

## **CONTRIBUTIONS ASSESSMENT**

**DUST DISEASES TRIBUNAL**

**MATTER NO: 220 of 2011 & 220 of 2011/1**

**Bluescope Steel (AIS) Pty Ltd**

**Plaintiff**

**Amaca Pty Ltd (Under NSW Administered Winding Up)**

**Defendant**

**CSR Limited**

**Cross Defendant**

## **DETERMINATION**

### **INTRODUCTION**

By letter dated 22 November 2011 bearing the signature of the Registrar of the Dust Diseases Tribunal I am appointed Contributions Assessor under Division 5 and Division 6 of the Dust Diseases Tribunal Regulation 2007 in these proceedings.

I have been provided with the file of the Dust Diseases Tribunal in these proceedings. The file in these proceedings contains the following material upon which I rely in making this determination

1. Reply filed by Plaintiff, Bluescope (AIS) Pty Ltd, the Plaintiff – “Bluescope”
2. Reply filed by Defendant, Amaca Pty Ltd (Under NSW Administered winding up) (“Amaca”)
3. Reply filed by CSR Limited, the Cross Defendant – (“CSR”)

In addition to the material described at 1-3 above I rely on the Standard Presumptions set out in Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007.

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

## **MR TAYLOR**

These proceedings arise out of proceedings commenced by Mr Walter Richard Taylor in the Tribunal against Bluescope. Those proceedings have resolved. Mr Taylor evidently contracted mesothelioma. His claim against Bluescope was resolved.

The Particulars filed by the Solicitors for Mr Taylor in his proceedings against Bluescope have been attached to each parties Reply.

Mr Taylor was exposed to asbestos while employed by Bluescope from 1963 until 1991.

Mr Taylor was exposed at other times however that exposure is not relevant for the purpose of this Determination.

Mr Taylor commenced at Bluescope as an inspector in 1963 and was subsequently promoted to foreman and then supervisor. His exposure ceased in 1980. He never worked directly with asbestos and his exposure occurred when he walked past other workers who were stripping and maintaining furnaces with insulation material. Mr Taylor does not provide any more accurate description of the asbestos than “insulation material”.

## **APPORTIONMENT**

I must assume that Amaca and CSR are liable to contribute even though both make good arguments in their Replies as to why they are not. I record that I have taken note of the matters set out in the Replies filed by each of Bluescope, Amaca and CSR. In my view the main points that are made by each are:

### **Bluescope**

- It is not properly regarded as a Category 1 and Category 2 Defendant. I am referred to Determinations of Contributions Assessors Mr Blackett SC and Ms Strathdee who have decided this point;
- Mr Taylor’s exposure to Amaca products accounts for 80% of his total exposure at Bluescope;

- The Standard Presumptions should be varied against Amaca (and CSR) to take account of its size and sophistication and pre-eminent position in the industry;

### **Amaca**

- Bluescope is to be categorised as a Category 1 and Category 2 Defendant;
- CSR is liable to contribute given its role in the Hardie/BI Partnership;
- Amaca did not manufacture asbestos insulation products after June 1974;

### **CSR**

- Bluescope is to be categorised as a Category 1 and Category 2 Defendant;
- Contribution is properly calculated by a “time on risk” approach;
- There is an “empty chair” exposure that must be taken into account being prior exposure when Mr Taylor was not employed by Bluescope;

Bluescope is a Category 1 and Category 2 Defendant as an “installer” and employer and Amaca and CSR are both Category 1 Defendants. I consider that the facts of Mr Taylor’s employment by Bluescope to be not relevantly different to that of Mr Went whose proceedings were the subject of a Determination in Wilfred Went v Bluescope Steel (AIS) Pty Ltd & Ors 7023/2007.

On the Standard Presumptions Bluescope, Amaca and CSR are on the one hand liable for 65% and Bluescope on the other is liable for 35%. I see no reason to vary the Standard Presumptions in these proceedings having regard to all relevant matters and particularly the “bystander” nature of Mr Taylor’s exposure. While it has been decided by Kearns J in (Re Floro) Bluescope v Amaca that Bluescope had actual knowledge of the dangers of asbestos exposure as at 1962 I consider that there is insufficient material in these proceedings to warrant an adjustment of the Standard Presumptions against Bluescope.

On the face of it, Bluescope, Amaca and CSR are equally liable for the 65% Category 1 Defendant liability however this would not in my view produce a just and equitable result. It is conceded by Bluescope that Mr Taylor was exposed to products other than those manufactured and supplied by Amaca. CSR should only be liable for the period of the Hardie/BI partnership and a small period thereafter when the products of the partnership would have been in situ.

A reduction in the liability of Amaca and CSR in line with the concession by Bluescope means that Amaca and CSR should only contribute to 80% of the 65% Category 1 Defendant liability being 52%. I consider that this 52% share of liability should be shared equally between Bluescope on the one hand and Amaca and CSR on the other, which is 26% each. This analysis results in Bluescope being liable for 13% plus 26% which is 39%.

As between Amaca and CSR I consider that an appropriate apportionment having regard to the length of time of the Hardie/BI partnership is Amaca 15% and CSR 11%.

I consider that the appropriate apportionment of the Category 1 Defendant liability between Bluescope, Amaca and CSR, having regard to all of the relevant matters set out in the factual considerations in Clause 3 of the Standard Presumptions and applying the broad brush is 11% CSR, 15% Amaca and 39% Bluescope.

The above analysis would result in Bluescope being liable for 74% which does not in my view reflect a just and equitable apportionment. I consider that the liability of Bluescope should be reduced to 65% and that the 9% should be shared pro rata between Amaca and CSR.

I determine contribution to be:

- Bluescope– 65%
- Amaca – 20.4%
- CSR – 14.6%

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

Toby Tancred

14 December 2011