

The long running battle over compensation for mine workers affected by blue asbestos at Wittenoom in the north of Western Australia reached a watershed this week when CSR accepted liability after the WA State Government Insurance Office declared its policy "inoperative" — a move CSR is to challenge in court. MICHAEL GILL traces the background.

THE tragically ugly dilemma which has now enveloped CSR, the West Australian State Government Insurance Corporation and at least 288 people as a result of CSR's mining of asbestos at Wittenoom, first became a major management issue for CSR in 1977.

Up until 1977, compensation for people afflicted by asbestos-related diseases at Wittenoom was handled by the SGIC. But in 1977, a former worker, Cornelius Maas, claimed civil damages from CSR for his condition. The Maas statement of claim asserted that CSR's subsidiary, Midalco, had been negligent in that it failed to adequately protect him from exposure to asbestos dust.

On June 20, 1977, four days before the Maas claim was lodged, two CSR personnel managers went to Perth to talk to the company's lawyers and to the SGIC. Notes of that visit were sent on June 27 to Mr Ian Burgess, who is now CSR's chief executive.

It said that the company's insurance was limited to only \$2,000 for any claim covering employees up to January 1, 1959. Mr Maas had worked at Wittenoom from October 21, 1937 until November 6, 1959. Talks with the SGIC centred on a proposal by which they and CSR would split the liability. But there were also a number of general points reported in the note:

- The SGIC lawyer said its interests would be best served if the matter was defended on the basis of limitations;
- Maas' case was the first common law claim;
- SGIC put a tentative estimate of the liability at \$100,000;
- The SGIC was, at that time, paying compensation to 160 former Wittenoom employees;
- Three employees had already died from mesothelioma;
- The SGIC had made a "preliminary estimate" of \$33 million of liability on the basis that the existing number of cases would double to 330. The CSR managers also put the company's view, saying that "CSR believes there is a moral obligation for someone to pay Mr Maas a reasonable sum as soon as possible and before he dies".

CSR wanted an early settlement also, so as to "avoid adverse publicity which could result and would involve both organisations if the matter was defended on a legal technicality or was unduly protracted".

Later, the CSR officers met their Perth lawyers again. The report noted that CSR's QC said the company had little choice but to accept the SGIC's formula. It also said that "dealing with the Maas claim established that there has been bad management on both CSR's and the SGIC's part".

The report said that information on the illnesses related to Wittenoom had been handed badly.

"Also," it said, "Perth branch had been authorising industrial disease claimants (by filling out a statutory form), but has not been passing this information on (it seems that they checked and received the reply that 'Sydney' was not interested in the form)".

On June 23, 1977, the SGIC wrote to CSR with its views on the Maas claim.

"It has been proposed that Maas be settled by a consent judgment," the SGIC said. "The probable settlement could approximate \$100,000 which could cost your company up to \$35,000 and \$42,000 to this office. The proposal would have merit but for the fact that there are approximately 160 persons currently receiving workers' compensation and with a probability of suffering from mesothelioma..."

"In many instances, these workers could fall completely into the earlier policy and the liability could be entirely that of your company. It is felt that the precedent is too dangerous, and too expensive, to be generous. It is felt that the issue must be taken as far as possible. If we lose, we will be in a worse position than if we decide to meet the claim of Maas without a fight."

A profile of Mr Maas in CSR's files said that he had been diagnosed with 100 per cent mesothelioma and asbestosis by the Pneumoconiosis Board and that the SGIC had begun compensation in November, 1975. The 42-year-old has three sons aged 17, 13 and 11. Mr Maas' employment record, marked with the pay number 374, carried the comment "Good

A decade on, CSR is still fighting

worker, conscientious and reliable". Mr Maas died on July 5, 1977.

"One question which arose immediately for those handling the Maas case — was whether CSR anticipated many more — was whether CSR knew of the dangers of its operations. This week, Mr Burgess conceded that "the company has been found to be negligent in regard to the dust. And I think, probably, grossly negligent. I mean, you can't hide behind that. But the Mines Department did not close the mine down. And they had the power to do so".

What did CSR know of the dangers? A memo dated June 18, 1974, by Malcolm King, a senior operations executive, said that "CSR began using asbestos as a raw material for asbestos cement in the early 1940s".

Mr King, who had travelled overseas in the 1940s to talk to other asbestos companies, said that "from discussions with Johns-Manville in Canada and Cape Asbestos in South Africa we were always aware of some danger from inhalation of asbestos fibre. Initially, we understood this to be similar to silicosis but later heard of asbestosis and other related diseases".

"Our attitude was that any industrial dust was potentially harmful and should be avoided or prevented. We provided increasingly elaborate and more effective means of dust collection at our factories and at the Australian Blue Asbestos mill in particular," Mr King said.

ABA was the operating name of the Wittenoom company, changed later to Midalco, well after mining stopped in 1966. And it was the mill at Wittenoom, where rock was crushed to release the blue asbestos fibre, which would later be the identified source for much of the illness that resulted.

A summary of CSR files and notes in the mine record book prepared by CSR showed that, while no records were found for the period from 1946 to 1946, the question of dust at the mine was raised by the AWU in an award claim in 1947. And the company began to work on dust collection systems in 1948.

In November 1951, management at Wittenoom said it considered "dust control to reduce fibre losses more important than expansion". In April 1955, Wittenoom management sought an early decision on plans for wet processing "as, if not installed, mines inspector will demand much improvement in dust control".

Mine manager, Mr C.H. Broadhurst, said he considered the dust "most unhealthy, unpleasant and inefficient". In January 1956, management argued that "irrespective of Mines Department reaction, it is essential that something be done to reduce dust".

Wetman dust collection equipment was installed but a note in Perth office files said they were "totally inadequate" and had to be modified. The senior Sydney manager, Mr Keith Browne, noted that "I have never learned this. It is a tragedy after previous good reports. Crushing must cease (sic) if dust collection is not operating".

Mr Browne's comments were his response to the October 1958 report of the senior mines inspector, who said that in May, dust conditions had been satisfactory. In August they had been "not good", but in October conditions were bad. The retortone dust collection system was not working properly, he said, adding that he could not allow those conditions to continue.

In February 1959, a note in the Perth office said that the dust collection system was not acceptable to the Mines Department.

Inspectors' reports throughout 1960 and 1961 varied, though their frequency increased. In August, 1961, an inspector said that ventilation was improved, though the mine was "still well below required standards". Air flow was "non-existent in some places".

In October 1961, the Sydney office wrote to the mine management with a troubled warning. "You must take any steps necessary to co-operate fully with the ventilation inspector and get efficient ventilation and dust collection in the mine and mill," the note said. Doctors McNulty and Letham were, the note added, "gravely concerned" at the health hazard to 34 people having asbestosis or silicosis.

In November 1961, concerns had risen substantially. The Perth office wrote to the senior mines inspector assuring him that the company regarded the dust problem as "serious and urgent". In Sydney, Mr Browne wrote to Mr King saying that the situation was "very serious" and the senior mines inspector, in the same month wrote saying that steps must be taken to eradicate the dust "menace", adding that "I will not hesitate to take the



Mr BURGESS ... concedes negligence

necessary drastic action if progress is not quick and continuous".

In 1966, the mine was closed. In a report recommending the closure, Mr Browne said that while dust conditions were improved, it was doubtful they were "even now" as good as would be required and demanded.

In June 1974, eight years after the mine was shut, a report on the incidence of asbestosis among Wittenoom workers was circulated among CSR management. Citing a paper given in 1973 by an officer of the WA Department of Public Health, the report said 142 cases of asbestosis and/or silicosis had been identified. The officer's paper said there had been six cases of pleural mesothelioma, although the company knew of two others. Thirty of the cases were known to be fatal.

More than two-thirds of the cases had arisen among workers in the crushing mill, as opposed to 32 per cent among underground miners.

On the question of monitoring dust levels, the report said sampling was started at Wittenoom in the mid-1950s. But "findings were suspect because the people doing the testing had insufficient knowledge". It added that sampling in 1964 by Mr G. Major of Sydney University showed high concentrations of asbestos in the air in the mill. Levels in the mine also exceeded safe limits, but were not as high as in the mill.

In April 1977, after the Maas case had been aired publicly, a discussion paper prepared by CSR's senior personnel executive was sent to his general manager. After reporting that more people, aside from those already known, could be expected to be diagnosed with asbestosis, lung cancer or mesothelioma, the report also discussed the question of negligence.

"As regards protection of people at Wittenoom, ABA-CSR may have behaved reasonably by the standards of production people at that time. Prior to the knowledge of mesothelioma (first related to asbestos in a medical paper published in 1960) fairly massive exposure to asbestos dust was believed to be needed to cause asbestosis," the report said.

"It was not until the 1960s that people realised that relatively small exposures might cause mesothelioma; and it was not until 1969 (in the UK) that regulations were first introduced to lighten up permissible dust levels in asbestos industries."

The personnel manager said "there would assuredly have been some degree of negligence at Wittenoom; the place was run by human beings. ABA-CSR has already been accused of negligence. The accusations are likely to continue". And, while the accusations were likely to be exaggerated, "there may be evidence of negligence; or of what a jury would consider to be negligence".

Referring to articles in *The Bulletin* in 1974 and 1975 and allegations of a "cover up", the

report said: "I am told that some CSR staff who worked at Wittenoom hold the view that such laxness and 'cover up' could have been possible."

"On the question of liability, the report said that aside from mine employees, others could be affected, including: townspeople, people who worked at Wittenoom but employed by CSR, and people who worked with blue asbestos other than at Wittenoom."

As to the company's obligations, the report said that "some of us may believe that CSR has no continuing or undischarged moral or legal obligations; but others will no doubt from time to time assert that we do have."

"I think we have, and will continue to have an obligation (moral or humanitarian, not minimally financial) to find out who was hurt and what we can help. We can't just turn our back on the situation," the report said.

CSR has denied specifically, as recently a last Tuesday, that it was warned in 1948 by a government medical officer, Eric Saint, of the extreme dangers at its Wittenoom operation.

Yet, an unsigned draft memo, dated June 12 1974, and headed "Press Enquiry — Mesothelioma" said that in 1948 Dr Saint in Perth had given warnings to people working at Wittenoom about asbestosis, but he implied in his advice that asbestosis was not particularly injurious because of the body's reaction; prevention to crystallise (sic) into lungs.

Professor Saint maintained that his warning were very strong and he wrote also to WA health authorities. CSR said this week that it had 288 cases on its books. It expected no more asbestosis cases and experience suggested another 10 mesothelioma cases a year.

But experts such as respiratory specialist Dr William Musk, in WA, said that as many as 25 more cases of mesothelioma might appear in the next eight years or so because the 30-year incubation extends at least until 1996. This is supported by a memo dated November 11 1977 — again by CSR's personnel executive — which noted that mesothelioma had a 20 to 40-year incubation. He said then that it "should start to peak about now; a running score fact around 1990 then tailing off".

As a result of the Maas case in 1977, CSR undertook a survey of people known to be affected. A report on the survey was produced in December 1977. It found that 43 people had died from asbestos-induced disease. Dependents of those who died totalled 81, of whom 24 were children under 16.

There were then 85 people alive and suffering from asbestos-induced illnesses and their dependents totalled 171, of whom 56 were children under 16.

Although CSR has twice clearly felt a moral obligation to limit the liability, it has also and injured workers. CSR's legal advice was wrongly opposed to any admission of liability. Claims against the company have recently demolished what was described as a "legal fortification" and last week the SGIC — CSR's insurer — declared its cover "inoperative".

Last Tuesday, the company gave a media conference at which it said that its liability in total was \$50 million — an average of about \$300,000 for each of the known cases. CSR would seek to enforce the SGIC's insurance liability for an estimated \$30 million of that. Subsidiary Midalco had agreed to bear \$20 million. And, in reserve, CSR had \$20 million of self-insurance with a "captive" insurer.

Specifically, CSR asserts that the SGIC "has known about the risks since 1943". The SGIC had inspected the mine regularly. It took advice from government departments on the risks. And "it had free and total access to Midalco's information for more than a decade."

On the question of the information in its own files presented here, CSR said it was relevant that much of the information was from statements made 10 years after the mine closed. It also highlighted the fact that a \$2 million trust was established in 1978, although it could not say how many of the 288 victims had sought help from the trust. A court decision in 1979 involving Mrs Joan Joosten said the company was not negligent.

On the other hand, a Victorian Appeal Court found last week that CSR was reckless, finding that it exhibited a continuing, conscious and callous disregard of employees' rights to be free of risk.

And, while the dispute over compensation and insurance continues, people such as David Gill, who worked at Wittenoom for less than two months, have died without having claims heard in court.

In the end, there must be basic questions about the system. Clearly, the victims of exposure to Wittenoom asbestos have not benefited. The company and its continuing employees have not benefited. And it seems hard to imagine that shareholders have gained. Everyone, in fact, stands to lose substantially.

Mr Burgess summed up the problems on Tuesday: "I think it's inevitable that there'll be chemicals and the like used in various ways and that there'll be recurrences of this sort of thing. And certainly the legal process is cumbersome and very slow. But I don't think you should quickly overturn 200 years of law."