

# Chemical Injury Litigation Group

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*The APLA Chemical Injury Litigation Group is alive and well, with some 28 members so far.*

As the number of chemicals and mixtures of chemicals increases with advancing technology, our objectives become more relevant.

Those objectives are:

1. To share knowledge of:
  - cause, diagnosis and treatment of chemical injury and chemical contamination
  - sources of expertise to prove salient issues in litigation
  - relevant legal precedents
  - standards of chemical safety
2. To press for legal reforms necessary to ensure that those chemically injured, or those whose stock or crops are chemically injured by the carelessness of others, obtain fair address
3. To improve access to justice for those who have suffered loss by toxic chemical exposure

Many persons injured by chemicals are unable to claim compensation, because the enlightened limitation laws applicable to personal injury in Victoria are absent in most other states of Australia. We need to press for uniform limitation law throughout Australia on similar terms to that in Victoria.

Currently, in many Australian states, an international refining company can recover some millions of dollars in damages from a small sub-contractor who carelessly contaminates its product. However, employees poisoned by the same international corporate entity may find that they are restricted to a pitiful Workers' Compensation limit in their claim for damages for the injury suffers, in the region of say \$100,000 to \$150,000, when the actual economic loss they have suffered may run to \$1 million to \$2 million.

In the adversarial system of litigation, major commercial entities can burn off the majority of those they have carelessly

injured by a range of litigation game playing techniques. The corporate giants can force secrecy agreements on those that get through to the final hurdle so that others similarly injured and the general public remain ignorant of the damage that has been wrongfully caused in the past and may continue to be so caused henceforward.

Most Australians continue to remain ignorant of the potential insidious, cumulative and synergistic effects of chemicals and their mixtures and those of us specialising in the field of chemical injury continue to service clients injured across the whole range of occupations, including agriculture, dry cleaning, the health professions, transport, building, mining and manufacturing.

## Case Study

On the positive side, the British system of justice has recently served well a 47 year old man who inhaled a pesticide (Diazinon) which was being sprayed in the Hong Kong Academy of Performing Arts, whilst the Hong Kong Philharmonic Orchestra, of which the plaintiff was the principal timpanist, was rehearsing.

As a consequence, he suffered physical and psychiatric injury. He will never recover from the psychiatric injury.

The importer of the pesticide, the local supplier, the pest control operators, the Hong Kong Academy of Performing Arts, and the Hong Kong Philharmonic Orchestra were found to be negligent.

The plaintiff received, amongst other awards, general damages HK\$750,000, past loss of income about HK\$3 million, future loss of income HK\$6.5 million, loss of business HK\$1 million, future medical expenses about HK\$3.5 million.<sup>1</sup>

## National Conference

At the APLA National Conference in October at Hamilton Island, we will be richly blessed in learning from the Clinical Psychologist Leonie Coxon about neu-

ropsychology and chemical injury and from Dr Mark Donohoe about chemical injury and the law.

Leonie Coxon has many years of experience in assessing and advising chemical injury victims and has prepared academic papers in this field. She has identified a range of symptoms of neurotoxicity, which include reduced attention span, memory problems, slow speed of information processing, sleep disorders, multiple chemical sensitivity and chronic fatigue.

We need to be alert to these symptoms because they are often not apparent, or at least their cause may not be apparent, to the prospective plaintiff who may live in a mental fog. These symptoms are also characteristics which can lead the lawyers consulted by the plaintiff to reject the client as a "nut" case, and to wrongly conclude that the client has no chance of success.

Mr Mark Donohoe is one of the most knowledgeable doctors in Australia in the field of chemical injury and indeed is an outstanding leader in his field.

There will also be some interesting case reviews at the conference and meeting of members of the Chemical Injury Special Interest Group. ■

**Chris Phillips** is the principal of Chris Phillips Solicitors and the National Chair of the APLA Chemical Injury Litigation Group **phone** 08 9721 4977, **fax** 08 9721 3412

## Note:

1. *Kristan Bowers Philips by his next friend Philip G Higgins v. Initial Environmental Services Limited, Hong Kong Philharmonic Society Limited, Hong Kong Academy of Performing Arts, Ciba-Geigy (Hong Kong) Limited and Wong Ching Ho Company Limited*. 1996 PI number 580 High Court of Hong Kong

The Chemical Injuries Litigation Group is open to all interested members of APLA. To register for the group at no additional cost please contact **Jane Staley** on 02 9415 4233.