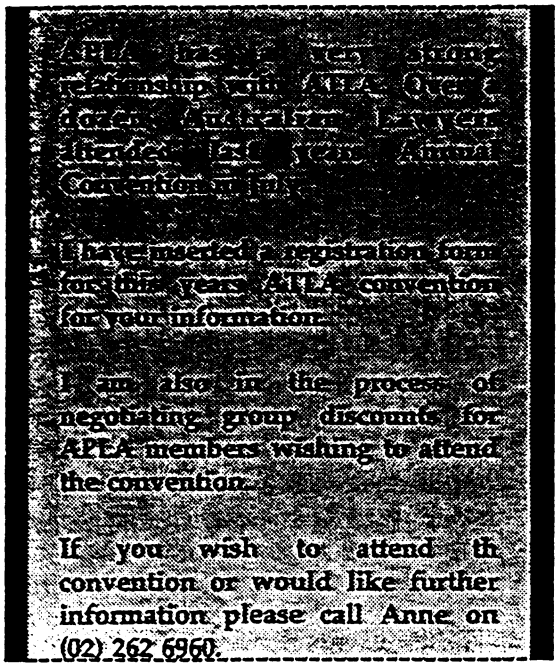
(cont)
window lock in rented premises after a rapist gained access to the premises through a defective window. In that case there was evidence of previous persistent request by the victim to the owner to have the lock repaired.

In the medical negligence field one of the numerous topics covered was the high incidence of complications in laparoscopic gall bladder removals, where surgeons accidentally snip the bile duct rather than the gall bladder duct which may cause peritonitis and other serious complications.

Most other injury topics were addressed. In addition to the formal program, many litigation groups met.

Litigation at Sunrise sessions were a bonus. Described as an "eye opening series of fast paced back to back presentations with up to the minute information on a wide array of hot litigation topics", the ten issues were dispatched in two hours before breakfast. The program certainly lived up to its claims.

As a First time ATLA attendee my reactions were various: excitement, wonder, admiration, inadequacy and fervour. The educational content was outstanding. Experiencing the enthusiasm, commitment and creativity of ATLA members was invaluable.



CASE NOTE

Commercial Minerals Pty. Limited v. Hollins & Ors.

Angul Pty. Limited(originally Quality Earths Pty Limited) v. Hollins & Ors(unreported, NSW Court of Appeal)

By Anna Katzman, Barrister.

These were appeals from a judgement of Johns CCJ. In the Dust Diseases Tribunal, New South Wales, in which he entered a single judgement in the sum of $502,272.00 against three defendants who had consecutively employed him in the same premises where he was exposed to silica dust. The plaintiff was employed by each defendant respectively between 1953 and 1955, between 1957 and 1962, and between 1969 and 1973 and from 1973 to 1986. He was diagnosed with silicosis first in 1971 when his disability was assessed at 10% by the Dust Diseases Board but the assessment progressively increased until 1986 when he was classified as 100% and he retired at that time. His father, who was also employed in the premises, died from silicosis in 1978.

He commenced proceedings against the three defendants in March 1991 and each defendant pleaded the Statute of Limitations. The appeals were brought by the second and third defendants. The first defendant did not appeal.

Handley JA, with whom Meagher and Sheller JJA. agreed upheld both appeals with costs for the following reasons:

(a) By April 1979 the worker's knowledge of the extent of his disability was for all practical purposes complete. The further deterioration that occurred since then was reasonably foreseeable and the worker was aware of this risk or chance. As a general principle, variations in the later progress of a disease within limits that were reasonably foreseeable at an earlier stage cannot establish a relevant lack of awareness of the nature or extent of that disease for the purposes of s.60F of the Limitation Act, 1969 (as amended).

(cont)

James Hardy & Co. Ptv. Limited v. Wootton (1969) 20 NSWLR 713 at 714 is distinguishable, for the plaintiff there knew only that he had asbestosis and did not know during the relevant period that he might also contract mesothelioma.

(b)The worker's lack of knowledge of the causative effects of the dust inhaled in the course of his employment by each defendant is irrelevant to the questions for determination under the Limitation Act. Dedousis v. The Water Board (unreported, New South Wales Court of Appeal, 20.8.93) followed.

There were other matters of significance raised by the Notices of Appeal and in relation to those matters the Court decided as follows:

(a)Both past and future benefits under the Workers' Compensation (Dust Diseases) Act should be taken into account in the assessment of a worker's damages, the receipt of such payments depending not on administrative discretion but on a legal entitlement: Adams v. Ascot Iron Foundry Ptv. Limited (1968) 72 SR (NSW) 120 followed.

(b)The Trial judge erred in entering a single judgement. The defendants were consecutive tortfeasors and not concurrent tortfeasors; their separate acts and omissions caused separate damage. Only the first defendant could be liable for damages which accrued prior to the commencement of the worker's employment with the second defendant; the second defendant could not be liable for damage which accrued before his employment with that defendant commenced and the third defendant could not be liable for damage which accrued before employment with that defendant commenced. Thompson v. Smith's ship Preparers limited [1984] QB 405 esp. at 437-448 followed.

The court ordered a new trial of the proceedings generally against the first defendant and against the third defendant in respect of causes of action accruing on and after 25 March 1985.

**Applications for special leave to appeal were filed in the High Court on 10.1.94 and 1.2.94.*

PASSIVE SMOKING
THE FIGHT HEATS UP

By Eugene Arocca, Maurice Blackburn Sol.

1994 is shaping up to be a decisive year in the battle over passive smoking. The last twelve to eighteen months has seen an a lack of commitment from the Federal and State Governments and departments to make hard decisions on the issue of cigarette smoking in public areas. The New South Wales Government very publicly backed down from a ban on smoking in hotels and related venues. The Victorian Government not only sought to water down the health warnings intended for cigarette packets, but also negotiated a lucrative sponsorship deal with tobacco companies for the Melbourne Grand Prix. Apart from Western Australia, there has been no real attempt by government bodies such as Occupational Health and Safety Authorities to utilise the legislative provisions at their disposal in order to stop cigarette smoking in workplaces.

Unfortunately, it is up to the legal and medical professionals to lead the way. Late last year, Merryn Wild took on the High Point Shopping Centre and demanded that a non smoking policy be implemented. Ms Wild, along with her 10 month old daughter, is an asthmatic, alleged that the shopping centre was being discriminatory by allowing smoking inside their premises. On 1st February, 1994, the Centre's Management announced that it was introducing non-smoking areas with a long term aim of making the centre entirely smoke free. The Federal anti-discrimination legislation (Disability Discrimination Act 1992) could prove to be a useful tool in the quest to make all public venues smoke free. The same threat of action was successful in "encouraging" the AFL to introduce non-smoking areas at the MCG and Waverley football grounds.

More recently, newspapers reported an out of court settlement in a claim for damages by a women against a Melbourne radio station for the short term effects of exposure to passive smoking. A confidentiality clause prevents publication of the facts or details of settlement however, it is likely that more claims of a similar nature are likely to surface in the near future. The hospitality, gambling and entertainment industries are prime targets. This important public health issue will continue to be the focus of attention by lawyers and doctors and 1994 could prove to be a critical year in the fight against tobacco companies.