



## HIGH COURT OF AUSTRALIA

Manager, Public Information

3 March 2010

AMACA PTY LTD (ACN 000 035 512) v TERESA ELLIS AS EXECUTOR OF THE ESTATE  
OF PAUL STEVEN COTTON (DEC) & ORS  
THE STATE OF SOUTH AUSTRALIA v TERESA ELLIS AS EXECUTOR OF THE ESTATE  
OF PAUL STEVEN COTTON (DEC) & ORS  
MILLENNIUM INORGANIC CHEMICALS LTD (ACN 008 683 627) v TERESA ELLIS AS  
EXECUTOR OF THE ESTATE OF PAUL STEVEN COTTON (DEC) & ORS  
[2010] HCA 5

The High Court today held that the death of a long-term and heavy smoker from lung cancer had not been shown on the evidence to have been caused or materially contributed to by his exposure to asbestos fibres at particular times during his working life. Paul Cotton died from lung cancer in 2002. During his working life he had been exposed to respirable asbestos fibres with two separate employers. Between 1975 and 1978 Mr Cotton worked for the South Australian Engineering and Water Supply Department where he worked with asbestos cement pipes manufactured by Amaca Pty Ltd (formerly James Hardie & Coy Pty Ltd). Between 1990 and his death in 2002 he worked for Millennium Inorganic Chemicals Ltd, where he was also exposed to asbestos. Mr Cotton had also smoked on average between 15 and 20 cigarettes a day for slightly more than 26 years before he was diagnosed with lung cancer.

Following Mr Cotton's death, the executor of his estate, Teresa Ellis, pursued actions in negligence originally brought by Mr Cotton against the State of South Australia, Amaca and Millennium in the Supreme Court of Western Australia. The trial judge found that all three defendants had been negligent and that breaches of the duties each of them owed to Mr Cotton had resulted in his being exposed to respirable asbestos fibre which caused, or materially contributed to, his contraction of lung cancer. A majority of the Court of Appeal of the Supreme Court of Western Australia dismissed the defendants' appeals. The High Court granted special leave to each of the defendants to appeal the Court of Appeal's decision.

The central question was whether it had been shown that it was more probable than not that exposure to asbestos was a cause of Mr Cotton's lung cancer. The executor of his estate submitted that epidemiological evidence supported an inference that exposure to respirable asbestos fibres, operating interdependently with tobacco smoke, had caused Mr Cotton's lung cancer. However, the High Court held that the evidence established only that exposure to asbestos *may* have been a cause of Mr Cotton's lung cancer, not that it was a probable cause. Indeed the statistical evidence pointed away from an inference that exposure to asbestos in combination with smoking tobacco was a probable cause of Mr Cotton's lung cancer. The High Court allowed the appeals of each of Amaca, Millennium and the State of South Australia.

- *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.*