FILE NAME: Colonial Sugar Refinery (CSR)

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DOCUMENT DESCRIPTION: Legal Memo Disputing CSR Liability in Mesothelioma Case

Mr I G Burgess

Mr M G King

23.7.76

W.A. Mesothelioma Case

It is known that a young woman aged 27 years has developed mesothelioma in Perth and that this condition is being related back to her childhood at Wittenoom where her father was working for A.B.A. Limited. So far CSR has not received any notice of claim but the matter has been drawn to the attention of Mr Leith in Perth by the W.A. Commissioner of Public Health, Dr J C McNulty.

It was decided to seek a legal opinion as to the Company's position in this case and in possible future cases. Our Sydney solicitors, Sly and Russell, sought the advice of Messrs Robinson, Cox and Co. who are CSR's solicitors in Perth.

To summarise the advice given by both the W.A. solicitors and Sly and Russell:

1. CSR Limited itself has no legal liability at all;

2. Midalco Pty. Ltd. (which was formerly A.B.A. Limited and which is a wholly owned subsidiary of CSR Limited) has a somewhat different legal position as follows:

   a. It is possible that the claim would be statute barred, due to the lapse of six years from the cause of action. However, the date upon which the cause of action arose would not be easy to determine or identify. It depends on when the disease started to manifest itself and not necessarily on the date of inhalation of the dust or her death.

   b. Midalco could argue that there is no breach of the duty of care because we did not know at the time that these consequences were likely to result from the inhalation of dust. This line of defence would be stronger in relation to inhalation of the dust prior to the publication of Dr Wagner's paper in 1960 which clearly established the connection between inhalation of asbestos fibres and mesothelioma. Once this paper was published an applicant has a much better argument that the Company should have known the consequences of inhalation of dust and that therefore the duty of care was clear.

Apart from the above legal situation it is possible that CSR may wish to make a payment in the event of there being

ome formal claim either from the woman concerned or from her husband following her death. Such a payment could be made on an ex gratia basis without admission of liability and this would not affect our position in any similar future claim. The letter accompanying such a payment would need to be carefully worded and should be drafted by our solicitors.

Recommendation

As the legal position has now been clarified it is suggested that we should do nothing until some form of claim is made on the Company and that we should then simply consider whether an ex gratia payment should be made.

Lung Cancer Death

Advice was recently received from Perth of the death from lung cancer of a former employee of A.B.A. Limited. This man, Mr Wielinga, worked at A.B.A. from July 1955 to January 1959 as a leading hand sampler. His death on 27 March 1975, was held to be due to carcinoma of the lung due to asbestosilicosis. This is different to mesothelioma which is cancer of the pleura.

The claim resulting from this man's death will be heard before the Workers Compensation Board on 19 May 1976. The claim will be dealt with by the W.A. State Government Insurance Office who were A.B.A. Limited's insurers.

N E Irving
16 Feb 76