

Conflict of Law

Group Action Afrika Al v Plc.

On 30 July, 1999 the Honourable Mr. Justice Buckley in the High Court of Justice (Queen's Bench Division) heard an application for a stay in representative actions on the grounds "forum non conveniens". The matter was *Group Action Afrika Et Al v Cape Plc.*


The litigation concerned claims by employees of South African subsidiaries of the British Company in respect of asbestos related diseases.

The class also contained people who lived in the vicinity of the mills, mines and factories. It was anticipated that the group action would eventually comprise of at least three thousand claims. The determination of the issue turned on the test, identified by Lord Goff in *The Spiliada* (1987) (1) A. C. 460, namely, whether there was another

available forum clearly and distinctly more appropriate for the trial of the action. Justice Buckley decided that South Africa was such a forum.

He stated "the operation of asbestos mines and mills in South Africa appears to have caused widespread injury, suffering and death over many years. An enquiry into the circumstances including local standards, conditions, regulations and state of knowledge of the parties and, if appropriate, assessment of damages to compensate the South African victims are overwhelmingly matters in which South African jurisdiction has far greater interest".

Further on he says, "even if the claimants here succeed in establishing a duty of care on the Defendant on the basis of decisions taken or policies laid down by it in England almost everything else about the case occurred in

South Africa. The mines were opened and the mills built there. If there were unsafe or dangerous conditions of work or emissions from those mines or factories inevitably that also occurred in South Africa. Injury, loss and damage was sustained in South Africa, albeit a few of the claimants now live outside South Africa. If it had been necessary for me to rely on this public interest factor in order to reach my decision and since I do not regard it as excluded from consideration by the decision in *Spiliada* I would have taken it into account and would have considered it to have had considerable weight in this case." 

Geoff Coates is a solicitor at Ryan Carlisle Thomas, 29 Lydiard Street Ballarat Victoria 3350, **PHONE** (03) 5331 7898
FAX (03) 5332 1910
EMAIL gcoates@rct-law.com.au

Helen Mendels Trading as Costing & Assessing Injury Management Services

ASSESSING, COSTING & EVALUATING MINOR & CATASTROPHIC INJURIES

- Direct liaison with the client
- Examinations and costing home care, equipment, nursing, housing and environmental requirements and social needs for life after an injury
- Holistic, qualitative and quantitative evaluations
- A thorough understanding of industrial issues, awards and market rates

Detailed, cost-effective reports based on a holistic approach. Call us at anytime **(02) 9344 4244 041 611 1246**

PO BOX 1780 BONDI JUNCTION NSW 1355 FAX (02) 9344 4165 EMAIL ilshelen@magna.com.au