

January 1961 and 31 December 1978, period C between 1 January 1979 and 31 December 1989 and period D, after 1 January 1990.

5. In this matter James Stanley Gerrey (hereinafter referred to as "the Deceased") filed a Statement of Claim on 3 December 2009 alleging:

- (i) Between about 1955 and about 1958 he was employed by Bluescope Steel (AIS) Pty Ltd (hereinafter referred to as "Bluescope") at factory premises situated at Port Kembla known as the Steelworks.
- (ii) In the course of his employment he handled, fit, cut, installed and removed asbestos contained in insulation products.
- (iii) He also worked in areas where other workers handled, fit, cut, installed and removed asbestos contained in insulation products.
- (iv) As a result of his exposure to asbestos, the Deceased contracted mesothelioma.

6. In support of his claim, the Deceased provided a Statement of Particulars on 24 December 2009 which, so far as is relevant, asserted:

- (i) Between 1956 and 1959 while the Deceased was employed by Bluescope as a bricklayer's labourer he was exposed to asbestos.
- (ii) The Deceased had no other exposure to asbestos while employed.

7. The Deceased relied upon an Affidavit sworn on 23 December 2009 which, so far as is relevant, alleged:

- (i) In about 1956 he was employed at the Steelworks, mostly in the number 1 open-hearth department, but sometimes in other parts of the Steelworks, including the blast furnace department.
- (ii) He worked as a refractory bricklayer's labourer for 2.5-3 years working on 3 rotating shifts.
- (iii) During the course of his employment he was exposed to and inhaled dust including insulation dust from insulation refractory materials being demolished and rebuilt next to him.
- (iv) His work was to assist the refractory bricklayers in repairing, maintaining and re-lining the insulation refractory bricks in hot areas in the number 1 open-hearth department and occasionally in other areas, including the blast furnace department.

- (v) He prepared and cut insulation materials (including blocks and composition) that the bricklayers handled and laid on the steel shell surfaces of the furnaces and other areas.
 - (vi) He used a hacksaw or handsaw to do this and clouds of dust went into the air each time he did this.
 - (vii) Each day refractory bricks were demolished as well as the insulation behind the refractory bricks and he was exposed to clouds of dust when this was done. He then was further exposed to clouds of dust when the debris and removed material was placed into bins.
 - (viii) The refractory bricklayers handled and cut to shape and laid insulation blocks or sheets and applied composition which he mixed in the gaps up against the internal steel shell of the furnace, after which refractory bricks were placed over the top, and while this sort of work was done there were clouds of dust in the air around him.
 - (ix) Pipe fitters also insulated steam pipes, removing and applying insulation in the form of rope, composition slurry and from steam pipes and flanges.
8. It can be seen from the above that the Deceased's condition is one of a mesothelioma, which is indivisible. It can also be seen that the period of the Deceased's exposure fell entirely within period A of the Standard Presumptions Order and that in such a period a Category 1 Defendant is to bear 75% of the liability and a Category 2 Defendant 25% of the liability, subject to an increase or decrease in such liability by an amount of up to 20 percentage points.
9. On 18 January 2010 Bluescope issued a Cross-Claim against Amaca Pty Ltd (hereinafter referred to as "Amaca") and Wallaby Grip Ltd (hereinafter referred to as "Wallaby Grip") claiming contribution or indemnity in accordance with the provisions of the *Law Reform (Miscellaneous Provisions) Act 1946*. However Regulation 25 of the Regulations, which is in mandatory terms has not been complied with, and in the normal course of events, requires separate proceedings to be issued for Bluescope to pursue such a cross-claim.
10. Bluescope filed a Reply on 19 February 2010 which, so far as is relevant, alleges:
- (i) Bluescope should fall into Category 2 and Amaca and Wallaby Grip should fall into Category 1.
 - (ii) The apportionment should be Amaca 37.5%, Wallaby Grip 37.5% and Bluescope 25%.

- (iii) Professor Breslin provided a report, which obtained a history of exposure while working with Bluescope, which essentially provided the same history as previously, provided.
11. On 8 March 2010 the Deceased's solicitors advised the Tribunal that the Deceased died on 6 March 2010 and presumably some application will be made to amend the pleadings accordingly.
12. Notwithstanding the problems raised by Regulation 25, on 12 March 2010 Wallaby Grip filed a Reply which, so far as is relevant, alleges:
- (i) Between 1956 and 1959 Wallaby Grip denies that it manufactured asbestos rope.
 - (ii) Between 1956 and 1959 Wallaby Grip was one of a number of suppliers of asbestos rope.
 - (iii) Wallaby Grip denies that it manufactured asbestos blocks.
 - (iv) Wallaby Grip denies that it supplied asbestos blocks to Bluescope.
 - (v) Amaca was the sole manufacturer of 85% magnesia products including asbestos blocks.
 - (vi) Amaca manufactured and supplied asbestos blocks.
 - (vii) The blocks to which the Deceased was exposed were manufactured and/or supplied by James Hardie.
 - (viii) Wallaby Grip was one of a number of companies including Amaca that produced asbestos composition.
 - (ix) Wallaby Grip does not admit that it supplied asbestos composition to Bluescope.
 - (x) Wallaby Grip denies that it manufactured and/or supplied asbestos sheeting at any time.
 - (xi) Amaca and a number of other companies manufactured asbestos sheeting in Australia.
 - (xii) Amaca should be placed in Category 1.
 - (xiii) Wallaby Grip should be placed in Category 1.
 - (xiv) Bluescope should be placed in Category 1 and Category 2.
 - (xv) Wallaby Grip relies upon the Deceased's assertion of employees installing asbestos products.
 - (xvi) The Standard Presumptions ought to be varied for Category 2 liability by 20 percentage points by reason of the size and sophistication of Bluescope.

- (xvii) In support of its allegations, Wallaby Grip provides a number of statements of decision and material.
13. Amaca has not filed a Reply, and has raised the Regulation 25 problem.
 14. It seems to me that the Regulation 25 problem is insurmountable, and that accordingly, the Claims Resolution provisions do not apply.
 15. However, in the event that I am wrong as to the operation of the provisions of Regulation 25, I provide the following comments, and "determinations".
 16. Initially the Contributions Assessor must determine the existence of any separate period of exposure pursuant to clause 5(8) of Regulation 5 of the Standard Presumptions Order and make a determination of what proportion of the whole each separate period bears having regard to the number of such periods, the length of each period, the duration of and intensity of exposure to asbestos present in each such period.
 17. Based upon the material before me, I "determine" that there is one period of employment between 1956 and 1959.
 18. From the Deceased's allegations it is clear that the Deceased's work was divided into two aspects of asbestos exposure, namely removal of old asbestos and replacement with new asbestos products.
 19. Having reviewed the whole of the Deceased's evidence and material, it seems to me that the Deceased's exposure could be fairly assessed as being 60% related to the products of Amaca and Wallaby Grip, but that 40% of the exposure relates to products for which neither Wallaby Grip were responsible. Accordingly, 40% of the Deceased's exposure is solely to be borne by Bluescope. Of the remaining 60% of exposure, it seems to me that this can be divided into 60% of Amaca's products and 40% of Wallaby Grip products. I do so, without any Reply having been filed by Amaca, but on the basis of the Deceased's allegations, and the Reply supplied by Wallaby Grip, and also having regard to the materials allegedly used by the Deceased.

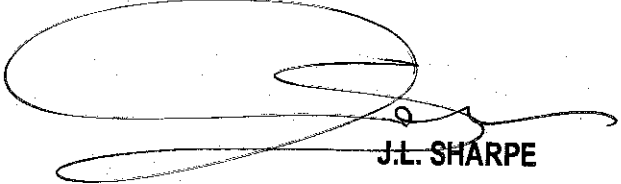
20. I "determine" that Bluescope does not fall into Category 1, notwithstanding the submissions made by Wallaby Grip, but that Bluescope falls into Category 2 and that Amaca and Wallaby Grip each fall into Category 1.

21. Insofar as paragraph 5(1) of the Standard Presumptions Order, this should lead to 75% being borne by the Category 1 Defendants and 25% by the Category 2 Defendant. In the present case, given the nature, size and extent of the operation of Bluescope, there should be a variation in the Standard Presumptions Order by 20 percentage points. Accordingly, for the 60% of the total exposure, 45% of that should be borne by Bluescope with 55% being born by Amaca and Wallaby Grip.

22. Thus, the following calculations as to liability can be made:

Bluescope – 40% + 27% (45% x 60%)	67%
Amaca – 55% x 60% x 60%	19.8%
Wallaby Grip – 55% x 60% x 40%	13.2%

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



J.L. SHARPE

22 March 2010