

communications flowed in one direction—from complaining consumers to the expert to the manufacturer. Although the manufacturer had given the expert an instruction packet for settling claims, this information and any insight the expert gained about the manufacturer's settlement strategies were freely disseminated to the public.

Assuming the manufacturer had disclosed confidential information to the expert, the court said, the manufacturer had waived its confidentiality. The court reasoned that the manufacturer had repeatedly acquiesced to the expert's criticism of its vaccines in publications. Moreover, the manufacturer had not sought to disqualify the expert in another case until the plaintiff had challenged the genuineness of the manufacturer's confidentiality argument.

Additionally, the Court noted that in determining disqualification, courts should balance competing policy objectives. Preventing conflicts of interest and maintaining integrity should be balanced against ensuring that parties have access to experts who possess specialised knowledge, allowing experts to pursue their professional calling, and preventing unscrupulous attorneys from creating inexpensive relationships with potentially harmful experts solely to keep them from opposing parties.

The Court found that the expert was the leading specialist on the cattle vaccine defects and courts are reluctant to disqualify experts who possess useful specialised knowledge. Moreover, the manufacturer had not disclosed confidential information to the expert, and thus there was no conflict of interest nor would the integrity of the justice system be jeopardised.

Consequently, the Court denied the motion to disqualify the expert.

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PASSIVE SMOKING UPDATE

By: Roland Everingham, Cashman & Partners, New South Wales,.

A case alleging damages arising from exposure to environmental tobacco smoke has been commenced in the Dust Diseases Tribunal of New South Wales.

The Plaintiff alleges exacerbation of her asthma condition following exposure to other people's cigarette smoke on board an international flight.

The plaintiff suffered a severe asthmatic attack. Whereas her condition had been stabilized and attack free for several years she now suffers from ongoing asthma attacks.

The tribunal has exclusive jurisdiction for dust related diseases. the Tribunal has previously determined that asthma, which is a condition of the airways, falls within its jurisdiction.

The Tribunal deals with dust related conditions. The preliminary jurisdictional issue for the Tribunal to determine is whether, within the facts of the case, environmental tobacco smoke is a dust. Interestingly, Dust is not defined in the Act.

This preliminary question will be determined on 23 June 1994.

If the plaintiff is successful the Dust Diseases Tribunal will provide an expeditious forum for determining claims arising from exposure to environmental tobacco smoke.

The determination of the jurisdictional question will be reported in due course.