

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

DDT NO. 8296 of 2008

WILLIAM JOHN HARVEY
Plaintiff

BLUESCOPE STEEL LTD (formerly John Lysaght (Australia) Ltd)
First Defendant

BLUESCOPE STEEL (AIS) PTY LTD
Second Defendant

AMACA PTY LTD
Third Defendant

WALLABY GRIP LTD
Fourth Defendant

WALLABY GRIP (BAE) PTY LTD (IN LIQUIDATION)
Fifth Defendant

**CONTRIBUTIONS ASSESSMENT
DETERMINATION**

In this matter I have been appointed as Contributions Assessor pursuant to clause 49(1) of the *Dust Diseases Tribunal Regulation 2007* (“**the Regulations**”).

1. By statement of claim filed on 16 October 2008 the plaintiff alleges that as a result of exposure to asbestos products he has contracted an asbestos-related pleural disease with right-sided pleural effusion and pleural thickening. In particularizing his claim the plaintiff alleges that between about February 1956 and February 1961 he was employed by the first defendant, hereafter referred to as **Lysaghts**, as an apprentice bricklayer at Lysaghts’ premises at Port Kembla where he was exposed to asbestos

manufactured and/or supplied by the third defendant ("**Amaca**") and the fourth defendant ("**Wallaby Grip**").

2. He further alleges that between November 1963 and November 1964 he was employed by the second defendant ("**AIS**") at its Port Kembla Steelworks as a refractory bricklayer where he was further exposed to asbestos supplied by the third and fourth defendants.
3. From about 1965 to about 1970 for about six to eight weeks a year the plaintiff alleges he was employed by Norman J Hurlll & Co Pty Ltd as a refractory bricklayer engaged in shut-down maintenance at the premises of Lysaghts and AIS.
4. From early 1971 for a period of about four months the plaintiff alleges he was employed by ARP Crow & Sons Pty Ltd as a refractory bricklayer engaged in a complete reline of the No 3 blast furnace at the Port Kembla Steelworks of AIS.
5. He alleges that from late 1971 for about three months he was employed by Crow performing a complete reline of the blast furnace at the Newcastle steelworks.
6. He further alleges that in about 1973 for about three months he was employed by Crows as a refractory bricklayer engaged in the construction of the paint line of the Port Kembla Steelworks of Lysaghts.
7. From about 1974 for about nine months he alleges he was employed by Hurllls at the No 5 blast furnace at the steelworks and then from about 1975 to about 1984 he was employed intermittently by Hurlll and Co as a refractory bricklayer at various industrial premises including Lysaghts for about four to six weeks each year, AIS for about four to six weeks each

year, at brickworks in Canberra for about six months, Oberon Timber Mill for about four months, ACI Glassworks for about three months and Corrimal Coke Works for about six months.

8. The plaintiff's full industrial history is comprehensively summarized at paragraph 3.1 of the plaintiff's statement of particulars setting out whether or not he was exposed to asbestos in those employments between 1956 and 2006.
9. I have reproduced his detailed exposure history set out at pp11-14 of the plaintiff's particulars.

"I left school at about the age of 15 years and commenced my apprenticeship as a refractory bricklayer with John Lysaghts (now BlueScope Steel Limited). In the first 4 years of my Apprenticeship I worked at Lysaghts' Plant known as C.R.M. on Port Kembla Road During this period I was required to work on several occasions at Lysaght's Springhill Plant mainly on shutdowns and breakdowns.

I was then transferred to Lysaght's Plant on Springhill Road, Port Kembla. I was building new furnaces and repairing existing furnaces.

On practically a daily basis in my work for Lysaghts, I used asbestos insulation materials in the form of blocks, sheets (called millboard) and rope and tape in the furnaces. The insulation blocks came in brown rectangular cardboard boxes. The blocks varied in size but were usually about 1 metre long and about 300mm high in thickness. I (and other bricklayers) cut them by hand with a carpenter's saw and placed them up against the steel shell of each furnace to protect the steel shell from the extreme heat generated in the furnaces. We then laid refractory bricks on top of the blocks. Cutting and handling the blocks created clouds of asbestos dust all around me. The dust from the blocks went all over me, on my clothes, on my face, in my hair and in my mouth. I could not help but breathe in this dust. The sheets of asbestos (we called them "millboard") were a soft sheet that was quite flexible. The sheets were greyish in colour and were about a metre square in dimension. We used the sheets in exactly the same way as the blocks, except they were used in lower temperature areas and in areas where we could not fit (or shape) the blocks. The

sheets were very dusty to cut, handle and install, They also gave off a lot of dust on me and in the air around me. I also made extensive use of asbestos rope and tape to insulate furnace doors and as packing in between blocks and refractory bricks where there were gaps. I cut the rope and tape with a hacksaw and used my hands to pack it Dust went into the air and on me from the rope and tape each time I used these materials.

While using new asbestos insulation materials was very dusty work, so was working in an environment where other labourers and demolishers, demolished existing asbestos insulation and refractory bricks in furnaces and heated vessels at Lysaghts. They used their hands, crow bars and sometimes pneumatic jackhammers to break up and demolish these materials, particularly during repairs and maintenance and shutdowns. They created clouds of greyish white dust within a few feet from where I was. They attempted to remove the dust and brittle asbestos debris from the furnaces or vessels that I and other bricklayers had to work on. However, it was impossible to get rid of it and as we worked clouds of dust went into the air from the removal process. This occurred regularly in my work at Lysaghts.

I have been shown a brochure entitled "Hardies 85% Magnesia for More Efficient Insulation." I identify the packaging on page 20 of that brochure as identical to the packaging that the insulation blocks material came in that I used (not only at Lysaghts but in my later years as well-see below).

I have been shown a brochure entitled "Bestobell -Products of Repute" and I identify the rope lagging on page 39 of that brochure as being identical to asbestos rope that I used in the expansion joins.

My exposure to asbestos from the insulation materials I have described above continued on practically a daily basis until I left Lysaghts in about 1961.

In about 1961 I got a job as a residential bricklayer for Allan Davidson and during this period I also worked for Ed Barraclough. I worked on houses in the Port Kembla and Wollongong areas. I did not use or handle any asbestos containing materials in this period of my work I worked for both of these men at different times until about October 1963.

Between about November 1963 and about November 1964 I was employed by Australian Iron and Steel (now BlueScope Steel (AIS) Limited) as a refractory bricklayer at the Port Kembla Steelworks. I worked in a gang of refractory bricklayers in various parts of the steelworks including the soaking pits, the slab mill, Coke Ovens, No. 1, 2 and 5 blast furnaces and No. 1 and 2 Open Hearth. I worked on furnaces, steel and torpedo ladles and other heated vessels including the stoves and bustlemains. I worked 8 hour shifts on a 7 day work roster. Most of my work during this period was in confined spaces. These spaces were inside various parts of furnaces and ladles where there was no ventilation. I used the same materials as I have described above in exactly the same way. The insulation (blocks and sheets) were put up against the steel shell of the furnaces, stoves and ladles and then bricked over with refractory bricks. Asbestos rope and tape were used to seal doors and fill gaps on insulation and brickwork. The asbestos insulation materials gave off clouds of dust as I have described above. Demolition work occurred at the Steelworks in the same fashion as I have described above at Lysaghts and clouds of dust from the old and brittle asbestos insulation circulated in the air in which I worked. I could not help but breathe in this dust.

In about November 1964 I left the steelworks and went back to work for Ed Barraclough and also for Allan Davidson as an "outside bricklayer": That term was used in the trade around Port Kembla to describe non refractory bricklayers not employed "inside" the Steelworks or Lysaghts. I worked mostly "outside" until about 1971 with no exposure to asbestos in my work on residential houses.

However, during the period from about November 1964 to about March 1970, while working as a residential bricklayer on the "outside", each year from between 6 to 8 weeks, I was employed by Norman J Hurl & Company Pty Limited ("Hurl's") as a refractory bricklayer engaged in shutdown maintenance at the premises of BlueScope Steel Limited (formerly John Lysaght (Australia) Pty Limited) and BlueScope Steel (AIS) Limited. This work occurred in about December and January of each year. All jobs were 10 hour or 12 hour shifts, mostly 7 days a week. I estimate that I worked equally between Lysaghts and the Steelworks in these years on shutdowns. My work was exactly the same as I have described above and I used and was exposed to asbestos insulation materials (blocks, millboard, tape and rope) in exactly the same fashion as I have described above. However, shutdown work was even dustier than the work I have described above. The reason for this is that

during shut downs other tradesmen such as pipe fitters, boilermakers and ladders, worked on site at the same time. Usually the ladders worked within a few feet or directly above me using asbestos insulation materials including blocks and prefabricated pipe sections. Therefore I was also exposed to the asbestos dust generated by the ladders and other tradesmen during the shutdown work I could not help but breathe in asbestos dust during my work on shut down at Lysaghts and the Steelworks.

I left working for both Davidson and Barraclough in about early 1971 and got a job as a refractory bricklayer with ARP Crow & Sons Pty Limited ("Crows"). I worked as a refractory bricklayer for Crows on a complete reline of the Number 3 Blast Furnace at the Steelworks This took about 4 months. I was again exposed to asbestos dust from the asbestos insulation materials I have described above on a daily basis. I used the materials in the same way as I have described above and clouds of dust went into the air. Demolishers and labourers worked around us removing the old lining of asbestos and refractory bricks. They generated clouds of dust. I could not help but breathe in this dust and the dust generated by me and the other bricklayers using the asbestos insulation materials. I worked 10 or 12 hour shifts, in most cases 7 days a week.

After we finished the reline of the Number 3 Blast Furnace at the Steelworks, Crows sent me to the Newcastle Steelworks, where I worked for about 3 months on a complete reline of one of the Blast Furnaces. I was again exposed to asbestos dust from the asbestos insulation materials I have described above on a daily basis. I used the materials in the same way as I have described above and clouds of dust went into the air. Demolishers and labourers worked around us removing the old lining of asbestos and refractory bricks. They generated clouds of dust. I could not help but breathe in this dust and the dust generated by me and the other bricklayers using the asbestos insulation materials.

After the job at the Newcastle Steelworks I continued bricklaying on the outside with Davidson and Barraclough for about a year with no exposure to asbestos

In about 1973 for about 3 months I was employed by Crows as a refractory bricklayer engaged in the construction of the Paint Line at the Lysaghts plant known as C.R.M., Port Kembla. The furnace to the Paint line was being built and I worked on it. I used the same asbestos insulation materials in the same manner as I have described above. I was

working in a confined space and I was covered in whitish grey from the use of asbestos insulation materials on a daily basis in this job. I could not help but breathe in this dust.

After this job I went back to work for both Barraclough and for Davidson as a residential bricklayer for several months. I do not recall any asbestos exposure during this period

For about 9 months in 1974 I was employed by Hurl's as a refractory bricklayer at the Steelworks on the construction of the No. 5 Blast Furnace. I used the same asbestos insulation materials in the same manner as I have described above. I was working in confined spaces and I was covered in whitish grey from the use of asbestos insulation materials on a daily basis in this job. I could not help but breathe in this dust.

Between about 1975 and about 1984 I was employed intermittently by Norman J Hurl & Company Pty Limited as a refractory bricklayer at various industrial premises including the premises of John Lysaght (Australia) Pty Limited (for about 4 to 6 weeks each year on shut downs and other maintenance), the Port Kembla Steelworks (for about 4 to 6 weeks each year on shut downs and other maintenance), at a brickworks in Canberra (for 6 months), the Oberon Timber Mill (for about 4 months), ACI Glassworks (for about 3 months) and Corrimal Coke Works (for about 6 months). On each of the premises with the exception of the brickworks in Canberra I used the asbestos insulation materials in the same manner as I have described above. However, in this period I think new asbestos insulation blocks were not used but we still used asbestos millboard, rope and tape. Again, I was working usually in confined spaces in furnaces and I was covered in whitish grey from the use of asbestos insulation materials in this period I could not help but breathe in this insulation dust. I was also exposed in this period to some dust from old asbestos insulation blocks demolished at the Steelworks and Lysaghts (which blocks I and other bricklayers has installed over the years (see above). As I have described above the demolition process created clouds of dust in my immediate vicinity. In this period when I was not working as a refractory bricklayer on the sites nominated above I worked as a residential bricklayer for Davidson and Barraclough (and sometimes for myself) with no exposure to asbestos.

When I worked for Crows or Hurl's at Lysaghts and/or the Steelworks as I have described above, Lysaghts and the

Steelworks always had foremen and supervisors, supervising and inspecting our work. They were there all the time and they saw the condition in which I worked. If there was a problem with the work they stopped the job by speaking to my foremen and sometimes when I was a leading hand directly to me. Also, on these sites Lysaghts and the Steelworks coordinated my work with the work of other tradesmen including their employees, for example use of cranes and forklifts, and supply and delivery of materials.

Between about 1984 and about 2002 I worked for Wollongong City Council as a bricklayer. I was helping to build commercial buildings and I was not exposed to asbestos during this period.

Between 2002 until I retired in 2006 I worked for Wollongong Council in an overseeing job and I was not exposed to asbestos during this period."

10. This document has formed the basis for the detailed submissions that I have received from the various defendants concerning their respective liabilities.
11. As Contributions Assessor I am obliged to accept that the plaintiff was exposed as he has alleged. The plaintiff alleges that he has a disease and for the purposes of this contributions assessment I will assume it is divisible. To the extent that the plaintiff was exposed by parties who are not presently sued I will assume that the non-defendant liability was contributory.
12. The plaintiff (paragraph 4.7) was unable to attribute as a percentage the proportion that each period of exposure constitutes his total exposure.
13. In an occupational history given to Professor Breslin on 17 November 2008 and reproduced in his report of 25 November 2008 the plaintiff alleges that refractory bricklaying used asbestos lining in 90% of the furnaces and he had to cut this lining with a handsaw or skutch hammer.

He also used asbestos rope, asbestos gloves (the gloves he used about 20% of the time), he also lagged pipes at Lysaghts as there were no ladders and to do this he would have to mix up asbestos slurry and apply it.

14. He attributes about four months a year at BHP or one of its subsidiaries in the period 1961 to 1987. He often worked around ladders and did lots of work on the blast furnaces and coke ovens.
15. Professor Breslin is of the view that the plaintiff, based on the history that he obtained, had significant asbestos exposure during the period 1955 to 1987 and says if the plaintiff's history is correct this only occurred at BHP, John Lysaghts and Kayser where the plaintiff apparently worked for a couple of weeks.
16. The first responsibility as a contributions assessor is the categorization of the various defendants into Category 1 or Category 2. Both Lysaghts and AIS submit that they are Category 2 employers and that Amaca, WGL and BAE are all Category 1 employers.
17. Amaca has submitted that Lysaghts and AIS should be categorized as Category 2 employers but believes that the standard presumptions should be altered so that Lysaghts and AIS should be attributed equal levels of knowledge.
18. WGL has submitted that both AIS and Lysaghts should be placed in Category 1 of the standard presumptions on the basis that they were installers of asbestos products.
19. WGL and BAE rely on Part 5(2)(a) of the Standard Presumptions Order ("**the order**") which defines Category 1 as:

“All those corporations, authorities and legal entities who engage in a business which relates to the period of exposure and which can be described as Miners, Manufacturers, Suppliers and/or Installers of asbestos or of products, plant and equipment which contained asbestos.”

20. They rely on the evidence given by Mr George Todd in DDT No 6140 of 2006 describing the work that was performed at AIS.

21. The note to the Schedule 1 of the DDT (Standard Presumptions) Order of 2007 is as follows:

“10. It is not intended to include retail shops or outlets within the meaning of the term Supplier in Category 1. Retail shops or outlets are included in Category 2. Similarly, it is not intended to include a user of asbestos products, such as a small building company, which uses bonded asbestos sheeting in building works.

11. For example, the category of installer would include the designer and manufacturer of particular plant or equipment which included asbestos as part of its design, as well as a company which is engaged to install the plant in accordance with the manufacturer’s instructions.”

22. Clause 2(b) describes Category 2 defendants in the following terms:

“Category 2 which includes all other defendants. These would ordinarily be all corporations, authorities, and legal entities who engage in a business which relates to the period of exposure and which can be described as Users of asbestos or products, plant and equipment which contained asbestos, Occupiers of Premises which contained asbestos or where asbestos or products, plant and equipment which contained asbestos were situated or Employers of staff who in the course of, or as an incident to, their employment were exposed to asbestos.”

23. The first and second defendants rely upon the contributions assessment by Mr John Sharpe of Counsel in the matter of Peter John Jones v BlueScope Steel (AIS) Pty Ltd & Ors dated 2 June 2009 in proceedings no. 8358 of 2008 as being of some precedent value in so far as it

concluded in respect of Mr Jones' exposure that the second defendant was a Category 2 defendant.

24. The matter was dealt with, with respect, in considerably more detail by Mr Jay of Counsel in his Contributions Assessment / Determination in DDT No 6140 of 2006/1 (Todd) and DDT No 7301 of 2007 (Fagnano) which are referred to in the particulars from WGL, where he reviews in some detail the evidence that was adduced in those cases, which is very similar to the exposures alleged by Mr Harvey. In particular the material that WGL has annexed to its submission describes in some detail the work associated with stripping an installation of asbestos from the blast furnaces which are in a state of almost continual sequential shutting down and relining.
25. Mr Todd's employment was November 1955 to May of 1959 and then March 1962 to September 1982. In Todd's case BlueScope submitted that the concept of installer is not intended to include corporations who may undertake installation building incidental to their primary purpose.
26. In Todd the contributions assessor considered that the explanatory note was not meant to be an exhaustive definition of what constitutes an installer. Mr Jay considered that a large and sophisticated organization such as BlueScope that employed up to 160 men in the relining of steel furnaces should properly be categorized as an "installer" of asbestos. He found that the stripping and resurfacing of the furnaces was an essential element to an operational steel-making venture. It was not a task which occurred irregularly or involved an incidental use of BlueScope's resources.
27. In my opinion it is clear that Category 2 defendants by definition can encompass very large organizations and entities or emanations of state

government or federal government bodies such as the Department of Defence, State Rail Authority, Electricity Commissions (as they once were designated) and organizations such as steelmakers which use large quantities of asbestos. It is clear that the Dust Diseases Tribunal has found high levels of knowledge amongst some larger organizations including state and federal governments and government instrumentalities that would place them in similar positions to the positions of actual asbestos manufacturers when it came to awareness of the hazards of dealing with asbestos. WGL points to the finding in the decision of Kearns J in *Floro: BlueScope Steel (AIS) Pty Ltd v Amaca Pty Ltd* [2007] NSW DDT 27 in which his Honour found that BlueScope had actual knowledge of the dangers of asbestos from December 1962. This is well after Mr Harvey's employment commenced on 8 February 1956.

28. Nevertheless, even a cursory reading of the managing director's report for the Broken Hill Proprietary Company for year ended 31 May 1965 (Annexure L to WCL's Reply) demonstrates the size, scale and profitability of the BHP enterprise conducted at Port Kembla and Newcastle.
29. Examination of O'Meally J's judgment being Annexure K in the Wallaby Grip materials in the matter of *Lawrence BHP Billiton Ltd v Amaca* (DDT 23 of 2003) is of little assistance on the question of AIS's and Lysaghts' awareness in this case.
30. At paragraph 8 O'Meally J accepted as being established that by January 1969 BHP had actual knowledge of the dangers of asbestos. He did not accept they had established that they did not have actual knowledge prior to that date.

31. At the end of the day in my view, the size of BHP is relevant for two reasons. One is to take it outside the purview of the examples referred to in Note 11 of Schedule 1 that I have referred to above. The second reason is because the nature and complexity of the steel-making process involving as it did employing literally hundreds of people including the plaintiff in the tasks associated with the commissioning and decommissioning of blast furnaces in particular, large numbers of refractory workers engaged in lining and delining the blast furnaces directs attention to the proposition as to whether or not those persons were engaged as installers.
32. The language of the standard presumptions order in Category 1 and Category 2 does contemplate, as I have indicated above, that large corporations and authorities may properly be considered Category 2 defendants, being users of asbestos or products, plant and equipment which contained asbestos.
33. The matter in my view is one of construction. "Install" meanings include: "to put in place or position", "to put in and prepare (equipment) for use", "to connect or set in position and prepare for use".
34. The question is then whether the first and second defendants were engaged in a business which relates to the period of exposure and which can be described as installers of asbestos or of products, plant and equipment which contained asbestos, or are they businesses who engage in a business which relates to the period of exposure and can be described as users. The language which is used in respect of the Category 2 occupiers contemplates that those persons conduct premises where asbestos or products, plant and equipment which contained

asbestos were situated or employers of staff who in the course of or as an incident to their employment were exposed to asbestos.

35. Notwithstanding the size and sophistication of its operation, in my view and contrary to Mr Jay's views op cit, AIS was not engaged in a business of installing asbestos products, plant and equipment but was rather the occupier of premises which contained asbestos.
36. In my view AIS and Lysaghts were engaged in a business, namely in a broad sense steel production, at the Port Kembla and Newcastle steelworks. They were installers of asbestos in the brick ovens where the plaintiff worked but they were not in the business of installation.
37. There is no evidence before me as to who was the designer and manufacturer of the plant and equipment that is referred to.
38. For the purposes of the Contributions Assessment therefore I am of the view that both the first and second defendants were large and sophisticated organizations who, throughout the course of their operations, used very large volumes of asbestos products to which the plaintiff was apparently exposed. There is evidence in the form of the statement of Peter Cross dated 23 August 2004 that Amaca was a major supplier of material used in the furnaces that were used by Newcastle Steel Works. See also paragraph 23 of the statement of Ronald Thomas Hillard of 28 April 2004 where he implicates the third defendant's products at AIS's premises. His period of employment in part post dates the plaintiff, having started at Port Kembla on 28 January 1958.
39. I have had some difficulty in reaching my decision concerning the proper categorization of the first two defendants. It underlines the difficulties of a

contributions assessor compared with a judge hearing a matter. As Judge Kearns makes clear in Floro's case at paragraph 26, he describes accurately, with respect:

"The standard presumptions are in place for a particular purpose. They are in place as part of the claims resolution process. The purpose is to facilitate the relatively quick and cheap disposal of cases. As part of the claims resolution process, there is a provision dealing with contributions assessments. This is to allow assessments to be made between defendants and cross-defendants. It is to be done by a contributions assessor on the papers and in an arbitrary way. The contributions assessor does not bring to bear questions of causal potency and relative blameworthiness in his considerations. Further, the standard presumptions might have Bluescope as a Category 2 employer when, because of its actual knowledge, it should really be treated as a Category 1 employer. Based on the standard presumptions, Mr Rowles submitted I could be guided as to apportionment by allocating 65% to Amaca and 35% to Bluescope and he submitted that would be generous to Amaca.

27. Bluescope was the plaintiff's employer under a high duty of care and with day to day control of the plaintiff and his working conditions. I think this factor calls for its contribution to be higher than that of Amaca and my view is that Amaca should bear 40% and Bluescope 60% of the remaining liability."

40. In my view, as a contributions assessor I can only vary the standard presumptions by up to 20%. In my view, WGL and BAE, based on the material supplied, have made a case for a maximum variation of the standard presumptions. But for the categorization of BlueScope which in my view I am constrained to come to by the terms of the regulation, I would have found that, based on the periods that we are dealing with, BlueScope should have been treated as equivalent to a Category 1 employer.

41. As a contributions assessor I am obliged to treat the plaintiff's condition as a divisible disease and assume that all exposures were contributory on a time-weighted basis.
42. This involves in my view essentially a broad brush approach. I am indebted to the detailed submissions that have been submitted by both Amaca and WGL in this respect based on their respective analyses of time on risk.
43. Amaca has submitted that on a time-weighted basis approximately 64% of the plaintiff's exposure relates to his presence at Lysaghts' premises, either as an employee or a contractor, and 36% at BlueScope. WGL/BAE has put in a very detailed table which I reproduce below setting out its assessment of time on risk expressed as a percentage at the various premises including premises which are not the subject of litigation.

Exposure Period	Period	Site	Months	Time on risk percentage
Feb 56 - Feb 61	A,B	Lysaght's plant	60	49.6%
Nov 63 - Nov 64	B	Port Kembla Steelworks	12	9.9%
Nov 64 - Mar 70 (3/4 weeks a year)	B	Lysaght's plant	5	4.1%
Nov 64 - Mar 70 (3/4 weeks a year)	B	Port Kembla Steelworks	5	4.1%
1971 (4 months)	B	Port Kembla Steelworks	4	3.3%
1971 (3 months)	B	Newcastle steelworks	3	2.5%
1973 (3 months)	B	Lysaght's plant	3	2.5%
1974 (9 months)	B	Port Kembla Steelworks	9	7.5%
1975-1979 (4/6 weeks a year)	B,C	Port Kembla Steelworks	6	5%

1975-1979 (4/6 weeks a year)	B,C	Lysaght's plant	6	5%
1975 -1979 (6 months)	B,C	Oberon Timber Mill, ACI Glassworks, Corrimal Coke Works	6	5%
TOTAL			119	98.5%

44. Based upon a concession in a letter from Messrs Turner Freeman, Annexure Q, WGL has discounted Mr Harvey's exposure by 1.5% on the basis that it occurred after 31 December 1979 when BAE says it went off risk as it ceased operations from 1 January 1980.
45. The position is complicated by the evidence of Peter Gross who says that whilst working at the Port Kembla Steelworks he was instructed to hand in all asbestos hats, gloves, aprons and gauntlets in or about 1977. I do not infer from either Lysaghts' or AIS's replies that all exposure to asbestos ceased at that time.
46. AIS's amended reply suggests that the apportionment should be 62.5% for Lysaghts, 37.5% for AIS.
47. The position that I have taken in relation to apportionment is to adopt and round off the tables that appear at pp21 and 22 of the WGL submissions. On a time-weighted basis I have accepted that 4% of the plaintiff's exposure is not the subject of litigation and that of the other 96% 35% should be attributed to AIS and 61% to Lysaghts.
48. As indicated above, I have rejected WGL's categorization of Lysaghts' and AIS's installers and have treated them as Category 2 entities that nevertheless are varied by the maximum percentage allowable of 20%.

49. In respect of the period before 1 January 1961, as Category 1 employers the standard presumption is that 75% of liability should be apportioned to Category 1 defendants. I acknowledge that there is no direct evidence that as at 1 January 1961 either AIS or Lysaghts had actual knowledge from the materials placed before me. However, having regard to the size of the organization, the extensive nature of its business operations and the extensive use of asbestos deployed at both Port Kembla Steelworks and at Newcastle, in my view it is proper that the standard presumptions be varied in respect of both Lysaghts and AIS by 20%. This increases the percentage for AIS and Lysaghts from 25% to 30%.
50. For the period B between 1 January 1961 and 31 December 1978 under clause 5 of the standard presumptions I increase the liability of AIS and Lysaghts from 35% to 42% and to the extent it is relevant, between Period C, 1 January 1979 to 31 December 1989, I increase AIS and Lysaghts as Category 2 defendants from 40% to 48%.
51. In respect of the first period of employment, this is almost wholly within Period A of the standard presumptions and I have attributed 50% of the plaintiff's exposure to this period.
52. Period C similarly can for practical purposes be almost disregarded. I have apportioned this period but it only constitutes approximately 1% of the divisible period.
53. I calculate liability as follows:

Period A Lysaghts 50%	Suppliers 70%	70% of 50 = 35%	Amaca 17.5%
			WGL/BAE 17.5%
	Lysaghts 30%	Lysaghts 15%	
Period B Lysaghts 11% Category 1 Suppliers proportion is varied 58% Category 2 42%	Suppliers 58%	Suppliers 6.38%	Amaca 3.19%
			WGL/BAE 3.19%
	Lysaghts 42%	Lysaghts 4.62%	
AIS liability 34% borne in the ratio Category 1 58% to 42% Category 2,	Suppliers 58%	Suppliers 19.72%	Amaca 9.86%%
			WGL/BAE 9.86%
	AIS 42%	AIS 14.28%	
Period C Category 1 bearing 60%, Category 2 40%	Lysaghts .5%	Lysaghts .2%	AIS .2%
			Suppliers .3%
	AIS .5%	Suppliers .3%	

TOTAL APPORTIONMENT

Lysaghts	15 + 4.62 + .2	19.82%
AIS	14.28 + .2	14.48%
Amaca	17.5 + 3.19 + 9.86 + .3	30.85%
WGL/BAE	17.5 + 3.19 + 9.86 + .3	30.85%
Other		4%

54. As to an apportionment between WGL and BAE I note that WGL was on risk from 1 January 1961 to 30 September 1966 and that BAE was on risk from 1 October 1966 to 31 February 1978, a total of 5.75 and 8.33 years respectively. I have apportioned liability between WGL and BAE in the ratio of 40% to 60%. Accordingly WGL's responsibility is 12.34 and BAE's is 18.51.

55. I appoint the claims officer of Amaca as the Single Claims Manager in accordance with Clause 6(3)(b) of the Regulations and I will forward my memorandum of fees to him.

Dated 12th day of August 2009

PAUL BLACKET SC
CONTRIBUTIONS ASSESSOR.

