

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 87 of 2009 & CC1

**DIMITRIOS KOUKOUTSIDIS (AS LEGAL PERSONAL
REPRESENTATIVE FOR THE LATE GEORGE DIMITRIOS
KOUKOUTSIDIS)**

Plaintiff

AMACA PTY LIMITED

Defendant

WESTPAC BANKING CORPORATION

Cross Defendant

DETERMINATION

INTRODUCTION

By letter dated 24 August 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 am permitted to rely in making this determination:

1. Plaintiff's Statement of Particulars ("Particulars")
2. Defendant's Reply
3. Cross Defendant's Reply

In addition to the material described at 1-3 above I rely on the Standard Presumptions set out in Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007.

I assume that the defendant and the cross defendant are liable to the Plaintiff. The Plaintiff is the Executor of the Estate of his late father George Dimitrios Koukoutsidis who apparently died after having contracted mesothelioma.

Amaca is a Category 1 and Category 2 Defendant and Westpac 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 deceased's respiratory system of asbestos dust and fibre.

The Particulars disclose that the deceased was exposed while he was employed by Amaca at its Camellia factory from 14 September 1955 to 18 May 1956 which is 35 weeks. He worked in the process of manufacture of pipe sections. The deceased worked as a cleaner on weekends but it is not specified if he worked every weekend or both days on every weekend. I assume the plaintiff worked 6 days per week for 35 with Amaca which is a total of 210 days exposure.

The deceased worked for Westpac as a cleaner at its Martin Place branch from 1980 to 1991. He cleaned the plant room that contained pipes lagged with asbestos. He cleaned air conditioning filters that contained asbestos. The particulars allege that asbestos began to be removed by Westpac in 1987. The detail of exposure is scant.

The plaintiff is unable to assess the proportion of the deceased's exposure that occurred as between Westpac and Amaca.

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Amaca asserts that the deceased would have been exposed for 294 Days with Amaca and 364 days with Westpac. The assessment of exposure with Westpac is based on an assumption that the plaintiff would have been exposed one day per week for the entire period of his employment with Westpac. It seems to me that the estimate of days exposed with Amaca is generous to Westpac and that the deceased would more likely have worked 210 days with Amaca. The estimate of days exposed with Westpac has

superficial attraction, however the scant detail of the Westpac exposure provided in the particulars causes problems in assessing the likely nature of that exposure.

Westpac has prepared a detailed Reply and makes a compelling argument as to why it ought not to be liable. I must however assume that Westpac is liable. Westpac refers to a number of evidentiary matters. An opinion of Professor Henderson as to causation of the deceased's mesothelioma; a history of exposure recorded in a report of Dr Gianoutsis; a history recorded by the Dust Diseases Board.

The Dust Diseases Board history is significant in that it concludes that any exposure would have been of a "bystander" nature only. I take the reference to bystander to mean light exposure. The history states that the deceased cleaned air conditioning filters on weekends and that he had to clean plant rooms.

Westpac also refers to documents that appear to be internal Westpac material that suggest that the deceased may not have been exposed to asbestos because any asbestos that was present on site was encased. The origin and authenticity of these documents is unclear.

Westpac submits that any exposure the deceased may have suffered would have occurred while the deceased cleaned debris left by tradesmen after they performed maintenance work in boiler rooms. It is submitted this exposure would have occurred one hour per year for six years.

The combined effect of the Westpac submission is that I accept that the contribution to the cause of the deceased's mesothelioma by the Westpac exposure was far less than the Amaca exposure.

I find that the Amaca exposure was 210 days and that the Westpac exposure was 24 days which is calculated by reference to one day per quarter for six years. The significance of six years is that the particulars state that asbestos began to be removed from Westpac in 1987.

The deceased's exposure is therefore 234 days. As a proportion of the total the Amaca exposure is approximately 90% and the Westpac exposure approximately 10%. I consider that on the totality of the material upon which I am permitted to rely I should determine contribution to be Amaca 90% and Westpac 10%.

I appoint Amaca as Single Claims Manager.

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

Toby Tancred

Date: 10 September 2009