

IN THE DUST DISEASES TRIBUNAL OF NSW

SYDNEY REGISTRY

DDT Nos. 185/2010 and 185/2010/1

BETWEEN: **GRAEME LESLIE FREEMAN** Plaintiff

AND: **JUBILEE ENGINEERING CO PTY LIMITED** First Defendant

RECKITT BENCKISER (HOUSEHOLD) PTY LIMITED
(FORMERLY RECKITT & COLMAN PTY LIMITED) Second Defendant

JUBILEE ENGINEERING CO PTY LIMITED Cross Claimant

MOUNT THORLEY OPERATIONS PTY LIMITED Cross Defendant

CONTRIBUTIONS ASSESSMENT DETERMINATION

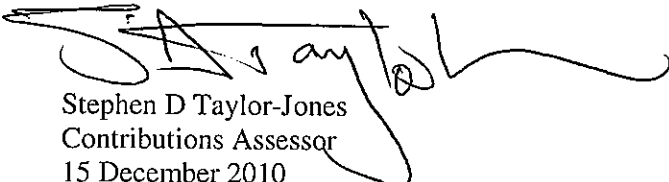
1. The Registrar referred this matter to me by letter dated 8 December 2010 received 15 December 2010 pursuant to clause 49(1) of the *Dust Diseases Tribunal Regulation 2007* (NSW) ('the Regulation') for a determination of apportionment as between the defendants.
2. The determination is to be made on the assumption that the defendants (that is including the cross defendant) are liable and applying as appropriate the *Dust Diseases Tribunal (Standard Presumptions - Apportionment) Order 2007* (the 'Order').
3. I note that no defendant has sought to be excluded from the determination on the basis of being an innocent defendant and no agreement has been reached amongst the defendants that any of them is an innocent defendant.
4. I make this determination having considered the plaintiff's Statement of Particulars filed on 18 October 2010, the Reply filed by the first defendant ('Jubilee') on 18 November 2010, the Reply filed by the second defendant ('Reckitt') on 23 November 2010 and the Reply filed by the cross defendant ('Mount Thorley') on 29 November 2010.
5. The plaintiff alleges that he has developed mesothelioma being an 'indivisible disease' as contemplated by clause 5(7) of the Order, as a consequence of exposure to asbestos dust and fibre in the course of employment as follows:
 - 5.1 by Jubilee as a maintenance fitter between 1963 and early 1969; and
 - 5.2 by Reckitt as a maintenance fitter and then engineering supervisor in the period between May 1970 and July 2006.

6. The plaintiff's particulars and his history to the Dust Diseases Board (as annexed to Reckitt's Reply) confirm that the nature and extent of his exposure in the course of employment Jubilee and by Reckitt were not consistent.
7. The plaintiff's particulars and history are that he was heavily exposed to asbestos dust and fibre on average once per week during the entire period of employment by Jubilee. That employment included work upon 6 ships being the SS Ayrfield, Teralba and Braxton ('the Steam Ships') and the Millers Canopus, RW Miller and Miller Macarthur ('the Tankers'). He also worked periodically at the Miller's Brewery and the Coal Wharfs at Glebe during the Jubilee period of employment.
8. The plaintiff says that he was exposed as a consequence of de-lagging and re-lagging sections of steam piping, valves, boiler components and the like in the course of undertaking maintenance fitting work.
9. the plaintiff was initially employed as a maintenance fitter by Reckitt and in 1984 was promoted to the position of an Engineering Supervisor. He particularises that the primary exposure occurred before 1984, then occurred less frequently after 1984 until 2000, and did not occur at all after 2000. Further the plaintiff particularises his exposure as far less frequent in the course of the Reckitt employment than in the Jubilee employment. In particular he says it occurred about once per month and in the history to the Dust Diseases Board that it was 'sporadic'. Also, apart from one 2 week period in about 1982 when he worked on the redirection of the 'canning line' he describes the exposure as of low intensity.
10. I am satisfied that separate periods of exposure are sufficiently different to warrant a differential determination of the contribution of each of the periods to be made as contemplated by clause 5(7) of the Order.
11. I find the Jubilee period amounted to exposure on 1 day per week over a 6½ year period and that exposure was heavy by comparison to the Reckitt exposure. That amounts to 338 days of exposure to which I apply a loading of 1.5 to take into account the comparative heaviness of the exposure.
12. As regards the Reckitt exposure I find light exposure once per month for the period between 1970 and 1984 save as to the 2 week period in undertaking work on the canning line. That would, in itself, amount to 10 days of exposure. In addition I find the exposure between 1984 and 2000 was about once per 3 months, again of light intensity. I find in accordance with the plaintiff's particulars that there was no exposure subsequent to the move to the Wetherill Park Factory in 2000. Accordingly the Reckitt employment resulted in 238 days of exposure. I do not apply any loading to that exposure to take into account its lighter intensity by comparison to the Jubilee exposure.
13. It follows, taking into account the loading, that the relative culpability of the exposure periods calculate to the following percentages:
 - 13.1 Jubilee period - 68%
 - 13.2 Reckitt period - 32%
14. The next question is as to the appropriate apportionment of contribution between Jubilee, Reckitt and Mount Thorley.
15. Mount Thorley admits at paragraph 4.2 of its Reply that it was the owner and consequently I find it to be the occupier of the Steam Ships. It denies that it was the owner of the Tankers. It has annexed to its Reply the Affidavit of John Robinson sworn 19 November 2010 in support

of its denial of ownership of the Tankers. The Affidavit deposes to searches undertaken of the Lloyd's Register of Asia in respect of ship owners of the ships relevant to these proceedings. The evidence appears to me to exonerate Mount Thorley in respect of the Tankers.

16. I also note the plaintiff says that his exposure in the course of employment by Jubilee occurred at the Miller's Brewery and the Coal Wharfs at Glebe. Mount Thorley is not alleged to have been responsible for exposure at those places. It is accordingly appropriate to undertake an analysis of the exposure in the course of employment by Jubilee arising from the Steam Ships as distinct from the non Steam Ship exposure in assessing the appropriate apportionment as between the defendants.
17. It is difficult to do that because the particulars are not complete and as such I cannot be fully informed as to the amount of exposure that had occurred on each ship by comparison to each other's ship and by comparison to the work at the Brewery or the Coal Wharfs.
18. I note the particulars are that the plaintiff's work at the Brewery occurred, more or less, once per year in the course of boiler maintenance during the annual shutdown of the Brewery although it is said the plaintiff also performed some maintenance work there outside the 'shutdown period'. There is no information to assist me in knowing how long the maintenance work occurred nor the frequency at which the plaintiff attended the Brewery and/or was exposed to asbestos dust other than during that annual shutdown. There is no information at all about the frequency, duration, and intensity of exposure at the Coal Wharfs.
19. It is clear that the plaintiff's primary work involved maintaining ships. In the 6½ years he worked for Jubilee he identifies 6 ships. Taking a 'broad brush' approach I find that about 45% of the Jubilee exposure occurred when the plaintiff was working on the Steam Ships for which Mount Thorley is in part responsible. I find the balance of exposure occurred on the Tankers, the Brewery and the Coal Wharfs for which Mount Thorley is not responsible.
20. When assessing apportionment between the defendants I note the submissions by each defendant is that all of the defendants are Category 2 Corporations. As such the 'table' prescribed by s5(1) of the Order has no relevance. Rather I am bound to consider relative culpability by reference to clause 5(7) of the Order.
21. I find Reckitt entirely liable for the Reckitt Period it being the only party sued in that respect.
22. In relation to the Jubilee Period I find Jubilee exclusively liable for the portion of the exposure other than in the course of work on the Steam Ships. As regards the portion of the work attributable to the Steam Ships I find Reckitt and Mount Thorley equally culpable.
23. It follows that I determine contribution in the following apportions:

23.1	Jubilee	-	52.7%
23.2	Reckitt	-	32%
23.3	Mount Thorley	-	15.3%
24. I appoint Jubilee as the Single Claims Manager pursuant to s61(3)(b) of the Regulation.


 Stephen D Taylor-Jones
 Contributions Assessor
 15 December 2010