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1 December 2010

Mr David Martin
Registrar, Dust Diseases Tribunal
DX 11567
SYDNEY DOWNTOWN

By Email: David_Martin@agd.nsw.gov.au

cc: Stephanie_Chia@agd.nsw.gov.au

Dear Sir,

**Barbara Byrne v Seltsam Pty Ltd & Anor
Matter No 273 of 2010**

I enclose my contributions assessment in this matter. I also will return the file by DX.

I have forwarded a copy of my fees to Messrs Colin Biggers Paisley, solicitors for Seltsam Pty Ltd, and have appointed their client as the Single Claims Manager.

Yours faithfully,



**Paul Blackett SC
Contributions Assessor**

**IN THE DUST DISEASES TRIBUNAL
OF NEW SOUTH WALES**

DDT NO. 273 of 2010

BARBARA BYRNE
Plaintiff

SELTSAM PTY LTD
First Defendant

AMACA PTY LTD
Second Defendant

**CONTRIBUTIONS ASSESSMENT
DETERMINATION**

1. I have been appointed as Contributions Assessor by the Registrar of the Dust Diseases Tribunal of New South Wales in this matter.
2. By amended statement of claim filed on 1 November 2010 the plaintiff alleges that her father Charles Bond was employed by the first defendant (who I will hereinafter refer to as "**Seltsam**") as a carpenter/joiner at its asbestos cement works situated at Belvue Avenue, Gaythorne, Queensland between the 1940s and middle 1950s.
3. From about the mid 1950s until 1973 the plaintiff's father worked as a contract carpenter/joiner in the building industry utilizing asbestos-based roofing and asbestos cement sheeting material manufactured by Seltsam and the second defendant Amaca, as it is now called.
4. Further, between 1945 and 1973 the plaintiff's father had neighbourhood exposure to asbestos products as he worked in the company of other tradesmen utilizing the first and second defendants' products.

5. The plaintiff also alleges that her father died as a result of the contraction of malignant mesothelioma on 19 January 1986.
6. In her statement of particulars filed on 28 September 2010 the plaintiff alleges that she was born on 6 November 1945. She says that she was exposed to asbestos by ingesting it in and around the home at 87 Belvue Avenue, Gaythorne, which was across the road from the premises of Wunderlich (now known as Seltsam Pty Ltd).
7. She alleges that there was always dust in the house which she was required to dust and sweep and she also washed her father's clothes during the week and on the weekend.
8. She was apparently the oldest of her siblings. She says *"During the period 1963 through to 1973 I was exposed to asbestos dust two to three times per week when I would return home to help my mother with my father's washing and general housework. My mother during that period had had several nervous breakdowns and had difficulty coping which required me as the eldest sibling to help my mother and father with domestic tasks around the house which exposed me to asbestos dust while performing the said household duties on a weekly basis"*.
9. Additionally, when he worked as a contractor, she would help her father both underneath the house at Belvue Avenue, Gaythorne and later at Landsdown Street, Newmarket and at Isaac Street, Spring Hill where he was making bird proofing for houses by helping him mark the bird proofing as he cut the asbestos cement sheeting which was manufactured by both Wunderlich and James Hardie (Amaca).
10. I set out paragraph 4.2 setting out her exposure.

"During the period mid 1950s, my father, Charles Bond, was employed as a carpenter/joiner by Wunderlich at its asbestos cement works situated at Bellevue Avenue, Gaythorne Qld. My father was exposed throughout his employment to asbestos dust and fibre when working at the Wunderlich factory at Bellevue Avenue, Gaythorne. My father deceased as a result of malignant mesothelioma on 19 July 1986. From mid 1950s to about 1973, my father was also employed in and/or worked as a contract carpenter/joiner in the building industry entirely within Queensland. My father worked on asbestos based roofing and asbestos cement sheeting material manufactured by both Wunderlich and James Hardie which he was required to cut, rasp, saw and file. In so doing, my father and I were exposed to and inhaled asbestos dust and fibres.

During the late 60s, my father performed subcontracting work as a carpenter/joiner, making "bird proofing" for private and commercial residences which required my father to cut, saw, manipulate, rasp, file and drill, James Hardie asbestos cement sheeting, manufactured and/or supplied by James Hardie. In so doing, my father and I were exposed to and inhaled asbestos dust and fibres.

Throughout the period 1945 to 1973, my father was also required to work in company with other tradesmen who were also performing building work in which asbestos cement building products manufactured and/or supplied by both Wunderlich and James Hardie were handled, cut, rasped, filed, edged, drilled, fitted and installed. In so doing, both my father and I were exposed to and inhaled asbestos dust and fibres.

Between 1945 until the mid 1950s, my father was exposed to and inhaled asbestos dust and fibre five to six days per week. I regularly came into contact with my father on his return from work during his employment with James Hardie and when I came into contact with his work clothes which I handled, shook out and laundered.

Between the mid 1950s to 1962 and then again in 1963 for a few months, I was exposed to and inhaled asbestos dust and fibre five to six days per week and I regularly came into contact with my father on his return home from his employment as a subcontractor/carpenter/joiner, using both Wunderlich and James Hardie products and I came into contact with his work clothes which I handled, shook out and laundered.

Between 1967 and the mid 1970s, I was exposed to and inhaled asbestos dust and fibre when I regularly visited my father at my father's home at 22 Landsdown Street, Newmarket Qld when I

came into contact with his work clothes and asbestos dust. and fibre released into the home environment.

Further, during this period I handled, shook out and laundered by father's work clothes regularly and was exposed to asbestos dust and fibre between one and three times per week.

During the period 1967 to 1973, I visited my father, Charles Bond, and entered my father's home and was exposed to and inhaled asbestos dust and fibre brought home on my father's clothes and person.

Between 1945 and 1959, my family resided at Bellevue Avenue, Gaythorne, across from the Wunderlich asbestos cement factory at Bellevue Avenue, Gaythorne Brisbane. Both myself and my siblings would wait at the asbestos cement works for our father to finish his shift. In so doing, both myself and my siblings would play in and around the asbestos cement sheeting and be exposed to dust and fibre.

Further, asbestos dust and fibre from the asbestos cement works was released into the air when the asbestos dust and fibre was inhaled by me.

Between 1959 and 1963, both myself and my siblings would attend with our father on school holidays at the James Hardie asbestos cement factory at Newstead, Brisbane, to pick up asbestos cement sheeting. In so doing, both myself and my siblings would play in and around and be exposed to asbestos dust and fibre. Further, asbestos dust and fibre from the asbestos cement works was released into the air and the asbestos dust and fibre was inhaled by me."

11. The plaintiff alleges during the period 1949 to 1963 she was exposed on a daily basis in dealing with her father's clothes when required to wash them and in having general asbestos dust in and around the house at both Belvue Avenue, Gaythorne and Landsdown Street, Newmarket, which she says she was required to dust and clean. She says she was exposed more frequently in school holidays when she would help her father pick up asbestos sheeting from Wunderlich and James Hardie and help mark up the asbestos cement sheeting for the jobs he was working on while he cut

and manipulated it in her presence, causing her to ingest dust in confined spaces.

12. She further says during the period 1963 to 1973 from about age 18 to 28 she was exposed to asbestos dust two to three times a week when she would return home to help her mother with her father's washing and general housework.
13. She says during an eighteen year period from 1945 to 1963 the level of intensity of exposure she perceived was high. She ingested asbestos dust pretty well every day as a child and as a result of her father working at both Wunderlich, James Hardie and using their products all his working life. There was always dust around the house which had come off her father's clothes and when they lived opposite Wunderlich's factory the home at Belvue Avenue was affected by dust from the factory premises.
14. From 1963 to 1973 the level of intensity of exposure to asbestos dust she describes as medium.
15. The plaintiff's exposure was both indirect, either neighbourhood exposure from her residence due to its proximity to Wunderlich's factory, or bystander exposure from working in proximity to her father cutting and rasping materials under the house, or from receiving or ingesting dust caused by shaking and handling his clothing.
16. Additionally she did attend apparently both premises in the school holidays and assisted her father with loading and unloading asbestos cement sheeting.
17. There is no independent evidence as to the nature and extent of the plaintiff's exposure which is set out above. There can be no doubt that it

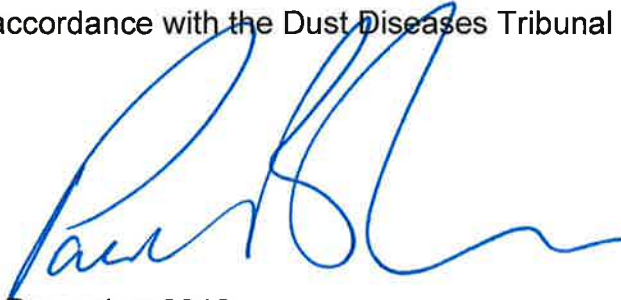
was extensive because of the proximity of the family home and her father's occupation she sustained an unusually high level of exposure for a child.

18. At paragraph 4.11 she says

"I cannot really reliably estimate the percentage of the exposure to each product, but if pushed, would expect that I was probably exposed to 55% Wunderlich asbestos cement sheetings and approximately 45% James Hardie asbestos cement sheeting products".

19. Both defendants have filed replies noting the imprecision of the plaintiff's account. Wunderlich suggests that as both defendants are Category 1 employers, liability should be apportioned 50:50. Amaca suggests that the apportionment should be 55:45.
20. Importantly Amaca does not suggest that the standard presumptions be varied.
21. The actual ambit of the dispute between the two defendants therefore appears to be 5% differential.
22. It has to be frankly acknowledged in these circumstances that the job of contributions assessor is inexact.
23. I see no plausible reason why Seltsam's percentage should be varied from the plaintiff's assessment. No cogent reasons exist for 50:50 apportionment. If anything, the evidence tends to suggest that not only was Seltsam's exposure earlier and thus potentially more potent causally but also there was significant neighbourhood exposure by virtue of the plaintiff's family home being in proximity to the Wunderlich factory.

24. Whilst acknowledging the qualified nature of the plaintiff's assertion as to percentage responsibility, at the end of the day it seems to me that it is a reasonable view based upon the history which I have set out of her exposure to both defendants' products whether Wunderlich was an employer, an occupier and a manufacturer and on one view there is an argument for varying the percentage. As this has not been sought by Amaca, I see no reason to depart from the plaintiff's and Amaca's acceptance of the 55:45 apportionment.
25. I appoint the proper officer of Seltsam Pty Ltd as the Single Claims Manager in accordance with the Dust Diseases Tribunal Regulations.



Dated 1st day of December 2010

PAUL BLACKET SC
CONTRIBUTIONS ASSESSOR.