

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 126 of 2009

BARRY COLTMAN

Plaintiff

AMACA PTY LIMITED (“AMACA”)

First Defendant

SELTSAM PTY LTD (“SELTSAM”)

Second Defendant

ERARING ENERGY (“ERARING”)

Third Defendant

DETERMINATION

INTRODUCTION

By letter dated 11 September 2009 bearing the signature of the Registrar of the Dust Diseases Tribunal I am appointed Contributions Assessor in these proceedings.

I have been provided with the file of the Dust Diseases Tribunal that contains the following material upon which I am permitted to rely in making this determination:

1. Plaintiff's Statement of Particulars ("Particulars")
2. First Defendant's Reply
3. Second Defendant's Reply
4. Third Defendant's Reply
5. Third Defendant's Amended Reply
6. Third Defendant's Further Amended Reply

In addition to the material described at 1-6 above I rely on the Standard Presumptions set out in Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007.

I assume that the defendants are liable to the Plaintiff who is a 75 year old male who allegedly has Asbestos Related Pleural Disease.

Amaca and Seltsam are Category 1 Defendants. It is asserted by Amaca and Seltsam that Eraring is to be regarded as a Category 1 Defendant on the grounds that it was an installer of asbestos products. Eraring disputes this categorisation. Eraring claims that it engaged others to install asbestos products in the construction of the relevant power station. I accept that Eraring should be regarded as a Category 2 Defendant only. I do not consider it can be properly said that Eraring engaged in the "business" of installation of asbestos products. I refer to the relevant analysis contained in Contribution Assessment *Wilfred Went, 7023 of 2007*.

PLAINTIFF'S ALLEGATIONS OF EXPOSURE

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

The Plaintiff was employed for most of his working life as a Carpenter and alleges the following exposure:

- 1949 to 1956 - employed by Ernest Haley & Sons Constructions working on the construction of Housing Commission homes. He unloaded and cut and sawed asbestos cement fibro sheets manufactured by James Hardie and Wunderlich. This employment accounted for 30% of his total exposure.
- 1956 to 1960 – working at Tallawarra Power Station while employed by Arcos Constructions Pty Ltd. He worked in the vicinity of ladders and insulation workers who handled asbestos. This employment accounted for 30% of his total exposure.
- 1958 to 1959 – performing renovations on a residence at 14 Griffit Street, Port Kembla. The work lasted 14 months. He handled asbestos 3 times per week in the form of Super 6 asbestos cement sheeting manufactured by James Hardie and flat asbestos cement sheeting manufactured by Wunderlich. The plaintiff does not specify whether the percentage of exposure experienced during this period is to be included in the Tallawarra Power Station period and I therefore assume that it is.
- 1960 to 1961 – employed by Monier Builders Pty Ltd working mainly at Port Kembla High School working with asbestos cement products manufactured by James Hardie. This employment accounted for 10% of his total exposure.

- 1962 to 1963 – employed Colin H. Niehus Constructions Pty Ltd in Port Kembla on the construction of cottages using products manufactured by Wunderlich and James Hardie. This employment accounted for 20% of his total exposure.
- 1963 to 1994 – employed by the NSW Fire Brigades during which time he worked a four day on four day off roster. During his four days off he worked as a carpenter for various employers and worked mainly with James Hardie products. This employment accounted for 10% of his total exposure.

I consider it reasonable to adopt the Plaintiff's assessment of the percentages to be applied to each period of exposure.

CONTRIBUTION ASSESSMENT

I assume that references by the Plaintiff to James Hardie are references to products for which Amaca is liable and references by the Plaintiff to Wunderlich are references to products for which Seltsam is liable.

The Ernest Haley period of exposure is to be divided equally between Seltsam and Amaca, therefore 15% each.

The Eraring Reply submits that the Tallawarra Power Station period should account for 22.5% of the total exposure on the grounds that 75% of exposure during this period occurred at the Power Station and 25% while the Plaintiff was working on his renovation of the Griffit Street property. The plaintiff says that his Griffit Street

exposure occurred approximately three times per week over a 14 month period. I calculate this to be 180 days of exposure. The Plaintiff worked at the Power Station for 4 years. I assume he worked 5 days per week.. Allowing for 4 weeks holiday per year this totals 960 days of exposure. On this calculation the total exposure during this period is 1140 days. The Griffit Street exposure is 15% of the total and the Tallawarra Power Station exposure is 85% of the total. The Power Station exposure is 85% of 30% which is 25.5% and the Griffit Street renovation exposure is 15% of 30% which is 4.5%

I divide the Griffit Street exposure equally between Amaca and Seltsam, therefore 2.25% each.

I divide the Tallawarra Power Station exposure between Amaca and Seltsam of the one part as to 75% and Eraring as to 25% of the other part in accordance with the Standard Presumptions. Therefore the Amaca and Seltsam liability is 75% of 25.5% which is 19.125% and the Eraring liability is 6.375%. I divide the Amaca and Seltsam liability equally between those two entities, therefore 9.5625% each.

I attribute all of the Monier Builders liability to Amaca because the Plaintiff does not implicate the Wunderlich products in this period, therefore 10% to Amaca.

I divide the Colin H Niehus Constructions Pty Ltd exposure equally between Amaca and Seltsam, therefore 10% each.

I attribute all of the liability for exposure during the period was employed by the NSW Fire Brigades to Amaca because the Plaintiff does not implicate the Wunderlich products in this period, therefore 10% to Amaca.

I determine contribution to be:

- Amaca – 56.8125%
- Seltsam – 36.8125%
- Eraring – 6.375%

I appoint Amaca as Single Claims Manager.

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

Toby Tancred

Date: 9 October 2009