

## **CONTRIBUTIONS ASSESSMENT**

### **DUST DISEASES TRIBUNAL**

**MATTER NO: 8047 of 2008**

**Kenneth Ian Crocker**

**Plaintiff**

**Amaca Pty Ltd**

**First Defendant**

**NSW Land & Housing Corporation**

**Second Defendant**

## **DETERMINATION**

### **INTRODUCTION**

By letter dated 21 October 2008 bearing the signature of the Registrar of the Dust Diseases Tribunal I am appointed Contributions Assessor in these proceedings.

I will refer to Amaca Pty Ltd as Amaca and NSW Land & Housing Corporation as NSW.

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. Reply filed for Amaca
3. Reply filed for NSW

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 Amaca and NSW are liable to the Plaintiff.

Amaca is a Category 1 Defendant. NSW is a Category 2 Defendant as an occupier of premises.

### **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's exposure occurred over a period of 29 years from 1956 to 1985 while he worked as a painter. He says he was only ever exposed to Amaca products. He worked on the construction of Department of Housing homes, exposure for which NSW is liable, for a total period of about two years. His exposure while working on NSW homes was daily.

The plaintiff worked for C L Bruce Pty Ltd from 1956 to 1962. “Not much” of his work during this period involved exposure. Apart from this period and the period he worked on Department of Housing homes, it is difficult to interpret that any of the plaintiff’s various other periods of exposure was more or less significant.

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The plaintiff was exposed while working on NSW homes for 2 out of his 29 year working life. It is necessary to ascribe a more significant contribution to the NSW exposure because it occurred on a daily basis. On the basis of the particulars I make the following assumptions

- That the plaintiff was exposed every day that he worked on NSW homes
- That on average the plaintiff would have been exposed 2 days per week for the other 27 years of his 29 year period of employment.
- That the plaintiff would have worked on average 5 days per week through his entire period of employment
- That the plaintiff would have worked on average 48 weeks per year through his entire period of employment
- That the plaintiff’s overall exposure to asbestos was 3072 days
- That the plaintiff’s exposure while working on NSW homes was 480 days

I determine that 15% of the plaintiff’s exposure occurred while he worked on NSW homes.

I am required by the standard presumptions to apportion liability 65% to Amaca and 35% to NSW unless I am satisfied that a variable contribution should apply. I

consider that contribution between Amaca and NSW should be equal because I do not consider that there is any relevant difference in terms of “sophistication” and culpability between them. Accordingly I determine contribution to be Amaca 92.5% and NSW 7.5%.

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 28 October 2008