

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 73 of 2010 and 73 of 2010/CC1

Kevin James Core

Plaintiff

Eraring Energy

Defendant/Cross Claimant

Babcock International Limited

First Cross Defendant

Babcock Australia Limited

Second Cross Defendant

Amaca Pty Limited

Third Cross Defendant

Wallaby Grip Limited

Fourth Cross Defendant

AWI Holdings Pty Ltd

Fifth Cross Defendant

DETERMINATION

INTRODUCTION

By letter dated 18 November 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. First Cross Defendant's Reply
4. Second Cross Defendant's Reply
5. Third Cross Defendant's Reply
6. Fourth Cross Defendant's Reply
7. Fifth Cross Defendant's Reply

In addition to the material described at 1-7 above I rely on the Standard Presumptions set out in Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007.

The Plaintiff is a 66 year old male who has allegedly contracted asbestosis. I assume that each Defendant and the Cross Defendants are liable to contribute to any damages to which the Plaintiff is entitled.

I will refer to the Defendant and Cross Defendants in the following way:

- Defendant – Eraring
- First Cross Defendant– BAL
- Second Cross Defendant – BIL
- Third Cross Defendant – Amaca
- Fourth Cross Defendant – WGL
- Fifth Cross Defendant - AWI

There is no dispute that the Cross Defendants are all Category 1 Defendants. I consider that Eraring should be categorised as both a Category 1 Defendant as an installer of asbestos and a Category 2 Defendant as the Plaintiff's employer.

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 that he was employed by Eraring at the Wangi Power Station and occasionally the Zaara Street Power Station from 1963 until 1975. The Plaintiff says he was initially employed as a labourer and subsequently as a trades assistant and then as a lagger. He says that he removed discarded lagging from boilers and pipes and worked in areas where lagging was being performed. When he worked as a lagger he says that he mixed asbestos

powder and cut up asbestos blocks and pipe sections. He worked on shutdowns when lagging was removed from boilers. He does not recall the supplier or manufacturer of the asbestos products that he worked with.

CONTRIBUTION ASSESSMENT

The Eraring Reply has been prepared with significant detail and is of great assistance.

Of particular relevance to the contribution exercise is evidence that (i) BIL tendered for a contract to provide services to Eraring worth £1,632,304 in 1948, (ii) Amaca was the only supplier of asbestos products to Amaca and that WGL was a sub contractor to Amaca, (iii) the Plaintiff told the Dust Diseases Board that 70% of his work was performed at Wangi Power Station and 30% at Zaara Street Power Station, (iv) the Plaintiff's employment card reveals that the Plaintiff was employed from 9 May 1966 to 11 February 1972, and (v) AWI did not perform any steam pipe work at Zaara Street Power Station.

Taking in to account all of the arguments set out in the Cross Defendants Replies I can see no reason to depart from the Standard Presumptions save for minor adjustments that take the matters in the preceding paragraph into account.

One matter of significance that is raised in the WGL Reply is that it ceased to operate on 30 September 1966. This is a major factor in reducing WGL's liability to contribute.

Of the 70% exposure at Wangi Power Station 35% is the liability of Eraring which is 24.5% and 65% which is 45.5% is the liability of Eraring, BIL, BAL, Amaca, WGL, and AWI. If this were split equally between these parties it would amount to 7.58% each.. I consider it appropriate to adjust upwards the liability of Amaca and BIL to 10% each and reduce the liability of WGL to 2.74%.

Of the 30% exposure at Zaara Street Power Station 35% is the liability of Eraring which is 10.5% and 65% which is 19.5% is to be apportioned between Eraring, BIL, BAL, Amaca, and WGL. If this were apportioned equally it would be 3.9% each. I consider it appropriate to adjust upwards the liability of Amaca and BIL to 5% each and reduce the liability of WGL down to 1.7%.

I determine contribution to be:

- Eraring - $24.5\% + 10.5\% + 7.58\% + 3.9\% = 46.48\%$
- BIL - $10\% + 5\% = 15\%$
- Amaca - $10\% + 5\% = 15\%$
- BAL - $7.58\% + 3.9\% = 11.48\%$ rounded up to 11.5%
- WGL - $2.74\% + 1.7\% = 4.44\%$
- AWI - 7.58%

I appoint Eraring as Single Claims Manager.

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

Toby Tancred

Date: 29 November 2010