

Asbestos ruling lets smokers claim

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Workplace Reporter

Angela Restuccia well remembers her father coming home from work at Cockatoo Island throughout her childhood, his mane of black hair white with the asbestos fibres that, together with the cigarettes he smoked, took his life in 1999.

"My one job was to take his duffle bag out the back to the grass and shake it out," she remembers. "I remember Dad yelling out, 'Shake that away from you, don't let that dust get on you.' It's almost like they knew that it could be dangerous even back then."

After a six-year legal battle led by Ms Restuccia, her mother, Maria, has won compensation for the death of her father, Dominic, who worked as a painter and docker for more than 20 years from 1960.

The result could open the door for hundreds - perhaps thousands - of other workers with lung cancer who have been refused compensation in NSW for exposure to asbestos because they were smokers. Under the ruling they would have to have been exposed to asbestos for at least five years.

The Restuccias' legal team, from Turner Freeman, a firm that has specialised in dust diseases, was able to demon-



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ing and asbestos exposure compounded to cause the lung cancer from which Mr Restuccia died, a precedent in the District Court.

"I find that it is more probable that the lung cancer which caused the death of Dominic Restuccia was itself caused or materially contributed to by two agents, namely cigarette smoking and asbestos dust inhalation, each not acting independently, but in a dynamic, synergistic relationship," Judge Chris Geraghty wrote in his decision.

He found that throughout his career Mr Restuccia had probably suffered moderate exposure to asbestos dust for a total of five years and smoked about one packet of cigarettes a day.

Most of the asbestos to which he was exposed was in insulation used in merchant and naval ships.

"They called it dirty money," his daughter said yesterday. "They did the tough jobs no one else wanted to do. He was new to Australia; he didn't have a lot of English."

The Dust Diseases Board fought the case so ferociously that at one point Judge Geraghty asked its counsel why it was spending more than \$1 million fighting a \$100,000 compensation claim.

"I think they have fought so hard because they wanted to make it difficult for workers in that situation; they wanted to limit the amount who could make the claim," said the Restuccias' lawyer, Joe Calabrese, last night.

"The board has made it just too tough for these people," he said, noting that smoking was more common among blue-collar workers. "I call on the chairman to go back and reassess any application made from a person with lung cancer who was refused compensation. The workers, the widows, should not have to; they should."

Mr Restuccia's widow, Maria, won an as yet undetermined lump sum as well as a pension and payment of her husband's medical bills. Costs were awarded against the board.

Ms Restuccia says the decision has come too late for most of her father's former workmates, whom she sought out in the hope they could testify in the case. "Most of them had died. Do you know how it was to knock on someone's door and have someone's wife say, 'No, he is dead. He died from lung cancer?'"