

3. Bluescope employed the Plaintiff as an apprentice refractory bricklayer and labourer between 19 December 1960 and 31 December 1967.
4. On 1 August 2008 judgment was entered in favour of the Plaintiff against Bluescope in the sum of \$440,000 inclusive of legal costs.
5. Bluescope's claim as against WGL and BAE was settled on 23 August 2010 by a verdict and judgment being entered in favour of Bluescope in the sum of \$45,000 inclusive of interest and costs.
6. On 20 January 2011 Bluescope filed a Statement of Particulars which, so far as is relevant, alleges:
 - (i) Bluescope should be classified as a Category 2 Defendant.
 - (ii) As the Plaintiff's allegation relates to employment between 19 December 1960 and 1 October 1967, pursuant to clause 5(1) of the *Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007*, that Standard Presumption Period B should apply [notwithstanding 12 days overlap with Period A].
 - (iii) The Plaintiff performed duties at the Port Kembla depot in the tin plate, blast furnaces, open hearths, foundry department and electric steel departments of Bluescope. His duties included but were not limited to re-lining and repairing refractory bricks and asbestos in hot areas using asbestos insulation blocks and laying refractory bricks using refractory slurry as a bonding agent. The Plaintiff gave evidence in which he identified the asbestos blocks as being manufactured by Amaca. The Plaintiff also alleged exposure to K-lite, Super HT insulation board and an asbestos slurry mix. It was alleged that Amaca manufactured these products. The Plaintiff also gave evidence of wearing asbestos gloves and hoods and these products were manufactured by WGL and BAE.

- (iv) In the relevant period Bluescope is a Category 2 Defendant and thus presumed to be liable for 35% of the liability, while Amaca is a Category 1 Defendant and is thus liable for 65% (this of course must be subject to the liability of “suppliers” other than Amaca.
 - (v) The standard apportionment should be varied by reason of the state of actual knowledge of Amaca, the identity, capacity, size and state of sophistication of Amaca, the number of defendants identified as having fault, and the steps taken by Amaca to minimise risk.
 - (vi) A “broad brush approach” should be adopted in determining the “just and equitable” contributions.
 - (vii) The apportionment should be: Bluescope 35%; Amaca 52%; other manufacturers 13%.
7. On 31 January 2011 Amaca issued a Cross-Claim against CSR Ltd (hereinafter referred to as “CSR”) claiming contribution towards its liability (if any) to Bluescope in respect of costs, expenses and damages. In support, Amaca relies upon a Deed of Agreement entered into on 24 September 1964 between Amaca, CSR and Bradford Insulation Pty Ltd (hereinafter referred to as “Bradford”), being the partnership deed whereby Amaca and CSR agreed to enter into a partnership to be known as Hardies-BI Company (“the partnership”) to manufacture in Australia, distribute and sell in Australia certain products more particularly described in the partnership agreement and that between 28 September 1964 and May 1974 Amaca and CSR manufactured the partnership products in partnership.
8. On 24 February 2011 Amaca filed a Reply to Bluescope’s claim which relevantly alleges:
- (i) Amaca, CSR, WGL and BAE should be placed into Category 1, and Bluescope placed into Category 2, in respect of the standard presumptions.

- (ii) The standard presumption should be varied by 20 percentage points against Bluescope and relies upon the relationship between the Plaintiff and Bluescope, the state of knowledge of Bluescope as to the risks associated with the use of asbestos and the steps which Bluescope took or ought to have taken to minimise the risk of harm for exposure to asbestos dust and fibre by the Plaintiff. Amaca alleges that Bluescope was a large and sophisticated organisation at the time of the Plaintiff's alleged exposure.
- (iii) The Plaintiff's exposure to asbestos products commenced only in January 1962.
- (iv) The period January 1962 to September 1964 should be identified as Period 1 and from October 1964 to December 1967 should be identified as Period 2.
- (v) Amaca disputes that it was the sole supplier of manufacture of the products used by the Plaintiff.
- (vi) Period 1 represents 46% of the Plaintiff's total exposure and Period 2 represents 54% of the Plaintiff's total exposure.
- (vii) The apportionment should be, after appropriate adjustments: Bluescope 55%; WGL and BAE 22.5%; Amaca 16.425%; and CSR 6.075%.

9. CSR provided a Reply on 6 November 2010 which relevantly alleges that:

- (i) The claims resolution process does not apply to these proceedings because it is not a proceeding brought by the Plaintiff and further because Bluescope has not issued a "cross-claim" as against CSR, nor did Bluescope issue a cross-claim in the Plaintiff's claim. In relation to the submission made by CSR as to the applicability of the resolution process to these proceedings, I determine that the contributions assessment process governs these proceedings.
- (ii) CSR, Amaca, WGL and BAE should be classified, as Category 1 Defendants while Bluescope should be a Category 2 Defendant. However, Bluescope

should also be classified as a Category 1 Defendant because Bluescope engaged in installing and maintaining furnaces containing asbestos products on its premises and should be categorised as an “installer”.

(iii) The apportionment should be: Bluescope 56.6%; WGL and BAE 21.7%; Amaca 16.9%; CSR 4.8%.

10. Initially, my function is to determine the existence of any separate periods of exposure pursuant to clause 5(8). In the present case, there is only one period of exposure, which falls within Period B. I determine that period to be from January 1962 until December 1967. During that period Category 1 Defendants are to bear 65% of the liability and a Category 2 Defendant is to bear 35% of liability in accordance with the Standard Presumptions Order. Of course the presumption can only apply to a situation of supply of the asbestos products by the nominated Category 2 Defendants.

11. In the present case, I determine that Bluescope was a Category 2 Defendant and, despite the submissions made by CSR, I determine that Bluescope was not additionally a Category 1 Defendant.

12. I determine that Amaca and CSR were Category 1 Defendants.

13. In the present case, the Standard Presumptions take into account the various aspects of the liabilities of Bluescope as a Category 2 Defendant, and the Category 1 Defendants and, accordingly, there should be no variation of the standard presumptions.

14. Thus, the following calculations as to liability can be made:

(i) As conceded by Bluescope 13% of the liability cannot be brought home to Amaca or CSR.

(ii) Bluescope is to bear 35% of the liability thus remaining (i.e. $87\% \times 35\% = 30.45\%$).

(iii) Of the 87% supplied by Amaca, 46% of this falls into Period 1 (i.e. $87\% \times 65\% \times 46\% = 26.01\%$, and with the remaining 54% in the second period, where, Amaca is liable for 50% (i.e. $87\% \times 65\% \times 54\% \times 50\% = 15.27\%$) and CSR is liable for 50% (i.e. $87\% \times 65\% \times 54\% \times 50\% = 15.27\%$).

15. For the purposes of this contributions assessment, the following apportionment is to be made:

| | |
|---------------------------|--------|
| Bluescope – 30.45% of 87% | 35% |
| Amaca – 41.28% of 87% | 47.45% |
| CSR – 15.27% of 87% | 17.55 |
| Total | 100% |

16. Pursuant to clause 61 of the Regulations, I appoint Amaca as the Single Claims Manager as it is the primary defendant defined under clause 61(9).



J.L. SHARPE
Contributions Assessor

11 May 2011