

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CIVIL DIVISION

VICTORIAN WORKCOVER AUTHORITY Plaintiff
v
HILLS INDUSTRIES Ltd First Defendant
PACIFIC COMPOSITES Pty Ltd Second Defendant

JUDGE: His Honour Judge Robertson
WHERE HELD: Melbourne
DATE OF HEARING: 27, 28 February, 1, 2, 6 March 2006
DATE OF JUDGMENT: 6 March 2006
CASE MAY BE CITED AS: VWA v Hills Industries & Pacific Composites
MEDIUM NEUTRAL CITATION: [2006] VCC 192

Catchwords:

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Plaintiff	Mr D. Masel	
For the First named Defendant	Mr W.C. Grainger	
For the Second named Defendant	Mr J.P. Brett	

HIS HONOUR:

- 1 This is an action made pursuant to the provisions of s.138 of the Accident Compensation Act 1985 whereby the Victorian WorkCover Authority, **the plaintiff, seeks to recover compensation paid by to an injured worker from Hills Industries Ltd, the first defendant and/or from Pacific Composites Pty Ltd, the second defendant.**
- 2 The plaintiff claims that the injury to the injured worker was caused under circumstances creating a legal liability in the first defendant and/or the second defendant to pay damages. The injured worker was one Stephen Shrimpton, a boiler-maker by occupation. At all relevant times Mr Shrimpton was employed by a company Airpold Pty Ltd, hereinafter referred to as the Company, a small family company of which he and his wife were directors.
- 3 Mr Shrimpton was in effect the sole boiler-maker employed by the Company whilst his wife worked in a management role in the business. There were no other employees of the Company, although from time to time the Company would engage sub-contractors to assist it in its various contracts. The Company was the owner of a **Baileys ladder Model FXN18/25. The model designation indicates that it was a fibreglass extension ladder, 18 feet in length in its unextended position and 25 feet in length in its maximum extended position.**
- 4 It would seem that the Company purchased the subject ladder new through another company in about 1995. Evidence would suggest that the subject ladder was manufactured by the first defendant in February of 1994. The ladder was manufactured by the first defendant in part with components, namely the fibreglass stiles, being manufactured by the second defendant. At trial the plaintiff's claim against both defendants was founded in negligence.
- 5 It would seem that the ladder was put to limited use by the Company being used on about six jobs a year, depending on Company requirements. For the

most part it would seem the ladder was stored in an upright position inside the workshop premises of the Company. It would appear that at some time in the year 2000 the ladder was left in the open on a construction site for a period of about a month.

6 On 1 November 2001 Mr Shrimpton was engaged in the removal and relocation of a boiler from the factory premises of Ascot Clothing in North Geelong. In the course of such work Mr Shrimpton used the subject ladder to gain access to the roof area of the factory premises. The ladder was apparently placed on an angle against an external wall of the premises with the top of the ladder protruding over the top of the wall.

7 Having been on the roof of the premises Mr Shrimpton commenced to descend the ladder carrying with him a cordless electric drill. At the relevant time Mr Shrimpton weighed approximately 85 kilograms and he described the cordless electric drill as being reasonably light. In any event, the combined weight of Mr Shrimpton and the drill was well inside the 120 kilogram rating for the subject ladder.

8 A sub-contractor of the Company, a Mr Peter Volodka was "footing" the ladder at the relevant time. As he was coming down the top half of the extension ladder Mr Shrimpton believed that he heard a crack with the ladder then folding in towards the wall. The next Mr Shrimpton knew he was on the ground with significant injuries. Mr Volodka confirmed in his evidence that the subject ladder had indeed "folded back" as he, Mr Shrimpton, was coming down it.

9 The issue before this court then is whether the happening of the subject accident occurred as a result of negligence on the part of either the first defendant, or the second defendant, or both. The ladder was over the years following the happening of the subject accident subjected to extensive examination by experts working for, or engaged by the various parties. This

court has carefully read and considered those expert reports.

- 10 The experts task was in a way hampered in a significant manner by reason of the fact that Mr Volodka had shortly following the happening of the subject accident, cut through the stiles of the ladder at or near the point or points of deformation. No criticism in this regard can be levelled at Mr Volodka, because he was required to do so to enable him to transport the ladder back to the Company's premises. The cutting was required by reason of the fact that the ladder being damaged as it was, it was unable to be retracted from its extended position. To make the ladder more manageable so that it could be transported back to the Company's premises, Mr Volodka cut through the ladder.
- 11 Before cutting commenced Mr Volodka observed "the fibreglass stiles was all broken up" at a point around halfway down the fly piece of the ladder. The fly piece refers to the extendable part of the ladder. Mr Volodka described the break as being "virtually an identical break on both sides." This was where Mr Volodka made his horizontal cut using a metal hacksaw.
- 12 In cross-examination Mr Volodka agreed that the cutting process would have created fibres, and fibreglass dust. He also conceded that the splits he observed in the ladder at the point where he cut it were on the compression side of the ladder with the far sides of the ladder remaining basically intact. It should be noted that both Mr Shrimpton and Mr Volodka gave evidence that pre-accident they had not experienced any difficulty in using the subject ladder, nor had either of them observed any pre-existing damage to the ladder. This court regarded both men to be honest witnesses.
- 13 However, at some point in time it is clear that this ladder had been subjected to significant impact damage. In this regard the court is referring to the inward deformation clearly observable on an aluminium ladder guide, and also to the fact that such guide is missing, or appears to be missing a rivet.

- 14 Mr Masel, learned counsel for the plaintiff most responsibly and fairly conceded when questioned by me during the course of his final submission that the damaged aluminium guide was in the general area where delamination and loss of structural integrity of the stiles had occurred resulting in the happening of the subject accident.
- 15 This court draws the inference where such significant impact damage has occurred to the aluminium ladder guide then it follows that it is more likely, more probable that significant impact damage also must have occurred to the fibreglass stiles in the general area of the deformed aluminium guide. **In this regard the court accepts the evidence of Dr Ian Crouch, an expert called by the first defendant to the effect that he, Dr Crouch, observed that a corner of the internal aluminium fitting had been badly deformed.**
- 16 Dr Crouch gave evidence that aluminium alloys required a significant stress of about 150 MPa to plastically flow. He gave evidence that this same action that damaged the internal aluminium fitting would almost certainly have damaged the composite stiles, because the through-thickness compression strength of the composite material was a lot less than 150 MPa. Dr Crouch opined that if a stile had been damaged in this manner, then the composite material would have possessed less resistance to twisting and bending.
- 17 He considered that in the extended position with a badly deformed runner, the ladder would not have had its normal level of lateral support making it unusually unstable to stand on, or to climb upon. **On balance this court finds that the subject ladder had been subjected to a significant impact damage in the area of the aluminium guide prior to the happening of the accident we are here concerned with.** It has support in reaching this conclusion by reason in part of the evidence of Dr Crouch, and further by reason of its own observation of the wear tracks on the stiles, such wear no doubt resulting from the deformed aluminium guide.

- 18 Those observable scoring marks were most unlikely to have been caused in the happening of the accident, or to have occurred post accident. Likewise, other cracking seen in the vicinity of various rungs off the ladder, and referred to by various witnesses during the course of the trial may also be indicative of the ladder having been subjected to prior abuse in usage.
- 19 The court takes the view that it may well be the position that neither Mr Shrimpton, nor Mr Volodka were aware as to the precise nature and extent of the pre-existing ladder damage. The court has carefully considered the evidence of Dr Hodgkin, an expert called on behalf of the plaintiff. Having done so it rejects his opinion that failure of the subject accident was caused by a combination of poor manufacture, and poor design.
- 20 The court rejects Dr Hodgkin's assertion that a resin content by weight of 32 per cent in respect of the inner unidirectional material was very inadequate, and it prefers the evidence of other expert witnesses called to the effect that 32 per cent is within the normal accepted range. The court accepts the evidence to the effect the subject ladder was properly designed, and manufactured by the first defendant in accordance with industry accepted standards applicable at the relevant time.
- 21 The court accepts the evidence that the stiles were properly manufactured by the second defendant in accordance with accepted industry standards applicable at the relevant time. Both defendants clearly had in place at all relevant times stringent testing, and quality control measures in relation to both the production of the ladder, and also as to the production of its fibreglass stiles.
- 22 The court finds that there is no evidence of negligence on the part of either defendant which was a cause of Mr Shrimpton's accident, and the subsequent loss and damage. The plaintiff's claim is accordingly dismissed.