

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 345 of 2009 and 345 OF 2009/1

NOEL IVAN HOPKINS

Plaintiff

STATE OF NEW SOUTH WALES

First Defendant

COMCARE

Second Defendant

CSR LIMITED

Third Defendant

MIDALCO PTY LTD

Fourth Defendant

AMACA PTY LTD

First Cross Defendant

WALLABY GRIP LIMITED

Second Cross Defendant

DETERMINATION

INTRODUCTION

By letter dated 19 May 2010 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 and amended Statement of Particulars ("Particulars")
2. First Defendant's Reply
3. Second Defendant's Reply
4. Third Defendant's Reply
5. Fourth Defendant's Reply
6. First Cross Defendant's Reply and Amended Reply
7. Second Cross Defendant's Reply

In addition to the material described at 1-7 above I rely on the Standard Presumptions set out in Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007.

I assume that the defendants and the cross defendants are liable to the Plaintiff who is an 88 year old male with asbestos related pleural disease.

I will refer to the Defendants in the following way:

- First Defendant – SRA
- Second Defendant – Comcare
- Third Defendant – CSR
- Fourth Defendant – Midalco
- First Cross Defendant – Amaca
- Second Cross Defendant - WGL

There is a controversy as to whether SRA should be categorised as a Category 1 Defendant as well as a Category 2 Defendant. SRA is a Category 2 Defendant due to its employment of the Plaintiff. The question as to whether it is properly categorised as a Category 1 requires consideration of the definition contained in the Standard Presumptions. Note 11 to the Standard Presumptions causes me to conclude that SRA is properly regarded as a Category 1 Defendant. I consider that it is appropriate to regard SRA as a designer of plant and equipment that included asbestos as part of its design. I note that several other determinations of contribution have concluded that SRA, in factual circumstances similar to that of this plaintiff, is properly regarded as a Category 1 and Category 2 defendant.

Amaca and WGL are Category 1 Defendants. CSR and Midalco are Category 1 and Category 2 Defendants. No party disputes that Comcare is a Category 2 Defendant only.

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 alleges he was exposed while employed by SRA at its Dubbo, Chullora and Eveleigh railyards as an Apprentice Boilermaker and Boilermaker from 1939 to 1943 and again from 1945 to 1946 but during this second period only at the Enfield railyard. He attributes 65% of his total exposure to employment with the SRA.

He alleges he was exposed while employed by Comcare from 1943 to 1945 working in South Australia and Western Australia. He attributes 25% of his total exposure to this period.

He alleges he was exposed while working at the Wittenoom asbestos mine in 1952. He attributes 10% of his total exposure to his time at Wittenoom.

CONTRIBUTION ASSESSMENT

I consider it appropriate to accept the Plaintiff’s assessment of his respective exposures.

Accordingly there is no controversy that 5% of liability should be apportioned to CSR and Midalco each and 25% to Comcare.

Of the remaining 65% to be apportioned to the SRA period of exposure the Standard Presumptions require me to apportion liability 75% as to Category 1 Defendants and 25% as to

Category 2 Defendants unless I am satisfied that a variable contribution should apply. Given the time at which the exposure occurred I am not satisfied that a variable contribution ought to apply. Therefore 48.75% is to be apportioned between SRA, Amaca, and WGL as Category 1 Defendants and SRA as Category 2 Defendant is to be solely liable for 16.25%.

I do not consider it appropriate to make any variation between SRA, Amaca and WGL as Category 1 Defendants.

Accordingly I determine contribution to be

- SRA – 32.5%
- Comcare- 25%
- CSR – 5%
- Midalco - 5%
- Amaca – 16.25
- WGL – 16.25%

I appoint SRA as Single Claims Manager.

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

Toby Tancred

Date: 10 June 2010