

**Supplementary
Submission
No 8a**

**INQUIRY INTO 2021 REVIEW OF THE DUST DISEASES
SCHEME**

Name: Mr Martin Jennings

Date Received: 4 February 2022

From: Martin Jennings
Sent: Friday, 4 February 2022 3:41 PM
To: Law
Subject: Re: 2021 Review of the Dust Diseases Scheme

Categories: DustDiseases

Good afternoon ,

As discussed I would like to provide some supplementary documentation for the committee:
ABC News item re compensation in Victoria, for auto-immune conditions linked to silica; and,
Items 1 - 3 Spanish newspaper articles concerning silicosis in engineered stone workers, c. 2010.

Thank you,

Kind regards
Martin Jennings
Consultant Occupational Hygienist

Public Prosecutor’s Office investigates six cases of silicosis in one company in Biscay

Gorospe, Pedro . El Pais ; Madrid [Madrid]06 Apr 2010: 1.

[ProQuest document link](#)

FULL TEXT

The Workplace Accident Prosecutor’s Office of High Court of the Basque Country has commenced an investigation into the case of the Biscayan marble factory in which six of its eleven employees fell ill with silicosis, despite having hired the services of an occupational risk prevention company.

Last week, the Labour Inspectorate sent the Special Prosecutor’s Office the report it prepared at the beginning of March, tipped off by EL PAÍS, after confirming that more than half of the company’s workforce was ill. The Inspectorate accused the two companies which had a duty to ensure the health of employees, first Mutualia, and later Malga Servicios Empresariales, of breaching several articles of the Occupational Risk Prevention Law. It furthermore specifies that other types of legal responsibilities may arise, referring the matter to the prosecutor’s office headed by Eburne Miranda.

In a detailed 32-page report, the Inspectorate also accuses the two companies which manufacture and import the types of quartz agglomerate countertops with which the affected company mostly worked - Silestone and Caesarstone - of not offering the latter enough information about the dangers of the compounds used in the materials. Silicates are present in high concentrations in these two products. Specifically, manufacturers and distributors did not provide accurate data about the content of their products until 2009, despite their high silicate content.

“Mass inhalation or ongoing inhalation of crystalline silica can cause pulmonary fibrosis and pneumoconiosis, such as silicosis,” states the report. In 2001, the Ministry of Employment published a medical action protocol which approves specific risk-prevention measures for working with these products.

The Special Prosecutor’s Office will now have to clarify whether the conduct of the two risk prevention companies;-Mutualia and Malga, of the Silestone manufacturer; Cosentino Sur, and of the importer of Caesarstone, a product manufactured by an Israeli company -Levantina y Asociados- is indictable and whether it will bring a case against them.

With respect to Caesarstone, manufactured by the Israeli Sdot-Yam Ltd, the Inspectorate is even leaving the door open for the Biscay company affected by the six cases of silicosis to make a claim, be it compensation or any type of liability "against the non-EU manufacturer, in accordance with the applicable principles of private international law".

In fact, the general lack of information on such products motivated the provincial marble sector employers’ association to organize a conference in May 2009 to inform all their associates of the danger of working with silica dust. The Biscayan employers' association, Cebek, is also very aware of the case and fully supports the action plan of Osalan, the Basque Institute for Occupational Safety and Health, which will especially focus its efforts this year on the inspection of marble factories in search of similar cases.

The Inspectorate reiterates the causal relationship that exists between occupational diseases and the absence of preventative measures and specifies that in the case of the Biscayan marble factory, “at the root of the absence” of adequate measures of this type “is the lack of information about the principal product used (quartz agglomerate).

And adds: “The responsibility for identifying the hazards of substances and mixtures must lie with their manufacturers, importers and immediate users.”



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The report exonerates the Biscayan company from any type of responsibility, because when the first cases of silicosis were confirmed in 2009, the company "immediately adopted, under the direct guidance of the National Silicosis Institute – given that it did not trust external risk prevention services, all of the recommended risk prevention and protection measures."

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La fiscalía investiga los seis casos de silicosis en una empresa de Vizcaya

Gorospe, Pedro . El País ; Madrid [Madrid]06 Apr 2010: 1.

[ProQuest document link](#)

FULL TEXT

La Fiscalía de Siniestralidad Laboral del Tribunal Superior vasco ha abierto una investigación sobre el caso de la marmolería vizcaína en la que enfermaron de silicosis seis de sus once empleados, pese a tener contratados los servicios de una empresa de prevención de riesgos laborales.

La Inspección de Trabajo remitió la pasada semana a la Fiscalía especial el informe que elaboró a principios de marzo, adelantado por EL PAÍS, tras constatar que más de la mitad de la plantilla de la empresa estaba enferma. La Inspección acusó de incumplir varios artículos de la ley de Prevención a las dos empresas que debían velar por la salud de los empleados: Mutualía, primero, y Malga Servicios Empresariales, después. Además de ello, precisa en su análisis que quizá puedan derivarse otro tipo de responsabilidades jurídicas, por lo que lo remitió a la fiscalía que encabeza Edurne Miranda.

En un detallado informe de 32 páginas, la Inspección acusa también a las dos empresas fabricantes e importadoras de los tipos de encimera de aglomerado de cuarzo con los que más trabajaba la firma afectada -silestone y caesarstone- de no ofrecer a esta última información suficiente sobre la peligrosidad de los compuestos usados en las piezas. Los silicatos están presentes en altas concentraciones en esos dos productos. En concreto, los fabricantes y distribuidores no facilitaron información precisa de sus productos hasta 2009, pese a su alto contenido en silicatos. "La inhalación masiva o continuada de sílice cristalina puede causar fibrosis pulmonar y neumoconiosis, como la silicosis", cita el informe. El Ministerio de Trabajo publicó en 2001 un protocolo de actuación médica y aprobó medidas precisas de prevención para trabajar con esos productos.

La Fiscalía especial tendrá que aclarar ahora si la actuación de las dos empresas de prevención -Mutualía y Malga-, de la productora de silestone -Cosentino Sur- y de la importadora de caesarstone, un producto fabricado por una empresa israelí, -Levantina y Asociados- resulta denunciabile y si impulsa una causa contra ellas.

En el caso de caesarstone, fabricado por la israelí Sdot-Yam Ltd, la Inspección deja abierta la puerta incluso a que la empresa de Vizcaya afectada por los seis casos de silicosis pueda reclamar desde indemnizaciones a cualquier tipo de responsabilidad "a la fabricante extracomunitaria, de conformidad con las normas de Derecho Internacional privado aplicables".

De hecho, la falta de información generalizada sobre tales productos motivó a la patronal provincial del sector marmolista a organizar un congreso en mayo de 2009 para informar a todos sus asociados del peligro de trabajar con polvo de sílice. La patronal vizcaína Cebek también se halla muy sensibilizada con el caso y respalda plenamente el plan de acción de Osalan, el Instituto Vasco de Seguridad y Salud Laborales, que dedicará una atención especial este año a la inspección de las marmolerías en busca de más casos de este tipo.

La Inspección recuerda la relación de causalidad que existe entre las enfermedades profesionales y la falta de medidas de prevención y precisa que en el caso de la marmolería vizcaína "en el origen de la inexistencia" de medidas adecuadas de ese tipo "se halla la falta de información sobre el producto fundamentalmente utilizado (aglomerados de cuarzo)". Y añade: "La responsabilidad de identificar los peligros de las sustancias y mezclas debe de recaer en sus fabricantes, importadores, y usuarios intermedios".

El informe exonera a la empresa vizcaína de cualquier tipo de responsabilidad, porque cuando en 2009 se constataron los primeros casos de silicosis, la firma "adoptó de manera inmediata y bajo la tutela directa del



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Instituto Nacional de Silicosis -puesto que desconfia de los servicios de prevención externos- todas las medidas de prevención y de protección recomendables".

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General inspection of all Marble Factories

PEL PAÍS GEL PAÍS . El Pais ; Madrid [Madrid]02 Apr 2010: 1.

[ProQuest document link](#)

FULL TEXT

In July 2009, the Biscay stone and Marble Business Association sent a letter to business owners in the sector warning about the problem of silicosis.

Earlier, in May, a conference was held on the prevention of this disease, in which the representatives of the sector openly expressed the lack of knowledge that had existed until that year. The business owners had been using the same risk-prevention approach in relation to quartz agglomerates as those they used for other products derived from natural stone.

One of Osalan's objectives for 2010 is the specific monitoring of all marble factories in the Basque Country, to check whether they comply with the measures.

In fact, in the case of the Biscayan marble factory that is the subject of the report, in which six of its eleven workers fell ill, the information came precisely in 2009, when the first illnesses emerged. "At that time, the company immediately adopted, under the direct guidance of the National Silicosis Institute – given that it did not trust external risk prevention services, all of the recommended risk prevention and protection measures." states the report.

Until then, as recognized by the business owners in the sector at the May conference, both the company and subsequently, the risk-prevention services, had applied and recommended risk prevention and protection measures that were possibly adequate for other products such as granite or marble "but were not adequate for quartz agglomerates, the composition of which is very different from that of other natural stone products," it states.

In particular, in a 2006 report it is stated that Caesarstone is composed of more than 90% crystalline silica. In a 2009 report from the National Silicosis Institute, it is observed that Silestone is composed of 13% quartz and 71% Albite, which, in turn, is a silicate composed of almost 70% Silicon dioxide.

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Revisión general de todas las marmolerías

PEL PAÍS GEL PAÍS . El País ; Madrid [Madrid]02 Apr 2010: 1.

[ProQuest document link](#)

FULL TEXT

La Asociación Empresarial de la Piedra y el Mármol de Biz-kaia, remitió en julio de 2009 una carta a los empresarios del sector advirtiéndolo sobre el problema de la silicosis. Previamente, en mayo, se había celebrado una jornada sobre la prevención de esta enfermedad, en la que los representantes del sector manifestaron abiertamente la falta de conocimiento habida hasta ese año. Los empresarios habían estado dando a los aglomerados de cuarzo el mismo tratamiento preventivo que al resto de los productos derivados de la piedra natural.

Uno de los objetivos de Osalan para 2010 es la especial vigilancia de todas las marmolerías de Euskadi, para ver si cumplen con las medidas. De hecho, en el caso de la marmolería de Vizcaya objeto del informe en la que enfermaron seis de sus once trabajadores, la información llegó precisamente en 2009, cuando se produjeron las primeras enfermedades. "En ese momento la empresa adoptó de manera inmediata y bajo la tutela directa del Instituto Nacional de Silicosis -puesto que desconfía de la actuación de los Servicios de Prevención Ajenos- todas las medidas preventivas y de protección recomendables", cita el informe. Hasta entonces, tal y como reconocieron los empresarios del sector en la cita de mayo, tanto la empresa como los sucesivos servicios de prevención habían aplicado y recomendado medidas de prevención o protección quizás adecuadas para otros productos como el granito o el mármol "pero que no lo eran para los aglomerados de cuarzo, cuya composición es muy distinta de la de otros productos de piedra natural", precisa. En concreto Caesarstone cita en un informe de 2006 que está compuesta por más del 90% por sílice cristalino. En un informe del Instituto Nacional de Silicosis de 2009 se observa que Silestone tiene un 13% de cuarzo y un 71% de Albita que es un silicato formado a su vez por casi un 70% de dióxido de Silicio.

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The plot thickens around Silicosis in Guernica

Gorospe, Pedro . El Pais ; Madrid [Madrid]29 May 2011: 5.

[ProQuest document link](#)

FULL TEXT

Silicosis emerged out of the coal mines when the economy stagnated during the middle of last century, and now it has appeared, again, in the marble factories of Biscay and the rest of Spain.

Like asbestosis, the combination of perilous effects caused by invisible asbestos fibres, silica dust enters the lungs and destroys them irreversibly. There is no way back.

Nevertheless, while the disease is progressing steadily amongst workers in this sector, the main criminal action on the issue, which is being pursued in the courts of Guernica, has stalled. Lawyers of the multinational companies are doing the unspeakable to delay the proceedings.

Judicial sources emphasize that "they are using a strategy of filing allegations to delay the case as much as possible and attempt to gradually dilute the case." "These are international companies, and they are pulling out all stops" say others.

The case came from the Cid marble factory, in the city of Biscay. Of the eleven workers employed, six developed silicosis. Of them, three are already retired despite being less than forty years of age, and the others are very scared. However, the criminal action is not against the marble factory, which in the opinion of the prosecution acted in accordance with the law, but rather is against the companies supplying the countertops and the risk-prevention companies. Specifically, it is against Cosentino, distributor of the original Silestone, and Levantina, distributor of Caesarstone.

It is a year ago, on 23 April 2010, that the judge of Court of First Instance number 4 of Guernica notified the legal representatives of the companies supplying countertops and surfaces for kitchens and bathrooms that were cut at the Cid Marble factory, and several technicians from Mutualia and Malga Servicios Empresariales, of the complaint of the Biscay Public Prosecutor's Office.

The complaint outlines two crimes against the health and safety of workers committed since 1991, as well as with six other crimes of injuries caused by negligence.

The Silestone and Caesarstone manufacturers did not adequately warn of the dangers of dust produced from cutting, or of its composition, and risk prevention companies did not adequately monitor the health of their customers. "The Biscayan marble factory affected by cases of silicosis was working with Silestone between 1991 and 2005 without there even being a theoretical possibility of it being provided information by the manufacturer on its chemical composition and its health risks" states the report of the Labour Inspectorate, on which prosecution relied to file the complaint.

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Judicial sources believe that this case is of "major interest" as it concerns possible penalties against two international companies. "Perhaps that is why their legal firms are responding to the judge's decisions with all kinds of manoeuvres," they emphasize. One of the latest manoeuvres has been to request a statement from the owners of the business to see if the scope of responsibility extends to them. This week or the next, a statement will also be made by those responsible for Levantina, Caesarstone's supplier.

However, for the prosecution and the Inspectorate, the only logical explanation for situation the marble workers are in, is the lack of information. The National Silicosis Institute estimated that these employees were exposed to daily concentrations of silicon in air of 50 to 100 times higher than the permissible level.

The daily exposure limit of cristobalite, a by-product of silicon dioxide, is 0.05 milligrams per cubic meter, and the family company registered five milligrams.

For quartz, the permissible level is 0.1 milligrams per cubic meter; the marble factory staff worked for years breathing in air with concentrations of up to five milligrams per cubic meter.

Silestone and Caesarstone have high concentrations of silica in different forms. Cosentino, the manufacturer with registered trademark Silesone, only had one safety data sheet available for its product from 2005, although the first it showed to the Inspectorate corresponded to the year 2006. However the Inspectorate reported that "the first time a safety data sheet was given to most of the companies in the sector was April 2009".

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La silicosis se enreda en Gernika

Gorospe, Pedro . El Pais ; Madrid [Madrid]29 May 2011: 5.

[ProQuest document link](#)

FULL TEXT

La silicosis salió de las minas del carbón cuando el negocio languideció a mediados del pasado siglo, y ahora se ha instalado, cómodamente, en las marmolerías de Vizcaya y del resto de España. Como la asbestosis, el conjunto de males que provocan las fibras invisibles del amianto, el polvo de sílice entra a los pulmones y los destroza de manera irreversible. No hay vuelta atrás.

Sin embargo, mientras la enfermedad avanza con paso firme entre los trabajadores de ese sector, la principal causa judicial penal sobre el caso, que se sigue en los juzgados de Gernika, está atascada. Los abogados de las multinacionales hacen lo indecible para frenar los procesos. Fuentes judiciales subrayan que "existe una estrategia de los denunciados para retrasar al máximo la instrucción e intentar que el caso se vaya diluyendo poco a poco". "Son empresas con proyección internacional y se la juegan", sostienen otras.

El caso partió de la Marmolería Cid, en la localidad vizcaína. De los once trabajadores empleados seis contrajeron silicosis. De ellos, tres están ya jubilados pese a no superar la cuarentena y los demás están muy asustados. La demanda penal, sin embargo, no es contra la marmolería, que en opinión de la fiscalía actuó conforme a la ley, sino contra las empresas suministradoras de las encimeras y las empresas de prevención. En concreto contra Cosentino, distribuidora del original Silestone, y Levantina, distribuidor de Caesarstone. Hace ahora un año, el 23 de abril de 2010, el juez de primera Instancia e Instrucción numero 4 de Gernika comunicó la denuncia de la Fiscalía de Vizcaya a los representantes legales de esas empresas que suministran encimeras y revestimientos de cocinas y baños que se cortaban en la Marmolería Cid, y a varios técnicos de Mutualía y Malga Servicios Empresariales. La denuncia aprecia indicios de sendos delitos contra la seguridad y salud de los trabajadores cometidos desde 1991, en concurso con otros seis delitos de lesiones imprudentes.

Los fabricantes de Silestone y Caesarstone no advirtieron adecuadamente de los peligros del polvo de corte, ni de su composición, y las empresas de prevención de riesgos no vigilaron adecuadamente la salud de sus clientes. "La marmolería de Vizcaya afectada por los casos de silicosis ha estado trabajando con Silestone desde 1991 hasta 2005 sin que existiera siquiera teóricamente la posibilidad de que le fuera facilitada información por la fabricante sobre la composición química del mismo y sobre los riesgos para la salud", describía el informe de la Inspección de Trabajo en el que se basó la fiscalía para interponer la denuncia.

Fuentes judiciales creen que se trata de un caso "de alto interés" al estar en juego penas contra dos empresas de proyección internacional. "Quizás por eso sus gabinetes jurídicos están respondiendo a cada paso que da el juez con toda clase de maniobras", subrayan. Una de las últimas maniobras ha sido pedir la declaración de los propietarios del negocio para ver si les alcanza la responsabilidad. Esta semana o la que viene declararán también los responsables de Levantina, la suministradora de Caesarstone.

Sin embargo, para la fiscalía y la Inspección la única explicación lógica a la situación que sufrieron los trabajadores de la marmolería es la falta de información. El Instituto Nacional de Silicosis estimó que esos empleados estuvieron expuestos a niveles de concentraciones diarias de silicio en aire entre 50 y 100 veces superiores a lo permitido. Si el límite de exposición diaria a la cristobalita, un subproducto del dióxido de silicio, se sitúa en 0,05 miligramos por metro cúbico, en la firma familiar se registraban cinco miligramos. Para el cuarzo, el valor límite admisible se fija en 0,1 miligramos por metro cúbico; la plantilla de la marmolería trabajó durante años respirando aire con concentraciones de hasta cinco miligramos por metro cúbico.



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El Silestone y el Caesarstone tienen altas concentraciones de sílice en diferentes formas. Cosentino, el fabricante de la marca registrada Silestone, sólo dispuso de una ficha de seguridad su producto a partir de 2005, aunque la primera que mostró a la Inspección era de 2006. Sin embargo, la Inspección denunció que "la primera ficha de datos de seguridad que dieron a la mayor parte de las empresas del sector es de abril de 2009".

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Lupus linked to silica dust exposure in Australia-first workplace compensation claim

ABC Radio Melbourne / By Matilda Marozzi

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WorkSafe has accepted Dianne Adams's compensation claim. (Supplied: Tim Carrafa)

WorkSafe insurers have accepted a compensation claim for an employee who was diagnosed with lupus after being exposed to toxic silica dust, in what lawyers believe could be an Australia first decision.

Lupus is an inflammatory disease which causes the immune system to attack its own tissues. It can affect the heart, lungs and brain.

Dianne Adams, 58, is one of seven people who claim they developed autoimmune conditions after working at silica milling factories in Dandenong and Lang Lang.

Ms Adams's compensation claim was initially rejected.

But a revised decision handed down on March 3 means she no longer has to live without heating or internet at her regional property in Victoria.

Key points:

- Workplace insurers accept Dianne Adams claim that silica dust was likely related to the onset of systemic lupus erythematosus.
- Ms Adams will now receive weekly payments and compensation for related medical expenses.
- Shine Lawyers say the decision is an Australian first

"I've been on the dole for 10 years because I was unable to work," Ms Adams told ABC Radio Melbourne.

"[Getting compensation] feels good."

What is silica?

Sometimes dubbed the new asbestos, crystalline silica is a mineral found in materials, including rock and engineered stone.

The link between exposure to silica dust and permanent lung damage is well established.

Now Shine Lawyers have successfully drawn a connection to silica exposure and a number of autoimmune conditions including lupus, scleroderma and rheumatoid arthritis.

"This is an Australian first," head of dust and diseases litigation Roger Singh said.

"It hasn't been an easy ride proving causal connection."

Ms Adams worked at the Lang Lang silica milling factory processing minerals for almost 20 years.

According to Shine Lawyers she encountered "substantial exposure" to silica dust during her employment.

In 2009, Ms Adams developed lupus and a year later she was diagnosed with a lung disease that has since been recognised as silicosis.

Mr Singh said the medical conditions had "extinguished her earning capacity" and the compensation could be "life changing".

"Dianne has been suffering in silence for over a decade with this condition," Mr Singh said.

"This outcome will enable compensation to be obtained to enhance her quality of life, and it will also pave the way for other workers who have been suffering in silence for many, many years."



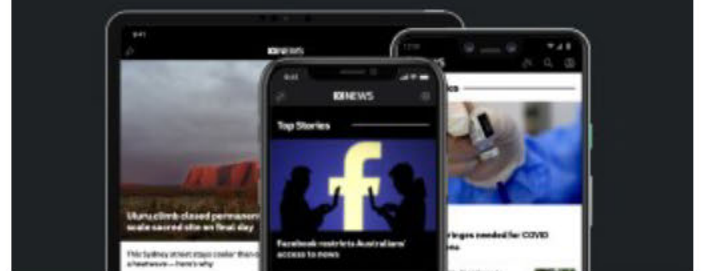
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Victorian woman wins landmark WorkSafe claim after developing autoimmune conditions linked to toxic silica dust

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They now plan to sue Ms Adams's former employer for negligence.



from the cutting of kitchen benchtops is giving workers silicosis. (ABC News)

What is being done to protect workers?

Awareness of the dangers of exposure to silica dust from engineered stone have increased dramatically over the past decade.

In 2019 WorkSafe Victoria [banned the dry cutting of engineered stone](#), in a bid to protect workers from developing silicosis.

When engineered stone products are cut, a very fine dust containing up to 95 per cent crystalline silica is released into the air.

"Exposure can result in silicosis, chronic bronchitis, emphysema, lung cancer, kidney damage and scleroderma," a WorkSafe spokesperson said.

Last month, the Victorian government said more than 1,000 workers from the stonemason industry had registered for a free health check up, as part of their action plan to protect workers from silica dust.

Workplace Safety minister Ingrid Stitt urged all past and present stonemasons to come forward.

"Our free health assessments mean those diagnosed with this deadly disease get the treatment they need as soon as possible," she said.