

Asbestos diseases

Asbestos

Slater & Gordon
Lawyers

Asbestos victims to win billions from Hardie

Landmark victory to wharfies' widows



\$25m Wittenoom payout expected

NO WIN, NO PAY

Asbestos victims to win billions

Payout to Wittenoom victims may be record



Historic payout to dying man

Asbestos win 'historic'



Brian and Maureen Crimmins

WIDOW'S victory in a three-year battle to secure compensation awarded to her wharfie husband, who died from an asbestos-related disease, could result in the federal Government paying out tens of millions of dollars to dock workers. Maureen Crimmins yesterday won her legal battle to secure \$450,000 in damages to Brian

arrangements are proposed over asbestos compensation liabilities over the next 50 years. James Hardie's liability has been estimated to be more than \$5 billion in today's dollars, but will be significantly more in total over the next five decades. The Sunday Age believes that the company will contribute each year to pay Crimmins \$833,622 in damages. But it appealed against that decision

I have no compunction helping send broke companies which did this to their workers

We are Australia's asbestos lawyers

We were there from the start and
we'll be there to see it through

Acknowledgements

This booklet is for all the people in our community who are concerned about asbestos or who have been diagnosed with an asbestos related disease. It is intended to provide you and your family, and your medical practitioner, with accurate information to assist you with some of the decisions that you may be facing, as a result of your illness. This may involve decisions about making a claim; including information on whether or not you're eligible to make a claim, how to get the right legal help, and what may be involved for you, and your family, if you decide to make a claim.

Because of our experience we understand that there is much more to an asbestos related disease than the illness itself. For this reason we've included information for you that will assist in your physical and emotional wellbeing.

We encourage you to talk about the contents of this booklet with an expert Slater & Gordon lawyer at any time.

We would like to acknowledge each and every person who throughout 25 years of asbestos litigation has made a contribution through advocacy, expert evidence, patient care, counselling of victims and their families, and care of loved ones.

We also thank the doctors, the support groups and several of our past clients for their advice and assistance in the making of this booklet.



Peter Gordon



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Asbestos

Asbestos is a mineral and it is a fibre. Its unique properties – flexibility, tensile strength, insulation (from heat and electricity) and chemical inertness – once gave it a reputation as one of the most useful and versatile minerals known to humanity. It is the only natural mineral that can be spun and woven like cotton or wool into useful fibres and fabrics.

At one time, asbestos was used in more than 3000 products. From 1950 to 1970, asbestos was everywhere. While the use of asbestos declined from the 1980's, asbestos continued to be imported into Australia until January 2004.

As a result many people in the community are likely to have been exposed to asbestos.



Left: The Slater & Gordon team on the plane on their way to Wittenoom in 1987

Centre: Peter Gordon inspects the mill at Wittenoom in 1987

Right: The Slater & Gordon team at the Roebourne Pub after inspecting the wharves at Port Sampson in 1987



About asbestos related diseases

What diseases are asbestos related?

The diseases associated with asbestos are generally diseases of the lungs. The initial symptoms of asbestos related diseases tend to be breathlessness, fatigue and in some instances pain around the chest or ribs. These symptoms are similar to symptoms associated with other non-asbestos diseases, particularly other lung conditions. Consequently, it is critical before any conclusions are drawn about the possible relationship between a group of symptoms and asbestos that advice is obtained from a specialist medical practitioner.

The following are all asbestos related diseases:

Mesothelioma

Mesothelioma is an aggressive cancer, which forms in the lining of the lungs any time from 10 to 60 years, after first exposure to asbestos. It can also occur in the peritoneum. The average life expectancy following diagnosis with mesothelioma is about 1 year although significant variations do occur.

Lung Cancer

There are about six different forms of lung cancer. All of them can be caused by exposure to asbestos. Most lung cancer sufferers who were exposed to asbestos also smoked. If you smoked it is important to be aware that the fact that smoking contributed to your cancer **does not** prevent you bringing a claim in relation to your

asbestos exposure. In many cases, it is the **combination** of smoking and asbestos exposure, which is the cause of lung cancer. So, even if smoking is the main cause of your lung cancer, you may still have an asbestos claim.

Asbestosis

Asbestosis is not cancer. It is a slow onset progressive disease, which affects breathing by hardening and scarring the lung and can be severely debilitating. Sufferers of asbestosis also run a risk of getting asbestos related cancer.

Pleural disease

Pleural disease is not cancer. It is a slow onset progressive disease, which may cause pain and breathlessness because it causes the hardening and constriction of the lining of the lung. This inhibits the capacity of the lungs to expand and contract and can affect people for many years.

Pleural plaques

Pleural plaques are not cancer. They are markings on the lining of the lung that indicate past exposure to asbestos. Pleural plaques can calcify or harden. Depending on their extensiveness and position, pleural plaques can cause some pain and lung restriction. However usually pleural plaques are non-disabling.



The dividends



Who is at risk?

Asbestos disease can strike anyone. It is unusual for it to strike someone under the age of 30 years, because there is generally a period of fifteen to forty years between exposure to asbestos and the occurrence of disease. No matter how unique the circumstances of your exposure, or even if **you don't know how you were exposed, it is likely that you will have some kind of viable claim for compensation.**

Proper legal research and advice is critical.

The following main groups of people who have been affected by asbestos disease reflect the history of the use of asbestos.

Miners

This was one of the first groups of workers known to be affected by mesothelioma. The landmark South African study, a study of black miner workers, first identified mesothelioma. In Australia, the incidence of disease afflicting miners at the Wittenoom blue asbestos mine became a focus for the first Australian studies.

Asbestos plant workers

Long before mesothelioma studies were first published (in 1959,) doctors noticed severe and disabling respiratory disease in factory workers who worked using asbestos fibre in the manufacture of cloth, rope and other weaves. Studies highlighting the incidence of such diseases were first published in the early twentieth century.

Handlers and waterside workers

After asbestos was mined out of the ground and milled into fibre, it was transported by rail, truck and ship. It came into contact with rail workers, truck workers and wharfies. Large numbers of these workers have been stricken with asbestos disease as a consequence.

Asbestos factory workers

After asbestos products had been mined, milled and transported, they were made into asbestos cement products at the factories of James Hardie, Wunderlich, Asbestos Products, Bell's Asbestos and Goliath. The majority of products were made by James Hardie. Many workers who devoted themselves to this work for these companies have paid a terrible price for their work.

Carpenters, plumbers, electricians and builders

After asbestos products left the factories they were used for building in a variety of domestic, commercial and industrial purposes. The various tradesmen who used the product had no inkling that by sawing, rasping or filing the products they were exposing themselves to a toxic dust.

Wives and children of workers

In all these categories of workers, workers would unwittingly take home the toxic dust they had been exposed to. It was on their skin, in their hair and in their clothes. Often the task fell to the worker's wife or children to clean work clothes. In particular, dusty occupations involved beating the overalls with a stick, which liberated large amounts of asbestos dust. Many women and children have suffered fatal exposure to asbestos in this way.



Death Valley

The number of former and present SEC workers in the La Trobe Valley who have developed mesothelioma, a fatal lung cancer, has increased dramatically in recent years. The SEC has already paid out millions in compensation, but lawyers say many more will die in what one man calls Australia's Chernobyl.



Office workers

Much asbestos was packed into the ceiling spaces of buildings or sprayed onto them as insulation. Over the years it became progressively dislodged as the vibration of the office and the installation, maintenance and renovation of air-conditioning, phone lines and computer equipment, impacted the insulation. Increasing numbers of office workers are reporting asbestos disease as a consequence of this exposure.

Mechanics/brake workers

Several companies including James Hardie and Bendix Mintex made car and truck brake pads, which were impregnated with asbestos. Servicing the pads required them to be machined and drilled and the work area was often then blown clean with high pressure air hoses. This created high levels of airborne asbestos. Many mechanics and brake workers have suffered asbestos disease in this way.

Power plant workers/refinery workers

The use of asbestos to insulate high temperature pipes in power stations and refineries was extremely widespread in Australia over many decades. The toll amongst Australian workers who made the insulation, serviced the pipes and maintained the plants has been extraordinarily high.

Teachers and students

There has been extensive use of AC sheeting in the building of portable and permanent classrooms for schools in Australia. Asbestos dust was liberated when such products were installed serviced, painted, replaced, renovated or vandalised. Teachers, students and maintenance workers have been affected in this way.

Hospital workers

Much asbestos has been used in public hospitals in Australia. Through the use of asbestos in plant rooms for insulating hot pipes and also the use of AC sheeting in a variety of applications, doctors, nurses, patients and hospital maintenance staff have all been exposed to asbestos.

Telstra workers

The Telstra pits, which appear on almost every street corner in Australia were made with Asbestos cement. Many telephone exchanges were heavily lined with asbestos. Because of this, many Telstra workers including linesmen, cable jointers, and maintenance workers have suffered asbestos disease.

People at home

Millions of Australian homes contain asbestos. It can be found in the eaves of roofs, the lining for tiled areas in the bathroom, laundry and kitchen and often in the roof. Many homes, including many beach houses (commonly known as fibro homes) had walls made of AC sheet. Likewise, many houses had garages and sheds made from AC sheeting. Asbestos in the home can be disturbed in a number of ways; principally through renovations (often do-it-yourself) as well as by demolition and by tradesmen such as painters effecting sanding down, pre-painting works. There is an increasing toll of Australians suffering asbestos disease through such exposure.

Death on the Block

Mr Plunkett is representing about 60 former and present SEC workers who have contracted mesothelioma, asbestosis and other asbestos-related diseases after working at the power stations. Each week, at least one

An asbestos timebomb hidden in Royal Brisbane Hospital's Block 7 is set to exact a deadly toll, writes Hedley Thomas



'This is the worst industrial disaster to ever befall any region in Australia, I believe it is Australia's Chernobyl.'
— Stephen Plunkett

'AM I the top of the iceberg or the only one?' Vicki Benson is short of breath and wheezing as she wonders aloud about the fate of others who may have had deadly contact with her former workplace — Block 7 at Royal Brisbane Hospital.

A malignant mesothelioma on her right lung, the result of exposure to asbestos, is killing her as surely as intense radiation treatment makes every day a misery.

'It's incurable and I would estimate that her prognosis is in the order of 12 to 18 months,' said her oncologist, Dr Paul Mitchell.

But even that grim prediction may be optimistic. Benson's health has worsened significantly since her cancer specialist's blunt forecast just before Christmas.

'I'm going to be soon, that's what they're telling me,' the 44-year-old former nurse told *The Courier-Mail* from her hospital bed this week. 'There is a shadow in my stomach — another tumour. I have more fluid in my lungs, this time on the left side. They're trying to control the pain. But this thing kills quickly.'

When Benson (now James, mother of three — Kelly, 24, Megan, 11, and Paul, 11 — experienced pain in her chest a little over a year ago, her GP suspected a minor peptic bladder problem.

But within a few months, after CT scans and the draining of pleural fluid, the biopsy tests on removed tissue confirmed a diagnosis of mesothelioma.

The finding stunned Benson, who grew up in Ipswich, went to Mitchell-

ton State High, then began work, in 1973, at the Royal Brisbane Hospital.

She had never knowingly been exposed to asbestos. She had never lived in or renovated a house containing asbestos. She would not be joining the litigants who blame James Hardie for their terminal conditions.

'I did not know where I could have got it,' she says.

But as Gordon Stewart, a Brisbane industrial chemist with wide experience in asbestos investigation, traced her work history to the RBB, pieces of the dreadful puzzle began to fall into place. After months studying documents dating to the construction, 30 years ago, of what was then the most modern hospital building in Queensland, the experts, Benson and her lawyers, Slater & Gordon, are now convinced — the culprit was in all like

lined a microscopic fibre from a product called Monokote, which was used to truss steel beams from fire.

When it was being sprayed by air gun over all 13 levels of Block 7, which has since cared for countless ill and injured patients and accommodated thousands of medical and auxiliary staff, Benson was one of many workers by.

Worse, it was known in Brisbane at the time of Block 7's construction that the US-made Monokote contained deadly asbestos.

The documents show that bureaucrats, unions and safety inspectors in Brisbane debated its use and risks before deciding it was the best of a bad bunch.

The product already had been banned in parts of the US as health authorities became increasingly alarmed over its asbestos load, which

What to do if you are diagnosed with an asbestos related disease

Mesothelioma

Medical Support

Mesothelioma is a disease that has traditionally been regarded as incurable. However, new techniques and drugs have improved the lot of some mesothelioma sufferers; both in terms of their quality of life and length of life. So it's important that your doctor is aware of all of the latest treatment and care options available for caring for a mesothelioma sufferer.

Your medical advice should encompass surgical and chemotherapy options available to you. It should also discuss techniques such as photodynamic therapy, and include discussion of new drugs, such as Alimta.

Many doctors now believe that if a mesothelioma is detected early and treated appropriately, significant gains may be made both in terms of length of life and quality of life.

It is important for you to seek as much information as possible from your doctors.

The science of palliative care (pain relief) has also greatly developed in the past several years. There are now many options of palliative care available, of which your local asbestos support group can provide you with more information.

Legal Support

The vast majority of mesothelioma victims in Australia have valuable rights to compensation. Indeed, many have statutory rights to lump sums and other benefits under workers compensation laws. Most can also access common law damages.

As an example, Slater & Gordon has acted for over two and a half thousand mesothelioma sufferers in Australia, over the past twenty five years. Less than one per cent of them have gone uncompensated.

It should be possible to retain a lawyer who will act for you on a No Win No Fee™ basis, and your case should ordinarily be resolved within months of first seeing a lawyer.

Later in this brochure, we give some guidelines as to when to see a lawyer and what sort of lawyer to choose.

Asbestosis or pleural disease

Medical Support

Asbestosis and pleural disease are not cancer but they are long term debilitating conditions.

Symptoms of asbestosis and pleural disease can be similar to other respiratory diseases. It is therefore critical that you see a lung specialist and obtain a clear diagnosis if you suspect you have either disease. Both diseases can result in chronic breathlessness and different treatment options may be available, depending on the cause of your breathing difficulties.

Asbestos victim who escaped too late

By Paul Daley

Of 200 asbestos workers x-rayed, the health of 50 had been definitely impaired and 40 others showed early effects.

— From a Health Department survey published in 'The Age' on 13 January, 1956

ALMOST 10 years after that report, 16-year-old Neil Gray began work as an apprentice electrician at the State Electricity Commission's A, B, C and D stations. Like his father who had worked there before him, Mr Gray knew the SEC would look after him — after all, the job was secure, the pay wasn't bad and he could stay in the La Trobe Valley where he had grown up.

Late last month, 27 years later,

be positive but sometimes that's hard when the doctors won't tell me how long I might have."

Mr Gray is talking about the mesothelioma that has claimed his right lung.

Formerly a robust man who always enjoyed good health, Mr Gray was deer stalking with some friends last August when breathlessness suddenly immobilised him. Three weeks later one of his ribs had been removed, his right lung surgically scraped and tumours removed with laser therapy.

"I wouldn't have lasted until Christmas without the operation. I've got to have chemotherapy soon... they don't know if that will help," he says.

Mr Gray recalls being covered in asbestos dust when other tradesmen removed the lagging from pipes and boilers in the old power



Frightening outlook: Neil Gray with the x-ray of his damaged lung.

only care is palliative and whose life expectancy is about 10 months, and hopes the warmer weather at Lakes Entrance will be kinder to his delicate health.

"At least I know if the worst happens I've got some money to put the kids through school and look after my wife, Veronica," Mr Gray says. "Now I just want to get away from the valley. I've lived and worked here all my life and this is what's happened to me."

While her husband is out of the room, Veronica Gray confides that his deterioration is breaking her heart.

"The four kids know he's dying. He's not the man he used to be... he's so sick and he's only 44," she says. "At least down at Lakes Entrance he can do all the things he's wanted to do — go out on the boat, spend time with the kids and go

It is important for sufferers of asbestosis and/or pleural disease to have your treatment managed by a doctor who is experienced in the care of such cases. The right application of drugs, nutrition, exercise, and where appropriate, supplied oxygen support can do a great deal to improve quality of life.

Legal Support

The majority of people who suffer from asbestosis or pleural disease have valuable claims for damages. These may vary from medium sized claims to very large claims depending on the severity of the condition. It is important if you are in this situation, to get advice from a lawyer who is experienced in asbestos litigation.

If you suffer from asbestosis or pleural disease, you also run a risk of developing mesothelioma or lung cancer sometime in the future. In most jurisdictions in Australia, if you bring your claim for asbestosis and/or pleural disease and you resolve it, you will not be permitted to bring another claim for damages if you later on develop an asbestos related cancer. An exception to this is the New South Wales Dust Diseases Tribunal, which does allow a second claim if a later asbestos related cancer develops.

It is important for your lawyer to be aware of these matters and to bring your case in the most appropriate court for the benefit of your claim.

Lung cancer and exposure to asbestos

Most people who get lung cancer for which asbestos exposure is partly to blame never get the compensation they are entitled to.

This is because they wrongly believe that because they smoked, they have no entitlement.

Many doctors and health professionals share this misunderstanding. They think that because the main cause of a person's lung cancer was smoking; they have no claim even if asbestos exposure also made a contribution.

It is important to clear up this misunderstanding.

If you were heavily exposed to asbestos; and you get lung cancer; it is very likely that you have a good and a substantial claim to compensation. The fact that smoking was the main cause doesn't destroy your claim at all. You should see an experienced asbestos lawyer.

Counselling and family support is available for all asbestos related diseases

In most Australian States, specific support groups for asbestos related diseases are in operation. Most of these offer counselling and other forms of support for asbestos disease sufferers and their families.

To obtain details of the Asbestos Diseases Support Group in your state please contact Slater & Gordon on freecall 1800 555 615.

NO WIN, NO PAY

Choosing the right lawyer

I have no compunction at all in helping send broke companies which did this to their workers

It's tough at the top, and so is Gordon

'Leadership is not about being popular,

Time is of great importance to people who have been diagnosed with mesothelioma, lung cancer, asbestosis, or pleural disease. For this reason you should seek legal advice immediately.

The following questions will help you choose the right lawyer:

Has your lawyer proved to the asbestos companies that he/she is prepared to take them to court and get a verdict?

Most people want to settle their case quickly and quietly out of court. But asbestos companies and insurers don't pay out good money quickly out of the goodness of their hearts. They only pay good money quickly when they have a healthy respect for the law firm they are facing - and that sort of respect is hard earned. It's earned by a law firm showing year after year, that it is prepared to take cases to verdict when a company is not prepared to pay proper and fair compensation.

Does your lawyer have that sort of reputation?

Does your lawyer have experience in a case like yours?

It's not enough these days for your lawyer to say they've previously had an asbestos case. It is a considerable advantage if that lawyer has previously sued the company you need to sue. This is especially so if that lawyer has a well-organised system for preserving the evidence obtained in those earlier cases.

Has your lawyer got a computerised data base containing evidence and witness statements from people who were exposed in the same place and in the same way as you were?



Killer
fibres

A firm of over 70 years standing

hit new
victims



Slater & Gordon has a proud history of fighting for asbestos victims and winning.

Our record of achievement for asbestos victims is unique. No other law firm can lay claim to the achievements for and the commitment to asbestos victims shown by Slater & Gordon over decades.

We were fighting workers compensation claims for asbestosis sufferers and their families way back in the 1950's.

In the 1970's, our former Senior Partner, Mike Higgins, successfully resolved the first negligence claims for asbestos sufferers.

That's a history and commitment now proudly carried on by Mike's sons James and Andrew Higgins.

James is Slater & Gordon's partner in charge of our Brisbane office.

In 1984 Peter Gordon won the first common law verdict for mesothelioma. In the two years that followed Peter continued to achieve firsts at Slater & Gordon for asbestos disease sufferers including:

- first verdict for asbestos related lung cancer
- first verdict for asbestos cancer against an electricity utility
- first verdict for lung cancer against an occupier of asbestos contaminated premises
- first video-taped deposition for a dying victim.

In 1986, Slater & Gordon challenged the might of CSR in the battle to achieve compensation for hundreds of victims of the notorious Wittenoom blue asbestos mine. This was at a time when every other major Plaintiff's firm avoided this battle, believing it was just too hard. Slater & Gordon,

in a campaign headed by Peter Gordon and John Gordon fought the battle across three states. The Firm committed all of its financial resources, opened an office in Western Australia and for the next four years fought with CSR until the giant multi-national asbestos company, conceded its liability and paid the injured and dying Wittenoom workers. Our Western Australian office has proudly represented asbestos disease sufferers ever since.

During 1987-1988, Slater & Gordon lost millions of dollars on an unsuccessful first case only to win later on appeal. Slater & Gordon also won the first punitive damages verdict against the company.

In 1988, Slater & Gordon's John Gordon and Luisa Dropulich conducted the cases of Heys and Barrow v CSR, the longest civil trial in the country's history and a pitched battle against CSR.

In the course of a famous victory, Slater & Gordon cut through the elaborate legal defence set up by CSR to avoid its liabilities and won compensation.

In all other cases run against CSR since that time, it was the evidence uncovered and run by Slater & Gordon in the Heys/Barrow test case which has established the rights of Wittenoom victims to compensation from CSR, in Australia and overseas.

In 1989, Slater & Gordon achieved a group settlement for 200 former Wittenoom workers. This meant that five years after taking on CSR single-handedly; Slater & Gordon achieved victory for over 350 of the victims who had been waiting years for compensation.

\$25m Wittenoom payout expected

LAWYERS in Perth are preparing for the biggest settlement in Australian legal history with \$25 million likely to be paid out to 230 Wittenoom asbestos victims.

They believe they are close to signing a mass settlement agreement based on US disaster litigation on behalf of former Wittenoom workers, their widows and children.

This comes after eight weeks of hard-fought negotiations with WA's State Government Insurance Commission and CSR Ltd, whose wholly owned subsidiary Midalco operated the Wittenoom mine.

Payment would be shared between the commission and CSR, Perth solicitor John Gordon said last night.

EXCLUSIVE

By **BRENDAN NICHOLSON**

SGIC and CSR an estimated \$26.5 million over the next two years that they would otherwise have spent assessing each victim's health, negotiating compensation and ultimately in legal costs if the claims went to court.

Legal costs totalling more than \$2 million paid on behalf of asbestos victims so far have badly dented the legal aid system in WA.

Mr Gordon said the settlement would also relieve the Supreme Court, which would otherwise spend the next two years hearing the cases.



Historic payout to dying man

A WIDOW'S victory in a three-year battle to secure compensation awarded to her wharfie husband, who died from an asbestos-related disease, could result in the federal Government paying out tens of millions in damages to dock workers.

Asbestos win to cost 'tens of millions'

Alison Crowther

A WIDOW'S victory in a three-year battle to secure compensation awarded to her wharfie husband, who died from an asbestos-related disease, could result in the federal Government paying out tens of millions in damages to dock workers.

Margaret Crimmins yesterday won a her legal battle to secure \$450,000 compensation awarded to Brian John Crimmins, who made legal history in 1977 as the first waterside worker to successfully sue the federal



Brian and Margaret Crimmins

to pay Crimmins \$450,000 in damages. But it appealed against that decision and won.

The battle went to the High Court, which ruled the authority had a duty

Slater & Gordon and the Asbestos Diseases Society of Australia: a proud partnership

Around the world, few law firms and community groups could lay claim to the long record of solidarity and success for their members as Slater & Gordon and the Asbestos Diseases Society of Australia (Inc) (ADSA).

The ADSA is Australia's oldest, biggest and most successful support group for victims of asbestos disease.

The partnership, led by Slater & Gordon's senior partner Peter Gordon and ADSA President Robert Vojakovic, had its beginnings in the mid 1980's when Robert convinced Peter that Slater & Gordon should open a Perth office to fight the Wittenoom cases against CSR.

Since then, the two organisations have fought side by side for asbestos victims; in Court; before politicians; for waterside workers, for research funding; and in the battle to make James Hardie accountable.

The two organisations, still led by Peter and Robert, remain just as determined to maintain their high standards of advocacy and representation, as together they enter their third decade of the fight for justice for victims of asbestos disease.

In the years that followed, Slater & Gordon's unique record continued to achieve milestones, including:

- the first verdict against the Commonwealth of Australia for asbestos related cancer (a case run by Steve Plunkett in 1991)

- the first verdict against James Hardie for mesothelioma (a case run by Peter Gordon in 1991)
- the first "third wave" mesothelioma verdict for an office worker exposed to asbestos
- the first common law settlements for asbestos injured waterside workers.

For Brian Crimmins, wharfie, a record verdict of \$870,000

In 1997 Slater & Gordon had the opportunity to take on the Commonwealth of Australia on behalf of waterside workers exposed to asbestos on Australia's waterfront.

Until then, the conventional wisdom had been that the rights to compensation available to other Australian workers arising from exposure to asbestos, were not available to waterside workers. This was because of the system of day labour that operated for decades on Australia's waterfront. Slater & Gordon did not accept this view and sued the Commonwealth of Australia in its capacity as the Authority responsible for safety on the wharves.

On behalf of former wharfie, Brian Crimmins, the Slater & Gordon team, headed by Peter Gordon and Margaret Kent, pursued the Commonwealth of Australia to the High Court of Australia, along the way winning a record verdict of \$870,000.

The *Crimmins* case secured for wharfies the same compensation rights as were available to every other Australian worker (just as the firm had done for CSR's victims in the Heys/Barrow case.)

Slater & Gordon then pursued compensation for the hundreds of waterside workers and their families who had until then been denied fair compensation. Slater & Gordon partner Suzanne Sandford, broke new ground by achieving

Dying mum wins payout

By ICHING HOES, Supreme Court

A FATHER'S death number of two years earlier was a significant milestone for the Federal Government yesterday as the High Court handed its judgment.

After a long and bitter legal battle, the High Court has ruled in favour of the widow of a man who died in 1994.

The widow was entitled to some interest from the government, but a government official had argued that the widow was not entitled to any interest.

The High Court has ruled that the widow is entitled to interest on the money she has received.



Landmark victory to wharfies' widows

By JOHN MASANAUSKAS

THE value of men's work around the home has been recognised for the first time in a landmark compensation settlement.

Domestic work such as painting, driving and gardening has been valued in a landmark payout to widows of wharf labourers who died from asbestos poisoning.

It is expected the precedent will lead to thousands of similar claims involving other industries and illnesses.

Eleven widows' wives, nine of them from Victoria, won compensation of tens of thousands of dollars each on Wednesday after settling their claims out of court.

They used the Federal Government's Redwooding Industry Finance Committee and manufacturer James Hardie and

"It recognises their contributions to the home, maintaining the home, doing housework, painting, that sort of thing," she said.

Ms Sandford said the decision affected women whose husbands died from work-related causes after the age of 65 or earlier if they weren't working at the time of diagnosis.

Until now it was not viable for such women to make claims, because compensation for dependents was largely based on their spouses' loss of earnings.

Australian Bureau of Statistics figures show that men over 65 spent an average 19.5 hours a week on domestic work.

Ms Sandford said the move to recognise unpaid



Volunteer Billy Harveyman (above) died in 1988 and Hans Lehan (below) in 1994.

compensation for widows whose husbands had died after retirement age. Hundreds of claims have since been resolved and millions of dollars of compensation recovered.

One of the proudest moments during this campaign was securing over a million dollars for the family of one waterside worker who had tried to obtain compensation many years earlier and who had been advised by another law firm that he had no claim.

Victims who die before reaching resolution can now be protected

In 2000, Slater & Gordon obtained compensation for a pregnant mother dying from mesothelioma in a claim against the Commonwealth over asbestos insulation in a Government building. Following this tragic case, Slater & Gordon successfully lobbied the Government of Victoria to pass laws, which preserved the damages rights of victims if they died before resolution of their case.

Subsequently, Slater & Gordon lawyers played important roles in achieving similar reforms in Western Australia, Queensland and Tasmania.

In 2004, Slater & Gordon also set up a five hundred thousand dollar trust to fund research for a cure for mesothelioma.

The Latrobe Valley

The LaTrobe Valley, the heart of Victoria's power generation industry, has endured an epidemic of asbestos related disease in the last 20 years.

Slater & Gordon's Steve Plunkett first started acting for asbestos sufferers in the Valley in 1982. More than any other person Steve has fought for and delivered not only compensation but a better quality of life for asbestos victims in that area. He has successfully represented hundreds of victims.

Slater & Gordon expose James Hardie conspiracy

In 2004, a Slater & Gordon team headed by Peter Gordon and Ken Fowlie acted pro bono for the ACTU, the union movement and the victims groups around Australia in the Commission of Inquiry, which exposed the conspiracy between James Hardie executives and advisers to cheat victims of Hardies asbestos from their legitimate compensation entitlements.

Following the Inquiry, Slater & Gordon partner Ken Fowlie acted for the ACTU in the negotiation of the historic in-principal agreement between the ACTU, NSW Government and James Hardie, which provided for compensation funding for victims for the next fifty years.

Dying son sues over asbestos

A FORMER Queensland resident has launched a landmark compensation case against a state power corporation, claiming he contracted deadly asbestos cancer when he visited his father's workplace.

Bruce Hamilton, 39, is fighting mesothelioma, described by his lawyer as a "turbo-charged" cancer of the lining of the lung. It usually kills within months of diagnosis.

Mr Hamilton is suing the Queensland Power Trading Corporation, claiming the cancer was sparked by childhood visits to his father Norman, who



are miles and miles of steam pipes that were covered in asbestos.

The Glenmore power plant was decommissioned in 1978 and demolished in the early 1980s when 20,000 bags of asbestos were removed and dumped.

Mr Hamilton's solicitor Stephen Plunkett, senior partner of litigation firm Slater and Gordon, said there was no previous example in Queensland of workplace-related asbestos exposure for a person not actually employed in the workplace.

Mr Plunkett said there

EXCLUSIVE
JAMES HARDIE SET TO PAY UP AT LAST

Asbestos victims to win billions

THE biggest compensation deal in Australian history — worth several billion dollars over 30 years — could be announced before Christmas, providing relief for asbestos victims.

James Hardie Industries is believed to be close to an agreement after months of negotiations with the ACTU trade lawyers and asbestos victims' representatives.

The compensation will cover the expected 30,000 Australian asbestos victims who are likely to suffer the fatal disease, mesothelioma, and other asbestos-related lung cancers in the future. The compensation arrangements are planned to cover asbestos compensation liabilities over the next 30 years.

James Hardie's liability has been estimated to be more than \$1.5 billion in today's dollars, but will be significantly more in real terms over the next few decades.

The Sunday Age believes that Hardie will contribute each year an amount calculated by scientists to be equal to the expected cost of claims for the following year or, alternatively, an amount equivalent to the company's

profit, not its assets. It is believed the industry-wide compensation agreement will be reached this week.

The deal was negotiated by victims' lawyer Mr. Gordon, together with Peter Gordon and Ken Lowe, of law firm Ziner & Gordon, as well as Jack Biele, QC, former barrister. Mr. Gordon is a member of the victims' group Asbestos Disease Foundation of Australia and others.

Mr. Gordon criticized the company saying its culture was "embedded in dishonesty". But the negotiating team agreed to ensure that the disputed company director, in order to meet compensation payments.

The negotiations, according to insiders, almost collapsed when Hardie insisted on a 50 per cent rise in the cost of pensioning claims.

The debate over offshoring — the quantity of Ozon, the arbitrary nature of Hardie's demand, as well as the nature of the award which was going to decrease the whole deal, Mr. Gordon said.

To break the deadlock, Mr. Gordon asked the NSW Government to review the company's

BILL EWINS TAKES ON BIG AUSTRALIAN AND WINS

\$197,287 – the state's first asbestos payout



Mr. Ewins (left) with his legal team, including Slater & Gordon's Bill Ewins, after the successful outcome of his case.

Landmark case on-going for psychiatric victim of asbestos

Arthur Della Maddalena worked in the most dangerous part of Wittenoom, the bagging section of the mill, in the early 1960's. He has long known the risk that that work will always pose for him. He has since those days seen his brothers, and dozens of friends and former workmates, die slowly from mesothelioma. Perhaps not surprisingly, he has suffered acute anxiety and depression caused by the sight of his family and friends, and knowing it could happen to him. Slater & Gordon took on his novel case for his severe psychiatric disability. The case lost at first instance, won overwhelmingly on appeal and has recently been to the High Court where it has been sent back to the District Court for a retrial. CSR has fought the case just as they fought the landmark cases of the 1980's. For Arthur Della Maddalena and for Slater & Gordon, the fight goes on; not just for the Della Maddalena family, but for all Wittenoom workers who find themselves in a similar position.

for many years. She had no idea where her fatal contact with asbestos many years before had occurred. Through Slater & Gordon's national resources, we were able to identify her exposure and uncover crucial evidence of a past asbestos hazard at the Royal Brisbane Hospital. It was the first claim of its kind from the hospital.

Mesothelioma victim's victory in South Australia

On St Patrick's Day 2005, Slater & Gordon conducted the first successful mesothelioma case in the Supreme Court of South Australia. This was a victory for South Australian mesothelioma victims. The South Australian Chief Justice awarded Mr Bill Ewins \$197,287.85 in damages. Mr Ewins' mesothelioma was caused by his exposure to asbestos, whilst employed by BHP between 1949 and 1963, at the Whyalla Shipyards.

These days, many law firms assert they are experts at asbestos litigation. Slater & Gordon's commitment and record of achievement is unrivalled.

Nurse awarded compensation claim

In February 2005, Slater & Gordon's Brisbane asbestos expert James Higgins, won compensation for a 48 year old nurse, struck down with mesothelioma. She had been living in Tasmania

THE State Government has agreed that asbestos in the Royal Brisbane Hospital was responsible for the mesothelioma now killing a nurse who worked there 30 years ago.

Vicki Benson was told by WorkCover yesterday that she would receive \$370,000 in compensation for a disease expected to end her life by Christmas. The decision by WorkCover to pay Mrs Benson the maximum amount means the State

"It's not going to help me, but I know my family will be all right"
Vicki Benson

Saturday, prompting contact from other people who lost loved ones to asbestos-related diseases

Asbestos win 'historic'

\$140,000 payout to former rail worker



Mr Street 'picks up the axe for Government'

Mr. Street, 67, was diagnosed with mesothelioma in 1998. He worked for the Queensland Government for 30 years as a railway worker. Slater & Gordon's Brisbane asbestos expert James Higgins, won compensation for a 48 year old nurse, struck down with mesothelioma. She had been living in Tasmania

with asbestos but I did not realize you could get mesothelioma or asbestos lung cancer.

Mr. Street said the decision was a "historic moment" for the thousands of people who have come into contact with asbestos through their work in the railway industry.

The case, for a number of thousands of workers who have come into contact with asbestos through their work in the railway industry, was a landmark decision. It gave people an opportunity to go through the process of getting compensation for their asbestos-related disease.

"I think the case has set a very important precedent. It gives people an opportunity to go through the process of getting compensation for their asbestos-related disease."

wins record damages

Claims & Compensation

A solicitor gets a
\$1.12 million payout
for asbestos illness.

he had been expecting the illness.
"Every time you read anything
about asbestos or you'd be alerted to
it, the fear would come," he said.
Mr. Beruldsen's solicitor, Peter
Gordon, of Slater and Gordon, said

There are two principal avenues of financial compensation for people afflicted by asbestos disease.

These are the various workers compensation schemes which operate across Australia, and the common law system, which has been developed over time as an important right of Australian citizens injured by the negligence of others.

Who can make a claim?

A Slater & Gordon lawyer experienced in asbestos litigation will provide you with free advice on a confidential no-obligation basis. **Our lawyers come to you and we regularly see clients at their home or even in hospital.**

Exposure to asbestos alone is not enough to provide a basis for a successful claim. Before you can claim you must have been diagnosed with an asbestos related disease.

It is possible you can make a claim even if:

- your exposure to asbestos occurred many decades ago
- you have left the employment where you were exposed
- you were exposed in a number of different workplaces
- your employer went out of business years ago
- you were self-employed
- your exposure did not occur at work
- you are not sure where or how your exposure occurred
- you are or have been a heavy smoker
- you are living in a different state from the state in which you were exposed to asbestos.

What if a relative has died from asbestos related disease?

If your partner or a family member dies as a result of an asbestos related injury, a claim for compensation may still be available to the estate or the dependants of the deceased. The claim may be limited to the financial consequences of the death.

Workers Compensation benefits

For more than a century, states, territories and the Commonwealth of Australia have maintained Workers' Compensation schemes.

These no-fault statutory compensation schemes provide financial benefits to employees injured in the course of employment. While the overall purpose of each scheme is identical, critical details, including eligibility rules and levels of available compensation benefits, differ widely. Also, most schemes have changed significantly over the years and eligibility rules and benefit levels have also changed. In the context of asbestos related disease, eligibility and benefit levels may depend on such things as dates of exposure to asbestos.

mesothelioma and has been given between six and nine months to live.

Yesterday his Supreme Court damages action against CSR, which mined the asbestos through a subsidiary company at its Wittenoom operations and James Hardie (Sales), which took over the company that employed him, ended in a negotiated



Ken Beruldsen

settlement.

A jury had heard both companies admitted negligence in the case, which arose from Mr Beruldsen's job as a casual laborer between November, 1963, and February, 1964.

He was 19 when he worked with the company Wunderlich Humes Asbestos Pipes, performing tasks such as filing or rasping asbestos pipes, stacking bags of blue asbestos and sweeping dry asbestos dust. James Hardie (Sales) took over Wunderlich after Mr Beruldsen had worked there.

Outside court, Mr Beruldsen said

an ed three-year-old daughter security for his v children.

"I'd really hoped time with my little round, but unfortunately to be," he said.

Mr Beruldsen said in his legal practice South Wales case 1964 collision between and Melbourne.

He said that iron working with the a month the naval dis

Many of Australia's workers compensation schemes offer some compensation benefits to sufferers of asbestos related disease and/or their families. What benefits are offered, who is eligible to claim, how claims should be made and whether claims can be made in addition to or instead of court action for lump sum compensation, differ between schemes.

Some schemes also support medical surveillance of asbestos exposed workers.

Your lawyer at Slater & Gordon will be able to advise you in relation to whether, and if so, what workers compensation benefits are available to you.

Common Law Claims for compensation

What can I claim compensation for?

In our court system, you can claim lump sum compensation (known as 'damages') if you have been injured as the result of the fault, or 'negligence', of someone else. Generally you can claim:

- any past medical and other expenses incurred as a result of the treatment of your condition
- future medical expenses
- lost earnings up to the date of trial or settlement and for the rest of your working life
- lost earning capacity

- the commercial cost of assistance around the home, in the garden and nursing care (even if that assistance is being provided voluntarily by relatives and friends)
- the cost of changes to your house or the purchase or rental of special equipment
- a payment for pain and suffering and loss of enjoyment of life
- a payment for any loss in life expectation or reduced life expectancy.

Past and future medical expenses

Generally, one component of your claim will be past and future medical expenses connected with your asbestos related disease. Any medical expenses incurred up to the date of the resolution of your claim, which have been paid by Medicare have to be repaid out of any compensation received.

If you are a member of a private health fund, you may also have an obligation to refund monies paid by your private health insurer connected with the treatment of your asbestos related disease. It is also possible that your private health insurer will restrict future benefits after compensation has been received.

Will a claim for compensation effect my pension?

Receipt of lump sum compensation can have an effect on payments from Centrelink. Generally, your pension or other benefit will only

be affected if you are receiving a benefit and make a claim for lost earnings or a loss of your earning capacity. You (or your partner) may be precluded from receiving payments for a period of time known as the preclusion period. The length of the preclusion period depends on the size of the compensation amount awarded.

What is involved in claiming compensation for exposure to asbestos?

This requires you to prove you have a medical condition caused by exposure to asbestos. This normally involves obtaining a report from your treating doctors. Your lawyer may also need to get a report from an independent specialist.

It also involves establishing when, where and how you were exposed to asbestos. Slater & Gordon will help you to identify your exposure to asbestos dust. We have developed an extensive database of information on how people have been exposed to asbestos, and what products were manufactured with asbestos and by whom. More than 3000 asbestos products and uses have been identified.

Our database of information, knowledge and experience helps us to identify your exposure quickly and with a minimum of expense.

Once we have identified where and how you were exposed to asbestos we will have the name(s) of potential organisation(s) to bring your claim against. The organisation(s) against whom a claim is brought are called Defendants.

How will Slater & Gordon handle my claim for compensation?

Once court proceedings have been commenced, your rights to compensation for pain and suffering are protected for the benefit of your estate.

We will do all things necessary to prepare your claim and ensure that you are well informed of:

- relevant court processes and their duration
- all aspects of legal costs
- your rights and entitlements.

We will not take any significant steps in your

claim, such as make or accept an offer of settlement, without your specific instructions.

During your claim it is important that you or a loved one, notifies us if there is any sudden deterioration in your health.

Will I need to go to court?

The vast majority of court actions concerning asbestos related illnesses settle before trial. In accordance with your instructions, Slater & Gordon will try to negotiate a settlement for you to avoid you having to go to court. However, we are unable to guarantee that your claim will not proceed to trial. And of course some people **want** their case to go to trial. In over 25 years of asbestos litigation, we have never had an unsuccessful outcome in a case which has gone to trial. We will provide you with information about how the court system works and what you can expect, if it becomes necessary for you to go to court.

How much will it cost me to claim ?

Having determined that you have a viable claim for damages, Slater & Gordon will handle your claim on a No Win No Fee™ basis. This means that you are only liable to Slater & Gordon for the costs incurred in your claim, if your claim is successful. The No Win No Fee™, Fee and Retainer Agreement explains fully the terms and conditions, including how legal costs are calculated.

Your legal costs are largely determined by the amount of time and work required to be undertaken to resolve your claim.

How long will my claim take to finalise?

We have pioneered court processes for critically ill clients so that claims can be urgently brought before court. Usually, claims involving asbestos caused cancers take months to resolve. If need be claims can be resolved within weeks or days. Claims for non-malignant asbestos related conditions can take a little longer.

Preventing future asbestos related disease

Warning bells 37 years ago



At Slater & Gordon we're working towards a shared vision that sees an end to the tragedy of asbestos related diseases. We believe this will be achieved through active lobbying for change, the demand for justice, the creation of awareness in the community and by continuing education and support.

This is why we've included information to assist in relation to your safety and to your physical and emotional well being. We view this as an important part of this booklet.

Asbestos in the Community

Many Australian homes contain asbestos, most often in the form of asbestos cement sheets or accessories. These products are colloquially known as 'fibro'. James Hardie continued to make fibro product containing asbestos until 1987. Unless your home was built later than that it is likely to contain at least some fibro and some asbestos.

Asbestos was used in other places around the community such as in insulation and vinyl floor tiles. Until very recently, asbestos was also widely used in brake and clutch pads.

Asbestos, in the form of fibro, is generally not hazardous to health so long as it is in a sound, unweathered condition and left undisturbed. Fibro can become a health hazard if asbestos fibres are released into the air, either because of the poor condition of the sheet or because the sheet is disturbed.

Laws in each state and territory now regulate the way fibro (and other asbestos containing products found around the home) can be handled or removed. Check with your local authorities before taking any steps. You can contact your local council, or the state environmental protection agency or workcover authority for more information.

A safety checklist:

- if in doubt ask a licensed expert whether the material contains asbestos and how you should manage it safely
- most asbestos containing products, undisturbed, usually present a very low health risk
- it is not necessary to cover fibro on health grounds as long as it is undisturbed. But, if your fibro is in poor condition, get a licensed expert to advise on its removal, rather than covering it
- watch for weathering of fibro, particularly fibro rooves, gutters and downpipes
- do not disturb fibro
- do everything to try and minimise the generation of dust
- never use power tools on a product which may be fibro
- never undertake tasks that generate excessive dust, such as water or sand blasting, wire brushing, drilling or cutting on a product which may be fibro

Asbestos support group starts up

Suggestions for maintaining health and well being

Our experience has shown that maintaining a positive approach throughout your illness can lead to an improvement in quality of life. Maintaining a positive approach also tends to have benefits for your family and friends. The fitter you are in mind and body, the better the chances are that you will extend your life, even if you've been diagnosed with mesothelioma or lung cancer.

Support groups for asbestos victims and their families

There are many excellent asbestos illness support groups within Australia. Their main purpose is to provide accurate and current information, and support for you, and your family.

To obtain details of the Asbestos Diseases Support Group in your state please contact Slater & Gordon on freecall 1800 555 615.

Allied health services

There are also allied health services, available in every state and hospital, that may be of great assistance to you, providing social work and counselling support.

Diet, exercise and perspective

If you've been diagnosed with an asbestos related disease, a positive approach to diet and exercise is important. Your best guide to diet and exercise is your doctor but as a general rule (unless your doctor tells you otherwise) these guidelines remain as true for you as for other people within your age range.

- try to have a low fat diet
- avoid excessive alcohol consumption and try to have at least two alcohol free days per week
- eat plenty of fresh fruit and vegetables
- if you are struggling to maintain your eating; keep plenty of fruit, nuts and other foods around the house; and eat what you can as frequently as you can
- talk to your doctor about an exercise program. Every degree of fitness you can build or hold on to can be valuable
- you're never too old to start some form of exercise. A walk around the garden or around the block can do you good if you can build it into a regular routine
- you will probably experience a reduced capacity for exercise. Try to accept this and don't be frustrated by it. Work within your capacity. Exercise everyday but at a slow pace for maybe 20-40 minutes. You should be able to talk out loud whilst walking



- if your fitness suffers a setback because of your treatment, maybe through surgery or a bad response to chemotherapy it's important to try and regain a degree of fitness as soon as you can; within your capacity. Again, it's important to talk to your doctor about this
- it's also important to conserve energy. Plan your day. Do the important things first. Include some quiet time and preserve enough energy to get through the late afternoon without becoming exhausted. Becoming exhausted can reduce your immune defences
- make sure you are getting adequate regular sleep
- stay in touch with your health professionals. Take a friend or family member along to help with communication, and to remember what is said.

Putting your financial affairs in order

The financial security of you and your loved ones is extremely important. This means that you should ensure that your financial affairs are in order. To assist you to do this, Slater & Gordon will prepare a will for you and your spouse or partner free of charge.

You should also seek advice from a financial planner regarding the best way to invest your settlement money. This is particularly important as your social security entitlements may change after you receive your settlement money. It will also assist you to provide your family with financial security in the years to come.

The Slater & Gordon Asbestos Research Trust

Slater & Gordon



Asbestos Research Trust

For over 70 years, the guiding ethos of Slater & Gordon has been the promotion of *social justice and fair access to the legal system for all Australians*. These principles have decisively shaped the legal work that Slater & Gordon has accepted, the causes that Slater & Gordon has supported and the way that Slater & Gordon has conducted its own affairs.

It has seen Slater & Gordon take on some of Australia's biggest companies and government at risk of its own survival to see the right thing done. It has also led to Slater & Gordon establishing like minded charitable organisations.

In 2004, Slater & Gordon was proud to launch, the latest of these initiatives: the Slater & Gordon Asbestos Research Trust. Slater & Gordon has committed a minimum of \$500,000 to the Trust, over 5 years.

The Trust provides financial support for research into asbestos related disease as well as assistance to medical practitioners seeking to improve their knowledge and skills in this area.

Already the Trust has contributed to several important ongoing research initiatives, as well as providing financial assistance to a number of health professionals pursuing further educational opportunities, in the area of asbestos related disease.

The Trust also sponsors an annual award, which acknowledges and supports research leadership in asbestos related disease.

The Trust distributes a periodic newsletter, which contains up to the minute information about developments in asbestos related disease, its diagnosis and treatment.

The work of the Trust is constantly evolving. It's most recent extensions include:

- providing financial support to enable sufferers of asbestos related disease to access expensive medical treatments
- making ex gratia payments to sufferers of asbestos related disease in financial hardship.

Slater & Gordon hopes that the work of the Trust will continue, and that it will make a tangible contribution to improving the situation facing asbestos disease sufferers.

Slater & Gordon

Lawyers

Call our Legal Help Line

Freecall 1800 555 615

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*Conditions apply.
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