

BETWEEN:

**CLIFFORD BOLTON**

Plaintiff

AND

**AMACA PTY LIMITED (FORMERLY JAMES HARDIE & COY PTY LTD)**

First Defendant

**COMCARE**

Second Defendant

**CONTRIBUTIONS ASSESSMENT  
DETERMINATION**

1. By letter dated 4 October 2008 I was appointed the Contributions Assessor by the Registrar pursuant to Clause 49(1) of the *Dust Diseases Tribunal Regulation 2007* (NSW) (**the Regulations**).
2. The plaintiff is Clifford Bolton (**Bolton**) and he sues Amaca Pty Ltd (**Amaca**) and Comcare (**Comcare**) for damages by reason of suffering malignant mesothelioma.
3. Mr Bolton has filed a very thorough and comprehensive Statement of Particulars detailing his history of exposure to asbestos.
4. Each of Amaca and Comcare has filed a Reply.
5. The determination is to be made by me on the papers, on the assumption that the defendants are liable, and applying the standard presumptions prescribed in the *Dust Diseases Tribunal (Standard presumptions – Apportionment) Order 2007* (**the Standard Presumptions**).
6. Mrs Meyers was born 20 July 1933. He trained as an apprentice in woodcutting and had over the years various jobs in that industry. None of those jobs involved exposure to asbestos.

7. Mr Bolton details two separate incidents of exposure. One arising from his employment by the Department of Defence at the St Mary's Munitions Works from 1970 to 1987 (save for a hiatus of 12 months in 1971 – 1972 when he was self employed as a furniture maker). The second incident of exposure occurred when he used asbestos to build a home at 97 Adelaide, St Marys. He built the house in two parts over and the work continued on and off from 1964 to 1979.

### **Exposure at the Munitions Works 1972 - 1987**

8. Mr Bolton worked as a driver at the munitions factory and he was responsible for overseeing the general transport requirements at the site. His exposure to asbestos commenced in 1974 when he worked in and around deteriorating asbestos lagged pipes. Where lagging fell from the pipes he was responsible for sweeping it up.
9. If the hot water steam pipes burst he was responsible for collecting and disposing of the broken pipe. The lagging was crumbly and dusty and he inhaled it. He estimates he cleaned up these old lagged pipes two or three times a month.
10. Between 1984 and 1987 Mr Bolton recollected very significant exposure to asbestos as a result of handling large volumes of asbestos lagged pipes. There was a large network of pipes that were being removed and replaced. Sections of the pipe would be cut off and left on the ground for Mr Bolton to collect. For 3 years he did this work. He says he did not work every Saturday but probably between two and three Saturdays (8 hours per day).
11. When he had finished transporting the pipes he would get on the back of the truck and sweep it clean causing dust to rise up into the air around him. The latter years were his major source of exposure at the Department of Defence site.
12. Mr Bolton estimates that 60% of his lifetime exposure to asbestos was at the munitions factory.

### **Building his home in St Marys**

13. Mr Bolton's second and discrete exposure to asbestos occurred when he built his own home at 97 Adelaide Street, St Marys. The house was built using James Hardie

asbestos. He used asbestos on the exterior, the eaves and in the bathroom. He used Super Six sheets on the roof.

14. He purchased the James Hardie fibro products from Baro's Hardware in St Mary's. He specifically recollects seeing the name "James Hardie" on the back of the sheets he purchased.
15. Mr Bolton did the building work himself. He used fibro cutters and rasped the sheets himself before nailing them to the frame of the house. He removed the Super Six roof and replaced it with metal because it was leaking. He stored the sheets in the shed before breaking them into smaller sheets and disposing of them.
16. Mr Bolton worked with fibro about his house on and off for 9 years. There are photos of him building his home at Adelaide Street in his Statement of Particulars.
17. He estimates that 40% of his lifetime exposure to asbestos occurred while building his home.
18. I find Mr Bolton's estimate of his lifetime exposure during each period to be highly persuasive in making my determination.
19. The factual matters that are relevant to my apportionment determination (see clause 3 of the Standard Presumption Order) include:
  - (a) Mr Bolton suffers from mesothelioma, and indivisible disease;
  - (b) He was exposed to asbestos between 1964 and 1987 at intermittent times. His largest sustained exposure occurred in the period 1984 – 1987;
  - (c) It cannot be said with certainty the type of asbestos he was exposed to at the munitions factory;
  - (d) The lag time between his exposure (1964 for Amaca and about 1974 with Department of Defence) and diagnosis is consistent with the latency period of mesothelioma, accepting that the earlier exposure is more likely to be causative;
  - (e) There were two discrete periods of exposure – one to a manufacturer's product and one whilst employed by the Department of Defence; and
  - (f) No effective steps were taken to advise Mr Bolton of the dangers of exposure to asbestos or to protect him against exposure.

## **Categorisation of Defendants**

20. Both defendants submit that the parties should be categorised as follows:

Amaca Category 1

Comcare Category 2

## **Amaca's Submissions**

21. Amaca submits that the standard presumptions should not be varied for any of the reasons available in clauses 8.5 – 8.8 of the Reply.

22. Amaca submitted that, taking into account his history, length and intensity of exposure the following apportionments should apply:

Amaca – 40%

Comcare – 60%

## **Comcare Submissions**

23. Comcare also submitted that the Standard Presumptions should not be varied. It did identify that Amaca was a manufacturer of asbestos products and had an acute and unique perception of the gravity of the risk of asbestos. I think that that is correct but the Standard presumptions are fixed on the basis that category 1 defendants had actual knowledge of the dangers of asbestos and so they are set to take that level of knowledge into account.

24. Comcare did not nominate an apportionment of total liability that should apply.

## **Findings**

25. The two periods of exposure were absolutely distinct. That is, there is no contention that Mr Bolton was exposed to Amaca's products during employment at the Department of Defence. Accordingly, each defendant is solely responsible for the total exposure Mr Bolton suffered in each discrete event of exposure.

26. Accepting that Mr Bolton is best positioned to estimate his lifetime exposure to asbestos I make the following apportionments: Amaca 40% and Comcare 60%.

27. I have been asked to appoint a Single Claims Manager. I appoint Comcare.

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David Jay

Contributions Assessor

11 December 2008