General Manager

Asbestos - Wittenoom

This is a discussion paper, with some recommendations, prepared in response to your request.

The following have been consulted and have contributed:

Mr Browne	Mr Winley	Mr Pearse
Dr Munday	Mrs Pratt	Mr McConnell
Dr Smythe	Mr Burgess	Mr Benson
Mr Davis	Mr Leith	Mr Elfverson
Mr M G King	Mr Pickford	

The paper consists of the following parts:

1 Diseases caused by asbestos

2 Study of pulmonary disease in asbestos miners in WA

3 Negligence?

4 Workers' compensation

5 Liability and insurance

6 Obligation?

7 Publicity

8 Administration in CSR

9 Summary of recommendations

The paper in this final form goes to you only. I have a copy. I have checked a near final form with Mr King, Dr Smythe, Dr Munday and Mr Pickford. I must take responsibility, however, for the opinions and recommendations, and for what I have put forward as factual, some of which is bound to turn out to be not quite as I have put it

Mr Voss has asked to be informed on this subject. I suggest he be given a copy of the attached paper.

J F B
29 Apr 77

Asbestos - Wittenoom
(paper by JFB Apr 77)

1 Diseases caused by asbestos

Asbestos exposure can cause a disease called asbestosis, a form of pneumoconiosis.

Asbestos exposure may contribute to lung cancer.

Mesothelioma is a rare cancer of the outer surface of the lung, or the lining of the chest cavity. It can be caused by relatively short exposure to asbestos, and can appear many years after exposure.

The Dust Diseases Board, Sydney, reported (Aust Cancer Society's journal Mar 76) on:

> "...160 persons who have successfully claimed compensation from the Dust Diseases Board for some asbestos-related disability, since February 1968.
>
> "Of these 160 people, 43 have already died, 16 from lung cancer and 14 from mesothelioma..."

Of the 14 deaths reported in NSW from mesothelioma over the 8-year period 68-76 none were from Wittenoom. The pattern of exposure and the time lag is indicated by some examples:

occupation	exposure	date first exposed
welder	asbestos sheets, bags, spraying asbestos	1941
stripping lagging	lagging	1946
asbestos floor tile manufacture	grinding asbestos	1950
carpenter	spraying blue asbestos	1932
manager of building construction products firm	handling washers made with blue asbestos	1970

In Nov 73 Dr Maguire (of WA Dept of Public Health) stated in a paper that there were:

142 cases of asbestosis
6 cases of mesothelioma

resulting from employment at Wittenoom.

28 of the 148 cases were fatal:

mesothelioma	5
cancer of the lung	7
asbestosis	6
coronary thrombosis	4
others	4

Professor Hobbs of WA told Dr Smythe in Feb 75 (after a Bulletin article) that there were 10 documented cases of mesothelioma in WA.

In Sep 76 Professor Hobbs sent Dr Smythe some preliminary results of a study of pulmonary diseases in asbestos mines in WA.

The study showed that there were then 19 cases of mesothelioma in ex-Wittenoom workers, mainly confined to men engaged before 1955.

In addition there were then 4 other known cases of mesothelioma, not from mining but from contact otherwise with Wittenoom asbestos:

- a private carting contractor
- a waterside worker
- the wife of a miner
- the daughter of a miner

making a total of 23 Wittenoom-caused cases as at Sep 76.

The 23 identified Wittenoom-caused cases in Sep 76 had apparently increased to 26 by Mar 77; the TDT program in Perth on 24 May 77 stated "...There have been 26 cases of mesothelioma in Australia in people who lived at Wittenoom during the mining days. All died..."

While 2.2% of 446 men employed before 1955 and working for longer than one year at Wittenoom have contracted mesothelioma, Professor Hobbs says the entire workforce may still be considered at risk.

Dr Smythe expresses the view, and he stresses that it is only a view, that there is not likely to be any upsurge of new cases of mesothelioma, but that cases will continue to be reported for 10 to 20 years or so at about the same rate as over the past few years.

Or it might be, as hypothesised by Professor Hobbs "that we are at present seeing only the early part of the distribution of what will eventually be a much larger number of cases."

From the above one can make some inferences:

- there will continue to be mesothelioma cases throughout Australia, arising from various kinds of exposure to asbestos
- only some of these will be attributable to exposure at Wittenoom

- people exposed to asbestos contract other diseases besides mesothelioma

- more people who worked or lived at Wittenoom can be expected to die from asbestosis, lung cancer, or mesothelioma

- only mine and mill workers can be expected to die of asbestosis and lung cancer (and they will be covered by workers' compensation)

- any person who worked or lived at Wittenoom, or handled Wittenoom blue asbestos, or came in contact with it, may get mesothelioma (and CSR-ABA may be liable to civil claim)

- the numbers of further mesothelioma cases arising from exposure at Wittenoom might be in the order of 30, in addition to the 26 established cases as at Mar 77

- but we cannot predict with any confidence - the numbers might be far higher than 30 (but are not likely to be much less)

2 Study of pulmonary disease in asbestos miners in WA

This study, to which CSR contributed $20,000 in 1974, was conducted at the University of WA under the control of Professor Michael Hobbs (Social and Preventive Medicine).

The employment records of ABA were made available so that ex-employees could be traced.

No publication of the study results has yet been made, but Professor Hobbs provided some preliminary results to Dr Smythe in Sep 76 on a confidential basis (see above).

It would seem fitting to ask Professor Hobbs if he needs further financial or other help, and to make it available to him (within reason).

3 Negligence?

The Wittenoom mine and mill were operated from 1943 to 1966.

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.

It was not until the 60's 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 tighten-up permissible dust levels in asbestos industries.

In 1963 a full-time ventilation officer was appointed at Wittenoom; his duties were said to include dust measurements and checks on air supply, ventilation and dust extraction. How well he did his job, or was able to do it, is another matter.

There was not in the days of Wittenoom mining such a consciousness as there is now, in the community or in the company, of industrial health hazards, or what should be done about them.

The behaviour of people at another time should not, of course, be judged by the standards of the present; but such judgments will undoubtedly continue to be made.

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.

The degree of negligence, and its nature, will almost certainly be exaggerated by some.

We can expect some exaggerated accusations of negligence, and insinuations that the pursuit of profit was put ahead of concern for people's lives.

But there may be evidence of negligence; or of what a jury would consider to be negligence.

Gersh Major, of the Commonwealth Department of Health, carried out an inspection at Wittenoom in 1966, 2 weeks before the mine closed. He commented on inappropriate and inadequate equipment and dust control procedures, and has been heard to say that the standard of housekeeping was atrocious. There is a strong implication that ABA was negligent.

The Bulletin articles in Jul 74 and Feb 75, and the Mar 77 TDT program in WA point to laxness by ABA in dust control, and "cover up" measures when there were health or mines department inspections.

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

In a case of the wife of a Wunderlich worker who got mesothelioma from washing her husband's clothes, I understand that the legal view was that the claimant would not have much difficulty in proving negligence, and that Wunderlich had a "duty of care" towards the wife as well as her husband. This case was settled out of court.

If it can be established that ABA did not take adequate precautions against asbestosis, and were thus negligent, I am told that the negligence thus established could extend to a pre-1960 mesothelioma case even though ABA knew nothing about mesothelioma prior to 1960.

4 Workers' compensation

Compensation of individuals whose health has been affected by their employment at Wittenoom is covered, as with any other occupational

diseases, by workers' compensation insurance.

In the case of ADA employees, compensation is effected through the WA State Government Insurance Office.

The WA act specifies a maximum compensation payment of $37,253. This maximum is reviewed at 1 Jul each year and will increase to about $40,000 as from 1 Jul 77.

In WA, I am told, an incapacitated miner would be paid about $100 pw which would allow him to get an invalid pension as well.

If he dies his widow is entitled to 85% of the maximum payment, that is, $31,665. If he had been drawing compensation for say 4 years at $100 pw, and then died his widow would get $37,253 less the $20,800 he had drawn.

Other than the fixed total compensation, WA is comparable to other states, except NSW which is more generous to both the man and the widow.

An ex-employee (whether he had received compensation or not), or his dependents, or his estate, could sue in the civil courts, charging negligence. Any damages that might be awarded would fall on the workers' compensation insurer, SGIO(WA).

But common law claims are rarely brought in dust disease matters (Mr Irving's advice) mainly because of the difficulty of proving legal negligence on the employer's part (which, in the view of some, may not be so difficult in the case of Wittenoom).

There is provision in the accounts of CSR for $320,000 to cover any uninsured workers' compensation or common law claims, to increase by $60,000 a year to $500,000.

If a claimant succeeded in a common law case, Mr Irving suggested a payment in the order of $80,000 may result (I have taken $100,000 - see below).

5 Liability and insurance

In addition to ex-employees from Wittenoom there are others who could be affected:

- Wittenoom townspeople; there is a reported case, among others, of a young married woman who lived in Wittenoom as a child; people living at Wittenoom today, and tourists, could be affected
- people who worked at Wittenoom and who are still in our employ (Messrs M G King, P C Thomas, for example)
- people who worked with blue asbestos other than at Wittenoom (blue asbestos ore was milled in a small mill in Central Laboratory, for example, and blue asbestos was used as a filter for some period for raw sugar filterability tests)

Ex-residents of Wittenoom could take civil action against Midalco Pty Ltd (successor to ABA).

Our insurance people, checking with United Insurance, cannot tell me whether or not we had any public liability cover for ABA prior to 1959. A search of ABA files (some of them in tea chests at Cottesloe) may uncover a policy.

They also advise that the first blanket-type cover taken out for CSR and its subsidiaries was for £50,000 per claim in 1959, increasing to $10,000,000 today.

The cover that would apply in any particular case is the cover that was in force on the last day of exposure.

The cover would also be for those whose exposure commenced after the 1959 policy was taken out.

If they lived at Wittenoom prior to 1959 and left, there would be no cover. If they lived at Wittenoom prior to 1959 and continued there into the 60's the insurance company would claim that the prior 1959 exposure may have caused the disease.

So it seems that we have public liability insurance cover only for 1959-66.

CSR could be unprotected by insurance and be up for say 30 x $100,000 = $3,000,000 or more for asbestos-caused diseases in people who were at Wittenoom pre-1959.

The legal and insurance aspects of our liability obviously need thorough checking out.

6 Obligation?

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, only minimally financial) to find out who was hurt, and whether we can help. We can't just turn our back on the situation.

The community accepts, through social services or through the institution of compulsory workers' compensation insurance, the financial obligation to help people who suffer disability. The workers at Wittenoom were insured. CSR-ABA's legal and financial obligation would appear to be discharged.

But workers' compensation payments in WA to incapacitated people, or to widows, while in some respects as good as those in most other states, are not generous.

Have we some kind of obligation to support a case for increased compensation? If we put up 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", and we could set up a trust to provide such help.

There may be a case to help some in particularly sad or difficult situations - not from either legal or moral obligation, but from common humanity. We could offer, for example, an education allowance to a widowed mother of a school-age child. To do so would expose us to a risk; we could be accused of acknowledging culpability and obligation. But we should accept that risk, I think.

Some non-financial responsibilities

Some of the people who passed through Wittenoom, either as workers or residents, are not likely to be very competent at helping themselves, even at obtaining compensation.

A case could be made that we should work with others to provide, or contribute towards, counsel and guidance to such people, and their dependents, including legal advice.

Locating them would be difficult. Social as well as medical reports on them would be needed.

Professor Michael Hobbs has expressed views to Dr Smythe about trying to contact people from Wittenoom who might be suffering (or be potential sufferers) from mesothelioma; he said nothing could be done for them medically, and contacting suspects could only cause increased anxiety.

We should probably keep more closely in touch with Professor Hobbs (and offer further financial or other help) and others in WA. It could be a continuing job for Mr Leith.

I think we do have a real obligation:

- to know the facts
- to know of the individuals who are suffering
- to be helpful where we can, with pre-decided limits

Maybe we should set up, or help set up, some kind of arms-length organisation and a trust fund.

7 Publicity

There will inevitably be further cases and further publicity.

I suggest that as a general rule we do NOT make public statements of any kind, but firmly and resolutely and courteously abstain, as far as we can do so, from any kind of involvement in public debate or media-production.

It may be said that "CSR refused to comment". It may be implied that we were careless, or blameworthy (but the media will be hesitant about going too far because of the laws of libel). We may just have to live with those things.

A "no comment" position may be imprudent to maintain. If we have to say something we might issue a statement along the lines of Dr Smythe's draft attached.

We should take the opportunity to ensure that responsible people, including our own staff, are informed.

It may also be necessary at some future time to publish something in the annual report (but only if we can't avoid it), or elsewhere.

A set of notes, coolly stating the facts, without advocacy, would be helpful to inform those responsible and involved in the matter; and could serve as a basis of any public statements we might be forced to make. It would need legal checking.

8 Administration in CSR

The files on asbestos and related matters are dispersed in CSR. And there are numbers of people who have been involved:

Mr N G King, who has authorised various actions and who has some files

Legal department, who have not recently been involved (Mr Chate had some AOA files)

Dr Smythe, who is well informed and has been involved for some years. He has a library of references.

Mr Pickford has considerable knowledge too, particularly on white asbestos.

Mr Irving, who is well informed on conditions at Wittenoom and compensation matters.

Mr Browne

Mr Davis and Mr Elfverson

Mr Pearse

It could be useful if one single person were made responsible for:

- assembling files and information
- maintaining contact with Mr Leith and Professor Hobbs
- compiling information
- establishing a source of sound, on-going (and readily available) legal advice
- working up a case to WA authorities to increase compensation
- submitting recommendations for ex-gratia

The one single person charged with the administrative on-carriage of asbestos matters could be Dr Munday.

Dr Munday could report on this matter to Mr Davis or to some other senior officer, but maintain close liaison with Dr Smythe who could advise him on maintaining contact with and helping Professor Hobbs.

9 Summary of recommendations

- Publicity Keep out of public debate. Don't make statements (if we can avoid doing so).

  Information Compile notes for reference.

  Special help Set aside, say, $20,000 - $30,000 pa, or more, for say 10 years for ex-gratia financial assistance to special cases, to help follow-up and to provide help, guidance and counsel to known sufferers or their dependents. Maybe do so, at arms-length, through a trust.

  Trust Set up an arms-length trust to receive these sums, and to administer help.

  WA compensation Investigate and decide whether we should put a case to improve, or whether we should supplement in any way.

  Consultation Consult more closely with the WA authorities and the university study, and co-operate with them.

  Medical retainer Check out arrangements made with Dr Rennie and Dr Joseph some years ago.

  Legal Get legal advice on overall situation, and particularly liability and insurance.

  Administration Name a senior man in CSR to work on and co-ordinate these matters.

29 Apr 77