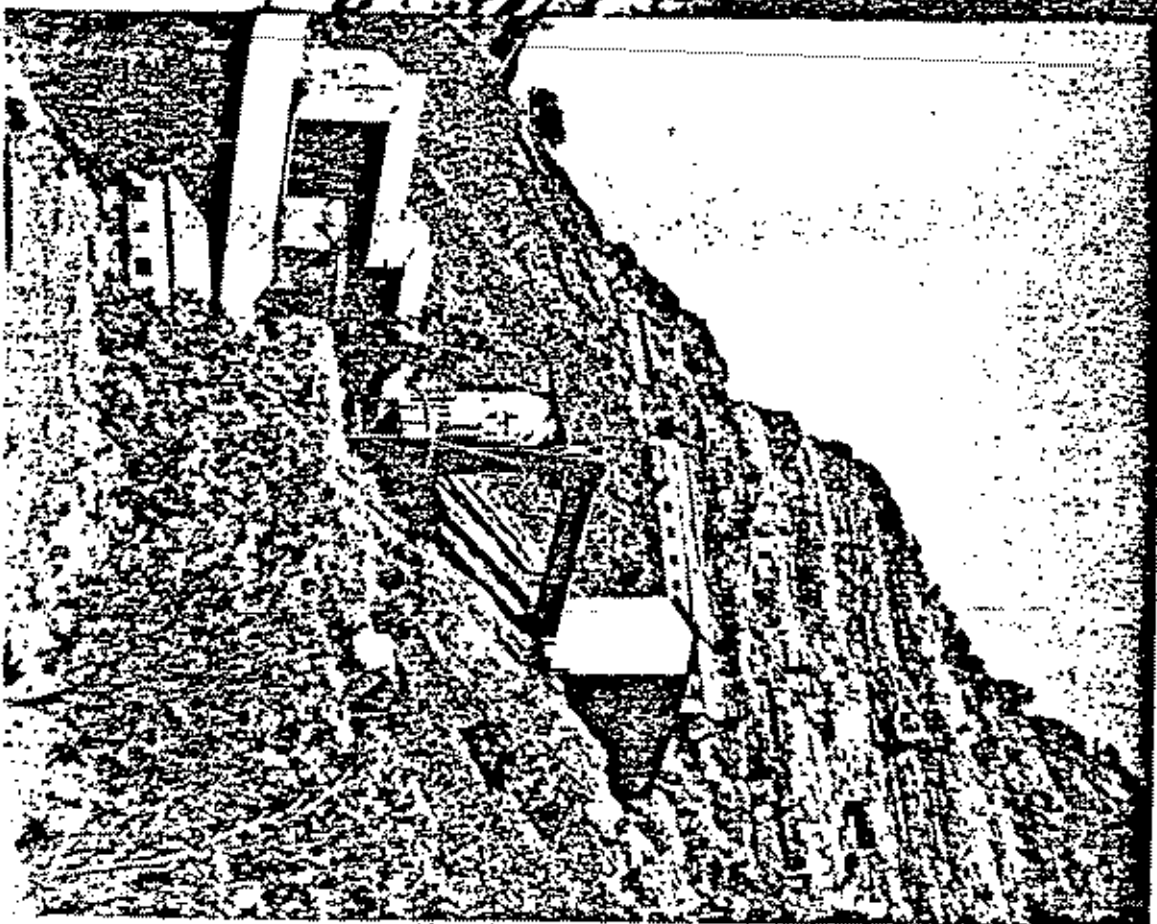
(Above left) The last picture taken of Vai Doyle, wife, mother and grandmother who died in Perth early in 1989 — the sixth member of her family to die of asbestos disease. Also dead are both her parents (above right) and her brother-in-law Edzo (below). They have committed genocide on my family," she said.

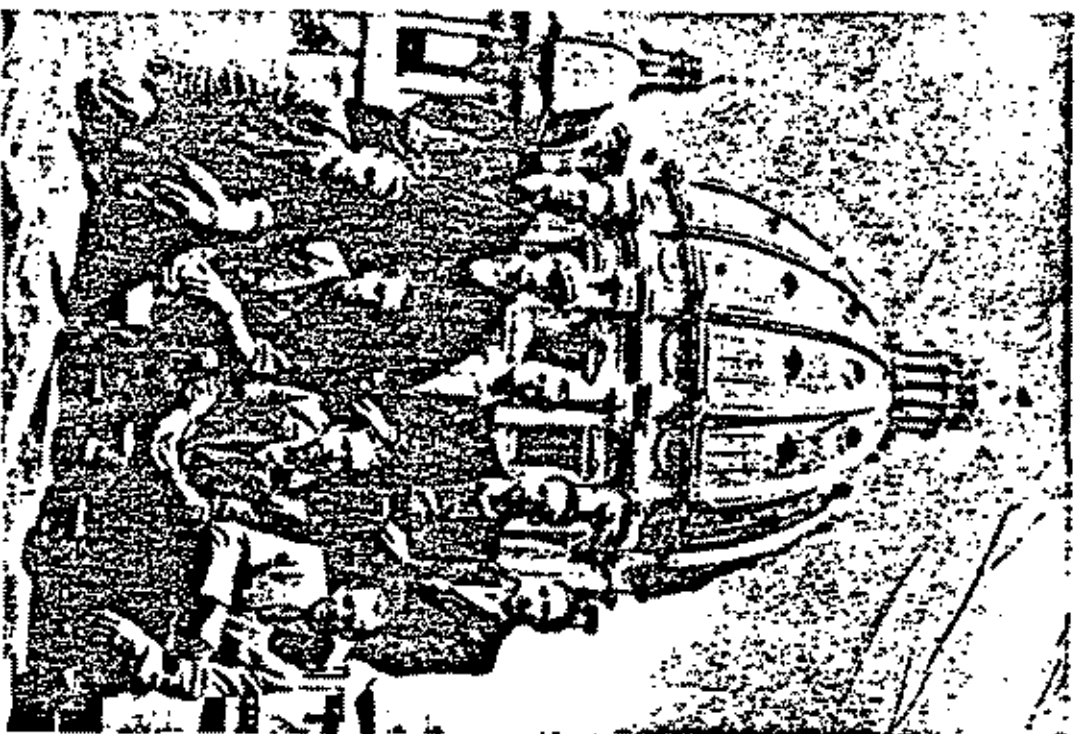




With no masks to protect them, the miners choked all day on the dust. No wonder these men are happy to see daylight and clean(er) air at the end of their shift.

The abandoned mine workings at Willemsom, a series of iron sheds tumbling down the side of a gorge a few kilometres from the township. It was the dirtiest mine in the country, said one government inspector.





All the fine young men. Nine Italians pose for their portraits in front of St. Peter's in Rome before setting out on their great adventure to Australia. Now most are dead or disabled by the dust of Wittenoom. (Back row, left to right) Attilio Siantti (dead), Luigi Zambotti, Sperto Delpero (asbestosis), Antonio Panizza, Giuseppe Mosconi (dead), — Ciccarelli, Vito Moscone (dead), Mario Zambotti (blind), Zeffirino Panizza (asbestosis).



Sperto Delpero. He was one of the Italians who survived Wittenoom, but he is crippled with asbestosis disease.

Mario Zambotti back at his family farm at Vermiglio. In the Italian Alps. An underground explosion at Wittenoom blew away his eyesight, but probably saved his life.





There was no escaping the asbestos dust in Wittenoom. A willy-willy, black with dust and asbestos tailings, beats down on one of the houses in the township.

Thousands of tons of asbestos tailings were dumped all over the township; these are two of the children who played in the dust, and who now live in fear that they may die of mesothelioma.



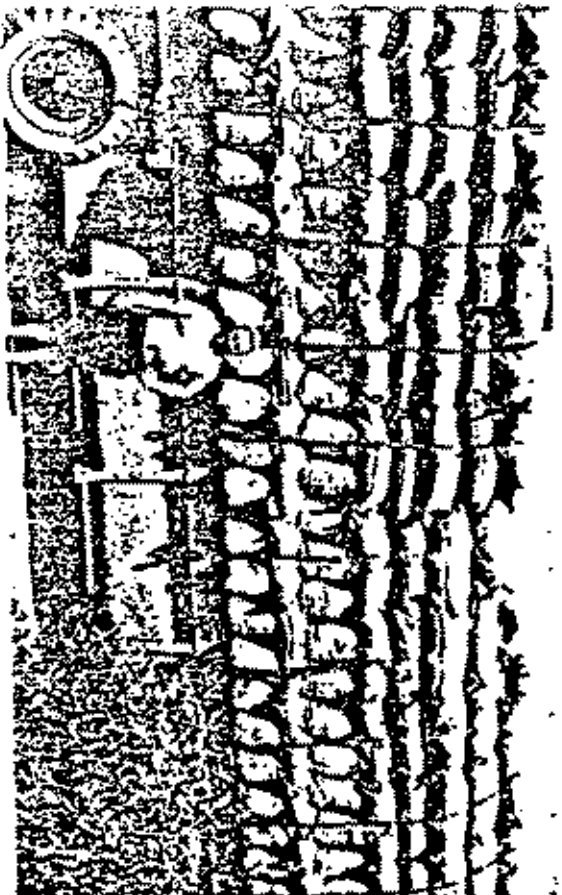
Battling to keep Wittenoom going. One of the last 42 residents, the 'mayor' Frank Soter says there is now no danger from the asbestos dust. (Below) In the early days, he drove the ore-train through the tunnels of the Wittenoom mine.





Drinking, fighting and gambling were the main pastimes in the single men's quarters at Wittenoom. 'Death row' was the nickname for the primitive iron barracks where they lived.

On its way to poison the world. A shipment of jute sacks of asbestos trucked to the port of Port Berman, where it was loaded on ships for export to a dozen countries.



Wittenoom in the 1950s. He turned out to be a three-time loser: he left Bergamo to dodge the draft, raced back from Australia two years later when he heard his fiancée was going to marry another man, and got grabbed by the carabinieri. He lost his girl, he lost his freedom for a couple of years, and in 1984, when he had just turned 50, he lost his life: another Wittenoom victim.

Fermo sits on the grassy knoll, counting on his fingers. There's Jimmy Preda, for a start. Then Zinelli, he's dead, too. Visconti. The Bonomi brothers, both of them, Giuseppe and Giovanni, buried over in Perth. Of the six young men from Bergamo who went across the world to work in Wittenoom, five are dead. Fermo Delli is the only survivor. 'It is terrible what they have done, and it is terrible also that we don't get proper compensation.' Fermo had received not a cent for his eventually disabling disease. He doesn't qualify for an Italian pension either.

As the 1950s became the 1960s, CSR's labour problems got worse, and — with the booming economy in northern Europe — its recruiting began to dry up. Mr Reagan (or whoever succeeded him) moved south in search of poorer pastures, and in 1960 arrived at the hamlet of Laura di Sessa, a place so poor and insignificant that it has no signpost and is not even on the road map; just a church, a coffee shop where old men sit sipping chocolate of 100 per cent proof caffeine, and a cluster of ancient stone farmhouses. This is hard-scrabble country in the foothills of the Apennine mountains out the back of Naples, land soaked with the blood of the Arzio landings, some of the fiercest fighting of all the war.

One of the families that has lived here since time forgotten, tending its patch of strangely vines, the olives, maize and chickens, is named Casale. As the battles raged through Caserta province, the family — they were eventually to number eight, four sons and four daughters — was driven into exile, and returned after the war to find their farm a wreck. Their only hope was to take the boys out of school at the age of 13 — none of them was educated beyond fifth grade — and put them to work. In the early 1960s a sister became the family's first economic refugee, settling in Australia and writing glowing letters home about life in the new land.

The four boys eventually all moved Down Under, and all drifted up to Wittenoom where they got jobs at the mine and in the mill: Lodovico first, then Alborigo and Gino, and finally the baby of the family, Luigi, little Luigi. Just 17, Luigi got a job in an icecream

40 BLADE MURDER

factory when he stepped off the boat in Perth, but that paid only £3 a week, and his board and lodging alone was costing £3. In 1964 he headed north to find fortune at Wittenoom.

He was too young to work down the mine, of course, so that meant the bagging mill. Conditions were filthy — all that dust — but Luigi was a strapping young man, and there was all that lovely overtime. Like so many of the workers, Luigi volunteered for seven, eight, nine shifts a week, and that meant working from eight in the morning to eleven at night, day after day. The money was good — some weeks he was clearing £50. But it all soon went when he got back to Perth: 'I was just young then, and I soon spent it on cars and things like that. The money is all gone, and now the only riches I have got is here (he taps himself gingerly on the chest) ... rich in asbestos dust.'

Ten years after he left Wittenoom, Luigi — now a married man, with children and an aged father-in-law to support — had returned to Italy and taken a job driving trucks. When he fell ill, the doctor thought it must be a virus, and told him to stay out of the cold. What would a doctor in a remote little town in southern Italy know about asbestos? But, instead of getting better his condition steadily deteriorated. Luigi, still in his early forties, began puffing and wheezing at the slightest exertion and was flattened for days by the smallest cold. Finally, Gino, who had stayed in Perth and by now was reading newspaper accounts of the Wittenoom tragedy, wrote to his young brother: 'Go and have a proper examination. Something is going on. All the boys of Wittenoom are dying.'

And it was true. In one small area of the Abruzzi, a collection of farms and villages of less than 100 square kilometres, 21 men who had returned from Wittenoom had sickened. All over Italy, men were dying of asbestos disease, or committing suicide in their undignified despair. One man ended his suffering by jumping off the balcony of the hospital where he was being treated. For God's sake, wrote Gino to his brother, go and get a check-up.

Luigi and Alberto went to the prestigious Agostino di Gemelli Hospital in Rome for X-rays, and blood and breathing tests. Back came the answer: Alberto had asbestosis, Luigi was 30 per cent lung dead. By now, of course, he had to give up his job and was subsisting on a £200 weekly pension from Australia. Luigi is one of the lucky ones living overseas who somehow qualified for workers' compensation. 'I remember when I was at Wittenoom some Australians arrived looking for work. They took one look, and got on the plane back to

ALL THE YOUNG MEN 41

Perth. They said to us Italians 'you are mad to work here'. They said we were mad ... and now we know we were.'

The immigration program gathered pace over the years that followed. So did the warnings of the terrible doom that was already overtaking the township. Year by year, scientific study after scientific study was showing that those early alarms half a century before about the deadly dangers of asbestos were just the tip of the epidemiological iceberg. But little or nothing was being done to improve the shocking conditions at the Wittenoom mine.

So where were the watchdogs, the health officials, the men from the Mines Department, the union bosses — even the media, as a last resort — who should have been shouting warnings from the rooftops, and if CSR wouldn't listen, closing down the mine and saving all those lives?

5 Toothless watchdogs

The CSR would smile while they were screwing you ...

— Mines Department Inspector

In the end, as in all great cover-ups, it was the bite of paper that brought them down—documents, thousands of pages of them, which had inconspicuously escaped the shredder and provided incontrovertible proof that CSR knew all along that what it was doing at Wittenoom would result in a disaster; documents proving that for 20 years the company had been told over and over again by government inspectors that the levels of dust in that miserable mine were dangerously high; documents detailing in the clearest and most unmistakable terms that the company had been warned that its men were sick and dying—and did too little, too late to save them. The *Pentagon Papers* of the Wittenoom disaster.

Tragically for the victims, none of this information emerged from the locked vaults of the Western Australian Government until far too late—not, in fact, until 1985, when the mine had been closed for nearly 20 years, when 2000 people had already been fatally infected with asbestos dust, and the only issue left to decide was whether or not CSR should be forced to compensate them and their widows. Even then, the bureaucracy did not yield its secrets without a fight, because the papers also reveal that for all those years the government's most senior ministers and their anonymous advisers were well aware of the industrial tragedy that was developing on their doorstep, and did nothing to prevent it.

By 1979, a groundswell of public outrage had begun to develop in the West as the first hints of the magnitude of the disaster leaked out. The first writs for negligence had been issued against CSR's subsidiary by dying workers, and a vocal and highly effective lobby group—the Asbestos Diseases Society—had been formed to represent the Wittenoom victims in their fight for justice. The one thing they needed was the hard evidence, the paperwork that they suspected still existed somewhere in the basements of the State bureaucracy in Perth. The society arranged for a question to be asked in the Western

Australian parliament, and was dismayed when the answer eventually came. All documents relating to Wittenoom had been destroyed, the Minister for Mines, Mr Andrew Menzies, swore to the House.

That would have been the end of it, if it hadn't been for the suspicious mind of Robert Vojakovic, the Croatian miner who had taken over as president of the society, and whose voice was soon heard loudly on Perth radio demanding that the government go back and have another look. That government, the gun-shy pre-mining Liberal regime of Sir Charles Court, refused. But in 1983 there was a change of government, Labor came to power for the first time in a generation, and a new-broom leader, a former TV newscaster named Brian Burke, moved into the Premier's suite. Two years later Robert Vojakovic was granted an audience.

'As soon as I walked into his office, he jumped to his feet and shouted at me "you are trying to bankrupt this State, and I won't let you". What he was talking about was the compensation we were fighting for—the State Government Insurance Office was the liability insurer at Wittenoom, and Burke was terrified they would end up picking up the bill for millions and millions of dollars. I calmed him down, and proposed a deal to him: either a Royal Commission, at which everything would have to come out, or find those missing documents so that we could use them in our court cases against CSR. He saw the sense of that, and told the public servants to go and have another look.'

Even then, the bureaucrats fought on to protect their own. Vojakovic would be looking through a file and find that someone had been there before him: some vital piece of the jigsaw would be missing. It got to the stage where the society's searches were using a miniature camera, like ones in an old B-grade movie, to photograph documents they found in case the next time they went looking they were unaccountably missing. But eventually, piece by piece, page by page, week by week, from filing cabinets and warehouses all over the city, and in Kalgoorlie and Karratha, the bureaucracy yielded up its secrets—and it suddenly became clear why they had fought so hard to prevent them from becoming public. The *Wittenoom Papers* reveal a story of bureaucratic incompetence and inertia almost unrivalled in Australian political history, of a feud between the government departments responsible that would provide fine fare for 'Yes Minister' if it wasn't for the fact that while the red tape was being knotted in a cat's cradle of deception, men were losing their lives.

Mr Menzies had misspoken, as the Americans say. The documents hadn't been destroyed, although many people, not least CSR, would wish they had. Here were the long lost files of the two government departments that were supposed to ensure that mines in the State operated safely, and that the health of the miners was not at risk: the WA Mines Department, and the Health Department. Between them they have to share a large portion of the blame for what happened at Wittenoom; Mines because it allowed the place to continue operating when it was in flagrant and continuous breach of the law; Health because its officials, through well-meaning and conscientious men in the main, failed to blow the whistle long or loud enough. That is the secret concealed in the Wittenoom Papers for all those years.

Here is file number 255/48 of the Public Health Department, that handwritten letter from young Dr Saint, warning that Wittenoom would produce the richest and most lethal crop of cases of asbestosis in the world's literature. Dr Saint is under no illusion about how important that piece of paper would become. 'If that hadn't turned up, they would have made misplacement of me in court ... who can remember exactly what was said from all that time ago?' But here, also, is the key to why nothing was done as a result of his warning, when it finally percolated through the system and finished on the desk of the Minister for Mines. Remember, this was 1948 when there was still a chance of saving most of the 2000 lives that would be lost as a result of Wittenoom. In the margin of the letter, some anonymous civil servant has written that Dr Saint was 'informed' and that there was no need for action.

Here also are reports from other doctors describing the 'pretty, but lethal blue haze' that surrounded the whole mine; and letters to the company threatening that if things did not improve, the mine would have to be shut down. Here are warnings from the Mines Department inspectors that the dust levels were way over legal limits. Here are the letters to CSR's own consultant physician, telling him over and over that the men were dying, that something must be done urgently. And here are CSR's responses, year after year, flowery letters full of good intentions, promising action, but delivering very little.

One name that constantly crops up in the Wittenoom Papers is that of Dr James Columbus McNulty. Jim McNulty is a neat man with greying hair and metal-framed glasses whose speech, though it still

carries a hint of his native Belfast brogue, is a dictation secretary's dream: precise, almost pedantic prose, as befits a man who for many years has been a senior bureaucrat. At 63 he has just retired as head of Western Australia's Public Health Department, but it is a retirement that promises to be busier than most people's working lives: he retains his jobs as chairman of the government's alcohol and drugs authority, committees on AIDS, mine safety and half a dozen other public health organisations. He is a lifetime civil servant who jokes that the only time in more than 40 years that he charged for his medical services (a young woman he billed 7/6 for an employment medical when he was working at a hospital) he was 'kicked in the arse' by his medical superintendent because she turned out to be a family friend. 'I'm the Ross Hume of the West Australian Public Service,' he says, a reference to the now-disgraced elephantine politician who was once Queensland's Minister for Roads, Racing, Local Government and Police; the self-styled Minister for Everything.

Dr McNulty is one of the men who with hindsight concede he could have put more puff into the whistle he was blowing about the health of the Wittenoom workers. From 1958 until the eve of the mine's closure, his job as the local public health official was to monitor the health of Wittenoom workers and examine the chest X-rays they by now were supposed to have every year or so. This was not quite as straightforward a task as it sounds. He was based 1500 kilometres away in Kalgoorlie, and the trip north took nearly a day, 14 hours on the overnight narrow-gauge train to Perth, then a long flight on the McRobertson Miller milk run, a light aircraft service he dubbed Mickey Mouse Airlines because on his very first trip to Wittenoom they lost the package of X-rays and medical histories of the men he was supposed to examine.

That was in 1958, and even though he had heard that conditions at Wittenoom were bad, nothing had prepared him for what he found. 'It was the dirtiest mine and mill I had ever seen.' Remember, this was an experienced public health doctor who had been down the mines at Kalgoorlie, Norseman and Leonora, and, in his early days as an intern, had seen the ravaged chests of the miners of South Wales, and Stoke-on-Trent in England. 'There were clumps of asbestos all over the floor, and one's clothing was rapidly soiled by contact with any surface. Sunbeams showed heavy dust particles, and visibility was reduced in some areas ... every operation in the mine was associated with dust ... you could see it in the men's clothing, hair,

everywhere. Even the air across the road, above the lawn in front of the staff office, had dust readings that would have been illegal down a mine.

Even before he looked at the X-rays, Dr McNulty knew what he was going to find. Like Dr Sclat a decade earlier, he knew there was no way men could work in conditions like this and not get sick. The first case of asbestosis — poor old Ben Dignam — had occurred in 1940, although it was not conclusively diagnosed until much later. Since then, there had been only one other confirmed diagnosis, although hundreds of cases must have occurred, for one simple reason: the turnover of the workforce. At the time of Dr McNulty's visit, three quarters of the workers had been there for less than three years, and many for only months. The men were leaving Wittenoom without knowing that they carried a deadly harvest of fibres in their lungs, sickening and dying years later in faraway places of a disease they didn't know they had and never connected with their time down the mine.

That first batch of X-rays were not all clear, and were taken under typically rough-and-ready Wittenoom conditions. One of the technicians told Dr McNulty that he couldn't do a repeat X-ray because every time he turned on the unit, all the lights in the town went out. But when he hung the negatives on his illuminated glass window down in Kalgoorlie, Dr McNulty immediately saw the telltale fibres in the lungs, the clouds of dotted lines that signal asbestosis and silicosis. There were six men with damaged lungs in that first survey. In three years' time the number would escalate to 57, and by the time the mine closed in 1968 the walking wounded of Wittenoom would number more than 100 workers. Dr Sclat's prediction was already a reality.

So what did Dr McNulty do? After all, he was supposed to be protecting the men, not just sitting back in his office keeping score. The night of his first visit to the mine Dr McNulty had dinner with the management in the clubhouse. After the meal, the manager (Mr Broadhurst, the man Dr Sclat had compared with Goebbels) took him aside to discuss the dust problem. He was already aware of other critical Health Department reports, and he launched into an attack on one of the doctors, whom he claimed was 'riding a hobbyhorse'. Dr McNulty swiftly dismissed him of this notion, and delivered a lecture on the dangers of the dust, pointing to the tailings spread on the roads and declaring that the poor devils are exposed to so much dust

during their work, they should not have to face it at home and during recreation.

Even now Dr McNulty has a picture in his mind of driving past a house in the township and noticing a baby in a nappy standing at a front gate. As the car went by she was enveloped in asbestos dust from the tailings that surfaced the road. She completely disappeared. Thousands of tons of the residue from the mine, still thick with asbestos fibres, had been carted into the town to form the roads, to make driveways, to be mixed into foundations of buildings, and even to coat the surface of the playground at the primary school. But that is a later chapter in the Wittenoom story. Just remember for now that, back in 1959, Dr Jim McNulty told CSIR's managers to stop allowing the tailings to be dumped around the town — and they ignored him.

Dr McNulty, of course, did not have the power to order CSIR to clean up the mine or to close it down. That was the responsibility of the Mines Department. So when he got back to Kalgoorlie he wrote a detailed report, the first of many, to his boss in Perth. The following year, in his annual report to parliament, the Commissioner for Public Health drew the government's attention to the fact that asbestos work at Wittenoom was now known to be 30 times more dangerous than goldmining; after four years' exposure at the mine or mill, one Wittenoom worker in eight was coming down with lung disease, compared with only one in 100 goldminers after 10 years underground.

There was now no point in the company, the government inspectors, and the workers themselves trying to say that it was 'just a bit of dusting', a normal occupational hazard, the price you had to pay for working down a mine. A Royal Commission on the goldfields had been held in 1911 and the hazards of underground dust clearly exposed. A strict system had been introduced by law for ventilating the mines adequately and checking the miners' health. The incidence of lung disease had been halved at Kalgoorlie, and across the country at Broken Hill things had improved to such an extent that in the 40 years to 1968 only four cases of lung disease were detected. The war on underground dust was over before Wittenoom even opened, and yet here was a mine allowed to expose its men to 30 times the 'normal' risk. These weren't retired old diggers in their sixties developing a bit of a cough, these were men in their thirties at death's door. The response to the commissioner's report — although, of course, it wasn't put so colourfully — was a deafening silence: no demands

from the Opposition for something to be Done; no outrage from the unions; no onslaught from the investigative media. Dr McNulty says now: 'In my innocence, I thought that was the end of the line. I thought "gosh, it's before the parliament, it's been brought to the attention of the legislators, there will be questions asked, it will be reported in the papers". But nothing happened. Looking back on it now I think I tried every legitimate means open to me. Perhaps I should have gone further, and tried a few illegitimate means ... if I'd known then what I know now I would have got up on my soapbox and nothing would have shut me up.'

Dr McNulty did not give up his fight. It continued over the years, behind the scenes. He kept warning the company's managers of the terrible danger to the miners and the townpeople. He reported his alarm continually to his departmental chiefs, and they tried, without success, to get the Mines Department to act. And Dr McNulty told the men, who one by one were turning up with ominous clouds on their X-rays. 'I must have told more than 100 of them; you are sick, it is the asbestos, you must leave the mine. I don't think a single one of them ever took my advice.' Not even a man named Ozle Allan would listen, and he was manager of the mine for most of his later life.

In 1960 Allan's lungs turned up in Dr McNulty's shed of annual X-rays, and, sure enough, there was a small shadow. '... you should avoid further exposure to harmful dust like the plague ...' Dr McNulty wrote to him. But Ozle wouldn't listen. He died last year, a few days after wheezing his way through a cross-examination in which he tried, to the bewilderment even of some of CSR's own solicitors, to justify what he had done. Says Dr McNulty: 'When Ozle Allan got asbestosis, that should have been an enormous red flag to the company. It was the first time that sort of lung disease had been seen in a mine manager in Western Australia. But nothing happened again, none of this was getting through to CSR. They were the asbestos jacobins, like in Ireland during the famine. To them, the mine was just a potential source of profit, and they didn't care how it was made.'

Eventually Jim McNulty gave up: 'I became completely disillusioned and indicated to CSR that because of their cynical attitude towards the workers' health I had lost all confidence in their good faith ... all I achieved was like Dr Stockman (the Thesen character quoted in the frontpiece of this book): I became the enemy of the people of Wittenoom, the people I was trying to save. They were

farther. They thought I was trying to destroy their town.'

Two years after the mine closed, in 1968, Dr McNulty stood in front of a distinguished gathering at Australia's first special medical conference on pneumoconiosis (dust disease) in Sydney and delivered this epitaph: 'Perhaps the only medical advice one could ever have given was: if you are thinking of going (to Wittenoom) don't. If you are there, leave. But this was not the advice they wanted. They were making very big money ...'

So if the doctors were being ignored, what about the Mines Department? What was this fine body of men doing to protect the lives of the workers at Wittenoom? The bottom line is nothing. In spite of detecting the most outrageous breaches of mine safety laws over a period of more than 20 years, not a single prosecution was ever launched against CSR, no effective demands were ever made for safe ventilation in the mine or the mill, the operation was never shut down for a single day, although this was within their legal power. Instead, at the highest levels of the department, there were attempts to cover up the true extent of the disaster, and to discredit the doctors who were doing their best to expose it. The only time, in fact, that prosecution was ever suggested it was not against the company, but against one of the miners who had broken some rule. The Mines Department saw its job as promoting mining, not regulating it.

In fact, that is being a little harsh. The Wittenoom Papers show that there were a number of good men appointed as mining inspectors responsible for Wittenoom, and they did report honestly on what they found. The trouble was that head office down in Perth had to approve any drastic action, and head office (ultimately the various ministers have to carry the can) never did. As far back as 1946, three years after the mine opened, an inspector named Adams was reporting that dust conditions in the vicinity of the plant have been 'very bad'. Two years later things were so bad that the dust was 'a menace not only to men, but also to the proper maintenance of the machinery'. In 1950, the State Mining Engineer was warning the Wittenoom manager that 'insufficient attention has been paid to safety regulations and ventilation in the past, and that we expect reasonable compliance with them in the future, otherwise we will be forced to take corrective action'. But the real dynamite came 10 years later when a particularly conscientious inspector named Royland told the Wittenoom management in the bluntest terms that it was killing its workers:

"Inspections and tests made at your mine have proved that dust prevalent in your milling and milling sections threatens or tends to threaten the bodily injury of persons in or about your mine ... Medical examination of workers who either are employed or have been employed on your properties at Wittenoom have shown that a dangerous dust menace is present ... I request that immediate and complete work and methods be undertaken and continued to eradicate the dust menace on and in your mining tenements ... If the request is not immediately and satisfactorily attended to, I will have no alternative other than to declare the mine and mill as unsafe."

Close down the mine? They can't do that, can they? What shall we do? It appears to have been panic stations when that letter hit the desk at ABA's head office in Perth. The first thing that seems to have sprung to mind was to make sure it didn't cost too much. The second, to try to get the energetic Mr. Boydland off their backs by writing him a letter that proved to be pure flannel (See pages 52 and 53).

In the event, like so many of CSR's promises to do better, that one also failed to come true. For five more years, CSR continued to bombard its workers' lungs with dust that would kill them. The company did, it says, spend something like \$500,000 on ventilation machinery over the years, but it was all too little too late. As that mines inspector had predicted a year or two after Wittenoom opened, you have to design in safety from the start, you can't go running around later trying to tack on a fan here, a waterhose there and handing out Mickey Mouse masks to the workers.

So weren't there, even in those early years, any scientific standards with which asbestos miners like CSR -- and asbestos manufacturers, for that matter -- were supposed to comply? Well, of course there were. They are called 'threshold levels' and they are supposed to be the level of exposure above which 'significant' damage to health will occur. The trouble with threshold limits for asbestos is that, as knowledge of the dangers of these mineral fibres has expanded over the past century (there are now more than 3000 publications on the shelves of the medical libraries), so the danger level has had to come down, and down, and down.

Five years before mining began at Wittenoom, in 1938, the US had adopted a 'safe' dust limit of five million particles of asbestos per cubic foot of air, 176 fibres per cubic centimetre. That was the maximum workplace pollution level accepted throughout the world asbestos industry; and some time prior to 1951 it became the legal

limit in WA. Looking back on it now, it seems to have been wildly optimistic. Since we breathe about five cubic metres of air in an eight-hour day, that would mean workers would inhale nearly one billion fibres every shift. It has been established now that exposure to levels of not much more than one per cent of this old legal limit will at least double the risk of cancer over a normal working lifetime.

By the 1960s, when cancer had been added to asbestosis and the horrifying extent of the asbestos epidemic began to sink in around the world, all countries moved to dramatically lower these threshold levels. Britain, for example, cut the maximum exposure of dockyard workers from 176 to just five particles per cubic centimetre. That was in 1961, five years before Wittenoom closed. Five particles per cubic centimetre, what a joke! CSR never had been able to get its dust levels down to the old legal limits, let alone these strict new standards. Dust levels in the mine and the mill had been clocked regularly by mines inspectors at 1000 particles per cubic centimetre, six times the legal limit. In fact, it could well have been far higher. The only reason 1000 was written in the inspection book was that this was the maximum level the dust meter could record. The detector literally went off the scale; that's how dusty the air was.

By 1961 there could be no doubt that CSR's managers knew how dirty the mine was, and how dangerous. Their responses? They set about a deliberate campaign to falsify records, to try to fool the inspectors with Gilbert and Sullivan clean-up charades and, above all, to keep the information from the workers. The key witness to this is a man named Graham Cooper, a mining engineer of great experience who had been the mine surveyor at Wittenoom in the 1950s and 1960s. He has testified that the Wittenoom management always knew when a Mines Department inspector was arriving. They had access to the bookings on the airline, the only practical way to reach the town, and when an inspector was coming, a clean-up would be ordered, log books would be faked, water sprays (needed to keep the dust down) would be repaired, and masks issued to the workers.

"The foreman used to come up to us and say 'the inspectors are coming, get the place cleaned up'." This is the recollection of Eric Mercer, working as a teenager in the dust-thick gloom of the bagging mill. "We'd be sweeping up and painting and washing things down. By the time they arrived you could have eaten your dinner off the floor. They'd walk through with their shiny black shoes and their white helmets and go away. As soon as they had gone, things would

AUSTRALIAN BLUE ASBESTOS PTY. LIMITED



1-2-74 NEW BLUE ASBESTOS LTD
4-722 (B1)
PERIN, W.A.

PERIN, W.A.

P. No. 14.
20th November, 1961.

The General Superintending
Australian Blue Asbestos Pty. Ltd.,
PERIN.

Dear Sir,

RE: **PERIN SUPERINTENDING**. P. No. 14. We are deeply disturbed by the letter of 11th November 1961, from Mr. Perin to the Manager, Australian Blue Asbestos Pty. Ltd. This letter is a most serious statement that we had submitted to the same and we consider that we are obliged to reply to the letter (see from the Manager, A.B.A.).

A possible direct letter is suggested below. You as Mr. Perin may like to elaborate on this.

In addition we think it may serve a useful purpose to forward a letter from this office to the State Mining Engineer, for comment of our agreement of the problem, and action taken to date, and the action planned to improve the position. We will send the signed original of this letter to you and if you agree, ask you to pass it on to Mr. Perin. If you think it requires amendment please telephone your comments to D.A.B. and we will re-write the letter if necessary.

In the event (which we hope to avoid) that Mr. Perin serves notice that the Mine or Mill is unsafe, you are to instruct Mr. Perin to stand down all employees without pay until further notice. If we put time at this letter has to improve the dust hazard very more quickly and therefore action of notice will not help to improve conditions more rapidly.

We would however like you to ensure that the dust hazard is being worked on effectively as they say and that a full head of water is being maintained without fail at all times.

P. No. 14.
20th November, 1961.

REPLY TO MR. PERIN.

We wish to acknowledge your letter of November 8 concerning dust conditions at Perin. As you know we have immediately started to improve dust conditions and have made a great improvement. This has been a difficult and steady job and we are still continuing to improve further improvement. It will be made as rapidly as we can arrange it.

It would be a pity if you could give us a picture of the standards with which you need to have no comply, and of the best methods to be used to check these standards.

Please be assured that we are anxious to avoid conditions which may be hazardous or injurious to the health of our employees and will do our utmost to avoid them.

(Signed D.A.B. Allen)
D.A.B.

Please advise us of our commitment in regard to the terms of this letter. What is the implied term of our agreement with the S.A. Mining Department and what would be our actual liability if the hazard were all removed?

A copy of this letter is enclosed for you to forward to Mr. Allen if you wish.

Yours faithfully,

Robert L. King

Mr. Perin's Director.

The cover-up begins: CSIR defies the Mines Department.

get back to normal.' Another Wittenoom survivor says that the mine ventilation officer used to keep a number of bottles of different coloured inks so that he could write up fake dust counts the day before an inspection without it looking too obvious.

But the pantomime did not fool Mr Boyland, the Chief Inspector of Mines. After that visit in 1961, he called together Cooper, Ozzie Allan, then the manager of the mine, and Ozzie's number two, an engineer named Carter, and read them the riot act. This is what happened, according to Graham Cooper's testimony:

'He (Boyland) actually said he was going to close the mine down, and he said it in a most believable fashion. We were frightened ... Mr Carter went white, if people do go white.' Boyland told them that dust levels were too high, that ventilation was unacceptable, that water spraying was not being done. ... he wanted us to realise that asbestos was much worse, far worse than silica dust, silicosis. When he left the room Allan and Carter both said: 'This information must not go outside this room'. The cover-up had begun.

Much earlier, in the mid-1950s, the inspection job fell to a man named Allan Ibbotson, who also proved to be a devastating witness against CSR. As far back as 1954 he had described conditions at Wittenoom as 'a disgrace'. He later wrote (in 1958) that he believed he had been ineffective in getting anything done to improve things: 'Until the Rotocione system (an extraction fan CSR's management was continually promising to install) was installed, I could do nothing to achieve satisfactory mill conditions without drastically curtailing the rate of production. I now feel that because I did not hammer them about the plant previously, solely for the reason that I knew nothing worthwhile could be done, they have accepted me as easy meat.' Allan Ibbotson also suspected that management was trying to pull the wool over his eyes by slowing production to reduce the dust levels before his visit. This fascinating exchange took place in the Victorian Supreme Court:

Barriester (Jack Rush): Your belief was that they (mine management) were conning you?

Ibbotson: Yes.

Q: Mr Ibbotson, you referred to them, Australian Elm Asbestos, as being good diplomats, and you said you had a rude word. What was it?

His Honour: We are used to rude words in these courts, Mr Ibbotson. Ibbotson: It was an expression, not a rude word. They would smile while they were screwing you.

So the Mines Department was being screwed, the Health Department was being ignored, was there no one else who might have been able to lift a finger to save the lives of all those young men? What about the union?

Most of the ex-Wittenoom workers interviewed for this book (more than 100 of them) just look blank when the subject of the union comes up. They never knew who their shop steward was. They never saw a rep. from head office. The only way they knew they were even in a union (those who could read English, that is) was when they saw the few bob a week membership dues compulsorily deducted from their weekly pay.

The union responsible for the workers was the Australian Workers' Union, an old, conservative union with its membership base in the pastoral industry of northern Australia. It did not accept Aborigines as members in Western Australia until the 1960s, and the impression you get from the Wittenoom miners is that it just couldn't be bothered, either, with a bunch of wogs up in the Hamersleys. The only record of any action the union took on behalf of its members was in 1957, when it approached the Mines Ventilation Board on their behalf. No, they weren't asking for better ventilation, they were asking for an extra two shillings (20 cents) an hour in exchange for their members putting up with the dreadful conditions. Even that was too much. The men in the bagging room, where the risk of death from dust was highest, were eventually awarded just threepence (two cents) an hour.

Right to the finish the unions were pushing for jobs at any price. When the mine was finally shut down in 1966, it was over the angry shouts of the entire Western Australian trade union movement. Its reaction was summed up in a front-page article in the union journal *The Tribune*: 'Imported asbestos, mined by the poorly-paid workers of South Africa, will (now) replace the Australian blue asbestos content of fibrolite and other such products, while hundreds of Wittenoom people lose their homes and their livelihood. The closure of Wittenoom Gorge asbestos mine by its parent company, Colonial Sugar, is seen by many workers as a bitter foretaste of the callous treatment they may expect at the whim of the consortiums and foreign companies gouging out iron and other minerals in the north-west ... The WA Trades and Labour Council strongly condemns the Wittenoom closure and the callous treatment of the unionists.' Callous treatment? This from a union that knew its men were in dire

peril, and traded their safety for threepence an hour? In reality, the closure of the mine saved hundreds, if not thousands, of lives.

As for the men themselves, without a union to protect them they were at the mercy of the company. The company was the only employer in town. One word of criticism and you were out on your ear, stuck in the middle of the desert a thousand kilometres from nowhere. One man who did dare to object to the conditions, a miner by the name of Allan Huma, suggested to the mine bosses that dust levels could be reduced by wetting down the rock before it went into the crusher: an eminently sensible precaution that would have reduced the risk considerably. For his trouble he was sacked on the spot. Men's health is (worth) more than just a bit of time to dry out a bit of fibre outside, he wrote in a plaintive letter to the Health Department.

And it was not just in their work that the miners, like the Kanakas before them, found themselves prisoners. Wittenoom was a company town in everything but name. The company controlled the houses and owned the store — which made a nice little profit jacking up prices; beer, for instance, was four times the price it cost in Perth. CSR controlled the power and the water, and ran the furniture market on which the workers depended for their secondhand beds, tables and refrigerators. You couldn't even get into the place if they didn't want you there. They would vet the passenger lists on the plane, and if someone was coming up who they thought was a troublemaker, they'd get the local copper to meet the plane, turn him round and send him straight back to Perth, says one ex-miner.

So the Mines Department was useless, the Health Department powerless, and the union more concerned with money than the safety of its workers. So, as a last resort, where were the watchdogs of the media? Apart from one brief radio report on the ABC in 1948, the now-bulging Wittenoom files in every newsroom in Australia then contained not a single reference to the place, apart from the odd gush about the scenic beauties of the gorge, or one of those 'people from all over the world living and working in harmony in the outback' extravaganzas, featuring a fruity-voiced Movietone presenter and lots of close-ups of kookaburras. In the nine years to 1977 — when the full extent of the disaster was becoming obvious — Western Australia's timid press carried just six stories about Wittenoom.

Of course, the kind of bare-fanged investigative journalism that is commonplace now hadn't been invented then, and the conserva-

tive editors of the 1940s and 1950s never would have indulged in what they would have seen as a muckraking campaign against a great and good corporation. But the real reason that the Wittenoom story was never exposed earlier is obvious: no one knew. The public servants would never have dreamed of actually going public. The union didn't give a damn. And the miners themselves had no idea what was being done to them. Anyway, who's going to fly 1500 kilometres into the desert to talk to a bunch of whingeing migrants?

The company and the government managed to keep the coffin lid on Wittenoom for years after the mine closed down. It wasn't until 1974 that a freelance writer for the national weekly the *Bulletin*, an author called Tim Hall, who has a special interest in medical horror stories, stumbled on to the story and it all began to come out. The *Bulletin's* cover story, featuring a colour shot of the red cliffs of Wittenoom and the headline IN THIS KILLER IN YOUR HOME?, sent shockwaves through the community and, as confidential documents obtained later reveal, panic at CSR.

What was the improbable clue that put Tim Hall on to the story? He was browsing through *The Lancet*, an English medical journal, when he came across a word he had not seen before: mesothelioma.

The third 6 horseman

'When I was in medical school, mesothelioma was as rare as leprosy. Now we are living in the middle of an epidemic of it.'

— Dr Donald Westphal, director of medicine in the TV series *Six Men*

She is sitting there in the doctor's office, nervously clutching the hand of her husband, who has come along to give support, a healthy-looking woman in shorts and T-shirt, aged just 31, the mother of three young children. 'What is the problem?' asks Dr Bill Musk.

'Well, I used to live at Wittenoom when I was a kid, my dad was the policeman there, and I was wondering, well ...'

She has this dry cough.

It is only a cough, isn't it? An allergy of some kind? Please?

It's the kind of consultation Dr Musk has been through 100 times before. He checks the young woman's X-rays against the illuminated screen on his office wall, he listens carefully to her chest and her back with his stethoscope. Nothing to worry about, he reassures her, but you might get yourself on the Vitamin A program that's starting up. You can see her melt with relief as she gets the news. She takes her husband's hand and walks out of the consulting room into the already steaming summer morning in Perth.

Dr Musk is head of respiratory medicine at the Sir Charles Gairdner Hospital, and that makes him the Wittenoom doctor, guardian angel — or undertaker — to the thousands of people who survived Wittenoom and are now waiting, and worrying, and wondering all these years later whether they are carrying slow-ticking time bombs in their lungs. The woman he has just examined, for instance, has heard of the death from asbestos disease of another woman, also the daughter of a policeman, who grew up in Wittenoom.

'There is a very high level of anxiety out there, particularly among the former residents (of Wittenoom). I don't think the publicity has helped in that. We have detected only six or eight cases of mesothelioma among the residents. He pauses, and then adds: 'But, of course, we don't know what's going to happen in the years to come.'

The asbestos epidemic among the miners was bad enough, but

surely the residents, people who didn't even work at the mine, who played as children in the dusty streets of the township 1.4 kilometres away — surely they can't really be at risk? And what is this tongue-twisting medi-jargon mesothelioma? Get used to the word, because we are going to hear a lot more about it over the next 10, 20, 30 years. By the second decade of the next century it will have killed nearly 800 of the men, women and children who lived and worked at Wittenoom, and killed them in a particularly gruesome way, that was both predictable and preventable during the latter years of the operation of that mine.

Asbestos, cancer, and now mesothelioma. It is the third horseman of the Wittenoom apocalypse, a turbocharged cancer that roars through the body at such a rate that half its victims die within nine months of diagnosis. It is reaching out to destroy the people of Wittenoom 30, 40, even 50 years after they left the town. There is no cure, and there is only one known cause: the asbestos CSR mined at Wittenoom, allowed to be spread around the township and exported all over the world. From being one of the rarest cancers in the textbooks, mesothelioma is now sweeping the industrial world, and Western Australia, thanks to Wittenoom, has the highest incidence of the disease on earth. It will kill more people than have so far died of AIDS in Australia, and the victims have much less hope of survival. That is why Dr Musk's waiting room is full of worried people.

The disease itself has been known since the 1930s, but it was regarded as a medical oddity, a condition so rare that even Western doctors quite literally stood more chance of seeing a case of leprosy than a patient with mesothelioma. One medical textbook went so far as to scoff at its very existence and claim that most descriptions of this cancer were the result of sloppy diagnosis. The cancer actually attacks the lining of the chest cavity, the condom-like membrane the thickness of a single cell that encases the lungs. It may also, more rarely still, infect the lining of the abdomen, so-called peritoneal mesothelioma. Either way, it spreads with extraordinary speed, it throws out secondary cancers to attack other organs, and it is inevitably fatal. No one has ever survived longer than three or four years, and most people are dead in a matter of months.

In 1952, a young South African medical researcher named Christopher Wagner, of Johannesburg, had what he calls a 'lucky break' in an assignment to study asbestos diseases. Asbestos — the white,

blue and brown varieties — had been mined on the Cape since early in the century, and was known to cause a number of diseases. Dr Wagner had been asked to report on whether there was any difference in the dangers associated with the different types. The breakthrough happened when he was called in to autopsy a black man who had been the shower attendant at a Witwatersrand mine and who was thought to have died of tuberculosis. To Dr Wagner's surprise, when he cut the man open he found 'a huge gelatinous tumour completely filling the right chest cavity'. After searching through his textbooks he came to the tentative diagnosis of mesothelioma. Within a few weeks, dozens of the lungs of people living in the mining region of the west Kimberley had turned up another 12 cases of what had been thought to be an extremely rare cancer. Dr Wagner had discovered an epidemic, but what was the cause?

The area where these people had lived was in the so-called blue asbestos mountains, a range of hills stretching for more than 600 kilometres from the Orange River, north to the South African border with Botswana. It is the only place in the world, apart from Wittenoom, with major mines producing crocidolite — blue asbestos. By 1960 Dr Wagner, who is still working on industrial health research in Wales, had discovered 33 cases of this no-larger-rare cancer. And the evidence pointed overwhelmingly to the cause: exposure to blue asbestos. His report was published that year in the *British Journal of Industrial Medicine* and circulated around the world.

Conditions in the South African asbestos industry were, if anything, even more appalling than at Wittenoom. In the 1940s, bare-foot Bantu children were put to work stomping the asbestos into sacks. A visiting doctor noted that boys as young as 12 had developed *cor pulmonale*, damage to the heart, from their gross exposure to the dust. He doubted that they would live long enough to develop asbestos cancer.

But what should have most alarmed CSIR, if it read the Wagner report, was the fact that most of the victims were actually not asbestos workers. They included a woman who had lived for only five years as a child in a village where she remembered there was a dusty blue asbestos mill, and several men who had never been down a mine, whose only exposure to asbestos was using it to insulate steam locomotives. The victims had been exposed to the dust for as short a period as three months and were dying because of that brush with death 40 years and more later. It was now established that you didn't

have to work years down a dirty mine to be killed by asbestos; innocent bystanders miles away could be poisoned by the deadly, invisible particles.

On top of the terrible dangers to which it was exposing the workforce, CSIR by now should have realised the menace to the town itself, to the 300 or 400 women and children living there at any one time. All told, more than 16,000 relatives of the workmen of Wittenoom passed through the township and, like the woman in Dr Muck's office, will have to live the rest of their lives with that word mesothelioma in their minds. It also would not have been lost on CSIR after the publication of the Wagner paper that those South African victims had not just been exposed to any old asbestos; it was crocidolite, the rare blue asbestos mined only in one other part of the world, Wittenoom. That was to turn out to be the key to the disaster.

Some years later, another extraordinary piece of research, conducted among women employed on assembly lines putting blue asbestos filters into gasmasks during the war, showed that (at least as far as mesothelioma was concerned) CSIR's blue asbestos was at least 60 times as dangerous as the white asbestos — crocidolite — that made up 60 per cent of the fibre mined on the planet. 'It is a much leaner, meaner particle,' Dr Wagner was to say.

Links between asbestos and all sorts of other cancers had been emerging from research schools and epidemiological studies around the world since the 1930s. As far back as 1938, a German doctor named Nordman identified six deaths among asbestos textile workers, referred to it as an 'occupational cancer' and went on to confirm his suspicions in the laboratory, wiping out 60 white mice in a third of their natural life span by sprinkling them with asbestos dust. By 1956, when Wittenoom still had 11 years ahead of it, a definitive survey of hundreds of asbestos workers in the United Kingdom, by an eminent physician named Richard Doll, uncovered a greatly increased risk of lung cancer. Since then, asbestos has been associated with a variety of other cancers, particularly cancer of the bowel, the oesophagus, and the stomach. But none strikes the same fear and loathing into the Wittenoom survivors as mesothelioma. Nothing is more guaranteed to break them into helpless tears and homicidal anger than the realisation that CSIR must have known about mesothelioma for years before it did anything to close the mine and pull the plug on the town.

'They knew what was going on. The doctors knew. The company knew. The only people they never told was us ... and now we are dying. I call it criminal.' This is Val Doyle, the lady we met at the start of the book, given the death sentence of mesothelioma for her 49th birthday present. Her only crime was that she was one of the dust children of Wittenoom, one of the kids who grew up there. Val Doyle's stepfather, Philip, had been one of the few professional miners at Wittenoom, heading north in 1950 to make his fortune. The following year, once he had got a government house sorted out, Philip sent for his wife Esther and his three teenage daughters. Val was just 13 when she first set eyes on the little town in the desert.

'What I remember most from those early years was the heat, the bloody heat. It was scorching. On top of that there was dust everywhere around the town from the tailings they used to dump. It was on the driveway, it was on the road, it was on the basketball court. If you fell over you got filthy. It was in your eyes, your hair, all over your clothes. I remember seeing willy-willies springing up, these great pillars of dust in the sky. That's what it was like to grow up in Wittenoom.'

The three sisters - Val, Virginia and Shirley - all met and married their men in Wittenoom. In fact, Val eloped at the age of 17, skipping off to Roebourne to wed. Ron was in charge of transport at Wittenoom, the trucks and the buses that carried the men from the township down the gorge to the mine. The couple had no complaints about their life in that remote little Outback town, but in the 1960s the Doyle's - there were now a dozen of them in the extended family, with four young children - began to drift away, back to the suburbs of Perth where the surviving members of the family still live.

The first to go was her father. He had been foreman at the bagging mill. He was diagnosed as suffering from asbestosis and died in 1970. Five years later, Val's mother went to the doctor with a dry, hacking cough and was told that she had mesothelioma. Inside six months she joined her husband in Perth's Karrakatta cemetery. Three years after that, it was the turn of Val's own husband. After lingering for two years in hospital, choking on his asbestos, Ron Doyle died. Val had lost both her parents and her husband. I thought, gee, we must have killed a Chinaman or something. Where's it all going to end? The penny still hadn't dropped.

The year after that, it was the turn of her brother-in-law Edna, one of those fine young men who came out from Italy to start a new life.

He had a difficult death, confined to bed and plugged into the umbilical cord of an oxygen supply as he battled his asbestosis and cancer. It was a relief when he slipped into his final coma. But the Grim Reaper still had not finished cutting its swathe through Val Doyle's family. The next to go, of bowel cancer, was another brother-in-law, Frank, who had been a truck driver at Wittenoom. In the space of a few years Wittenoom had claimed five members of one family, leaving three young widows, and four children without a father.

Then, in September 1985, Val Doyle came down with what she took to be a virus. Doubled up in pain, she was admitted to Sir Charles Gairdner Hospital for tests. After I had been there for a couple of days, they moved me up to a beautiful single room with a lovely view. I knew something was up - me, a public patient, in a \$300-a-day single room. Then the doctors came in, and they told me it was mesothelioma. I said 'Thanks a lot, that's a great birthday present'.

They tried a few experimental drugs. Interleukin II and so on, but that was really just for appearances' sake. It is very hard for a doctor to stand by and say that, with all the wonders of modern medical science, there is not a damn thing he can do. 'They did their best,' recalls Val's second husband, John, but she was suffering terribly; no one will ever know. She had more tubes and bottles hanging out of her than a space shuttle, but we knew it was no good. 'They were trying to put a Rolls Royce engine into a rusty old Baby Austin body'.

Val Doyle, wife, mother and grandmother, died a few months after her 49th birthday, on State election day, 4 February 1989. She too is now buried in Karrakatta cemetery. The latest toll in that tragic extended family, which used to total 20, is six dead, two seriously ill. No wonder this sad, angry lady called it genocide. No wonder her widower wants Wittenoom preserved as 'Australia's Industrial Belsen'.

Because, of course, just as CSR knew of the dangers of asbestosis before the mine ever opened, the company knew all about mesothelioma long before it finally closed it.

The only question, once the Wagner paper had been published in 1980, was how long it would be before mesothelioma turned up among the people of Wittenoom. The answer was that it had already claimed its first victim. Late in 1983, a pipefitter named Joseph Sawyer was admitted to the Kalgoorlie Hospital with a chest problem, and was given an X-ray that showed a highly-suspicious pleural effusion. Unfortunately, Mr Sawyer had better things to do than

64 BLADE MURDER

hang around to make medical history, and he went back to prospecting in the bush. He returned to the hospital again a year later, and this time there could be no mistaking that he was terribly sick. He had lost weight, was coughing, short of breath and his fingers showed the start of the ominous clubbing associated with asbestos disease. Dr McNulty, the chest physician at the hospital, by now had read the Wagner paper with great interest and began to wonder whether this could be mesothelioma. A biopsy, a sample taken from Joseph Sawyer's lungs, showed that it probably was.

Eight months later, in June 1961, the man was dead, at the age of 48, and the post-mortem showed beyond doubt what had killed him. Joseph Sawyer had become Wittenoom's first recorded mesothelioma victim. He had worked at the mill for just two years in the late 1940s. Twenty years later the fibres of blue asbestos in his lungs had erupted into this strange and virulent cancer. Dr McNulty published a report of that case in the *Medical Journal of Australia* in December 1962. But long before then, he and his colleagues at the Department of Public Health had realised the urgency of their discovery, and were writing direct to CSR's doctor demanding urgent action.

CSR's consultant physician at the time was an eminent Macquarie Street specialist, Dr H. Maynard Rennie. In September 1961 Dr McNulty wrote him a strong, three-page letter urging action (see facing page):

'...my concerns for the health of the workers at Wittenoom is caused by the number of men seriously affected by silicosis/asbestosis at relatively early ages and short exposures. These include a malignant pleural mesothelioma.' Dr McNulty said that dust conditions at the mine were worse than during his last visit, and quoted figures to back this up, showing levels up to eight times the legal limit. He warned that 'even minimal asbestos exposure, such as from road tailings' might be dangerous, and finished with this plea:

'One cannot help feeling that production (at the mine) comes first, and that the health of the workers receives secondary consideration. The primary concern of a company is to produce a product profitably, but it has been shown, time and time again, that apart from gross exploitation of labour this is best achieved when the interests and health of the workers (are) considered. The contrary, where the product is produced at the expense of the health of the worker, cannot be tolerated in a civilised community ...'

SUBJECT: 18th September, 1961.

Dr. H. Maynard Rennie,
Macquarie Street,
103 Macquarie Street,
Sydney, N.S.W.

Dear Dr. Rennie:

Dr. Hunt has kindly forwarded a copy of your reply to his letter concerning conditions at Australian Blue Asbestos Wittenoom, N.S.W.

My approach to the problem is entirely candid. I am not an engineer and my concern for the health of the workers at Wittenoom is caused by the number of men seriously affected by silicosis/asbestosis at relatively early ages and short exposures. These include a malignant pleural mesothelioma after two years as a shift boss in the mill. At an all-parallel Federal Symposium, I have visited Wittenoom on two occasions, and in my opinion, conditions in the mill were worse in August, 1961 than in November, 1958. In certain levels with a light breeze attending the dust visibility was appreciably increased. During a hand along a rail platform a cloud of black dust containing sharp asbestos fibres. Hands, hair and clothes were filthy with dust after a short 15-20 minute stay. This dust is innocuous. Collier photographs show that the mill and surroundings are enveloped in a foggy but lethal blue haze. I bring my visits most of the year when weather conditions are this. In itself, is a combination of complete failure to control. I do not see how a man and wife in their early years could avoid a two-fold or more increase in any form of silicosis if they visit the mill regularly. That extreme form of silicosis is now being seen in the mill workers. My one visit was in August a few hundred yards from the mill and saw in a smoking bloom all over the place. Then in the same trip much of the road and both margins in part of more material from the mine and the asbestos fibre are obvious.

Five permanent inspectors have prepared reports on dust conditions at Wittenoom and I would refer you to those. Further no distinction between Wittenoom, Utah and America. The 1961 dust sample of 10.0 & 10.0 C.C. was not reported in the one letter. This is very three times the previous level. A comparison of dust conditions from 1958 and the peak period is clearly allusion.

CSR is warned about the cancer mesothelioma in 1961: the mine kept operating for another five years ...

66 BLUE MURDER

Strong words. And they were followed up with an even stronger plea to Dr Renzie, from another senior Perth doctor, Dr Bruce Hunt, a former president of the Royal Australian College of Physicians who demanded 'urgent action' to improve conditions. Dr Renzie's reply (see facing page) appalled him with its smug complacency, and Dr Hunt once again tried to make CSIR realise just how serious the problem at Wittenoom was:

"... (the) Commissioner and Assistant Commissioner of Public Health both speak of Wittenoom in blasphemous terms - "a festering sore" was one of the colorful expressions which came into the conversation ... Bob Elphick, the very efficient medical superintendent of the Perth Chest Hospital, tells me that he has seen more serious chest disease from Wittenoom during the past five years than he has seen from all the goldmines of Western Australia for the past 16 years ...

I think that if the officers of CSIR, whose rather strong and self-satisfied statements to you are quoted in your first paragraph were to be compelled to look at (a patient) and hear him struggling for breath, they would be a little less satisfied ... one comes up with the feeling that either the responsible officers of the company have the catchiest instinct very strongly developed, or that the command in my letter which you quoted back to me and to which you took considerable exception, is nevertheless amply justified ... My dear Fred, this matter cannot possibly be allowed to rest. I gather from the senior health authorities that they have been trying for some considerable time to get the company to realise and remedy the situation - so far without much effect ... after examining the evidence ... I find it very difficult to believe that a reputable public company could remain in its apparently self-satisfied state and continue to allow the asbestos mining industry to go on killing men unfortunate enough to be employed in it. If the present situation is to remain unaltered, I would feel it my bounden duty to bring the matter to the personal attention of the Premier."

While this secret paper warfare was going on, a man named Brian O'Neill was happily going about his work up at Wittenoom, ignorant of the fact that he was living in a 'festering sore' and certainly unaware that 'even minimal exposure from road tailings' might endanger his health. Brian O'Neill was one of the best-known and best-liked men in the town, a tall, skinny Irishman with curly, dark hair, a terrific laugh and a bit of the brogue and the blarney of his native Ulster.

Brian O'Neill had first gone to Wittenoom in 1948, not long after

Mr. NORMAN KERRIE
P.O. Box 100, (Land)
P.O. Box 100, (Land)
P.O. Box 100, (Land)

Wesleyan Church,
155 Wesleyan Street,
Sydney

7th September 1951.

Mr. Brian Hunt,
of the Health,
and the Health,
and the Health,
and the Health,

Dear Sirs,

I have just had a conference with the officers of E.S.R. concerning the Wittenoom problem. It appears that some three years ago a lot of money was spent on improving the tailings and dust extraction at the mill and this has led to a much improved atmosphere in the town. It is suggested that it is to get too early to judge the benefits or otherwise of the improved conditions but they feel that they have gone as far as they can with the present knowledge and they are quite willing to look at any further information that may be forthcoming.

Following up meeting with the officers I am very firmly of the opinion that your statement "with doctors are of opinion that the company has not got a well developed conscience on the matter and feel very strongly that very rapid action is required" can hardly be justified by the facts. However, for my own information I shall see Allen King and I shall also ask him to send me more information about the movement of dust emanating from the asbestos industry referred to in the statement in his report, 1948.

It is not intended therefore that I should come over to Wittenoom in the immediate future. I shall certainly let you know if there is any change in plans and if you have any further information on the subject I shall be delighted to receive it. I will keep you posted.

Yours sincerely and very truly,

Yours sincerely,
(Sgd) Fred
B. NORMAN KERRIE

... And how CSIR ignored the warning!

the mine opened, when the government was busy making CSR a gift of millions of dollars worth of public works. His job was working for the Main Roads Department building the road that would link Wittenoom with Rosebourn, 160 kilometres away on the coast, and the township of Point Samson, the port from which all the asbestos was exported. He loved the life in the bush and Brian, but there was one thing missing. In 1954 he took three months off to find a bride. He travelled to Perth, chose a blushing 17-year-old by the name of Ruth, courted her, married her and carried her off to Wittenoom.

They lived there happily for the next seven or eight years, Ruth somewhat taken up with raising the first six of what would eventually be a tribe of eight children in one of those little fibro houses with its wood stove and kerosene fridge. One of Ruth's regular jobs was to back his truck under the tailings hopper at the mine, and cart 12-ton loads of the crushed rock wherever it was needed, to put on the road, the airport, the school, to drop a load off for someone's driveway. Around 33,000 tons of the stuff was provided free by CSR to anyone who wanted it. 'It was delivered to you for nothing ... it was like a bonus for being a good boy,' recalls one of Wittenoom's last remaining residents. Another says people used to surround their houses with the dusty rust-coloured gravel as a snake-alert; you could spot the tracks left by a venomous black or brown snake that might be lurking under the house. Brian, certainly, thought it was pretty useful stuff. He hadn't read Dr McNulty's letter. He had no idea he was death's chauffeur.

In 1962 the O'Neills packed up and went back to live down south, mainly because they wanted a better schooling for their kids. They settled on a small kiwi fruit and tamarillo farm at Bedfordale, a peaceful little town 30 kilometres south of Perth. But the O'Neills could never forget the friendships they made at Wittenoom, and every year for 20 years, on the Sunday closest to St Patrick's Day, they have a grand reunion at the farm, with people coming from far and wide to gather under the fruit trees with their cars and campervans and hampers of chicken and beer to swap yarns about the good old days. A bit like war veterans meeting up on Anzac Day.

And like the veterans, their numbers thinned as the years went by. Two hundred people came to that first reunion; 20 years on barely a third of them are alive. At the beginning of each gathering Brian would read out the list of 10 or a dozen names of those who wouldn't be coming that year. Some, of course, died of old age or natural

causes, but many succumbing to asbestosis, mesothelioma, and other awful cancers. Old Wilko, for instance; they knew he wouldn't make it one year.

His real name was Keith Wilkin; a true character of the Wittenoom district. Old Wilko worked with Brian on and off on the trucks, and then down the mine. On days off he used to terrify the town with his low-flying escapades in a plane he didn't exactly have a licence to fly. Rumour has it that when the aviation authorities went looking for him he buried the machine in the desert sand. He even made a joke about it when he was diagnosed as suffering from mesothelioma in 1987. He held a wake for himself, invited his mates over for a drink or three, had 100 people sign his coffin and posed inside it for the TV cameras. Christmas Day he died. The O'Neills knew he wouldn't make it to the reunion after all.

This year, 1989, Brian O'Neill won't be there either. Ruth will be reading his name out on the list of those who were unavoidably detained by death. At the age of 83, she is left a widow; those eight children and 19 grandchildren have lost a fine man.

Brian had known for 20 years that there was something wrong with his chest — asbestosis — but he stubbornly refused to give up work and claim workers' compensation. The Main Roads Department, those soulless bureaucrats again, even refused to believe there was asbestos in the tailings he had carted until a year before his death. To prove his point, Brian O'Neill and his clan made a sentimental trip back to Wittenoom, driving all the way in a secondhand, yellow Toyota Hi-Ace called the Buttercup Express. While he was there he shipped off a lump of bitumen from the road in which the tailings were clearly and visibly embedded. He sent the evidence to the Main Roads Department and it was only then that they relented. A social worker came up to Ruth O'Neill after the funeral and told her that the department had just agreed to compensation for his death, the princely sum of \$17,000. From CSR — not a red cent.

He had known there was something wrong with his chest, but, like many Wittenoom victims, he had the devil's own job getting a doctor who would correctly diagnose the problem. Victims have been told they have a virus, pneumonia, bronchitis, anything but what is inevitably turns out to be — asbestos disease. Robert Vojakovic believes some of the government doctors do this deliberately, to try and save on compensation payouts. A few years ago he set a trap: he selected a Wittenoom survivor who had been approved for compensation with

70 BLUE MURDER

80 per cent asbestos, and took him to the Perth Chest Clinic for an X-ray. The doctor put the negatives up on his screen and announced 'nothing there, come back in a year'. When Robert pointed to a dark patch and said 'Isn't that a shadow on his lung?' the doctor snapped off the light and repeated his diagnosis. The matter was brought to the attention of the Pneumonomonist Board, and shortly after that diagnosis of Wittenoom victims took a turn for the better.

In Brian O'Neill's case, the doctor came up with a beauty: it was coxioidosis, a kind of fowl disease, which he must have contracted shovelling chicken manure. Of course it wasn't. It was asbestososis, and then, in May 1988, the word every Wittenoom survivor dreads, mesothelioma. Brian O'Neill was given nine months to live, but he lasted only five.

It was a horrible way to go: his breathing became laboured, his body filled with fluid; his daughters could hear it sloshing about in his chest when he lay down. Towards the end he was so bloated that his legs blew up like balloons, and his penis became so swollen that he could not get it into the hospital bottle to urinate. He spent his last weeks lying on a chaise longue on the balcony of his home gulping oxygen from a mask. This quiet, friendly Irishman who had never smoked and barely drank, was introduced to morphine. 'I'm dying,' he used to say as the drug dulled the agony in his body. Five months later it was all over. Hundreds came to pay their last respects — the cortege from St Francis Xavier church stretched for two miles as they made their way to the little cemetery in the town of Serpentine, where he had reserved his plot.

But, of course, it wasn't all over. Not for his wife Ruth, who knows that the dust she inhaled all those years ago was so deadly that some women have contracted mesotheliomas simply from shaking and washing their husbands' dirty work clothes. And not for the six children who grew up at Wittenoom. Like Val Doyle, they played in the dust, they built little castles out of it, they were in contact with the stuff every day. 'It is a cloud that hangs over us all,' says Ruth O'Neill. 'We used to talk about the dust, but no one took it very seriously. We didn't know about mesotheliomas then ... it was your job, and you got on with it. We looked at the mine management, they lived in a settlement much closer to the mine, and we thought "well, if they are exposing themselves to it, it must be all right". If only we'd known, if only the company had told people. CSIR is a dirty word in this household.'

THE THIRD HORSEMAN 71

Because, as we know now, the company had known that the tailings were dangerous, that the by-product of its mine could be poisoning the town 14 kilometres away, endangering the health of the thousands of people, men, women and children who would come to live there. Dr McNulty can swear to that. He told the company's managers that it was dangerous, he wrote to the company doctor. And it didn't stop there. The local council had been warned at least a year before the mine closed that the tailings were so deadly they could even threaten tourists who came to the town.

Frank Sheehan was the Local Authority then, Secretary of the Shire of Tableland, an area the size of England with a population of not much more than a thousand. He was also the undertaker, the magistrate and the vermin control officer. Every month he had to send the crop of dingo scalps down to Perth to collect the bounty. Now living in retirement in Perth (and, ironically, also 10 per cent disabled by asbestos), Frank's memories of Wittenoom are of a wild West town of wide verandahs with hitching rails, men in broad-brimmed hats and a generally laid-back attitude to life.

Around 1965, the Wittenoom doctor, a part-time explorer named Gordon Oker, who named many of the peaks and ravines in the hinterland ranges, had written to the Mines Department physician in Kalgoorlie to find out once and for all whether the stories they had been hearing for years about the dangers of asbestos tailings were true. The letter came back, from a Dr McGuire, and was passed on to the council. It left no doubt at all in Frank Sheehan's mind that the dumping should be stopped.

The letter referred to the link between lung cancer and mesothelioma that had by now been conclusively established around the world, and to the fact that it was now emerging that the crocidolite, the blue asbestos mined at Wittenoom, was the most dangerous kind.

The original objection to the use of mine tailings for road surfacing was that the miners were exposed to heavy dust concentrations at work, and it seemed a reasonable precaution to advise against the use of tailings for this purpose on the grounds that the miners should not be exposed to harmful dust during their leisure hours as well ... It seems to me, then, that the causal exposure of the townspeople and thousands of visitors is undeniable, at least.

Maybe the warning wasn't tough enough. Or maybe the fact that Oggle Allan, manager of the mine, was also president of the shire had

something to do with it. Frank Sheehan isn't sure. Either way, the warnings were ignored, and CSR continued to hand out its tailings to anyone who wanted a truckload. "You can blame it all on the invention of the limited liability company. No one to kick, no one to damn," says Frank Sheehan. Philosophical words for a man who now has been diagnosed as suffering asbestosis. They even shot the sheriff.

Back in Dr Bill Musk's office, a beeper goes off and he grabs for the phone. It's another Wittenoom patient, he explains as he rattles along the corridors and down the back stairs to the basement. Actually, it's an ex-patient. He is lying on a slab in the morgue, his flesh that yellowish, waxy texture of the recent dead; a man in his sixties, a former miner. His body has been excavated, and his organs, his lungs, heart, liver and lights are lying on the dissecting table. The young pathologist slices through the effel to show Dr Musk the extent of the cancer: mesothelioma, no doubt about it, but also tumours on the surface of the liver, and yellow cancerous nodules along his small intestine. It's a wonder he lived as long as he did, resisting the multiple invasion of his body for 18 months. Dr Musk orders some further tests, and gallops back to his office where the patients are piling up.

It's ironic that the Sir Charles Gairdner Hospital, sprawling around an 80-hectare (200-acre) campus beside a lake a few kilometres from the centre of the city, should be the medical front line in this epidemic of asbestos disease. When it was built 30 years ago, it seemed like the wrong hospital at the wrong place in the wrong time. It was part of the Commonwealth Government's belated war on tuberculosis, a great sanatorium and treatment centre for the victims of last century's greatest lung scourge. But by the late 1960s, TB already had been virtually eradicated in Western Australia, and it looked as though the hospital was going to be a white elephant.

And then along came Wittenoom. When Bill Musk first did his rounds here 20 years ago, it was asbestos. Today, it is the victims of malignancy that fill his wards: lung cancer, mesothelioma, and other cancers like that of the stomach that are more common in people exposed to asbestos dust. The wards are full, there are long waiting lists at the outpatients' clinic, the hospital is stretched at the seams, because it is not just the Wittenoom workers with whom Dr Musk and his colleagues are dealing, it is everyone who came into

contact with the product all the way down the line. The dockers who lugged the dusty 100-pound bags off the boat at Fremantle, the power station workers like Rolf Harris's father, the people who worked in Perth's asbestos fabrication factory, the railway men who installed it as insulation on the trains. All are at risk of asbestos disease. No one is safe.

On top of all this are the 20 to 30 per cent of mesothelioma victims against whose names 'no known exposure' is written. It could be that busy doctors haven't had time to ask about or record the patient's work history. But in many cases the truth with asbestos has been so slight, so long ago, that the victims just can't remember. The *British Medical Journal* reported on the case of two elderly slavers who both died of mesothelioma. A lengthy and detailed questioning could find only one explanation. Many years earlier they had both got up on the roof of a shed to scrub away moss with wire-bristled brushes. The roof was made of asbestos.

Or it could be, most ominous of all, simply the air we breathe, with its ubiquitous burdens of tiny, invisible fibres, that is driving the mesothelioma epidemic. Random autopsies in Melbourne routinely show 50,000 asbestos fibres in every gram of lung tissue of people who have never worked with the stuff. It is found in the lungs of newborn babies.

Patient number two on Dr Musk's list this Friday morning has no trouble remembering where he was exposed to the deadly blue dust. He's an Italian, a man of 53, and he worked for three or four months in the dust hell of the Wittenoom bagging plant. Dr Musk peers at the charts. Is that a bit of pleural thickening, the first sign of trouble? He places the stethoscope on the man's chest. Yes, there is definitely a bit of crackling there. It could be bronchitis ... or it could be the start of something else. He signs off slips of paper for a battery of further tests: heart, lung capacity, more X-rays. Bye you in a week or two.

The third patient is another woman, another ex-resident who lived in Wittenoom after the mine closed down, running the local store for Lang Hancock when he bought the place back from CSR. Two of her kids were born there, and, yes, of course, they were all aware of the dust. Dr Musk goes through his routine. Everything is normal. There is no need to worry. The woman is so eager to hear the news that she repeats his sentences after him to reinforce the diagnosis. She knows that for the rest of her life, whenever she has a health worry, whenever her children get sick, she will be back here

74 BLADE MURDER

at the hospital, wondering whether this time the dust of Wittenoom tickling away in her lungs is about to explode into cancer.

The tragedy for Dr. Musk and his colleagues around the world is that in the 20 years or more they have been battling the mesothelioma epidemic, nothing, absolutely nothing, has been discovered to postpone the inevitable death, let alone 'cure' the cancer. Only the toughest of patients survive as long as three or four years; the average time between diagnosis and death is just nine months. The only real boon to the victims from those years of research is that, at Sir Charles Gairdner Hospital at least, they have halted some of the more horrific treatments that were found to be not only expensive and painful, but ineffective: like removing lungs by surgery or bombarding the patient with massive doses of radiation. Interferon II, an anti-cancer 'wonder drug', was tried for some time with patients like Val Doyle, but (at the time of writing) the results have not been very promising. The bottom line is that a cure for mesothelioma is as elusive, or so far away, as a cure for any other cancer. All modern medicine can really offer is the painful and messy relief of draining the chest of the fluid that builds up, and pain-killing drugs to ease the final agony. Treating mesothelioma victims is an exercise in death management, not disease control.

About the only upbeat project afoot at the hospital is a pilot program to provide free beta carotene (Vitamin A), also known as retinol, to some 2000 former workers and residents at Wittenoom. It is hoped that this will somehow delay the onset of cancer, although scientists overseas are highly sceptical. But even this token program — it will cost \$118,000 in its first year — is threatened by the tightly-squeezed health budget. There are hundreds of millions of dollars being spent around the world on the search for a cure for AIDS, while low-profile specialties like asbestos disease have to battle for every cent.

But it is a crisis that sooner or later will have to be addressed by government if this great leaching hospital, with its 700 beds and its \$110 million annual budget, is not to be overwhelmed by the man-made epidemic of Wittenoom. The cost of treating each mesothelioma patient — more accurately, the cost of managing his or her death — is around \$50,000. (See facing page.)

If the latest estimates by the National Health and Medical Research Council are anywhere near the ball park — they predict nearly 1000 new cases of Wittenoom-caused mesothelioma and lung cancer

THE THIRD HORSEMAN 78

over the next 30 years — it will be a bill of \$60 million. Hardly surprisingly, many people in the medical profession are wondering what CSIR's contribution will be to this budget-breaking drain on the country's health system. Who should pay the bill for this greatest of all industrial disasters?

That question has been around for a long time, since 1977 to be precise, when a man named Cornelius Mans decided he wasn't going to sit around and wait for his mesothelioma to kill him.

ASSESSMENT OF MEDICAL COSTS FOR MR. MANS

This estimate is based on the likelihood that Mr. Mans will survive for 18 months from the present time. The immediate survival for patients with mesothelioma from time of presentation is 3 months but Mr. Mans has some favourable prognostic indicators: large, current well-being, absence of rapid degeneration (p-delta), it is likely that he will develop increasingly protracted pain which will require analgesics and possibly surgical procedures, such as epidural nerve blocks and radiotherapy to palliate. He will require increasingly frequent outpatient clinic attendance and ultimately terminal care in hospital.

Estimated Costs - 18 months

Three monthly routine outpatient clinic attendances & visits at \$54 per visit	544.00
Three monthly pain chart x-ray examinations at \$78	234.00
Epidural alcohol nerve block with top ups for pain control	400.00
In-patient hospital care:	
For terminal care 3 months at \$175 per day	5175.00
Outpatient anaesthesia 3 days at \$175 per day	525.00
Palliative radiotherapy, 31 days at \$175	7875.00
Analgesic drug therapy	2000.00
Palliative radiotherapy, 15 fractions over 3 weeks	600.00
Cytology, pathology, biochemistry and haematology tests	1000.00
	\$40344.00

Death's last account: the cost of treating a Wittenoom victim.

7 Death on the courtroom steps

'...Imagine the headline: CSR clears conscience with \$5-a-week payment to widows.'

— CSR internal document arguing against compensation

They met on the dance floor at the Dutch Club in Perth and it was pretty much love at first sight. Reike was just 21 and Cornelius Mease a year older, two young Dutch people not long off the boat, starting life in their new land with lots of hope, but not much money. Cornelius had been working on a farm, and back in 1967 you were lucky if this sort of labour brought in £5 a week. So, to build up a grubstake for his marriage, young Cornelius headed off north, where so many of his countrymen had boasted that there was big money to be made. In four months he was back in Perth with his dowry to claim his bride and take her to her new home — in Wittenoom.

'It was hot, it was dusty, but I was happy there. I would have been happy anywhere. I was just married. I was in the prime of my life ... oh, I was so happy,' Reike remembers. Cornelius had a tough, dirty job in the mill, working the late shift that finished at midnight. 'I always used to wait up for him and we would have some supper together. I remember one night as I was sitting there, I heard the dog barking, and I went out to see what was wrong. There was this strange man walking up towards the house, an old man with grey hair. It wasn't until he called out to me that I realised this was my husband. He was so covered in the dust that I didn't recognise him, even the dog didn't recognise him.'

But still, the money was good, very good, and Cornelius and Reike Mease probably would have stayed at Wittenoom for many years if it hadn't been for an odd allergy. In 1969, not long after her first child was born, Reike developed a type of asthma — spinifer fever, the locals used to call it. She was allergic to the pollen from the spiky tussocks of desert grass, so allergic that she finished up in hospital. Reluctantly, Reike and Cornelius packed up their possessions and moved south to Perth, where Cornelius began a spray painting business, and Reike settled down to raising two more children.

She was always short of breath, he felt very ill, but the doctor kept

DEATH ON THE COURTROOM STEPS 77

saying 'It's just a bad dose of the flu, don't worry about it.' It was now 15 years since Cornelius had left Wittenoom, and the legacy of asbestos dust in his lungs was maturing. Finally, he insisted on an X-ray, and when the results came back, a new word entered the Mease family vocabulary: mesothelioma. Cornelius had never heard of it and never suspected that the dust he was breathing could kill him. He would never have gone there to work in the first place if he had, would he? But in the nine years since the Wittenoom mine had closed, knowledge was growing of the full extent of the medical epidemic now well and truly under way. After Tim Hall's 1974 cover story in the *Bulletin* — and a series of reports by a journalist named Matt Pocock on the ABC's 'Broadband' and 'This Day Tonight' programs — the public at last was starting to realise what was going on. But Cornelius Mease remained in blissful ignorance until he received what amounted to a death sentence. He took it stoically, but Reike, who by now had three young children tugging at her apron strings, was devastated.

In 1980, long after it knew of the connection between blue asbestos and the disease that would eventually kill Cornelius Mease, CSR finally, but reluctantly, gathered its workers together after the last shift of the week before Christmas, and gave them all the sack. 'The mine was closing down, and the mill; it was Wittenoom's death sentence, and many of the men just grabbed their last pay envelopes, packed their belongings and left.'

Ironically, it wasn't the dreadful danger that lurked in the mine, or the fear of the enormous damages it might have to pay to atone for them, that forced CSR to shut it down. It was simple economics. For most of the years it had been operating, Wittenoom was a hole in CSR's balance sheet. In only one year (1981) did the mine pay a dividend, and that was a paltry \$364,200. By 1988, the miners were chasing an ever-diminishing thread of asbestos deep into those red quartz cliffs, and the company estimated that it would cost \$2 million to relocate the mine at a new deposit nearby, and another \$1 million to upgrade the town. It was money CSR's board, sitting across the continent in Sydney, didn't want to spend.

Right to the end, all those promises of fancy new machinery to eradicate the dust menace never eventuated. Just two weeks before the closure, a man named Gerold Meier from the Commonwealth Health Department became the first government official to inspect, and report with horror, on conditions at Wittenoom. According to

Internal CSR documents, he condemned 'inappropriate and inadequate equipment and dust control procedures, and had been heard to say that the standard of housekeeping was atrocious. There is a strong implication that ABA [Australian Blue Asbestos] had been negligent'.

And that was exactly what Cornelius Mass thought when he had time to absorb the news that he was a dying man, although, of course, he knew nothing about that report; the Wittenoom Papers were still clutched tightly to the bosom of the WA State Government bureaucracy. First, he travelled to Europe, back to his home town of Leyden to say a tearful farewell to his relatives still living there. Then he went to see a solicitor.

'Cornelius was a very determined man,' says Raika. 'He didn't want to bludge on the government, he thought CSR should compensate him, he said they were criminals and they should be made to pay for their crime.' On 24 June 1977 Cornelius Mass became the first Wittenoom victim to sue the CSR subsidiary that operated the mine, which by now had been renamed Midalcroft. (All over the world companies were scrambling to remove any reference to asbestos from their names, and so Australian Blue Asbestos Pty. Ltd. had to go.) It was day one of what was to become the greatest series of product liability lawsuits in Australian legal history, a battle that was to last 11 years and consume more than \$20 million in legal costs alone, as hundreds of furious Wittenoom victims pursued one of Australia's largest public companies through the corridors of courts across the country, seeking justice for the death and damage of Wittenoom.

In the CSR boardroom in Sydney's busy O'Connell Street, the writ set off the fire alarms, and a damage-control team of senior managers was at once dispatched across the continent by jet to assess the danger and plot defence strategies. In fact, the company had been aware for some time of the time bomb sitting under its balance sheet. In the years since the mine had closed, the toll of Wittenoom victims had been mounting. The State Government Insurance Office — which runs the Western Australia's workers' compensation scheme, as well as having been CSR's liability insurer at the mine — had been deluged with claims from the Wittenoom workers, those 'wrecking wrecks', as one SGIO manager referred to them. By 1975 it had more claims from Wittenoom than from all the State's other mines put together: 175 men suffering from asbestosis, cancer and mesothelioma, 11 cases of which by now had come to light. The Wittenoom death toll

had already reached 27, and the SGIO was sending out \$16,000 a month in compensation cheques to the survivors. If it was alarmed enough when it estimated the eventual toll at 300, what would its reaction be a decade later when it discovered the final figure would be 2009 men condemned to death and disabling illness from this one workplace?

CSR's thinking at this time of corporate peril has become clear thanks to a journalist named Michael Gill, who in 1989 was working on a networked television finance program, *Business Sunday*. From the back of a fast-moving truck, which is all he is prepared to say about his sources, came a pile of documents a foot thick that he used as the basis for a devastating documentary. Those documents show that in 1977, when Cornelius Mass filed the first writ against the company, CSR could have chosen to quietly settle the claim — and the other claims that would inevitably follow — for an amount far smaller than the payout it is now confronting. And there would have been another bonus: the company could have avoided the damaging publicity of a string of show trials, and fulfilled what some of its managers were by then arguing was its moral obligation to the victims of Wittenoom.

Within days of the writ being issued, CSR managers were sitting down with the SGIO in Perth arguing that Mr Mass, and the victims who would follow him, should receive compensation.

'We stated a belief that early settlement would be desirable for both SGIO and CSR,' said a minute of that meeting. 'CSR believes there is a moral obligation for someone to pay Mr Mass a reasonable sum as soon as possible, and before he dies — his solicitor believes this is only six months away.'

Like the canny Scot who founded the company a century before, CSR's managers were keen to minimise the amount it would pay. A strategy paper that went to the company's general manager later that year said:

'I think we have, and will continue to have, an obligation (moral or humanitarian, only minimally financial) to find out who was hurt, and whether we can help. We can't just turn our backs on the situation ... workers' compensation payments in Western Australia ... are not generous. Have we some kind of obligation to support a case for increased compensation? If we put such a case to the WA authorities, they would ask if we, too, were prepared to contribute. Our answer could quite properly be 'yes, we would help in a supplementary way, and within limits ... to

NO BLUE MURDER

do so would expose us to a risk we could be accused of subverting culpability and obligation. But we should accept that risk, I think.

Years later, that document was unearthed by the next generation of CSR lup brass and sent to the company's lawyers with this handwritten comment scrawled in the margin: 'This is an excellent analysis - pity not more of his suggestions were taken up.' Because, of course, CSR finally chose the low road of litigation. For the following decade it would spend millions fighting the Wittenoom victims through the courts, angrily denying that it knew of the dangers of Wittenoom, claiming that it had done everything it reasonably could to minimise the dangers of that deadly dust, denying above all that it had been negligent in any way, shape or form. 'Going back over the history, I have found that the picture is completely different from what the popular press has led people to expect,' one of the huge teams of lawyers hired by CSR was to say in an interview. 'It has been claimed so often that the company was generally rapacious, and used workers as cannon-fodder ... I am afraid the real story is only going to come out in court.' How right he was, though not quite in the way he expected.

On 4 July 1977, less than a month after he issued his writ, Cornelius Meas saved everyone a great deal of trouble. He died, aged just 41. He hadn't had even the six months' life in him that his lawyer expected - only 10 days, in fact. Reike was left a young widow with three small children, and a few days after the funeral she got this letter from the SCIO: 'It was noted with sincere regret that your husband passed away on 4 July, and on behalf of the SCIO I extend my sympathy to you on your sad loss. Due to the death of Mr Meas, it will be necessary to terminate the fortnightly compensation cheque ...' To CSR, the same bureaucrat wrote with evident relief that the death of Mr Meas meant that '... the potential common law claim would seem to have been resolved'. Mrs Meas was left with raising her family on her own.

The pressures on CSR to forget all this nonsense about corporate moral obligation, so the Gill papers reveal, was coming from two directions. The SCIO was obviously in a blue funk about the potential enormous workers' compensation alone. At these early meetings a decade ago, it estimated that if, on top of this, common law claims were successful, the bill would end up anywhere from \$16 to \$30 million. For those cases after 1959 (that was when the SCIO covers for the Wittenoom workers, which had previously been limited to

DEATH ON THE COURTROOM STEPS 81

\$2000 a head, because unrestricted), the government insurance office would be responsible. Little wonder it urged CSR 'not to be generous' in any help it offered to Mr Meas's widow. The insurers were opposed even to a plan by CSR to use social workers to conduct a quiet survey of the known Wittenoom victims. They did not like the idea ... it would be like stirring with a big spoon. It would get known. It would encourage more claims. It would be misrepresented by the press. If CSR helped anyone, the SCIO said, you could imagine the headlines: CSR CAUSES CONCERNANCE WITH \$4-A-WEEK PAYMENT TO WIDOW and CRUCIOUS TRAIL FROM ITS COMPANY, said the memo.

The other pressure group was the legal profession, which some would say had a vested interest in a long, drawn-out fight in court. In fact, over the years, the barristers CSR and the SCIO hired to fight its case were to make a great deal more money out of Wittenoom than any of the victims. CSR's own lawyers in the West were the long-established firm of Robinson Cox, one of the largest in Perth. Right from the start, it was advising that even if CSR did choose to fight, it might not win in the end. Mr Harvey (a CSR executive) suggested that we explore a defence against the charge of negligence. It is understood that, in Robinson Cox's view, we could not sustain that defence,' says a file note from later in 1977. So CSR decided to get a second opinion, from another eminent firm of lawyers, Frechill, Hollingdale and Pegg, in Sydney. This is the essence of its advice, in a letter dated the following February:

'Although we have sympathy for, and can understand the emotive moral and humanitarian feelings which are very evident in your papers, we are of the view that there are substantial legal barriers to the overcompensation by the claimant. Therefore, in corporate best interests, any move outside the legal "fortification" should only be undertaken after lengthy deliberation, and in the light of far-reaching consequences ... The philosophy of the CSR group and its executives in their regard to moral and humanitarian obligations towards employees is recognised. Nevertheless, in the interests of the group as a whole, those liabilities must be pursued until the situation becomes clearer, even if, in the meantime, some ex-employees and/or dependants suffer some detriment.'

This advice was to become the cornerstone of CSR's strategy to defeat the Wittenoom victims, and at first it was mighty successful, thanks to the savage speed with which mesothelioma dispatches its victims. Half of them are dead within nine months, remember, and in the context of the lumbering Australian legal system that is just

82 BLUE MURDER

the blink of an eye. It takes on average about two years to just get a case before the country's crowded Supreme Courts. As the years went by, victim after victim trying to extract justice from CSR died, almost literally, on the steps of the court. The company, quite simply, had too much to lose by giving up without a fight, and it was now coming to terms with the dreadful secret it had protected all those years:

'From discussions with John MacVillie in Canada, and later with Cape Asbestos, we were always aware of some danger from inhalation of asbestos dust or fibre. Initially, we understood this to be similar to silicosis, but later (we) heard of asbestosis and other related diseases, says the most damning note on those company files.

There must be something about the Dutch, because the next Willenoom victim to dare to take on the mighty CSR also had a Dutch connection. Joan Joosten was her name, a Perth woman who married into a Dutch emigrant family. In 1979, when she was 61, she became the second person to take her case to court. Her courageous fight for justice captured the imagination of the West, and her memorial in the little cottage that bears a plaque inscribed with her name, the Joan Joosten Centre, the headquarters of the Asbestos Diseases Society.

Like Cornelius Meas, Bert Joosten had migrated from Holland just before Christmas in 1948. Like Cornelius, he met his bride at a party, a picnic actually, and went north to Willenoom to make some fast money for a start to married life. In 1950 he returned to Perth, married, and took his blushing bride back to Willenoom. Bert was working as the foreman in the asbestos bagging mill, and young Joan landed a job as company secretary, working from the tin office across the road from the mill. In the three years they lived and worked in Willenoom, both were exposed to heavy concentrations of the deadly dust. Bert worked all day in the blinding clouds of dust in the mill, and the dust blew across the road to Joan's office, where it hung in the air and dangled in skeins from the flywire windows. 'It was shockingly dusty, anyone could see that. But they told us it was clean dust—you couldn't get silicosis from it. We had never heard of asbestosis, of course.'

The Joostens returned to Perth in 1963 when their first child was due—they didn't trust the primitive medical facilities at Willenoom—and it was 25 years before they realised they were in trouble. Joan

DEATH ON THE COURTROOM STEPS 83

was hanging out the washing when she felt a sudden pain in her chest. Her husband insisted she go along to a clinic for a chest X-ray. When they got the results back, they didn't sit her down and give her a cup of tea or anything, they just said 'it's mesothelioma'. She knew it was a death sentence... she went wandering out into the street, crying. She nearly got hit by a car... she was in a terrible state.'

When she recovered from the shock, Joan Joosten decided to fight—the disease, and the company that had exposed her to the killer dust. She had been given only six months to live, but she survived for nearly three years. As her weight slumped from 12 stone (78 kilograms) to a skeletal five stone (32.5 kilograms), Joan Joosten battled CSR with an extraordinary determination. Her husband sold his lunch supply business to finance the litigation and stay by her side. By 1979, she had beaten all the medical odds and become the first of the Willenoom victims to live long enough to actually have her day in court.

'They fought us all the way—they fought us with money, and they fought us with lies. CSR spent \$60,000 on that case... we didn't have anything like that. And all those documents that the Mines Department had hidden... if they had been available it might have been a different result,' Bert Joosten said. Bert and Joan sat in the Supreme Court at the end of the trial and heard the judge, Justice Wallace, intone: 'I do not condemn as negligence that which, in my opinion, was a sad misadventure.' He threw out the case. Bert Joosten sat there stunned: 'I was shocked, I felt like screaming out "you are wrong, you are wrong". But instead we decided to appeal. The lawyers were sure we had a pretty good chance.'

Of course, Justice Wallace could have had no idea of the incriminating contents of that horde of documents, the Willenoom Papers, which were not to emerge until many years later. But, even with the evidence that was available then in that scrappy little case (by the standards of the many trials that were to come), many lawyers believed the judge was wrong, and that Joan Joosten should appeal. This she did, and the appeal was listed to be heard in the WA Supreme Court at 10 in the forenoon of 10 March 1980. By now Joan Joosten's suffering had become so acute she had been admitted to hospital. Just a couple of hours before the appeal judges were to hear her case, she died. Perth had another widow, and CSR had saved itself the expense and the risk of another trial. Her ashes were scattered under a palm tree overlooking Green Mount in a nearby

national park where Joan Josten had loved to go bushwalking. In the years to come, no fewer than three of the four women who laboured over the ledger in that filthy little tin shack near the mine would die of mesothelioma.

As for Bert Josten, on top of losing his wife, the litigation had left him just about broke, and with a teenage son to look after. 'I was a pauper ... I had to borrow right, left and centre,' he remembers. One day, he went to the lecture hall at the University of Western Australia where CSR's general manager of the day was due to give an address on 'Living in the year 2000'. After he and some of the other Wittenoom victims threatened to disrupt proceedings, the CSR executive agreed to meet them later. 'He told me, "Look, if you ever want any help, contact me and I'll do what I can". Some time later I was hoping CSR might lend me some money to help me get back into business, and I did write. He never even bothered to reply to my letter. That's the sort of people they are ... they just job you off, they don't give a hoot for the people of Wittenoom.'

Twelve long years later, John Gordon (from the Wittenoom victims' legal firm of Slater and Gordon) was still waiting to plaster the headline 'SOOTY WIDOWS' with DAMEL on his office wall. Bert Josten by now had developed pleural thickening, often the forerunner of asbestosis, and was having trouble sleeping. The company, more than 10 years after his wife's death, offered Bert \$75,000. He knocked that back. He wants only \$72,000, just compensation for the three years he had to take off work, and the \$12,000 it cost them to fight the case. But he demands interest on it, and that works out to nearly \$200,000. 'I am not looking for a handout. I just want compensation for the loss I suffered,' says Bert Josten. More than 30 years after the mine closed, he was just one of 200 Wittenoom victims still waiting in vain.

As for CSR, breathing a sigh of relief, the company set about repairing its public image by establishing a trust fund to help the Wittenoom victims. The amount it thought an appropriate endowment? Three million dollars, just \$1500 a head for the 2000 people who would die because of its negligence. It is hard to gauge how effective the Wittenoom Trust has been, because details of its income and expenditure are kept secret, even from the victims. Only about 200 people are believed to have received any benefit at all, and then it was nickels and dimes — a few dollars to repair a roof, an interest-free loan

for a car, a motorised golf buggy for a victim too debilitated to even walk around the 18 holes of a golf course. The trust has become an object of suspicion and derision by the victims who have joined the Asbestos Diseases Society — hardly surprisingly, in view of the comments of one of its trustees a few years ago.

The trustee was a man named Joe Leherwood, a union man in fact, compensation officer of the Australian Workers' Union in WA. In an extraordinary interview with Perth-based freelance journalist Jan Mayman, he said that the trust's backlogs of about \$1500 a time were 'not bad when you're destitute'. He then went on to announce that the union was not going to help any of the victims. 'If anyone is thinking of suing and expecting the AWU to pick up the tab they have got another think coming.' And to questions about victims who had been refused assistance, he said this: 'The Wittenoom people come in here whingeing and groaning, but we have to be kind. We have a responsibility to use the trust's money wisely.'

Indeed. At the time of writing, the trust had been so wise that, according to its secretary/manager, the Perth accountant Peter Forbes, it had invested around \$700,000 of its endowment. Mr Forbes appeared particularly pleased that it had made a \$200,000 'killing' on the stock exchange. He was not at all perturbed at criticism from Robert Vojakovic and other members of the Wittenoom survivors' society, and their belief that the money should be given to the victims. 'They have a different approach. They are one of the most successful lobby groups in Western Australia. Robert has been yelling from the rooftops ... and now the pendulum has swung,' said Mr Forbes.

But it was a different story a few years back. The third victim to sue CSR, but despair of ever receiving adequate compensation, was Oscar Penella, another of those fine young men from Italy whose lungs, so he believed, had been crippled by the blue dust of Wittenoom. He took legal action in the autumn of 1984, but his case never proceeded because of some suspect legal advice. Then came Rino Pedrotti, another mesothelioma victim. By now, the Western Australian legal system had begun to realise that there was an urgency about these Wittenoom cases, and a bedside court was convened to hear Rino Pedrotti's testimony in hospital, on the morning of 10 February 1986. A few minutes after midnight, Rino Pedrotti died. The legal strategy was working like a dream, from CSR's point of view.

And in all probability, it would have continued to work if it hadn't been for Robert Vojakovic, the Croatian miner who had gone to work at Wittenoom. During the war, his family had been split up and displaced, and he had been trying to emigrate to make a fresh start in life. He applied to every country he could think of: America, Canada, Argentina, even South Africa. Everyone rejected him, until in 1961 the Australians said okay, and just past his 21st birthday Robert Vojakovic found himself stepping off a ship at Fremantle harbour. He began hunting for work, and a couple of months later some crooks from the Croatian Club tipped him off that there was good money to be made up north at Wittenoom. Vojakovic went down to the company's office on St George's Terrace and was signed up on the spot.

That Christmas Eve, when he had been at Wittenoom for just three months — living with the other single men on Death Row, and working on the back-breaking grizzly — Vojakovic stood watching some of the workers whiling the time away with a game of cards. It was poker, and although he had never played in his life, Vojakovic asked to be dealt in. That game quite probably saved his life.

They played all night, and Vojakovic had a dream run of luck. By the morning he was £400 in front, a great pile of greasy pound notes sitting on the table in front of him, more money than he had seen in his life. He took his mates for lunch in the pub, packed his swag, and berthed the airline pilot with £750 to smuggle him on to the flight south to Perth that very day. Robert Vojakovic turned his back on Wittenoom. His mates turned out to be losers in more ways than one: today, most of them are dead from the dust.

Back in Perth, Robert Vojakovic took up taxi driving, and studied for an accountancy degree. He thought little about his three-month adventure at Wittenoom until nearly 20 years later when he read in the Perth newspaper of, first, the Mass case, and then the tragic death of Joan Joosten. In 1979, a little self-help group of former Wittenoom workers, the Asbestos Disease Society, had been founded as a social network, and to give what help it could to people in their long, losing struggle against CSR. Four years later, Vojakovic took over as president of the ADS, and things began to move.

The society, which operates from that little bungalow named after Joan Joosten, now has around 1,600 families on its books. Every taxi driver knows the place. You can hardly miss it, because of the huge black and white flag emblazoned with a skull and crossbones that

fles from a pole in the front yard. The flag flies at half-mast when one of the members of the ADS dies; that is most days. The death toll from Wittenoom at the time of writing was approaching 500, 100 of them from mesothelioma alone.

The society is well-known in Perth, respected as a highly vocal, extremely effective organisation, although Vojakovic has gained the reputation of being a touch paranoid among the journalists he badgers constantly to run Wittenoom stories. If that's true, he has every reason to be: since he took over the society, there has been an extraordinary flurry of tricks campaigns run against it and its members. There have been burglaries (Rino Pedrotti's house was broken into the day of his funeral), documents have been stolen, and there have been all sorts of anonymous threats. A few years ago victims were lashed by private detectives, and there was even an amazing extortion attempt: someone delivered to the Perth Daily News a tape-recording threatening to assassinate the entire Western Australian Cabinet unless each Wittenoom victim was paid \$3 million. The finger of suspicion, of course, was pointed at Robert Vojakovic, and the police raided the society's office and the homes of some of its committee members. No one was ever charged, and this book makes no suggestion that CSR was in any way involved.

In spite of this harassment, the organisation has achieved some extraordinary success by its persistent lobbying. It was the ADS, remember, that none too subtly persuaded a Premier to have his bureaucrats yield up the secrets of the Wittenoom Papers; it was the ADS that pressured the government to change the law to allow the victims to sue long after the legal cut-off time for a writ, which (under the Statute of Limitations Act) was six years after the date the damage was done; and it was the ADS that finally wrung from the Western Australian government the money — eventually more than \$1 million — that would be needed to successfully fight CSR on its own chosen battleground: the courts.

Because in spite of that judgment in the Joan Joosten case, in spite of being outgunned by the enormous resources CSR was about to throw into the litigation, in spite of all the legal obstacles to success (and there were many and formidable), Robert Vojakovic and his society were determined to fight on until they won. They knew that, somehow, it could be done. They had been watching what was going on across the Pacific in the USA, where another great asbestos company stood at bay, with its victims tearing at its throat.

8 The conspiracy

'A cover-up grimmer than anything Richard Nixon could have dreamed of.'

— US attorney Ronald Motley

'They're coming back.' The official stands at the door of Court 408, calling out to the little huddle of people sitting on benches in the apartment lobby of the Middlesex County Court. The lawyers gather up their papers and hurry inside to take their places at the long bar table. Judge Thomas Mason arrives to preside. Francis Komenda takes her husband's hand. 'It won't be long now, honey,' she says.

This is it: the moment George Komenda has been waiting for through all those years of pain. A pleasant, grandfatherly man — he's now 67 — with a New Jersey drawl, George Komenda worked most of his life at a nearby factory owned by the Planktoda Corporation, making the sheets of asbestos siding that coat so many of the little hot houses round about and the asbestos shingles on their roofs. Twenty-five years he was there, just an ordinary working Joe, until cancer forced him to retire.

This is not mesothelioma or cancer of the lungs, the disease you might expect from half a working lifetime breathing asbestos dust: what Mr Komenda had was cancer of the bowel, the large intestine to be precise. The first contracted it more than 30 years ago and was whisked into hospital where surgeons removed seven feet of his intestine, and gave George only five years to live. He beat the odds, but at the cost of two more bouts of major surgery: in 1970 they removed some more of his colon, and then, in 1984, they had to cut out the rest. They gave George Komenda an ileostomy, an operation in which a hole is cut through the abdomen — for the rest of his life he will have to defecate through a tube into a small bag.

The links between asbestos and cancer have been known for more than 50 years, but George Komenda's is something of a test case: only once before has a court in the United States been sufficiently convinced of the connection with this particular type of cancer to award damages to a victim. And this is the only issue the jury has to decide. This is 1989, and the asbestos industry no longer even bothers to run what is known as the 'state of the art' defence, to try and prove it

didn't know about the dangers of asbestos. But Mr Komenda's lawyers still have a formidable task ahead of them. They have spent a week poring over epidemiological studies before the jury, and producing medical experts to testify that yes, as well as everything else, asbestos causes colon cancer. Planktoda, and three other asbestos supply companies in the dock alongside it, have spent a week trying to shoot down the arguments. Now is the moment of decision.

In they file — six good women and five, all aged around 30, all but one white, the sort of people you would expect to be teaching primary school or pumping computer buttons down at City Hall. Mr Komenda's lawyers are hopeful: justice in working-class New Jersey are sympathetic to plaintiffs. In fact, one of the opposition counsel mutters later that they regard their job as the redistribution of wealth, rather than the search for the truth. He has reason to be bitter.

'Madam forelady,' asks the clerk of the court with a flourish, 'is the plaintiff, George Komenda, suffering from a disease caused by his exposure to asbestos?' 'Yes,' says madam forelady. 'How should the damages be apportioned between Planktoda and the other defendants? And then — the big one last — how much should the Komendas get?' \$220,000 to Mr Komenda, \$90,000 to his wife. 'The judge thanks the jurors, and George and Francis smile at each other. Maybe now they can afford to take that little vacation in Australia. Then they get the bad news: because it is such an important precedent, the companies are certain to appeal ... it could be years before they see a cent of that \$300,000.

As the Komendas' case comes to an end, another is starting up next door, in Court 407. Asbestos litigation is as common a part of the calendar at the Middlesex County Court in frosty New Brunswick as the muggings and drugings being dealt with downstairs. Just 10 years after that Western Australian court threw out Joan Joosten's case, hundreds of asbestos suits are being fought — and won — in courts across the United States, and more than 20,000 cases have been settled out of court. Damages awards have been astronomical: the highest so far, \$75 million punitive damages in one case where conspiracy was proved between two of the country's biggest asbestos manufacturers to conceal the dangers of the deadly dust. Even this does not satisfy the attorney, a Mr Thomas Crumpler, of Wilmington, Delaware. He puts in an appearance, at the annual asbestos litigation conference in Monterey wearing a T-shirt on which is emblazoned \$75 million is not enough.

Asbestos litigation has become a legal industry in the United

50 BLUE MURDER

States that has even spawned its own monthly newsletters — not one but two, circulating to thousands of attorneys from New York to New Mexico. It is the greatest avalanche of toxic tort litigation in history ... litigation that has already sent more than 20 corporations into bankruptcy, and is threatening even the cornerstone of the world's insurance industry, Lloyd's of London. The eventual global payout will be more than \$10 billion, larger than the gross national product of many of the smaller countries in the United Nations.

Paul Brodeur has been following this extraordinary saga for more than 20 years. He is an award-winning journalist for the *New Yorker* magazine, currently lecturing at the University of California, and the author of three books on the asbestos industry whose titles give you a clue as to his viewpoint: *Magic Mineral*, *Expendable Americans* and, his latest, *Outrageous Misconduct — The Asbestos Industry On Trial*. According to Brodeur, US courts had begun making landmark awards to asbestos victims many years before Cornelius Meas sued and died, and Joan Joesten sued and lost Down Under in Australia.

We know that as far back as 1929, the US asbestos industry, notably the giant Johns Manville Corporation, had begun quietly settling cases out of court, a clear indication that they knew of the dangers of asbestos, and knew that they could lose if a negligence claim ever came before a jury. But it wasn't until 1961 that an attorney came on the scene with the energy and the anger to really take the fight to the industry, rather than sit back and accept a contingency slice of grossly inadequate and usually secret settlements. That man was Ward Stephenson, the senior partner in a law firm in the East Texas town of Orange, and a man with great experience in industrial accident litigation. Stephenson knew little about asbestos; he was best-known among his fellow attorneys for creating the *Pied Piper* theory of liability, winning a case against an icecream company for a small girl who was run over when she ran after a bell-ringing van. He was willing to have a go.

In 1961, when the Wittenoom mine still had five years to run, Stephenson filed his first writ on behalf of a man suffering from asbestosis from his exposure to the stuff as an insulation worker. He filed a product liability suit, aimed not at the employer, who in most States of the US is shielded from liability by workers' compensation legislation, but against the manufacturers of the insulation, and in particular against the Fibreboard Paper Products Corporation (Fibco). That company was later to achieve the dubious distinction

THE CONSPIRACY 91

of becoming the defendant at the top of the most important asbestos judgment in the US, a benchmark decision that was to be quoted in hundreds of subsequent cases.

The case of Borel v. Fibreboard involved an asbestos victim named Clarence Borel, who had heard of Stephenson's reputation in fighting for the rights of asbestos victims and walked into his office in Orange one day in 1963 looking for help. Borel was a man of 57, of Cajun descent, the father of six children. He had been working in the asbestos industry for more than 30 years. Now he was sick — pale, emaciated, short of breath and suffering from severe asbestosis. Stephenson filed a writ on his behalf against Fibreboard and 10 other asbestos companies, claiming damages of \$1 million, the start of a case that would drag through the courts for two long years. Tragically, Borel never would live to taste the sweet fruit of victory. In May the following year, bedridden and by now suffering the terminal agonies of mesothelioma, he gave a deposition about his life as an asbestos worker. The following month he was dead.

But Stephenson continued to pursue his case through the courts, and in 1971 — six years before Mr Meas was to sue the Wittenoom mining company — he won a landmark judgment that would form the springboard for the tens of thousands of asbestos victims who would follow. In the US Fifth Circuit Court of Appeals, Judge John Minor ruled that the asbestos companies had had '... a duty to warn ... whenever a reasonable man would want to be informed of the risk, in order to decide whether to expose himself to it.' The judgment then went on to uphold the decision of a jury in a lower court, and to carve in stone the culpability of the asbestos industry which, he found, had known of the dangers of the 'magic mineral' all along, and had done nothing to warn its workers.

'... the underlying principle is ancient. Under the law of torts, a person has long been liable for the foreseeable harm caused by his own negligence. This principle applies to the manufacture of products, as it does to almost every other area of human endeavour. It implies a duty to warn of foreseeable dangers associated with those products. This duty to warn extends to all users or consumers, including the common worker in the shop or in the field. Where the law has imposed a duty, courts stand ready in proper cases to enforce the rights so created. Here there was a duty to speak, but the defendants remained silent. The District Court's judgment does no more than hold the defendants liable for the foreseeable consequences of their own inaction.'

92 BLUE MURDER

Fighting that case cost more than \$1 million in lawyers' fees alone. All Clarence Barell's widow received was \$32,000. But the judgment was a precedent that offered hope to tens of thousands of asbestos victims all over the world.

Four years later, after fighting protracted legal trench warfare through the courts, it was the turn of the mighty Johns Manville (since renamed the Manville Corporation) to face the lash of the law. A Federal Appeal Court held the company liable for damage caused by the asbestos it had mined and milled for three-quarters of a century. The floodgate of litigation that would overwhelm the industry finally was thrown open and, in courts across the country, thousands of writs from workers crippled and killed by asbestos began to pour in. A *New York Times* writer called it a 'lawyers' feeding frenzy'. And remember, this was all happening years before Joan Joesten lost her case and Robert Vojakovic took up the fight for the victims of Wittenoom. The guilty foreknowledge of the asbestos industry was already on the table. The cover-up of the terrible dangers to which it had been exposing its workforce for years was about to be exposed. /

Johns Manville have engaged in a cover-up greater than anything Richard Nixon or anybody associated with Watergate ever could have dreamed of. Ronald Mooley is obviously not a man to mince his words. This is what he tells juries as he jets his way around the United States, producing truckloads of evidence that the company was 'the greatest mass murderer in history'. Strong language, and it obviously has a strong impact on the jurist. In eight years, Ronald Mooley's South Carolina law firm, Blatt and Pelen, has handled more than 3000 asbestos damages claims. The firm's fees alone (US lawyers operate on a contingency fee system under which if they lose they get nothing, and if they win they get 30 to 40 per cent of the award) had come to \$10 million, and Mooley himself had become a millionaire. It's obviously great box office, but where's the evidence for this product liability Watergate?

The proof that proved so compelling — like the Wittenoom Papers that were to emerge years later — was a mountain of documents and testimony ferreted out by lawyers over the years; tons of evidence that leave no doubt that the US asbestos industry engaged in a highly organised and well-orchestrated global conspiracy for 30 years to censor medical research, to suppress information about

THE CONSPIRACY 93

asbestos disease, and to lie to its workers — and, of course, to its millions of consumers — about the dangers to which it was exposing them.

It was another lawyer, a New Jersey attorney by the name of Karl Asch, who was to uncover the most damaging cache of papers, the 'smoking gun' of asbestos litigation. It is known as the Summer Simpson file, named after the man who in 1929 had founded the Raybestos Manhattan company, one of the largest asbestos companies in the US, with factories in Connecticut and Pennsylvania that made brake linings and asbestos cloth. Asch had been convinced that somewhere hidden in the bowels of the industry there must be some hard evidence — bits of paper — that would prove the manufacturers and miners had known a lot more about the dangers of their product than they were letting on. In the spring of 1977, he obtained a subpoena and presented himself at the Raybestos Manhattan head office in the town of Trumbull for a meeting with Summer Simpson's son, William, who had taken over as president of the company 10 years earlier, after his father's death.

After lunch in the corporate cafeteria, Simpson casually mentioned that there were some documents, his father's 'personal papers', which had been placed in a carton and stored in a vault after his father's death. Would Asch like to look at them? Would he ever. The attorney, according to Brodeur, spent the next few days reading the file. 'I realised that I had hit pay dirt,' said Asch. 'Even a quick run-through of the papers told me that neither Johns Manville nor Raybestos Manhattan ... would ever again be able to claim with any validity that they had not known about the hazards of asbestos ... they are collectively a smoking gun.'

The documents show that, as far back as 1929, the Metropolitan Life Insurance Company had been commissioned to survey a number of asbestos plants owned by Johns Manville and Raybestos. They found not only that there were dangerously high dust levels in the workplace, but also that half the workers who had been in the industry for more than three years had already developed lung disease. When the two corporations met to consider the report, the minutes showed that rather than institute a clean-up of warn the workers about the dangers they faced, a decision was made: '... that our past policy of keeping this matter confidential is to be pursued ...'. The true picture of the epidemic that already was engulfing the industry did not emerge until many years later, when that report was published

by the United States Public Health Service. This was the pattern of suppressing information that was to emerge over and over again from the Sumner Simpson papers.

It was one thing to try to keep the lid on information, but quite another to try to pervert the course of medical research. But this is what Manville quite clearly did. It happened like this:

During the war, the most important centre for research into industrial chest disease was the Sarrnac Laboratory in New York, which was in fact funded by the Asbestos Association, the trade organisation representing the industry. In 1943, experiments on white mice at Sarrnac confirmed what German doctors had discovered several years earlier: that asbestos causes not only asbestosis, but cancer. The mice exposed to asbestos dust had an 80 per cent increase in lung cancer.

One would have thought that this important piece of experimental data — with its obvious implications for the health of every worker in the industry — immediately would have rung alarm bells throughout the country. And it might have, if Manville had not engaged in an extraordinary attempt to censor and suppress the paper when it was sent to it for comment. It wasn't until 1961 that this grim warning finally struggled into print in a watered-down form, eight years after the discovery was made.

The man who headed the campaign to keep news of the carcinogenic dangers of asbestos secret was, ironically, another lawyer — Manville's chief counsel, Mr Vandiver Brown. In 1950 he made it perfectly plain why: he told another medical researcher to suppress a report on cancer among Canadian asbestos workers because 'it would be harmful to the economic interests of his company'.

If you want a face to put on this evil conspiracy, Vandiver Brown is your man. He haunts the archives of the asbestos cover-up, a morally debauched and sinister figure, the real Prince of Darkness of the story. A tall, handsome Texas lawyer, the son of a wealthy cotton broker, he was to all appearances the epitome of New York corporate flash, with his bow tie and dark, double-breasted suit. In fact, the man who served for nearly 20 years as Manville's chief counsel, their in-house lawyer, was a closet homosexual (he was sacked when they eventually found out) and an incipient alcoholic. His callous contempt for the health and safety of the Manville workers was typical of the attitude of the asbestos industry. And we now know precisely what he thought, because some time in 1942-43,

he made the mistake of speaking his mind to a lawyer named Charles H. Roemer, who was then chairman of the Industrial Commission in the town of Paterson, New Jersey.

Roemer had been told by his cousin — an industrial disease doctor named Jacob Roemer — that he had found X-ray evidence of lung damage among a number of men working at a nearby asbestos insulation factory. He sought an urgent interview with John Manville, the largest asbestos company in the US, to find out what it knew about the risk of disease, and an appointment was made with Vandiver Brown. Roemer's sworn affidavit takes up the story:

... Vandiver Brown stated that John Manville's physical examination program had, indeed, also produced findings of X-ray evidence of asbestos disease among workers exposed to asbestos, and that it was John Manville's policy not to do anything, nor to tell the employees of the X-ray findings. (He) went on to say that it was foolish for us to be concerned, and that if John Manville's workers were told they would stop working and file claims against John Manville... it was John Manville's policy to let them work until they quit because of asbestosis, or died as a result of asbestos-related diseases.

It was Vandiver Brown who promoted the strategy of pushing State legislatures to pass workers' compensation laws that effectively would shift the burden of compensating the injured workers on to the state, and (he hoped) shield the asbestos companies from their obligation under law. As far back as 1935, at a meeting of 250 industrialists called to discuss the threat of industrial disease litigation, he referred to the 'menace of ambulance chasing lawyers, in connection with 'unscrupulous doctors' and said that industry could best protect itself from litigation by twisting the arms of the legislators... the strongest bulwark against future disaster for industry is the enactment of properly drawn workers' compensation laws.' Vandiver Brown told those capitalists of commerce. They are words on which politicians should reflect when the perennial issue of 'no-fault' workers' compensation schemes is raised.

It was also Vandiver Brown's plan to counter the growing alarm among doctors and scientists — those whom the industry could not muzzle — by producing its own 'studies' from 'independent' organisations that, of course, would show that asbestos was perfectly safe. Over the years, many of these fake reports were disseminated all over the world by powerful international lobby groups: the Asbestos International Association, and its propaganda arm, the Asbestos

Information Association. Much of the reassuring rubbish emanated from a respectable-sounding organisation in Pittsburgh, Pennsylvania, called the Industrial Hygiene Association, which published reports, conducted research and organised conferences for many years. Sounds pretty fancy, but far from being an independent scientific organisation, it was (again, in the words of Vandiver Brown) '... the creature of the industry and the one institution on which employers can rely completely for a sympathetic appreciation of their viewpoint'.

There is a final twist to the story of this truly evil man. Many years later, when plaintiffs' lawyers were trying to find out whether Vandiver Brown was still alive, so that they could call him to account, Manville had sworn in depositions that, alas, he was dead. In fact he wasn't; that was yet another lie. Vandiver Brown had been fired in 1951 when the company discovered his homosexuality, and in 1981, then aged 80, he was living in Scotland. Unfortunately, when investigators tracked him down, he gave them a rendition of 'Deep in the Heart of Texas', and claimed he couldn't remember whether he had ever worked in New York, or anything else, for that matter. He had either become senile, or was giving a pretty good impersonation. This was a considerable disappointment to the many thousands of asbestos victims who would have liked to see him extradited back to the United States to stand trial for murder. Manville, however, must have breathed a deep sigh of relief at their rescue from what those mad dog litigators would have done to Vandiver Brown if they got him in the witness box to answer for his black conspiracy of all those years ago.

Curiously, there is one empty seat in the dock of the Middlesex County Court in New Jersey this frosty winter morning -- the seat reserved for Manville. Why? Why has the greatest mass murderer in history been deprived from paying his share of the damages due to old George Komenda?

Manville was once not just the largest asbestos company in the world, but one of the largest corporations in the United States; in the early 1980s its assets were \$2 billion and it was ranked 181st on the *Fortune* magazine's list of America's top 600 companies. It long since had moved its headquarters from the grim New Jersey town that bears its name to the more salubrious climes of Denver, Colorado, abandoning Bruce Springsteen for John Denver. The company had

more than 20,000 employees working in 50 mines and factories across the United States and in Canada -- Big Business, among the biggest there was.

Like CSR in Australia, Manville had taken a decision early in the wave of litigation to hit the company in the 1970s that it could not and would not quietly settle these cases out of court; the company would stand and fight, and the victims could go to Hell. Legally, it was relying on what plaintiffs' lawyers in the US call the 'Your Dog Defence', the same courtroom strategy that would be used much later by CSR. It goes something like this:

Your dog jumps over the fence and bites your neighbour's daughter to death. The first line of your defence when they take you to court is that you never owned a dog, or if you did, it was always kept tied up. If you lose on this point, you then claim you had no idea the dog was savage. If you lose that one, you try to make out that the child must have provoked the dog, that it was her fault. The last line of the defence, if all else fails, is that okay, you did have a dog, it wasn't tied up, you did know it was dangerous, it did bite the child, but that her actual death was caused by something else.

That was the legal basis of Manville's defence, and it spent millions of dollars trying to convince courts from New Brunswick to New Mexico that it had (1) no idea asbestos was dangerous; (2) in any case, it took all reasonable precautions to protect its workers from the dust; (3) that if the workers didn't wear the masks provided, it was their own fault if they got ill; and (4) they didn't suffer from asbestos disease at all ... the cancer was caused by cigarette smoking or something.

At first, the strategy appeared to be working well, not so much because of the force of the legal arguments on picaresque juries, but because of the colossal resources Manville was prepared to throw into a battle on which, it was now beginning to realise, the very survival of the company depended. The writs were pouring in from every corner of the country: by 1982 there were 16,500 lawsuits pending against Manville, and 3500 claims had been settled out of court. The company was having some success in court; it won around half the 100 cases that eventually went to trial, but it was at a staggering cost. Manville's legal bill had reached \$2 million a month, and the company was portraying itself as an embattled, bleeding giant at the mercy of those countless victims.

But, inevitably, as the company's terrible secrets began to emerge

from the filing cabinets of history, the tide turned. In 1975, after a three-year fight through every appeal court in the country, the US Federal Court of Appeal confirmed the first judgment against Manville. By 1980, the first million-dollar damages had been awarded — a jury in Beaumont, Texas, gave the widow of an asbestos insulator \$3 million. The following year came the judgment Manville had been dreading all along: the first award of punitive damages.

The sting of the shilling, English lawyers call it. In the UK and Australia they are known as exemplary damages, but they are essentially the same thing. They are an extra financial lash, on top of the normal damages that courts can award, when a company has acted in an utterly outrageous manner. In June 1981, Manville stood in the dock of the appeal court to hear the judge condemn it for having acted with 'reckless disregard for human life'. The judge confirmed an ordinary damages award of \$1,250,000, and punitive damages of \$750,000. It was the beginning of the end for Manville.

By then, several other asbestos — and insurance — companies had already gone to the wall. In Tyler, Texas, there was just a vacant lot where for 17 years the Pittsburgh Corning Corporation had operated a factory making asbestos insulation for submarines. The company had been forced to pay out \$20 million to hundreds of workers there who had contracted cancer and other asbestos diseases, and had then demolished the plant to obliterate all trace of its guilt; the buildings were torn down, the machinery cut up and buried. The scorched-earth policy was to leave no reminder that nearly a third of the 900 men and women who worked there would eventually die because of the company's negligence.

By 1982, it was Manville's turn to face the music. With its insurance company backing out of its liability, and writs pouring in at the rate of 500 a month, Manville called in outside consultants to assess the damage. One look at their report, and Manville, the 161st largest company in the United States, filed for bankruptcy. The consultants told Manville that it could expect eventually to receive \$2,000 writs from people suffering from asbestos disease, and that the final payout could be \$2 billion, the entire net worth of the company. 'We are completely overwhelmed by the cost of the asbestos health lawsuits filed against us,' said Manville's chairman, John A. McKinney. 'The company filed for the protection of Chapter XI of the Bankruptcy Act, which meant an immediate halt to all legal action against Manville. But the litigation juggernaut rolled on.'

It is no accident that New Jersey became the asbestos litigation capital of the United States. Florida, it ain't. This is America's industrial heartland, to which every noxious industry from petrochemical to steel-making migrated during the 19th and 20th centuries. Now it is part of the 'rust belt', with the skeletons of abandoned factories lining the banks of the truck-clogged New Jersey Turnpike, that mighty 12-lane river of rubber and steel that leads to New York, an hour to the north. Many of the factories have long since closed, but their deadly legacy lives on in the stinking swamps of poisonous chemicals that foul this blighted landscape. If you look at the cancer atlas of the United States, New Jersey is the capital of just about every malignancy in the book.

So, it was natural that in the 1930s this was the place that Manville and many other manufacturers came to set up their asbestos plants. Manville built a company town next to its plant, a huge complex of buildings like aircraft hangars on the wrong side of the railway line. It recruited its workers where it could, mainly among the underground coalminers of Pennsylvania. 'They were offered a bounty of \$25 a head for each of their friends they brought in to work at Manville, but they hardly needed the incentive. They wouldn't be working underground, and the dust they were exposed to was white instead of black. They thought it was God's gift,' says Jane Cantor.

Mrs Cantor is a partner in a small suburban law firm called Gerruto, Gelzer and Cantor, which operates from a modern office block in East Brunswick, a few miles down the turnpike from the Middlesex County Court. It is a firm that specialises in toxic torts: people damaged by the Dalkon Shield IUD, by methanol and other chemicals, and by tetracycline, the so-called 'green teeth' drug.

Jane Cantor is an unusual woman. She dropped out of college to have four children, went back to study law, and on graduation served her 'apprenticeship' as a judge's clerk. The judge turned out to be a man named Jack Horath, who was known around the New Jersey court system as the 'asbestos judge' — he handled most of the big, benchmark cases. Ten years later, and now in private law practice, Jane Cantor's life is still dominated by the 'magic mineral'. The walls, and shelves, and filing cabinets — every available inch of space in her suite of offices — are filled with binders and files, documents and affidavits, medical reports, maps and photographs, the legacy of nine tough years fighting Manville and the other asbestos companies.

Manville's plant in New Jersey, so the testimony shows, must have been one of the dirtiest in the US. More than 6000 men worked there during its 40-year lifetime, and now 1000 of them, one man in five, is expected to die of asbestosis, mesothelioma and other cancers. The men worked in buildings where the dust was so thick you couldn't recognize a man 10 feet away; they churned out asbestos products ranging from gaskets to asbestos cloth, pipes and brake linings. And the toll is not just among the workers of the plant. In the shabby little township nearby, where they used to joke about it moving in July, the victims have included women who contracted cancer from their husbands' dirty overalls, a barber who breathed in the dust from the men's hair — even the barman who poured their beer in dead of mesothelioma.

Jane Cantor's firm is by no means the largest in the litigation stakes, but she already has won or settled George Kommand's case and more than 700 others like it. And she has another 700 claims on her books, just keeping track of the paperwork is a nightmare.

When Manville fled to the protection of Chapter XI of the Bankruptcy Act, lawyers like Jane Cantor were not prepared to just give up and leave their clients twisting in the wind. They went hunting for other companies they could sue, companies that supplied Manville with its raw asbestos. And they found a phone book full: more than 60 corporations across the US and in South Africa, Wales, Zimbabwe, England and even the Soviet Union. And in the middle of that list was Australia's very own CSR. Jane Cantor has so far named CSR in more than 600 writs. As she looks through CSR's latest annual report, noting approvingly that the company has 'deep pockets', she announces her intention to proceed for default judgment against CSR. But that story will have to wait for a later chapter.

Jane Cantor's clients are a pitiful procession of the victims of asbestos. Many of them have died waiting for justice — 30 or 40 from mesothelioma. Typically, the awards for asbestosis, mockingly dubbed 'the green politics' by defence attorneys, range from \$30,000 to \$50,000, but in more serious cases the sky is the limit. The firm recently has settled for \$1 million for one victim, and has negotiated payments for mesothelioma sufferers of \$600,000 for one man aged 56, and \$700,000 for another aged 60. If the average compensation payment is \$100,000, this one small firm has won \$70 million for its clients over the years and earned itself a handsome commission.

Lawyers are not generally loved in the United States. You only have to look at the buttons on sale in the newsstands on Broadway; LAWYER! — THINK MOST BE A LAWYER IN THE ROOM says one; and another: A LAWYER IS A PERSON WHOSE JOB IS TO PROTECT HIS CLIENTS FROM OTHERS OR HIS PROSECUTOR. The joke doing the rounds in Manhattan is the one about the lawyer who met the Devil one dark night. 'You can have anything you want in the world if you give me your soul,' says the Devil. The lawyer thinks for a while, and replies: 'What's the catch?' No, they are not a popular breed, particularly to the fat cats of corporate America.

Those 'ambulance chasing lawyers' about whom Vanderbilt Brown was complaining have forced a radical rethink of the way the whole country goes about its business. Gynocologists in Manhattan are now faced with annual malpractice insurance premiums of more than \$100,000. Car-makers are sued for bad design, airlines for crashing, drug companies for not making sure their products are safe. On the wilder fringes, a woman has recently won a case against an unlicensed televangelist for failing to save her soul, and the Colt weapons company is suing the State of California for legislating to ban automatic assault rifles after a particularly grisly playground massacre.

The explosion in litigation in the US is one result of the fee system on which lawyers operate. In Australia you have to pay to run a case, but US lawyers work on their 'contingency fee'. In New Jersey this is fixed by law at 35 per cent of the first \$250,000, 25 per cent of the next \$250,000, and 20 per cent of the next \$500,000; a million dollar award is worth \$238,000 to the lawyers — but, of course, out of this they have to pay the enormous costs of all the discovery and deposition needed to prepare the case. The attorneys call it giving the poor man the key to the courthouse.

Many lawyers in other States, of course, charge more than this — and quite a few have become millionaires out of the asbestos litigation. The Rand Corporation, a respected economic think-tank, calculated that by the end of 1982, only 37 per cent of the \$661 million that by then had been paid out in compensation by asbestos companies actually had been finished up in the pockets of the victims. Nearly two-thirds had been eaten up by the lawyers, doctors and other expert witnesses. According to James Vermaulen, a leading asbestos victims rights campaigner in California, one New York attorney by the name of Leon Silverman stood to collect \$2,280,674 of the settlement

he negotiated on behalf of his clients. 'It is a licence to steal,' protests Verwoerd.

But others look at the impossibility of ordinary working people raising the money to fight great corporations for their rights. Jane Cantor's firm, for example, took the almighty risk 10 years ago of taking out a \$2 million loan to get into asbestos litigation. It has paid off handsomely since, of course, but if the firm had lost, it might be filing for Chapter XI bankruptcy itself.

But a deal like this — no win, no pay — is not the way Australian lawyers operate. To take on a company with the resources of CSR, you either have to be very rich, or very poor: rich enough to match the millions the company was putting into a war chest to fight its victims, or poor enough, so poor that you have virtually no assets and can qualify for government Legal Aid. Very few of the Wittenoom survivors fell into either category — hundreds of them by the early 1980s were giving up without a fight, convinced their cause was hopeless.

By 1986, four years after Manville had filed for bankruptcy, CSR must have been convinced that its strategy was working. Although the worldwide conspiracy to cover up the dangers of asbestos had now been established beyond a shadow of doubt — and damages awards in the United States were now rising towards the \$2 billion mark, with thousands of cases already settled — CSR had not had a glove laid on it in court. Joan Joosten had obligingly died before her appeal could be heard, Oscar Penella had pulled out of his action on the advice of his lawyers, Cornelius Meas and Rino Pedrotti had died before their cases could even be heard. The poisonous rhythms of the Western Australian courts could not keep pace with the death-race of mesothelioma; the public and the government could not come to terms with the enormity of the disaster; the conservative and clannish legal profession could not find a way to finance retribution against the company that caused it.

And then one day in the spring of 1986, the telephone rang in a little shopfront lawyer's office in the low-rent western Melbourne suburb of Footscray. A man named Peter Gordon took the call.

9 The galloping Gordons

'What the fuck is going on here! Here's a roomful of people who are dying, and no one's doing anything about it.'

— Wittenoom victims' lawyer Peter Gordon

Peter Gordon was not so much a rebel as a one-man Cultural Revolution. He was going to change the world all right, this stocky little boy, or at least those bits of it he could see from the bedroom window of his home in the grimy Melbourne industrial suburb of Braybrook.

When he was 16, he took exception to the stinking pall of pollution pouring from a nearby petrochemical plant and rang the Environment Protection Authority to complain. When his dad, Jack, a law-abiding allforce clerk, heard about this he was furious — how dare he cause trouble for a rich and powerful corporation. Hardly surprisingly, says Peter, he became a Marxist by the time he was in his twenties — though he was too much of a rebel ever to actually join a party.

By the time he turned 16, he'd had his first brush with the law of defamation. Like a good little Irish Catholic, he had been sent to the local St John's College — no toffs Xavier or De La Salle, this, but the kind of school where kids in the football team used to hide knives in their socks to intimidate the opposition. That wasn't what got him into trouble, however, it was an article in the school magazine that he edited, *Rebelling The Army*. The story was a grossly insulting portrait of a particularly objectionable teacher, and Peter thought he could get away with it because the man wasn't identified by name. Unfortunately, a mischievous colleague placed it under a picture of the man, and Peter came close to expulsion.

In spite of this, he managed to work his way through an undistinguished law degree at Melbourne University, picking another small blow for the proletariat on the side. Peter Gordon had been working as a volunteer at the Footscray Legal Service, a free storefront law office catering for the battlers of Melbourne's western suburbs, and he had received a number of complaints about the high-pressure, high-interest credit-selling tactics of the Waltons department store chain. By chance, he was working at Waltons during his university holidays, and decided on a bit of direct action. He started slipping

pamphlets warning don't trust warrens into the pockets of the L.P. records he was selling. His downfall came when one of his customers turned out to be the assistant manager of the store. Peter Gordon was out on his ear.

When he finally got his degree, he was an obvious candidate for recruitment by the small Melbourne law firm of Slater and Gordon. The Gordon was no relation, he was Hugh Gordon, a lawyer-aviator who had died during the Second World War. The Slater was Bill Slater, one of Melbourne's first labor lawyers who served as Attorney-General in the first Cain Government in Victoria, and eventually became Australian Ambassador to the Soviet Union during the Stalin years.

The firm had been founded in the 1880s, and specialised in representing plaintiffs, especially unionists and people with workers' compensation and accident claims. Asked whether it has any large corporations on its books, Peter Gordon wrinkles his forehead and finally comes up with 'The Comedy Company', a popular network TV show, but hardly a CSR. No, it's a plaintiff's firm, and a firm that built a reputation as a tough bargainer. Its lawyers call themselves the Nomads, in contrast with an opposition plaintiff's firm called the Pioneers. The Pioneers are early settlers, Nomads never settle, or so they boast.

Slater and Gordon had its small share of celebrity: Rod Ted Hill, who appeared in the notorious Peter Royal Commission on Soviet spying, was a lawyer here; and they represented Charlie O'Shea, the tramways leader whose jailing in the 1960s was a union cause célèbre. But in recent years the firm had run into trouble, and compensation claims, its bread and butter, were drying up because of the introduction in Victoria of Workcare, a no-fault government insurance scheme. By 1986, when the partners were bought out by a lawyer named Jonathan Rothfield, it was struggling to support its offices in Melbourne, in Merwell, and Peter Gordon's place, a shopfront next to the Cockatoo Cafe in decidedly downtown Footscray.

Peter Gordon was just 28 and an ambitious young consumer advocate yet to fulfil his early promise of anarchy when he received the telephone call that was to change his life, and alter the destinies of the victims of the Wittenoom mine disaster. It was in September 1986, and the call was from someone named Robert Vojakovic, the president of something called the Asbestos Diseases Society 4000 kilometres across the Nullabor in Perth.

Quickly, Vojakovic ran through the Story So Far, most of which was new to Peter Gordon. He had seen the occasional newspaper headline, but taken no great interest in the unfolding disaster at Wittenoom. Robert Vojakovic told him about the failed attempts at litigation that had begun when Peter Gordon was still at high school; he told him about the plaintiffs dying on the steps of the courts; he invited him to come to Perth to have a look for himself; the victims were at their wit's end - could Slater and Gordon help?

'I just couldn't believe it.' It was a month later and Peter Gordon was waiting in that little house on the outskirts of Perth, the Joan Joostan Centre, to meet some of the victims of Wittenoom. It was a regular monthly meeting of the society, and the room was packed. Robert pointed out to me some of the people who were sitting there. 'That is Mr Barrow', he whispered, 'he's suffering from mesothelioma ... that man next to him has cancer ... that woman has just lost her husband'. I thought to myself 'what the fuck is going on here ... here's a roomful of people who are dying, and no one's doing anything about it'. Peter Gordon decided then and there that the firm couldn't turn its back on Wittenoom. Somehow the money had to be found to take on CSR. Somehow the evidence had to be found to defeat it.

Although he hadn't heard much about that little mine in the desert, Peter Gordon did understand a bit about asbestos, and he certainly knew what mesothelioma was. Two years earlier, a plumber who had contracted the ravaging cancer from his exposure to asbestos insulation had become his first client to die. It was a profound shock. Peter Gordon still finds it difficult to harden himself for these death-bed videotape depositions, those early-morning telephone calls that mean he has an appointment at the cemetery instead of the Supreme Court.

In 1984, two years before Robert Vojakovic's call for help, Peter Gordon had achieved some small legal fame, and passing attention in the media, when he won the first mesothelioma case to be fought in court. It was the first time most of the public had heard the word, because until then the asbestos companies had preferred to quietly settle any claims behind closed doors. James Hardie, the Sydney-based asbestos manufacturer, had been particularly sensitive about publicity, inserting secrecy clauses in all its settlements; and VicRail, the Victorian Government railway system whose notorious 'blue trains' were contaminated with asbestos, likewise sought to avoid alarming the travelling public.

But the case of Harold Pilmer was different. A man in his sixties, he had worked all his life for the large Melbourne hardware company McPhersons in a variety of jobs from salesman to floor manager, jobs that had brought him into only passing contact with the popular asbestos products of the day, the wallboard, the fireproof rope. He had never worked down a filthy mine or in an asbestos mill, but Mr Pilmer had contracted mesothelioma and knew he must die. McPhersons was not offering him a settlement he could accept and the case was listed for the Supreme Court of Victoria.

'With hindsight, it was an extraordinarily thin case,' says David Ashley, QC, who took on Mr Pilmer's case. He looks back through his diary, and when he discovers that he only spent 17 hours in pre-trial conferences with Harold Pilmer and his solicitors, he laughs. A mere eye-blink compared with the grueling months and years ahead. David Ashley was to become the second member of the team that took on CSR to fight for the victims of Wittenoom.

You could hardly cast an odder couple than David Ashley and Peter Gordon. Gordon, the broad-ribbed, ruddy-faced 'Wendy' from the wrong side of the Maribyrnong River, and Ashley, the lean, elegantly-dressed barrister almost old enough to be his father, son of a doctor, honour degree from Melbourne University, pictures of staid livestock from his country property decorating the walls of his chambers in the beehive of Owen Dixon Chambers, across the road from the Supreme Court building in Melbourne. But Ashley, in spite of his pedigree, is also a plaintiff's man who never represents corporations.

It was just as well the big guns of CSR were not brought to bear in the case of Harold Pilmer. His lawyers' library of medical literature was small, their access to top-gun experts limited, their knowledge of the emerging asbestos cover-up almost non-existent. They weren't even sure where the asbestos that Mr Pilmer had been handling had come from. But, inexplicably, McPhersons chose to call no evidence of their own in the case. They were relying on one defence, the legal barricade that would dog the asbestos litigation down the years: how could the company have foreseen the dangers of mesothelioma when the disease was not conclusively linked with asbestos until Dr Wagner published the results of his South African research in 1960? And if it couldn't have foreseen it, how could it be held responsible for destroying Mr Pilmer's life?

The argument David Ashley put to the jury was this: although McPhersons could not have been expected to know about mesothelioma, they should have known about asbestosis, and about the other cancers that had been linked with asbestos since the 1930s. Other cancers that, to use the legal jargon, were 'of like class, type, or character' to mesothelioma — they kill you just as dead, though perhaps not as quickly. McPhersons should have protected its workers and its failure to do this was negligent — that was what David Ashley sought to convince the court.

Although it is a technical argument, it wasn't lost on that Supreme Court jury. They brought back a verdict for Mr Pilmer and he was awarded \$222,000 — not much for a man's life, you might think, but it set a precedent that was the first mile on the road for justice for all the Wittenoom victims. The decision was appealed, but David Ashley knew he had won when McPhersons' barrister argued before the judges that all Mr Pilmer should receive for his pain and suffering was \$50,000. To that for the past, Mr Wymmer? asked Justice Kaye drily. The appeal was dismissed and Australia's first asbestos liability test case was in the law books.

'I thought that was going to be the end of it,' says David Ashley wryly. 'I thought that now all those asbestos cases that had been around for years would be settled. But it wasn't the end, it was just the beginning.' David Ashley had launched himself on a project that would consume nearly two years of his life, turn him into an exile from his home and family, and teach him a whole lot more about asbestos than anyone should reasonably expect to have to know. Not a flamboyant lawyer, he frowns when you quote Ronald Motley's 'greatest mass murderer in history' line and says, 'his colleagues regard him as a bit dull, but prepared to put in the effort to master every detail of the case'. That technique was to lead to the greatest defeat, and the greatest victory, of his career.

CSR was amazed when Wally Simpson was selected as the man to carry the flag, the man in whom the Wittenoom victims placed their faith, the man Slater and Gordon believed would be the first to win damages from the company for its treatment of its workers more than 20 years before. 'Our lawyers thought ... what in hell is Slater and Gordon doing bringing this on as a major negligence case?' the company concoded, looking back on it, David Ashley admits they made a 'tactical mistake'.

Wally Simpson is a knockabout sort of guy who lives in a caravan at a place called Caversham on the outskirts of Perth. He was born in England, but came out to Australia with his mother during the war. Unable to read and write, apart from his name, he left home at 13 and drifted through a variety of jobs: station hand, butcher's apprentice, jockey, septic tank installer, wildflower picker. When CSR advertised for men in the late 1950s (a mate had to read him the advertisement from the paper) Wally Simpson decided to give mining a go and went down to the Australian Blue Asbestos office in St George's Terrace. Illiteracy was no problem — Wally Simpson had two of everything that was biologically necessary, and a few days later he was on the milk run plane north. For the next four or five years, he worked in the mine and the mill at Wittenoom on and off in stretches of a few months.

Around 1977 — Wally Simpson is notoriously inaccurate about dates — he felt a bit off-colour and was treated for what he thought was a 'touch of pneumonia'. A couple of years later, Wally Simpson was in the Sir Charles Gairdner Hospital for a lung biopsy, and the results, although they were to be disputed at the trial, convinced him that he had asbestosis. By 1981 he was accepted by the WA Pneumoconiosis Board as an asbestosis sufferer and awarded a meagre workers' compensation pension. Wally Simpson went into a decline, his health deteriorated until he became dependent on painkilling drugs and an oxygen bottle, and he began to do the rounds of the lawyers, trying to find someone who would take up his case. He had no luck at all, until he discovered a firm called Taylor Smart, and another young lawyer named Gordon, John Gordon.

Meet the third member of the team that was to change the course of history for the survivors of Wittenoom. Although they are only a couple of years apart in age (John hadn't turned 30 at the time he would be running some of the biggest trials in Australian legal history), John Gordon had little in common with his Melbourne namesake, beyond the fact that he too was a good Catholic boy. His parents are professionals (mother a schoolteacher, father a geologist) and he approaches life with a totally different political outlook. Later, during pre-trial negotiations, he was to take Peter aside and confess that at university in Perth he had been national secretary of the student Liberal Club. He was educated by the Jesuits, wanted to be a lawyer from the age of 11, and by the time he turned 26 had his degree and was one of the youngest law firm principals in the

country, a partner in the firm of Taylor Smart.

After the death of Cornelius Mees and the defeat of Joan Joosten, asbestos litigation virtually ground to a halt in Western Australia. It was all too hard, the timid lawyers of Perth were telling the victims, you haven't a hope of beating the big companies like CSR. Look what happened to Joan Joosten. As the cases — and the wins for the victims — were piling up in their thousands in the United States, only three were known to be still on the books in Western Australia: Rino Pedrotti, who was to die; Oscar Penabazka, who was to pull out; and Wally Simpson. Their cases were in the hands of another Perth firm that had done little to pursue them, and — fed up with the lack of action — they decided to switch lawyers, to take their cases to Taylor Smart. John Gordon went to collect their files. As he staggered down the steps with the cardboard binders, one of the victims' ex-lawyers muttered 'good riddance'.

When he examined the files, John Gordon was shocked to discover that, with the dragonbreath of mesothelioma on his neck, nothing had been done for 12 months in Rino Pedrotti's case. He arranged an emergency bedside sitting of the Supreme Court to take his dying deposition on the morning of 10 February 1986. But a few minutes after midnight that day, Rino Pedrotti died. Like Peter Gordon a couple of years earlier, it was John Gordon's first experience with mesothelioma, and he was shocked. It put a face on the textbook descriptions of the disease he had read about: a face contorted with pain, choking to death in an oxygen mask with a weeping wife at the bedside.

That left Wally Simpson, good old Wal, the battler from the bush. John Gordon pulled the case together, and it was slowly moving closer to court when Robert Vojakovic, who by now had more than 1000 Wittenoom families in his society, intervened. Things were moving too slowly for his liking. The Wittenoom survivors weren't happy with the prospects of success. They had heard about the Plimer asbestos victory in the Victorian courts and they wanted to see whether Slater and Gordon would help. This piff John Gordon in a difficult position. Among lawyers, there is nothing guaranteed to raise hackles more than an attempt by a rival firm to poach clients, especially when there is a good prospect of victory and a fat fee.

Peter Gordon, and another ambitious young lawyer from Slater by the name of Bernard Murphy, had flown back from Perth convinced that they should take Wally Simpson's case, and those of

110 BLUE MURDER

about 100 other members of the Asbestos Diseases Society, who also wanted to switch from Taylor Smart and other firms. But first, they had to persuade the 'board of directors' of Slater and Gordon to take the greatest gamble in the firm's 50-year history. The proposition was that they should expand to become Australia's first national plaintiffs' firm, specialising in asbestos cases, but also breaking into the almost untapped potential of toxic tort litigation, ranging from passive smoking to victims of the Dalkon Shield, and pesticides. There was argument on all sides. Some of the lawyers saw it as an ego trip that would bankrupt the firm. Some were worried that it would mean abandoning their traditional client base in workers' compensation cases.

In the end Peter Gordon won. John Gordon, after much soul-searching, agreed to open a branch office for Slaters in Perth. Into partnership with him went another young solicitor, Lukas Formito, who had a special axe to grind in taking on CSR - her own brother-in-law had worked at Wittenoom, and had died of mesothelioma. With pink-checked optimism they expected the fight for justice for the victims of Wittenoom to cost around \$500,000. The bill was to end up at more than \$3.5 million, as the firm became annexed in a series of the greatest court battles in Australian legal history, marred by trials that were the longest, most complex, most costly claims of their kind ever to come to trial. CSR was not going to abandon its 'legal fortifications' without a fight, and Slater and Gordon was to come close to bankruptcy as the litigation raged on over the years that followed.

The only reason Wally Simpson could at all sue with any hope of success was that in 1983 the Burke Labor Government in Western Australia, under continual harassment from the victims' society, had bitten the bullet and passed legislation exempting the Wittenoom survivors from the so-called statute of limitations, a general legal prohibition on anyone suing for something that happened more than six years before. Internal documents show that CSR and the government insurance office had believed this was their strongest defence against being successfully sued. But, in spite of their protests, the government pushed through the Acts Amendment (Asbestos Related Diseases) Act, which made a special exemption for the Wittenoom victims, in recognition, of course, that it may take 30 or 40 years for mesothelioma to suddenly strike. A deadline had been

THE GALLOPING GORDONS 111

set, however, for people who had developed asbestos disease before 1984: they had to file their writs by midnight on 18 January 1987. That gave the Galloping Gordons just two months.

Flying back to Perth, the team - Peter Gordon, Bernard Murphy, and another young solicitor from the firm, Sue Pail - got their first real grasp of the enormous job they had taken on. Working around the clock, by phone, fax, letter, and by advertisements in the newspapers - a device that raised some eyebrows among the stuffy Western Australian legal establishment - they began contacting as many of the society's members as possible, to see whether they wanted to sue - not ABA/Mid Alco, which had been left a hollow shell of a company with virtually no assets, but CSR itself. By the time the deadline expired, they had flooded the WA Supreme Court with the greatest snowstorm of writs it had ever seen, nearly 300 in all. Just to file the paperwork cost around \$75,000, but that was chickenfeed compared with the costs that lay ahead. Wally Simpson's case alone, by the time they had fought a protracted paper war with CSR's solicitors, gathered their evidence, selected their expert witnesses, flown them to Wittenoom for an inspection, and paid for the barristers, would come to well over \$1 million. The case would run for 66 days, then the longest civil dispute to hit the Western Australian courts.

It was the first time CSR and the government insurance office that would pay the bill, and fight shoulder-to-shoulder with the company in court, had really bared their teeth to the Wittenoom victims. The scene for the confrontation was the pretty, mock-Georgian Supreme Court building, set in a subtropical park of bamboo, bougainvilleas and frangipani on the banks of the Swan River. Justice Peter Brindley opened the case on 6 July 1987 in a court packed with journalists and Wittenoom victims.

It was a formidable sight. Ranked against David Ashley and his little team from Slaters was a wall of flesh, some of the highest paid barristers in Australia, who in a later trial would include even the Sydney silk Tom Hughes, one of the most famous trial lawyers in the country, who commands a fee of around \$3000 a day - three times what the victims could afford to pay David Ashley. There were never less than four CSR solicitors in the court, and a team of clerks and stenographers who converted an office in the building into a whirling communications centre and computer-based law library. Just to pay the bill for the CSR's barristers and solicitors would cost

\$17,800 a day, more than \$2 million for the trial. And there were other, more subtle, advantages of playing on the A-team. Sue Tull, one of the Slater team, recalls wistfully how her mouth used to water, as she sat during adjournments sipping a lukewarm beaker of Nescafé, when she smelt the aroma of real brewed coffee drifting from the CSR room down the hall and saw the crusty croissants going in for morning tea.

CSR's courtroom tactics were hardball. One of the doctors testifying for Wally Simpson says he was goaded in cross-examination by one of the company's team of barristers deliberately mispronouncing medical terms. On another occasion, CSR's in-house lawyer, Ian Matton, apparently worried that his barrister was on the wrong track, handed him a note and received a reply that said: 'Ian, don't worry. It is all part of the principle of stuffing them up.' - N. M. But that was nothing to the stuffing poor old Wally Simpson was about to receive. Having, he claimed, destroyed his health, CSR was about to destroy his reputation as well.

The opening bars of the cross-examination by Mr Richard Burridge, QC, will give you the flavour of the questioning old Wally had to endure for four long days in the witness box, something on his oxygen mask and calling for adjournments so that he could have painkilling injections. It also will give you an idea of the huge resources CSR and its insurers must have poured into getting the dirt on him:

Burridge: Is your full name Walter Simpson?

Simpson: Yes.

Burridge: Not Walter Aloysius Simpson?

Simpson: No.

Burridge: Did you marry Shirley Street?

Simpson: Yes.

Burridge: On 11 August 1982?

Simpson: Yes.

Burridge: At the Assembly of God Church, Hyde Street, Perth?

Simpson: Yes.

Burridge: Did you not state your name at the time as Walter Aloysius Simpson?

Simpson: No, I did not.

Burridge: Do you have any idea where the name Aloysius may have come from?

Simpson: Yes, I do.

Burridge: Perhaps you had better tell us.

Simpson: From my wife.

Burridge: You mean, she added that for you?

Simpson: Yes, she did.

It was about the only point Wally Simpson was to win. His wife had filled in the marriage certificate (that presumably CSR's private detectives had ferreted out) because Wally couldn't write. She had added an invented extra Christian name because she thought it would make the proceedings more dignified.

As the rubbish cross-examination progressed, it became obvious that CSR's detectives had dug up much, much more. It was implied that Simpson had received psychiatric treatment after being kicked in the head by a horse as a teenager. They had somehow obtained his hospital records and suggested that he had spun a web of fantasy about his life, including claiming he was a war orphan and inventing a twin brother. They said he had invented a wife to get an increased workers' compensation pension. They found out that he hadn't filed his tax returns for seven or eight years. They unearthed convictions for assault, for passing a dud cheque and for a driving offence. They showed that his memory did not match his employment records at Wittenoom.

As for his chest disease, CSR produced a formidable array of medical experts prepared to swear that Wally Simpson did not have 'classical' asbestosis at all... In spite of the fact that four years earlier he had been granted workers' compensation. The clear implication was that it was all in his mind.

To represent the company, CSR put on the stand Osborne Anzac Allen, the ramp Oxie Allen who had been warned of the dangers of the mine all those years earlier by Dr McNulty. Allen was a lifelong servant of CSR, and for nearly 20 years had been superintendent and manager of the mine. As he walked to the witness stand, he was followed by a dozen pairs of eyes, the eyes of the men who worked for him all those years ago and who now were sitting in the court waiting, hoping that he would tell the truth about the appalling conditions he had tolerated at Wittenoom.

As Allen proceeded with his evidence, it became obvious that he, too, had become a victim of the mine. Since 1960, when he was diagnosed 30 per cent lung dead, Oxie Allen had known that he had acute asbestosis. But as he wheezed his way through his evidence, it became apparent that even that was not going to make him deviate

114 BLUE MURDER

an inch from the company line. 'Generally, I thought it was dust safe,' he told the judge. In the public gallery, the Wittenoom survivors blushed and called out 'Jair'.

He had the chance to tell the truth and die like a man. He would have been remembered for 1000 years. But he stood there, a dying man, and he perjured himself to protect the company. He will rot in hell,' says Robert Volakovic. A few days after the trial finished, Oxley Allen, too, lay dead, killed by the dust of Wittenoom.

When Justice Peter Brinsden delivered his judgment in November 1987 - it is trial by judge, not a jury, in Western Australia, owing to some quirk in the law - the courtroom was packed with Wittenoom survivors. There was tension in the air, and hope. Would this be the verdict that after all these years would give them their revenge for what had been done to them?

Their optimism quickly drained away as the judge began to read his finding. Simpson did not have asbestosis, he ruled, or any other disease that could be blamed on CSII; his bronchitis was caused by smoking, his lung function tests affected by the fact that he was overweight. '...that view was reinforced over the whole three months of the case when he sat in the back of the court facing me with his stomach clearly visible.' As for Mr Simpson's reliability, that had been effectively destroyed by the cross-examination. 'His early medical history... is suggestive of a person who is inclined to exaggerate his symptoms, give false information to those examining him, and engaging in seeking hospital and medical assistance through some personality disorder, rather than through physiological reasons,' said Justice Brinsden.

A shocked silence fell on the court. Two of the defence lawyers nudged each other and smiled. David Ashley threw his head back and closed his eyes in disbelief. Wally Simpson told the reporters outside that he would cut his lung out and send it to the judge.

That night, John Gordon went out and got good and drunk, and, at two o'clock in the morning, went around Perth ripping down newspaper posters with their taunting headline AMBERGEE KNOWS LOSS CASE. He pinned one to the wall of his office, and swore that before the litigation ended he would cover it over with headlines proclaiming victory for the Wittenoom victims. Two in particular: *murderer wins* *verdict* and *murderer wins* *verdict*. It would be a long wait; it took until December 1988 for three of Justice Peter Brinsden's colleagues on the WA Supreme Court of Appeal to throw out his

THE GALLOPING GORDONS 115

judgment and order a new hearing. It had not come to retrial at the time of writing, nor had Joan Jocelyn's widower received a cent from CSIR.

It was the lowest point of the struggle that by now had been going on for 11 years, the bitter drizzle of despair. So none of the Wittenoom victims took much interest when, in the court next door, before a different judge, the hearing of the claims of two more Wittenoom victims began. Nor did they care much a few months later when another case started up across the continent in Melbourne. They would lose that one, just like all the others: checked from justice by death, or by judges who got it wrong. That was what they believed. They hadn't counted on a man named Klaus Rabenau.

10 The maxi-trials

Conventional, adjective: ... superlatively incoherent ... reproachful, shameful, disgraceful.

— Oxford English Dictionary

Still, nearly two years after he received his death sentence, Klaus Rabenault was a powerful-looking man. With thick arms, a barrel chest and a bullfrog neck, you could imagine him back in his native Barren mountains, knocking back steins at the Oktoberfest. The mesothelioma smouldering away in his chest had not yet erupted into the bushfire of cancer that would surely destroy him, just as it will all those other young migrants who went to Wittenoom. All of hope and returned with their lungs laced with asbestos fibres.

A photo engraver by trade, Klaus came to Australia in 1960 when he was just 24, looking for adventure, sick of a country where life was just work, work, work. He arrived at Wittenoom later that year to make some money, after, it's important to remember, CSR should have known of the Wagner paper linking asbestos exposure with mesothelioma. 'It was the last place on earth I should have gone, coming from a civilised place like Germany, but I was stuck there until I could afford to pay the company back the air fare,' he said.

First, he was put to work in the bagging plant, ramming the fleecy fibres into sacks with a wooden club. Then, Klaus Rabenault was sent down the mine to work bent double in those four-foot stopes, shovelling the asbestos rock down a chute into the little ore train that took it to the mill. The air was stifling, the dust so thick that the beam from the lamp on his helmet could not penetrate more than 15 or 20 feet. Yes, masks were available in the mill, but no one could wear them because they were too hot and sweaty and the filters used to clog up with dust. At night he slept in the primitive single men's barracks, Wittenoom's 'Death Row'. Klaus Rabenault struck this out for just six months, then headed south with a sigh of relief and a few pounds in his pocket.

He migrated across the continent to Melbourne, and as the years went by built up a successful small business, a furniture store and a delivery truck. He married and raised a family and threw himself

THE MAXI-TRIALS 117

into the Great Aussie Outdoors: skiing, golf and tennis, even sailing in the Sydney-Hobart yacht race. At the age of 53, Klaus Rabenault was a man in the Indian summer of his life. And then, nearly 30 years later, the Grim Reaper of Wittenoom tapped him on the shoulder with his sickle.

He had been feeling short of breath, unusual for a man like him — strong, fit, hardly a day's illness in his life — and went to his doctor. By now, he knew of the diseases that were killing the men of Wittenoom, but, of course, he never expected it to happen to him.

By October 1987, he knew the worst: mesothelioma, no doubt about it, a year to live at the most if the treatment didn't work, and it never had before. Klaus Rabenault knew he was dead, although his iron self-discipline never allowed him to give up hope until he choked his last in a hospital bed. A slow burning anger began in his belly. They were not going to be allowed to get away with it. 'They' was CSR.

Towards Christmas that year, there was an unseasonal mood of gloom in the pastel-tinted offices of Slater and Gordon. The times! was in the air, the drinks were on the table, but no one's heart was really in it. They had fought and lost Wally Simpson's case and, although the bailiffs were not yet hanging on the door, the firm was hundreds of thousands of dollars down the drain. Another loss and not only would all hope be extinguished for the Wittenoom victims, it would in all probability mean the end of the law firm that fought for them. They had put not only their reputation but also their very existence on the line.

Some months before the Simpson case started, there had been a series of negotiations between the Asbestos Diseases Society and the Western Australian Government to get a guarantee of Legal Aid funding for the test cases. The society, that's Robert Vojakovic, had argued that without this support, it would be impossible to get the cases to court — but the sort of money needed would consume a large slice of the total annual budget of Legal Aid. Eventually, and with a lot of baggling, the government agreed to fund four cases, four out of the 300 that were now on the court list, with an initial budget of \$500,000. It was a huge sum, but even that would be nowhere near enough. Those first four cases eventually would cost the victims more than \$2 million. CSR and its partner in litigation, the State Government Insurance Office, would spend more than \$10 million fighting them.

The day before the judge threw Wally Simpson's case out of court, David Ashley was back in Perth to join forces with a top-gun local QC named Daryl Williams, to plan strategy for the second, and greatest, of the Wittenoom maxi-trials, a case that would make the Simpson hearing look like a minor preliminary skirmish, and tie up a judge, a court, and two teams of solicitors and barristers for nearly a year. The case of Heyes and Barrow would take a gruelling 131 sitting days to complete, with legal costs ticking over at more than \$20,000 a day. It would involve 69 witnesses, 730 exhibits, and 11,000 pages of transcript, a body of evidence the size of a set of encyclopaedia, which alone would cost \$80,000 to purchase. CSR had its back to the wall. The company could hide, but it could not run. It had chosen to make the last stand in two courts on opposite sides of the country.

The Perth hearing was well into its second grinding month when Klaus Rabenault asked Peter Gordon whether he would take on his case. Peter Gordon liked the man, his toughness, his sense of humour (although now it was beginning to hurt him even to laugh) and liked his chances of winning. Klaus Rabenault was one of very few Wittenoom survivors living in Victoria, which meant that he could have his case heard before a jury, not a judge sitting on his own. He had mesothelioma and he had contracted it after CSR should have known of the dangers of the disease and protected its workers. He would be a good, honest witness and, most importantly of all, his mesothelioma had been diagnosed in its early stages. There was a good chance Klaus Rabenault would live long enough to see judgment day. Slater and Gordon agreed to take the case.

The Victorian Supreme Court — unlike those early cases in the West — did realise the urgency of getting the trial on before Klaus Rabenault died, and it scheduled what for the slow grinding machinery of the law was an emergency hearing. On 7 April 1988, Klaus Rabenault was in the witness box and the case that would make or break the Wittenoom victims was under way.

It was a duel of the expert witnesses, rather than a trial of any forensic brilliance; the meticulous accumulation of arcane technical information rather than the thrust and parry of Perry Mason. Day by day, witnesses after witnesses testified about the appalling conditions at Wittenoom, about the warnings sounded by Jim McNulty and by Eric Saint all those years ago, about the publication of medical literature (by then there were more than 5000 scientific reports linking asbestos with cancer and other diseases) that should have

warned CSR about the dreadful dangers of that mine.

It took just 32 sitting days, long enough by the standards of ordinary litigation, exhausting for the eye-glassed jury, but still a baby by the standards of the maxi-trial in Perth that was by now well into its sixth month with no end in sight. The barrister chosen to handle the Rabenault case was Richard Stanley, a tall, urbane Queen's Counsel more used to representing great corporations than attacking them. But, by the time he was winding up for his closing address on 23 May 1988, he was pulling out every emotional stop — his final speech to the jury was so moving that even a professional cynic like solicitor Bernard Murphy embarrassed himself with tears. The jury went out to consider its verdict. The minutes ticked by in that grand old Victorian courtroom, and the minutes turned to hours.

After four hours there was a knock on the door, and the court stipstaff led the six men and women back to the jury box. The verdict was for Klaus Rabenault: \$428,000 by way of compensation and \$250,000 punitive damages. It was not only a win at last for the Wittenoom victims, a breakthrough after all those years of sorrow and suffering, it was a win with the 16 candles of punitive damages on the cake, the first time in Australia that any judge or jury had found a company so recklessly indifferent to the safety of its workers that it should be punished in this way.

The only cloud in the sky was that it was a verdict, not against CSR but against its subsidiary Miliato, the now-hollow shell of a nonetheloma. After all those months of cracking hardy, Klaus Rabenault was embarrassed to find tears running down his face as he listened to the verdict.

News of the win was telephoned to Perth, where it gave some heart to David Ashley and John Gordon, who were fighting against time to get to a verdict before their clients died. In fact, as the case ground on and on, one of the two Wittenoom victims was to succumb to mesothelioma before the hearing finished, and the other was to outlive the verdict by only two months.

Peter Heyes was the first to die. A gregarious, sport-loving man, he had first gone to Wittenoom as a lad of 17 in 1956 and worked as a plumber's assistant and a hand in the bagging mill. The money was good, of course — even a maintenance man could earn \$50 a week, including threepence an hour overtime — but Peter Heyes hated the

heat, the dirt and the isolation. After only two months, like Robert Vojakovic, he had a lucky gambling windfall and jumped on the first plane out. Peter Hays drifted off to Christmas Island, where he met his wife, Janette, a primary school teacher. He returned to Perth, and started a family.

Early in 1986, aged just 47, he developed chest pains, and was diagnosed as suffering from flu. But the pains didn't go away, and the next year he was sent to the Perth Chest Clinic where X-rays were taken. When the results came back it was clear that two months' exposure to that deadly dust 30 years before was all it took: he had mesothelioma. Peter Hays submitted to major surgery (that was in the days before they realised that even this was no help), but the doctors knew that he had two years at the most to live. By the time the case came to court he was virtually bedridden. He lived long enough to give his evidence, but when he died, on Good Friday, 1 April 1988, the verdict was still four months away. John Gordon went to the little chapel at the university that Sunday to pray - for plucky Peter Hays and for victory in his case.

Stephen Edward James Timothy (Tim) Barrow was the other plaintiff in the maxi-trial. The court had agreed to hear the two cases together because the scientific evidence was identical and it would save the time and the expense of two hearings. Tim Barrow was a man of many parts, and great wit and charm.

A Londoner who had served in a British Army entertainment group during the Second World War, he obtained a Bachelor of Arts degree by correspondence, and emigrated to Australia in 1947. The following year, he took Mickey Mouse airlines north to Wittenoom, where he first worked for Lang Hancock in exploration drilling around those wild, red hills. Then he got a job at the mine as the timekeeper and tally clerk writing out the time-cards for those hundreds of migrants who couldn't speak any English. He worked during the day in a metal shed across the road from the mill, with the asbestos dust blowing in through gaps in the walls. After three years, Tim Barrow decided to move back to Perth.

More than 30 years later, in 1982, he began to feel short of breath while he was pushing his lawnmower and went to the doctor. Another mis-diagnosis; he was told he had pleurisy. It wasn't until four years afterwards that Tim Barrow was told his time was up, that he had mesothelioma. Twenty months later he was dead, but not before news of the verdict had been broken to him on his deathbed.

So these were the two men, Hays and Barrow, whose names were about to be written into the case history books in the most important employer liability trial in Australian history. But there is still one puzzle: why had CSR chosen to fight this case in the first place? Simple - their lawyers thought they could win.

Throughout that interminable trial, CSR, like the Manville Corporation in the United States, had been relying on the 'four dog defence'. Remember how it goes? It intended, first of all, to prove it didn't have a dog; that the mine belonged to Midalco and was nothing to do with CSR, even though it was a wholly-owned subsidiary. If that failed, it intended to prove it had no idea it was dangerous, it had never read all those hundreds of medical reports warning of the lethal effects of asbestos; it had never been warned that Wittenoom was a disaster just waiting to happen. If that didn't work, CSR would try to convince the judge that it had done everything it could to protect the workers; if the men didn't wear the masks provided, then they deserved everything that was coming to them. Only the fourth dog - that the damage done to Mr Hays and Mr Barrow was not the cause of their impending deaths - could not be advanced with a straight face, even in court.

Asbestos is the only known cause of mesothelioma. There can be no doubt at all about that.

As far as Midalco was concerned, CSR's attempts to hide behind the 'corporate veil' were slow and systematically shredded. The management of the subsidiary were all CSR men; no expenditure of more than £10 could be undertaken without head office approval; the stationery and even the jute sacks in which the asbestos was packed carried the distinctive diamond-shaped CSR logo; even problems as petty as the breakdown of a crankshaft would be referred to CSR's board of directors 2000 kilometres away in Sydney. With hindsight, you wonder why CSR bothered to try this defence. 'It would be completely unrealistic to suggest that ABA (Midalco) controlled its own destiny in any real sense,' said Justice Barry Rowland when he had heard the evidence. 'CSR exercised hands-on management.'

What, then, of the wotit details by CSR's witnesses that they knew how dangerous asbestos was? The judge studied the exhibits, the hundreds of medical reports stacked up on the courtroom benches. He listened to the evidence of Professor Saint (it was the last trial in which he was to testify before his death), of Dr McNulty and the other witnesses called and cross-examined on those events

of long ago, and made this finding, which stands at the core of his judgment:

"... the board of ABA should, in 1943, have caused inquiries to be made about asbestos related dangers. It may be thought presumptuous at this distance to ascribe the duty of an employer some 40-odd years ago. I find it impossible, however, to believe that standards have changed to the extent that an industrialist would not be obliged to find out all there was to know about the properties of a mineral which he intends to mine and mill, and to find out the industrial dangers of such an enterprise ... ABA should have foreseen a risk of asbestosis ... (and) should have foreseen a risk of lung cancer ... It is almost inconceivable that at least the oral warnings of Dr Saint were not sent back to (CSR in) Sydney."

Justice Rowland had rushed to judgment by August of 1988, less than a month after that arduous and complex case had finished, sacrificing attempts at elegance and complexity in order to make a finding before Tim Barrow died too. As John Gordon leaped through the thick (223 pages) plastic-bound volume containing the judicial decision, he stopped to notice that the judge had been especially critical of CSR's 'star' witness, a now retired Sydney company director named Keith Osborne Brown, who had been a director of ABA/Midvale, and later managing director and chairman of the Wittenoom subsidiary.

Ozzie Allan by now was dead of asbestosis/silicosis. So was Broadhurst — the man who designed, built and ran the mine for its early years — appropriately enough of mesothelioma. The only senior manager still alive was Mr Brown, a gentlemanly figure by now in his late seventies, with a distinguished career as a company director. As well as Australian Blue Asbestos, he had been a director of CSR, of the national airline Qantas, and of the Permanent Trustee Company. A pillar of Mosman respectability, he was the man who took the stand to defend CSR's indefensible record at Wittenoom.

In his evidence, Mr Brown explained that he hadn't thought the mine was dusty, because it didn't fog up his glasses when he walked through on his infrequent visits to Wittenoom. He testified that he believed 20 million particles of asbestos per cubic foot (700 per cubic centimetre) was a safe level, when in fact for years before the mine even opened the asbestos industry around the world was operating on standards only a quarter this level. He testified that the company had tried to obtain the latest equipment to extract the dust. 'I'm a factory man from way back, and all factories are risks,' Mr Brown

testified. Two small excerpts from his long and detailed cross-examination will give you a flavour:

Q: (Would you agree) the sole responsibility for the health and safety of the workers lay with the managing director and the board of directors in Sydney?

A: Well, I cannot accept that, any more than I do for any other safety matter.

And later:

Q: I suggest to you that the management was concerned, not for the safety of the workers, but was concerned about production and profit.

A: I have to reject that, and I — I can't believe the management itself took that view. They lived there.

As the stone-walling continued, David Ashley, QC, turned up the heat. 'If he was feeling pain at the end of that cross-examination, he deserved it. He is one of the few truly wicked men I have seen.' Even the judge, according to David Ashley, looked down from the bench and gave Mr Keith Osborne Brown an old-fashioned look. In his judgment a few weeks later, he didn't exactly call Mr Brown a liar, but his words had much the same effect: 'I find that equipment and techniques existed at relevant times that could (have) enabled ABA to contain and control dust to limits which were then acceptable; but (the company) failed to utilise the equipment and techniques available, and failed to achieve an acceptable limit ...' said Justice Rowland.

For this final decision, this landmark finding, Justice Rowland had moved the venue to the number one court of that handsome Georgian building in the park. He needed all the space he could get: the place was packed. As he reached the key findings of his judgment, Robert Vojakovic and the other survivors sat on the edge of their benches in the public gallery. John and Peter Gordon were there, but David Ashley had flown back to Melbourne after his long exile in the West, and was resting in bed with a rickety back. The day before the verdict, his 11-year-old daughter, Alexandra, had asked him how he thought the decision would go. 'Darling, we are not going to win, you know ... anywhere else, but not in Western Australia.' 'I'm my heart, dad, I know you should win,' said his little daughter.

Peter Gordon sensed long before the verdict that the judgment was going their way — he reached under the bar table and shook John by the hand. 'They had won. The Wittenoom victims had won. Nothing, not even the death of Peter Hays, not the fatal illness of Tim

Barrow — he was to die less than two months later — could take that away. Justice at last, after all those years, even if the final verdict was only a fraction of the million-dollar-plus judgments being handed down in the United States: \$218,000 for Mr Barrow, \$135,000 for Mr Heyn.

Justice Rowland demolished CSR's defences — they had known that dust levels at the mill were 'excessive to a marked degree' ... they had made no attempt to warn their workers of the dangers of inhaling asbestos dust ... their attempts to improve ventilation were 'too little, too late' ... they should have known of the dangers of asbestosis, and (after 1948) of lung cancer. The only disappointment for the Wittenoom victims was that Rowland J. ruled that CSR's actions were not reckless or flagrant enough to warrant the award of punitive damages.

That night there was champagne in the office and the Gordons, Peter and John, threw lines from that great Paul Newman movie *The Verdict* at each other.

A few weeks later, there was something else to celebrate. CSR had been stunned by the harsh finding of the jury in the Klaus Rabenauit case, and had appealed against the decision, particularly the award of exemplary (punitive) damages. The decision was argued at length before the three judges of the Full Court, the ultimate court of appeal in Victoria. It was a dry and legalistic argument that the trial judge had misdirected the jury, and the appeal court's judgment, when it was finally handed down in September 1985, was equally unimpassioned. Only one paragraph leaps from the page, and that is the one that counts:

... having regard to the weight of uncontested evidence of information concerning the risks in which the employees were exposed in the mill and mine ... I consider that a strong case supporting the finding of recklessness — indeed of continuing, conscious and contumacious disregard by the defendant (Mitsui) for the plaintiff (Klaus Rabenauit) right to be free from risk of injury or disease — was made out ...

The Full Court had thrown out CSR's appeal. That judgment would stand for ever in the law books, a beacon of hope for the hundreds of Wittenoom victims seeking financial revenge for the damage done to them ... and for any other worker injured because of his boss's reckless negligence.

There was champagne in the Rabenauit townhouse that Charles, as Klaus unwrapped his 'angel's wings' and his wife wept in the

laundry. But, of course, nothing — not \$600,000, not \$800 million — can make up for the loss of a man's life.

I wish I was Alan Bond, said the dying man, or John Elliott. I would buy CSR and dismantle it piece by piece, destroy it. It should cease to exist, even its name. How can it be that to pay a few million dollars is punishment enough for what they have done, destroying the lives of thousands of innocent human beings. If I go out and kill somebody, that is murder and they will hunt me down and punish me. But if a company kills thousands of people nothing is done. They are allowed to get away with murder.

At three in the morning of 24 April 1989, Klaus Rabenauit died in a ward at Melbourne's Cabrini Hospital.

By the end of 1988, CSR's legal 'fortifications', so carefully built more than a decade before, had been battered down. Fear judges and one jury had pierced the veil of secrecy and deception that had hung for nearly half a century over that little mine in the desert that would kill 2000 people, and held that CSR had acted with arrogant disregard for their health and safety. Even good old Wally Simpson, the brawler from the bush whose evidence so underwhelmed the judge that he threw out his case, had won a new trial. On the wall of John Gordon's office in Perth, the humiliating headline of his loss in the Simpson case had just about been obliterated by a rash of clippings: *TRASH, RAVENOR AS JUDGE NUNES IN ASSEROS CASE*, *WAX WERE HEROIC ASSEROS VICTORY*, and *HUXE PAVERT NOT UNDER VICTIM*. The tide had turned and was roaring back over the mudflats of history to inundate the company that had dared to deny its guilt. But even now, CSR's management — instead of putting on the white sheet and offering realistic compensation to the victims — was conjuring a desperate rear-guard action.

On 21 September, the day after the Full Court's landmark decision, CSR was dealt another body-blow. For 10 years, at a joint cost estimated by opposition lawyers at more than \$10 million, CSR had fought side by side with its lawyer, the State Government Insurance Commission of Western Australia, against the Wittenoom victims. Now, as it read and reread that judgment, the SGIC realised that it was slating down the abyss of a damages payout that could wreck it, or at least send it to the financially-strapped State Government for a multi-million dollar bailout. SGIC did its sums and issued a terse, four-paragraph statement under the name of its managing director,

Mr Frank Mitchell, declaring all bets off: '... it is apparent from yesterday's court decision ... that Midalco had been aware of the dangers associated with asbestos dust, that it had failed to take reasonable precautions to protect employees, and had failed to fully disclose the dangerous nature of the Wittenoom mine operations to the Insurance Commission,' read the statement. '... the insurance policy for ... Midalco is (therefore) considered to be inoperative.'

SGIC originally had covered the Wittenoom workers to a maximum of \$2000 a head, but in 1959 that had changed to an unlimited liability. It would be up for the lot, which (if Klaus Rabenau's case was anything to go by) could be more than \$500,000 for each victim who claimed. And even at that stage it looked as though there were up to 1000 people who might have a claim: the commission knew of 600 Wittenoom workers who were receiving workers' compensation and 249 who had already issued writs. By the SGIC's accounting, the final 'worst case scenario' would be a payout of \$200 million. The commission had no reinsurance arrangement under which a mega-claim like this could be passed on to an overseas insurance pool like Lloyd's of London. SGIC, which had fought the victims side by side with CSR all those years, had turned on its former partner in litigation with a vengeance. The company's statements (said Mr Mitchell) were 'mischievous, misleading, and designed to shield it from the impact of recent court judgments'.

When the SGIC statement hit the wires — and news organisations around Australia were already headlining the Rabenau decision — CSR's shares began to drop alarmingly on the stock exchange. Something had to be done, and that something turned out to be not an apology, or an admission of guilt, or an offer to immediately settle all claims, as one might expect. On 31 October, CSR placed large double-page advertisements in every newspaper in the country to present its analysis of the 'problem', an analysis so flawed, so inaccurate and so wrong that Slater and Gordon gave immediate consideration to referring it to the Trade Practices Commission for prosecution as false and misleading advertising.

That statement will be dealt with in detail later, but in essence CSR booked its own eventual liability to the victims of Wittenoom at \$20 million, said the SGIC would have to pay another \$30 million, and gloated that even if it lost the inevitable court battle with the commission and had to pay the lot, that would only mean eight cents off the price of every share. Its estimates of future claims (only a

further 30 cases of mesothelioma) were wildly at variance with what the SGIC had calculated, and with what the medical team at Sir Charles Gairdner would come up with only a few months later. Finally, with a neat turn in hypocrisy, CSR declared itself suddenly overwhelmed with sympathy for those victims it had fought, quite literally, to the death for more than a decade. Following the 1988 judgment, it is of critical importance to the peace of mind of the genuine claimants that they and their families should not have to endure protracted litigation. The remaining claims should be settled speedily on humanitarian grounds. 'Klaus Rabenau confessed that he felt close to throwing up.

Of course, like just about everything CSR has said about Wittenoom, that sentiment should not be taken at face value. Six months later, more than 200 of the victims were still waiting for a reasonable offer, settlement of all but the most urgent post-1959 claims had been postponed pending the battle between CSR and its insurer, and Slater and Gordon were preparing for another long, grinding year of litigation.

And around the world, hundreds of other victims of the deadly blue asbestos from Wittenoom were becoming impatient; people who had never been near the place, never heard the name and could hardly find Western Australia on the map. Because CSR had exported its cargo of deadly fibres to a dozen countries, and now — like the miners of Wittenoom — they were reaping the harvest of death.

'Aussie Blue'

'We all thought we were saving lives ... none of us had any idea we were killing people.'

— Wartime scientist Henry Walton

In the middle of the most secret place in wartime Britain stood a little wooden hut. This was Porton Down, on the bleak and foggy Salisbury Plains, the War Ministry's establishment for research into germ and chemical warfare. Here, during the early years of the Second World War, the greatest collection of scientific talent in the country gathered to invent the weapons — and the defences — to defeat Hitler. It was Britain's Los Alamos, without the atomic bomb, and in the middle was this shed where half a dozen men worked through the night on a mysterious project. They were trying to build a better gasmask, one that would protect soldiers against the new generation of German poison gas, the terrifying arsenic smoke they called Blue Cross that could penetrate the old charcoal masks designed during the First World War.

Henry Walton remembers what went on there, although he's now in his late seventies, living in retirement near Edinburgh and still gagged by the Official Secrets Act in what he can reveal. Henry Walton was an expert in the other particle physics, the study of dust, when he was drafted in 1939 to be part of the Porton gasmask research team. His particular job was to devise the tests to make sure the new generation of gasmasks were effective. The task of the little team working in the shed, under the leadership of an eminent scientist by the name of Dr D. J. Thomas, was to design a new mask, a mask with fibres so fine that they would trap the poisonous smoke and protect the soldier. And what finer fibre could there be than crocidolite, blue asbestos, with its bore a hundredth the width of a human hair? The specifications they came up with for the filter to fit in the probe of the mask — blue asbestos, sandwiched between layers of Australian Merino wool — became the blueprint for more than two million gasmasks assembled in England, Canada and (later) the USA. The blue asbestos? There were only two places in the world where it was mined — South Africa and Wittenoom.

'AUSSIE BLUE' 129

As early as 1939, Lang Hancock had been making inquiries, with the help of the Western Australian Agent-General in London, about the chances of selling the asbestos he was mining up in the Wittenoom gorges to the United Kingdom. The new military gasmask design, with its specification (L.A.G./97, D) for blue asbestos, came as a Godsend, and from the wharf at Point Gassman, he began to ship tons of it across the ocean to the factories in England that were being hastily converted to manufacture the filters. It was the beginning of an export industry that was eventually to consume a substantial slice of the Wittenoom asbestos production — over the years more than 60,000 tons, \$10 million worth, would be exported to England, the United States and to at least 10 other countries. The seeds of an international plague of mesothelioma were sown. The harvest was still being reaped half a century later.

These first wartime shipments of asbestos were delivered to factories at Barking in Essex and Hobden Bridge in Yorkshire, where the fibres were compressed into filters, sandwiched between layers of wool and sent for assembly to plants at Leyland in Lancashire, and to a production line in Nottingham that Boots, the pharmaceutical people, had turned over to the government. Conditions at the Boots factory, where more than 1000 civilians, mainly women, were conscripted to work, make a stark contrast to the primitive pick-and-shovel mining at Wittenoom. That company, at least, understood well the dangers of asbestos, even if mesothelioma had not yet been 'invented'. The women worked on a conveyor belt, with their arms sticking through holes in the sides of a long flame cupboard arrangement equipped with extraction fans, much like the robotic arm system used by scientists handling radioactive material. They were issued with special masks. The extracted dust was put in sealed boxes, which were then buried. That's how dangerous responsible companies realised asbestos was, even before CSR bought into the mine at Wittenoom.

Auntie Redgate was one of these women. She was a Nottingham lass in her early twenties, a war bride whose husband Arthur was off with the navy. From 1942 until they stopped making the gasmasks at the end of the war, she worked on the production line, stuffing those asbestos/wool filters into the gasmasks for the troops. When the war ended she left to raise a family, and Arthur took up work as a plumber at Boots. The years went by, the salad days of holidays at Belling's and whist drives in the church hall, ballroom dancing and

the arrival of grandchildren. They were by now both in their sixties and Arthur had retired. What grand plans they had for their Golden Pond.

Then, one morning in 1981, Annie said she was feeling poorly, out of breath all the time. The doctor gave her an inhaler and told her to take it easy; but as the year went by she got worse. Nothing seemed to help. The doctors wouldn't tell her what was wrong. Towards the end, her weight dropped to six and a half stone (43 kilograms) and Annie Redgate was confined to bed, gasping with pain, unable to eat. Her last words were: 'Arthur, I think I've got TB.' But, of course, it wasn't.

'I'd never heard that word meso ... meso ... meso-what-ever-it-is until the inquest. Then I realised that the doctors must have known all along. I got such a steam up - they knew what she had, but they wouldn't tell us. But what can you do ... nothing can bring her back. She was a war casualty, she died because she worked to save other people. They should build a great big memorial to people like my Annie.' Arthur Redgate is crying as he sits in his little flat, cradling a cup of tea. He's been a widower now for eight years, not the kind of retirement he had in mind. And all because of that blue asbestos. He was right, the doctors did know it was mesothelioma, and they did know what had caused it.

Twenty years earlier, a young doctor named Stephen Jones had been working as a junior pathologist at a hospital in the tough East End of London, in the heart of the docklands where asbestos had been used by the ton to insulate ships, and not far from the asbestos factory at Barking. By chance, Dr Chris Wagner, the South African doctor who a couple of years earlier had identified blue asbestos as the cause of an epidemic of mesothelioma in the Transvaal mining towns, was visiting the hospital, curious to see whether this rare and weird cancer had been found in the United Kingdom. It was not a very respectable diagnosis in those days, recalls Dr Jones. Many doctors didn't really acknowledge it as a tumour in its own right. By luck, the London Hospital's pathology department had been ruled by an obsessive Germanic professor who had insisted on keeping the most meticulous autopsy notes on every patient and the storage until the end of time of frozen blocks of tissue taken from their lungs. Dr Jones decided to put them under the microscope again and, after months of study, discovered 33 cases of mesothelioma that had

slipped undetected through the scrutiny of the autopsy room. He was stunned.

Three years later, in 1985, Dr Jones was posted to the Nottingham Hospital in northern England, where he is now a professor and chief of the pathology department. 'I thought that would be the end of my research; there was no asbestos here. But in my very first week, I was called into the operating theatre where a surgeon was removing a lung from a woman. It had a very peculiar tumour, and I took a frozen section from it. Sure enough, it was mesothelioma, but where had the woman contracted it? She said she had worked all her life in the lace industry for which Nottingham is famous, but when Dr Jones sat down and took her through her life year by year, she remembered that during the war she had worked for a while at the Boots gasmask factory. Dr Jones, pathologist turned detective, got hold of one of the old gasmasks and pried it open with a tin opener. Sure enough, there was asbestos inside, four pads of blue asbestos sandwiched between layers of wool in the filter.

The following year, Dr Jones had another mesothelioma patient who had worked at the factory, and he decided to undertake a research project. By another stroke of luck, he managed to get hold of the Boots factory wages book, a thick, leather-bound volume that he intercepted on its way to the shredder. He now had a master list of all the people, 1200 of them, who had been exposed to asbestos at the factory. But what to do with the information? After much wrangling with his conscience, Dr Jones decided that silence was the best policy. 'A lot of debate went on about this, but in the end it was decided that it would be unethical to worry people about it. We had nothing to offer them. If they were in danger of contracting TB, we could go to them and say "you are at risk, here is the treatment". But for mesothelioma there is absolutely no treatment. We have tried surgery, we have tried radiotherapy, we have tried chemotherapy, we have tried immunological agents ... nothing has the slightest effect.'

Annie Redgate's name was on that list, of course. And so were the names of many of the other mesothelioma victims who were discovered in the Nottingham area over the years that followed. At latest count, 55 of the women who worked on that doomed production line - one in 20 of the workers - were dead of mesothelioma. Dr Thomas, the head of the research unit that developed the gasmask at Porton Down, had already died of mesothelioma, in the 1980s, the first known casualty of the deadly dust. Within a few years, three other

men who worked in that little wooden shed were also dead of cancer. 'We all thought we were saving lives,' says Henry Walton sadly. 'None of us had any idea that we were killing people.'

The dust from that blue asbestos had turned out to be, for, the deadliest than anyone had suspected. The shortest exposure resulting in the disease was a woman aged only 46 who had worked on the assembly line for just 10 days. Even the nightwatchman who just walked around the factory breathing in the evening air contracted it. Around the other factories and shipyards across the United Kingdom, dark stains were spreading on the cancer maps as mesothelioma started cropping up among people, ordinary residents, who had the misfortune simply to live downwind, breathing in the invisible particles. Across the Atlantic, a tollgate keeper whose only exposure had been breathing the dust from brake linings was dead of mesothelioma. There is no safe minimum level of exposure to any kind of asbestos, and blue asbestos was turning out to be the deadliest of the lot.

Two hours down the motorway, on the outskirts of the Merseyside city of Liverpool, a team of epidemiologists from the government's health and safety executive has been keeping count since 1967 when it was realised that, like most western countries, Britain was on the brink of a mesothelioma epidemic. Every death certificate that carries this diagnosis is fed into its computer; every year the toll takes another leap. By the end of 1987, 8000 English men and women had been killed by blue asbestos, and deaths were being reported at the rate of two or three every day. The cancer atlas shows plague patches around every major industrial centre in the country: the dockyards of the East End, Plymouth and Humberside; the factories of Essex, Yorkshire and the Northern Black Country. Everywhere that blue asbestos from Australia and South Africa was tipped into the manufacturing system, people are dying by the thousand, and will still be dying well into the next century. But just how deadly it is, compared with the common or garden white asbestos used in 90 per cent of the pipes and panels and insulation material that was turned out?

In Canada, at the department of epidemiology and health of Montreal's renowned McGill University, another team of researchers had been engaged in what would have been a fascinating experiment, if it didn't involve counting corpses. They were trying to

compare mortality rates between a small group of people who had worked with blue asbestos (crocidolite) at another military gunmark factory in Quebec, with the 10,000-odd men who worked in the country's white asbestos (tremolite) mining and milling industry. In 1978, they published their startling results in the *Canadian Environmental Research Journal*. Among the 200 blue asbestos workers, none were dead of mesothelioma, and 4 of other cancers - nearly half the 66 deaths they investigated. Among the thousands of white asbestos workers, there were only a handful of cases of mesothelioma, a quarter of one per cent of deaths. The findings concluded that blue asbestos was 60 times as likely to cause mesothelioma as white asbestos - and some researchers now suspect that white asbestos on its own may not cause the cancer at all. Other cancers, yes, but maybe not mesothelioma.

But that was all in the future when CSR, now firmly in the saddle at Wittenoom, began its desperate drive for export markets. The mine had never been profitable, and the major asbestos manufacturers in Australia (notably James Hardie) preferred to use the cheaper, easier-to-manage white asbestos in their wall panels. CSR scouted the world for markets, and eventually came up with a list of customers as long as your arm. A faded old photograph shows a boat being towed through the township with sacks of asbestos tied up in bunting, and the slogan PROTECTING AS BEST AS WE CAN. It has a crude graphic showing the main markets for Wittenoom asbestos: Poland, the United Kingdom, Holland, Japan, Germany, Canada, and South America. Documents obtained from litigation in the United States show that CSR's customers included companies like SA Francise Electric in Switzerland, Alst SPRC in Belgium, and Gecelis Manufatti in Milan, Italy. In the United Kingdom the biggest importer was a brokerage house named Mineral Fibres Ltd in East London. But the biggest market of all was the United States.

By 1946, CSR had firm export contracts with the world's biggest asbestos company, Johns Manville, with its plants across the United States from New Jersey to California. Manville was to become the company's biggest foreign customer, and the blue asbestos it imported from that little Aussie mine would end up killing its workers like flies, along with the truckers, the shipyard workers and the freight handlers who came into contact with it along the track. In just 10 years, from 1963, Manville imported 35,000 tons of 'Ausale Blue' from CSR in shipments worth more than \$5 million. But why did

they need it? What was so great about this blue asbestos that Manville would pay to import it, rather than use the white stuff from its own mines in Canada?

'(Blue asbestos) was the catalyst that made everything run... blue was always the elixir that made the operation go. You had to have blue.' This is the courtroom testimony of one Kenneth J. Whalen, recently retired after more than 40 years as Manville's director of pipe production. The magic of blue asbestos was the length and fineness of the fibres, and its resistance to saltwater and acid. It strengthened the fabric of the product, much like the straw that Pueblo Indians used to mix with mud to make their house bricks. It was used particularly in pipe-making plants where the 10-foot lengths of Transite conduit that carry power and water under every American city were produced - pipes like the ones George Komenda used to handle, because research has shown that the Fibritex Corporation where he worked was a major customer of CSR.

The Manville 'cookery book' shows that blue asbestos, either from Australia or South Africa, was used in about 60 different asbestos cement recipes, blended with white asbestos in a concentration ranging from three per cent to more than 50 per cent. It found its way into battery boxes (because of its resistance to acid) and brake linings, insulation products and wallboard. It was handled by men, possibly hundreds of thousands of the 20 million American workers who have been exposed to asbestos in the workplace. And, with the Manville Corporation covering behind the protection of Chapter XI of bankruptcy, the eyes of lawyers like Jane Cantor are focusing with increasing concentration on CSR's factories around the United States, and the company's fat balance sheet across the Pacific in Sydney.

'CSR has deep pockets,' says Mrs Cantor, as she examines the company's 1988 annual report, which shows a recent profit of \$185 million, and reserves of \$220 million in cash and \$535 million in unused lines of credit. 'Tell me, why should they not have to bear a share of the liability like the other companies over here, which have been forced to pay out billions of dollars in damages to the workers injured by their products? A good question, and one you won't find the answer to in the CSR balance sheet. In a minute footnote way back on page 50, you can find that CSR admits it has been 'joined as a defendant in 101 matters in the United States'. The company claims that it has an insurance policy to cover this ('subject to upper limits') and says it is unable to estimate its eventual liability.

Well, Jane Cantor can. Early in 1988, she announced her intention to pursue some 600 cases in which CSR had been linked as a defendant, cases involving workers and their relatives who are damaged or dying because of their exposure to asbestos. Writs have already been served in some of these cases, but there has been a strong silence from CSR's New York attorneys and no defence has been filed. Jane Cantor's firm intended to file for the usual 'nominal' damages of \$2 million in each case and apply to the New Jersey courts for a default judgment of \$151.2 billion if the company fails to turn up. And that is by no means the end of the story. Across the country the same idea has occurred to other firms specialising in asbestos litigation.

It is an eerie feeling, walking through any large US city today. Everywhere you go you are aware of voices, shouts from behind shuttered buildings, the crash of demolition, beams of men in white 'space suits' moving about behind barricades in sealed-off streets. Right in the heart of New York, on Madison Avenue, just a bagel's throw from Bloomingdale's, here is a strange sight: an abandoned boutique, once the upmarket outlet of an exclusive couturier named Vittorio Ricci. Pratered across the empty windows is a poster proclaiming: 'FEMALE ASSAULTS ARE BEING DETECTED ON THE PREMISES ... THE OWNER OF THE BUILDING AGREES TO ADDRESS THE PROBLEM ... BECAUSE OF THE HAZARD TO OUR STAFF AND OUR CUSTOMERS, WE ARE OBLIGED TO CLOSE THE STORE. It is just one of thousands of buildings being abandoned and gutted - at a cost of tens of millions of dollars - all over the world. While the dying goes on, the decontamination of our cities begins.

When you cross the Bay Bridge heading east from San Francisco, you are in another California. This is not the sunny State of Hollywood and the Beach Boys, Robert Mondavi wine, Piphermo's Wharf with its piles of steaming crabs, the scrubbed and sterile computer laboratories of Silicon Valley; this is California's industrial hinterland. Down the coast you spot the cranes of half a dozen major navy and civilian dockyards; around Oakland and Stockton and Redwood City are the smokestacks of great industrial complexes. Asbestos was used here by the tens of thousands of tons, and now California - like New Jersey across the country - has become a killing field for asbestos, mesothelioma and all the other cancers that are associated with it. Like New Jersey, California has developed a booming new industry in asbestos litigation.

Sitting in his office on the outskirts of Oakland is a large, mildy man wearing rummers and a purple shirt. His name is Stephen Kazan, a 46-year-old Harvard-educated lawyer — and don't let appearances fool you. By early 1969, his firm had settled about 300 cases for people dead or damaged by asbestos, with the biggest payout \$1.5 million for the family of a government shipyard worker who contracted mesothelioma. He has another 400 cases on his books, including a number where Stephen Kazan believes he can prove that it was the blue asbestos imported from Wittenoom that did the damage.

John Manville had four major asbestos factories in California. At Pittsburgh they manufactured roof shingles, at Lompoc there was a plant producing insulation from asbestos and diatomaceous earth; but most of the blue asbestos the company imported was headed for plants at Redwood City and in the town of Stockton, in the San Joaquin Valley near Fresno, where pipes were produced and crocodilla was the 'elixir' that bound them together. James Vermoulen, one of Stephen Kazan's clients and the founder of an asbestos victims' association, remembers it well. He worked at the Stockton factory for nine years.

Mr Vermoulen is now 62, and in the winter he is driven into exile from his native California to the warm, dry climates of Arizona. He has chronic asbestosis, and the slightest chest cold could carry him away. In 1967, he took a job at the Manville factory, an enormous plant of eight hectares (20 acres) under roof on the outskirts of Stockton, where he worked on a variety of jobs making pipes for water supplies, boilers and chimney flues. 'We used the blue asbestos in all these products. It was a reinforcing agent. We didn't know whether it came from South Africa or Australia or wherever ... I wasn't in that area. But it was blue, all right, and it was a son-of-a-bitch.' The entire Stockton plant was enveloped in a fog of asbestos particles. It was in the air, it lay like thick dust on the ground, there was no avoiding the stuff.

James Vermoulen didn't realise he had a problem until 1977, 11 years after he left that dusty factory, when he was out hiking with his family in the Dinky Creek Mountains out the back of Fresno. The abduction block was a 100-yard walk from where he was camping, and even that left him panting for breath. Back home in Fresno, he collapsed and was rushed to hospital with chronic heart failure and double pneumonia. The doctors packed him in ice and fought all

night to save his life. Jim Vermoulen had severe asbestosis, he was 60 per cent lung dead. 'My gut up and go sure got up and went ... I dressed those cold, foggy days in Fresno, just the slightest cold or flu and that is a certain death sentence for me.'

Jim Vermoulen did receive an offer from Manville. To compensate him for living the last third of his life as a virtual cripple, they suggested \$30,000 would be an appropriate atonement for their negligence. 'I told them to shove it where the sun doesn't shine. What sort of an offer is that for a man's life? I'm going to fight them, not just for me, but to make sure the whole world knows what a bunch of murderers they are.' Of his 250-odd workmates at the Stockton plant, James Vermoulen makes a guess that half are either dead or suffering from asbestos disease, many of them terminally ill with mesothelioma. Manville knew all along what it was doing to us. 'They just didn't give a damn.'

So what had been going on at Manville, after that great corporation was forced to flee into protective bankruptcy? For six years, the company had been negotiating with teams of lawyers for a solution to the litigation that threatened, quite literally, to lead to the death of one of America's Top 200 companies and the breaking up and selling off of all its assets. Late in 1988, Manville's headquarters in Denver announced that it had set up a 'settlement trust' to compensate its victims, the first time a trust like this had ever been established, and (with the exception of compensation for the Dalkon Shield IUD victims) the greatest payout in the history of toxic tort litigation. Under a complex reorganisation plan, Manville and its insurers had agreed to an 'evergreen' arrangement under which cash, shares, and a cut of the company's profits would be paid in until the year 2016. The eventual kitty would be \$2.5 billion, and the share deal would mean that — what a bizarre turn of fate — the victims of Manville's negligence would end up owning 80 per cent of the company.

In November, Manville said that it was emerging from bankruptcy (rumour has it keeps to go gushed *Time* magazine) but as a mere shadow of its former self. The company had posted an annual loss of more than \$1 billion, it had slashed its operations to the bone, sacked 8000 of its 28,000 workers, closed its asbestos mines and factories ... and even sold off its corporate headquarters in Denver. In exchange for that, the victims had to agree to negotiate settlements with the trust. It was total, abject surrender, an admission

that all along, the evil empire of Vandiver Brown had knowingly and negligently exposed its workforce to the terrible risks of asbestos disease.

Even then, some of the lawyers smelt a rat, and opposed the settlement. But at the end of the day (this is Jane Cantor's way of looking at it) "... we decided, why kill the goose that laid the golden egg? Stephen Kazan looked at the deal like this: 'The Manville reorganization is immoral, inadequate, and means that future victims are getting screwed. I think the best thing would have been for the company to be liquidated and its executive officers taken out and shot. But looking at it pragmatically, the existing victims are getting their money in larger quantity and sooner than under any other proposal ... what I ended up saying to my clients was: "If you don't need the money now, and if you want to make a moral stand - vote against it!"'

Their optimism didn't even last out the mild, snow-depleted winter of 1988-89. Early in February, less than three months after the trust was set up, the trust said that it was running out of money. It had been set up with an initial lump sum of \$700 million (\$165 million from Manville and \$530 million from the company's insurers) but the money had already gone. No one had anticipated the torrent of claims that would come pouring into the trust's headquarters in Washington; no one had foreseen the size of the payments.

By February, 40,000 people injured by Manville's asbestos had filed claims, and the company was now admitting that it expected eventually to receive somewhere between 120,000 and 200,000 claims. By then, 14,000 claims had been settled at an average of \$38,000 each and the entire start-up bankroll was gone. 'We project that in the third or fourth quarter of 1989, the trust will recurrently find itself temporarily unable to pay claimants,' the Manville Trust said in a statutory report filed with the Federal Bankruptcy Court. Said a lawyer involved in proceedings: 'It means a lot of sick people are going to be getting IOUs, perhaps as early as the end of this year. When you have a disease as fatal as asbestosis, delay is often akin to non-payment.'

So, at the time of writing, the Manville victims, like many of the casualties of the Wittenoom mine, were still waiting and hoping after all these years, those decades of struggle, for justice. Yet, the trust could sell some of its shares in Manville, but here is the Catch-22 situation they find themselves in: the price by now has plummeted

to the extent that the asbestos expert Barry Castleman says 'you wouldn't use the shares to roll your cigarette in'. Many of the victims of what by now was beyond doubt the world's greatest man-made epidemic were, like James Vermilion, telling the trust to stick its money where the sun didn't shine. Another wave of litigation was bearing down on the company.

But if the American asbestos victims were overcome with rage and frustration, Down Under many of the men and women and children whose lives had been destroyed by Wittenoom, by CSR's 'continuing, conscious and contemptuous' disregard for their safety, were still in lingering limbo. Promises of a speedy settlement had evaporated. Another year of exhausting litigation was on the court calendar. The company was still denying its negligence, telling its shareholders it was in good shape, and even refusing to acknowledge the extent of the disaster.

12 Lies, damn lies and statistics

What good is he doing by predicting that another 600 people will die, other than make them sicker in their beds?

— CSR executive Bill Bennett attacking the National Health and Medical Council's forecast of the Wittenoom toll

2020. It's a number, not a year. If the past is another country, the future is another planet. By the end of the second decade of the next century, the Russians will have a colony on Mars, the parliamentary democracy of China will be jostling Japan for economic superpower leadership of the world, the Siberian hordes will be hacking in ozone-depleted Mediterranean sunshine, and genetic engineering will offer us all the body of Arnold Schwarzenegger and the brain power of a Grey supercomputer.

By 2020 cartographers will be wondering what that funny name Wittenoom is doing on the map of Western Australia, that long-abandoned ghost town with its empty, shuttered pub and its silent dusty streets. And down in Perth, a recently-retired Professor of Statistics named Nicholas H. de Klerk will be checking the medical literature occasionally, to see whether his predictions from all those decades before are coming true.

Nick de Klerk is sitting in his cramped little office at the Sir Charles Gairdner hospital in Perth, tapping numbers into his computer. On the screen, a humpbacked curve is taking shape as the complicated logarithms are crunched, and strange terms like 'average time-weighted cumulative exposure' are translated into a graph anyone can understand. It is the graph of death of Wittenoom, stretching 30 years into the unknowable future — the culmination of 10 years' work trying to predict the eventual extent of the country's greatest industrial disaster.

Nick de Klerk is one of the four members of the National Health and Medical Research Council (NH&MRC) special study team. The others are Dr Bill Musk, the head of the hospital's respiratory medicine department; Dr Bruce Armstrong; and Professor Michael Hobbs, head of the unit of clinical epidemiology at the University of Western

Australia. They are the most expert and experienced team of asbestos disease researchers in the country, and possibly the world. If anyone is to come close to getting the Wittenoom numbers right, it is those four men.

Their prediction: by the year 2020, almost 2000 men and women will be dead or disabled by asbestos disease, two out of every seven who worked at the mine.

So, how did this study come to be set up? As you might expect from trading the Manville tactics, which became the blueprint for the world asbestos industry, it was CSR that made the first approach to the scientists. Its motives, whether a genuine attempt to harden its own calculations of the eventual death toll or a bid to capture the scientific debate that was beginning, may never be known. In November 1977, the company's confidential internal records show, there was a meeting between Professor Hobbs and Dr Armstrong and a delegation from CSR. The agenda: CSR funding for a study to track down all those 7000 men and women who had worked at Wittenoom, and try to find out how many were dead or dying. It must have sounded a bit like Hitler funding a postwar census of the Jews, and CSR was well aware that certain cynical people might see a conflict of interest in its proposal.

Neither Professor Hobbs nor Dr Armstrong thought that CSR support was prejudicial in their work, although some media people would undoubtedly claim otherwise; the CSR record of that meeting reads, 'Dr Armstrong considered that his only responsibility to CSR would be to keep us informed. We pointed out that even this was not necessary in our view — we would keep ourselves aware of progress, but did not expect exclusive access to results. Any assistance we gave would be, provisionally, "at arm's length" through a grant to the university.'

In 1978 the colossal task of tracking down all those transient people who had passed through Wittenoom had begun; 6700 names had been obtained from CSR's wages book, although this is considered incomplete, and the real number may be as high as 7600. Stephen Woodward, now an anti-smoking campaigner and head of the Sydney-based Action on Smoking and Health (ASH) had been hired to join the research group. 'It was just the most enormous job ... people had left the town, left the State, many of them had left the country. People had died. We had to go back to the most basic grass roots research.' Mr Woodward and the team examined every telephone book in Australia, every electoral roll, every birth, death and

marriage certificate going back to the 1950s, every green and white departure card filled out at every port and airport — millions upon millions of pieces of paper and cardboard. The job took three years, but at the end of it they had tracked down more than two-thirds of the Wittenoom workers.

By now — it was 1981 — it was becoming obvious that there was a crisis at hand. More than 40 Wittenoom workers were dead of mesothelioma; one new case a month was being reported of this disease that 20 years before had never been seen in Western Australia. The State's Pneumonomiosis Board had approved compensation for more than 100 workers with asbestosis and other cancers and the cost to the government was already approaching \$1 million a year. And by now the scientists knew that these diseases could strike more than 50 years after the victim's last exposure to the deadly dust. The epidemic was nowhere near its peak.

Using all this data, a group from the university's mathematics department built a model to predict the future toll. That paper, prominently stamped CONFIDENTIAL, was sent to CSIR and did not see the light of day until many years later. Hardly surprising, because what it showed was worse than anyone had dared to fear: the mesothelioma epidemic would not peak until 1994-99, when 30 new cases of mesothelioma would occur every year among the Wittenoom workers. The eventual toll from that disease alone — leaving aside the hundreds who would succumb to asbestosis and to other cancers — would be 774, more than one in 10 of the workforce. The report was quietly pigeonholed, but the death rate could no longer be concealed from an increasingly inquisitive media and, by now, a thoroughly alarmed medical profession. The wards of the Calverley Hospital were gradually filling with the victims of the slow-moving epidemic. Seven years down the track, it was becoming obvious that even this pessimistic assessment was wrong, a disastrous underestimate of the eventual toll. By the end of 1988, before the death of Val Doyle, Wittenoom had claimed its 600th victim, and the death toll had topped 400. At the time of writing, the NCI's official body count stood at: mesothelioma cases 111, 84 of whom were dead; lung cancer 147 (133 dead); and asbestosis 369 (219 dead). Where was it all going to end? Nick de Klerk and his team sat down to do their sums again.

It is eye-glazing stuff: 26 pages of 'standard Cox regression analysis' and 'underlying hazard rates' and all the other obscure jargon of

high-level statistics. The bottom line was this: the number of mesothelioma cases would not peak until the year 2010, when every fortnight one Wittenoom worker will be diagnosed as dying of the disease. New cases of lung cancer and asbestosis would be detected right through to the end of the second decade of the next century. The final toll would be 791 cases of mesothelioma, 324 cases of lung cancer, and 838 people with asbestosis; 1953 people, nearly a third of the entire workforce, will end up killed or crippled by the blue dust of Wittenoom (see chart overleaf).

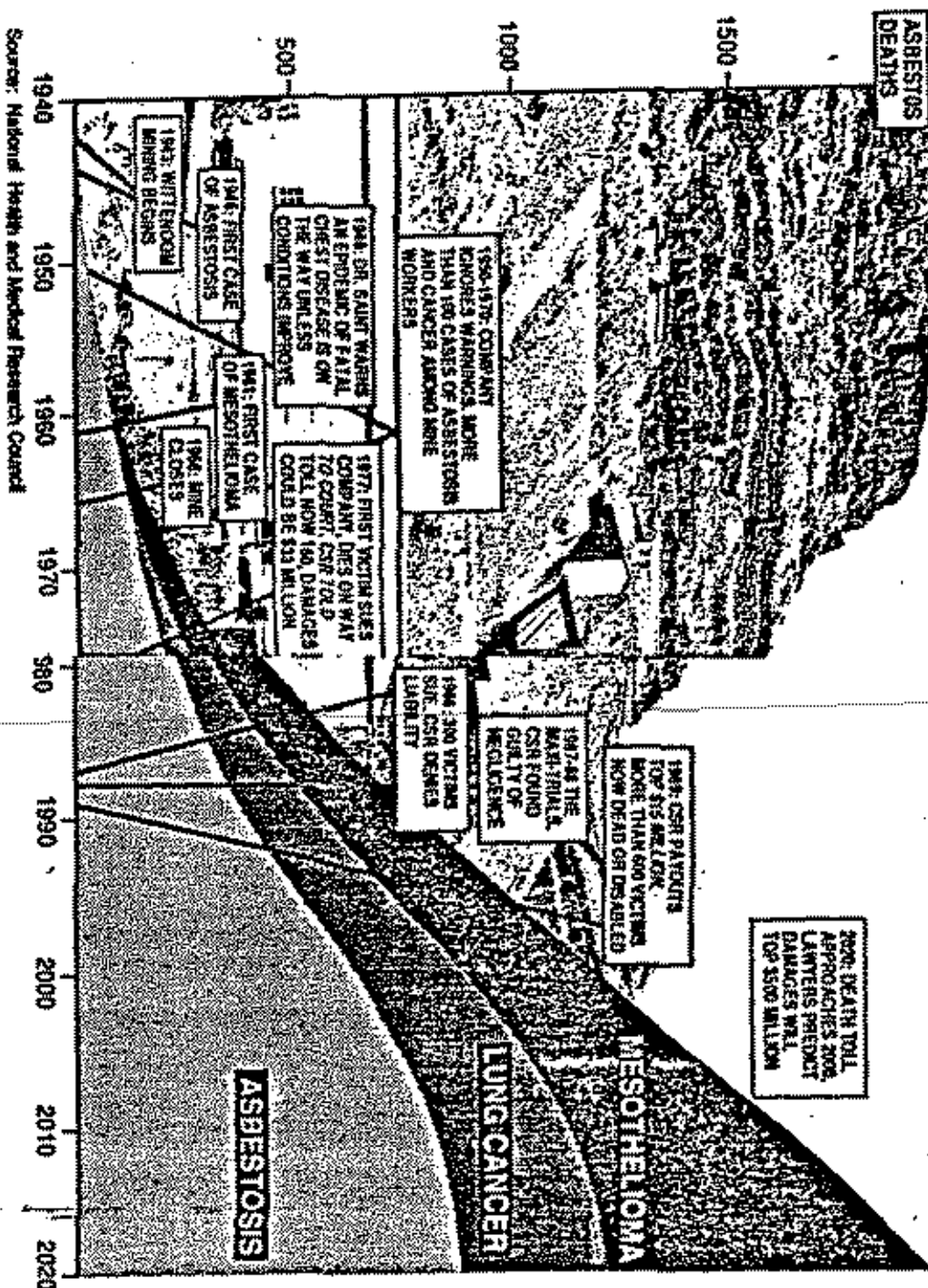
Two thousand. If a just a number, like 2020. What do 2000 dead people look like; how can you convey the enormity of this tragedy? Does it mean anything to say that three times as many people will end up dying of Wittenoom asbestos than died of AIDS in the first decade when the virus swept Australia? That the toll from Wittenoom is almost as large as the total number of people killed on Australia's roads in a whole year? That five times as many people will finish up in early graves as Australia lost in the Vietnam War? Or is the number so great that, in the end, it is beyond comprehension?

Nowhere, any time, have we seen anything like this... It is much, much worse than anything we have seen in the United States, says Professor Irving Selikoff. Professor Selikoff, now in his seventy-fifth year and still working as Emeritus Professor at New York's famous Mt Sinai Hospital, is acknowledged as the world's leading authority on asbestos disease. He has been researching it since 1954 when he began a study on the long-term effects of asbestos in the lungs of 17 men who had worked at the Union Rubber asbestos installation factory at Paterson, New Jersey. Unfortunately, recalls Dr Selikoff, the study was ruined because by the time he was ready to publish his results six years later, a third of the men were dead, not of asbestosis, but of cancer. 'That really got the wind up us all,' he says. He decided to devote the rest of his life to asbestos and other occupational health hazards.

Professor Selikoff has been keeping a close eye on the unfolding disaster at Wittenoom, if only because it has now given Australia the horrific distinction of having the highest mesothelioma rate in the world. Visiting professors travel to Perth to study it. Only in some little villages in Turkey, where the soil contains a similar fibre called erionite, which people used to build their houses, can you find a better human laboratory for mesothelioma. The Australian death toll from this terrible cancer is approaching 2000. Fifteen Australians in

WITTENOOM: The death march

2000 - ASBESTOS DEATHS



Source: National Health and Medical Research Council

a million, more than 200 people a year, will die of the man-made disease that was virtually unknown three decades ago; that is higher than in England, more than double the rate in the United States and seven times greater than in Canada, which had the largest asbestos mines in the world - white asbestos, or, of course, not the much more lethal blue stuff.

Even so, the toll from Wittenoom is just a small drop in the bucket of the asbestos plague sweeping the world. Dr Seilkoff calculates that the eventual toll in the United States will be more than 200,000. Every hour of every day of the year someone is dying over here of cancer caused by asbestos. It's an absolute disaster, and all people like you and me can do is sit on the sidelines keeping score. Appropriately enough, the victims in the US have included Rudolph W. H. the German scientist who invented the blend of asbestos insulation that became the standard for the US Navy. Tragically, they also include the actor Steve McQueen, who contracted the mesothelioma that killed him while serving in the navy.

In the United Kingdom, asbestos deaths are expected to top 60,000 - 60,000 people dead because the industry ignored the warnings, exposed its workers to the lethal dust and covered up its guilty secret all those years. Driek to the death of just one of them: Richard Gaze, the former chairman of Cape Asbestos, the biggest mines/manufacturers in England, who succumbed to mesothelioma a few years ago.

A quarter of a million people in just those two countries; what will the world toll be? Half a million? A million? Ten million? One can only guess. Alongside this, the 2000 dead of Wittenoom may appear small beer, but, remember, this toll is from just one workplace. Dr Seilkoff has never heard of dust concentrations as high as those at Wittenoom, never seen a mine or a factory where elementary safety precautions were so blatantly ignored, and is confident that nowhere else in the world will there be a death rate even approaching that little mine in the desert. In fact, it's a matter of conjecture as to whether any industrial disaster anywhere comes close to it. In their own discussions on how to 'damage control' publicity and litigation, CSR pondered whether to approach Dithlone Ltd for advice. Dithlone is the company that unleashed Thalidomide on the world and caused the birth of thousands of grotesquely deformed babies. Thalidomide always appeared to be harmless over Thalidomide - perhaps we should talk to them, one of CSR's executives noted at the time.

So what did CSR do when this awful prediction landed on the desk of its boardroom; when it realised that 2000 people were to die because of its negligence? Why, it immediately realised that the game was up, the futile denials of guilt, the inept attempts to fudge the figures, the harassment of the victims through the courts - all that had to stop. They placed prominent advertisements in all the newspapers in the country admitting their negligence, and asking pardon from the victims of Wittenoom. They made immediate and handsome offers of settlement to those claiming damages. And they offered a multi-million dollar endowment to the Sir Charles Gairdner Hospital, a no-strings grant for research into cures for asbestos disease.

Like hell they did.

Two months after that advertisement was published, with its honeyed promise of 'speedy' settlement of the claims of the Wittenoom victims, a team led by CSR's corporate lawyer, Mr Ian Mutton, sat down with Slater and Gordon to negotiate. The venue was the law firm's white stucco office in West Perth, and on the table were nearly 100 claims by Wittenoom victims suffering from asbestos and cancer. It soon became obvious to John and Peter Gordon that even now - after losing the two main trials and being thrashed with punitive damages - CSR was still full of fight and, far from making generous offers, was prepared to confront another year of litigation. For a start, it refused to offer a cent to any of the people who contracted asbestosis after 1968 because the dispute with the SGIO insurance office was still not settled. Then the company lawyers went line by line through the claims, trying to beat the victims down by every dollar they could.

Mr A, 69 years of age, suffering from asbestosis for 20 years, totally incapacitated by the disease since he turned 60. He \$228,500 too much for this man's ruined life? CSR thought so. It offered him \$178,000, take it or leave it.

Mr B, aged 77, forced to retire at the age of 61 and suffering asbestos disease for 18 years. Slater asked for \$167,000. CSR said he was worth only \$107,000.

Mr C, aged 64, suffering asbestos disease for more than 20 years and forced to undergo an operation to remove part of his right lung. Slater believed he deserved \$243,700. CSR tried to knock him down \$68,000.

Mr D, aged 73, an asbestosis victim since 1970 with a limited life

expectancy. Slaters said \$197,500. Too much, said CSR, and offered \$125,000.

On through those stifling summer days they haggled over the price of a man's life, men whose widows, as CSR knew well, would receive a great deal less by way of compensation if they should die before the negotiations were complete. Desperate men who had been waiting decades for justice. Men who took CSR at its word when it promised a speedy settlement, and lived to learn that this was just another lie.

By Easter of 1989, CSR had made acceptable offers to about only 50 of the 300 people represented by Slater and Gordon and the other firm handling a handful of asbestos claims. Taylor Smart, Paynter had ranged from \$50,000 to the widow of a man who died of asbestosis, to more than \$200,000 for a senior Health Department official who had contracted mesothelioma. CSR's payout had now reached more than \$10 million, far and away the biggest bill for negligence any Australian company had ever met. But still the company was dragging its feet, arguing over every dollar, stubbornly refusing to strike a deal with its insurers so that the post-1989 victims could be paid.

It took, appropriately enough, until April Fool's Day, nearly six months after that 'speedy' settlement was promised, for CSR and the State Government Insurance Office to negotiate a deal under which more than 200 people who worked at Wittenoom after 1959 would be paid. In the end it was a classic compromise. As the victims had been urging from the start, the two organizations agreed to split the bill, which they calculated would be another \$30 million, \$50/50 between them. So that was that... except, of course, for the hundreds of people still carrying the asbestos death charge in their chests, who will not develop asbestosis or cancer for many years to come.

To the amazement of the scientists involved, CSR was still denying that the final toll would be anywhere near the 2000 predicted by the National Health and Medical Research Council's team. It was sticking to its original, advertised, worst case scenario of a total payout of \$50 million. It was a scenario so flawed that one of the researchers asked for the documentation so that he could examine the statistical method used. He read it several times, scratched his head, and muttered something about 'voodoo statistics'. Across the top, he scribbled: 'Where do the "facts" come from?'

CSR was asking its shareholders to believe that there would be

only another 33 cases of mesothelioma from the mine; an eventual 'total' of 121. In fact, within six months of that prediction the mesothelioma toll had already passed CSR's ludicrous underestimate: 111 mesothelioma cases had been confirmed, and 10 more were in the NH&MRC system awaiting verification. And the peak years for the eruption of the disease had not yet been reached. CSR was telling the world that there would not be a single new case of asbestosis, when just about every week men were being diagnosed and accepted for compensation by the Pneumonia Clinic Board. And they were making no allowance, none at all, for the residents of Wittenoom, the men, and women and children who had merely lived in that dusty little township, and who — like Val Doyle — were now sickening and dying of mesothelioma.

The reason is obvious: CSR had told the world the maximum payout would be \$50 million, eight cents a share. That was based on the 300 claims it knew about, plus only 33 new cases of mesothelioma it expected to come to light; no new asbestosis cases; no allowance at all for claims for other cancers; no allowance for the bystanders, the wives and children of the men of Wittenoom who were by now dying in accelerating numbers; nothing set aside for that mountain of claims in the United States. If the NH&MRC prediction was correct, it would be a financial calamity for the company. If, instead of 33 new cases there were well over 1000, it could mean that even the SGIC's estimate of \$200 million was inadequate, and that Slater and Gordon, who expect the final bill to top \$500 million, could be closer to the mark.

I asked CSR to explain, during a long interview at the company's skyscraper headquarters in Sydney. I couldn't understand much of it, but here is what the company's chief executive officer, a man named Bill Bennett, and the company lawyer, Ian Hutton, had to say on the subject:

Q: In your statement to shareholders, you calculated your liability at a maximum of \$50 million, or eight cents a share. Now, both the SGIC and the NH&MRC say that this is a gross underestimate ...

Bennett: The SGIC say it's a gross underestimate?

Q: Yes. (I showed him their calculations, which came up with a final payout of \$200 million.)

A: Well, could I just show you (he rummages through some papers). This is the SGIC's estimate of the claims outstanding as of six months ago. That comes up at this stage at \$47 million.

Q: But it is based only on existing claims, and only those which had been lodged six months ago.

Morton: No, it's been actually adjusted to take into account all cases that would have manifested, but not be the subject of a claim.

Q: Who is responsible for your calculations, and what are they based on? ... Is this the methodology that was used in CSIR's calculation? (I handed Mr Bennett the CSIR document the company produced when its statistics were first questioned.)

A: No.

Q: What is it then?

A: I'll come back to that ... what we have said is that there are 260 people who have made a claim, and if you went through this and assumed that they all had what they were claiming, you come out with a figure of \$47 million ... we have looked at a few others where it's been established that they haven't got what they claimed ... so we discount that.

Q: How much by?

A: In our own figuring, we discounted it back and I don't have it in front of me ...

Q: Let's take it step by step ... number one, you expect the number of new cases of asbestosis is going to be minimal or zero, is that correct?

A: Zero.

Q: Now, mesothelioma?

A: Mesothelioma, it's likely to be of the order of six to eight a year.

Q: Well, isn't the number here (on CSIR's own document) a total of 83 ... isn't that the basis of your calculations?

A: No, it's not the basis.

Q: Well, what is this?

A: We have projected forward from now. These cases are in there. That's asbestosis ...

Q: Sorry, is this or is this not the basis on which you are calculating your future liability?

A: Yes, but please listen and I'll try to explain ... as publicity was given to the disease and as the Statute of Limitations Act and all that debate was going on, a large number of people who had worked at Witcomb way back there came forward and submitted themselves to medical examination ... the sum of all those comes to about 230 or something like that. We don't expect there will be any more declarations of asbestosis because of the nature of the disease.

Q: Okay, Now, mesothelioma. Here's the final page, here's the bottom line, which predicts a further 83 cases, is that not correct?

A: We turned around then and said what happens with mesothelioma? There is not yet, we believe, a significant enough history of this disease to be categorical about ... if the dormancy is 20 years then you can say there are unlikely to be any new cases post-1985 ... if you say the dormancy is 30 years, then you can say there are unlikely to be any new cases beyond 1995 ...

Q: Yes, of course, that's obvious (since the mine closed down in 1960). But your prediction here is that the incidence will be 1.8 per cent. Which means another 23 cases ... isn't that what it says?

A: Roughly, yes.

Q: Precisely what it says?

A: Oh, that's what it says there. Now some people looked at incidences of mesothelioma and looked at the historical data ... if the average latency period is 35 years, we are probably at the peak. If it's 45 years, we haven't seen the peak ...

Q: But you've chosen an interpretation here which assumed that we have passed the peak ... what you have said in asbestosis was, mesothelioma 83. Now, I don't see any calculation here for either carcinoma, particularly lung cancer. Is there anything here for that?

A: Well ... all we know from the medical advances is that the asbestos-related diseases, we have split it into two parts, namely asbestosis and mesothelioma. We don't quite know what people are talking about when they talk about "you haven't accounted for lung cancer". There (have) been no claims, as far as I am aware, for the general disease.

Q: Do you think exposure to asbestos increases the incidence of lung cancer among the people exposed?

A: Um, I don't know.

Q: Well, there are medical textbooks full of references, going back to Solihoff in the mid-1960s.

A: Look, the medical textbooks are full of things which also say what we thought in 1960, we now believe something different in 1990 ...

Q: You think they are wrong and you are right?

A: We think they are wrong.

Q: Otherwise, you'd be in big trouble for telling your shareholders a story that wasn't correct, wouldn't you?

A: We don't see any point in entering into judgement about who's right and who's wrong.

Q: Would you accept that the team in Perth comprises the most experienced asbestos disease scientists, epidemiologists and medical statisticians in the country - that's Armstrong, Munk, de Klerk and Hobbs?

A: No. Don't accept that. Don't accept that they are the world experts, in fact ...

Q: Could you name a group that you prefer to them?

A: If we were waiting to get thing [sic] we would probably go to Professor Tattersall ... people who are world-renowned.

Q: Who are the best in Australia?

A: At what?

Q: At predicting the incidence of asbestos disease.

A: I don't know.

Q: Well, this team in Perth has spent 10 years studying it. Do you know what their latest estimation are?

A: No, I don't.

Q: Mesothelioma -- now, this is just among the workers, we haven't talked about the bystanders yet -- an additional 892 cases between now and the year 2020. Not 33, it's more than 20 those that number. Where does that leave your calculation?

A: There were seven cases in 1988.

Q: Lung cancer, more than 200 additional cases, which don't appear to have even been taken into account in your own calculations.

A: Well, I'm not sure what they are referring to there. I don't know where they got that statistical information from.

Q: Asbestos: nearly 500 additional cases of asbestosis. You are saying here ... on what scientific basis do you, as CSR spokesman, make your statements? And what right do you have to challenge the expertise of those people who are medical experts, who have spent a decade studying the problem?

A: If that's what you believe, believe it. We just happen to have a different view ...

A: But what is your view based on? What is your expertise? Where is your science? Where are your numbers?

A: This material is part of it. The whole database. It's been looked at by consulting actuaries. It's been looked at by other people that have appeared for us in those trials over in Western Australia ... we just happen to feel that this is the likely outcome. Now, we don't see any purpose in getting involved in any debate about what's going to happen in five years' time. There's nothing we can do about it. We have said that they'll be compensated ... what is the purpose, what good is the doing by predicting that another 800 people will die, other than make them shiver in their boots?

Q: This report estimation that by the second decade of the next century,

when presumably you and CSR will still be around, very close to 2000 people will be dead or damaged by their exposure to asbestos at Wittenoom ... now, if that is correct, how do you expect people to believe that CSR's compensation payment will be \$50 million ... that's just \$25,000 a head?

A: You may not believe it. I can tell you what, a lot of other people do believe it.

Q: It's not a matter of belief. These are the scientists, these are the people who are supposed to know the answers.

A: They are a group of people whose credibility was challenged by other experts in the Simpson, and Hoye and Barrett trial. The judge happened to take notice of some of the Western Australian people ...

Q: Do you take any notice of the State Government Insurance Commission?

A: Yes, we do.

Q: Right, SCIC. Their estimate, and this is based on ... what they call a worst-case scenario ... into the next century, \$200 million. Not \$50 million, \$200 million. Now, do you accept their expertise?

A: Look, I've got no idea what they are including in that figure ... there are people there who will have a claim against others than CSR. We are not legally responsible.

Q: ... put yourself at CSR's annual general meeting in the year 2020. Someone pulls out this following newspaper clipping from the *Sydney Morning Herald*, dated 31 October 1988, in which you state that the provision of \$50 million was 'more than adequate, and the financial impact on the company will not be significant'. Do you really think you are going to be able to proudly state that shareholder in the face and say 'yup, we told you everything we know'?

A: That is the best estimate we have at this present point in time. The SCIC, in discussions with us, have not disagreed with us. I don't know what piece of paper you are referring to there.

Q: This is the SCIC's own calculation of existing and future liabilities. A: We don't know about it ... look, there are statisticians and statisticians and liars. You can do anything with statistics ...

Q: They might say so can you.

A: Yes, right, well ...
If I was getting nowhere trying to understand CSR's wretched mathematics, the Wittenoom victims back in Perth had finally come to the end of their rope. Led by the indefatigable Robert Vojakovic, they launched an extraordinary media onslaught against CSR and

threatened action that could give the company more than just a stinking public reputation.

In March, a man named Dino Pellliccia arrived in Perth. Dr Pellliccia is secretary-general of the influential Italian Emigrant Union, which represents the interests of millions of Italians living overseas. Dr Pellliccia met members of the Asbestos Diseases Society and told the media that he was shocked at the death toll among Italians who had worked at Wittenoom. He pledged his support for a petition to the International Labour Organisation in Geneva, for a worldwide boycott of CSR products.

And then, a meeting of Wittenoom victims and supporters laid plans for besieging the company's factories in Perth, halting shipments in and out for a week. Ironically, they were looking to the union movement for support, the union that turned its back on them all those years ago when they needed protection from the blue dust of Wittenoom. 'We have relied on the lawyers and the medical profession and the media long enough ... now it's time for us to take direct action,' Vojakovic told the cheering meeting.

In all the enthusiasm, no one gave a thought to that little town in the desert, that ghostly place of abandoned buildings and dark, sinister slag heaps. What was happening way up there in the burning Outback? Would Wittenoom, all those years after the mine closed and the miners slung their swags, still be claiming new victims?

13 The last hurrah

'There's more (asbestos) dust floating in the air in St George's Terrace ...'

— Wittenoom 'mayor' Frank Soter

It's not the bits you can see, don't worry about them,' says Frank Soter, scuffing his boot in the red, granular surface of the sidewalk. It's the invisible particles just floating around. 'He is standing outside his home, a comfortable tree-shaded bungalow, a short stroll from the Wittenoom pub. In the dust all around, glittering in the glaring noonday sun, lie the blue/black spicules of asbestos, like the plucked-out teeth of a billion old plastic combs. More than 20 years have passed since the mine closed, hundreds of thousands of dollars have been spent trying to sterilise Wittenoom's poisonous wounds. But still on the footpaths and the driveways, the playground of the little abandoned school, the runway of the sleepy little airport, densely needles of asbestos lurk among the thousands of tons of tailings that were spread around, in defiance of those long-ago warnings.

Frank Soter is one of the survivors of Wittenoom, the unofficial mayor, local councillor, Labor Party organiser (branch membership 17), postman, loanman, Justice of Peace and banker. He has to be. There's hardly anyone else left now, just 42 souls, a couple of traders, a few rowdies from the mining rigs down the road, a policeman, a taken hippie from Carnarvon discovering karnas out among the spinifex, and a couple of withered, inebriated crones with their covers of cats. What was once a rip-roaring boom town is now a sad and dilapidated place. Half the houses were demolished a few years ago, leaving weed-grown concrete slabs. The cinema is shut, the Catholic church a rusting tin tabernacle, the motel bearded up — the sounds of Wittenoom are the creak of old iron and the banging of broken shutters. It has all the scenic appeal of a dried dead dog squashed on a freeway.

But Frank Soter is determined to change all that. For 10 years he has been fighting the Government of Western Australia, not just to preserve this little ghost town, but to revitalise it, to turn it into a freeway.

flourishing tourist centre, gateway to the geological treasures of the Hamersley gorges. The government would dearly like it to just vanish from the map, along with the memory of those 2000 people who will die because they lived and worked here; those who will die wretchedly of asbestos diseases that the mining company should have prevented, and the government could have stopped. They would like Frank Soter to be the last man to leave, the one to turn the lights out on this grim chapter in Australian corporate history.

He came here in 1950, straight off the boat, another of those fine young men from postwar Europe. He was 23 years old, a refugee first from the ruins of war, and then from Rumania's persecution of his native Transylvania. He and his wife and their three young children were among 2000 migrants crammed into the good ship *Stratford*, and he was halfway across the Indian Ocean before he had any idea where he was heading. An official mustered the migrants and announced: 'Numbers one to 150, you are going to Fremantle; numbers 150 to 650, Melbourne; the rest of you, Sydney.' Frank Soter and his family were in the first 150. When the ship docked in Fremantle, they were taken to a migrant camp and eventually interviewed by the employment officer. It was really Buckley's choice: Frank could go and live in a tent and work on the railways; or he could be a farm labourer; or he could go to some place called Wittenoom where they would give him a cheap Housing Commission home, and a job in a mine. He hadn't heard of asbestos, and he certainly had no idea what conditions were going to be like out there in the desert. He had been working as an electrical linesman in wintry Europe, and often used to say to himself please, God, take me somewhere warm. God obviously has a sense of humour.

I went up on my own first, and they put me in the single men's quarters. The men were like animals and I was scared, I didn't speak a word of English. They were drinking beer and gambling and there was fighting all the time. It was like the Wild West... a lot of the men had been recruited from the courts in Perth, people charged with vagrancy and so on. They were a rough bunch, all right.

But Frank Soter landed a job driving the ore train that took the asbestos in four-ton truckloads from the mines to the mill. He stuck at it for six years, bringing his family north and raising two more children in Wittenoom. It was dusty, all right — when you backed the truck up under the chute, it was so smothered in dust you couldn't tell when the truck was full. But it was a job, and I had no idea the

asbestos dust was dangerous. No one told us. Thirty years later, Frank Soter has serious asbestosis. He has been diagnosed 60 per cent disabled, but he's nearly 70 now, too old to start a new life somewhere else. He doesn't care if the government says it is still dangerous even to live in the Wittenoom township — in fact, he doesn't believe it. There's more asbestos floating in the air in St George's Terrace (Perth's main thoroughfare) than up here ... It's perfectly safe, says Frank Soter.

But that's not what the government says. The hazard, of course, comes from the tailings, the crushed up rocky residue from the mill that was strewn around the town almost every day for more than 20 years. The roads were surfaced with it, it was dumped on the school playground and the hospital carpark. It was at the bush race-track where the farmers came in every year for the picnic races, 1000 tons of it was used to make the airport, it was spread around the yards and driveways of nearly every one of the 200 houses in the town. No matter where you lived, the idea was to put down a load of tailings in your yard to keep down the dust, said mine manager Ozle Allan in a deposition a few years ago. 'The grass used to grow through quite well,' Frank Soter put some down, too. 'They used to deliver it free ... it was like a bonus for being a good boy.'

No one listened to the warnings from Dr Jim McNulty and the Mines Department's chest physician that the stuff was dangerous; not CSIR, which happily provided the tailings; not the Main Roads Department and the other government authorities that spread them around the town. Around 33,000 cubic metres of tailings with their residue of deadly blue asbestos fibres eventually were trucked the 14 kilometres from the mine to the township to be mixed in with the concrete foundations of the houses, to form the roads, to coat just about every horizontal surface in Wittenoom. The children played in it, the housewives breathed it in as they swept out their buses and shook their husbands' dusty work clothes. Everyone in the town was exposed to it, all 20,000 people who would come and go over the years that the mine was operating; and, as time passed, it began to wreak its deadly revenge.

Like Val Doyle, Ross Munro and his friend Philip Noble were just children when their families moved to Wittenoom in the early 1950s. They went to the primary school, played on its asbestos-surfaced playground, rolled around in the yard at home, like all the hundreds

168 BLUE MURDER

of children who were born and raised in the town they were regular little dust kids. 'Practising to be Aborigines,' says one of the Wittenoom mothers, as she looks at old black and white Box Brownie photographs of her own children drenched with dust.

The families moved on long before the mine closed, and in 1988, while he was jogging around the football oval at the Mt Newman mining town where he was now living, Philip Noble felt a sudden stitch in his side. That was all it took. He was a strong, healthy man — 5ft 11 as a bull according to his father — and aged just 38. But the doctor had no doubt about the diagnosis: it was mesothelioma. Nine months later Philip Noble, husband and father of two teenage daughters, was dead.

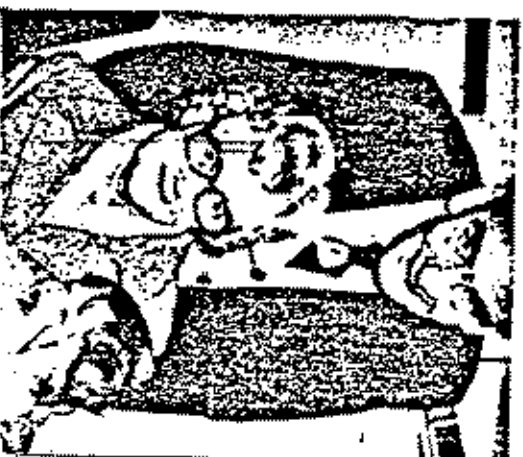
Two years later, it was Ross Munro's turn. Munro had moved to Perth and raised a family of four young children. He was working as a senior English teacher at a high school in the suburbs, a lean, bearded man with a strong Christian commitment. 'I had never had a day's sickness,' he said not long before he died. Suddenly, after helping my brother-in-law shift some furniture, I had this incredible pain in my chest... a few months later, they told me it was malignant mesothelioma. 'Mr Munro hoped to beat the disease with the power of prayer, but that proved just as ineffective as the more conventional methods of medical science. Early in 1989, aged just 37, he was dead.

Ross Munro, Philip Noble and Val Doyle are what asbestos scientists call 'bystander' victims of the disease. They never worked with asbestos, merely came into contact with it in the air, in the dust in which they played. No one can even hazard a guess as to how many of these most tragic of all Wittenoom victims will eventually go to early graves in Karrakatta cemetery. At the time of writing, eight of the Wittenoom residents, seven of them who were children there and one who was married to a mine worker, were known to have died of mesothelioma. Robert Vojakovic believes the true toll is already more than 30. But who can tell how many more people still may be exposed to the dangers of asbestos disease, simply by visiting that blighted little township? There is, don't forget, no known 'safe' level of exposure to the dust of blue asbestos.

When the mine closed just before Christmas 1988, and Wittenoom lost its only reason for existing, the government expected an exodus. Instead, many of the townspeople chose to stay. In the late 1970s there were still 200 people there, demanding the government keep up its services... the school, the police station, power, water. They



Professor Stephen Jones at Nottingham Hospital. He was the first to make the connection between women dying of a rare cancer, and the fact that they worked in a wartime factory assembling blue asbestos pads into gas-masks. (Below) One of the masks, for which blue asbestos and Australian Merino wool were specified. (Below right) Annie Redgate, with grandchild and husband Arthur. One of the best photos of a woman who would die because she was exposed to blue asbestos dust in that factory.





A flying visit from 'Ming', Prime Minister Sir Robert Menzies, to Willemoom. He inspected the mine and the township which Commonwealth and State governments promoted. (Below) He would have no idea of the appalling conditions in which the men worked, bent double in three-foot high stoops, in that asbestos mine down in the gorge.



Half the miners at Wittenoom were immigrants, fresh off the ship — like these two young men from Italy (right). Many of them were to return home to die of the asbestos disease they contracted. (Below) Maria Moscone of Vermiglio (in the Italian Alps) who has buried a husband and a brother-in-law. (Below, right) Fermo Doti lived to tell the tale, but is suffering from asbestos disease. Here he visits the grave of one who wasn't so lucky — Jimmy Freda.



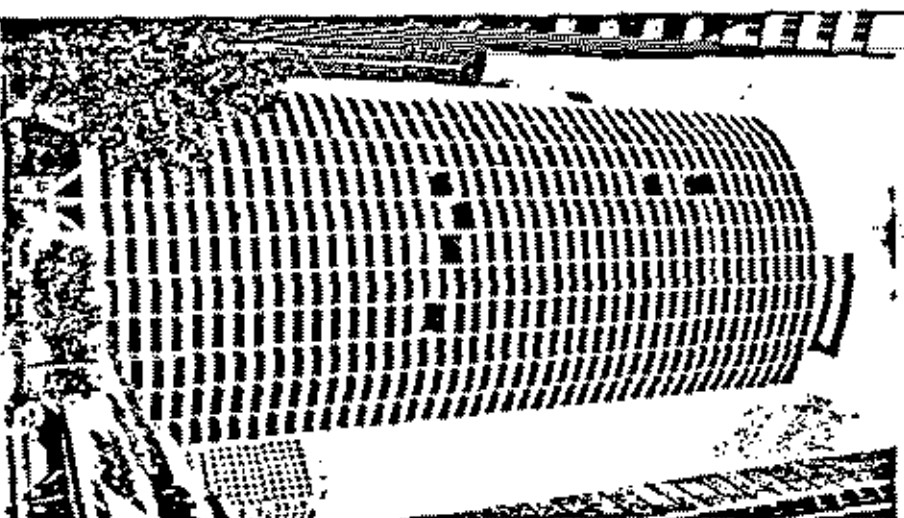


Robert Vojakovic, a Croatian-born miner who survived Wittenoom and for 10 years headed the victims' society in their fight for justice.

(Below) The 'Galloping Gordons', John and Peter — the lawyers who risked the survival of their firm to fight and defeat CSR in a series of the greatest maxi-trials in Australian legal history.



Mr Bill Bennett, chief executive of CSR (the company which owned the mine). For a decade the company denied any negligence, and even today refers to some of the victims as 'malingers'.



CSR's skyscraper headquarters in Sydney. Decisions were made here which meant 2000 people would die.

defied the government to make them move. They scoffed at claims that the town was paved with death.

Beginning in the 1970s — God knows why they took so long — the Western Australian Health Department began to take dust counts around the township, and they were rocked by what they found. Some of the readings — particularly from one monitor at the school — were 20 times higher than international maximum safety levels, and asbestos fibres were detected as far away as 45 kilometres from Wittenoom. In 1979 the people of Wittenoom were treated to another official warning, this time from the State's Health Minister, a Mr Ray Young. 'Fortunately, the fibre concentrations are low, but not low enough to avoid risk to the health of people living in the town, especially to children,' he said.

The warning fell on deaf ears. The residents like Frank Soter had grown to love their unlovely little ghost town, and they were not going to be moved. The government closed the school, they threatened to use the Child Welfare Act to take the remaining children away from their parents, they issued public warnings designed to scare away visitors, they refused to connect any new water or power. They even introduced a policy under which only older policemen would be posted to Wittenoom — and no one with young children — because of the danger of mesothelioma. They lured away around 100 families, buying out their houses and raking them to the ground (at a cost — to the government, of course, not CSR — of more than \$1 million). But still the town staggered on, sealing roads here and there to cut down on the dust, commissioning new studies that by the mid-1980s showed that asbestos pollution was down to 'acceptable' levels. They chose to ignore the fact that there is no acceptable level, no level below which any medical expert is prepared to guarantee that cancer may not result.

Grand plans have been drawn up over the years for exterminating the town, knocking it down and rebuilding from scratch four or 40 kilometres away from that polluted patch of soil. At one stage, a study proposed a new tourist complex be built at a cost approaching \$100 million — but that too failed to attract a buyer. Even the name Wittenoom is enough to send a shiver down the backs of most Western Australians, apart from those ghoulish tourists who occasionally knock on the door and ask to see the mine where all those people died.

There is no doubt a tourism potential in those wild and beautiful



Rolf Harris, Wittenoom's only celebrity, worked at the mine in 1948. His health is good, but by coincidence his father died of asbestosis. (Below) Eric Merrer wasn't so lucky, he has serious asbestos disease resulting from the time he worked as a teenager in the mine's bagging mill. (Above right) Underground, 103-year-olds looked like candles in the dust, according to one ex-miner.



hills where the summer life-lace about and mureo mureo mureo mureo bloom after the Christmas rains. It is Wittenoom that is the problem — not the threats of government, not even the lure of a brand new town down the road could persuade the residents to leave. But why would anyone choose to live in such a harsh and inhospitable place, in defiance of warnings more than 20 years after the mine closed down that they still could be risking death? The radioactive poisons that seeped from the Chernobyl power station at least have a half-life — another 10,000 or 20,000 years and the planet will be safe again. Asbestos has no half-life, as far as anyone knows.

Try telling that to Frank Soter. 'We had a problem in the past,' he says. 'My kids all played in the dust, and I'd be lying if I said I wasn't concerned. But we have cleaned everything up now, it's perfectly safe. I challenge them to produce a single person who has contracted mesothelioma since the mine closed in 1966.' So safe, in his view, that he is quite happy to have his little grandchild living and playing in Wittenoom, one of four or five children still in the town. This is an idea that makes Dr McNulty, Dr Munk and all the other experts down in Perth shudder when you mention it to them. If they had their way the town would be wiped off the map tomorrow.

No one actually is telling tourists not to go there. The Western Australian Agent-General in London was happily sending inquirers brochures singing the praises of Wittenoom as recently as 1988. 'The gorges of the Pilbara are perhaps Western Australia's greatest tourist attraction ... a photographer's paradise ... the scenic beauty of spectacular mountains ...' and so on. But it's a different story if you visit the Department of Regional Development in Perth. 'The health risk from airborne asbestos fibres to short-term visitors and tourists in Wittenoom is considered to be significantly less (than to residents) ... however, warnings are given that inhaling asbestos fibres may cause cancer.'

It must be the only tourist spot on earth where visitors are told to keep to the main roads, wind up the windows when the wind blows, not to even touch the samples of asbestos rock in the little souvenir shop and, above all, avoid those monstrous dumps of tailings that litter the landscape like lava flows from an extinct volcano, down in the Wittenoom gorge.

Those mountains of tailings, dotted with danger signs, straggles down the hillside of the gorge beside the rusting, abandoned colony of tin sheds that was once the asbestos mill, the quiet visible remain-

der of the damage done to the once-beautiful landscape by the mining operation. Now there are fears that they also may be a threat to the environment of the entire area. Somewhere between two and three million tons of tailings were dumped here in the open air, weathering away, with the residue of asbestos fibres slowly leaching into the watercourses of the Pilbara, and airborne fibres blowing away into the nearby national park. The bill to clean up the dumps, to erect dam walls to contain the tailings and surface the areas with soil and vegetation has been calculated by consulting engineers at \$35 million. But who should pay this price to protect the environment? CSR, the company that did the damage in the first place? Wrong again.

Here's what Mr Bill Bennett, CSR's chief executive officer, had to say when I questioned him about the company's obligations:

Q: ... there are enormous dumps of tailings still existing up there that the Health Department of Western Australia says represent an environmental risk. What will CSR do to clean them up? It was your mine. They are your tailings.

A: Well, we haven't had any discussions with them about what's going to be done there ...

Q: Do you think you have an obligation to make those tailings safe ... the township (and in the whole area)? It's going into the watercourses and so on.

A: I don't know the history of the closure and the conditions of closure. I do know that when it did close, the government wanted us to surrender the lease so that they could offer the mine and the ongoing facilities to others ... what was agreed to between the government and ourselves at the time, I don't have ... I'd have to look at that and see what the circumstances are.

Q: You are not prepared to say whether or not you will contribute?

A: Not at this stage, no ... It's an issue that I haven't been aware of ... In fact, many years before CSR had been asked to contribute to a clean-up of the tailings that had been dumped around the town. Not our responsibility, the company said, try the government. And that has been the theme all along. Government agencies — Main Roads, the Housing Department, the Commonwealth Civil Aviation Department — they were the ones responsible for spreading the tailings, they should pay, not us, CSR said. It even applied this principle to Ross Munro as he lay on his deathbed. It gave him a token \$50,000 for the mesothelioma he contracted from their tailings ... and said he

162 BLUE MURDER

should go to the government for another \$50,000. The government refused.

Q: I'd like to ask you about the adequacy of the offer of \$50,000 to Mr. Munro, who died the other day, by the way.

A: That was what he requested.

Q: Do you think that's a fair offer for a man's life?

A: Sister and Gordon made a request for \$100,000 for settlement. We said we were prepared to pay half. He was not an employee of CSR or Midalea. We said we were prepared to pay half, we made an offer to the Western Australian Government to go \$50-60 in all non-employee cases.

Q: But they haven't paid him another \$50,000, or his widow.

A: No, they haven't.

Q: Even so, is that really an adequate offer?

A: But that's what he asked for.

Q: I am not in a position to dispute that, and nor is he, because he's dead.

And so are other young men of Wittenoom, dead before their time because of CSR's reckless disregard for their safety, for the safety of the men who worked down the pit, for the safety of the women and the little children who played in the tailings of that mine. But what does the company care, that amorphous organisation with, as old Frank Sheehan, the former shire secretary of Wittenoom, put it 'no care to kick, no soul to damn'. Surely for slaughter on this scale -- the deaths of 2000 people, the extinction of an entire town -- the sanctions of civil law are not enough.

Why aren't they charged with murder?

14 Industrial homicide

If the bullet takes 20 years to kill you, it's not called murder, it's called business.

— US asbestos author Paul Brodeur

They stood there in the dock of Cook County Circuit Court, staring ahead without expression, waiting for the sentence. You didn't need to be Einstein to tell that these were not your run-of-the-mill Mafia, muggers or crack dealers from the city where Al Capone was once king. The three men in their business suits and ties, with their polished shoes and their fancy attorneys, were executives of a Chicago chemical company, Film Recovery Systems Inc. — the president of the company himself, the plant manager and the foreman. But they were about to be dealt with as if they were just common criminals.

Three years earlier, in 1983, a 68-year-old Polish immigrant by the name of Stefan Golab had been working at the Film Recovery Systems factory, a plant that specialised in reclaiming the silver particles from old X-ray film. Like many of the workers there — like CSR's employees at Wittenoom — he spoke very little English, could not read the warning signs, was not told of the dangers of the bubbling vats of chemicals around the plant and had been issued with no proper protective clothing. Golab was told to clean out a vat. He was not told that it had contained deadly poisonous hydrogen cyanide. Within days he was seriously ill, and a week later Stefan Golab died. A tragedy for his family, but a death that would become a landmark in the United States legal system.

The Cook County prosecutor was appalled when he learned the facts of the case and decided on an extremely unusual course — so unusual, in fact, that it had never been attempted before. He arraigned the foreman who sent Stefan Golab to his death, that man's boss, and the head of the company — on charges of murder. The senior management of Film Recovery were implicated, said the judge, because they knew conditions at the plant were dangerous. Other workers had become previously nauseous and had complained about conditions.

The jury came back with a verdict of guilty, and Judge Banks remanded the three executives in custody before delivering his sentence. 'I find that the death was not accidental, but in fact murder ... the conditions under which the workers performed their duties (were) totally unsafe,' said the judge. He sentenced each of the three men to 25 years' jail, the first time in American corporate history that company managers had been jailed for homicide over workplace negligence. The decision, particularly since it came at a time when the Reagan administration was busy dismantling occupational health and safety controls, sent shockwaves along Wall Street. The unthinkable had happened. Company executives, important people who lived on Fifth Avenue and had chauffeur-driven Limousines, might be held criminally responsible for their actions, not just by their shareholders, but by their workers and by the community at large. What was the world coming to?

What indeed. It stood the whole concept of the limited liability company on its head — the concept of 'it' rather than 'they' that had stood at the centre of the industrial world since a rightly-suspicious British Parliament had legislated into existence the first joint stock companies in the early 19th century. Until that landmark decision in the Cook County court, it had been taken for granted that nothing in the company could be shunted home to individual managers and directors sitting around their polished boardroom tables. There was nowhere for the buck to stop, no one to kick, no soul to damn.

Civil sanctions — lawsuits by damaged consumers — are fine, as far as they go. Anthony Marzocchi, former legal director of the US Oil, Chemical and Atomic Workers' International Union summed it up like this: 'History shows that the lawsuit is the only adequate preventive measure against occupational and environmental cancer. Take away the lawsuit, and replace it with a compensation schedule or some other administrative scheme, and you pave the way for cancer to become just another commodity to be cooked out ... you institutionalise occupational and environmental cancer as a way of life.' Mine, and certainly 'the sting of the shilling' may have a salutary effect on corporate misconduct around the world, in the wake of the shipwreck of the Manville corporation. But why should more of these cases not be prosecuted as crimes?

Russell Mochaber, a Washington DC lawyer who edits a weekly newsletter called the *Corporate Crime Reporter*, has spent years researching the issue of corporate accountability that lies at the

heart of the Wittenoom tragedy, and all the other great industrial disasters that have been inflicted on workers and innocent bystanders around the world. 'A man in a three-piece suit atop a Manhattan office building has the potential to inflict more violence on society than all the street thugs in New York City combined,' he says in his definitive book *Corporate Crime and Violence*. 'Yet street criminals, mostly poor and black, get long prison terms for minor property crimes, while white collar criminals can fix prices, defraud consumers of millions, and kill and maim workers with impunity.'

And Paul Brodeur, the US author of three books on the asbestos conspiracy, has been arguing for years that the Manville Corporation directors and executives should be charged over their crimes against their workers and the environment. 'It seems that for it to be classified as criminal behaviour, the killing has to be quick. If the bullet takes 20 years, it's not called murder, it's called business.'

Sanctions, real criminal sanctions like the prosecution and conviction of the Plum Recovery Systems executives, are so rare that it's hardly surprising most Australian executives don't believe they exist at all. Manslaughter charges over death in the workplace occasionally have been brought in the United States: the president of a small drilling company, for instance, who was sentenced to 60 days' jail over the death of a worker who was overcome by fumes when he was lowered down a shaft, on the end of a cable, without a safety harness. In Japan, two executives of the chemical company that polluted Minamata Bay, causing dozens of deaths, and more than 1,000 pitiful birth deformities, were convicted of 'involuntary manslaughter'. In the United Kingdom, three judges have recently ruled that the company that operated the Spirit of Free Enterprise, the cross-channel ferry that sank with the loss of more than 100 lives, could be charged with manslaughter. But in the main, even the most catastrophic cases of mass killing in the workplace have been punished (if at all) by fines, which, of course, are paid by the shareholders.

In Australia, the idea of criminal enforcement of workplace safety has never even been tested, in spite of the fact that, even without the awful toll of Wittenoom, the country has one of the worst industrial safety records in the western world. Australians are more likely to be killed at work than murdered by muggers or lovers, are 100 times more likely to be injured on the job than assaulted off it. In New South Wales in 1980-81 (to pick one State and one year at random

from the statistics) there were 116 homicides, and 176 deaths in the workplace; 1388 serious assaults were reported to the police, but there were 129,419 injuries at work that required more than three days off - 600 every working day of the year, more than one serious accident a minute. The homicides and the assaults, of course, are vigorously investigated by the police, and the culprits, when caught, are brought before the courts and jailed. Yet we are asked to believe that not a single case of the hundreds of thousands of industrial injuries a year around Australia is the result of an employer's criminal negligence.

Workplace safety in most States is left to a small and largely ineffective band of inspectors from various government departments whose prosecution record is lamentable. Victoria (which has recently shown signs of beefing up its Occupational Health and Safety Act to allow for fines of up to \$600,000), NSW and Queensland in recent years have averaged only around 200 prosecutions a year, mainly for relatively trivial offences like unguarded machinery. The penalties have been little more than parking fines for the companies involved, an average of about \$200 a time. But this looks positively draconian alongside the record of the WA Mines Department, the organisation that was supposed to safeguard the workers of Wittenoom.

As recently as 1980, the department did not initiate a single prosecution for an entire year. There was one magistrate's court finding, in a prosecution that followed the deaths two years earlier of two workers at the Kwinana nickel refinery in that State. The company was fined \$100, and the refinery manager and the foreman responsible were fined \$20 on each of two counts of safety breaches, liberally less than a parking ticket for breaches of the law that resulted in the deaths of two men. In Tasmania, the Mines Inspection Act actually has the same maximum penalty (\$500) for negligently causing a person to be killed down a mine as it provides for using obscene language underground.

Nevertheless, there is growing evidence that most Australians are coming to believe that white collar crime - particularly over workplace danger - should be dealt with much more severely. And there is strong support for the idea that there is no need for a new offence of industrial homicide; that the laws we already have would allow for charges of manslaughter or murder to be brought where workers are killed because of their employers' reckless disregard for

their safety. A public opinion survey some years ago put work safety negligence (a case where a man lost a leg because his employer failed to guard a piece of machinery) fourth on a list of 14 crimes. People said it should be punished more harshly than armed robbery, tax evasion or housebreaking. Nearly a quarter of the people surveyed said industrial negligence deserved a jail sentence, and the rest thought the fine should be at least \$50,000.

A man who has spent some years studying this issue, and writing submissions for government, is Dr Peter Grabosky, senior criminologist at the Australian Institute of Criminology in Canberra. Dr Grabosky's work supports the sentiments of so many of the people interviewed for this book that criminal charges could have been brought against CSR's executives and directors of the day - the Val Doyles, the Klaus Fabezews, even the late Professor Salnt, who said before he died that he believed there was a case to answer for murder over the operation of the mine.

Two years ago Peter Grabosky, with John Braithwaite, a senior social scientist at the Australian National University, and Brent Flatau, professor of law at Sydney University, prepared a detailed submission on industrial law enforcement for the Victorian Government, which like all States has basically the same criminal law as Western Australia, even though some operate on so-called common law and others have statute law for homicide. The essence of that submission is worth quoting:

'A number of commentators have argued that a fatality arising from an employer's gross disregard for the health and safety of employees merits the creation of a new offence of industrial homicide. It would appear, however, that the law of Victoria, as it currently stands, would readily support the framing of charges for manslaughter and, in the most extreme cases, for murder.

'Although murder is commonly understood to mean intentional killing, the existing law of murder in Victoria is sufficiently broad to encompass death arising from acts or omissions of an employer who possesses the knowledge or belief that death or grievous bodily harm would probably result. To support a conviction for murder, it is not necessary to prove that the employer had sought to cause the employee's death - indeed, the employer may well have desired that death not occur. What is required is that the probability of the employee's death be foreseen by the employer, and that the death be caused by the employer's acts or omissions.

'When the Victorian Government begins to bite the bullet on a major high-profile case against a residential company ... it will be making a start to signifying the new governmental and public perception of the seriousness of occupational health and safety crimes. To have a criminal law, with its enormous symbolic, educative and moralising potential for creating a new sense of managerial and corporate conscience, and not to use that potential, would be remiss.'

Acts or omissions, gross disregard for the workers' safety, the foreseeability of death — these are the very issues that have been at the core of the Wittenoom manslaughter, and the company's guilt on all counts has been spelt out in the clearest and most unequivocal terms by Mr Justice Kaye: CSR's (or its subsidiary's) 'continuing, conscious and contumacious' disregard for its employees' safety.

That view is also shared by Victoria's Law Reform Commissioner, Mr David Neal, who argues that if all these standards of proof are satisfied, there could be grounds for charging not only the company but also any manager or executive who had direct conduct of the operation at Wittenoom. 'The difference between manslaughter and murder is this: if you are driving around and you negligently knock someone down, then that could be manslaughter. If, on the other hand, you deliberately drive your car at a crowd of people hoping they will jump out of the way and you kill someone, then that would be murder. From what I know of the case (Wittenoom) a charge of murder sounds more appropriate. The only impediment, according to Mr Neal, is the 'one year and one day' rule, which dates back to 17th century England. It means that in States that still operate under common rather than statute law, a murder charge cannot be brought if the victim dies more than 366 days after the attack. In the days of Queen Elizabeth I, who could have anticipated the workers of Wittenoom stalked by death for 30, 40 years and more?

I put all this to CSR's chief executive, Mr Bill Bennett.

Q: As you know, there have been some cases in the US in which companies have negligently caused the death of employees, consumers or bystanders in which criminal sanctions have been levied. It's been suggested in a submission to the Victorian Government that the law as it currently stands in Australia would also allow the framing of charges for manslaughter or murder where 'a fatally serious employee's gross disregard for an employee's health or safety'. Why would this not be an appropriate sanction against CSR over the hundreds of lives that will be lost as a result of the Wittenoom mine?

A: Well, look, let me just say first of all that Mr Justice Rowland in the Hays and Barron trial came to the view that, examining all the facts, he could not support a finding of contumacious conduct ... he could not find on the evidence that there was a deliberate attempt to avoid knowledge, or a reckless disregard for the safety of the workforce ... so the question you asked is therefore hypothetical.

Q: Yes, of course. The point is that in two cases involving three people — two of whom are in fact dead — you have been found to have been negligent. My question really goes to whether or not you feel — either applying to CSR or to corporations in general — if they negligently cause the death of an employee, whether or not they could or should be charged with manslaughter or murder.

Ian Maitson (CSR's lawyer): ... the most likely persons in these circumstances to be charged would be the manager who had direct responsibility for the running of the mine, and at various stages that would be a person by the name of Broadhurst, and another person by the name of Allan (both of whom are now dead).

Q: Well, Mr Brown's still alive (Gaila Osborne Brown was a director, and later managing director of the mine, for most of its life).

Mutton (it would have to be the person who was) directly running, as opposed to just sitting on the board. If you look at the Byrthville papers, you will see that they are focusing on who had the day-to-day control of the operation. (At Wittenoom) you have a situation where all of the managers who had the day-to-day running of that operation have contracted, and most of them have died of an asbestos-related disease. So it's almost tantamount to saying that they committed suicide if you could sustain a charge of manslaughter against them. In terms of running it at a higher point, which is what you are suggesting, that would involve showing culpability on the part of, let's say, Hiddleston — and that would require you to establish knowledge in him (Brown) and total disregard ... and I personally, it's my view, don't believe that would be possible.

Q: (To Bennett) What's your view?

A: I don't believe it would be possible. In fact ... Judge Rowlands has found that it was not.

Q: So if was negligence, but not negligence of sufficient consciousness — to justify charges being laid?

A: ... as a broad observation, nothing to do with this case at all, the direction society is heading is — with the wisdom of hindsight — to blame someone and seek some compensation from them. In the United States it's got to the situation where there are no manufacturers of light aircraft

... you can see the reaction to the United Airlines thing. Christ, who can we sue, and for how much?"

Q: Wouldn't you, if your union had been wrecked out of a hole in the side of a plane because they negligently allowed a door to come off?

A: If they did ... there's a threshold of negligence there ... there are no manufacturers of gymnastium equipment in the United States, because everyone who has an accident in a gymnastium uses the manufacturer of the equipment ... the general proposition advocated by these people, and the way it is interpreted in court, is that people won't be prepared to take any risk whatsoever ... now (in the case of Wittenoom) we know 30 years after the event, those people back there were negligent. Who do you bring a criminal case against? Me? Is that reasonable?

Q: Mr Brown?

A: Mr Brown was a director of CSR. He was not directly involved in the management of the operation.

Q: He was managing director of Midalco. He visited the place ...

A: Yeah, but he was not directly involved in the operation of the mine. The thing is, I am a director of CSR. There are many of our operations that I haven't seen. I don't know what goes on there on a day-to-day basis.

Q: Mr Allen, if he hadn't died?

A: That's what I am saying. You would have to go back to that level. Q: Surely ... If those sanctions are invoked, both under civil and criminal law, surely the intent of that ... is to induce a higher sense of morality, safety and care in industry; care not just for the shareholders, but care for the employees and care for the environment in general.

A: Yes. What I am saying is the intent has gone so far that we are trying to legislate all the risks out of our lives, and if we proceed down this route we will produce and do nothing because the risk will be too great ... I don't want to get to the stage where the government has legislated the risk out of my life and I live in a little cocoon ...

I suppose I should have asked him whether a cocoon was preferable to a coffin. I did ask him whether he actually had met any of those people his company had sentenced to death at Wittenoom. I did ask him whether, without the sanctions of civil and criminal law, a Wittenoom could happen all over again. I asked him that, and a lot more during a long summer afternoon in his Sydney penthouse office.

15 'Malingers'

-CSR chief executive officer Mr Bill Bennett's description of some of the Wittenoom victims

He sits there at his big shiny desk, high in a tower of steel and glass, overlooking Sydney Harbour. Over his left shoulder is the great grey catlanger of the Harbour Bridge, straight ahead the gleaming ceramic sails of the Opera House. It is a long way from Wittenoom, but here at the headquarters of the Colonial Sugar Refining company is where the buck stops - where the ultimate responsibility lies for the decision to send 2000 men to their death. The man chosen to explain is Mr Bill Bennett.

He seems uncomfortable in the role. As one of the most senior people in the organisation, Mr Bennett's responsibilities are usually of a more global nature. Since the 1960s, CSR has expanded dynamically to become one of Australia's most successful and diverse multinationals. It has building material factories from Florida to California, timber interests in Scandinavia, it has a finger in the coal and aluminium industries and, of course, is still the biggest sugar company in the southern hemisphere. By the end of fiscal 1987, it was holding assets of \$4.4 billion in a dozen countries, and had posted a massive profit of \$185 million.

CSR had become one of the giants of Australian industry, the 17th biggest company in the country, with 18,000 employees, and a shareholders' register that includes many of Australia's most respectable blue-chip institutional investors: the Australian Mutual Provident Society, the National, NSW and the ANZ banks; State government superannuation funds have tens of millions of dollars invested in CSR shares; the Toyota car company in the seventh biggest shareholder. At the front of the book you can find the company's corporate slogan for more than a century: 'CSR exists to create wealth and income for its shareholders'. And here, tucked away at the back of the balance sheet is Bill Bennett, the proud holder of 35,440 CSR shares.

Mr Bennett is CSR's chief executive officer. He is a neat, greying

bureaucrat of a man — glasses, neutral grey suit, a voice that rarely rises above a drone. He is 51 years old and, like so many of CSR's top people, he has worked for the company all his life — since 1959 when he graduated from university and signed on as a junior chemical engineer. He lives with his wife and children in the silverleaf Sydney suburb of Mosman. Today he is the man selected to carry the can for Wittenoom.

In some ways, it's an odd choice. You would expect the spokesman on such an important issue to be the company's standard bearer, the chairman of the board, a man named Keith Stowell, who also happens, in a sick irony, to be vice-president of the Australian Cancer Society. But he's not available; he is due to retire in May 1989 at the age of 72. The next most senior man is CSR's chief executive, managing director Ian Burgess. He is another company 'lifer' who has had a close involvement with the Wittenoom disaster; his name appears on many of those confidential internal documents from the mid-1970s. But he's not available either, perhaps shirking from another confrontation like his famous encounter with an investigative TV crew late in 1986 in which he blundered around, pink-faced and sweating, unable to adequately answer any of the questions.

No, we won't have that pleasure. CSR's decision is that Mr Bennett should face the music, a man who was just five years old when the Wittenoom mine opened, a man who admits he has not read all the transcripts of the marvellous, a man who hasn't even bothered to visit the scene of the company's 'crime', a man who has never met any of the Wittenoom mesothelioma victims; a man for whom their death agonies are just another number in the company accounts.

Ian Hancock, at least, was upfront in his own gross and misinformed way when he was asked about his own responsibility for the Wittenoom disaster. You can't make an omelette without breaking eggs, he rumbled, and demanded space in the *Porch Daily News* in 1978 to explain what he meant: 'Before becoming misled about the dangers of asbestos, one should remember that there are many substances in everyday household use which are potentially more harmful than this useful fibre. Sugar, for instance, when taken to excess, is more harmful than plutonium. In the case of Wittenoom, the mine was originally opened so that guano-mann manufacturers could provide a filler capable of saving millions of lives; yet 26 people from Wittenoom are reported dead before their allotted span, to enable a greater number to live.'

Perhaps it was unrealistic, but I was expecting something better when I sat down with Mr Bennett one hot summer afternoon to try to understand how it all could have happened — and why, with its guilt nailed so publicly to the mast, CSR was still refusing to make financial awards to so many of the victims. Instead, there was an attitude of stubborn denial; even with the words of the judges ringing in his ears, Mr Bennett is seeking to convince the world that there was no way CSR could have foreseen the consequences of its failure to protect the workers. He is branding some of the victims 'malingers' and claiming there is nothing really wrong with them. He is blaming Slater and Cordova for not bringing the genuine cases forward for settlement fast enough. He is accusing the media of misrepresenting the company's position. It is a gravity-defying performance.

It is not riveting copy, but it is worth reading the text of that interview — in a form edited to leave out some of the most boring bits. For all his tedious style, Mr Bennett turns out to be the Nijinsky of the non-answer. It will not give you any of the answers to the greatest mystery of Wittenoom: why did CSR do it, and how did it think it would get away with it? Nor does it provide any hope for those hundreds of victims, those diseased and dying people who were still waiting for compensation at the time of the interview. But it will give you an idea of what the company would like the world to think. In a way, it was just the latest chapter in half a century of contempt and cover-up that have surrounded the world's greatest industrial disaster.

Mr Bennett is sitting at a round conference table, with his arms folding and unfolding, occasionally crossing his legs and bringing up one of his polished black shoes to rest on the arm of his chair. Sitting at his side for support is Ian Mutton, the company lawyer. This is how it went:

Q: Until quite recently you have adopted a 'no comment' policy on requests for information about Wittenoom. Why have you agreed to this interview, and why have you been chosen as the spokesperson?

A: ... we had an legal advice been very careful about what we have said publicly. During the course of the last six or eight years during which there has been a significant amount of litigation ... we have ... not agreed on many occasions, particularly during the course of trials, to give any interview. People will understand that many of these cases extended over a significant period of time, they were very costly to run and we certainly did not want to give any chance of people claiming that we were in

contempt of court or prejudicing a trial. We also felt that the proper place in which the issue of negligence and other things was argued was in the courts and not the public media.

Q: Do you think this policy of not speaking out has really harmed you in a public relations sense?

A: It may have, but judging by a lot of the publications that I have seen there is a fair amount of "my mind is made up, don't confuse me with the facts" ... so one might have taken the view that even if you did make yourself public people would not have taken any notice of it anyway.

Q: I gather from that that you think the media reporting has been skewed and unfair and dishonest.

A: When I say skewed and unfair, I think there have been reports which are not factual or which have tended to make assertions which are not supported by the facts ...

Q: Okay, so why not? The chairman of CSR is Mr Keith Street, he's been head of the company for about 10 years. The managing director, Ian Burgess, has been there nearly 40 years and he has an intimate involvement with the history of Wittenoom. Is it that this issue is not important enough for either of those to comment on?

A: Well ... chairman of public companies very rarely give interviews on matters of real detail, and that's why ... I expect that you are wanting to know the real detailed facts of this, and chairmen don't do that. They regard it as a terribly important issue, the board and the chairman, but it's not something that chairmen get involved in.

Q: Ian Burgess, now he has made some public comments in the past.

A: He has, right, and he is overseas at the moment ... It (was) 1988 (when) that mine closed, 23 years ago, and to the best of our knowledge there is no one working on the staff of CSR now who had any involvement in the operation at Wittenoom ... we have selected one of the most senior people in the company to have carriage of it from CSR's perspective. It's not been the managing director, in the sense of having the day-to-day carriage of it ... quite obviously he's involved, the board's involved, but when it comes to giving an interview like this, I'm the most senior person involved ...

Q: So how thorough is your knowledge of the events at Wittenoom. Have you read, for instance, the transcripts of the court proceedings?

A: I have read a fair ... as much as can reasonably be read in the time, given that to read the transcripts of the court proceedings is a massive undertaking.

Q: Tell me about it ... have you actually visited Wittenoom yourself?

A: No, I haven't visited Wittenoom, no ... and I'm not sure that one would gain a great deal of benefit from visiting Wittenoom ... some of us have any real idea of what it was like, no first-hand experience ...

Q: In terms of your litigation you have had only one uncontested win, if I can put it that way, that was the Joan Joosten case. Since then there have been three of those small trials. You now have seven judges, including the three appeal court judges and one jury who have ruled that CSR was negligent, or had a case to answer, because Simpson is coming up for trial as you know. Do you unreservedly accept now that you have, as a company, responsibility for the damage done to those workers?

A: ... there is no doubt that exposure to asbestos did cause damage to people, there is no doubt about that, with hindsight. What we have been contesting for years is whether we were negligent or not. Initially, 1979, the first case found that we were not negligent.

Q: It was then appealed, and Joan Joosten died the day before the appeal could be heard.

A: I thought you came along here saying you wanted an objective assessment from CSR ...

Q: Yes, I do ...

A: Every time I have tried to say something you have interrupted to put your own perspective on it. Are you hearing us out or not?

Q: Please finish your point.

A: The first thing is that we were found not negligent (in the Joan Joosten case). The fact that the other person (Wally Simpson) appealed you are making as being indication of guilt. The fact that something else has gone to appeal, you are assuming an indication of guilt.

Q: Well, there was a possibility if it had gone to trial that you would have lost, wasn't there?

A: Anyway, we were found not negligent in the case of Joosten. In the next one that came up, it did not go to trial, right. Because one of the things we are saying (in that) not only were there a number of cases where we believe we were not negligent, but secondly we believe that a number of those people did not have a genuine asbestos-related disease. So the second case, Partridge (sic - his name is Penrice) established that. He withdrew. Third case, Simpson. Again the judge found that he did not have an asbestos-related disease. Now the appeal court has said in effect have a re-trial, but still ...

Q: Well complete it. Mr Heyn, Mr Barrow, Mr Rabinovich complete the essential cases, don't they?

A: Right, they complete the thing ...

Q: And you lost all three of those.

A: We believed we were not negligent. The fact that a court has found us negligent does not change our belief. I mean, people have gone to the electric chair protesting their innocence. The fact that the court found them guilty did not change their own view that they were innocent.

Q: You think you have been framed ...?

A: What I am saying is that if a court forms a judgment based on the facts, you don't necessarily have to agree with that ... we still believe, looking back over the whole of the facts at that time, that we were not negligent, right. Now that's the case. We still believe that.

Q: How long will you continue to pursue this point of view that you have?

A: Look, all I can say is that I have talked to people involved. I have read transcripts of evidence. I have just got a feeling, reading everything I know, and knowing some of the people involved, that they were not people who would be involved in willful negligence. Right. I happen to know Paul Thomas who died of asbestos, he was the union representative, I know him well. Worked with him in our asbestos activities. Keith Brown, who was a director at the time, is a near neighbour of mine and a man of whom I have the utmost regard ...

Q: But his evidence wasn't accepted, you see. This is the whole point. It is not a matter for you to make a judgment or me to make a judgment, this is what the court said.

A: All I am saying is that I have lived around and with Mr Brown for 25 years and I regard him as a man of enormous integrity, and I look at what else he did in the company. I know Sir James Vernon was involved ... there are people for whom the rest of us or the general community have regarded as people of extraordinarily high integrity, and I don't believe that having regard to their knowledge at the time, that they were willfully negligent ...

Q: So how did you feel when you read that judgment in which Justice Kaye said that the company had a continuing, conscious and substantial disregard for the safety of its workers. Did you think that Justice Kaye might have had a brainstorm or gone mad?

A: Mr Justice Rowland came to the completely opposite view. Mr Rowland, in the Hays and Barrow case, came to the opposite view.

Q: What do you think of a judge who can make such a strong finding against your company?

A: Look, it doesn't worry me, I don't think about that. All I am saying is that I have a gut feel, right, based on knowledge of the people involved

(and) seeing them in many other areas, that I have a feeling that they were not negligent.

Q: So you know better than the courts, you know better than Justice Kaye?

A: I don't know better than the courts, right. All I am saying is that I can have a view. It doesn't have to be the same as the judge's ... I can happen to have that view ... all of us had not seen the operation, were never there, but we know the people that were involved. We have worked with them intimately ... and we just say okay, people with the wisdom of hindsight, and making judgments in 1998, about what circumstances should have been like in a mine in 1949, can come to a view. They can come to that view. The judge didn't see it. A number of the people who gave evidence didn't see it. A number of the people who at the time wrote in favourable terms about it, including Dr McFady, changed their mind in 1988. But what they wrote in 1980 was that things weren't too bad. There were only five cases or so of asbestos-related disease. (Quoting from a document on the desk): 'We were generally impressed by the health of the workforce.' But in 1988, they said 'No, if I had known now what I know then I would have told them that it was disastrous' ...

Q: You are saying that they couldn't have done it because they were good people and it was not in their character?

A: They wouldn't have been willfully negligent, right. However, a court has found on the basis of evidence submitted to it, that we were negligent. We have accepted that, and we have, with the insurers, with the SCIC, we have consented settlement of those claims. Now, let me say that the SCIC and others did not believe that we were negligent either ...

Q: How long do you intend ...

A: It doesn't matter.

Q: ... attempting to convince the courts that you weren't negligent. Will you be fighting more cases?

A: We may not, depending on what is brought against us.

Q: So you have made no decision whether or not you are going to contest in court any more cases?

A: No, we are settling claims at the moment.

Q: You are settling claims now. Now, I don't think that you would deny that more than 10 years ago there was quite a strong argument within CSR itself - when the first Winton room (claim) came to light - that on moral grounds, settlement should be offered, and on legal grounds even then it was accepted that you may well lose any case that came to court. Now, why wasn't that advice taken then?

A: Because the circumstances at the time were that there was other advice contrary to that. What the '60 Minutes' people picked up was (that there was) a view of some people in CSR ...

Q: You are talking about Michael Gill on 'Business Sunday', are you? A: Yes. There was apparently some memorandum going around, I am not sure who was the author of it, but I certainly knew that a fellow called I think Norman Irving's name was on it, and he was in a workers' compensation department at that time. There was also the generally held opinion -- because bear in mind that at that time Sir James Vernon and others were still actively involved, going back 10, 15 years, were saying 'look, we still believe we were not negligent'. The SRCO believed we were not negligent. They were our insurers, and they were taking the view that we should continue that *have in court*.

Q: Well, if those documents are accepted as being accurate records, one of them shows that your own managing director, Ian Burgess, was saying that there was a moral case for those people to be compensated.

A: Look, he admits that that was a view he held as a junior person in the company at that time. He will admit that. He held that view. There were others around looking at the same thing who held a different view.

Q: So the moral argument was overthrown in favour of the economic argument?

A: No, no. There was a whole mix of things go around, you know ... Milton. There was also a requirement by the insurers that the matters not be settled.

Q: With hindsight, would it not have been cheaper for the company -- tens of millions of dollars cheaper -- to have settled the cases way back then? And it would surely, wouldn't it, have been more humane to the victims also, the people who were allowed to die without a cent of compensation as their cases were about to be heard?

A: Well, look ...

Q: Just from an economic point of view, it would have been cheaper, surely?

A: No, I don't think so ...

Q: The SRCO then estimated that the maximum payout would have been \$25 million ...

A: If there was an estimate made in 1977 then that estimate would be wrong today on the basis that there would have been new cases. There are new cases coming forward ... the economic argument about settling them was not something that one does. You don't settle if you and your insurers believe at the time that you are not negligent.

Q: But what about the moral argument? Why did that get thrown away along the track?

A: Well, it didn't get thrown away, I think from my recollection ... bearing in mind that up until 1960 I think there were 10 cases of asbestosis, so ...

Q: That you knew of. Of course many people just slipped through the net and were never even again.

A: In 1968 McNulty wrote that the absence of a response from the workers concerned suggests that there cannot be much disability, and the urgency of the problem has lessened now that the new mill is in operation ... By and large I was favourably impressed by the working conditions ... This is McNulty in December '59 ... Back even in 1968, if you were a reasonable person, and someone writes to you, the union medical officer writes to the mine manager with few exceptions the health of the workers I examined at Witkoppsmoot appeared excellent ... by and large I was favourably impressed with the working conditions, but I feel that there is a particular problem with a particular hazard which has not yet been fully remedied. The transfer from the old to the new mill has removed some of the urgency. Now, if you were the people there, would you have felt that by continuing to operate the mine you were willfully negligent?

Q: This is all very selective, and what I don't think is productive is for us to throw bits of paper at each other, because you are as aware as I am that the following year McNulty was writing to Rembe saying 'we have got a terrible problem here. We have a case of mesothelioma, men are dying, the company must do something about it' ...

A: I accept that, but (reading from another piece of paper) ... Professor Warren, the professor of pathology at Prince Henry Hospital: 'It is not appropriate to judge diagnoses and decisions made with 1960s knowledge by criteria and standards which have been proved up and available in 1988.' Now, I just think that, standing back on it, and reading everything, that people have got the wisdom of hindsight now.

Q: How much has this litigation cost CSR, have you got any estimate at all? There are some estimates of \$5 to \$10 million, is that correct? And would it not have been better if this money had been spent on the victims rather than making a few barristers into millionaires?

A: Well, I don't think that's happened, the latter comment. One has a fiduciary as well as a moral duty, as a director of a company ... they (CSR's directors) came down to the view that based on all the information available to them, and based on the view of their insurers, they were not

negligent, right. Now, sure, they felt compensation for the people and applied money through the Williamson Trust to be helping people. In addition, of course, and this is what is not commented on, is that all the people that had made claims, were receiving compensation via the normal workers' compensation procedure, it wasn't as if some of them had any help ...

Q: Is four years' pay adequate compensation for someone who loses his life? That's all workers' comp. In, even today it's only \$79,000 or \$89,000 ... the bottom line is that some of these mesothelioma patients received four years' pay for their lives. Now, that's hardly adequate compensation, is it?

A: In whose view?

Q: In their view?

A: In their view? Yes, I'm sure. In the general community view in Australia, that's the community standard. Now, we'd all like it to be more, but on the other hand we all believe in paying former taxes, and buying goods and services at lower prices. We all believe in general economy, and particular expenditures.

Q: The plaintiff lawyers expect that they will have to continue their campaign in the courts at least through 1989 ... how much longer does CSIR intend to fight on, how many millions more are you going to spend on this litigation?

A: We have told you, we have told the people ... that we are prepared to compensate genuine sufferers in accordance with the standard procedure for compensation in the courts in Western Australia. Now, as of today we are in discussion with Slater and Gordon. What is the normal procedure is that there is a medical examination. There follows a review of the claim based on lost earnings etc. etc. ... we have so far had discussion with them in respect of 80 claims; 69 have so far come forward and submitted themselves to medical examination. Some have not, and obviously we are not going to compensate someone who will not submit themselves to a medical examination, and we suspect, always have, and I think Slater and Gordon will acknowledge, that a number of those will fail. In 69 (cases) we have had assessments and provided offers in 69 of those, 49 to Slater and Gordon, and 10 to Taylor and Smart. Eight of the clients of Taylor and Smart have accepted ... 15 of the Slater and Gordon clients have accepted so far ... we are continually talking with them. Out philosophy in this is that, number one, we are dealing with all those where there is a clear life expectancy as fast as they can bring them forward, and we have settled all the known mesothelioma cases, the they pre-CSIR or post-

CSIR. Secondly, we can only deal with claims brought to us by Slater and Gordon. There are 260-odd that we know with have been issued, but we can't deal with them until they bring forward a claim. They are snowed under bringing forward claims in respect of those people ...

Q: The point is that you offered last October to settle those cases as expeditiously as possible and that was widely accepted at face value. The fact is that since then only somewhere between 20 and 30 of those 80-odd claims have in fact been settled. One of the reasons why the balance hasn't been settled is that your offers have been regarded as inadequate ...

A: There is an established basis which was confirmed by Heyes and Barrow which is the process that we and the SGIC are following in making offers to those people ... there's an established practice over there about determining foregone earnings, medical costs, and an award for pain and suffering.

Q: Let's not be too technical. Most of the dispute is about the amount offered by way of general damages, this is for the pain and suffering of the people involved. And the statement by the clients is that your offers are inadequate.

Muston: The offers are in line with the court criteria.

Q: All right, the court criteria are inadequate, it doesn't matter. You are the ones who are paying the bill ... In the Heyes Barrow case, Justice Rowland commented on certain missing CSIR/Midalex documents, which may have thrown more light on the company's knowledge of the dangers of the waste and the adequacy of its measures to protect the workers there. Were they concealed or destroyed? And if not, where are they and will you make them available?

A: Well, look when the litigation commenced, all the documents that were in CSIR/Midalex/ABA's possession were handed over to Robinson Orr who were Midalex's solicitors. They were not subject to any vetting by people within CSIR or Midalex or ABA ... at no stage did either CSIR or Midalex destroy any documents or seek to influence the determinations that their external solicitors made concerning documents to be discovered ... let me say that we are dealing with documents that relate to a period from 1943 to 1980 and on. It would be absolutely normal in any commercial organisation for files to be sort of looked at during the course of five or seven years after and any took, throw all that out, it's irrelevant.

Q: You think that's what happened? It was just checked away?

A: Yes ... what you can do, of course, is keep storing those things and ultimately you'll end up having the shovelful to hold the documents ... there is a programme of culling of things, which may hurt just after the event

well down the creek to have been important documents ...

Q: Are you sorry those documents were thrown away? Or are you happy. Do you think they would have shown that CSR in fact was more careful about the health of its workers at Wittenoom, or do you think they would have shown conclusively that it was more negligent than is known?

A: I don't know what was in the documents ...

Q: ... but if stretching credibility almost to breaking point to accept that they were just checked out?

A: It was the view that all documents whatsoever should be held CSR would have a statement the size of the Sydney Cricket Ground.

Q: Okay, so you are saying that this is not a Watersgate, and there is no mysterious gap on the tapes?

Mutton: What happened was that perhaps 95 per cent of the documents produced were documents that were originally held at Wittenoom ... when the Cornallius Hest case came about the direction was given that none of them was to be destroyed, nothing was to happen ...

Q: So some had been destroyed prior to that?

Mutton: Oh, when they closed the mines down, there is evidence about many documents simply being burnt.

Q: Just burnt? They had a bonfire, did they?

Mutton: Presumably.

Q: On this question of the expedition and size of the offers, I interviewed Val Doyle in January. She has just become the sixth member of her family to contract mesothelioma from the tailings at Wittenoom. She died without any compensation. What would you like to say to her family when you are discussing the reasons why those offers are not being made, or are being rejected?

A: I think one has to distinguish between cases that had a legitimate claim against CSR ... some of them, like Doyle, had no employee relationship, and it was doubtful that they could have successfully brought a legal claim against CSR.

Q: She didn't live long enough to test that in the court, did she?

A: No, what I am saying is that those people, it's doubtful. We believe that they would have had a much greater chance of successfully bringing a claim against the government if they were Wittenoom residents or employees of the government. Now, we did make a proposal to the government that they should acknowledge that they had an obligation to compensate people, particularly the seriously ill people, and they have not taken a view on that. But when people have made a direct claim to us for compensation ... we have made an offer, ex-gratia ...

Q: You didn't make Mrs Doyle an offer, did you?

A: No, we didn't, because they didn't come to us and ask for one ...

Q: So you were prepared to fight that, to contest that case in court?

Mutton: What we wanted to do was contest the third party proceedings, that's the real issue in all of this.

Q: So, what would you say to her family? You should have made a claim?

A: Yes ... there was no approach to us.

Q: There is the case of Wally Simpson. Now, he has been battling through the courts for nearly three years in an attempt to prove that he had lung damage from his time at Wittenoom. It is going back to trial on appeal. Why subject this man to the ordeal of yet another trial in court, why not make him a reasonable offer now?

A: Both our lawyers, both internally and externally, thought 'what in the hell is Slater and Gordon doing bringing on this as a major milestone case?' The evidence that we believed would be accepted by a court would show that it was highly unlikely that he could demonstrate that he had an asbestos-related disease. Secondly, the general feeling was that he would not be a good witness, he would not be a reliable witness.

Q: Well, you made sure his evidence was seriously challenged.

A: Yes. But I mean the thing is that he misled Slater and Gordon on his employment history and a number of things, so we believed that was a case that had to be fought. I mean, you don't pay compensation to people that you believe, to use a blunt term, are malingerers. You do pay it to people like Hays and Barrow ... if Hays and Barrow would come up now, we'd say 'yes, they are genuine sufferers'.

Q: Do you think there are a lot of malingerers among those claimants?

A: Well, we had Mr Panetta (sic) who was the first one, who was diagnosed, and we contended that, and he withdrew on the basis that the medical advisers would not submit themselves to going into the stand ... to categorically say 'this person had asbestosis. We had the view that Wally Simpson fell into the category of people who the court would not hold had an asbestos-related disease ...

Q: The point is that that 'victory' has now been thrown out on appeal. The original judge erred. It is going to go to a retrial. Now, you have agreed to settle a number of these cases, why not settle Mr Simpson's now? Why put him through that ordeal of the court? Have you seen him there with his oxygen bottle ...?

A: Yeah, but if he doesn't have an asbestos-related disease, I think we've got a fiduciary duty to our shareholders not to pay out ... you don't

open Pender's Box by agreeing to pay people who you don't believe, and who have not yet established a genuine disease. We are quite happy to pay out the ones that will establish themselves ...

Q: If they will accept your offer as adequate?

A: Yeah ... a significant number have accepted our offer ... it may be that a number of these people who have come forward don't prove on through even submitting themselves to a further medical examination ... if they don't, we can't in conscience compensate them ...

Q: So you intend to contest Simpson when it comes back to court?

Mutton: Well, it's a matter that has been handled by the SGIC in that case, that's outside the arrangements that exist.

Bennett: ... there may be, and there seems to be, some people saying 'cheat complaint, few spots on the X-ray, worked with CSR, asbestos',

Q: You have approaching 100 pre-'85 cases and approaching 200 post-'85 cases that we know of in Australia. There is a dispute between CSR and SGIC over whose responsibility it is to pay up, if indeed you are found negligent. Now, when will the dispute be resolved, and is it fair that the claimants should be kept waiting? Why don't you come to an arrangement with SGIC, under which, without admission of liability, the money is paid over and then you go to court later to fight out whose responsibility it is to meet the final bill?

A: We would obviously prefer that ... we are in discussion with SGIC about how it would be handled, but it is our desire to proceed that way. But on the other hand, we cannot in the circumstances take any action that prejudices our potential to recover money from the SGIC ...

(At this stage there was the discussion on the eventual Withnorton bill, and CSR's liability. Mr Bennett denied the bill would eventually be 2000, and insisted that CSR's estimate of \$50 million by way of compensation was honest.)

A: Our interest is an informed estimate, the best we can do. I can't see that it does us any good to deliberately understate a liability. Why should we? What have we got to gain from it?

Q: Presumably to reduce your shareholders' confidence in the company. It's had some fairly bad publicity the last year or two.

A: I think it's had some excellent publicity in the last two years ... we have had our own people have a look, we have consulted with lots of people, ... that is our best estimate of our future liability, the experience of 1985 backs that up. Secondly, we have not had so far as I am aware, any reported confirmed instances of new asbestos in the last year. Obviously if there are going to be 200 between now and the year 2000 (the NHA/MRC

estimate was in fact 600 new cases of asbestos up to the year 2020) ... the average age of the people working there was 35 in 1985. By the year 2000 those people will have no economic life, they will be past 65.

Q: That's going to sound awfully callous. Is that really all you care about -- the bottom line payout?

A: You were just asking me how we calculate. You were trying to tell me our liability will be \$250 million (the SGIC estimate was, in fact, \$200 million).

Q: No, I'm trying to tell you that SGIC estimates the liability. I don't have a view, I am telling you what people you say you believe in estimate it at.

A: If you had to get to a figure of that sum, you would be making a wrong assumption that there would be any economic loss.

Q: So SGIC has got it wrong. The NHA/MRC team has got it wrong. And CSR has got it right?

A: All I am pointing out is that some of these people who have made these calculations of future liability may have not recognized the age of the population that worked at Withnorton ... also, having regard to the age of the population of the people that are left, it is also highly likely that they will have died of some other cause other than mesothelioma at that time ...

Q: CSR undertook to 'contribute' ... to compensation for Withnorton residents who contracted asbestos disease. What form will the contribution take, and why does CSR not accept the whole responsibility for the damage caused by the tailings from the mine that were spread around the township?

A: Withnorton was not a company town. Withnorton was administered completely independently of Midvale. Midvale did not spread any of those tailings in the town. Midvale did not seal the roads with the tailings, the Department of Main Roads did. Midvale did not cart tailings and put them on the school, the Department of Education did.

Q: ... but CSR provided the tailings. CSR knew what was going on. A: Yeah, we knew it was going on. But we do not believe we had the primary responsibility in respect of those tailings, right.

Q: So the government should pay, is that what you are saying?

A: Yeah, ... should contribute.

Q: Well, what's their response been? Have you asked them to do this? Have you said 'we'll split it 50/50 with you'?

A: Yes, yes.

Q: What have they said?

A: "We'll consider it."

Q: This is Peter Dowding, the Labor Premier we are talking about. What do you think of his attitude to the former residents there, and existing residents, for that matter?

A: They have, to be quite honest ... a massive problem over in Western Australia, have had since this issue first arose. Because not only do they have a problem with their own employees for which damages are being awarded, they have a problem in respect of the township and other cases. They have a problem that effectively the government over there has massive shortage of funds. My guess is they will probably say "we'd like to compensate you, but we haven't got any money". And the aftermath of the Rothwells debacle will go right through this whole thing. My feeling is that they probably feel that it would be politically desirable to compensate the Mrs. Doyles and others, but at the moment they are probably saying "where are we going to get the funds from, and if we start to do it what Pandora's Box is open?"

Q: There are still 42 people living there ... what's your view of the people who continue to live there and dream of making it into a big tourist centre?

A: They are silly.

Q: Your advice would be: get out, and get out now, would it?

A: Yeah ... from what we know now ... it is tragic ... what we are seeing, and the big problem that people are dying from, is not what Dr. Eric Saint projected ... people in those times just accepted dusty conditions underground and around mines and accepted that you got a bit of a chest problem ...

Q: The workers certainly had that attitude, but CSR had available to it, as these cases have shown, information that could have corrected that misapprehension.

(We discussed CSR's liability for cleaning up the asbestos tailings dumps at Wittenoom.)

Q: In your latest annual report, you acknowledge that you have been joined as a defendant in 101 (asbestos) cases. Considering the large quantity of (CSR) asbestos that was shipped to companies in the US, and the fact that one lawyer alone states that she has joined you in 800 actions and intends to proceed for default judgment, is that statement still accurate, and what provision should be made in the company's accounts for potential damages awards in the US?

A: ... the statement that we made in the annual report was accurate as to the facts known at the time. The second thing is that we believe that

at this stage, and this is taking legal advice in the US, that there is no need to make any provision for potential damages against CSR.

Q: When you say in your statement that 101 is correct, how does that gel with statements to me from US lawyers that there are many more who that have been taken out and served?

Mutton: There may be a definition problem between pending and issued ... for argument's sake, write that have issued in 1980 and have been settled for whatever reasons are not current write ...

(We discussed whether CSR directors or executives should be charged with murder.)

Bennett: ... people accept risks, they want to accept reasonable risks, and there's this question of duty of care, and therefore if people don't exercise a duty of care then there should be redress and legal sanctions against them ... and I accept that ... and I must say that in this company, probably because of the Wittenoom experience (we) have a greater social conscience now than probably any other company in Australia ... but I guess that there are a lot of people who turn around and say "there but for the grace of God go I" ... if the people who now turn round and say "how disastrous it was ... it would have taken one letter from any of those people ... at the time, if they genuinely believed that conditions were bad, it would have taken a letter to the Premier, or to the general manager of CSR, and the place would have been closed down. What did they do? They passed letters back and forwards between themselves ... 15 years later they said it was terrible ...

Q: Now just a minute, just a minute. Your own company's consultant doctor, Dr. Rennie, was told in the clearest and most unmistakable terms in 1961 (about mesothelioma) ... now I don't want to re-fight all those issues, but you know that.

A: I'm talking about people within the Mines Department and the Department of Health who did not draw the matter to any higher authority.

Q: McNally and others within the Health Department drew the matter to the attention of their Minister, who drew it to the attention of the Mines Minister ... let's not re-fight it, please. The court has made its decision ... one point that you emphasized in your advertisement was that the Western Australian Government should in some way share the blame ... are you really saying that back in 1948 when Dr. Eric Saint made that report about the impending asbestos disease at Wittenoom, that the government should have shut it down then?

A: In 1948? No.

Q: In 1967?

A: I would have said that looking back now with what we know, the Wagner report is the definitive step ... so in 1962, the professionals at the time were debating what the Wagner report meant. Now, I don't know when it should have been shut down. My guess is some time between 1962 and 1970.

Q: Aren't people entitled to say that this is an absolutely specious statement CSR was in a position to know ... about asbestos, it knew. About cancer and about mesothelioma in the early 1960s. The mine continued operating until 1984, for four years after you knew the potential for it to kill people. Why didn't you shut it down? Why should it be the government's job?

A: We're looking at it with the wisdom of hindsight ...

Q: No, future sight. You talking about 1982?

A: For accepting that it was the responsibility of CSR to shut it down. But what we are also saying is that many of those things operate effectively under license from the government.

Q: Tell me, why didn't you shut it down? It was losing you money for most of the years it was operating ...

A: There were lots of pressures to keep it going.

Q: Who from?

A: The government. The workers.

Q: Have you got any documentation on this?

A: I don't have any ...

Q: What do you think in general about the effectiveness of those government watchdogs that were supposed to ensure that CSR was operating safely? Now, as you know very well, year after year, report after report about the appalling conditions at that mine, and yet they did nothing. What does that say about our regulatory authorities, about their ability to keep companies like your own in line?

A: All I can say is, and I go over and over and over it, there were a range of opinions at the time, and some of the experts shifted their opinion: they wrote that it was fine one time, and then they wrote that it was appalling, and then back again to fine ...

Q: What you are saying is correct, but the weight of evidence accepted by the court was that there were more reports saying that conditions there were bad.

A: What we are saying is that ... once the judge has decided, has he the wisdom of Solomon and should none of us ever hold any point of view or error believe there was credence in one view or the other view?

Q: But what does it say about our watchdogs? The Mines Department was supposed to make sure the mine was safe. We know now it wasn't. The Health Department is supposed to make sure that the health of the workers was safe. It wasn't.

A: With the wisdom of hindsight we know that a lot of the watchdogs were not satisfactory ... there's the Dalken Shield, there's many other things, there's Thelismide, many others.

Q: When it's all said and done, what does this mean? Is there nothing really to prevent CSR or some other company seeing an opportunity to make money, ignore the dangers to its workforce, its neighbours, its consumers, and for another Withnorton to happen all over again tomorrow. Would that be possible?

Mutton: Yes.

Bonnett: With the wisdom of hindsight, yes.

Q: Well, what should we be doing about this? Obviously our watchdogs are not effective.

A: No ... what I am saying is that there could be and there is now, people are talking about the next asbestos, and amongst those things people are talking about crocote.

Q: They are also talking about fibreglass.

A: They are talking about fibreglass, right. At the moment the consensus of medical experts is that fibreglass is safe, satisfactory ... but there are a few people nibbling around the edges saying 'well, there's a little bit of doubt here'. In 30 years time ... people will look back and say 'in 1988 you should have shut down all fibreglass manufacturing activity ... if you wanted to have zero risk, that's what you should have done'.

Q: The other watchdog we haven't talked about is the union. How do you explain the fact that the union, which was supposed to be safeguarding its members' health, did virtually nothing apart from asking for a bit of dirt money?

A: That apparently was, and to a lesser extent still is, the norm in our society.

Mutton: That union hearing you are talking about in 1988 should have provided the ideal base for people like Dr McNulty to come forward. A forum.

Q: No, I am saying something a little bit more basic than that. How do you explain the fact that the union didn't care about its workers' health, to the extent that it wanted 28¢ a day for them to consent what it knew was lung disease? Is this the toll we have to pay for our workplaces?

A: But that was the generally accepted morality of society at that time.

Q: Do you condone the union's behavior?

A: Not on today's standards.

Q: On any civilized standards?

A: Well, you see, that's the trouble. We are all trying to make judgments about civilization based on today.

Q: I was in the workplace in the 1950s. If I'd known that my union knew that hypertension was going to give me cancer of the fingers, and went to my boss and got a dollar a day allowance for it, I'd be outraged.

A: With the wisdom of hindsight?

Q: No, with the wisdom of their sight. I don't want to contract cancer, even if I am getting a pay rise.

A: You would have been, in the 1950s, you would have been unusual. Most unusual ... (in the 1950s) it was known that asbestos was a risk, and yet people worked in it and required dirt money for doing it ... I started work at CSR's factory at Pyrmont. What was paid for the corner in working conditions then ... today you would say was absolutely unacceptable.

Q: But you are still alive, that's the point. It wasn't fatally unacceptable like that mine at Wittenoom.

A: No, I agree.

Q: What do you think that the publicity has done to CSR's image. I know you said before that you believed the company now has a very highly developed social conscience. Do you think it is seen that way?

A: All the surveys that we have done with shareholders, investors and the general public have indicated that they believe that we, present management, have got a legacy that was unforgotten at the time. CSR is generally seen to be a responsible corporate citizen, and that's why I think that there has not been the adverse reaction against CSR that one might have expected had we not had an image of being generally responsible.

Q: Why has your share price come down so dramatically since those court cases?

A: They have not come down so dramatically.

Q: What were they last October?

A: They have come down in line with the general market.

Q: What were they last October, \$4.50?

A: But the general market has also fallen. If we measure our share price against the general market, there has been negligible impact of the asbestos settlement on it ... we did fall after the Heya and Barrow (cases), then publicity about that, and it rose again subsequently, and we have generally been ahead of the market for two years ... we have received a large number of letters from shareholders and from other senior institution-

those managers sort of complimenting us on the forthright approach in that letter to shareholders. I think people see us as having inherited a legacy, but dealing with it responsibly and compassionately.

Q: Do you have family, a wife, kids?

A: Yes ... two (children).

Q: I want you to reflect on what your emotions would be if it was your dad who worked at Wittenoom. Who was dying now, who had contracted mesothelioma and who had not recovered what he regarded as an acceptable offer from CSR.

A: Well ... my reaction is ... that this whole Wittenoom thing is a most unfortunate occurrence. We can all be wise with the wisdom of hindsight. It was most unfortunate. If we knew then what we now know the thing would have been shut down and certainly in 1961 or 1962.

Q: But you were in a position to know about it then. You were. The information was out.

A: We could debate that, but let's not. You have formed a view about that, and so have others ... from what I can see you are in the minority in holding that view. Still, let's not go back over that. What I am saying is that it is a most unfortunate thing. I say to myself in all these circumstances, there but for the grace of God go I ... I don't believe in so-called retribution, and there's an element of retribution in some of the statements being made by people in this thing. I also don't understand the morality, the circumstances, where someone is on their deathbed from a fatal disease, and lawyers and others and the media are saying there's one way to fix this fellow, and that's to give him \$200,000 ... (if it was me) I would feel very badly towards the company if I felt that it was negligence, gross negligence. Now, the interesting thing was that very few people from Wittenoom believed there was any negligence at the time they worked there ...

Q: Because they didn't know. Because the information was vested in the corporation, not in the workers.

A: I'm talking about asbestos ... so I suppose I'd feel very bitter. I suppose I'd feel bitter towards CSR. I don't know.

Q: Have you ever met any of those people, any former Wittenoom worker who has got a disease?

A: No ... only people who were on our own staff ... Paul Thomas. He was the mine superintendent in 1960. He died recently of mesothelioma. I worked with him in our mineral activities from 1976 until he retired in 1979 ... he sought no compensation from CSR.

Q: Do you regard that as being an honourable thing to have done, or

In some way praiseworthy? Why shouldn't he have got compensation?

Matson: It was a reflection of his attitude towards the issue of negligence really.

Q: As you know, this has attracted enormous amounts of media attention. What do you say when your kids see something on television or read in the newspapers that CSR may eventually be held responsible for 2000 deaths... what do you say to your kids when they say 'Daddy, how could you work for a company like that'?

A: Well, they haven't asked that question. I think my children have met and know a lot of people who work with CSR... and I think their view, I haven't asked them this, would be to say 'well, they are people who have been kind, generous, caring towards us'. They would regard this, I think, as an accident, and I don't think they would hold any sort of ill feeling towards people unless they thought they were being wilfully negligent... there has been no adverse comment to me by any of my friends about the asbestos thing and CSR's current management and current staff... because we are regarded as a company of the highest integrity and repute. I think people would feel that this is an unfortunate accident, that we are dealing with it compassionately and properly now... my view is that absolutely no good purpose is served by raking over the coals of the past with the wisdom of hindsight, and saying what, if, and shouldn't you have known and shouldn't you have done this, and shouldn't you have done that? The fact of the matter is, it was one of those tragic accidents... my view, and you won't shake me on this, knowing the people involved, is that it was not wilful. It was not deliberate.

Q: So the courts are wrong, and you are right?

A: No, they are saying it wasn't wilful.

Q: They are saying it was negligent...

A: It was negligent, but there's a difference between...

Q: ... that you knew, or should have known, you could have prevented and you chose not to. That's the bottom line.

A: I think they are really saying that we didn't do as well as we should have, right. With the wisdom of hindsight they are saying that. I know people who have been charged with negligent driving. I say to myself 'well, the court found them negligent, but I regard it as an accident'... I haven't heard any adverse comment about CSR and its handling of this... (from) the people in my community, and friends that I sit with...

Q: Where do you live?

A: I live in Maramba.

Q: Perhaps the type of people you mix with aren't the sort of people who

might have much in common with the Willemoon workers?

A: Well, that's an interesting observation to make. I happen to have come from a very humble background, and I happen to maintain friends that did have a very humble background themselves... over the period of our life (CSR) has managed 500 separate industrial activities, started them up, closed them down. This is one incident out of 500.

Q: An awful lot of people are going to die over one incident out of 500.

A: Yes, I accept that. What good is being served in raking it over...?

Q: What good? I would have thought that's obvious. Compensation for the victims, and perhaps a warning for the future.

A: Despite the attempts of people to put a very slanted view on this thing... no one has got up in arms and demanded a Royal Commission into CSR.

Q: I think that's a very interesting suggestion. What would your attitude be? Would you support the establishment of a Royal Commission?

A: I don't think absolutely anything would come out of it whatsoever...

Chronology

Asbestos: the Warnings

CHRONOLOGY 185

- First century AD: Roman historian Pliny notes that slaves weaving asbestos cloth sicken and die. Describes the use of respirators made from animal bladders.
- 1898: British factory safety inspectors express concern about the 'evil effects' of asbestos dust.
- 1908: British Parliamentary Commission confirms first cases of asbestosis deaths in factories, recommends better ventilation and other safety measures.
- 1911: Royal Commission into working conditions in gold mines in Australia reveals widespread lung disease. Ventilation laws introduced.
- 1918: Prudential Insurance Company in the US produces an actuarial study showing premature death in the asbestos industry. Other companies begin increasing premiums and refusing insurance.
- 1926: First successful claim for compensation by a sick asbestos worker to the Massachusetts Industrial Accidents Board. Over the following three years several hundred further claims filed.
- 1927: Asbestosis given its name.
- 1928: Johns Manville Corporation, the world's largest asbestos mine/mill manufacturer served with 11 writs by asbestos victims. Claims settled out of court with secrecy orders.
- Metropolitan Life Insurance company in the US finds that half the men working at Johns Manville and Raybestos asbestos plants for more than three years develop lung disease.

- 1936: British Home Office survey finds widespread asbestosis disease in UK factories.
- 1936: Inspector of Factories and Shops in Western Australia reports on the effect of asbestos dust on the lungs of workers in the James Hardie factory in Perth.
- 1936: Lang Hancock 'discovers' the Wittenoom blue asbestos (crocidolite) deposits and later begins pick and shovel mining.
- 1936: CSR Ltd sends senior executive M.O. King to the US, Canada, South Africa and Europe to study asbestos mining and manufacturing. It is the start of regular contact between CSR and Johns Manville, including further overseas trips in 1947 and 1952.
- US adopts a 'safe' dust limit of 176 particles of asbestos per cubic centimetre in the workplace.
- German researchers identify six cancer deaths among asbestos textile workers. Later animal studies confirm asbestos dust kills mice.
- 1939: Western Australian Commissioner of Public Health and Chief Inspector of Factories find respiratory disorders among James Hardie workers.
- 1940: Hancock begins mining at Wittenoom. Plant opens in 1943, and CSR takes over in 1948.
- 1943: Saranac Laboratory in New York confirms the link between asbestos and cancer. Johns Manville suppresses the report.
- A report on an asbestos mill at Zeehan in Tasmania (owned and operated by a CSR subsidiary) says that asbestos dust is a health hazard, and discusses methods of eliminating it.
- 1944: First warning of asbestos dust at Wittenoom — the W.A. Assistant State Mining Engineer reports on the dangers of the dust being generated.
- Mines Inspector Adams reports on the 'dust menace' at Wittenoom and discusses the need to reduce dust levels.
- 1946: Known asbestos death toll reaches 236 in Britain, 16 in France, 30 in Italy.

Wittenoom mine manager writes to head office about first known asbestos case — a man named Dignam.

Mines Department inspector Adams describes dust conditions at Wittenoom as 'verry'.

1948: Dr Eric Saint tells Wittenoom mine management that asbestos is extremely dangerous, and that men exposed would contract chest disease inside six months. He writes to the Public Health Department in Perth that the mine will produce the greatest crop of asbestosis the world has ever seen.

Over the following three years, dust levels at the mine and mill are regularly monitored at six to eight times 'safe' levels. Further warnings are given to mine management. No improvement in conditions is noted.

1950: WA Commissioner for Public Health reports to his Minister that 'Asbestos dust, if inhaled, constitutes a very grave risk and is, if anything, worse than silicosis'.

State Mining Engineer reports insufficient attention to safety regulations and ventilation at Wittenoom.

1951: WA has adopted a 'safe' dust limit of 176 particles per cc. Wittenoom readings continually off the scale at 1000 particles. Mines and Health departments take no action... apart from issuing further warnings.

Commissioner for Public Health writes to the Under Secretary for Mines that, 'The hazard from asbestos is considerably greater than that from silica... we have reason to believe that attention to this aspect of mining operations at Wittenoom has been inadequate in the past'.

1954: Mines Inspector Robinson describes conditions at Wittenoom as a 'disgrace'. The following year he threatens to close the mine.

1955: Dr Richard Doll in the UK produces the most comprehensive survey to date linking asbestos dust with lung disease.

1959: WA Health Department official Dr James McNulty discovers six cases of lung damage among Wittenoom workers. He warns the mine manager, and writes the first of a series of warnings.

1960: Wagner paper published. A 'new' disease, mesothelioma (fatal cancer of the lining of the lungs), discovered among people exposed to asbestos in South Africa.

Annual report of WA Commissioner for Public Health says working at Wittenoom is thirty times more dangerous than other mining.

1961: Britain cuts maximum exposure level of asbestos in the workplace from 176 to five particles per cubic centimetre.

First case of mesothelioma detected among ex-Wittenoom workers. Man dies.

1961-1963: More than 100 cases of lung disease among Wittenoom workers and ex-workers — more than for all the other mines in Western Australia.

1965: Local council warned that the tonnes of asbestos tailings being spread around Wittenoom could even threaten tourists.

1966: G. Major of the Commonwealth Health Department is highly critical of dust at the mine and the mill. CSR closes the mine two weeks later.

1973: Wittenoom toll reaches 176; 27 men now known to have died.

1974: First public warning of the dangers of blue asbestos: *Bulfinch* magazine cover story, 'Is This Killer in Your Home?'

1977: Cornelius Meas becomes the first mesothelioma victim to sue the CSR subsidiary that ran the mine. Dies before the case gets to court.

1983: First victories in court for Wittenoom mesothelioma victims. Judge rules CSR acted with 'continuing, conscious and contemptuous' disregard for its workers' safety.

1986: Wittenoom toll tops 500; National Health and Medical Research Council predicts the final toll will be two thousand.

Index

INDEX 169

- Acta Amendment (Asbestos Related Diseases) Act 110
- Adams, Mr 49
- AIJR SPRC, Belgium 133
- Allen, Osborne Anzac, 'Oxide' 48, 54, 71, 113, 114, 122, 157, 169, 170
- amosite (brown asbestos) 6, 69
- Armstrong, Dr Bruce 140, 141
- asbestos, blue (ferrochrysotile) 6, 60, 61, 71, 128, 133
- disease victims 141, 142, 144-5, 146, 148-9
- diseases caused by, see asbestosis, cancer, lung cancer, mesothelioma
- early health concerns 11-12, 13
- history of use 9, 11
- properties of 9, 134
- 'safe' levels for dust 60-61
- substitutes for 10
- uses 9, 10, 11, 134, 136
- asbeston, brown (amosite) 6, 69
- asbestos, white (chrysotile) 6, 61, 133
- Asbestos Diseases Society vi, 42, 82, 85, 86, 110, 117, 154
- Asbestos International Association 95
- Asbestos Information Association 85-8
- Asbestos Worker 15
- asbestosis 12-14, 23, 28, 29, 51, 58
- Asch, Karl 93
- Ashby, Alexandra 123
- Ashley, David, QC 106, 107, 111, 114, 118, 119, 123
- Australian Blue Asbestos, later Midalco see Midalco
- Australian Workers' Union 55, 56, 85, 189-90
- Barrow, Stephen E.J.T. 'Tim' 105, 118, 120, 122, 124, 175, 183
- Bennett, Bill 140, 149, 161, 168, 171-93
- Bergamo, Italy 37-9
- Blatt and Fales 92
- Bonomi, Giovanni 38, 39

- Bonomi, Giuseppe 38, 39
- Borel, Clarence 91, 92
- Borel v Fibreboard 91
- Boysland, Mr 49-50, 54
- Brathwaite, John 187, 189
- Brinsden, Mr Justice Peter 111, 114
- British Journal of Industrial Medicine 60
- British Medical Journal 73
- Broadhurst, Joe 25, 28, 46, 122, 169
- Brodie, Paul 90, 93, 163, 165
- Brown, Keith Osborne 122, 123, 169, 170, 176
- Brown, Vandiver 94, 95, 96, 101, 138
- Bulletin, the 57, 77
- Burbridge, Richard, QC 112
- Burgess, Ian 172, 174, 178
- Burke, Brian 43
- Canadian Environmental Research Journal 133
- cancer 89, 146 see also lung cancer, mesothelioma
- Cantor, Jane 99, 100, 102, 134, 138
- Cape Asbestos Co. (South Africa) 10, 62, 146
- Carter, Mr 54
- Canada, Alberto 39, 40
- Casale, Gino 39, 40
- Casale, Luigi 39, 40
- Casselman, Dr Barry 10, 11, 139
- Cassese, Nicolai 6
- Cattorelli, Riccardo 37
- Colonial Sugar Refining Company (CSR) 16, 17, 19, 43, 60-9, 72, 78, 100, 106, 111, 112, 121, 125, 133, 139, 141, 146-54, 171-93
- compensation cases 14, 78-80, 82-4, 85-8, 89-90, 96-9, 101, 106-15, 118-19, 120-5, 135, 138, 146, 163-4, 176-7, 181, 183-4
- Cooper, Graham 51, 54
- Corporate Crime and Violence 165
- Corporate Crime Reporter 184
- Court, Sir Charles 5, 43
- crocidolite see asbestos, blue
- Crumplar, Thomas 89
- crysotile (white asbestos) 6, 21, 59, 61, 133
- Daily News 87, 172
- Dann, Ignatious (Dick) 30

200 BLUE MURDER

INDEX 201

de Klerk, Nicholas H. 140, 142
 Delperu, Sperandio 29, 30, 33, 35, 37
 Dignam, Ian 28, 46
 Dignam, Peggy 28
 Distillers Ltd 146
 Doll, Sir Richard 61
 Dotti, Ferno 37, 38, 39
 Dotti, Frances 36
 Dowling, Peter 186
 Doyle, John 1, 4, 63
 Doyle, Ron 62
 Doyle, Val 1, 62, 3, 70, 74, 149, 157, 166, 167, 183
 Doyle, Val, relatives of Eddo 62, 63; Esther 62; Frank 63;
 Philip 62; Shirley 62; Virginia 62
 Eapitch, Dr Bob 66
 eronite 143
 Expendable Americans 90
 Fibreboard Paper Products Corporation (Pebo) 90
 Film Recovery Systems Inc. 163, 165
 Fosse, Brent 167
 Flintkote 88, 89, 134
 Flynn, Dr 25
 Forbes, Peter 85
 Formato, Luisa 110
 'Four Dog Defence' 97, 121
 Freehill Holdings and Page 61
 Garrula, Galex and Cantor 99, 102
 Gaze, Richard 146
 Gill, Michael 29, 178
 Golub, Stefan 163
 Gordon, Hugh 104
 Gordon, Jack 102
 Gordon, John v, 84, 108, 109, 114, 119, 120, 122, 123, 147
 Gordon, Peter v, 102, 104, 105, 106, 110, 111, 118, 123, 147
 Grabosky, Dr Peter 167
 Gundagai, NSW 11
 Hall, Tim 67, 77
 Hancock, Langley George 6-7, 10-17, 73, 129, 172
 Harris, Rolf 17, 18, 19; father 73

Harvey, Mr 81
 Heath, Judge Jack 89
 Heya, Juanita 120
 Heya, Peter 119, 120, 123, 176
 Heya and Barrow case 118, 163, 169, 176, 181, 183, 190
 Hill, 'Red Ted' 104
 Hobbs, Professor Michael 140, 141
 Hoffman, Mr 16
 Hughes, Tom QC 111
 Hume, Allan 66
 Hunt, Dr Bruce 66
 Iobaton, Allan 64
 Industrial diseases 2
 Industrial Hygiene Association 66
 Irving, Norman 176
 Iherwood, Joe 86
 James Hardie Corporation 11, 105, 133
 Joan Joosten Centre 82, 86, 104
 Johns Manville Corporation see Manville Corporation
 Jones, Dr Stephen 130, 131
 Joosten, Bert 82, 83, 84
 Joosten, Joan 82, 83, 86, 90, 92, 102, 109, 175
 Kaye, Mr Justice 107, 124, 168, 176
 Kazan, Stephen 136, 138
 King, Malcolm George 21
 Knox, Sir Edward 20
 Komende, Francis v, 86, 89
 Komende, George v, 1, 2, 86, 89, 96, 100, 134
 Lancet, the 67
 Lanza, A.J. 15
 Laura di Sessa, Italy 39
 Layman, Lenore 34
 Lloyds of London 80, 126
 Lombardo, Luigi 37
 lung cancer 51, 59, 72, 143, 161
 lung diseases 47
 Maas, Cornelius 75-80, 82, 90, 102, 109, 162
 Mass, Reiko 76, 77, 78, 80

202 BLUE MURDER

- McKinney, John A. 98
McNulty, Dr James C. 44-9, 64, 66, 71, 110, 121, 167, 169, 177, 179, 187
McQueen, Steve 146
McPherson Ltd 106, 107
Magic Mineral 90
Maguire, Dr 71
Major, Derek 77
Manion, Judge Thomas viii, 88
Manville Corporation 10, 11, 14, 21, 62, 90, 92-100, 133, 136, 137
Mayman, Jan 85
Mazzechi, Anthony 164
Medical Journal of Australia 64
Menarou, Andrew 43, 44
Menzies, Sir Robert 35
Mercer, Eric 23, 51
Mercer, Eric Sam 23
Mercer, Ray 23
Merewether, Dr 13
mesothelioma 57-8, 75, 77, 121, 130-1, 143, 149
mesothelioma, peritoneal 59
Metropolitan Life Insurance Co. 83
Michel, Frank 126
Micalice (formerly Australian Blue Asbestos) 17, 18, 26, 78, 111, 119, 121, 126, 161, 165
Micalice (ABA) Mine, Wittenoom
mine closure 45-6, 77, 158
mine conditions 18-19, 22-3, 25, 26, 28, 34, 36, 45, 51, 54, 78, 116
mine profitability 77
mine strike 34
mine workforce 29, 30, 33, 35
Mineral Fibres Ltd, UK 133
Minor, Judge John 91
Mokhiber, Russell 164
Moscone, Giuseppe 31, 32, 37
Moscone, Maria 31
Moscone, Vito viii, 2, 32, 37
Mottley, Ronald 88, 92, 107
Munro, Ross 157, 168, 181
Murphy, Bernard vi, 109, 111, 115
Murray, Dr H. Montague 12
Musk, Dr Bill vi, 58, 72, 73, 74, 140, 160

INDEX 203

- Multon, Ian 112, 147, 149, 169, 173, 178, 181, 182, 183, 184, 187, 188, 192
Neal, David 168
New Brunswick, USA viii
New York Times, the 92
Noble, Philip 167, 168
Northman, Dr 81
Nottingham, UK 2, 4
Nugent, Reg 33
O'Neill, Brian 66, 68, 69, 70
O'Neill, Ruth 68, 69, 70
O'Shea, Charlie 104
Outrageous Misconduct — The Asbestos Industry on Trial 90
Oxer, Dr Gordon 71
Panella, O. see Penella
Panizza, Antonio 37
Panizza, Oscar 39
Panizza, Zelferino 37
Pascock, Matt 77
Pedretti, Rino 85, 87, 102, 109
Pelliccia, Dr Dino 154
Penella, Oscar 85, 102, 109, 176, 183
Pinner, Harold 106, 109
Pittsburg Corning Corporation 98
Point Samson, WA 8, 68, 129
Perton Down, UK 128, 131
Predel, Giacomo 'Jimmy' 38
Price, Mr 13
Ribenauff, Elizabeth ix
Ribenauff, Klaus ix, 2, 115, 118, 124, 125, 127, 175
Ribesius Manhattan 83
Ribesius Phenomenon 22
Rieggen, Mr 31, 36, 37, 39
Redgate, Annie x, 2, 129, 130, 131
Redgate, Arthur x, 129, 130
Rennie, Dr H. Maynard 64, 66, 67, 179, 187
Robinson Cox 81, 161
Roemer, Charles 95
Roemer, Jacob 95
Rothfield, Jonathan 104

204 BLUE MURDER

Rowland, Mr Justice Barry 121, 122, 123, 124, 169, 176, 181
Rush, Jack 64

SA Francaloe Etenille, Switzerland 133

Sacelli Manfredi, Italy 133

Saint, late Professor Eric v, 24-26, 44, 118, 121, 167, 186, 197

Sarneck Laboratory 94

Sawyer, Joseph 63-4

Sellkoff, Professor Irving 143, 146

Sheehan, Frank 71, 72, 162

Silicosis and Asbestosis 16

Silverman, Leon 101

Simpson, Shirley (Street) 112

Simpson, Sumner 93

Simpson, Wally 107-14, 117, 126, 178, 183

Simpson, William 93

Sir Charles Gairdner Hospital v, 1, 68, 69, 72, 74, 108, 140, 147

Slanz, Attille 31, 35-7

Slater, Bill 104

Slater and Gordon v, 84, 104, 105, 107, 117, 126, 147, 162, 173, 180, 183

Soter, Frank 18, 156, 156, 157, 158, 160

Stanley, Richard QC 119

State Government Insurance Office 43, 78, 79, 80, 125, 126, 147, 148

Steel, Keith 172, 174

Stephenson, Ward 90

Sumner Simpson file 93, 94

Tait, Sue 111, 112

Taylor Smart 108, 109, 110, 148, 180

Thomas, Dr D.J. 128, 131

Thomas, Paul 176, 191

Tribune, the 55

Turner and Newell 10

Vermeulen, James 101, 102, 136, 137, 139

Vermiglio, Italy v, 4, 31-2

Vernon, Sir James 176, 178

Vishoni, Mr 39

Vojakovic, Robert v, 34, 43, 69, 65, 86, 87, 92, 104, 109, 114, 117, 118, 123, 163, 164, 168

INDEX 205

Wagner, Dr Christopher 59-61, 106, 139

Wagner paper 63, 64, 116, 188

Wallace, Mr Justice 83

Walton, Henry 128, 132

Warren, Professor 179

Watts 7

West Australian Department of Mines 7, 41, 43, 44, 47, 49, 51, 55, 56, 166

West Australian Department of Public Health 28, 44, 45, 47, 55, 56

West Australian Trades and Labour Council 55

Whalen, Kenneth 134

Wild, Rudolph 146

Wilkin, Keith 'Old Wilko' 69

Williams, Daryl QC 118

Winneke, John 107

Wittenoom, Edward Horne 1

Wittenoom Papers 42, 43, 44, 49, 56, 76, 83, 87, 92

Wittenoom township, WA 1, 2, 4, 6, 7, 16, 34-5, 47, 68, 71, 157, 159-60

Woodward, Stephen 141

Yampine Gorge, WA 7

Young, Ray 159

Zambotti, Mario 31, 32, 37

Zeehan, Tasmania 11, 19

Zinetti, Mr 39