

Asbestos ruling lets smokers claim

Nick O'Malley
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 demonstrate that the effects of smok-



Angela Restuccia... father's workmates had died.

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?'"

Asbestos payout to top \$1bn

EXCLUSIVE

By JOE HILDEBRAND
Work and Family Reporter

THE State Government could be liable for more than \$1 billion in extra compensation for thousands of asbestos victims it abandoned because they were smokers.

A *Daily Telegraph* investigation has found that a recent landmark court decision could hit the Government's coffers at a time when it is already under massive financial pressure.

For years the Government's Dust Diseases Board had rejected the claims of hundreds of victims of asbestos-related lung cancer because the workers were also smokers, even though most asbestos workers smoked.

But in a case brought against the board, the District Court ruled asbestos exposure multiplied the cancer risk in a smoker and that the board had to pay compensation.

Medical experts spoken to by *The Daily Telegraph* estimate there could be between 6000 and 12,000 sufferers of asbestos-related lung cancer diagnosed by 2020.

With a typical payout of about \$200,000, if just 6000 came forward it would cost the Government \$1.2 billion.

Epidemiologist Doug Henderson, an international expert on the link between asbestos exposure, smoking and lung cancer, said smoking was extremely common among the blue-collar workers exposed to the poisonous dust.

That exposure did not just add to the risk of lung cancer but could also multiply it, he said.

Professor Henderson said the Dust

Diseases Board had grossly under-recognised lung cancer victims on the basis they were smokers.

Medical evidence suggests there are up to two cases of asbestos-related lung cancer for every one case of mesothelioma. There have been recent claims that the ratio could even be three to one.

Yet the Dust Diseases Board paid out just 300 claims for lung cancer compared to almost 1800 mesothelioma victims from 1968 to 2004. Last year it handed out 1555 mesothelioma payments compared to 170 lung cancer payments.

"Most of the workers in the relevant trades were cigarette smokers and most of the lung cancers related to asbestos are related to the combined effect of cigarette smoke and asbestos," Professor Henderson said.

"[But] there's a significant under-recognition of asbestos-related lung cancers by the board. It's about one tenth of the accepted level."

Joe Calabrese, the lawyer from Australia's largest dust disease legal firm Turner Freeman who successfully took on the board in the District Court, said the ramifications would be enormous.

"This decision could open the door for many hundreds and maybe thousands of workers in similar situations to receive justice," he said.

Australian Manufacturing Workers Union secretary Paul Bastian himself worked at the asbestos-ridden ship-building works on Cockatoo Island where many of the claimants are expected to come from.

He said as late as the 1970s about two-thirds of the 3000-odd workers there were smokers.

The union was in the process of alerting all its members he said.

The Dust Diseases Board and WorkCover declined to comment.

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Watershed asbestos win

Compensation pay-out to Inner West family may have major implications. Report SOPHIE BLAKEMORE

Hundreds of NSW workers who developed lung cancer after exposure to asbestos, but who were refused compensation because they were smokers, could be eligible for pay-outs after a landmark District Court ruling.

Judge Chris Geraghty has ruled that an Inner West widow should receive compensation after her husband died of lung cancer in 1999.

Dominic Restuccia, a smoker, worked as a docker and ship painter on Cockatoo Island on and off for 20 years.

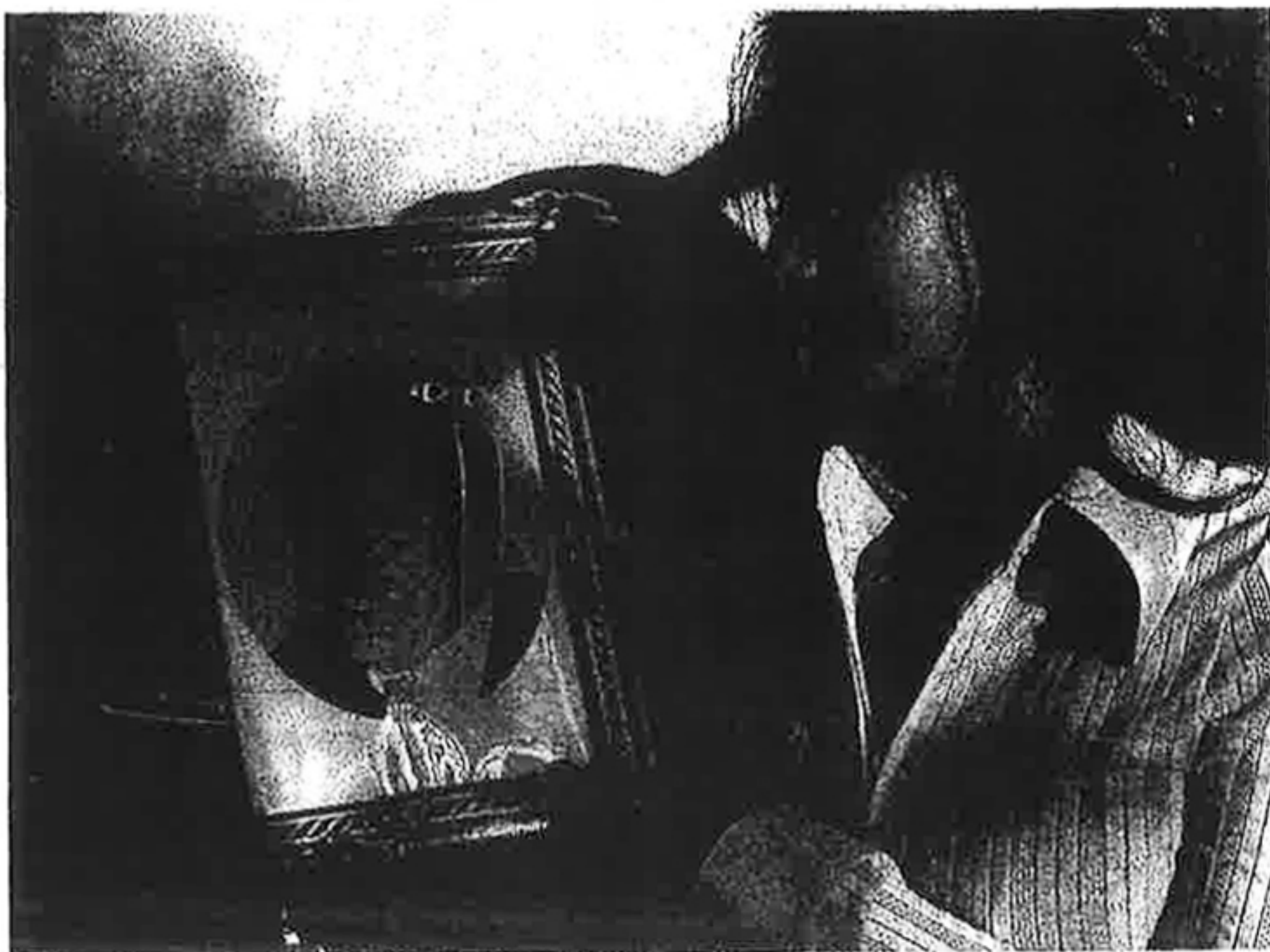
The judge found he probably suffered "moderate" exposure to asbestos fibres for five years and smoked a packet of cigarettes a day.

Despite the Dust Diseases Board putting up \$1 million to fight the case, Judge Geraghty found asbestos was a contributing factor to Mr Restuccia's illness and subsequent death.

"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," he wrote in his decision.

Mr Restuccia's daughter, Angela, who fought the case on behalf of her mother, Maria, said she was angry it had taken \$1 million of taxpayers money to prove.

"I had to see this through as it was my father's dying wish and I hope this decision prevents other families going through what we have been through," she said.



Angela Restuccia with a photograph of her father, Dominic.

Photo: Jelly O'Sullivan

A NSW official at the Construction Forestry Mining and Energy Union (CFMEU), Tim Vollmer said this could be the first time such a ruling had been made.

"It is incredibly significant because in the past the attitude has been if you were a smoker you have no right to compensation," he said. "This now means there is a whole group of workers who smoked and were exposed to asbestos who will be eligible to make claims."

The Restuccia's lawyer, Joe Calabrese of

Turner Freeman, which specialises in dust disease cases, said this had set a precedent for future claims.

"The board has made it too tough for workers in this category to make compensation claims," he said.

"Hundreds, if not thousands, of workers who were exposed to asbestos could now benefit as a result of this decision."

Mr Calabrese said his own father suffered from asbestosis after handling raw asbestos as a factory worker in the 1960s.