



HIGH COURT OF AUSTRALIA

Public Information Officer

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CSR LIMITED AND MIDALCO PTY LTD v ARTURO DELLA MADDALENA

A retrial of a former asbestos worker's claim for psychiatric injury was required to explore fully questions left unresolved by the original trial and an appeal, the High Court of Australia held today.

Mr Della Maddalena, 63, worked for either CSR or Midalco at the asbestos mine and mill in Wittenoom, in north-western Western Australia, for a total of three-and-a-half years from 1961 until the Wittenoom operation closed in 1966. He alleged that in the course of his work he was negligently exposed to asbestos, causing him to suffer asbestosis, pleural disease, respiratory degeneration, pain and breathlessness, and psychiatric injury. He claimed the psychiatric injury was caused by anxiety about his exposure to asbestos and a belief that he was suffering from asbestosis. At age 18, Mr Della Maddalena had followed his older stepbrother, Walter, from Italy to Australia to work at Wittenoom. Walter died of mesothelioma in 1988. In 1990, Mr Della Maddalena began to experience shortness of breath, chest pain and tiredness. Specialists found some presence of asbestos in his lungs. Mr Della Maddalena had seen friends die of asbestos-related diseases and all but four of the 13 people who had come to Wittenoom from his village had died of mesothelioma.

Doctors noted symptoms of depression and he was treated by psychiatrists and a clinical psychologist and also examined by Salvatore Febbo, a psychiatrist retained by CSR and Midalco. Mr Della Maddalena was kept under surveillance and videoed for 150 hours, of which 82 minutes was tendered in evidence at the WA District Court trial. The tapes showed him performing activities allegedly inconsistent with breathlessness or chest pain. The psychiatrists gave evidence that he was suffering from a major depression associated with significant anxiety arising from concern about the effects of asbestos exposure. His own two psychiatrists said their diagnoses were not affected by the videotape, but Dr Febbo said he changed his mind after seeing the tape as he believed Mr Della Maddalena's description of what he could do and not do was unreliable. Judge Michael O'Sullivan concluded Dr Febbo's opinion was to be preferred and dismissed Mr Della Maddalena's claim, holding that the evidence did not show he had suffered any physical or psychiatric injury. Mr Della Maddalena successfully appealed to the Full Court of the WA Supreme Court, which held that he did suffer from a psychiatric injury and remitted the matter to Judge O'Sullivan to determine damages against one or both of the two companies. CSR and Midalco appealed to the High Court against those orders.

The Court, by a 3-2 majority, held that the appeal should be allowed in part and ordered that the proceedings be remitted to the District Court for retrial. The Court held that the issue required an examination of why the psychiatrists differed in their opinions, not just a preference for particular witnesses over others. Because questions remained about Mr Della Maddalena's condition, the Court ordered a new trial of the action, rather than a hearing restricted to questions of which of the two companies bore liability and what damages should be awarded.

- *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.*