



# Silicosis Claims

Shaping the future of insurance law

## Liability issues, quantum and policy impacts across Australia

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SUMMARY PACK

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## Presenters



**Cassandra Wills**

Special Counsel, Brisbane

T: +61 7 3236 8717

[Cassandra.Wills@wottonkearney.com.au](mailto:Cassandra.Wills@wottonkearney.com.au)

[View Cassandra's Profile](#)



**Emily Archer**

Senior Associate, Melbourne

T: +61 3 9116 7807

[Emily.Archer@wottonkearney.com.au](mailto:Emily.Archer@wottonkearney.com.au)

[View Emily's Profile](#)



**Jacqueline Grace**

Senior Associate, Sydney

T: +61 2 8273 9890

[Jacqueline.Grace@wottonkearney.com.au](mailto:Jacqueline.Grace@wottonkearney.com.au)

[View Jacqueline's Profile](#)



**Ken Grunder**

Senior Associate, Perth

T: +61 8 9222 6967

[Ken.Grunder@wottonkearney.com.au](mailto:Ken.Grunder@wottonkearney.com.au)

[View Ken's Profile](#)

## RESOURCES

### Video recording of the session:

<https://vimeo.com/557930779/48a6325716>

### Presentation slides:

<https://www.wottonkearney.com.au/download/10734/>

### Other W+K articles and insights:

<https://www.wottonkearney.com.au/knowledge-hub/>

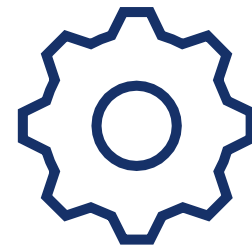


## FEEDBACK & QUESTIONS WELCOME!

We welcome any feedback you may have on the presentation materials or format of our webinar. If you have any feedback or further questions, please don't hesitate to **email one of our presenters**.

## Key takeaways

- The latency period for silicosis can be more than 10 years, which means some insurers may already have a potential claims exposure for policies from the past 10 - 20 years.
- While most silicosis claims are made by workers, there are risks for insurers providing public and product liability or professional liability insurance to:
  - Manufacturers and suppliers of artificial stone products;
  - Occupiers that have operations that create high levels of silica dust on their premises.
- Key to liability findings will be the state of knowledge of the risks held by the identified party at the time of exposure, and the steps taken to mitigate the risk.
- Little to no quantum guidance from the courts at this time.
- Silicosis claims are of significant concern to insurers and present complicated coverage issues depending on the policy wording in question.



## **What types of warnings are your seeing the manufacturer and supplier of engineered stone putting on their products and how are these warnings being communicated?**

The level of sophistication of warnings on products and transactional documents, such as invoices, varies depending on the commercial size of the manufacturer/supplier.

Manufacturers/suppliers will typically provide a warning label on any engineered stone supplied to fabricators. All warning labels include a notice about the health risks of processing stone products containing silica and will provide references to resources containing more information about the risks and proper processing procedures (often the manufacturer/supplier's website and official occupational health and safety resources).

More sophisticated warning labels of the larger manufacturers/suppliers provide warnings in multiple languages and may provide an overview of safe handling procedures and composition of the product.

Tax invoices issued to fabricators by manufacturers/suppliers often include a notice of the occupational risks of the purchased products, with the invoices of larger suppliers providing links to international health and safety information. We are also seeing manufacturers/suppliers providing "returnable receipts" to fabricators who purchase stone products, requiring them to acknowledge the health and safety risks associated with processing engineered stone.

## Have you seen any cases where lung lavage treatment has been successful?

We currently have two cases where Claimants have recently undergone lung lavages, however, it is too early to assess the long-term impact of these procedures. The procedure, which is performed as part of a study at Brisbane's Prince Charles Hospital, rinses out the Claimant's lungs with warm salt water.

One Claimant underwent a left lung lavage in June 2020. There were no immediate post-procedural complications and a post-lavage chest x-ray was promising.

The other Claimant underwent a left lung lavage in February 2021 and a right lung lavage in March 2021. This Claimant had established lung fibrosis and there is currently no data to confirm that a whole lung lavage will provide long-term benefits to patients with this disease. Despite the lack of data, it was considered a lung lavage would have more beneficial long-term effects than a lung transplant. In the 2 months following the procedures, the Claimant reported symptomatic benefit and was recovering well.

## **Why would a plaintiff join a class action against the manufacturer of engineered stone rather than bring their own claim?**

Joining a class action may be a more viable option for a plaintiff as it is less expensive than conducting individual proceedings (eg in some cases, litigation funders may be used, meaning there may be no financial outlay for a plaintiff in exchange for the litigation funder being entitled to a portion of the settlement sum). Further, the risks of litigation may be lower to ordinary members of the class action, as a costs order will only be made against a representative plaintiff.

Depending on a plaintiff's desire to be actively involved in proceedings, class actions typically require less involvement from the ordinary members, whereas individual proceedings will require greater input from a plaintiff and the plaintiff will have greater control over any resolution of the matter.

While a class action may draw greater public interest, an ordinary member may recover less than a plaintiff pursuing an individual claim (eg where litigation funders may be used, they will often require a portion of the settlement moneys).

To summarise the above, class actions present less risks for an ordinary member, and awards of compensation may be smaller. In comparison, individual claims present greater risks for a plaintiff, and may result in larger awards of compensation.

## OUR NATIONAL GL PARTNERS



**Charles Simon**  
Lead Partner (Sydney)  
T: +61 2 8273 9911  
charles.simon@wottonkearney.com.au



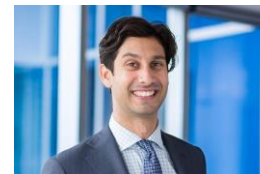
**Greg Carruthers-Smith**  
Partner (Sydney)  
T: +61 2 8273 9965  
greg.carruthers-smith@wottonkearney.com.au



**James Clohesy**  
Partner (Sydney)  
T: +61 2 9064 1816  
james.clohesy@wottonkearney.com.au



**Belinda Henningham**  
Partner (Sydney)  
T: +61 2 8273 9913  
belinda.henningham@wottonkearney.com.au



**Aisha Lala**  
Partner (Melbourne)  
T: +61 3 9604 7916  
aisha.lala@wottonkearney.com.au



**Jonathan Maher**  
Partner (Melbourne)  
T: +61 3 9604 7919  
jonathan.maher@wottonkearney.com.au



**Scott Macoun**  
Partner (Brisbane)  
T: +61 7 3236 8713  
scottm.macoun@wottonkearney.com.au



**Sean O'Connor**  
Partner (Sydney)  
T: +61 2 8273 9826  
sean.oconnor@wottonkearney.com.au



**Will Robinson**  
Partner (Perth)  
T: +61 8 9222 6909  
william.robinson@wottonkearney.com.au



**Hope Saloustros**  
Partner (Melbourne)  
T: +61 3 9604 7908  
hope.saloustros@wottonkearney.com.au



**Andrew Seiter**  
Partner (Melbourne)  
T: +61 3 9604 7906  
andrew.seiter@wottonkearney.com.au



**Robin Shute**  
Partner (Melbourne)  
T: +61 3 9604 7905  
robin.shute@wottonkearney.com.au



**Paul Spezza**  
Partner (Brisbane)  
T: +61 7 3236 8701  
paul.spezza@wottonkearney.com.au



**Stan Tsaridis**  
Partner (Sydney)  
T: +61 2 8273 9810  
stan.tsaridis@wottonkearney.com.au



**Chantal Van Grieken**  
Partner (Melbourne)  
T: +61 3 9604 7900  
chantal.vangrieken@wottonkearney.com.au



**Angela Winkler**  
Partner (Sydney)  
T: +61 2 8273 9983  
angela.winkler@wottonkearney.com.au



**Lesley Woodmore**  
Partner (Sydney)  
T: +61 2 8273 9934  
lesley.woodmore@wottonkearney.com.au



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Wotton + Kearney Pty Ltd ABN 94 632 932 131, is an incorporated legal practice. Registered office at 85 Castlereagh St, Sydney, NSW 2000

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A founding member of **LEGALIGN**  
GLOBAL

#### **SYDNEY**

L26, 85 Castlereagh Street  
Sydney NSW 2000  
T: + 61 2 8273 9900

#### **MELBOURNE**

L15, 600 Bourke Street  
Melbourne, VIC 3000  
T: +61 3 9604 7900

#### **BRISBANE**

L23, 111 Eagle Street  
Brisbane, QLD 4000  
T: +61 7 3236 8700

#### **PERTH**

L1, Suite 1 Brookfield Place  
Tower 2, 123 St Georges  
Terrace, Perth WA 6000  
T: +61 8 9222 6900

#### **AUCKLAND**

L18, Crombie Lockwood  
Tower, 191 Queen Street  
Auckland 1010  
T: +64 9 377 1854

#### **WELLINGTON**

L13, ASB Tower,  
2 Hunter Street  
Wellington 6011  
T: +64 4 499 5589

[www.wottonkearney.com.au](http://www.wottonkearney.com.au)