

**IN THE DUST DISEASES TRIBUNAL  
OF NEW SOUTH WALES**

**No. 2011/95**

**BETWEEN:**

**ERARING ENERGY**

**Cross-Claimant**

**AND:**

**AWI HOLDINGS PTY LIMITED (FORMERLY  
KNOWN AS STUART ST LLOYDS PTY  
LIMITED)**

**First Cross-Defendant**

**WALLABY GRIP LIMITED**

**Second Cross-Defendant**

**CONTRIBUTIONS ASSESSMENT DETERMINATION**

1. The Registrar of the Dust Diseases Tribunal has referred this matter to me pursuant to clause 49(1) of the *Dust Diseases Tribunal Regulations 2007* (hereinafter referred to as "the Regulations") for a determination of apportionment as between the Cross-Claimant, the Cross-Defendants and additionally the Cross-Defendants in proceedings No.2009/282.
2. In proceedings No.2009/282 where Eraring Energy (hereinafter referred to as "Eraring") was the Cross-Claimant, Babcock International Ltd (hereinafter referred to as "BIL") was the First Cross-Defendant, Babcock Australia Pty Ltd (hereinafter referred to as "BAL") was the Second Cross-Defendant, Power Technologies Pty Ltd (hereinafter referred to as "Power") was the Third Cross-Defendant, Amaca Pty Ltd (hereinafter referred to as "Amaca") was the Fourth Cross-Defendant and CSR Ltd was the Fifth Cross-Defendant. That Cross-Claim was filed in relation to a claim,

which had been brought against Eraring brought by Dusan Anthony Pauchlik (Hereinafter referred to as "the Plaintiff").

3. In the previous Cross-Claim proceedings I determined the following:

- (i) That in the period 13/3/67 to 14/12/69 the Plaintiff was employed at Bunnerong B Power Station and Bunnerong C Power Station, and that that represented 25% of his total exposure,
- (ii) That between 14 December 1969 to November 1974 the Plaintiff was employed at Pymont Power Station and that represented 50% of the Plaintiff's exposure and
- (iii) That between November 1974 and 24 April 1982 the Plaintiff was employed by Pymont Power Station and that represented 25% of the Plaintiff's total exposure.
- (iv) Eraring was a Category 2 Defendant, while each of the Cross-Defendants were Category 1 Defendants.
- (v) That all Category 1 Defendants' liability should be divided equally.
- (vi) That the liability of Eraring be increased by 15 percentage points.

4. On the basis of the material that was then before me, I determined the liability as follows:

Eraring	62.50%
Amaca	16.66%
BIL	4.17%
BAL	4.17%
Power	12.5%
Total	100%

5. On 8 April 2011 Eraring issued a Statement of Claim by way of Cross-Claim claiming contribution from AWI Holdings Pty Ltd (hereinafter referred to as "AWI") and Wallaby Grip Ltd (hereinafter referred to as "Wallaby Grip") in respect of its liability in respect of the Plaintiff's claim.

6. The Cross-Claim against AWI relates to the Bunnerong and Pymont Power Station periods which Eraring describes as being between 13 March 1967 to 13 December 1969 in relation to Bunnerong (as previously determined by me as representing 25% of the total period of exposure) and between 15 December 1969 to 24 April 1982 in respect of Pacific Power Station period of exposure which I previously divided into two periods, namely 14 December 1969 to November 1974 representing 50% of exposure and from November 1974 to 24 April 1982 representing 25% of the exposure. The allegation against AWI is that it had designed steel mains, headers and high pressure feed piping for installation at Bunnerong Power Station. It is alleged by Eraring that AWI is a tortfeasor, which, if sued, would have been found liable to the Plaintiff, and, accordingly, indemnity or contribution is claimed.
7. As against Wallaby Grip, Eraring alleges that the Plaintiff was exposed to asbestos dust and fibre supplied by Wallaby Grip. It is alleged by Eraring that Wallaby Grip is a tortfeasor, which, if sued, would have been found liable to the Plaintiff, and, accordingly, indemnity or contribution is claimed.
8. In support of its allegations, Eraring filed a Reply on 12 April 2011, and it alleged:
  - (i) In the period prior to 1982 AWI designed, manufactured, supplied, constructed and installed steam mains, headers and high pressure feed piping at the Bunnerong and Pymont Power Stations pursuant to certain identified named contracts dated 13 January 1950, 1952 and 1948.
  - (ii) Correspondence before 8 September 1953.
  - (iii) As against Wallaby Grip, it relies upon the evidence of BIL having subcontracted to Wallaby Grip for lagging four of the six Bunnerong B boilers, and also the affidavit of Frederick James Ross who was an employee of Wallaby Grip during the 1940s and 1950s.
  - (iv) Additionally, Eraring relies upon certain correspondence.

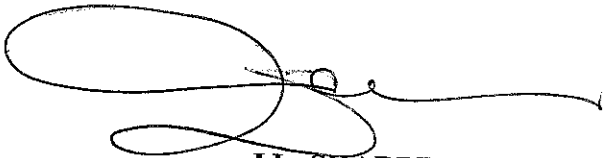
- (v) Additionally, Eraring relies upon Donald Bourke's affidavit, which alleged employment from 1961-67 with Wallaby Grip.
9. AWI has not filed any reply.
10. Wallaby Grip has filed a Reply which alleges:
- (i) The Plaintiff did not and could not identify the supply of the asbestos products with which he worked.
  - (ii) Wallaby Grip ceased operations on 30 September 1966 and, since the Plaintiff's exposure occurred between March 1967 and 1982, Wallaby Grip denies any liability.
  - (iii) Wallaby Grip did not manufacture or supply products during the Plaintiff's period of employment.
11. Under Regulation 49 of the Regulations I am directed to determine this application on the assumption that each of the Defendants are liable, and to do so on the material provided.
12. I determine that each of AMI and Wallaby Grip are Category 1 Defendants.
13. On the information before me, the Claims against AWI and Wallaby Grip have little if any prospects of success.
14. Were it not for the provisions of Regulation 49(4) of the Regulations, I would determine the liability of each of AWI and Wallaby Grip being *nil* by reason of the lack of any evidence of the Plaintiff's exposure having been to asbestos dust and fibre coming from any asbestos or asbestos products supplied, or installed by either AWI or Wallaby Grip.
15. Because of the provisions of Regulation 49(4), I am required to determine a contribution on the assumption that each of the Defendants is liable, I determine that

in each case the liability is 1%. In attempting to identify any exposure to asbestos dust and fibre either supplied by Wallaby Grip or as a result of the involvement of AWI, I determined that such exposure was *nil* or at worst *de minimis*. In particular, I have had regard to the Plaintiff's claim in this matter and the material provided by the Plaintiff together with each of the parties' replies in the previous contribution assessment and the material provided in the in the present Cross-Claim.

16. In regards to the other Cross Defendants, I am bound by my determination previously made, and accordingly I adjust the contribution of Eraring to take into account the liability of AWI and Wallaby Grip.
17. I therefore determine the total liability of Eraring and each of the Cross-Defendants in accordance with the previous determination and, accordingly, the following determination is made:

Eraring	60.5%
Amaca	16.66%
BIL	4.17%
BAL	4.17%
Power	12.5%
AWI	1%
Wallaby Grip	1%
Total	100%

18. Pursuant to clause 61 of the Regulations, I appoint Eraring as the Single Claims Manager as it is the primary defendant defined under clause 61(9).



**J.L. SHARPE**

**Contributions Assessor**

7 October 2011