

参考資料

参考１：DDT 手続に前置される請求解決プロセスの具体的手順

参考２：「2007 年 2 月時点での NSW 州粉じん疾患裁判所の損害賠償判決」一覧の読み方

参考1: DDT 手続に前置される請求解決プロセスの具体的手順

DDT において中皮腫以外の疾患のケースに適用される非緊急事案について、2005 年に、DDT 手続に前置される手続として導入された請求解決プロセスの主な手順は以下の通りである。

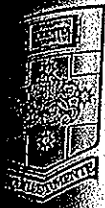
- (a) 請求者が「項目書類」(Statement of Particulars)という標準フォームを記入し、完成させる。これには、専門家の報告書やその他の証拠が含まれる。請求書類 (Statement of Claim) とともに利用される。
- (b) 被告は、「回答」(Reply)という標準フォームを準備する。これは、上記請求書類に記載されている情報を認容したり、争点としたり、更なる情報を要求したりするもので、被告が争う事項を根拠付ける文書とともに利用される。
- (c) 被告は、実践可能な限りただちに、他の被告と合流することが要求される(複数を被告とする場合)。
- (d) 非公式の和解は、いつでも解決の選択肢となる。
- (e) 複数の被告は、賠償責任の分担に関して合意する。合意に至らない場合、独立の第三者が標準化された推定手法を利用して、分担を決定する。その決定は、争うことができるが、請求が和解された後、あるいは、裁判所による決定が下された後にのみ可能である。
- (f) 請求が非公式に解決されない場合、強制的調停 (compulsory mediation) が請求者と被告の間で持たれ、認定を受けた調停者により調停が行われる。請求者は、病状が深刻でなければ、調停に出席する。被告側は、調停者により要求があれば、調停に出席しなければならない。
- (g) ほとんどの請求は、この調停の結果として処理される。
- (h) 複数の被告が後日、負担割合の是非を争うという理由で宣誓証拠を要求した場合、請求者は、調停の最後に宣誓証拠を与えるよう要求される。ただしこれは、請求者の請求がすでに被告側と解決済みである場合に限られる。
- (i) 当事者は、和解の申し出 (offers of compromise) を用いることによって、和解を奨励することができる。

出典) James Hardie Industries NV, “Explanatory Memorandum”, Feb 2007.

参考2:「2007年2月時点でのNSW州粉じん疾患裁判所の損害賠償判決」一覧の読み方

NSW 大学法学部法学教育継続センターは、NSW 州 DDT の判決を分析した『粉じん疾患請求』という報告書を出している。次頁以降に訴訟一覧を添付する。ここでは、一覧を読むに当たって留意すべき点を以下にまとめる。

略語	意味
Meso	中皮腫
A	石綿肺
ARPD	石綿関連胸膜疾患
LC	肺がん
Age	判決時点または死亡時点での被害者側の年齢
LCA	キャンベル卿法 の請求 「他人の死亡に関する不法行為により損害賠償を受けることはできない」というコモンローの原則を、当該死亡者の遺族等限られた人々に賠償請求の資格を付与することで修正する法。
p	過去
f	将来
Ops	立替（自腹）支出
FMC	将来の医療費
Eco Loss	過去の経済的損失及び将来の収入能力の喪失
GvK	グリフィス対ケーケメイヤー（Griffiths v Kerkemeyer）損害 …賠償請求の主題となる傷害の結果として、サービスを提供することができなくなったために、サービスの費用について原告に補償すること。これらの損害額は、市場のレートを適用して算出される。
SvG	第三者に対するサービスに関する損害賠償（サリバン対ゴードン（Sullivan v Gordon）損害） …過失の結果、傷害を負った原告に対して、家庭サービスを提供する能力が損なわれたことに対する損害を回収するため、賠償を認める原則。ただし、2005年10月21日、最高裁判所は、この原則が損害賠償額の評価において長きにわたり確立されてきた原則と一致するものではないと判示し、本原則は却下された。
*	合意された総額
LEL または L	余命の喪失
NA	認容されず
Place of Tort	不法行為地
GDs	General Damages（通常損害賠償額）



THE UNIVERSITY OF
NEW SOUTH WALES

Faculty of Law
Centre for Continuing Legal Education

Dust Diseases Claims

Wednesday 14 February 2007

Damages judgments of the Dust Diseases Tribunal of NSW at February 2007

Key

Meso. – Mesothelioma

A – Asbestosis

ARPD – Asbestos related pleural Disease

LC – Lung Cancer

Age – Age of injured party at date of judgment or death

LCA – Lord Campbell's Act, claim

p – past

f – future

Ops – Out of pocket expense

FMC – Cost of future medical care

Eco Loss – Past economic loss and future loss of earning capacity

GvK – Griffiths v Kerkemeyer damages

SvG – Damages for services to third parties (*Sullivan v Gordon* damages)

* – Sum agreed

LEL, L – Loss of expectation of life

NA – not allowed

Name	Judge Date of judgment	Injury	Age	Place of Tort	GDs (000)	Ops & FMC (000)	Eco. Loss (000)	GvK (000)	SvG (000)	Comment
Sinclair	O'Meally P	A/ARPD	75	SA	60	25	NA	5	1	
Miller	Curtis J	Meso	75	NSW	185	17 * 8	NA	39		The judge allowed \$20,000 for LEL, noting that although 75 years of age the plaintiff was in very good health and had many years of active life before her
Lake	Johns J	Meso	57	NSW	180	-	151	28	24	The judge allowed 20,000 for LEL Lengthy discussion by the trial judge of the factors leading to his conclusion with respect to general damages – including reference to complication of thrombosis Allowance for care provided by local congregation Commercial value of foregone services to aged mother permitted
Parker	O'Meally P	A/ARPD	C66	SA	75	3 (past) 16 (resp) 5* (psych) 5 (medic)		12.75 63 (fut)	2.6	20% respiratory disability referable to asbestos exposure; Anxiety disorder, some portion of which a consequence of asbestos exposure. At least ½ the factors contributing to psychiatric condition unrelated to asbestos exposure. Risk of developing carcinoma taken into account in general damages Amounts for ops, services and care discounted by up to 50% to reflect non compensable conditions
Thompson <i>Appeal allowed SvG damages removed</i>	O'Meally P	Meso	C60	SA	165	18*	20	53*	165*	Compensation for fear of contracting asbestos related disease sought and rejected [21] Situation may be different if evidence that plaintiff suffers from a discrete psychiatric disorder. Whilst the entitlement to SvG damages was disputed the figure was agreed if permitted.

Name	Judge Date of judgment	Injury	Age	Place of Tort	GDs (000)	Ops & FMC (000)	Eco. Loss (000)	GvK (000)	SvG (000)	Comment
Curry	Curtis J	Meso	52	NSW	190	-	300	40*	10*	Age of the plaintiff considered significant with respect to general damages and coincident health also considered Finding that plaintiff would have spent \$222 on his personal care. Held that the plaintiff would work to 70 but future sum discounted by 20%
Nottle	Curtis J	Meso	66		190	12* 25*	-	1* 35*	9.7	The general damages reflects the torment of the mind suffered by the plaintiff Services claim reflects the intended interior and exterior painting of the plaintiff's dwelling \$20000 for LEL
Hill	O'Meally P	Meso	70	NSW	175	-	-	5 22* (fut)	14	Plaintiff suffers from peritoneal mesothelioma Evidence that peritoneal mesothelioma not as painful as pleural mesothelioma but recurrent draining of abdominal fluid will be necessary \$10,000 for LEL The plaintiff's wife suffers from a series of medical problems. Because of the health of the plaintiff's wife, held that the plaintiff unlikely to spend the last month of his life at home.
Virtu	O'Meally P	A / LC	76	NSW	150	-		16*	50	The deceased's wife seriously disabled. Contended that deceased is primary carer. His honour considered the health of the deceased before the onset of lung cancer and the family circumstances in which the deceased and his widow lived in determining the commercial value of the care that would have been provided by the deceased but for the compensable condition.
Lawrence	O'Meally P	A	76	SA	75	.3* .9*	-	47* 33.6*		S11A of the DDT Act expressed to be a substantive provision only affecting NSW cases. Liberty to parties to revisit the question if the HCA takes a different view In considering the amount of general damages His Honour considers the contribution to the plaintiff's respiratory disability of non-compensable factors as well as the plaintiff's cardiac health and the effect of a back injury. Account also had for the remote chance of carcinoma or mesothelioma. \$5000 awarded for LEL
Strachan	Johns J	A/ARPD	66	NSW	125	-	-	38 97		The plaintiff underwent several operations and was considerably disabled. His AR disability was likely to give rise to ongoing care for 15yrs
Kennedy	O'Meally P	Meso	77	Qld	100	35* 47.5*		10* 35*		Discussion of the means by which general damages ought be assessed in a state other than NSW. Held: One common law of Australia
Cattanach	O'Meally P	Meso	81	SA	140	41*	-	40*		LEL \$5,000

Name	Judge Date of judgment	Injury	Age	Place of Tort	GDs (000)	Ops & FMC (000)	Eco. Loss (000)	GvK (000)	SvG (000)	Comment
Routley	Walker J	Meso	86	SA	175	3.6 22.3	-	42 91	141	LEL \$6,000 Substantial contest in relation to the plaintiff's life expectancy SvG compensation provided for services of the wife on account of the illness of her husband who had a "litany" of health problems Comments made critical of the OT called for the Defendant in relation to the reasonableness of her assessment
Shuttleworth	Duck J 26 Feb 03	Meso	56	NSW	160	7.2	19.4 196 [dep]	32	208	Lengthy consideration by the TJ in relation to the treatment of the evidence of exposure including statements made by the deceased shortly before his death. Period of suffering shorter than in some cases, influencing the finding with respect to general damages Adopts the Luntz approach to dependency
Thomas	Curtis J 4 Mar 03	A	63	NSW	100			10.5 20	6.5	Principle portion of the Plaintiff damages is psychological illness caused in part by exposure to asbestos
Nickel	Armitage J 24 Mar 03	ARPD	62	NSW	60					Disability due to asbestos somewhere between 20% and 25%.
Piccoli	Duck J 1 April 2003	Meso	72	NSW	160	3	-	19 22	-	Contest over GvK. Competing reports. Resolved by the TJ by taking 80% of the report of Ms Tchan for the past and somewhere between 75% and 80% for the future
Every	Armitage J 2 April 03	Meso	58	NSW	185		50	90	5 20	Future care claim moderated on account of the "give and take" expected in the domestic relationship Claim made for lost services with respect to rental properties and around the home DDB payments received deducted from award
Karakasch <i>Appeal dismissed</i>	Maguire J 17/04/03	Meso	56	Vic	200 20	24.4 11.9	21.9 369	20.3 40.8	5	Period of illness: Oct 02 – Oct 03; Pl. father died of meso & close family life factors in GDs. Pl. retirement probable at 70. Replacement labour approach applied over obj of D.
Third	Duck J 9 May 2003	Meso	59	NSW	170	4.3	138	45		
Dyer	Curtis J 26 May 03	Meso	73	NSW	155			24		The relatively short duration of suffering by the deceased and his age, impacted upon the TJ's assessment of general damages
Marden	Curtis J 28 May 03	Meso	66	NSW	195		5	9 47	25	The plaintiff had a very young son about whom he was "exquisitely troubled" The SvG claim concerned care that the plaintiff would have provided his son by way of education

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Zanier	Curtis J 11 July 2003	Meso	57	NSW	175	46	15	35		Discussion by the TJ of the liability of BHP in 1963. Relying on <i>Baldwin</i> his Honour observed that the circumstances of BHP were not exceptional and the risk was foreseeable. The failure of the deceased to apply to the DDB is not considered to be a failure to mitigate on account of an absence of evidence
Burton	Curtis J 13 Aug 03	Meso	81	SA	90	3 4 (funeral)		15	6	Plaintiff spared the worst prospects of mesothelioma because of a heart attack. His physical suffering was for a relatively short time. His health prior to mesothelioma was not strong
Gaunt	Curtis J 28 Aug 03	Meso	60	NSW	220	28* 20*	12 136	50		LEL \$21,500 The plaintiff suffered from severe claustrophobia and was in severe pain. The greater part of the plaintiff anguish at the time of trial was mental anguish. His family were very fit.
Hart	Armitage J 11 Sept 03	Meso	66	WA	150	25 4	24		245	The plaintiff and deceased lived on an 83/4 acre property which was maintained by the deceased.
Azzopardi	O'Meally P 18 Nov 03	ARPD Psych.		NSW	30	2 5				S11A/ onset in 1998/ slight symptoms Panic disorder not allowed/ minor anxiety state referable to ARPD
Knopke	O'Meally P 9 Dec 03	ARPD A	C66	Qld	80 5 L	11.4* 59.7*	15*	35.8*		Discussion of criteria separating A from UIP Symptomatic since April 2002/Final judgment/Progressive in 6 yrs Risk of Meso/LC 10%
Underwood	Armitage J 15 Dec 03	Meso	62	Qld	185	15* 35	13 40	10 75		The trial judge was presented with competing evidence with respect to both GvK damages and future medical care. Generally, his honour chose to compromise the ranges he was offered by the experts called by the parties. The TJ considered the approach to <i>Husher</i> when the plaintiff was a participant in a true partnership with partners who themselves had control over the operation of the business. Held that the actual income disclosed by the business was the safest measure of the plaintiff future earning capacity.
Varney	Ashford J 17 Dec 03	Meso	68	SA	-		84	33	203	Her Honour determined that the plaintiff was entitled to the loss of pension benefits that would have flowed into the household but for the death of the deceased. Further held that the plaintiff was entitled to the commercial value of lost services that the deceased would have provided both to the plaintiff and to his family
Kernebone	Johns J 12 Feb 04	Meso	63	NSW	180					\$10,000 for LEL The balance of the plaintiff's entitlement was agreed at \$110K.

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Hart	Johns J 20 Feb 04	Meso	61	WA	200	2		50 30	3	The plaintiff underwent radical surgery at the hand of Prof. McCaughan, which was ultimately unsuccessful and had a very difficult recuperation His Honour concluded that he did not have enough evidence in relation to the plaintiff's obligation to his aunt to justify an award of SvG damages. He allowed the plaintiff's claim in relation to services intended for his spouse.
Lynch	Curtis J 24 Feb 04	Meso	56	NSW	200		277 LEC 136 Super 28 (MV)	50		The plaintiff was a member of a defined benefit superannuation fund. It was submitted that superannuation should be calculated at the rate of the GSC rather than the actual loss suffered by the plaintiff. Submission rejected.
Hurst	Duck J 22/4/04	LC	61		175	TBA 5,593	NA	11.5 30	NA	HH accepted, when considering GvK; 24 hours per day for the last 4 weeks, 12 hours per day for the previous 4 weeks and an average of 3 hours per day for the balance of the Plaintiff's claim.
Griffith	Duck J 25/2/04	A/ARPD	59	NSW	80	NA	Nil	Nil	NA	HH did not accept that the Plaintiff was as seriously ill as he contended and hence rejected the Plaintiff's claim for LEC, and GvK.
Routley	Walker J 2/3/04	Meso	86	SA	175 6 L	3.6 22.3		41.9 91.3	141.2	Period of illness: Aug 03 – Aug 04; F/T personal care allowed for 22 wks Disabled spouse. 4 hours per day for 5 yrs allowed
Russell	Duck J 1/4/04	A/ARPD	C59	NSW	25	0.4 9.6	NA	Nil	NA	HH determined on balance of evidence that the Plaintiff's condition was mild and was not satisfied more probably than not that the condition would worsen despite the presence of early asbestosis. HH thought that prospect was possible only. Mild disability from 2001.
Nasr	O'Meally P 7/4/04	ARPD	66	NSW	40	NA	NA	NA	NA	10%-20% compensable impairment 1985 pleural effusion held not to be causally connected to Plaintiff's asbestos exposure. Psychiatric condition not accepted as related.
Hurst	Duck J 22/04/04	LC	61	SA	175 20 L	TBA 5.5		11.5 29.4		Symptomatic since 1999, more significant since 2003; Chemo; metastatic disease Care: Last 4 wks – 24 hr care; 4 wks prior – 12 hr per day; Bal. 3 hrs per wk plus allowance for gardening.
Bathis	Walker 28/4/04	ARPD	77	NSW	65	0.95				Trial proceeded in the absence of the Defendant. Medical evidence suggested reduction in diffusing capacity assessed at 30% of the whole person. Suggestion that non-compensable respiratory changes impacted on disability.
Price	Curtis J 22/06/04	Meso	74		150 12.5	1.2* 9.3		35.2		Period of illness Mar – Aug

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Ghaleb <i>Appeal allowed. Remitted for re-hearing</i>	Walker J 14/7/04	ARPD	72	NSW	136	NA		119	59.4	Plaintiff reached additional settlement of \$50K plus costs with other Defendant. Respiratory impairment assessed at 60%. HH held that obstructive and restrictive illness working synergistically to create impairment. Not satisfied that Defendant discharged evidentiary onus to disentangle confounders. Satisfied that total loss attributable to conduct of First Defendant in time, because of the timing of pleural effusions Measurably respiratory impairment since 1988. No reduction in life expectancy expected \$36K in general damages for past pleural effusions. Plaintiff primary carer of disabled wife.
Amato	Curtis J 21/07/04	ARPD A	80	NSW	50 3 L			2 3		Breathless on minimal exertion; Severe emphysema pre-dating ARD; other inter-current conditions; Pre 06/03 15% due to ARP; Post 06/03 30% due to ARP Greville preferred to Alpers & Antic Liberty to apply wrt care/FMC if DDB do not cover. Allowance for car travel
Di Giuglio	Duck J 4/8/04	Meso	69	NSW	185			50		Plaintiff suffered from both pleural and peritoneal mesothelioma. Example of HH inclination to award \$1,000 per year for LEL. No allowance for care whilst Plaintiff hospitalised.
Richardson <i>Appeal Dismissed</i>	Duck J 2/9/04	Meso	71	SA	180	2.1		41.3	23.7 (LCA)	HH held that full Gokic rate applies to GDs between death and trial. Applied 1K pa for LEL Applied 25% discount to future services claim brought by widow.
Lawrence	Curtis J 10/9/04	Meso	72	NSW	135	NA		25 23.5	Nil	Plaintiff suffered from peritoneal mesothelioma. Underwent radical surgery. Suffered a stroke. HH held mesothelioma and treatment a cause of stroke. Plaintiff's treatment provider opined that he had a 50% chance of surviving 5 years and if he did, thereafter he would enjoy a normal quality of life. HH applied Malek principles to reduce GDs from \$180K to \$135K on the basis that the Plaintiff had a chance of surviving more than 5 years. Applied similar reductions to LEL. Preferred assessment of Ms Shanahan to Ms TChan. Declared SvG claim 'without merit'. Read CA in SvG narrowly.
Weckert	O'Meally P 28/9/04	Meso	68	SA	160	15.9 4.6		72	7	Per HH – impossible to assess entitlement to SvG by mathematical process. Allowance conceded by Defendant, awarded. GD's amount conceded by Defendant, awarded.
Morgan	Curtis J 29/10/04	Meso	58	SA	190 22	1 25	9.3 120	10 10		Period of illness: 2002 – 30/03/05; Chemo; Major part of suffering is mental.

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Ridgway <i>Appeal allowed Limitation pt Remitted</i>	Walker J 2/11/04	ARPD	C58	SA	20 55	Nil 51.7	187	201.4		15% asbestos related impairment Presence of other non-compensable difficulties Disease held to be progressive and P likely to be 'relatively disabled' in 5-10 years time If not progressive GD range of 20 – 40K. Awards 20K for past GDs 5K for LEL Rejects argument that no GvK claim arises wrt tasks previously performed by P's spouse.
Bartowsky	Curtis J 5 Nov 04	Meso	69	SA	170	17.5 50		6 37	21.5	2 years of disease Prefers Aitken to Morgan (\$166K) for care Wife unwell. Made allowance for SvG but applied 20% contingency.
Harmer	Duck J 10/11/04		64	Qld	180 22	8.6* 23.5 FMC 7*	14.3*		90.3	Period of illness: Dec 03 – Nov 05; Chemo – providing some benefit; Care: Last 4 wks 24 hr active care; 4 wks prior 24 hrs passive care; 4 wks care after radiotherapy; 2 x Nine wks f/t care after further Chemo; 6 hrs per day for balance SvG allowance for services to able bodied spouse.
Best	Curtis J 24/11/04	Meso	79	NSW	150	2.3		50	NA	Defendants conceded 15 for LEL.
Mathwin <i>Appeal dismissed</i>	Curtis J 7/12/04	Meso	85	SA	120	107		20		GDs lower because of age of Plaintiff and relative brevity of suffering ie March – June. LEL = 5K
Longfield	McIntyre AJ 16/12/04	Meso	53	NSW	170	NA	11.5 3 172	20		HH considered youth of Plaintiff relevant to GD assessment even though period of suffering relatively short. Allowed 20K for LEL Took robust approach to determining LEC where historical information specific to the plaintiff was limited.
Trehearne	Duck J 17/12/04	Meso	77	SA	175 8 L	26.4* 15*		50*		Period of illness: Sept/Oct 02 – Dec 04; 2 x Chemo; Radiotherapy; Morphine
Cremer	Duck J 21/12/04	Meso	86	NSW	150			25*		12months of disability before death of plaintiff 4K for LEL
Murrell	Duck J 8 Feb 05	A/ARPD	70	NSW	35	.8 7.2		Nil		10% respiratory incapacity; Not DDB accepted; Respiratory problems from 2000; Unrelated medical problems incl cardiac, knees and back; Condition unlikely to worsen but possibility necessitates medical supervision HH declined to order GvK damages in part cause of the give and take of the marriage relationship No reduction in medical surveillance costs for chance of later DDB acceptance.

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Winton	Curtis J 9/2/05	Meso	72	NSW	170	22.7* 28.6		5* 5		Period of illness Aug – Apr 05 GvK award reflects plaintiff lived alone. Likely to be institutionalised for end stage.
Clyne	Curtis J 16/2/05	Meso	57	NSW	190 25 L	4.2* 5*	26* 85* 20	8 20*	23.6	Period of illness 10/03 - 09/05 20K allowance for contingency of work after 65 \$1.5 for home mods
Ness	Duck J 17/3/05	LC	73	NSW	145 16 int 5 L	20.8*		8.4* 3.7 23.3 114 f		Never smoker; LC on background of pleural thickening and fibrosis but normal asbestos fibre count. Breathless for 10yrs; painful resection surgery; 50% chance of survival Fut care calc. - 50% care if survives & 50% care if not
Hatzistergos	O'Meally P 31/03/05	ARPD	78	NSW	55			28.7 2.5 fc 12.5 fs		Breathless for 10yrs / worsened for 5 yrs/ relationship between a surgery and ARPD Bryant preferred to Gardiner s11A award
Williams	O'Meally P 12/05/05	ARPD A	79	SA	60	.09 15*		13* 11*f		symptomatic since 2003 mild asbestosis - some progression of respiratory dysfunction accepted 40% reduction in lung func./ some pain on exertion 5 - 10% risk of meso or LC Full & final award
Latz	O'Meally P 19/05/05	Meso	69	SA	150 15 L	23* 2.5 fmc 25 fops		.9 119.4 16.8 f	21.5	period of illness 09/04 - 06/05; surgery; panic attacks 24 hr care since 09/04 hosp discharge non residential parent of school age children
Worbs	Curtis J 03/06/05	Meso	69	NSW	160	11.3*		30.7	NA	Interest on GD @ 9% post death Illness from 05/03 – 04/04 Discussion of principles of SvG in context of able-bodied 3 rd parties – not satisfied that plaintiff "possessed any need to perform services ..."
Roufas	John AJ 23/06/05	ARPD	60	NSW	75 14.2 int	1.7 3.3	203 260	6.4 13.8		Increasing breathless for a number of years from about 1990. TLC 60% of predicted Detailed consideration of lost earning capacity principles comparing loss of profits with replacement labour approach. Singularity of plaintiff's contribution to business' income, critical. [42] 20% vicissitudes 60 - 65 S11A award
Bricis	Duck J 15/07/05	ARPD A PI Meso Pr Meso	79	NSW	180 8 L	4.8 2		45* 14.5	110 care 14.5 grdn	A – DDB accepted 2001; Meso 06/04 – 09/05; chemo treatment Wife disabled. SvG discussed – Calculation of need could be included as separate head or within GDs. 2k allowance (conceded) for chance that Plaintiff intended to paint his house

Name	Judge Date of judgment	Injury	Age	Place of Tort	GDs (000)	Ops & FMC (000)	Eco. Loss (000)	GvK (000)	SvG (000)	Comment
Jensen	O'Meally P 23/08/05	A	70	SA	12.5 5L	.4p 5.5 f		2.5 f		Medical experts evidence taken concurrently Diagnosis dispute. A mild 2 yrs symptomatic; A progressive; 5% risk of meso/LC; breathlessness contributed by non-compensable factors; 9 further years FMC – conceded amount GvK cushion
Buttner	O'Meally P 24/08/05	ARPD A	64	SA	60 2.5 L	.5 18				Def failed to discharge onus of showing disability from arthritis or asthma. HH satisfied disability related to both ARD and smoking Life expectancy shortened by 5 yrs ½ due to A Discussion of approach to apportioning damages in divisible disease when earlier settlement. V for % of assessed damages = % of exposure with D
McNeil	Duck J 05/09/05	Meso	78	NSW	150 7.5 L	17 5.4 aids 16 fmc				Symptoms from mid-2003 to Apr 06 5K allowance for chance of chemo
Stiles	O'Meally P 27/09/05	Meso	64	NSW	150 12.5			30*	3	Duration of illness Nov 04 – Aug 05 (Severe pain from May 05) LEL reduced to reflect risk of death caused by other conditions
Nielsen	O'Meally P 6/10/05	ARPD A	65	NSW	90 5 L			45		S11A award Allen preferred to McEvoy 40% respiratory impairment ¼ due to obesity Moderate A – occasional pain; breathlessness at rest; progressive & life shortening (considered significant in assessment of GDs) Presence of several inter-current conditions; Symptoms from about 2002 Leave to apply wrt FMC if DDB application declined
Hutton	Johns AJ 8/12/05	A	77	NSW	110 Incl L			28 26		Early signs of A in 1997; took hold in 2002; progressive Severe A at hearing; oxygen dependent; Life expectancy < 6 months Presence of inter-current conditions incl. heart & back. HH believe conditions not impacting on P 'split dif' betw Walker & Tchan
Crane	O'Meally P 16/02/06	A, Anxiety & Depression	55	S11A applied	100*	5.5*	432*	20*		Preliminary discussion of whether D estopped by earlier VEA proceeding from denying injury. Held; No. Malec approach to LEC rejected. 10K for LEL 25% for LEC vicissitudes; considering other health issues. Liberty granted in relation to FMC if Gold Card denied.

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Re: Doughan*	Curtis J 23/02/06	Meso*	59	NSW	220*		1,151 *	99*		*CC between Amaca & BI. Q of reasonableness of compromise. Per Curtis – GD & LEL Figures within reasonable range. % of business profits plus replacement labour for LEC, appropriate.
Adams	O'Meally P 03/05/06	ARPD, A		NSW	40			5		Extent to which asbestos makes a contribution to ARP determined by duration & intensity of exposure. First symptoms – Feb 1988, but P remains fairly active. Breathlessness caused by both ARP & cardiac. Can't disentangle. Breathlessness cause by cardiac condition ignored. DDB accepted. S11A judgment.
Shepherd	O'Meally P 01/06/06	ARPD	66	NSW	75					Evidence of P about work history not accepted. 5% of ARP attributed to D. 50% disabled according to DDB. GvK & LEL not allowed on basis that P's accepted exposure not sufficient to create need.
Abraham	Curtis J 21/06/06	Pleural Plaques	69	QLD	150	14.6* 45*		50*		Significant pain associated with pleural plaque impingement. P accepted as witness of truth. Case accepted as most extreme. P suffering unremitting, severe & worsening pain.
Davies	Duck J 07/07/06	Occup. Asthma	42	NSW	130	20.1*	142.5 218.8 56 Super	13.4		Consideration of whether asthma caused by wheat dust is Schedule 1 disease. Held: Yes. P Symptoms since 1989; 45% WPI. Interest on 60K GDs over 17 years. Calculation of eco loss for P with residual earning capacity, applied.. Assumed DDB acceptance.
Callaghan	Curtis J 26/06/06	ARPD, A	65	QLD	100	3.3 38.5		35.8		Dr Allen preferred to Dr McEvoy – "appears to have more specialised experience". A/ARP likely to cause death. Interest on 20K. Finding of A critical to allowance for FMC. Allen's opinion discounted for possibilities, vicissitudes & deferred. Same approach applied to GvK. Full & Final judgment.
Todd	Kearns J 20/09/06	A	85	NSW	120	7.1		135 23.9		Exposure at D and at other location. Consideration of relative contributions. Held; 75% D responsible. P's life expectancy less than 3 months. Oxygen dependant. Co-morbidities. House bound, Anxious.

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										<p>Interest not allowed until illness significant in 2000.</p> <p>Discussion of s15B of CLA</p> <p>LEL – 6K</p> <p>DDB accepted.</p> <p>SvG allowance beyond P's death calculated at 50% of needs for P & spouse during balance of P's illness.</p>