



COURT OF APPEAL OF NEW ZEALAND

TE KŌTI PĪRA O AOTEAROA

27 May 2021

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

ACCIDENT COMPENSATION CORPORATION V CALVER [2021] NZCA 211

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

1. Deanna Trevarthen died in December 2016 due to mesothelioma, a fatal cancer caused by inhaling asbestos. ACC declined her cover because her mesothelioma was not work-related. In a unanimous decision, the Court of Appeal has confirmed that non work-related mesothelioma, such as Ms Trevarthen’s, is a personal injury for which ACC cover is available.
2. The Accident Compensation Act 2001 states cover is not available for personal injuries caused wholly or substantially by a disease (unless one of the Act’s prescribed exceptions applies). Dismissing ACC’s appeal, the Court of Appeal ruled that this exclusion provision did not apply. The operative cause of the personal injury was an accident — the inhalation of asbestos fibres. ACC’s argument that the disease (mesothelioma) is what caused the personal injury (pleural effusions, tumours and death) draws an artificial distinction between a disease and its physical manifestations.