



## HIGH COURT OF AUSTRALIA

7 October 2015

### ALCAN GOVE PTY LTD v ZABIC

[2015] HCA 33

Today the High Court published its reasons for dismissing an appeal from a decision of the Court of Appeal of the Northern Territory of Australia. The High Court unanimously held that the respondent was not statute-barred from suing the appellant in negligence in respect of mesothelioma he contracted as a result of inhaling asbestos fibres during his employment with the appellant.

The respondent was employed as a labourer at the appellant's alumina refinery from 1974 to 1977. Around late 2013 or early 2014, he began to experience symptoms of mesothelioma.

The *Workers Rehabilitation and Compensation Act* (NT) ("the Act") abolished common law actions in negligence with respect to certain workplace injuries and provided for limited statutory rights to compensation for injured workers. Sections 52(1) and 189(1) of the Act provided, in effect, that the respondent could not sue the appellant for damages in negligence unless his cause of action accrued before 1 January 1987.

The respondent commenced proceedings in the Supreme Court of the Northern Territory of Australia. The main issue in dispute was whether the respondent had suffered compensable damage before 1 January 1987. The evidence at trial was that the asbestos fibres that the respondent inhaled while working at the refinery caused changes to his mesothelial cells soon after the inhalation, which ultimately culminated in malignant mesothelioma. The changes to the cells were likely to have lain dormant until one to five years before the first manifestation of symptoms. At that point, an unknown "trigger" set off the development of abnormal genetic switches in the respondent's mesothelial cells that resulted in malignancy.

The respondent's claim was dismissed at trial, but the Court of Appeal allowed the respondent's appeal. The Court of Appeal held that, with the benefit of hindsight, it was possible to infer that the mesothelial cell changes that occurred soon after exposure to asbestos between 1974 and 1977 led inevitably and inexorably to the onset of mesothelioma. The respondent's cause of action therefore arose before 1 January 1987.

By grant of special leave, the appellant appealed to the High Court. On 12 August 2015, the High Court published an order dismissing the appeal. In its reasons published today, the Court unanimously held that, on the evidence given at trial, it could be inferred that the "trigger" which led to mesothelioma was present in the respondent's mesothelial cells when the initial changes to the cells occurred. It followed that, because the mesothelial cell changes were bound to lead to mesothelioma, the respondent had suffered compensable damage at the time of the cell changes. His cause of action in negligence therefore arose before 1 January 1987 and his claim against the appellant was not barred by the Act.

- *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.*