

case study

Date: 10 August 2011

Evans v Queanbeyan City Council [2011] NSWCA 230

In *Evans v Queanbeyan City Council [2011] NSWCA 230* the New South Wales Court of Appeal considered the causation question of whether a material increase in risk constitutes a causally material contribution to the harm suffered. The decision confirms that causation cannot be proved by increased risk.

Relevant Facts

The relevant facts of the case were as follows.

- In November 2006 Mr Keith Evans was diagnosed with lung cancer. Mr Evans smoked between 20 and 35 cigarettes a day for approximately 40 years up to 1991. He also experienced occupational exposure to asbestos dust of variable intensity.
- Mr Evans worked for Queanbeyan City Council from 1975 until 1990. Amaca Pty Ltd was an important manufacturer of asbestos building products throughout Mr Evans' working life.
- In the Dust Diseases Tribunal, Mr Evans' widow, Mrs Lola Evans, claimed that Mr Evans' lung cancer was caused by exposure to asbestos dust in circumstances imposing responsibility on the respondents.
- Judge Curtis was not satisfied on the balance of probabilities that Mr Evans' lung cancer was caused by exposure to asbestos: *Evans v Queanbeyan City Council* [2010] NSWDDT 7.
- Mrs Evans appealed to the NSW CA against that decision.

The Court of Appeal's Findings

- The Court of Appeal dismissed the appeal and held that the law as to negligence requires that a plaintiff prove on the balance of probabilities that the defendant's wrong caused or materially contributed to his or her loss; it is not sufficient for the plaintiff to show that the wrong materially increased the risk of harm, where medical science does not permit any further proof.
- The link to the decision is: <http://www.caselaw.nsw.gov.au/action/PJUDG?jgmid=153809>

Comment

In an action at law, a plaintiff does not prove his case merely by stating that it was possible that his injury was caused by the defendant's default. To the extent that English case-law supports liability based on a material increase in risk, adoption of such a principle in Australia must lie with the High Court.

This publication is intended to provide a general outline and is not intended to be and is not a complete or definitive statement of the law on the subject matter. Further professional advice should be sought before any action is taken in relation to the matters described in this publication.

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