

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 285/2009 & 285/2009CC1

Hugh Livingston

Plaintiff

Cockatoo Dockyards Pty Limited

First Defendant/Cross Defendant

Comcare

Second Defendant

The State of New South Wales

Third Defendant

Amaca Pty Ltd

Fourth Defendant

Seltsam Pty Ltd

Fifth Defendant

Wallaby Grip Limited

Cross Defendant

DETERMINATION

INTRODUCTION

By letter dated 25 June 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 ("Particulars")
2. First Defendant's Reply
3. Second Defendant's Reply
4. Third Defendant's Reply
5. Fourth Defendant's Reply
6. Fifth Defendant's Reply

In addition to the material described at 1-6 above I rely on the Standard Presumptions set out in Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007. I am not permitted to rely on any other document or other material.

I assume that each defendant sued by the Plaintiff, who is a 75 year old male who has allegedly contracted Asbestos Related Pleural Disease and Asbestosis is liable to the Plaintiff. I also assume the Cross Defendant is liable to the Plaintiff.

I will refer to the Defendants in the following way:

- First Defendant – Codock
- Second Defendant – Comcare
- Third Defendant – NSW
- Fourth Defendant – Amaca
- Fifth Defendant – Seltsam
- Cross Defendant - WGL

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 three separate periods of exposure.

Period 1

Between 1952 and 1957 the Plaintiff was employed by Codock as an apprentice shipwright. He worked with ladders and was exposed to asbestos emanating from half form pipe sections, rope, and compound. The Plaintiff does not identify the manufacturer of these products. This period accounts for 45% of the Plaintiff’s total exposure on the Plaintiff’s estimation.

Period 2

Between 1966 and 1967 the Plaintiff was employed by NSW at Gosford Hospital as a maintenance worker. He worked on the demolition of a boiler house and was exposed while working with and near pipe sections, rope, powder insulation and fibro sheeting. The Plaintiff does not identify the manufacturer of these asbestos products. The Plaintiff considers this period accounts for 10% of his total exposure.

Period 3

From 1969 to 1975 and then from 1979 until 1981 the Plaintiff was self employed as a licensed builder. The Plaintiff alleges that he regularly worked with Versilux, Tilux, Villaboard, Hardiplank, Hardiflex and compressed sheets. He nominates Amaca as the manufacturer of all these products save for the Villaboard that he says was manufactured by Seltsam. The Plaintiff considers this period of exposure accounts for 45% of his total exposure and that 90% of his exposure in this period arose from Amaca products and 10% from Seltsam products.

CONTRIBUTION ASSESSMENT

There is no dispute that Codock, Comcare and NSW are Category 2 Defendants and that Amaca, Seltsam and WGL are Category 1 Defendants.

I consider it appropriate to adopt the Plaintiff's own assessment of his respective exposures despite a submission by NSW that I should not. I am asked to have regard

to an assessment of the likely extent of exposure set out in a report of Dr McEvoy that is attached to the Reply filed on behalf of NSW. In taking that opinion into account I consider that the Plaintiff is in the best position to assess his respective exposures.

Incorporated into the Reply filed by Codock is a letter from Bells Asbestos and Engineering (Australia) Limited dated 7 June 1955 addressed to The General Manager, Department of Navy. This letter refers to rates of pay for “*our ladders working on Naval vessels*”.

Under the Standard Presumptions, the liability for period 1 should be apportioned 75% to WGL (33.75%) and 25% to Codock and Comcare (5.625% each). I consider it appropriate to vary the Standard Presumptions given the size and sophistication of Comcare. I consider it appropriate to vary the contribution between Category 1 and Category 2 Defendants for period 1 so that it is 55% to Category 1 Defendants and 45% to Category 2 Defendants. This results in 24.75% being apportioned to WGL and 20.25% to be apportioned between Codock and Comcare.

The Standard Presumptions provide that “*If there is more than one defendant in either of Category 1 and Category 2, then the Contributions Assessor is to treat each defendant as equal in contribution to the percent share of that Category unless satisfied that a variable contribution ought apply*”. I am satisfied that as between Codock and Comcare a variable contribution ought apply given the identity, capacity, size and state of sophistication of Comcare. I consider it appropriate to apportion liability approximately 35% to Codock and 65% to Comcare which results after rounding in 7% to Codock and 13.25% to Comcare.

NSW is solely liable for the exposure in Period 2.

The 45% exposure during Period 3 is to be apportioned 90% as to Amaca (40.5%) and 10% as Seltsam. (4.5%). Seltsam contends for a different apportionment in its Reply but I consider that the Plaintiff's own assessment of his respective exposures and the Standard Presumptions produce a just and equitable result for this period.

I determine contribution to be:

- Codock – 7%
- Comcare – 13.25%
- NSW – 10%
- Amaca – 40.5%
- Seltsam – 4.5%
- WGL – 24.75%

I appoint at random Amaca as Single Claims Manager.



Toby Tancred

Date: 14 July 2010