



HIGH COURT OF AUSTRALIA

Public Information Officer

7 August, 2003

AMACA PTY LIMITED (formerly known as JAMES HARDIE & COY PTY LIMITED) v THE STATE OF NEW SOUTH WALES AND ROLLS ROYCE INDUSTRIAL POWER (PACIFIC) LIMITED (formerly known as JOHN THOMPSON (AUSTRALIA) PTY LIMITED)

The New South Wales Court of Appeal must now decide whether the State of NSW owes an asbestos disease victim a duty of care and whether it should contribute to a damages pay-out after the High Court of Australia today unanimously allowed Amaca's appeal.

Warren Hay was diagnosed with mesothelioma in 1993 after being exposed to asbestos dust and fibre between 1958 and 1961 during construction of the Wallerawang power station near Lithgow. Mr Hay brought proceedings in the NSW Dust Diseases Tribunal, obtaining consent judgments against his then employer Rolls Royce and the NSW Electricity Commission for \$185,000 each. Rolls Royce and the Electricity Commission both sought contribution from asbestos product manufacturer James Hardie. The Electricity Commission has settled its claim, obtaining a 70 per cent contribution (\$129,500). James Hardie then claimed contribution from the State, alleging NSW breached a duty of care owed to Mr Hay as it was in a position to prevent or minimise harm caused by exposure to asbestos in sites such as power stations.

In the Tribunal, Judge James Curtis found it unnecessary to decide whether NSW owed a duty to Mr Hay. He held that James Hardie created a danger which the State had merely failed to avoid and said contribution to Mr Hay's damages should come out of James Hardie's profits from selling asbestos products, not from NSW taxpayers. The NSW Court of Appeal dismissed James Hardie's appeal, holding that Judge Curtis had properly exercised the power under section 5(2) of the Miscellaneous Provisions Act to exempt NSW from liability. Subsequently, the High Court gave Amaca special leave to appeal against the Court of Appeal judgment.

The question for the Court was whether Amaca's claim against NSW could be decided without any determination of the State's liability towards Mr Hay. It held that contribution outcomes available under section 5(2) depended upon Amaca's entitlement to obtain contribution from another body liable for the same damage. But neither the Dust Diseases Tribunal nor the Court of Appeal ever decided whether or not the State was liable. Nor did NSW admit liability. The High Court held that Judge Curtis made two errors of law. That James Hardie was a commercial enterprise and the State raised revenue through taxes was irrelevant in deciding their responsibilities to contribute to Mr Hay's damages. Judge Curtis also made an assumption about the State's liability without determining the content of its duty of care or how the duty had been breached. These issues had to be determined before any decision concerning contribution could be made.

The Court ordered that the case be remitted to the Court of Appeal to determine whether NSW owed Mr Hay a duty of care and whether Amaca could claim contribution from the State.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*