

# **CONTRIBUTIONS ASSESSMENT**

**DUST DISEASES TRIBUNAL**

**MATTER NO: 117 of 2010 & 117 of 2010 CC1**

**William John Bligh**

**Plaintiff**

**Switzer Towage Holdings Pty Ltd**

**First Defendant**

**Amaca Pty Ltd**

**Second Defendant**

**CSR Limited**

**First Cross Defendant**

**Wallaby Grip Limited**

**Second Cross Defendant**

**Wallaby Grip (BAE) Pty Limited**

**Third Cross Defendant**

## **DETERMINATION**

### **INTRODUCTION**

By letter dated 13 August 2010 bearing the signature of the Registrar of the Dust Diseases Tribunal I am appointed Contributions Assessor in these proceedings.

I have been provided with the file of the Dust Diseases Tribunal that contains the following material upon which I rely in making this determination:

1. Plaintiff's Statement of Particular ("Particulars")
2. First Defendant's Reply and Amended Reply
3. Second Defendant's Reply
4. First Cross Defendant's Reply
5. Second Cross Defendant's Reply
6. Third Cross Defendant's Reply

In addition to the material described at 1-6 above I rely on the Standard Presumptions set out in Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007.

The Plaintiff has allegedly contracted mesothelioma.

I record that in making this determination I have taken into account what has been included by the Defendants at each of their Replies. I have not relied on the Plaintiff's Statement of Claim.

I refer to the parties as follows:

- First Defendant – Switzer
- Second Defendant – Amaca
- First Cross Defendant - CSR
- Second Cross Defendant – WGL
- Third Cross Defendant - BAE

## **PLAINTIFF’S ALLEGATIONS OF EXPOSURE**

Where I refer to “exposure” or its derivation this is to be taken to mean exposure to and inhalation into the plaintiff’s respiratory system of asbestos dust and fibre.

The Plaintiff alleges that he was exposed in three distinct and material periods. He alleges two other periods that I regard as immaterial.

He says he was employed at Cockatoo Dockyards from 1962 to 1964 and that during this period he experienced 5% of his total exposure. He only identifies exposure to WGL products during this period.

From 1964 to 1965 the Plaintiff says he was employed by SG White Pty Ltd and that 15% of his total exposure occurred during this employment. He only identifies exposure to WGL products during this period.

The Plaintiff's most significant exposure occurred while he was employed by Switzer from 1965 to 1979. He says that 80% of his total exposure occurred during this period. He identifies Amaca products only; Hardie-BI partnership products to be exact.

### **CONTRIBUTION ASSESSMENT**

I accept the Plaintiff's own assessment of his respective exposures as accurate and I consider that on balance these percentages should be adopted as those properly representative of the respective culpability of the three periods of exposure.

WGL is solely liable for the Cockatoo Dockyard exposure and the SG White exposure.

It is clear to me that Switzer is a Category 1 and Category 2 Defendant. The plaintiff refers to the employment by Switzer of ladders and the installation of asbestos lagging by its employees in Switzer's business of ship repairs.

The plaintiff does not identify WGL or BAE products as being ones to which he was exposed during this period and no other Defendant has served material implicating WGL or BAE for this period.

For the Switzer exposure I see no reason to depart from the standard presumptions of 65% contribution to Category 1 Defendants and 35% to Category 2 Defendants. This results in 52% to

be apportioned among the three of Switzer, Amaca and CSR as Category 1 Defendants. If this were to be apportioned equally this would result in unfairness given that CSR is only properly liable for about ten years of the period being the duration of the Hardie BI partnership. Accordingly I assess Amaca as 20% liable, CSR as 14% liable and Switzer as 17% liable.

Switzer is solely responsible for the Category 2 liability of 28%.

I determine contribution to be:

- Switzer - 45%
- Amaca – 20%
- WGL – 20%
- CSR – 15% (ROUNDED UP)

I appoint Switzer as Single Claims Manager.

A handwritten signature in black ink, appearing to be 'Toby Tancred', written in a cursive style.

Toby Tancred, 9 September 2010