

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

DDT NO. 8313 of 2008

**STEPHEN MARK LAWLER, EXECUTOR OF THE ESTATE OF ALLISON
MARIE LAWLER (PREVIOUSLY THE EXECUTOR OF THE ESTATE OF
JOHN LAWLER)**
Plaintiff

AMACA PTY LTD
First Defendant

COCKATOO DOCKYARD PTY LTD
Second Defendant

NORTH SYDNEY COUNCIL
Third Defendant

**CONTRIBUTIONS ASSESSMENT
DETERMINATION**

In this matter I have been appointed as Contributions Assessor in accordance with clause 49(1) of the *Dust Diseases Tribunal Regulation 2007*.

1. The plaintiff is the executor of the estate of his mother Allison Marie Lawler, who was in turn the executor of the estate of her husband, the late John Lawler who died on 25 November 2006.
2. The original statement of claim filed on 29 October 2008 in the Dust Diseases Tribunal alleged that in the late 1940s and early 1950s the late Mr John Lawler ("Mr Lawler") was employed as a labourer by various timber yards including McKenzies, Koltz & Lawler in Annandale and A Primrose in Gladesville. It is alleged that in the course of his employments with those timber yards, Mr Lawler was required to load, unload, carry, stack, cut and otherwise handle AC building products manufactured and/or supplied by the first defendant ("Amaca"). The imprecision as to

the start and end dates of those employments does not make my task any easier.

3. Further, it was alleged that between the "early 50s and about 1958" Mr Lawler was employed by the second defendant ("Cockatoo") in what is later described as the position of relief clerk at its premises in Sydney Harbour. As a result of that employment it is alleged that Mr Lawler was required to be present on board vessels that were undergoing construction, maintenance and/or repair within the confines of the dockyards. It is further alleged that he was present on board vessels in areas in which other workers were removing and/or applying insulation products containing asbestos.
4. It is further alleged that whilst in the employ of the third defendant ("the Council") his duties as a driver of Council trucks was to pick up and handle waste in and around the North Sydney Council area and whilst performing those duties he again handled building products containing asbestos and worked alongside other persons performing tasks of a similar nature.
5. As a result of the different exposures it is alleged that he developed the condition that I will hereinafter refer to as ARPD. Only the third defendant concedes that Mr Lawler suffered from such condition, accepting apparently a medical authority from the Dust Diseases Board of March 2007 which is not in the papers before me.
6. The sparse information which is before me as to the deceased's exposure, the precise periods of his employment combined with a paucity of evidence in relation to the nature, quality and extent of his exposure means that at best the Contribution Assessor's task is speculative.

Nevertheless, applying the standard presumptions, I am required to do the best I can with the material that is before me.

7. In this regard I have treated the plaintiff's pleading and the absence of precise dates as to his employments on the basis that he worked for a period from about 1948 to 1952 at the various timber yards referred to above. I will assume a period of four years in respect of those employments.
8. In respect of the period of employment at Cockatoo, I have selected, for want of better information, a period of six years from 1952 to 1958 and I have selected a period of employment at the Council of six years.
9. All parties concede that the first defendant is a Category 1 defendant and that the second and third defendants are Category 2 defendants.
10. I have no medical material before me, nor do I have an affidavit from the plaintiff as to his exposure. The only document containing any summary of work and exposure history is set out in Part 4A. The deceased's exposure in various timber yards is described in the following terms:

Various Timber Yards

d. From about 1948 to the early 1950s, Mr Lawler worked in various timber yards as a labourer. Those timber yards include McKenzies, Koltz & Lawler in Annandale and A Primrose in Gladesville. In the course of his work at these timber yards [sic], Mr Lawler loaded, unloaded, stacked and processed orders which contained asbestos fibro products. The manufacturer of these products was James Hardie. On occasions, Mr Lawler cut these sheets to size for specific customer orders and/or worked alongside other workers performing these tasks.

Cockatoo Dockyards

e. From about the early 1950s to 1958 Mr Lawler worked as a relief clerk. One of his duties included looking after pays and delivering pays to the

workers. During the course of his work, Mr Lawler was required to visit all parts of the dockyards, and to board ships which were under repair. Mr Lawler was frequently present when work was being carried out by workers using asbestos products, including but not limited to removing and applying asbestos lagging.

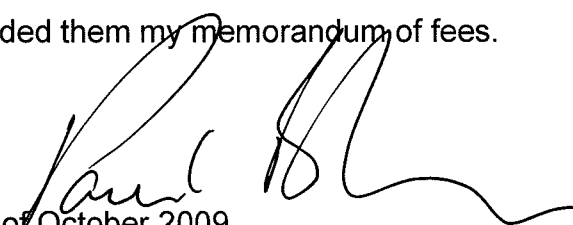
North Sydney Council

- i. Mr Lawler [w]as employed on the Ward gang, which was mainly responsible for collecting and transporting waste from council cleanups to the tip. The waste collected included building products containing asbestos fibro which was thrown and rushed by Mr Lawler in the course of his work.*

11. At 4.13 the deceased alleges his exposure to asbestos occurred when he was both working with asbestos-containing products and working in the vicinity of others who were working with asbestos-containing products.
12. It is alleged that Mr Lawler passed away on 25 November 2006 from pulmonary thrombo-emboli, which is unrelated to his asbestos disease.
13. For the purposes of this assessment I will assume that ARPD is a divisible disease. I am obliged to make a determination of what proportion to the whole each separate period of exposure bears having regard to the number of such periods, the lengths of each such period and the duration and intensity of exposure to asbestos within each period. I am to treat each separate period as equal in contribution to the disease unless satisfied that a variable weighting ought apply.
14. I make the following observations. As to Amaca, its exposure is in Category 1 period and it is the only defendant. The deceased in the nature of his duties in the timber yard alleges he was regularly exposed to its products.

15. In the second defendant's period, even though it is a Category 2 defendant it was running a significant industrial enterprise. Notwithstanding that it claims to be only the occupier of, I take it, the dockyard rather than ships which from time to time were present at the dockyard, it would seem that, despite the plaintiff's job description as a relief clerk, he may well have been exposed to significant neighbourhood exposure to asbestos on occasions.
16. The third defendant Council's exposure is of the intermittent type. In its submissions at paragraph 8.2 the Council in its reply submits that the standard presumptions should be varied against Vickers Cockatoo Dockyards by 10 percent on the basis that during the 1950s the second defendant would have had actual or constructive knowledge of the risks and dangers associated with the use and inhalation of asbestos dust and fibre as compared to the Council. It accepts that North Sydney Council exposure was in the late 70s and early 80s and therefore if such exposure existed it could be suggested the Council was more culpable. It points out that there is no evidence that the Council used asbestos on a daily basis.
17. As I apprehend the nature of the deceased's duties, it was to participate in council clean-ups and waste or refuse removal. There is no evidence to suggest that the deceased's encounters with asbestos would not be casual and in a sense fortuitous if they occurred.
18. I therefore find it is reasonable to weight the nature of the Council's exposure compared with the other two defendants.
19. On a purely temporal basis, assuming identical exposure, the apportionment over a sixteen year period would be 4/16ths for Amaca, 6/16ths for Cockatoo and 6/16ths for the Council.

20. As I have stated above, the evidence in relation to apportionment is meagre. I am of the view that the first and second defendants' employments were of a different nature and quality to that of the third defendant's employment and that the Council's liability should be no more than 20%.
21. Apportioning between the first and second defendants based on period of exposure and rounding it up, I vary the first defendant's responsibility upwards from 25% to 31% and the second defendant's responsibility up from 37.5% to 50%, and the third defendant down to 20%.
22. I appoint Cockatoo by its proper officer to be the single claims manager. I have forwarded them my memorandum of fees.


Dated 12th day of October 2009

PAUL BLACKETT SC
CONTRIBUTIONS ASSESSOR.