

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 277 of 2010 & 277 of 2010 CC1

Bruce Edward Johnston

Plaintiff

Eraring Energy

First Defendant/Cross Claimant

Babcock Australia Pty Limited

Second Defendant/ Second Cross Defendant

Babcock International Limited

First Cross Defendant

Amaca Pty Ltd

Third Cross Defendant

Wallaby Grip Limited

Fourth Cross Defendant

AWI Holdings Pty Limited

Fifth Cross Defendant

DETERMINATION

INTRODUCTION

By letter dated 8 December 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 Particular ("Particulars")
2. First Defendant/Cross Claimant's Reply
3. Second Defendant/Second Cross Defendant's Reply
4. First Cross Defendant's Reply
5. Third Cross Defendant's Reply
6. Fourth Cross Defendant's Reply
7. Fifth 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.

The Plaintiff is a 75 year old male who has allegedly contracted mesothelioma.

I record that in making this determination I have taken into account what has been included by the Defendants at each of their Replies. I have relied on the Plaintiff's Amended Statement of Claim because it has been attached to various of the Defendant's Replies.

I refer to the parties as follows:

- First Defendant – Eraring
- Second Defendant/Second Cross Defendant– BAL
- First Cross Defendant - BIL
- Third Cross Defendant – Amaca
- Fourth Cross Defendant –WGL
- Fifth Cross Defendant -AWI

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 that he was exposed in three distinct and material periods while working at Wangi Power Station. It seems to be common ground between the defendants that the Plaintiff's allegations of exposure in his Particulars are superseded by his allegations of exposure in the Amended Statement of Claim. Doing the best that I can I apportion the overall percentage of exposure between these three periods as follows:

- Arcos Instructions employment: 5%
- BAL employment: 90%
- Australian Asbestos employment: 5%

This is in large part based on the periods of employment referred to in an employment card said to relate to the Plaintiff attached to the BAL Reply.

CONTRIBUTION ASSESSMENT

Each defendant has filed a Reply that is very helpful. Each Defendant argues that its liability should be lower than the other Defendants. Without meaning to do any disrespect to the carefully constructed argument of each Defendant I will attempt to summarise the main points that are made in each Reply as relates to contribution.

Eraring

- It should only be categorised as a Category 2 Defendant because the installers of asbestos at Wangi Power Station were employed by other entities
- BAL should be categorised as Category 1 and Category 2 Defendant because it employed the Plaintiff and was an installer of asbestos
- The Standard Presumptions should be varied significantly against Amaca because of its size and sophistication

BAL

- It was only involved in the design and construction of the boiler house of Wangi Power Station and not the Turbine house
- The apportionment attributable to the other Defendants is higher than that of BAL due to prior findings of the DDT

BIL

- Eraring should be categorised as a Category 1 and Category 2 Defendant
- Each Defendant but particularly Eraring, Amaca and BAL are far more culpable than BIL

WGL

- It supplied Amaca products at relevant times and manufactured composition and rope but did not supply these products to Wangi Power Station
- Eraring should be categorised as a Category 1 and Category 2 Defendant

The argument as to categorisation of Eraring deserves amplification.

In these proceedings the Plaintiff alleges that his exposure occurred in the period from 1955 to 1959. The evidence relied on by WGL, although supportive of a conclusion that Eraring

employed ladders and that it should therefore be regarded as an installer, relates to periods that post date the plaintiff's period of employment. I do not think I am permitted to draw an inference that Eraring employed ladders at a time that the Plaintiff worked at Wangi Power Station without evidence from the Plaintiff in these proceedings that he worked at Wangi Power Station with ladders employed by Eraring.

Amaca

- Does not admit manufacture of any product to which the Plaintiff alleges he was exposed

AWI

- It should be regarded as an innocent defendant
- It should be regarded as a Category 2 defendant only

I conclude that for the Arcos period BIL, BAL, Amaca, WGL, and AWI are Category 1 Defendants and Eraring is a Category 2 Defendant.

I conclude that for the BAL period BIL, BAL, Amaca, WGL, and AWI are Category 1 Defendants and Eraring and BAL are Category 2 Defendants.

I conclude that for the Australian Asbestos period BIL, BAL, Amaca, WGL, and AWI are Category 1 Defendants and Eraring is a Category 2 Defendant.

Having regard to the totality of the Defendants' arguments I see no reason to alter the Standard Presumptions and I see no reason to vary the weighting of contribution as between the Category Defendants.

For the Arcos period contribution is 3.75% to Category 1 Defendants. This is to be divided equally between BIL, BAL, Amaca, WGL, and AWI (0.75% each). Contribution of the sole Category 2 Defendant, Eraring, is 1.25%.

For the BAL period contribution is 67.5% to Category 1 Defendants . This is to be divided equally between BIL, BAL, Amaca, WGL, and AWI (13.5% each). Contribution of the Category 2 Defendants is 22.5%. This is to be shared equally between the two Category 2 Defendants Eraring and BAL,(11.25% each).

For the Australian Asbestos period contribution is 3.75% to Category 1 Defendants. This is to be divided equally between BIL, BAL, Amaca, WGL, and AWI (0.75% each). Contribution of the sole Category 2 Defendant, Eraring, is 1.25%.

I determine contribution to be:

- Eraring – 13.75%
- Amaca – 15%
- WGL – 15%
- BIL – 15%
- BAL – 26.25%

- AWI -15%

Given that there is no primary defendant I appoint at random BAL as Single Claims Manager.

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

Toby Tancred,

16 December 2010