

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

DDT NO. 206 of 2010

DONALD IAN CLARK
Plaintiff

W SMITH (PLUMBING) PTY LTD
First Defendant

DEPARTMENT OF SERVICES, TECHNOLOGY AND ADMINISTRATION
Second Defendant

**CONTRIBUTIONS ASSESSMENT
DETERMINATION**

1. In this matter I have been appointed by the Registrar of the Dust Diseases Tribunal pursuant to clause 49(1) of the *Dust Diseases Tribunal Regulation*.
2. The plaintiff as I shall refer to Donald Ian Clark in his statement of particulars discloses that he was born on 10 September 1932. He alleges employment between 1949 and 1970 with W Smith (Plumbing) Pty Ltd ("**Smith**") performing plumbing and mechanical services work including gas fitting, plumbing and supervision. In it's reply Smith acknowledges his employment but suggests that he worked for two periods for the first defendant. At some point prior to 1965 he ceased work and travelled round Australia, resuming with the company in 1965 and working till 1970. Between 1970 and 1991 he worked for the New South Wales Department of Public Works as a mechanical inspector.
3. It appears that the plaintiff, a resident of Bathurst, worked at various sites in central western New South Wales including Bathurst, Orange, Lithgow, Dubbo and Cowra.

4. The work entailed from time to time working around and installing equipment that was required to be insulated or lagged with asbestos.
5. Between 1970 and 1991 he worked at various schools, prisons, court houses, police stations, hospitals and other State government controlled facilities carrying out inspection of a wide range of facilities and equipment owned by the State government including boilers, air conditioning equipment, lifts, kitchens and LPG installations.
6. The work that he was required to do in both occupations is set out at paragraph 4(a) of his particulars and I will not reproduce that.
7. Unfortunately the plaintiff has been diagnosed with a malignant mesothelioma.
8. The plaintiff's estimate of the nature and extent of his exposure in the first defendant's employ he describes as being on a "weekly/daily basis depending upon the work being performed".
9. In relation to the New South Wales Department of Public Works he says he worked on a regular basis when inspections were made of the various facilities.
10. The dust levels to which he was exposed at Smith could be moderate to high depending on the work being carried out, whereas the work at the Department of Public Works he describes as low to medium, again depending on the type of work being performed.
11. He suggests that his period of exposure as a proportion of his total exposure in the first defendant's employment was 60% and in the second defendant's employment 40%.

12. He says that he worked both directly and in the presence of others working with asbestos material.
13. He was required to cut holes in fibro to insert pipes when installing sewer and hot water systems and remove and apply insulation material to boiler pipes that were being installed in the buildings. His work with the New South Wales Department of Public Works involved more inspections rather than physical removal or application of insulation.
14. Notwithstanding his assessment that only 60% of his exposure was with Smith, he acknowledges that this occurred on a daily basis with Smith whereas with the Department of Public Works it was only ten to twenty times per year. This is a matter that is relied upon by the second defendant in its reply for some reduction in the plaintiff's estimate of 40%.
15. Indeed, assuming that he was exposed for approximately twenty years on a daily basis, allowing for annual holidays and perhaps the fact that he may have left the first defendant's employment for a period to travel around Australia, it would suggest he was exposed for 20 years x 48 weeks a year (deducting annual holidays) – approximately 4,800 times.
16. His exposure as an inspector for the State where he was not actively engaged so much in directly cutting or lagging or dealing with asbestos but more was playing an inspecting role would only have been some 20 times a year over a similar period.
17. The second defendant argues that plaintiff's percentage should further be varied having regard to the fact that it was a later exposure. This does not seem to me to be so significant when it is accepted that his initial period of exposure was from 1949 to 1970 and the latter period from 1970 to 1991.

He was not diagnosed with mesothelioma until 16 December 2009. His last exposure, it is asserted, was in 1988.

18. Both defendants are Category 2 employers, although it would have to be said that the position of the Department of Public Works as an instrumentality of the State of New South Wales had a much greater knowledge of the dangers of asbestos than a plumbing company working in western New South Wales would have had in the immediately post war period up until 1970.
19. Whilst on the one hand the plaintiff's assessment attributing 60% to the first employment is a little at odds with daily exposure, I am of the view that, having regard to the knowledge of the State and the fact that twenty-one years has expired since he was last exposed, that is more than adequate time for the second period of employment to be implicated in his disease, which of course is indivisible.
20. I have therefore concluded that the plaintiff's assessment of his own degree of exposure is at the end of the day perhaps a little conservative in relation to his period with the first defendant but I am not minded to vary the percentage.
21. Accordingly, the first defendant will be liable to pay 60% of any damages the plaintiff may establish and the second defendant 40%.
22. I appoint the proper officer of the first defendant to be the single claims manager. I have forwarded them my memorandum of fees.


Dated the 15th day of November 2010

PAUL BLACKET SC
CONTRIBUTIONS ASSESSOR.