



## HIGH COURT OF AUSTRALIA

**Public Information Officer**

12 November 2008

JANINA PUTTICK (as executor of the estate of Russell Simon Puttick) v TENON LIMITED  
(formerly called Fletcher Challenge Forests Limited)

Victoria was not a clearly inappropriate forum to decide a claim for damages arising from the asbestos-related death of a former employee of a New Zealand company, the High Court of Australia held today.

Janina Puttick's late husband, Russell Puttick, was employed by Tasman Pulp and Paper Company in NZ between 1981 and 1989. He allegedly contracted malignant mesothelioma from exposure to asbestos during visits to factories in Belgium and Malaysia. Mr Puttick, a NZ citizen who had moved to Melbourne, died in 2005, just after commencing proceedings for damages in the Victorian Supreme Court. Mrs Puttick continued the claim. Tasman was a subsidiary of Tenon Limited. Tenon allegedly owed Mr Puttick a duty of care through the control it had over Tasman and its employees. Mr Puttick claimed that it had breached that duty. Tenon was incorporated in NZ. It sought an order permanently staying the proceedings or dismissing them summarily. Tenon contended that the alleged negligence occurred in NZ, that the law to be applied to determine the claim was NZ law, and that NZ's statutory compensation scheme barred a common law claim.

In 2006 Justice David Harper held that the proceedings should be permanently stayed on grounds that Victoria was an inconvenient or inappropriate forum. It was then not necessary to decide Tenon's application for summary judgment so Justice Harper did not express an opinion about the effect of the NZ no-fault compensation scheme on Mrs Puttick's claim. Justice Harper held that NZ was the more appropriate forum because many witnesses and the relevant documents were in NZ. He held that the law governing substantive issues was the law of the place where the tort occurred, which he said was NZ, so the action should be permanently stayed.

Mrs Puttick appealed to the Victorian Court of Appeal, alleging that Justice Harper had made an error of law. Tenon cross-appealed, alleging that, because NZ law was the governing law and NZ law regulating the no-fault compensation scheme should preclude the negligence claim, her action should be dismissed as bound to fail. The Court of Appeal, by majority, dismissed Mrs Puttick's appeal and held that the relevant law was the law of NZ. She appealed to the High Court.

The Court unanimously allowed the appeal. It held it was not yet possible to decide whether NZ law was the applicable law to decide the case. The Court held that the Court of Appeal and Justice Harper erred in deciding that the material available in this matter was sufficient to decide what law governed the rights and duties of the parties. Details about Mr Puttick's factory visits and the relationships between Tenon, Tasman and Mr Puttick were lacking or ambiguous and were not resolved by determining Tenon's application for a permanent stay. The Court held that, without those issues being resolved, not even a provisional finding could be made about where the alleged tort occurred. It was not possible, on the material available, to decide which legal system was applicable. All that Justice Harper and the Court of Appeal could decide was that NZ law was arguably the law that governed the dispute. Assuming the dispute was governed by NZ law, Tenon had not established that Victoria was a clearly inappropriate forum to try the dispute. Geographical proximity, similarities between legal systems and legislation for the determination of some trans-Tasman litigation meant Victoria was potentially an appropriate forum. The Court ordered that Justice Harper's orders be set aside and that Tenon's original summons be dismissed with costs.

- *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.*