FILE NAME: Colonial Sugar Refinery (CSR)

DATE: 0000

DOC#: CSR185

DOCUMENT DESCRIPTION: Legal - Plaintiff's Response to Defendants Request for Further Particulars in Simpson vs. Midelco

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

No. 1814 of 1985

B E T W E E N:

WALTER SIMPSON

Plaintiff

-and-

MIDALCO PTY. LTD.

Defendant

PLAINTIFF'S RESPONSE TO DEFENDANTS REQUEST FOR FURTHER PARTICULARS OF THE FURTHER AND BETTER PARTICULARS OF THE STATEMENT OF CLAIM

The Plaintiff hereby supplies the following Further Particulars of the Further and Better Particulars of the Statement of Claim pursuant to the Order of Master Seaman, Q.C. made the 15th day of December, 1986.

Q1. As to Answer 4(iv), give particulars of the advice or directions referred to therein including:

(a) whether the advice or directions were written, oral or partly written and partly oral;

(b) if the advice or directions were written or partly written, identify the document containing the writing or written component;

(c) if oral, state the substance of the advice or directions, stating when, where and by whom on behalf of the Mines Department of Western Australia the advice or direction was given to whom on behalf of the Defendant.

A1. (a) Advice and directions were given in writing, orally and were to be inferred.

(b) Insofar as the same were given in writing they are to be

found in communications discovered both by the Plaintiff and the Defendant in this action and passing between the Mines Department and/or the Health Department and the Defendant or passing between the Mines Department and the Health Department or within the Mines Department or the Health Department and recording advice or directions given to the Defendant; the author in each case being officers of the relevant department as named and the addressee being the person named therein and the dates of such communications being the dates respectively thereon. The said documents include:

A.

No.	Description	Date
01	Letter State Mining Engineer to C.T. Oliver AWU	10.05.48
02	Weekly report of Workmens Inspector of Mines for week ending 17.09.49 and entries dated	18,19.09.49
03	Memo District Inspector of Mines (Boyland) to State Mining Engineer	14.02.50
04	Report to Inspector Boyland by Hunter	22.02.50
05	Letter State Mining Engineer to Under Secretary for Mines	01.05.50
06	Extract from letter on file 19/50 - Letter from State Mining Engineer to District Inspector of Mines, Cue.	09.05.50
07	Report District Inspector of Mines J. Boyland to State Mining Engineer	19.06.50
08	Report State Mining Engineer to Under Secretary for Mines	14.07.50
09	Report Assistant Ventilation Inspector of Mines to State Mining Engineer	21.08.51

10	Report District Inspector of Mines Boyland dated - inspection Also letter Boyland to State Mining Engineer	25.06.52 14.05.52 17.09.52
11	Report District Inspector of Mines (Ibbotson) to State Mining Engineer	02.08.54
12	Extracts from Annual Ventilation Report	1955
13	Report J. Boyland Senior Inspector of Mines to State Mining Engineer	28.06.56
14	Report Assistant Inspector of Mines Simmons to District Inspector Faichney (Kalgoorlie)	06.12.56
15	Report District Inspector of Mines J.M. Faichney to State Mining Engineer	23.08.57
16	Letter District Inspector of Mines J.M. Faichney to The Manager Australian Blue Asbestos	27.08.57
17	Report District Inspector of Mines J.M. Faichney to State Mining Engineer	10.10.57
18	Letter Australian Blue Asbestos to J.M. Faichney District Inspector of Mines (Kalgoorlie)	14.02.58
19	Report District Inspector of Mines Cue (Ibbotson) to Senior Inspector of Mines (Kalgoorlie)	17.03.58
20	Memo to Manager Australian Blue Asbestos from District Inspector of Mines (Ibbotson) Cue - Also Report Ibbotson to Senior Inspector of Mines (Kalgoorlie)	26.03.58 03.04.58
21	Report District Inspector of Mines Cue to Senior Inspector of Mines (Kalgoorlie)	19.04.58
22	Letter District Inspector of Mines Cue to Manager Australian Blue Asbestos	26.05.58
23	Memo District Inspector of Mines (Kalgoorlie) J.M. Faichney to State Mining Engineer recording visit	24-29,05.58
24	Report District Inspector of Mines Cue (Ibbotson) to State Mining Engineer	22.10.58

25	Notice District Inspector of Mines (Ibbotson) and Workmens Inspector of Mines (Hunt) to the Manager Australian Blue Asbestos	09.05.58
26	Ventilation Report	1958
27	Letter Australian Blue Asbestos Acting Manager to Director Australian Blue Asbestos Perth	29.10.58
28	Letter Australian Blue Asbestos Acting Manager to Australian Blue Asbestos Director Perth	24.11.58
29	Report Assistant Inspector of Mines (E.F. Shenton) to District Inspector Faichney	12.12.58
30	Letter District Inspector of Mines Cue to The Manager Australian Blue Asbestos Perth	03.04.59
31	Letter District Inspector of Mines (Kalgoorlie) to Manager Australian Blue Asbestos Wittenoom	14.09.59
32	Report District Inspector (Kalgoorlie) to State Mining Engineer Perth	24.09.59
33	Letter Australian Blue Asbestos General Superintendent to Australian Blue Asbestos Wittenoom	22.02.60
34	Letter Australian Blue Asbestos General Superintendent to Australian Blue Asbestos Sydney	02.02.60
35	Letter General Secretary Chamber of Mines WA (Inc) (G.H. Jennings) to General Manager Australian Blue Asbestos Wittenoom	16.03.60
36	Report Assistant Inspector of Mines (Kalgoorlie) Simmons to Senior Inspector of Mines (Kalgoorlie)	22.07.60
37	Letter Assistant Inspector of Mines (Kalgoorlie) Simmons to The Manager Australian Blue Asbestos Wittenoom	22.07.60
38	Letter Assistant Inspector of Mines (Kalgoorlie) Simmons to Senior Inspector of Mines (Kalgoorlie)	22.08.60
39	Letter signed by Senior Inspector of Mines Boyland and Workmens Inspector of Mines Hunt to The Manager Australian Blue Asbestos	06.09.60
40	Letter State Mining Engineer to Under Secretary for Mines	15.09.60

41	Letter Senior Inspector of Mines (Kalgoorlie) (Boyland) to Manager Australian Blue Asbestos	19.09.60
42	Letter Senior Inspector of Mines to State Mining Engineer	19.09.60
43	Letter Dr. McNulty to Australia Blue Asbestos Wittenoom	13.10.60
44	Letter Dr. McNulty (Chest Physician Kalgoorlie District Hospital) to State Mining Engineer (Mr. Brisbane)	09.11.60
45	Letter Workmens Inspector of Mines (Hunt) to Manager Australian Blue Asbestos	30.11.60
46	Letter Assistant Inspector of Mines Kalgoorlie (Simmons) to Senior Inspector of Mines	09.12.60
47	Letter Senior Inspector of Mines Kalgoorlie to Manager Australian Blue Asbestos	20.12.60
48	Ventilation Report	1960
49	Notes of inspection A.W. Ibbotson	26,27.04.61
50	Report District Inspector of Mines (Simmons) to Senior Inspector of Mines	10.09.61
51	Letter Dr. McNulty to Dr. Rennie	18.09.61
52	Letter Dr. Letham to Dr. Rennie	20.09.61
53	Letter Dr. Letham to Dr. Rennie	02.10.61
54	Letter Dr. Letham to Australian Blue Asbestos	05.10.61
55	Letter District Inspector of Mines (Simmons) to Manager Australian Blue Asbestos Wittenoom	09.10.61
56	Report State Mining Engineer (Mr. Brisbane) to Under Secretary for Mines	12.10.61
57	Minutes of Conference of Representatives of Department of Mines, Department of Health, and Australian Blue Asbestos sent by the Under Secretary for Mines to the Minister for Mines	13.10.61
58	Report of meeting prepared by Dr. Letham, Physician of Occupational Health	10.10.61
59	Letter Dr. McNulty to Dr. Rennie	25.10.61

60	Letter from J.L. Hunt Workmens Inspector of Mines and A.W. Ibbotson District Inspector of Mines, Cue to the Manager Australian Blue Asbestos	27.10.61
61	Letter Senior Inspector of Mines to the Manager Australian Blue Asbestos	06.11.61
62	Letter District Inspector of Mines, Cue (A.W. Ibbotson) to the Manager Australian Blue Asbestos Wittenoom	06.12.61
63	Letter General Superintendent to the Manager Australian Blue Asbestos Wittenoom	08.12.61
64	Letter District of Mines Cue (A.W. Ibbotson) to the Manager Australian Blue Asbestos Wittenoom	06.12.61
65	Minutes of meeting Mines Department, Health Department and Australian Blue Asbestos	08.01.62
66	Letter Senior Inspector of Mines to State Mining Engineer	20.07.62
67	Letter Senior Inspector of Mines (J. Boyland) to the Manager Australian Blue Asbestos Wittenoom	20.07.62
68	Letter to Manager Australian Blue Asbestos Wittenoom	25.07.62
69	Letter District Inspector of Mines Port Hedland to State Mining Engineer	14.09.62
70	Letter Dr. McNulty to Dr. Rennie	10.12.62
71	Letter District Inspector of Mines to Manager Australian Blue Asbestos Wittenoom	15.01.63
72	Letter Dr. McNulty to Dr. Rennie	06.02.63
73	Letter Dr. McNulty to Dr. Rennie	08.03.63
74	Letter District Inspector of Mines Port Hedland to Manager Australian Blue Asbestos Wittenoom	12.07.63
75	Letter to M.G. King	18.09.63
76	Letter District Inspector of Mines (A.W. Ibbotson) to the Manager Australian Blue Asbestos	04.12.63

77	Letter Australian Blue Asbestos to CSR Ltd.	20.12.63
78	Letter District Inspector of Mines to Senior Inspector of Mines	02.01.64
79	Letter Senior Inspector of Mines to District Inspector of Mines	28.01.64
80	Letter District Inspector of Mines to Senior Inspector of Mines	25.02.64
81	Air Flow Survey at Colonial Mine Australian Blue Asbestos Wittenoom	17-19.11.64

B. Entries from the Colonial Mine Record Book on the following occasions.

05.08.55
21.06.57
16.08.57
21.10.57
31.10.57
27.11.57
24.01.58
06.03.58
21.03.58
21.05.58
28.05.58
12.09.58
09.10.58
21.11.58
04.02.59
24.03.59
10.04.59
28.04.59
21.05.59
19.06.59
10.07.59
07.08.59
27.08.59
27.10.59
16.03.60
27.04.60
17.05.60
06.09.60
30.11.60
04.02.61
17.02.61
24.03.61
26.04.61
27.04.61

18.05.61
04.08.61
18.08.61
09.08.61
01.09.61
19.09.61
11.09.61
27.10.61
06.12.61
17.01.62
13.02.62
28.02.62
23.03.62
11.05.62
07.06.62
21.06.62
26.06.62
06.07.62
27.07.62
11.08.62
13.09.62
11.10.62

(c) Insofar as the same were given orally, they were given as follows:

1. Where the documents referred to in paragraph (b) refer to conversation, then such conversation took place between the persons named therein and were conducted on or about the dates indicated therein or to be inferred therefrom and were to the effect noted therein or to be inferred therefrom.

2. On many occasions between 1948 and 1951 the precise dates of which can not now be recalled, Dr. E.G. Saint of the W.A. Health Department informed the management of the Defendant, particularly Mr. Broadhurst, that the mine and mill and the general environment at Wittenoom were a danger to health by reason of the presence of asbestos fibres and dust to excess.

3. On many occasions between 1953 and 1966 the precise dates of which can not now be recalled, official Mines Department Inspectors including A.W. Ibbotson and ventilation inspectors employed by the Mines Department whose names the Plaintiff has not presently ascertained, advised and warned the Defendant that the conditions of work at Wittenoom by reason of excess exposure to asbestos fibres was perpetuating a health hazard, and instructed the Defendant to take a large variety of measures to improve dust control. The instructions can not seriatim now be recalled but were to the effect of the instructions referred to in the documents comprised in paragraph (b).

Q2. As to Answer 4(viii), give particulars of the large quantity of literature dealing with the risks of chest disease among workers in the asbestos industry both in Australia and overseas, contents of which the Plaintiff alleges the Defendant knew or ought to have known, stating the author, the substance of the literature, the date and place of publication, and where relevant, the journal reference.

A2. Refer to the document annexed filed and served herewith entitled "Plaintiff's Bibliography".

Q5. As to Answer 6(a) and (b)(ii), give particulars of all relevant available literature stating the author, the substance of the literature, the date and place of publication and, where relevant, the journal reference.

A5. Refer to the answer to request 2. and the document annexed filed and served herewith.

Q6. As to Answer 13, give particulars of the loss and damage suffered by the Plaintiff as alleged in paragraph 8 of the Amended Statement of Claim.

A6. PAST LOSS OF INCOME

If truck driving:

1981-82	$ 18,000.00
1982-83	$ 19,000.00
1983-84	$ 21,000.00
1984-85	$ 21,500.00
1985-86	$ 22,200.00
1986-87 (est)	$ 23,200.00
	$124,900.00
	==========

If wildflower picking:

1981-82	$ 15,000.00
1982-83	$ 17,325.00
1983-84	$ 18,900.00
1984-85	$ 21,000.00
1985-86	$ 22,500.00
1986-87	$ 24,000.00
	$118,725.00
	==========
less about	$ 2,000.00

per/annum earned from occasional wildflower picking/sales in the years 1981/1982, 1984/1985.

The Plaintiff's economic loss continues at an annual rate of between $23,200.00 to $24,000.00; and the disabilities and thus his economic loss is permanent.

TRAVELLING EXPENSES

Including travel to doctors, hospitals, and for treatment including physiotherapy (approx. 6,400km at 50cents/km)

$3,200.00

MEDICAL EXPENSES

The Plaintiff believes that all his hospital, medical and like expenses have been paid for him. Further enquiries are being made to confirm this.

Dated the day of 1987.

SOLICITORS FOR THE PLAINTIFF