FILE NAME: Colonial Sugar Refinery (CSR)

DATE: 1987

DOC#: CSR186

DOCUMENT DESCRIPTION: Legal - Re-Amended Statement of Claim in Simpson vs. Midalco

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

FURTHER RE-AMENDED STATEMENT OF CLAIM
(AMENDED PURSUANT TO THE ORDER OF MASTER STAPLES MADE THE 27TH DAY OF FEBRUARY, 1986 AND AGAIN PURSUANT TO THE ORDER OF MASTER SEAMAN Q.C. MADE THE 12TH DAY OF DECEMBER, 1986 AND AGAIN PURSUANT TO THE ORDER OF MASTER SEAMAN Q.C. MADE THE 28TH DAY OF JANUARY, 1987)

1. The Plaintiff, who was an invalid pensioner, was born on 22nd December 1936.

2. The Defendant, formerly named Australian Blue Asbestos Pty. Ltd., is a duly incorporated company.

3. At all material times the Defendant was the owner and operator of a blue asbestos mine and mill at Wittenoom.

4. The Plaintiff was employed by the Defendant initially as a scraper driver then as a grizzly man and later as a loco driver and for short periods as a loco guard, plate layer, mechanical bogger and pump operator at the mine between about June 1959 and about March 1964 (save for a period of about six months in our about 1960).

5. In the course of his said employment the Plaintiff was exposed to and inhaled dust containing a heavy concentration of asbestos fibres and particles as a result whereof he contracted asbestosis and chronic bronchitis.

6. The Plaintiff contracted asbestosis and chronic bronchitis in consequence of the negligence of the Defendant, its servants and agents and the Defendant's breach of statutory duty.

A1. (a) - (e)

These are not proper requests for Further and Better Particulars. Notwithstanding this, the Plaintiff says:

A loco guard was the guard on an ore train operating in a haulage way of the mine; a plate layer was a person assisting to lay railway lines in the mine; a mechanical bogger was a man using a machine to remove aggregate from a work face in the mine; a pump operator was a person operating or assisting to operate a pump in the mine.

Q2. As to paragraph 6(aa) of the Amended Statement of Claim give particulars of:

(a) the ducting and other machinery it is alleged formed part of the dust collection system in the mill;

(b) what is meant by the expression "integrity".

A2. (a) The request to provide particulars of the ducting is not a proper request for Further and Better Particulars. The "other machinery" is the machinery being parts of the dust collection system of the mill described in detail by the Defendant in its publication "The ABA Story", being documents numbered 259 in the Defendant's List of Documents herein.

(b) "Integrity" refers in this context to failure of maintenance such that asbestos fibre and dust was permitted to escape from the ducting and other machinery into the mine.

Government?

A.61. (a) Yes.

(b) The Ventilation Officer, his assistants and Shift Bosses.

(c) Officers from the Mines Department of Western Australia were in the mine from time to time using dust measuring instruments. The Defendant does not know and is not able to say which particular officers were monitoring levels at any particular time.

Q.62. Further, if yes to interrogatory 59(a)(i) and/or (ii) were such levels monitored by -

(a) a Konimeter;

(b) a midget impinger?

A.62. (a) Yes.

(b) The Defendant purchased a midget impinger in 1960 but the Defendant is unable to state whether dust levels were monitored by the Defendant by the use of a midget impinger during the Plaintiff's period of employment.

Q.63. If yes to interrogatory 62(a) -

(a) was a Konimeter capable of detecting the incidence of fibres of asbestos length;

(b) (i) to the then knowledge of the Defendant, did Dr. J. McNulty report to the Commissioner of Public Health (W.A.) in 1959 as to the use of a Konimeter in detecting the incidence of fibres of asbestos length;

(ii) if yes to part (b)(i) did the Defendant -

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(x) prior to;

(y) subsequent to -

acquiring knowledge of the said report (and, in either case, then approximately when)-

(aa) know -

that the Konimeter was unsuitable for detecting the incidence of fibres of asbestos length;

(iii) if no to part (b)(i) did the Defendant at any and what time approximately -

(w) prior to;

(x) during -

the employment -

(aa) know -

that the Konimeter was unsuitable for detecting the incidence of fibres of asbestos length.

(c) did the Defendant know during the employment of the method of measuring levels by use of a midget impinger?

A.63. (a) The Defendant understood that the purpose of using a Konimeter was to measure dust levels. The Defendant does not know what the phrase "incidence of fibres of asbestos length" means.

(b) (i) Not in 1959.

(ii) Not applicable.

(iii) (w)(x) (aa)

By letter dated 16 March 1960 the General Secretary of the Chamber of

D.N. Allen (sgd) R.C. Henry (sgd)

Mines of W.A. (Inc.) wrote to the General Manager of the Defendant enclosing a letter from the Quebec Asbestos Mining Association which stated inter alia that "the Konimeter has not been found to be a suitable instrument in the asbestos field for several reasons, one of which is that concentrations greater than 1,500 parts per cc cannot be measured". Otherwise the Defendant did not know that the Konimeter was unsuitable for detecting the incidence of fibres of asbestos lengths.

(c) Yes

Q.64. At any and what time -

(a) prior to;

(b) during -

the employment did the Defendant -

(i) know -

that a dust concentration at a workplace in excess of 300 particles per cubic centimetres -

(x) was excessive;

(y) might, over a period, cause asbestosis or other chest injury to a worker exposed thereto?

A.64. (a)(b)(i)(x)

By letter dated 16 March 1960 the General Secretary of the Chamber of Mines of W.A. (Inc.) wrote to the

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General Manager of the Defendant enclosing a letter from the Ontario Mining Association which stated, inter alia, that the general classification for concentrations of dust particles was "100 particles per cc excellent
up to 300 particles per cc good
500-600 particles per cc fair
over 1,000 particles per cc poor."
Otherwise the Defendant did not know that a dust concentration at a workplace in excess of 300 particles per cubic centimetres was excessive.

(y) The Defendant objects to answering this interrogatory on the grounds that it is oppressive as it does not specify over what particular period, or what other chest injury.

Q.65. On any and what occasions during the employment was the Plaintiff exposed in the mine -

(a) to dust in excess of 300 particles per cubic centimetre;

(b) to dust in excess of 300 particles per cubic centimetre, containing blue asbestos fibres;

(c) to dust in excess of 1000 particles per cubic centimetre;

(d) to dust in excess of 1000 particles per cubic centimetres containing blue asbestos fibres?

A.65. The Defendant objects to answering this interrogatory on the grounds that it is oppressive

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as the Defendant is unable to ascertain where the Plaintiff in particular worked in the mine nor on what occasions he worked in any particular area, and therefore nor to what level of dust, if any, he was exposed.

Q.66. If yes to any part of interrogatory 65, on approximately how many occasions in the mine was the Plaintiff exposed -

(a) to dust in excess of 300 particles per cubic centimetre;

(b) to dust in excess of 300 particles per cubic centimetre, containing blue asbestos fibres;

(c) to dust in excess of 1000 particles per cubic centimetre;

(d) to dust in excess of 1000 particles per cubic centimetre containing blue asbestos fibres?

A.66. Not applicable

Q.67. In July 1961 was Dr. R. Rennie a consultant physician to the Defendant?

A.67. No.

Q.68. Look at the document hereto annexed and marked with the letters "BB" and say -

(a) did the same come to the knowledge of the Defendant;

(b) was the Defendant advised of the contents of same;

(c) when the same came to the knowledge of the Defendant or in the alternative whichever is earlier when the Defendant was advised of its contents.

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A.68. (a) Yes

(b) Yes

(c) In or about August 1961

Q.69. (a) To the then knowledge of the Defendant did the Commissioner of Public Health present to both Houses of Parliament in Western Australia a Report for the year 1959 dealing, inter alia, with industrial chest disease of workers employed by the Defendant?

(b) If yes to sub-part (a), did the Defendant obtain a copy of the said Report, and, if so, then when?

A.69. (a) Not in 1959

(b) Not applicable

Q.70. Between 1955/1959 were approximately 12 employees or former employees of the Defendant, to the then knowledge of the Defendant, its servants or agents diagnosed as suffering from chest disease due to exposure to blue asbestos fibre/dust?

A.70. No.

Q.71. Between 1960/1964 were approximately 24 employees or former employees of the Defendant (additional to those employees enquired after in interrogatory 71), to the then knowledge of the Defendant, its servants or agents diagnosed as suffering from chest disease due to exposure to blue asbestos fibres/dust?

A.71. 1) The Defendant was advised by the State Mining Engineer in February 1960 that the Health Laboratory expressed concern that four of the Defendant's employees were diagnosed as

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suffering from asbestosis.

2) In a letter dated 20th June 1960 the Defendant was advised by the State Government Insurance Office that there were three or four claims over the last 12 months for employees certified as suffering from asbestosis either with or without tuberculosis.

3) The Defendant's Mine Manager Mr. O. Allan was diagnosed in about May 1961 as suffering from some degree of silicosis or possibly asbestosis.

4) In about August 1961 the Defendant was provided with copies of a memorandum to Dr. A. King dated 13 January 1960, an addendum to Report on the Health of Workers in Wittenoom 1959 dated 23 March 1960 and the Wittenoom chest x-ray survey of 1960. The copies were returned to Dr. Bruce Hunt on 31 August 1961, and as the Defendant did not keep copies of the reports at the time the Defendant is now unable to state what information was contained in those reports.

5) The Defendant's available records indicate that in October 1961 there was a meeting with Mr. P. Thomas on behalf of the Defendant and Drs. McNulty and Letham when statistics were apparently tabled at the meeting listing 34 names of persons suffering from asbestosis or silicosis believed to be contracted whilst in

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the employ of the Defendant over the past 15 years.

6) In about September 1963 the Defendant was aware that there were attributed to Wittenoom 21 cases of asbestosis and silico-asbestosis which had been graded by the Public Health Department as "one asbestosis, four early asbestosis, fourteen early silico-asbestosis and two silico-asbestosis."

Q.72. During the period of the employment, and at such time (if any) as the Plaintiff worked shift work did -

(a) the morning shift end at approximately 3.30 p.m.;

(b) the afternoon shift commence at 4.00 p.m.;

(c) the afternoon shift commence at 4.30 p.m.

A.72. (a) For employees not involved with blasting work the morning shift ended at approximately 3.15 p.m., for those employed in blasting work at 3.30 p.m.

(b) No

(c) Yes

Q.73. During the period of the employment, or some and what part thereof, was blasting work undertaken in the mine at or about the time of the ending of the morning shift?

A.73. Yes.

Q.74. Did such blasting work as was undertaken in the mine during the period of the employment -

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(a) produce dust in;

(b) result in the dissemination of dust throughout -

(i) the stopes;

(ii) the haulage ways;

(iii) the main adit?

A.74. (a) & (b)(i), (ii) and (iii)

Blasting work produced dust in the vicinity of the area blasted, which depended upon the stage of the development of the mine and the necessity for blasting.

Q.75. If yes to any part of interrogatory 74 hereof, what measures, if any, did the Defendant take to alleviate the production or dissemination of dust there referred to?

A.75. The Defendant:-

(a) allowed time between shifts for the dust to settle and to be exhausted by the ventilation system referred to in my answer to interrogatory 20;

(b) instructed its employees to water down the ore broken by blasting.

Q.76 (a) At any time prior to;

(b) At some and what time during -

the employment was the Defendant:

(i) requested;

(ii) directed -

by officers of any and what department of the Western Australian Government to allow a greater period than -

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(x) 1 hour;

(y) 1-1/2 hours -

between blasting operations and the commencement of the next shift of work in the mine?

A.76. (a) (i), (ii), (x), and (y)

(1) Yes. A letter dated 6 September 1960, from the Senior Inspector of Mines and the Workmens Inspector of Mines to the Manager of the Defendant contained in the Colonial Mine Record Book stated inter alia "It is suggested that shifts be arranged so that there is a break of 2 1/2 hours between any day shift and afternoon shift for underground workers".

(2) A letter dated 19 September, 1960, from the Senior Inspector of Mines to the Defendant stated inter alia, "My investigations indicated to me that a longer "break" between day and afternoon shift would allow the "fume" conditions to clear and that the period necessary for this is two and one half (2 1/2) hours."

(b) (i), (ii), (x) and (y).

No.

Q.77. If yes to any part of interrogatory 76, give the usual particulars of any such request/direction.

A.77. I refer to and repeat my answer to interrogatory 76.

Q.78. Further, if yes to any of interrogatory 76, did the Defendant pursuant to any such request/direction at any and what time and for any and what period during

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