FILE NAME: Colonial Sugar Refinery (CSR)

DATE: 1989

DOC#: CSR007

DOCUMENT DESCRIPTION: CSR Company Report to Shareholders - Wittenoom and Asbestos

WITTENOOM AND ASBESTOS.

The answers to questions some shareholders have asked.

CSR

PLAINTIFF'S EXHIBIT 105440

CSR

CSR Limited
Level 35 Grosvenor Place
225 George Street
Sydney NSW 2000
Australia

GPO Box 483
Sydney NSW 2001
Australia

Facsimile (02) 235 8555
Telephone (02) 235 8333

3 July 1989

Dear Shareholder,

Wittenoom asbestos

On 28th October, 1988, I wrote to you outlining the facts relating to CSR's involvement in the Wittenoom asbestos mine operated by Midalco, a subsidiary of CSR.

Of particular concern at the time were some exaggerated claims being made about the extent of CSR's liability for compensation of people who have suffered injury as a result of their exposure to asbestos at Wittenoom.

Attached to this letter was a statement of issues relating to Wittenoom as they existed at the time.

A number of these issues have since been resolved. However, new issues have been raised in the media.

A number of shareholders, financial analysts, researchers and stockbrokers have sought further clarification of CSR's position regarding Wittenoom, including the company's position in the U.S.

It seems best now to address the most common questions asked, in order to clarify the situation for all shareholders.

Yours sincerely,

IG Burgess
Managing director

1

What proportion of asbestos used in Australia was mined at Wittenoom?

The Wittenoom mine first opened in 1943 and closed in 1966.

During the period 1943 to 1966, the Wittenoom mine accounted for less than 10%[5] of the asbestos used in Australia.

Following the closure of the Wittenoom mine in 1966, CSR ended its investment in the mining of asbestos.

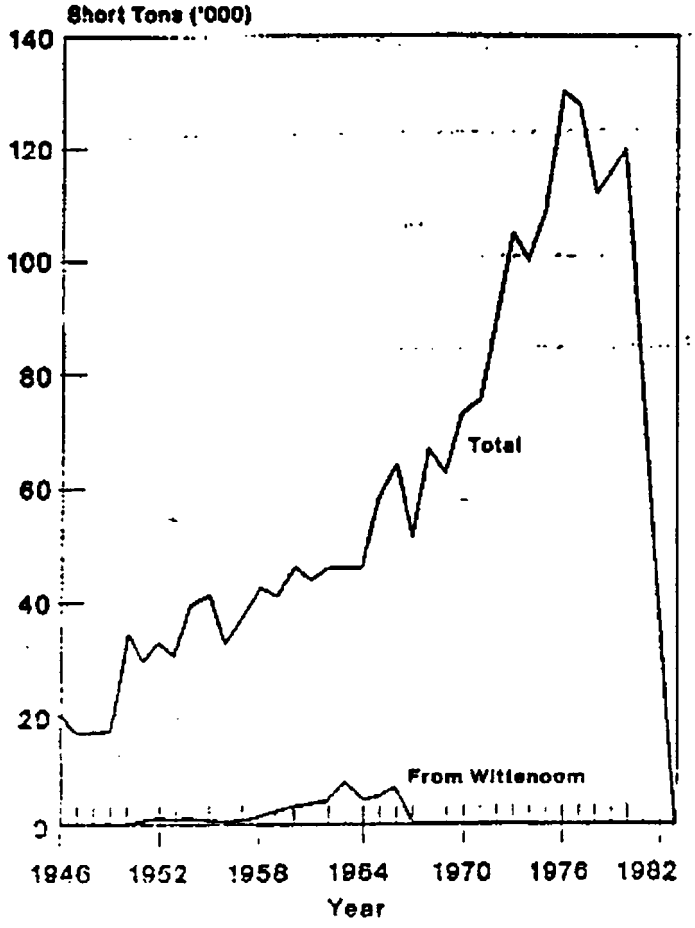
The mining and use of asbestos in Australia continued until 1983.

The asbestos used during the period 1967 to 1983 was imported or produced by other mines in Australia.

Over the period 1943 to 1983, Wittenoom asbestos accounted for less than 5%[6] of the asbestos used throughout Australia.

ASBESTOS IN AUSTRALIA – 1946 TO 1983

AUSTRALIAN CONSUMPTION



2

Media reports of the number of people diagnosed as suffering from asbestos related diseases vary. What is the position?

There are two diseases directly linked in scientific literature to the exposure to asbestos dust and fibres.

- Asbestosis – a dust related disease similar to silicosis which reduces lung function but which is not normally totally disabling.
- Mesothelioma – a cancer of the outer lining of the lungs which is fatal.

To date, approximately 200[4] former employees of Wittenoom have been diagnosed as having contracted asbestosis.

Asbestosis usually manifests within 20 years of first exposure to asbestos. As the Wittenoom mine closed 22 years ago, the incidence of new cases of asbestosis amongst former Wittenoom workers is expected to be negligible. (There were 30 cases in 1984 and just 3 in 1988.)

However, a small number of cases of asbestosis are likely to continue to be diagnosed amongst people exposed to imported asbestos and to asbestos produced by other mines in Australia after Wittenoom closed.

Between 1947 and 1988, approximately 2000* people throughout Australia have been diagnosed as having contracted mesothelioma.

Of these, a total of 110[5] – a little more than 5% – are known or understood to have had exposure to asbestos at Wittenoom.

- 87 were former employees of Midalco who worked in the mine and mill at Wittenoom.
- 3 were employed by Midalco in the township of Wittenoom.
- 20 were understood to have been associated with operations at Wittenoom (contractors, people living in the township, etc).

The remainder – about 95% – of diagnosed mesothelioma sufferers were employed in other industries throughout Australia.

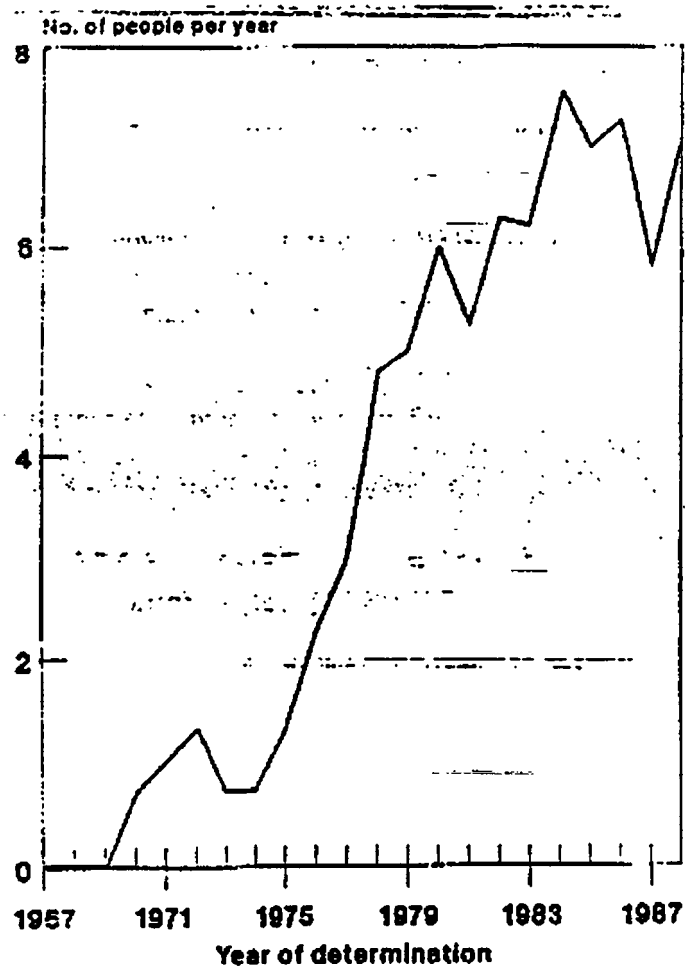
From 1967 onwards, these people would have been exposed almost entirely to imported asbestos or to asbestos produced by other mines in Australia

The period between first exposure to asbestos at Wittenoom and the manifestation of mesothelioma averages 27 years.

As the mine closed over 22 years ago, the incidence of mesothelioma amongst former Wittenoom employees is expected to decline over the next five years and be negligible after the year 2000.

WITTENOOM MESOTHELIOMA CASES

BASE: THREE YEAR MOVING AVERAGE



Over the past ten years, an annual average of seven Wittenoom workers have been diagnosed as having contracted mesothelioma.

So far this year, there have been two additional diagnoses of mesothelioma amongst former employees of Midalco at Wittenoom.

Based on experience over the past 46 years, it is estimated that the total number of former employees and residents of Wittenoom contracting mesothelioma will be around 150.

However, it is expected that approximately 200* mesothelioma cases will continue to occur each year throughout Australia into the next century.

This situation will be almost entirely due to the continued importation and use of asbestos after the Wittenoom mine closed in 1966.

The reference to the continued occurrence of around 200 cases of mesothelioma each year into the next century has caused some confusion in the media and has been wrongly linked on several occasions to the operations at Wittenoom.

*Reference 1:2:3:

3

It has been stated that CSR knew of the dangers to its workers at Wittenoom. What is CSR's reaction?

The company's position was that it was not negligent having regard to the knowledge available and accepted at the time:

- the operation of the mine and mill and the health of the workforce was subject to periodic inspection and reports by experts from the Western Australian Departments of Health and Mines
- asbestos was not classified by the U.S. Government as a hazardous substance and its use restricted until the early 1970s
- the mining and use of asbestos continued around the world through to the 1980s; indeed its use continues in some countries today.

The continued use of asbestos throughout the world through the 1980s reflects the widespread underestimation of the now well known dangers regarding the use of asbestos.

It is simply not appropriate to judge the actions of the Wittenoom management and of the Western Australian authorities over the period 1943 to 1966 by the knowledge we now possess in 1989.

Some commentators have alleged that the company and the senior management (who lived and worked at Wittenoom with their families) were aware of the risks which we now know were involved in the mining of asbestos.

CSR cannot accept this view.

To claim that these people had the knowledge of the significant risks, yet continued to live and work at Wittenoom, is tantamount to claiming that they were indifferent to their own safety and lives; indifferent to the safety of and lives of their families; and indifferent to the safety of and lives of the employees.

In this regard, Mr Justice Rowland of the Western

Australian Supreme Court commented..."I am not able on the evidence to find that there was a deliberate attempt to avoid knowledge, or a reckless disregard for the safety of the workforce, or any other contumelious disregard for the rights of the plaintiffs (employees)".

Some media reports have also suggested that Midalco employees falsified safety records at Wittenoom.

These suggestions have no substance.

CSR finds these allegations reprehensible.

4

What is the present position relating to asbestos claims from Wittenoom?

As at 30 June, 1989, 303[(*)] former employees of the Wittenoom mine or their dependants had commenced action in the courts against Midalco and CSR for compensation for asbestos related injuries suffered as a result of their working at Wittenoom.

Following the 1988 judgements that Midalco was negligent and that CSR, by virtue of its proximity to Midalco, was also negligent, CSR and Midalco commenced settling claims in accordance with the procedures for claims for damages for personal injuries in the State of Western Australia.

The process involves the claimant undergoing a medical assessment and producing relevant financial documentation in support of their claim.

Under the agreement with Midalco's insurers, the State Government Insurance Commission of Western Australia (SGIC):

- Midalco/CSR are responsible for settlement of all claims for those who worked at the mine prior to 1 January, 1959.
- CSR and the SGIC are jointly responsible for settlement of all claims for those who worked at the mine after 1 January, 1959.
- Settlement of claims is being administered by the insurers, the SGIC.

Of the 303[(*)] claimants, 220[(*)] have submitted details sufficient to commence the settlement procedure.

Of the 220[(*)] claims:

- 86 claims have been settled.
- Offers have been made on a further 51 claims.

The remaining 83 claims are currently being dealt with.

5

People who were connected with Wittenoom, but not employed by Midalco, have contracted mesothelioma. What is CSR doing about these people?

These people are residents or former residents of the township of Wittenoom; government employees either residents of, or frequent visitors to the township; and people involved in transport to and from Wittenoom. There are 20[(*)] such people.

Liability has not been established for injuries suffered by these people.

CSR believes the primary responsibility in these cases rests with the Western Australian Government.

The company has, however, advised the State Attorney-General that it is prepared to make a contribution to these settlements, despite the fact they were not employees.

Former Wittenoom residents who contract an asbestos related disease and who were not Midalco employees, will be offered up to $50,000 as compensation by Midalco/CSR.

6

In its public statement of 24 October 1988, CSR estimated its eventual liability in respect of former Wittenoom employees at a maximum of $50 million. Is this still correct?

No. In fact it is lower – about $35 million.

The estimate of $50 million was based on an

analysis of the 290 asbestosis and mesothelioma claims outstanding in October 1988 and assumed a further 30-60 cases of mesothelioma over the next ten years.

Recent experience suggests that the future incidence of asbestosis amongst former Wittenoom employees will be negligible and that the number of additional cases of mesothelioma will be less than 60.

Based on experience of the settlements to date, CSR is confident that the total liability for all asbestos related diseases for former Wittenoom employees will be within the October 1988 estimate of $50 million.

In April 1989, Midalco/CSR reached agreement with the State Government Insurance Commission of Western Australia (SGIC) on insurance cover for the Wittenoom operations.

The agreement (and the insurance contract between Midalco and the SGIC) specifically covered claimants who worked at the mine after 1 January, 1959.

Under the agreement, the cost of settlement of claims for people who worked at Wittenoom after 1 January, 1959 will be shared equally between Midalco/CSR and the insurers, the SGIC.

As a consequence, the total liability of $50 million will be apportioned: approximately $35 million Midalco/CSR and $15 million SGIC.

The provision of $50 million set aside in CSR's accounts for the half year ended 30 September, 1988 was reduced to $35 million in the accounts for year ended 31 March, 1989.

In addition, the company has set aside a provision of $10.5 million in the accounts for year ended 31 March, 1989 to cover legal and other costs including settlement of claims by non-employee residents of Wittenoom.

7

Recent press reports suggest U.S. attorneys are examining methods whereby U.S. judgements can be enforced against CSR in Australia. What is CSR's position in this matter?

From around 1950 to about 1966, asbestos fibre produced at Wittenoom was exported to the United States for industrial use.

It is CSR's understanding that these sales represented a tiny fraction of the asbestos used in the United States during this period.

At the time of these sales, the companies in the United States which used asbestos led the world in the development, manufacture and application of asbestos-containing products, and in knowledge regarding the properties of asbestos and potential health effects of asbestos exposure.

In the circumstances, the company does not believe that Midalco, CSR or its shareholders are responsible for any injuries suffered by the employees of the manufacturers who used Wittenoom asbestos in the United States.

Certainly, British law, which Australia has traditionally followed, does not currently recognise a liability for either CSR or Midalco under these circumstances.

CSR has, however, been joined in litigation in the United States, as one of up to 30 defendants in approximately 650[7] cases covering the period 1979 to 1989.

As at 30 June, 1989, only 244[7] of these cases remain to be finalised.

All other cases have been settled without reference to CSR.

Nothing suggests the remaining cases have anomalies likely to alter CSR's position.

Even if the U.S. courts were to hold either CSR or Midalco liable, the legal opinion available to CSR is that the judgements would not be material and would not be enforceable in Australia.

As a matter of prudence, CSR has made a provision in the accounts for year ending 31 March, 1989, should it ever be established that CSR has a liability. This provision is in addition to insurance cover that CSR has in place.

Accordingly, if any liability is ever established, the impact on CSR will not be material.

REFERENCES

1. The incidence of malignant mesothelioma in Australia, 1947-1980 (The Medical Journal of Australia, March 6, 1989, Vol 150)
2. The Australian Mesothelioma Surveillance Program 1979-1985 (The Medical Journal of Australia, August 17, 1987, Vol 147)
3. The Australian Mesothelioma Surveillance Program 1986-1988 (unpublished results)
4. Information relating to Claims and Settlements is a Reflection of Agreements and Procedures as at 30 June, 1989.
5. Records of the State Government Insurance Commission of Western Australia.
6. CSR records and data derived from Australian Bureau of Statistics' Annual Reports.
7. Information supplied by U.S. Attorneys, Cleary Gottlieb Steen & Hamilton.