

**AMACA PTY LIMITED (UNDER NSW ADMINISTERED WINDING UP) v
BOOTH & ANOR (S219/2011)**

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Court appealed from: New South Wales Court of Appeal
[2010] NSWCA 344

Date of judgment: 10 December 2010

Date of grant of special leave: 10 June 2011

These matters concern the approach to be taken when determining the questions of duty of care and causation in asbestos cases.

Mr Booth worked as a brake mechanic between 1953 and 1983 and he subsequently developed mesothelioma. During his employment he worked with brake linings containing asbestos manufactured primarily by Amaca Pty Limited (under NSW Administered Winding Up) ("Amaca") and Amaba Pty Limited (under NSW Administered Winding Up) ("Amaba"). There were also several other short exposures to asbestos which were unrelated to his employment.

The trial judge found that a duty of care was established because, by 1953, it was reasonably foreseeable that a person in Mr Booth's position may contract an asbestos-related disease. His Honour also found that adequate warnings on the dangers of asbestos had not been given. He further found that virtually all exposure to asbestos plays a cumulative and a causal role, and that Mr Booth's exposure to Amaca's and Amaba's products was therefore a material cause of his cancer.

The Court of Appeal (Beazley, Giles and Basten JJA) dismissed both Amaca's and Amaba's appeals, holding that no error had been demonstrated in the approach taken by the trial judge.

In both matters, the grounds of appeal are:

- The Court of Appeal erred in holding that any act or omission on the part of the Appellant caused Mr Booth's injury:
 - a) By declining to correct, or alternatively by approving, the primary Court's decision that causation could be established by reference to an increase in risk, even a small increase in risk;
 - b) By declining to correct, or alternatively by approving, the primary Court's reliance upon insufficient expert opinion evidence in respect of causation.