IN THE DISTRICT COURT
AT WELLINGTON

I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA

[2023] NZACC 022 ACR 203/21

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	JOSEPH WERNHAM Appellant
AND	ACCIDENT COMPENSATION CORPORATION First Respondent
AND	NEW ZEALAND POLICE Second Respondent

Hearing: 26-27 January 2023
Held at: Wellington by AVL

Appearances: H Armstrong and B Thompson for the Appellant
J Maltby for the New Zealand Police
The Corporation advised that it would abide the decision of the Court on this appeal and that it did not wish to be heard at the hearing of the appeal

Judgment: 9 February 2022

RESERVED JUDGMENT OF JUDGE P R SPILLER
[Claim for cover for work-related gradual process injury - ss 30 and 60, Accident Compensation Act 2001 ("the Act")]

Introduction

[1] This is an appeal from the decision of a Reviewer dated 13 August 2021. The Reviewer quashed the decision of the New Zealand Police ("the Police"), dated 11 March 2021, declining Mr Wernham's claim for cover for a work-related gradual process injury ("WRGPI"). This decision was on the basis that further investigation

was necessary, and the Reviewer directed the Police to reinvestigate the claim and issue a new decision. On 11 August 2022, the Court directed, by consent, that:

(1) the Reviewer's decision be varied so that it did not quash the Police's original decline decision and direct Police to issue a new decision at the conclusion of its investigation, and that the Police's original decline decision stands; and

(2) the issue of whether Mr Wernham has cover for a WRGPI will be resolved in the current appeal.

Background

[2] Mr Wernham was born in 1979. In November 2003, he graduated from the Police College. From 2007, Mr Wernham worked for the Police in its National Clandestine Laboratory Response Team (called the Clan Lab Team), responsible for the assessment, examination and dismantling of clandestine drug laboratories (Clan Labs). A Clan Lab houses a collection of chemicals and equipment, which is used to manufacture illicit drugs (mostly, methamphetamine). The Clan Lab Team works alongside scientists from the Institute of Environmental Science and Research Ltd (ESR), collecting samples that ESR scientists test and analyse.

[3] In a 40-hour week, Mr Wernham spent approximately 50% of his time at Clan Lab scenes, and 50% of his time in the office doing administrative tasks. He estimated that he attended approximately 500 Clan Labs for the purpose of evidential processing. The time taken to process a Clan Lab was between four and eight hours. He commonly encountered a range of acids and solvents at Clan Lab scenes. This included toluene, a derivative of benzene. Toluene is a household solvent, so Mr Wernham did not wear breathing filters when dealing with it. When he was exposed to toluene, he experienced toluene burn (the skin on his face turned red). He estimated that he was exposed to toluene in about one in five Clan Labs (in total, approximately 100 Clan Labs in over 13 years, or around seven Clan Labs annually). He stated that he also experienced headaches.

[4] In October 2020, Mr Wernham presented to Dr Peter Moore, GP, with lower urinary tract symptoms, incomplete emptying and nocturia. He underwent a series of scans and other tests.

[5] On 10 November 2020, Dr Carmel Jacobs, Medical Oncologist, provided a report after a consultation with Mr Wernham. Dr Jacobs diagnosed Mr Wernham with high-grade urothelial carcinoma of the bladder, metastatic to lymph nodes, retroperitoneal lymph nodes and supraclavicular fossa lymph node involved. Dr Jacobs noted that Mr Wernham did not have any known risk factors for bladder cancer: he was young (41 years old), he had no known family history of bladder cancer, and he had never smoked. Dr Jacobs noted further that, in Mr Wernham's work over the last 12 years, he was exposed to obviously highly significantly caustic, erosive and potentially carcinogenic chemicals. Dr Jacobs assessed that it was highly likely that Mr Wernham had been exposed to aromatic amines/organic chemicals that are known carcinogens. Dr Jacobs advised that Mr Wernham's potential chemical exposure during his work had to be considered to be the primary cause of his cancer, as he was likely to have been exposed to a number of carcinogens in his work despite the attempts at protection. Dr Jacobs recommended that Mr Wernham lodge a claim for a WRGPI.

[6] On 12 November 2020, Dr Peter Moore, on behalf of Mr Wernham, lodged a claim with the Corporation for a WRGPI. The claim was for cancer of the bladder. The cause was described as "work" and the description of how it was caused was as follows: "I was working with drug squad and went into P manufacturing houses and was exposed to chemicals which gave me bladder cancer". The claim was transferred to Mr Wernham's employer, the Police, as an accredited employer.

[7] On 27 February 2021, Dr Chris Walls, Occupational Medicine Specialist, provided a report after contacting Mr Wernham by telephone to confirm details of his occupational and exposure history. Dr Walls provided the following assessment:

> 1. What is the Personal Injury?
>
> a. Joe Wernham has in all likelihood acquired Urothelial Bladder Cancer from his occupational exposures.

> 2. In your opinion is the Personal Injury of a type that involves the exposure to a substance described in Schedule 2?
>
> a. I note the lack of clarity around methamphetamine manufacturing processes in New Zealand (as to exactly what chemicals would have been used).
>
> 3. Does he suffer a disease of a type generally accepted by the medical profession to have been caused by any of the exposures listed in Schedule 2?
>
> a. I note that Schedule 2 - Clause 33 identifies Bladder Cancer as an outcome of certain chemical exposures, namely
>
> i. 33 - Bladder carcinoma diagnosed as caused by 2- naphthylamine, benzidine, 4-aminobyphenyl, N, N-8/s (2-ohloroethylj-2- naphthylamine, other aromatic amines, or poly-cyclic aromatic hydrocarbons.
>
> 4. If so what was the substance that he was exposed to?
>
> a. Please see the discussion above.
>
> b. There have been significant exposures to a number of chemicals and mixtures only some of which have been evaluated as to their carcinogenicity.
>
> c. The known likely toxic exposure implicated in the development of cancer are:
>
> i. Benzene and its derivatives
>
> ii. Various Acids (Hydrochloric Acid)
>
> iii. Other solvents (where the experimental evidence is less well developed). …
>
> In my opinion it is more likely than not that Mr Wernham's occupational exposures have significantly contributed (far more than to a trivial extent) to his developing this disease.

[8] On 11 March 2021, the Police declined Mr Wernham's claim for cover, in order to make a decision within the statutory timeframe while it continued to investigate the claim. Mr Wernham applied for a review of that decision.

[9] On 29 March 2021, Dr John Monigatti, Occupational Physician, provided a report, after carrying out a file review. Dr Monigatti advised as follows:

> … Dr Walls advised that there is no known association between methamphetamine production in the development of bladder cancer, notwithstanding that some chemicals are known to cause bladder cancer and that some of the compounds used to manufacture methamphetamine can have an adverse effect on health. It is no more logical to attribute Mr Wernham's bladder cancer to those chemicals than to his diet or the deodorant he wears, given that many substances people ingest or put on their skin can cause disease.

> It is true that bladder cancer in a 41-year-old is rare, even in a smoker, but there are case reports in the literature of people of that age or younger who have no known risk factors and were not exposed to any industrial process. …
>
> There are no biomarkers for exposures to methamphetamine or methamphetamine-related chemicals. Despite what appear to be safe work practices outlined in the Standard Operating Procedures, and the availability of suitable respirators when required, Dr Walls advised that on occasions Mr Wernham was heavily exposed to potentially harmful fumes and liquids. There was no environmental monitoring to confirm it, however, probably because the perceived risk level is too low to warrant a statutory requirement to measure them.
>
> Gases generated during methamphetamine manufacture include hydrocarbons known as volatile organic compounds (VOCs), hydrogen iodide and hydrochloride. These substances can cause skin and mucous membrane irritations (e.g. to the eyes, nose and mouth), respiratory symptoms, headaches and light-headedness, and allergies in some individuals. There is mention of Mr Wernham having had facial skin irritation on occasions, but that is all. Had he been exposed to unsafe levels of the solvents listed he would very likely have experienced neurotoxic symptoms such as headaches, nausea and confusion and sought medical attention for them yet there is no evidence to that effect, either contemporaneously or recounted to Dr Walls.
>
> In short, there is nothing in the history provided by Mr Wernham to suggest that he ever became significantly unwell in the course of his work. Even if a weak association between methamphetamine and bladder cancer had been demonstrated, there would be no grounds for concluding that Mr Wernham's exposure to either the substance or the manufacturing process was abnormal or excessive enough to elevate that possibility to the level of "more likely than not". …
>
> In summary, bladder cancer is a multifactorial disease that can be affected by genetic factors including various oncogenes, tumour suppressor genes and genetic polymorphisms. A variety of environmental risk factors such as occupational exposure to chemical carcinogens, cigarette smoking, nutritional factors, ingestion of analgesics or artificial sweeteners, infection and inflammation, radiation and chemotherapeutic agents can induce and promote the development and progression of bladder cancer. Methamphetamine and the chemicals used in its manufacture are not known to do this, and police officers and others engaged in work such as Mr Wernham's are not known to be at a significantly increased risk of developing bladder cancer. Even if they were, Mr Wernham's exposure has been less than the minimum latency period between exposure and onset and is thus not a plausible cause. Bladder cancer may be uncommon at his age and he may be a non-smoker, but that does not make chemical exposure at work the likely cause of his condition when there is no evidence that it is actually causative. Speculation by Dr Walls and Dr Jacobs to that effect is all very well but it falls some way short of the "balance of probabilities" threshold for ACC cover.

[10] On 13 April 2021, Dr Jacobs repeated her earlier comments that, with the exception of occupational exposure, Mr Wernham had none of the known and accepted risk factors for bladder carcinoma. Dr Jacobs referred to:

> The team of treating Specialist Surgeons and Physicians who diagnose and manage all stages of bladder cancer in the Auckland region, who appreciate the extreme rarity of bladder cancer in someone of Mr Wernham's age group and appreciate the impact of carcinogen exposure in the development of bladder cancer.

[11] On 27 April 2021, Mr Chris Hawke, Urological Surgeon, wrote in support of Mr Wernham's claim for cover for a work-induced cancer. Mr Hawke endorsed Dr Jacobs' report and noted that an overwhelming majority of truly expert opinion would hold in favour of Mr Wernham having his treatment covered.

[12] On 24 May 2021, Dr Giuseppe Sasso, Radiation Oncologist, wrote in support of Mr Wernham's claim. He stated that the specialists involved in Mr Wernham's care all concurred that there is a high likelihood that his disease was caused through occupational exposure.

[13] On 28 May 2021, Dr Walls wrote in response to Dr Monigatti's report. Dr Walls said that he was not arguing that Mr Wernham's young age and the absence of other accepted agents meant that occupational exposure "must" be the cause of Mr Wernham's cancer. Rather, his first report had proposed a "known carcinogenic agent, benzene, a known contaminant of the methamphetamine process". Dr Walls acknowledged that he could not discuss "with any knowledge or certainty the presence, absence or possible concentrations of benzene exposure in the manufacturing process". Nevertheless, Dr Walls remained of the opinion that:

> The young age of onset in a never smoker means that an occupational causation (or a significant contribution to causation) must not be lightly dismissed.
>
> The exposure time is sufficient.
>
> The arguments about latency ignore the individual variation of onset.
>
> There has been (as far as we can determine in an illegal manufacturing industry) exposure to a carcinogen capable of causing this condition.
>
> The work practices were faulty and inadequate.
>
> … there has been a more than minor contribution to Mr Wernham's medical condition by his occupational exposures. He has acquired an occupational illness of some severity by means of a Gradual Process Injury.

[14] On 8 June 2021, Mr Harry Fraser, Genetic Counsellor, reported that testing did not identify a genetic cause of Mr Wernham's cancer.

[15] On 9 June 2021, the Corporation's Toxicology Panel reviewed Mr Wernham's claim. The panel recommended that Dr Michael Beasley, panel member and Clinical Toxicologist, review Mr Wernham's file and complete a literature review of the link between exposure to methamphetamine manufacturing chemicals and bladder cancer.

[16] On 21 July 2021, review proceedings were held in relation to the Police's decision of 11 March 2021 declining Mr Wernham's claim for cover. Mr Wernham gave evidence in which he noted that the manufacture of drugs such as methamphetamine involves the use of various volatile chemicals which present a serious danger to those handling them. He stated:

> Manufacturing methamphetamine also produces waste liquids which can be very toxic to your health and are usually a combination of solvents and caustic solutions. These are usually stored in unmarked containers. Toluene is an aromatic hydrocarbon and has been widely used in the manufacture of methamphetamine in New Zealand for many years. …
>
> Because toluene is considered a household solvent I never wear breathing filters when dealing with it. Of note, when I have been exposed to toluene I get what we call toluene burn on my face, which means my skin generally turns red. This can last 3 - 6 hours after being exposed to it. … In the 13 years I've been working on the Clan Lab Team I have attended approximately 500 clan lab scenes, meaning I've potentially been exposed to clan lab environments anywhere between 2000 - 4000 hours.

[17] Mr Wernham further noted that nine out of ten of the labs he worked in were inactive, and in these the only time that he wore a respirator was on initial entry. Otherwise, while processing the lab, which could involve eight hours, he generally did not wear any respirator. None of his bosses ever told him to wear a respirator while at the lab scene the whole time.

[18] On 13 August 2021, the Reviewer quashed the Police's decision of 11 March 2021 declining Mr Wernham's claim for cover. This was on the basis that further investigation was necessary. The Reviewer directed the Police to reinvestigate the claim. As part of the Police's investigation, the Police was to obtain a report from the Corporation's Toxicology Panel, and then issue a new decision.

[19] On 5 September 2021, Mr Wernham appealed to the District Court on the basis that the Reviewer failed to apply the provisions of the Act correctly and had sufficient evidence to make a decision.

[20] On 13 September 2021, Dr Michael Beasley, Medical Toxicologist, provided a report to the Corporation's Toxicology Panel following a literature review. Dr Beasley focused on Mr Wernham's exposure to toluene, which is known to be used in the manufacture of methamphetamine in New Zealand, and to which Mr Wernham was exposed. Dr Beasley stated that:

> I cannot exclude the possibility that toluene itself, or especially benzene (a toluene contaminant) was a cause of this bladder cancer. I do not agree that there is absolutely no known link between exposure to chemicals associated with methamphetamine production and urothelial bladder cancer. Toluene has been listed in some reports as a risk factor for bladder cancer (at least in other occupations/industries); and whether that is always related to its contamination with benzene is less clear. Hadkhale et al observed a significantly increased risk of bladder cancer for those exposed to toluene at a "high" exposure level (but no effect was observed at low and medium levels). …
>
> I do not agree that Mr Wernham was not exposed to known carcinogens, including benzene. It is established that toluene products can be contaminated with small amounts of benzene (a known carcinogen, including a bladder carcinogen), and toluene, which some contend is also a carcinogen (if not a potent one) in its own right.
>
> It is plausible that the claimant's bladder cancer has arisen from his occupational exposure. perhaps particularly from the toluene and benzene perspective. However it is difficult to determine whether it is more likely than not. In particular, the airborne levels of toluene + /- benzene likely to have been present in his work environments are not well known, and the overall severity of exposure cannot be accurately gauged. A more detailed exposure history may be helpful.

[21] On 17 September 2022, the Corporation's Toxicology Panel, having reviewed Mr Wernham's case again, acknowledged that it was plausible that his bladder cancer had arisen from his occupational exposure, particularly from the toluene and benzene. The Panel recommended that an Occupational Physician obtain further exposure details, for example, the frequency of potential exposure to solvent such as toluene, the nature of the exposure, how these substances were handled, removed and stored, and who performed these activities.

[22] On 19 September 2021, Dr Walls provided a further report, after undertaking more research and discussing Mr Wernham's case with colleagues. These included, in particular, Professor Andrea 't Mannetje, an associate professor with a research background in the field of occupational cancer epidemiology, including occupational bladder cancer. In this report, Dr Walls now placed ortho-toluidine as the most likely cause of Mr Wernham's cancer, although benzene remained relevant. Dr Walls summarised his findings as follows:

> - this manufacturing process is undertaken in an uncontrolled environment increasing the likelihood of significant contaminants.
> - The manufacturing methods are recognised as producing known bladder Carcinogens.
> - The concerns about sufficient latency are not well founded.
> - The NZ Police did not carry out an appropriate hazard recognition/risk management nor personal monitoring regime. … Mr Wernham was not provided with appropriate respiratory and other protective equipment nor was he properly trained in the use of such equipment.
> - He had acute symptoms and these are a surrogate measure of failure of work process and protective measures.
> - This is an unusual cancer in a never smoker with no genetic predispositions.
> - Mr Wernham, as far as I can determine has an illness secondary to a chemical exposure that is identified in Schedule 2 of the Act, he also meets the ACC three part test. Corporation is erecting an insurmountable barrier with an unscientific foundation when it denies Mr Wernham coverage for this work related neoplasm.

[23] On 21 September 2021, Professor 't Mannetje provided a report, based on a file review of Mr Wernham's case, and concluded:

> Mr Wernham has worked as part of the National Clandestine Laboratory Response Team … for 13 years since 2007. This means that meth labs effectively constituted his work environment for 13 years. The presence of toluene, in combination with other chemicals commonly used in meth labs, is a red flag that aromatic amines can be formed in the process of making meth, and in particular the aromatic amine ortho-toluidine. The chemical structures below illustrate the close relationship between toluene and ortho-toludine, which is a potent bladder carcinogen. …
>
> … I consider it highly likely that Mr Wernham has been occupationally exposed to aromatic amines, specifically orthotoluidine and aniline. Ortho-toluidine is classified as carcinogenic to humans (Group 1), based on sufficient evidence in humans that ortho-toluidine causes cancer of the urinary bladder,

> and sufficient evidence in experimental animals (IARC monograph 100F, 2012). Aniline is classified as a probable carcinogen /Group 2A).
>
> Both compounds are solvents and occupational exposure can occur through inhalation and through dermal contact. This leads me to the issue of the type of controls and PPE required to protect workers from being exposed to these compounds. A US NIOSH document on "Preventing Bladder Cancer from Exposure to o-Toluidine and Aniline" (https://www.cdc.gov/niosh/ docs/90-116/ default. html) describes the worker training, engineering controls, work practices and PPE that need to be put in place to sufficiently protect workers from exposure and bladder cancer risk. It is clear that these conditions were not in place in Mr Wernham's work environment.

[24] On 23 September 2021, Dr Jacobs provided a further report, responding to questions from Mr Wernham's counsel. Dr Jacobs assessed that:

> … in my opinion Mr Joe Wernham at the age of 41 years with no familial, genetic or commonly associated habit that is associated with bladder carcinoma, such as cigarette smoking, has unfortunately developed a malignancy, which is very rare in this setting. I therefore strongly believe his occupational exposure is the most likely underlying cause.

[25] On 14 December 2021, Ms Erina Mayo, a forensic scientist employed by ESR as its Clan Lab team leader, provided a report based on relevant documentation. Ms Mayo commented on the chemicals present at Clan Lab scenes in New Zealand, noting:

> … When processing a clandestine laboratory scene, it is very common to locate liquids. Screening tests are undertaken to determine if these liquids may be relevant in the manufacture of illicit drugs. If so, a sample is collected so subsequent analysis at the ESR laboratory can be undertaken, if required. If aliquid is not deemed to be relevant to the investigation, no sample will be taken. …
>
> Aromatic amines, including ortho-toluidine and aniline, are not used in manufacturing methods encountered at clandestine laboratories in New Zealand, therefore it would be unlikely that such chemicals would be present at clandestine laboratory scenes and if they were labelled to be present, would not be sampled.
>
> Ortho-toluidine and aniline have not been identified in any of the samples analysed at ESR in relation to suspected clandestine laboratories. [They] would only be identified … if they were a significant component of a sample.
>
> As not every unknown liquid is sampled and not every sample collected is subsequently analysed, I cannot conclusively say that ortho-toluidine and aniline have not been present at clandestine laboratory scenes in New Zealand.

[26] On 30 March 2022, Dr Andrew Hilliard, Occupational Physician, provided a report after reviewing the medical information on file. Dr Hilliard noted that file reviews are considered a relevant method of providing an opinion, providing note is taken of the limitations of not being able to take a history and examine the individual in question. Dr Hilliard advised:

> Given the nature of clandestine methamphetamine laboratories, Mr Wernham over time would have been exposed to multiple different chemicals and chemical mixtures.
>
> The precise nature for some of those chemical exposures cannot be determined, with potential for containers to be unlabelled or mislabelled. …
>
> It is likely that Mr Wernham would have had contact with toluene, it being my understanding that toluene is one of the most common solvents used in clandestine methamphetamine laboratories here in New Zealand.
>
> However, toluene is only one of many different solvents used in the manufacture of methamphetamine, Mr Wernham having stated that toluene was found in around 20% of all clandestine laboratories visited by himself.
>
> Exposure to toluene would therefore have been on an intermittent basis, interspersed with other work and chemical exposures, and any exposure to toluene would not have been frequent or constant. … Any exposures to toluene contaminated benzene can therefore be considered to have been fairly low.
>
> There is … no good evidence on file to support the view that Mr Wernham was experienced exposures to aromatic amines. Any theoretical exposures to aromatic amines including aniline or ortho-toluidine would have been infrequent and at very low levels, if at all. …
>
> Although it is not possible to quantify the totality of Mr Wernham's exposures during the period of time he worked for the NCRLT, there is no good evidence on file to support the view that he has experienced significant exposures to chemicals that could be causative of bladder cancer. …
>
> Even if it could be shown that there has been an occasional exposure to aromatic amines (and as mentioned above there is no current evidence on file to support that view), Mr Wernham would not have been exposed to a sufficiently high level of those chemicals to have been causative of his bladder cancer. …
>
> For most individuals, the latent period for the development of bladder cancer is still considered to be very long, and rarely less than 20 years after beginning smoking or occupational exposure to relevant chemicals. …
>
> Mr Wernham's bladder cancer can be considered to be of idiopathic origin, i.e. current cause is unknown.
>
> In the absence of significant exposures to chemicals with potential to cause bladder cancer, it is then not plausible that work exposures have been causative or contributory to his bladder cancer. …

> I have not been able to identify any property or characteristic in Mr Wernham's workplace that could have been contributory or causative to his bladder cancer. …
>
> I also have not been able to identify any property or characteristic found to any material extent in Mr Wernham's non-employment activities or environment that could have been contributory or causative to his bladder cancer. …
>
> I have not been able to find any specific evidence in the published medical literature that methamphetamine is a carcinogen. …

[27] On 2 May 2022, Dr Walls and Prof 't Mannetje provided a joint report in response to Dr Hilliard's report, after having talked to Mr Wernham about his occupational history and other relevant issues. Dr Walls and Prof 't Mannetje asserted that Mr Wernham had suffered bladder cancer caused by aromatic amines (as per Schedule 2 of the Act) because both ortho-toluidine and aniline are listed in the 2008 US Environmental Protection Agency Report.[1] Dr Walls and Prof 't Mannetje also assessed that: Mr Wernham worked in an uncontrolled environment without adequate monitoring exposed to known carcinogens for 13 years, some of which are recognised and potent bladder carcinogens; there are not personal or familial factors or exposure in Mr Wernham's life that put him at a greater risk of developing this condition at such a young age; and the risk of suffering the harm is significantly greater for people who do his particular work tasks or work in his particular work environment than it is for other people.

[28] On 6 June 2022, Dr Hilliard responded that matters raised by Dr Walls and Prof 't Mannetje did not change any views or conclusions contained in his (Dr Hilliard's) previous report.

[29] On 19 July 2022, Prof 't Mannetje provided a further report, in response to Dr Hilliard's later report:

> There is evidence in the literature that aromatic amines can be present in clan labs, as clearly described in the 2008 US EPA report. While Dr Hilliard now

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[1] Environmental Protection Agency, *Resource Conservation and Recovery Act Hazardous Waste Identification of Methamphetamine Production Process By-products Report to Congress* (2005), Appendix B: "Chemical Properties and Hazardous Waste Codes Associated with Chemicals Commonly Found at Clandestine Methamphetamine Laboratory Sites", Table B-3 Solvents (exposure through skin, eyes and inhalation). The Report describes the wastes that are likely to be found at meth labs and includes a list of by-products from meth production that would likely meet the RCRA regulatory definition of hazardous waste.

> appears to acknowledge the existence of this report, he does not acknowledge the particularly high standing of the US EPA in this regard. …
>
> Even though the presence of aromatic amines in clan labs was known at least since the publication of the US EPA report (2008), ESR never tested any clan lab samples for aromatic amines. None of the ESR lab test results are therefore in any way proof that aromatic amines were not present. …
>
> … aromatic amines are extremely potent bladder carcinogens, and in particular ortho-toluidine, as indicated by epidemiological studies in occupationally exposed populations. The bladder cancer risk associated with orthotoluidine exposure should in no way be described as 'relatively small'.

[30] On 10 August 2022, counsel for Mr Wernham, the Corporation and the Police filed a joint memorandum, noting:

> The Police has now completed its investigation of Mr Wernham's claim. On the basis of all of the evidence obtained since the claim was made, the Police has concluded that Mr Wernham has not suffered a WRGPI under section 30 and therefore does not have cover. However, in accordance with Judge Henare's directions, the Police has not issued a new decision declining cover, and counsel have conferred about whether a pathway could be maintained in this appeal.
>
> In the interests of limiting wasted costs of this appeal and avoiding the costs of a further review, the parties' preference is for cover to be resolved in this appeal, with all of the evidence obtained to date available to the court.
>
> The parties propose that:
>
> the Reviewer's decision be varied so that it did not quash the Police's original decline decision and direct Police to issue a new decision at the conclusion of its investigation, and that the Police's original decline decision stands; and
>
> the issue of whether Mr Wernham has cover for a work-related gradual process injury (whether under the three-part test in section 30 or as a schedule 2 disease) will be resolved in the current appeal.

[31] On 11 August 2022, the Court accepted the parties' preference for cover to be resolved in this appeal, with all of the evidence obtained to date available to the Court. The Court therefore accepted that the review decision be varied as proposed by the parties.

[32] On 10 January 2023, Professor 't Mannetje provided a brief of evidence in which she concluded that Mr Wernham was exposed to multiple known and suspected carcinogens during his employment as a member of the National Clandestine Laboratory Response Team, with specific emphasis on his exposure to

aromatic amines, specifically ortho-toluidine and aniline, as these are known and potent bladder carcinogens. Professor ‘t Mannetje advised:

> As an expert in this field, it is my opinion that Mr Wernham’s occupational exposures experienced during his 13-year employment as a member of the National Clandestine Laboratory Response Team are the likely cause of his bladder cancer.
>
> a. It is significant that Dr Jacobs is firmly of this opinion, as are the specialist medical teams she mentions; and
>
> b. that the Panel thought it was a plausible cause (but sought more information).
>
> c. The link between exposure to aromatic amines and bladder cancer is well known.
>
> I place weight on the evidence provided by:
>
> a. Mr Wernham about the chemicals he found in the labs and the tasks he performed,
>
> b. the acceptance that toluene and other chemicals are found in Clan Labs scenes,
>
> c. the evidence that ortho-toluidine is a common methamphetamine production process by-product,
>
> d. the acute health effects reported by Mr Wernham (toluene face and headaches) being indicative of substantial exposure to solvents and therefore also any contaminants that may be present,
>
> e. the length of time that he worked in the team (13 years)
>
> f. the latency period falling well within the latency periods observed for occupational exposure to aromatic amines,
>
> g. the evidence from Dr Walls about the processes to clean up the labs and lack of PPE,
>
> h. his age upon diagnosis,
>
> i. the fact that no other risk factors for bladder cancer could be identified (Mr Wernham is a never smoker and genetic risk factors were not identified).

[33] On 10 January 2023, Dr Walls concluded that the requirements for cover for Mr Wernham were met under Schedule 2, as he suffered from bladder carcinoma diagnosed as caused by aromatic amines. Dr Walls referred to the evidence of Dr Jacobs, and further stated:

iii. Occupational exposures are recognised as the second most common identified cause (after smoking) for bladder cancer.

iv. A substantial number of those who have reviewed this file, including the Panel and Dr Beasley acknowledge that occupational exposure is a plausible cause of Mr Wernham's bladder cancer.

v. I am satisfied from my history taken from Mr Wernham that surrogate markers of solvent exposure have been present.

vi. I consider that the respiratory and other PPE did not provide Mr Wernham with consistent or effective protection over the course of the 13 years he worked in the clan labs.

vii. With respect to the ESR testing, it is acknowledged by Ms Mayo that not every substance is tested and those are tested are not testing for human carcinogens. Having read the ESR reports, I understand that these test results were for evidentiary purposes (not health and safety) and ortho toluidine was not identified. However some of the records do show other nitrogenous compounds reflecting the haphazard nature of the manufacturing processes. The absence of results does not imply the absence of the substance, as each chemical requires its own sampling methods.

viii. I am confident that Mr Wernham has been exposed to aromatic amines. I have formed this conclusion based on the chemicals used in meth manufacturing, the processes for making meth and the identified waste products which include ortho toluidine, and from the tasks he was performing.

ix. The account of Mr Wernham's work is not in dispute.

x. Exposure to ortho toluidine during his work is likely to occur in any number of different scenarios: when he dismantles a clan lab, collects samples from unmarked containers, open unlabelled bottles, takes a sniff to identify the substance from an unmarked container, exposure to combustion residues, being splashed, during disposal of samples, when transporting samples, when throwing samples into a pit without PPE, when entering active and inactive labs.

Relevant law

[34] Section 30 of the Accident Compensation Act 2001 ("the Act") provides:

30 Personal injury caused by work-related gradual process, disease, or infection

(1) Personal injury caused by a work-related gradual process, disease, or infection means personal injury—

(a) suffered by a person; and

(b) caused by a gradual process, disease, or infection; and

(c) caused in the circumstances described in subsection (2).

(2) The circumstances are—

(a) the person—

(i) performs an employment task that has a particular property or characteristic; or

(ii) is employed in an environment that has a particular property or characteristic; and

(b) the particular property or characteristic—

(i) causes, or contributes to the cause of, the personal injury; and

(ii) is not found to any material extent in the non-employment activities or environment of the person; and

(iii) may or may not be present throughout the whole of the person's employment; and

(c) the risk of suffering the personal injury—

(i) is significantly greater for persons who perform the employment task than for persons who do not perform it; or

(ii) is significantly greater for persons who are employed in that type of environment than for persons who are not.

(3) Personal injury caused by a work-related gradual process, disease, or infection includes personal injury that is—

(a) of a type described in Schedule 2; and

(b) suffered by a person who is or has been in employment—

(i) that involves exposure, or the prescribed level or extent of exposure, to agents, dusts, compounds, substances, radiation, or things (as the case may be) described in that schedule in relation to that type of personal injury; or

(ii) in an occupation, industry, or process described in that schedule in relation to that type of personal injury.

(3A) To avoid doubt, where a claim is lodged for cover for a work-related gradual process, disease, or infection, section 57 applies to require, among other things, the Corporation to investigate the claim at its own expense.

(4) Personal injury of a type described in subsection (3) does not require an assessment of causation under subsection (1)(b) or (c).

[35] Clause 33 of Schedule 2 (Occupational diseases) of the Act provides for bladder carcinoma diagnosed as caused by 2-naphthylamine, benzidine, 4-aminobiphenyl, N, N-Bis (2-chloroethyl)-2-naphthylamine, other aromatic amines, or poly-cyclic aromatic hydrocarbons.

[36] Section 60 of the Act provides:

> The Corporation may decline a claim that a personal injury is a work-related personal injury of a kind described in section 30(3) only if the Corporation establishes that—
>
> (a) the person is not suffering from a personal injury of a kind described in Schedule 2; or
>
> (b) the person's personal injury has a cause other than his or her employment.

[37] In *Priddle*,[2] Venning J stated the judgment of the Court of Appeal:

> [35] When s 30 is considered in context, we conclude that the intent of the legislature was to provide a separate means of cover under s 30(3) for those people suffering from the occupational diseases listed in Schedule 2 without them having to bring themselves within the definition in s 30(1) and, consequently, the circumstances referred to in s 30(2) at all.
>
> …
>
> [40] … Schedule 30(4) exempts Schedule 2 claimants from the necessity of an assessment of causation under s 30(1)(b) and (c) which is an exemption of all the circumstances set out in s 30(2).

[38] In *Hastings*,[3] Cull J stated:

> [34] *Priddle* is authority for the proposition that if there has been workplace exposure to a Schedule 2 disease, the claimant does not have to prove that that exposure caused the mesothelioma, because the scientific evidence of that causation has already been well-established. …
>
> …
>
> [39] I also find there is some force in Ms Hansen's submission that there is a further consequence if the applicants' position was upheld. It would mean that a mere assertion by a claimant would trigger s 60 of the Act and ACC would be required to disprove all cases, even those which may be speculative. Section 30(3) of the Act requires there to be both a Schedule 2 disease and workplace exposure before the onus shifts to ACC under s 60. …

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2 *Estate of Priddle v Accident Compensation Corporation*, CA223/05, 19 October 2006.

3 *Hastings v Accident Compensation Corporation* [2019] NZHC 761.

[39] In *Monk*,[4] Henare DCJ stated:

> [57] Mr Monk must establish on the balance of probabilities, that he has suffered an occupational disease, and the disease is of a type generally accepted by the medical profession as caused by the metals …
>
> …
>
> [64] The following principles are discerned from the case law regarding the application of s30(3) and s 60 of the Act:
>
> - Section 30(3) stands on its own which means that the three-part test under s30(2) does not apply.
> - There must be proof of workplace exposure, potential exposure or risk of exposure is not a basis for cover.
> - Where a claimant establishes both a Schedule 2 disease and workplace exposure under s 30(3) that claimant is not required to prove causation or the other requirements under s 30(1).
> - Notwithstanding, a claimant must establish the two requirements are satisfied under s 30(3) on the balance of probabilities. 'Some evidence' does not suffice.
> - The onus then shifts to the Corporation under s 60 to establish either that the person is not suffering from a Schedule 2 disease or there is another, non-work related, cause for the disease.
>
> [65] The Court accepts that before the presumption operates, and the onus shifts to the Corporation, Mr Monk must establish under s 30(3) that:
>
> - He has suffered a disease which he claims as listed under items 7, 8, 9 and/or 31 of Schedule 2; and
> - He suffered the workplace exposure under items 7, 8, 9 and/or 31 of Schedule 2, being to arsenic or its toxic compounds, mercury or its toxic compounds, lead or its toxic compounds and a diagnosis of lung cancer caused by... cadmium.

[40] In *Ambros*,[5] the Court of Appeal stated the following in relation to causation:

> [65] The requirement for a plaintiff to prove causation on the balance of probabilities means that the plaintiff must show that the probability of causation is higher than 50 per cent. However, courts do not usually undertake accurate probabilistic calculations when evaluating whether causation has been proved. They proceed on their general impression of the sufficiency of the lay and scientific evidence to meet the required standard of proof ... The legal method looks to the presumptive inference which a sequence of events inspires in a person of common sense …

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4 *Monk v Accident Compensation Corporation* [2021] NZACC 10.

5 *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

…

> [67] The different methodology used under the legal method means that a court's assessment of causation can differ from the expert opinion and courts can infer causation in circumstances where the experts cannot. This has allowed the Court to draw robust inferences of causation in some cases of uncertainty -- see para [32] above. However, a court may only draw a valid inference based on facts supported by the evidence and not on the basis of supposition or conjecture … Judges should ground their assessment of causation on their view of what constitutes the normal course of events, which should be based on the whole of the lay, medical, and statistical evidence, and not be limited to expert witness evidence …
>
> …
>
> [70] … The generous and unniggardly approach referred to *Harrild* may, however, support the drawing of a robust inference in individual cases. It must, however, always been borne in mind that there must be sufficient evidence pointing to proof of causation, on the balance of probabilities, for a Court to draw even a robust inference on causation. Risk of causation does not suffice.

Discussion

[41] It is accepted by the parties that Mr Wernham has been diagnosed with malignant neoplasm of the urinary bladder, also described as high grade metastatic urothelial carcinoma of the bladder. The central issue in this case is whether Mr Wernham has established that he suffered a work-related gradual process (WRGPI) in that he was sufficiently exposed to chemicals capable of causing bladder cancer, in the course of his work investigating clandestine drug laboratories.

Cover under section 30(3)?

[42] For Mr Wernham to prove that he has cover under section 30(3) of the Act, he must establish that:

(a) his personal injury is of a type described in Schedule 2 (Occupational diseases) of the Act; and

(b) his personal injury was suffered in employment that involves exposure, or the prescribed level or extent of exposure, to what is described in the Schedule.

[43] Section 30(4) provides that personal injury of a type described in subsection (3) does not require Mr Wernham to establish that the occupational exposure *caused*

the disease. This is because the scientific evidence of that causation has already been well-established.[6] Section 60 provides that the Corporation may decline a claim for a work-related personal injury, of a kind described in section 30(3), only if the Corporation establishes that Mr Wernham is not suffering from a personal injury of a kind described in Schedule 2, or his personal injury has a cause other than his employment.

[44] In relation to the first requirement for cover under section 30(3), that is, that Mr Wernham's personal injury is of a type described in Schedule 2 of the Act, this Court notes that clause 33 of Schedule 2 provides for bladder carcinoma diagnosed as caused by aromatic amines. The Police accepts that Mr Wernham has been diagnosed with bladder carcinoma, that Mr Wernham estimated that he experienced "toluene face" in Clan Lab scenes, and that ortho-toluidine is an aromatic amine and is a known bladder carcinogen. The Court finds, on the basis of the evidence, that Mr Wernham's personal injury is of a type described in Schedule 2, in that his bladder carcinoma has been diagnosed as caused by an aromatic amine.

[45] The Court now proceeds to an examination of whether Mr Wernham has established the second requirement for cover under section 30(3), that is, that his personal injury was suffered in employment that involves exposure, or the prescribed level or extent of exposure, to what is described in the Schedule. The Court acknowledges that there must be proof of such exposure on the balance of probabilities, and potential exposure or risk of exposure is not a basis for cover.[7]

[46] Ms Maltby, for the Police, submits as follows. There is no evidence that Mr Wernham was occupationally exposed to bladder carcinogens, including aromatic amines. Further, the evidence indicates that Mr Wernham is unlikely to have been exposed to aromatic amines, and any (hypothetical) exposure is unlikely to have caused his cancer. Ms Mayo of the ESR reported that ortho-toluidine and aniline have not been identified in any of the samples analysed at ESR in relation to suspected clandestine laboratories. Dr Monigatti and Dr Hilliard, both Occupational Physicians, have provided well-reasoned, objective reports that the cause of

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6 *Hastings*, above note 3, at [34].
7 *Monk*, above note 4, at [64].

Mr Wernham's cancer is idiopathic. The evidence of Dr Jacobs, Dr Beasley, Prof 't Mannetje and Dr Walls should be given limited weight.

[47] The Court acknowledges the submissions for the Police. The Court accepts the credentials of Dr Monigatti and Dr Hilliard, and that they have provided reasoned accounts in support of the Police. However, the Court notes that both Dr Monigatti and Dr Hilliard conducted file reviews without seeing or speaking with Mr Wernham. Dr Hilliard acknowledged the limitations of not being able to take a history and examine Mr Wernham. This Court considers that these limitations are accentuated in the present case, which requires an assessment of the occupational exposure that Mr Wernham had to bladder carcinogens. In this regard, the Court notes that the Corporation's Toxicology Panel, in September 2021, recommended a referral to an occupational physician to obtain more specific exposure details (such as the frequency and nature of potential exposure to solvents such as toluene, how these substances were handled, removed and stored, and who performed these activities). The Court considers that these matters could have been usefully discussed by Dr Hilliard with Mr Wernham.

[48] The Court further notes that Dr Monigatti conceded that bladder cancer in a 41-year-old is rare, even in a smoker, and assessed that Mr Wernham had idiopathic bladder cancer presenting at a younger age than most. Dr Hilliard considered it likely that Mr Wernham would have had contact with toluene and accepted that toluene may result in the formation of toludine. Dr Hilliard was not able to identify any property or characteristic found to any material extent in Mr Wernham's non-employment activities or environment that could have been contributory or causative to his bladder cancer. Like Dr Monigatti, Dr Hilliard could not identify the cause of Mr Wernham's bladder cancer. Overall, in the face of the evidence presented in support of Mr Wernham's claim (elaborated on below), the Court finds the reports of Dr Monigatti and Dr Hilliard to be unpersuasive.

[49] In relation to the evidence of Ms Mayo of the ESR, the Court acknowledges that ortho-toluidine and aniline have not been identified in any of the samples analysed at ESR in relation to suspected clandestine laboratories. However, as Ms Mayo indicates, the focus of the ESR tests is on liquids that may be *used* in the

manufacture of illicit drugs, for the purpose of prosecution. This focus stands in contrast with that of the research done by the USA Environmental Protection Agency, which analysed wastes *found* at methamphetamine labs, to determine substances that are potentially hazardous to human health.[8] Ms Mayo noted that, when processing a clandestine laboratory scene, screening tests are undertaken to determine if unknown liquids may be relevant in the manufacture of illicit drugs, and, if a liquid is not deemed to be relevant to the investigation, no sample will be taken. Ms Mayo thus conceded that not every unknown liquid is sampled and not every sample collected is subsequently analysed and so she could not conclusively say that ortho-toluidine and aniline have not been present at clandestine laboratory scenes in New Zealand. In light of these considerations, the Court finds the evidence of Ms Mayo to be of limited weight in the present case.

[50] The Court also refers to the following considerations and evidence.

[51] First, the Police accepts that:

(a) Mr Wernham, when diagnosed with bladder carcinoma by Dr Jacobs, his Medical Oncologist, was 41 years old and reported in all other respects as being well;

(b) Mr Wernham is a "never smoker", and smoking is the most significant risk factor for bladder cancer;

(c) Mr Wernham shows no known genetic predisposition to bladder cancer with no known familial, genetic or commonly associated habit that is associated with bladder carcinoma;

(d) All the medical professionals agree that bladder cancer is rare for someone of Mr Wernham's age and disposition;

(e) Mr Wernham worked for 13 years in the Police's National Clandestine Laboratory (Clan Lab) Response Team, Clan Labs being illicit

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8 See above note 1. The Report of the Agency referred to characteristic wastes as those that (1) may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (2) pose a substantial present or potential hazard to human health or the environment when improperly managed.

operations used for manufacturing methamphetamine, where chemicals are not always labelled and stored correctly;

(f) Mr Wernham attended approximately 500 Clan Lab scenes during his 13 years of service, in which time he encountered a range of acids, caustics and solvents while collecting samples, cleaning up and disposing of the chemicals in and from the Labs;

(g) Mr Wernham estimates that he has experienced "toluene face" at approximately one in five Clan Lab scenes;

(h) Ortho-toluidine is an aromatic amine, and group 1 bladder carcinogen can be formed from toluene via chemical processes;

(i) Ortho-toluidine has been found in United States' Clan Labs according to the 2008 USA Environmental Protection Agency report.[9]

[52] Second, in November 2020, Dr Jacobs, Medical Oncologist, noted, after a consultation with Mr Wernham, that his work over the last 12 years had exposed him to obviously highly significantly caustic, erosive and potentially carcinogenic chemicals. Dr Jacobs advised that Mr Wernham's potential chemical exposure during his work must be considered to be the primary cause of his cancer, as he was likely to have been exposed to known carcinogens (aromatic amines/organic chemicals) in his work despite the attempts at protection. Dr Jacobs' report was endorsed in April 2021 by Mr Hawke, Urological Surgeon, and in May 2021 by Dr Sasso, Radiation Oncologist. In September 2021, Dr Jacobs noted that Mr Wernham's malignancy was very rare in terms of his overall personal condition, and she reiterated her strong belief that his occupational exposure was the most likely underlying cause of his malignancy. This Court finds that Dr Jacobs' evidence should be given weight, particularly in light of the fact she was Mr Wernham's consultant oncologist and well versed in his cancer condition and other personal circumstances.

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9 See above note 1.

[53] Third, in February 2021, Dr Walls, Occupational Medicine Specialist, noted, after speaking with Mr Wernham to establish details of his occupational and exposure history, that he had in all likelihood acquired urothelial bladder cancer from his occupational exposures. Dr Walls pointed to the particular tasks performed by Mr Wernham in an hazardous environment, and the failures in safety management at his workplace. In September 2021, Dr Walls identified ortho-toluidine as the most likely cause of Mr Wernham's cancer and pointed to the inappropriate hazard recognition/risk management and personal monitoring regime of his work environment. In May 2022, Dr Walls (with Prof 't Mannetje) assessed that Mr Wernham had suffered bladder cancer caused by aromatic amines, having worked in an uncontrolled environment without adequate monitoring exposed to known carcinogens for 13 years, some of which are recognised and potent bladder carcinogens. This report noted that there were no personal or familial factors or exposure in Mr Wernham's life that put him at a greater risk of developing this condition at such a young age. In January 2023, Dr Walls affirmed that he was confident that Mr Wernham had been exposed to aromatic amines, based on the chemicals used in meth manufacturing, the processes for making methamphetamine, the identified waste products which include ortho-toluidine, and the tasks he was performing.

[54] This Court notes Dr Walls' credentials as an experienced occupational medicine specialist, and that he conferred with Mr Wernham as to the details of his occupational and exposure history. Dr Walls' reservations as to the protection afforded to Mr Wernham in his work are supported by the evidence given by Mr Wernham in the review hearing (see paragraphs [16]-[17] above). Dr Walls' references to Mr Wernham's overall health are well supported by the evidence accepted by the Police, and Dr Walls' conclusion that Mr Wernham's bladder cancer was caused by aromatic amines was buttressed by the insights provided by Professor 't Mannetje. At the hearing of this appeal, this Court found Dr Walls to be a credible witness. Overall, this Court finds that Dr Walls' evidence should be given considerable weight.

[55] Fourth, in September 2021, Dr Michael Beasley, Medical Toxicologist, reported, after a file and literature review, that it was plausible that Mr Wernham's

bladder cancer has arisen from his occupational exposure, perhaps particularly from the toluene and benzene perspective. Dr Beasley's finding as to the plausibility of Mr Wernham's bladder cancer having arisen from his occupational exposure, was adopted by the Corporation's Toxicology Panel. Dr Beasley's assessment, while provisional, is in line with the view of Dr Walls, and is entitled to some weight.

[56] Fifth, in September 2021, Professor 't Mannetje, Associate Professor in occupational cancer epidemiology, concluded, after a file review, that it was highly likely that Mr Wernham had been occupationally exposed to aromatic amines, specifically ortho-toluidine, a proven cause of urinary bladder cancer. Professor 't Mannetje pointed to the close relationship between toluene and ortho-toluidine, a potent bladder carcinogen, and noted that the presence of toluene, in combination with other chemicals commonly used in methamphetamine labs, was a "red flag" that ortho-toluidine can be formed in the process of making methamphetamine. Professor 't Mannetje also noted that worker training, engineering controls, work practices and PPE were not in place sufficiently to protect Mr Wernham from exposure and bladder cancer risk. Professor 't Mannetje's further report of May 2022 (with Dr Walls) is noted above. She issued another report in July 2022, in response to the report of Dr Hilliard, confirming her findings. In January 2023, Professor 't Mannetje affirmed her view that Mr Wernham was exposed to multiple known and suspected carcinogens during his employment, with emphasis on his exposure to aromatic amines, specifically ortho-toluidine and aniline which are known and potent bladder carcinogens.

[57] This Court notes Professor 't Mannetje's credentials in occupational cancer epidemiology, including occupational bladder cancer, which are relevant to the assessment of whether Mr Wernham's bladder cancer was caused by his occupation. Professor 't Mannetje's link between toluene (in combination with other chemicals commonly used in methamphetamine labs) and ortho-toluidine (a bladder carcinogenic) was founded on her extensive research. Professor 't Mannetje's references to Mr Wernham's overall health condition, level of exposure and work conditions are well supported by the evidence. At the hearing of this appeal, this Court found Dr Walls to be a credible witness. Overall, this Court finds that Professor 't Mannetje's evidence should be given considerable weight.

[58] In summary, there is clear medical evidence that:

(1) Mr Wernham's bladder cancer is rare for someone of his age and disposition;

(2) Mr Wernham's engagement for 13 years in the toxic environment of Clan Labs exposed him to toluene;

(3) there is a link between toluene and ortho-toluidine, which is an aromatic amine causing bladder cancer;

(4) ortho-toluidine has been found in United States' Clan Labs; and

(5) no other cause of Mr Wernham's bladder cancer has been identified.

[59] In light of this evidence, this Court finds, on the balance of probabilities, that Mr Wernham's personal injury was suffered in employment that involved exposure to an aromatic amine, which is described in Schedule 2 of the Act. In making this finding, this Court is mindful of the repeated view of the Court of Appeal that "a generous, unniggardly interpretation of personal injury by accident is in keeping with the policy underlying the Accident Compensation Act".[10]

[60] The Court thus concludes that Mr Wernham has met the requirements for cover for a WRGPI under section 30(3) of the Act.

Grounds to decline under section 60?

[61] Mr Wernham having satisfied the requirements of section 30(3), the Police may, in terms of section 60 of the Act, decline his claim that his personal injury is a WRGPI if the Police establishes that:

(1) he is not suffering from a personal injury of a kind described in Schedule 2, or

(2) his personal injury has a cause other than his employment.

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[10] *Accident Compensation Corporation v Mitchell* [1992] 2 NZLR 436 at 439, per Richardson J, adopted in *Harrild v Director of Proceedings* [2003] 3 NZLR 289 at 296, 299 and 317, and in *Accident Compensation Corporation v Ambros* [2008] 1 NZLR 340 at 359.

[62] The Court notes that there is clear medical evidence, and the Police agrees, that Mr Wernham suffers from bladder carcinoma, which is described in Schedule 2. The Court finds that the Police has not established the first of the alternative requirements under s 60 for declining Mr Wernham's claim.

[63] In relation to the second alternative requirement for declining cover, the Court refers to the evidence of Dr Jacobs, Dr Walls and Professor 't Mannetje that Mr Wernham's occupational exposure is the most likely underlying cause of his personal injury. The contrary views of Dr Monigatti and Dr Hilliard do not posit a cause other than Mr Wernham's employment, rather, they consider that Mr Wernham's bladder cancer is of idiopathic origin (that is, the cause is unknown). Section 60(b) requires the Police to prove that the person's personal injury has "a cause other than" his or her employment. In *Monk*, the Court referred to the onus on the Corporation to establish either that "there is another, non-work related, cause for the disease".[11] Simply positing that there is no cause established does not establish "a cause other than" his or her employment. The Court therefore finds that the Police has not established the second of the alternative requirements under section 60 for declining Mr Wernham's claim.

[64] In light of the above, the Court concludes that the Police has not established grounds to decline Mr Wernham's claim that his personal injury is a WRGPI.

Cover under section 30(2)?

[65] In view of the Court's findings on Mr Wernham's cover under section 30(3) of the Act, it is not necessary for the Court to make a finding under section 30(2) of the Act. However, for the sake of completeness, the Court will briefly set out its finding under section 30(2).

[66] For Mr Wernham to establish a WRGPI under section 30(2) of the Act, he must establish that:

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11 *Monk*, above note 4, at [64].

(1) his employment tasks or the environment in which his tasks were performed had a particular property or characteristic that caused or contributed to his personal injury by gradual process;

(2) the property or characteristic identified is not found to any material extent in his non-employment activities or environment; and

(3) the risk of suffering his personal injury is significantly greater for persons performing his employment task in that environment than for persons who do not perform that task in that environment.

[67] A Court may draw robust inferences of causation in some cases of uncertainty, grounded on its view of what constitutes the normal course of events, based on the whole of the lay, medical, and statistical evidence.[12]

[68] The Court refers in particular to the reports of Dr Jacobs, Dr Walls and Professor 't Mannetje, noted above. The Court finds, on the basis of the evidence, that Mr Wernham also qualifies for cover under section 30(2) of the Act because:

(a) Mr Wernham is employed in an environment (a Clan Lab) that has a particular property or characteristic, as he is exposed to aromatic amines which are toxic to the human body and a potent cause of bladder cancer.

(b) There is no evidence that the particular property or characteristic of Mr Wernham's employment environment is found to any material extent in his non-employment activities or environment.

(c) The risk of suffering Mr Wernham's personal injury, being bladder cancer, is significantly greater for persons performing Mr Wernham's employment task in his environment than for persons who do not perform his task in his environment.

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12 *Ambros*, above note 5, at [67].

Conclusion

[69] For the above reasons, the appeal is allowed, and the review decision dated 13 August 2021 (as varied by consent) is set aside.

[70] Mr Wernham is entitled to costs. If these cannot be agreed within one month, I shall determine the issue following the filing of memoranda.

P R Spiller
District Court Judge

Solicitors: Armstrong Thompson for the Appellant
Buddle Findlay for the Second Respondent