

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 279/10 & 279/10/1

LAZAR CVORO

Plaintiff

WALLABY GRIP (NSW) PTY LIMITED (IN LIQUIDATION)

First Defendant

ACTION INSULATION ENGINEERS PTY LTD (IN LIQUIDATION)

Second Defendant

UNITED INSULATION COMPANY PTY LTD (IN LIQUIDATION)

Third Defendant/Cross Claimant

MICKI MOTTO PTY LIMITED (FORMERLY UNITED INSULATION CONTRACTING PTY LIMITED)

Fourth Defendant

AMACA PTY LTD

Fifth Defendant

WALLBY GRIP (BAE) PTY LIMITED

Sixth Defendant

UNILEVER AUSTRALIA LIMITED

First Cross Defendant

GELITA AUSTRALIA PTY LIMITED

Second Cross Defendant

SYDNEY LOCAL HEALTH NETWORK

Third Cross Defendant

SOUTHERN NSW LOCAL HEALTH NETWORK

Fourth Cross Defendant

UNIVERSITY OF NEW ENGLAND

Fifth Cross Defendant

AMACA PTY LIMITED

Sixth Cross Defendant

WALLABY GRIP (BAE) PTY LIMITED

Seventh Cross Defendant

DETERMINATION

INTRODUCTION

By letter dated 30 August 2011 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. First Defendant's Reply
3. First Defendant's Amended Reply
4. Third Defendant (Cross Claimant's) Reply
5. Fifth Defendant's Reply
6. Sixth Defendant's Reply
7. First Cross Defendant's Reply
8. Second Cross Defendant's Reply
9. Third Cross Defendant's Reply
10. Fifth Cross Defendant's Reply
11. Sixth Cross Defendant's Reply
12. Seventh Cross Defendant's Reply

In addition to the material described at 1-12 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 defendants are liable however this assumption is overridden by my conclusions concerning several of the cross defendants .

I record that there are no Replies on the file of the Dust Diseases Tribunal from the Second Defendant, the Fourth Defendant and the Fourth Cross Defendant

I will refer to the defendants as:

- First Defendant – “NSW”.
- Second Defendant – “Action”
- Third Defendant/ Cross Claimant – “United”
- Fourth Defendant – “Micki”
- Fifth Defendant/ Sixth Cross Defendant – “Amaca”
- Sixth Defendant – “BAE”
- First Cross Defendant – “Unilever”
- Second Cross Defendant – “Gelita”
- Third Cross Defendant – “Balmain”
- Fourth Cross Defendant – “Goulburn”
- Fifth Cross Defendant – “UNE”
- Seventh Cross Defendant – “BAE”

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 is a 74 year old male who alleges he has contracted asbestos related pleural disease. He says that he was exposed during three separate periods of employment although it is clear that the third of these periods that he describes was with two different employers.

He was employed by "Bells Asbestos" – a reference to NSW – for three months in 1968 as a logger. He worked at the ICI Botany Plant and was exposed while working with and near Amaca and BAE products.

He next worked for Action as a logger for four months in 1969. He worked in the Department of Education building in the city and at the Mascot Airport. He refers to working with and near half pipe sections, pipes and composition. He does not specifically identify the manufacturer or supplier of these products.

The plaintiff then worked for "United Insulations" from 1969 to 1987 as a logger. He says that in about 1983 there was a change in management of his employer. He recalls working at several sites the main one being Unilever at Balmain. He identifies working on premises or sites owned or controlled by Davis Gelatine (Gelita), Armidale University (UNE), Goulburn Mental Hospital (Goulburn) and Balmain Hospital (Balmain) and James Hardie (Amaca).

He describes his exposure at Unilever as involving removal and repair of old insulation, and application of new insulation in the form of half pipe sections and composition, cloth, tape and cord. He also describes his exposure at Amaca as being of a duration of “two or three days.” The only other place of exposure that he describes is at the Arnott’s Factory. He does not describe his exposure at Gelita, UNE, Goulburn or Balmain.

CONTRIBUTION ASSESSMENT

There are eleven Replies that I have considered in my determination. Due to the volume of material it is not efficient to refer to each Reply separately. Each Reply has been of assistance in clarification of the issues and in my determination. Of particular assistance is a statement of Kevin Francis Wilkinson that is annexure A to this determination. Mr Wilkinson was a director of United from 1966 to 1982. His son Michael was the owner of Micki after 1983.

The Reply filed by Balmain helpfully attaches correspondence passing between the solicitor for United and the solicitor for the plaintiff. This correspondence sheds more light on the plaintiff’s exposure during his employment with United and Micki and can be summarised in the following way:

- Unilever – of all the sites at which he worked he was present at this site the most. His exposure was regular.

- Gelita – his exposure occurred on two occasions, the first while repairing boilers, and the second while removing insulation from pipes. He does not say how long he worked on these two occasions
- Balmain – he worked for three or four days while removing insulation from pipes in the ceiling.
- Goulburn – he describes this as a “big job” removing old insulation and replacing it with half pipe sections and then mixing “compo”. This job took two weeks to complete.
- UNE – this was his first job with United and involved insulating two eight inch pipes under the floor.
- Amaca – this was “not a big job” and involved insulating two pipes. The job lasted “about two days.”

Clause 5(4) of the Standard presumptions states “*If there is more than one defendant in either of Category 1 and Category 2, then the Contributions Assessor is to treat each defendant as equal in contribution to the percent share of that Category unless satisfied that a variable contribution ought apply*” . The contents of the statement of Mr Wilkinson and the particulars provided in correspondence by the solicitors for the plaintiff satisfy me that the exposure the plaintiff experienced at Gelita, Balmain, UNE, and Amaca was “de minimus”. I am satisfied that the Goulburn exposure occurred in the earlier part of the plaintiffs employment while he was employed by United and of some albeit minor significance.

There is no agreement as to the category into which each defendant is to be placed. I consider that the defendants should be categorised as follows:

Category 1	Category 2
Amaca – as manufacturer	NSW – as employer
BAE - as manufacturer	Action – as employer
United – as installer	United – as employer
Action – as installer	Micki – as employer
Micki – as installer	UNE – as occupier
	Unilever – as occupier
	Amaca – as occupier of James Hardie factory
	Gelita – as occupier
	Balmain – as occupier
	Goulburn – as occupier

A difficulty arises from the absence of a Reply from Micki and the absence of a reference to Micki in the particulars. I am unable to have regard to the Statement of Claim to ascertain the allegations against Micki in the absence of it being attached to a Reply; it has not been so attached to any Reply. The Reply filed by United does refer to an allegation made by the Plaintiff against Micki of employment and exposure from 1983 to 1987. This is consistent with the contents of the statement of Mr Wilkinson.

The plaintiff's total period of exposure was 219 months. This is calculated in the following way:

1. 3 months with NSW;
2. 4 months with Action;
3. 164 months with United being 8 months in 1969 (the particulars refer to employment with BAE for a 4 month period in 1969) and then 12 months in 1970 to 1982 inclusive;
4. 48 months with Micki being 12 months from 1983 to 1986 inclusive

As a percentage of the whole the above periods are:

- NSW - approximately 1.4%
- Action – approximately 1.8%
- United – approximately 75%
- Micki – approximately 21.8%

The liability for the NSW period is to be apportioned 65% to Amaca and BAE and 35% to NSW. This results in 0.45% to Amaca and BAE each and 0.5% to NSW.

The liability for the Action period cannot be apportioned between Category 1 and Category 2 defendants because the particulars do not expressly indentify the manufacturer and supplier of the products for this period. Action is therefore liable for 1.8%.

The United period spans period B and Period C in the Table at Clause 5(1) of the Standard Presumptions. The period up to 1 January 1979 in Period B is 116 months

which is approximately 70% of the entire United period and the period after 1 January 1979 in Period C is approximately 30% of the entire United period.

70% of the United exposure (75%) is 52.5% and 30% of the United exposure (75%) is 22.5%.

52.5% of the United exposure is to be apportioned 65% as to Category 1 Defendants – Amaca, BAE, and United – and 35% as to Category 2 Defendants – United, Unilever and Southern. I consider Amaca liable for 11.5%, BAE liable for 11.5% and United liable for 11.25% of the Category 1 apportionment. I consider that United and Unilever equally liable and Goulburn only liable for a small fraction of the Category 2 apportionment. I consider United liable for 9%, Unilever liable for 9% and Goulburn liable for 0.375%.

22.5% of the United exposure is to be apportioned 60% as to Category 1 Defendants – Amaca, BAE, and United – and 40% as to Category 2 Defendants – United and Unilever. Amaca is liable for 4.5%, BAE is liable for 4.5% and United is liable for 4.5% of the Category 1 apportionment. I consider that United is liable for 4.5%, Unilever is liable for 4.5%.

The Micki exposure of 21.8% is to be apportioned 60% as to Category 1 Defendants – Amaca, BAE, and Micki – and 40% as to Category 2 Defendants – Micki and Unilever. This results in approximately 13% to Category 1 Defendants and 8.8% to Category 2 Defendants. I consider Amaca liable for 5%, BAE liable for 3% and Micki liable for 5% of the Category 1 apportionment. I note that BAE ceased to operate on 31 December 1979 and I have therefore reduced apportionment to it for

this period. I consider Micki liable for 4.4%, and Unilever liable for 4.4% of the Category 2 apportionment.

The above calculations result in apportionment of:

- NSW – 0.5%
- Amaca – $0.45\% + 11.5\% + 4.5\% + 5\% = 21.45\%$
- BAE - $0.45\% + 11.5\% + 4.5\% + 3\% = 19.45\%$
- Action – 1.8%
- United – $11.25\% + 9\% + 4.5\% + 4.5\% = 29.25\%$
- Unilever – $9\% + 4.5\% + 4.4\% = 17.9\%$
- Micki – $5\% + 4.4\% = 9.4\%$
- Goulburn – 0.375%

The total of the above figures is 100.125%. I consider it is appropriate to reduce the apportionment of Goulburn by 0.125% to 0.25% given that the exposure with it would have on any view of it been light in comparison to exposure in other employments and in relation to the likely exposure at Unilever during the period the plaintiff was employed by United and Micki.


Accordingly I determine contribution to be:

- NSW – 0.5%
- Amaca – $0.45\% + 11.5\% + 4.5\% + 5\% = 21.45\%$
- BAE - $0.45\% + 11.5\% + 4.5\% + 3\% = 19.45\%$
- Action – 1.8%

- United – $11.25\% + 9\% + 4.5\% + 4.5\% = 29.25\%$
- Unilever – $9\% + 4.5\% + 4.4\% = 17.9\%$
- Micki – $5\% + 4.4\% = 9.4\%$
- Goulburn – 0.25%

I have been asked to appoint a Single Claims Manager. There is no primary defendant as defined by Regulation 61(9) of the *Dust Diseases Tribunal Regulation 2007*. In these circumstances I am required to select at random the Single Claims Manager from among those defendants who each have an apportioned share of at least 15%.

I appoint at random Unilever as Single Claims Manager.

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

Toby Tancred

Date 5 September 2011.

Ref: 69/11/MC

STATEMENT



Name: Kevin Francis Wilkinson
 Date of Birth: 16 June 1927
 Address: 29 Massey Street, Gladesville NSW 2111
 Telephone: 02 9817 4814
 Email Address: N/A
 Occupation: Retired

STATES:

1. I have been asked to provide a statement in connection with the asbestos claim from Lazar Cvoro, which has been allegedly attributed to his employment with United Insulation Company Pty Limited ("United") from 1969 to 1983.
2. I was a director of United from 1966 to 1982 – I got out around 1 year before Les Sprod ("Les"). Les then sold the business to my son, Michael Wilkinson ("Michael").
3. Michael commenced trading as United Insulation Contracting Pty Limited ("United Insulation Contracting") in 1983. I came back for a while to assist Michael.

Lazar Cvoro

4. I recall Lazar Cvoro, he was known as "Louis". Louis was employed as a lagger. I cannot recall his precise start date, but think it was likely to have been just before 1970. I have not heard from Louis for many years.
5. He was a very good worker.
6. I saw his house in Tempe, which was a brick construction. He renovated the entire house. He was a handy man.
7. Louis was not a smoker.

SIGNED  WITNESS 

Louis' Duties and Exposure to Asbestos when working for United

8. Louis' main duties with United consisted of lagging steam pipes and various vessels and soap product lines. I estimate that around 75% of Louis' work was on vessels and similar equipment and the remaining 25% on steam pipes.
9. Around 75% of Louis' work was on existing pipes where the original lagging had to be removed first. The remaining 25% of his work was on new pipes.
10. On the vessels, I estimate that around 50% of Louis' work was on newly constructed vessels and the other 50% on existing vessels that were being re-lagged.
11. Towards the end of his time with United, Louis started doing some metal work for us. This was for last couple of years and may have represented around 10% of his work with the other 90% being lagging work.
12. I consider that on average, Louis spent around half his time at the Unilever site in Balmain.
13. We used the preformed sectional pipe lagging to lag the pipes. This was initially 85% magnesia sections and we continued to use the 85% magnesia sections until I left in 1982. However, we used them very seldom in the latter years.
14. Calcium silicate K-Lite sections were marketed as being asbestos free and these replaced at the 85% magnesia sections. Both were available from the 1960s.
15. Since 1966, rock wool and fibreglass versions of the sectional lagging were available and these were gradually being phased in.

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16. When using rock wool or fibreglass sectional lagging, this was all we used and there was no use of asbestos rope or slurry for the bends or the ends of the pipes. The sectional lagging was simply cut to fit the pipe.
17. There was some encouragement for us to use the rock wool and fibreglass sectional lagging, as we were able to obtain a 40% discount on this product whereas we could only obtain a 30% discount on the 85% magnesia and K-Lite materials. Also, the fibreglass and rock wool were lighter and easier to handle.
18. When lagging the various vessels, we used 85% magnesia blocks that were 36 inches long, 6 inches wide and 2-3 inches thick.
19. We used Salamander L 5 from Bells asbestos, which was a fibre product that came in bags. We made a slurry with this to fill the voids in the vessels. We also used 85% magnesia in dry form from BI Hardies, which was similar, for filling voids around the vessels. I think we used more Salamander L5 than the 85% magnesia fibres. We continued using this right up until I ceased in 1982, although the use of these products were diminishing, as we were using more fibreglass products.
20. We tried to use the blanket form of fibreglass as much as we could on the vessels, but if the client requested asbestos, we had to use asbestos. By the late 1970s and early 1980s, I consider that around 90% of the insulation for vessels was fibreglass.
21. We used very little asbestos rope, although this was always available. It was used more for personal protection to stop people getting burnt on down pipes.
22. When working for United, Louis was required to remove pre-existing lagging as required. This continued up until 1983.
23. I consider that Louis' heaviest exposure to asbestos when working for United was when working at Unilever, mainly in the soap section when replacing lagging on the soap vats. He had to strip these down back to the

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metal. There was 6 cubic metres of Salamander L5 and 85% magnesia slurry to remove from each vessel.

Louis' Duties and Exposure to Asbestos when working for United Insulation Contracting

- 24. I believe that Louis undertook more asbestos removal when working for United Insulation Contracting (the company operated by Michael). Michael formed another company, possibly called Asbestos Abatement.
- 25. They (Michael's company and Louis) did a lot of cleaning up of asbestos materials at Unilever. They covered up many of the pipes with metal cladding to prevent the dust becoming airborne.
- 26. They also did some asbestos removal work.
- 27. I cannot comment on what work Louis did when working for Michael after he left United.
- 28. I have no knowledge of Louis stripping asbestos lagging at Arnott's and breaking the insulation off with a crowbar and complaining to Michael - this must have been when Louis was working for Michael.

Unilever in Balmain

- 29. Louis worked on the soap vats and other vessels at the Unilever site.
- 30. Originally, the asbestos blocks were applied to the vessels by wire and these were then covered with a slurry of 85% magnesium and with a coating of Salamander L5 over the magnesium slurry.
- 31. I think the fibreglass blankets were introduced at the Unilever site sometime in the 1970s. However, Louis was still required to remove the original existing asbestos from the vats throughout the 1970s and probably in to the early 1980s.

SIGNED..... *[Signature]* WITNESS..... *[Signature]*

- 32. There were 22 of these soap vats. It took around one week for 2 men to strip the vats and another week to replace the insulation.
- 33. I think some of the soap vats contained blue asbestos.
- 34. Louis also worked on many other similar vats throughout the factory, which were storage tanks.
- 35. We started using the fibreglass sectional lagging on the pipes at Unilever before the 1970s.

Davis Gelatine at Botany

- 36. Louis worked at Davis Gelatine at Botany.
- 37. I think this was fibreglass as we worked here in the later years. Most of the work was pipework.

Armadale University



- 38. Armadale University was one of Louis' first jobs.
- 39. This was new pipework and we used 85% magnesia pipe sections.
- 40. We were on the site for around one week.
- 41. Our client was Baskerville from Mortlake, a mechanical services company.

Goulburn Mental Hospital

- 42. Louis worked at Goulburn Mental Hospital.
- 43. This was new pipework and we used 85% magnesia sections.
- 44. Our client was Hockin Plumbing.

Balmain Hospital.

- 45. Louis worked at Balmain Hospital.

SIGNED.......... WITNESS..........

46. This was the removal and replacement of 85% magnesia pipe lagging.

47. The removal of the original lagging took a couple of days.

48. We re-lagged with fibreglass.

EOI at Marrickville (known as Marrickville Margarine),

49. Louis also worked at EOI at Marrickville.

50. This was new pipework and we used fibreglass.

Arnott's Biscuits

51. Louis worked at Arnott's Biscuits.

52. This was mainly new pipework.

53. We used fibreglass.

54. I do not recall removing any existing lagging.

James Hardie Asbestos Factory at Camellia.

55. Louis worked at the James Hardie asbestos factory at Camellia – I do not know how long.

56. The work was lagging a new autoclave.

57. This involved 85% magnesia blocks and fibreglass blankets.

Knowledge, Precautions and PPE

58. I first became aware of the dangers associated with asbestos exposure in the 1970s. There were rumours, but no hard evidence, so we did not take any precautions initially.

59. When we did the removal of the asbestos lagging at Balmain Hospital in around 1981-82 and replaced it with fibreglass, asbestos was starting to get a bad name and this was why the Hospital wanted it removed. This

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was when I first started become more aware of the issues, as I considered that there must have been a good reason why Balmain Hospital were going to the expense of removing the asbestos lagging.

- 60. The workers appeared to know more about the asbestos than I did initially.
- 61. We did not provide any warnings to the workers, as we did not have knowledge at this stage.
- 62. We did not provide Louis with any type of mask. I know that Michael provided him with a mask when Louis worked for Michael.
- 63. There were no medical assessments or examinations being carried out during Louis' period of employment.
- 64. I am not aware of any atmospheric surveys or air quality monitoring being undertaken during Louis' period of employment.

Manufacturers and Suppliers of Asbestos Based Materials

65. I believe that the following materials were supplied by Bradford Insulation and were called "Hardie BI:

- 85% magnesia preformed sections
- 85% magnesia blocks
- 85% magnesia power in hessian bags
- K-Lite sections

66. I do not think we ever purchased directly from James Hardie and we did not have any contract with them.

67. The Salamander L 5 slurry mix came from Bells Asbestos.

68. The asbestos rope came from Bells Asbestos and Bradford Insulation. There was also another company that supplied some asbestos rope, which was a breakaway from Bells Asbestos. I cannot recall their name.

69. Les did all the purchasing of the materials.

SIGNED *x* *Kevin Wilkinson* WITNESS *x* *Don Wilkinson*

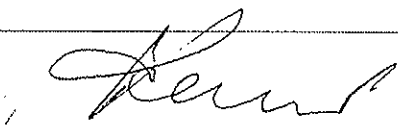
70. There were never any warnings/instructions provided by the manufacturer/supplier relating to asbestos exposure.

I confirm that I have read this statement and I have been invited to make any alterations or additions considered necessary.

I ACKNOWLEDGE THAT THE INFORMATION RECORDED IN THIS STATEMENT IS COLLECTED IN ACCORDANCE WITH THE PROVISIONS OF THE PRIVACY ACT 1988 AND MAY BE DISCLOSED TO EXTERNAL ORGANISATIONS, INCLUDING MYI FREEMANS' PRINCIPAL, ITS LEGAL REPRESENTATIVES OR OTHER SERVICE PROVIDERS.

I ACKNOWLEDGE THAT I CAN ACCESS A COPY OF MYI FREEMANS' PRIVACY STATEMENT ON THEIR WEBSITE AT WWW.MYIFREEMANS.COM.AU

THE ABOVE STATEMENT HAS BEEN READ BY THE UNDERSIGNED AND IS TRUE AND CORRECT TO THE BEST OF MY RECOLLECTION KNOWLEDGE AND BELIEF.

SIGNED  AT *Gladesville*

ON *29/3/11*

WITNESSED: ** Don Wilkinson*

NAME: ** Dulcie Mary Wilkinson*

SIGNED  WITNESS ** Don Wilkinson*