

**CONTRIBUTIONS ASSESSMENT**

**DUST DISEASES TRIBUNAL**

**MATTER NO: 8094/08, 8094/08/1 & 8094/08/2**

**ALBERT GEORGE**

**Plaintiff**

**BRALIS ENTERPRISES PTY LTD (FORMERLY KNOWN AS  
JOHN GEARY (ENGINEERING) PTY LTD)**

**First Defendant**

**AMACA PTY LTD**

**Second Defendant**

**DELTA ELECTRICITY**

**Third Defendant**

**POWER TECHNOLOGIES PTY LTD**

**Cross Defendant**

# **DETERMINATION**

## **INTRODUCTION**

By letter dated 26 June 2009 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. Second Defendant's Reply
4. Third Defendant's Reply
5. First Cross Defendant's Reply

In addition to the material described at 1-5 above I rely on the Standard Presumptions set out in Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007.

I assume that each defendant sued by the Plaintiff and the cross defendant is liable to the Plaintiff. The Plaintiff is an 81 year old male.

I will refer to the Defendants in the following way:

Bralis Enterprises Pty Ltd – “Bralis”

Amaca Pty Ltd – “Amaca”

Delta Energy – “Delta”

Power Technologies Pty Ltd – “Power”

There is some dispute between the Defendants as to their categorisation.

Amaca argues that it should be a Category 2 defendant given that the Plaintiff’s claim against it is as an occupier of premises. While that is relevant to the determination of issues between Amaca and the Plaintiff it is not relevant to the contribution assessment and determination of liability as between the Defendants.

Delta argues that Power should be a Category 1 Defendant on the basis that it was a supplier of asbestos, a designer of asbestos products, and an installer of asbestos products. Beyond that assertion there is no evidence provided to support the proposition and so I do not accept that Power should be a Category 1 defendant.

Amaca is a Category 1 Defendant and every other Defendant is a Category 2 Defendant.

## **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 was exposed to asbestos for two separate periods relevant to this determination.

The first period occurred when the Plaintiff was employed by Bralis for 7 months in 1965 installing pipework at the Amaca factory at Camelia. He says he installed the pipework in a part of the factory in which asbestos cement was made. He worked near Amaca employees who emptied bags of asbestos into a mixer and this process resulted in large amounts of asbestos getting into the air.

The second period occurred when the Plaintiff worked in partnership with his brother in the aptly named business George Brothers. For 18 months the plaintiff worked at Vales Point and Munmorah Power Stations during the construction phase of each station. The plaintiff estimates that 80% of his time was spent working inside the stations. He worked in the vicinity of ladders insulating pipework and was thereby exposed. He recalls that his work was constantly supervised by engineers from Delta and he received directions from these Delta engineers.

## **CONTRIBUTION ASSESSMENT**

Attached to the Reply filed by Bralis is a report of a Respiratory Physician, Dr Muers from the Leeds Chest Clinic in the U.K. Dr Muers examined the Plaintiff on 16 December 2008. In his report Dr Muers states that he is “diffident about estimating fibre concentrations in a case like this because of major uncertainties about the position in which Mr George worked and the concentrations of fibre to which he was exposed.” With that caveat Dr Muers assesses that 77% of the Plaintiff’s exposure

occurred at the Amaca factory, 15% at Munmorah and Vales Point Power Stations and 8% elsewhere.

The Plaintiff experienced 25 months exposure in total.

As a percentage of the total the Bralis exposure accounts for 28%. I take into account the plaintiff's evidence that a proportion of his time at Munmorah and Vales Point was spent outside and the opinion of Dr Muers. I consider that the Bralis period should be adjusted so that it accounts for 40% and therefore Delta for 60%.

I see no reason to vary the standard presumptions for the Bralis period and therefore determine contribution for this period to be Bralis 14% and Amaca 26%.

Contribution for the Delta period is to be divided between Delta and Power. The Replies filed by these entities assert that Amaca should be liable for this period but as Amaca points out in its Reply the plaintiff does not implicate Amaca in liability for this period. Neither the Reply of Delta nor Power provides any evidence that Amaca products were used at Munmorah and Vales Point Power Stations. Neither Reply refers to specific findings of the Tribunal about the presence of and use of Amaca products at Vales Point and Munmorah. If there are such findings I am unable to rely on them given the absence of reference to them in the Replies. Certainly the Reply filed by Delta makes detailed submissions about the culpability of Amaca but I cannot see any material upon which I can support a finding that the Plaintiff was exposed to Amaca products at Vales Point and Munmorah. In the circumstances I therefore divide contribution equally between Delta and Power for this period.

Accordingly I determine contribution to be:

- Bralis – 14%
- Amaca 26%
- Delta – 30%
- Power – 30%

I appoint Amaca to be Single Claims Manager out of the Defendants with a liability to contribute of greater than 15%.

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

Toby Tancred

Date 16 July 2009.