

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 288 of 2009 and 288 OF 2009 CC1

ANTONINO CONTI

Plaintiff

State of NSW

Defendant/Cross Claimant

AMACA PTY LTD

Cross Defendant

DETERMINATION

INTRODUCTION

By letter dated 11 May 2010 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 rely in making this determination:

1. Plaintiff's Statement of Particulars ("Particulars")
2. Defendant's Reply
3. Cross Defendant's Reply

In addition to the material described at 1-3 above I rely on the Standard Presumptions set out in Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007.

I assume that the defendant and the cross defendant are liable to the Plaintiff.

I will refer to the Defendants in the following way:

- Defendant – SRA
- Cross Defendant – Amaca

There is a controversy as to whether SRA should be categorised as a Category 1 Defendant as well as a Category 2 Defendant. Doubtless SRA is a Category 2 Defendant due to its employment of the Plaintiff. The question as to whether it is properly categorised as a Category 1 revolves around an analysis of the definition contained in the Standard Presumptions. Note 11 to the Standard Presumptions helps me conclude that SRA is properly regarded as a Category 1 Defendant. I consider that it is appropriate to regard SRA as a designer of plant and equipment that included asbestos as part of its design. I note that several other determinations of

contribution have been on the basis of a conclusion that SRA, in factual circumstances similar to but not the same as that of this plaintiff, is properly regarded as a Category 1 and Category 2 defendant.

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 plaintiff’s respiratory system of asbestos dust and fibre.

The Plaintiff alleges he was exposed while employed by SRA at its Eveleigh Railyards as a Progress Man from 1971 to 1982. He alleges that he was required to cut asbestos cement sheeting manufactured by Amaca.

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The Reply filed by Amaca makes the following relevant submissions:

- Due to the size and sophistication of SRA the Standard Presumptions should be varied upwards by 20% to the detriment of SRA.
- A decision of *Re Woelfl* of the DDT found that SRA had actual knowledge of the dangers of asbestos prior to 1960
- From 1976 Amaca provided warnings on its products as to the danger of asbestos and the safe use of its products

The Reply filed by SRA submits that a 20% adjustment of the Standard Presumptions should be applied in the favour of SRA.

67% of the Plaintiff's alleged exposure occurred during Period B to the table at Clause 5 of the Standard Presumptions and 33% of the Plaintiff's alleged exposure occurred during Period C to the table at Clause 5 of the Standard Presumptions.

The Standard Presumptions require contribution to be apportioned 65% to Category 1 Defendants and 35% to Category 2 Defendants for exposure during Period B and 60% to Category 1 Defendants and 40% to Category 2 Defendants for exposure during Period C.

If the Standard Presumptions were to be applied this would produce apportionment of SRA 68.325% and Amaca 31.675%.

Clause 4 of the Standard Presumptions permits me to adjust contribution between the Category 1 Defendants and I consider it appropriate to do so. I take into account (i) the particulars of exposure provided by the Plaintiff, (ii) the description of exposure contained in the history recorded by Professor Breslin in his report attached to the SRA Reply, (iii) the submissions made by Amaca and SRA in relation to contribution, (iv) the respective size and sophistication of SRA and Amaca and those entities access to relevant information, those entities knowledge of the dangers at relevant times, and warnings provided or not provided by the entities. I conclude that there is no relevant difference between Amaca and SRA when assessing culpability.

I therefore determine contribution to be equal between SRA and Amaca and I appoint at random
SRA as Single Claims Manager.

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

Toby Tancred

Date: 12 May 2010