

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 8166/2008

DONALD STEWART LONGWORTH

Plaintiff

AMACA PTY LIMITED (UNDER NSW ADMINISTERED WINDING UP)

First Defendant

SELTSAM PTY LIMITED

Second Defendant

DETERMINATION

INTRODUCTION

By letter dated 1 September 2008 bearing the signature of the Registrar of the Dust Diseases Tribunal I am appointed Contributions Assessor in these proceedings.

The Plaintiff is an 83 year old male who has allegedly contracted Mesothelioma.

I will refer to the Defendants as Amaca and Seltsam.

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. Reply filed for Amaca
3. Reply filed for Seltsam

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 do not rely on the Amended Particulars filed by the Plaintiff nor the Amended Reply filed by Amaca.

I am to assume that each Defendant is liable to contribute.

CATEGORY OF DEFENDANT

There is no dispute that Amaca and Seltsam are both Category 1 Defendants.

PLAINTIFF'S 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 a number of periods of exposure during his working life as a carpenter. He does not claim against any of his numerous employers but only against Amaca and Seltsam on the grounds that these entities are responsible for the manufacturer of products to which the plaintiff was exposed. I make this presumption on the basis of certain denials and admissions contained in the Replies filed by Amaca and Seltsam.

The plaintiff explains the way in which his various exposures occurred in some detail but he does little to identify how it is that Amaca and Seltsam are responsible for those exposures. I am left at a loss to determine how each of the respective exposures the plaintiff alleges can be attributed between Amaca and Seltsam on the material upon which I am permitted to rely, except in accordance with the Standard Presumptions.

The plaintiff alleges he was exposed to “asbestos cement fibro”, “fibro”, “Tilux”, “Villaboard”, “SuperSix corrugated fibro” and “compressed fibro”. Of these products the plaintiff only links Amaca to “fibro” with which he worked while constructing the Upper Kangaroo Valley Hall in the period 1972 to 1976. No other reference is made to Amaca or Seltsam.

CONTRIBUTION ASSESSMENT

The Reply filed by Amaca notes that the plaintiff alleges he was exposed to Tilux, SuperSix, Villaboard, and Asbestos Cement Fibro.

Amaca admits that it manufactured SuperSix, asbestos cement sheets, and Tilux, and after 1977 Villaboard. Amaca submits, and I accept, that asbestos cement fibro is a generic term that refers to a product manufactured by a number of manufacturers. Amaca submits there should be no variation of the Standard Presumptions.

Seltsam’s reply asserts that the plaintiff identifies that Amaca manufactured asbestos cement fibro, Tilux, fibro eaves and gutters, and compressed fibro. This is contrary to what is contained in the Particulars

where the plaintiff makes only one reference to working with an Amaca product.

Seltsam admits it manufactured Villaboard from 1968 to July 1977.

Seltsam has prepared a painstaking calculation of the plaintiff's various exposures and submits that in accordance with those calculations it should contribute only 5% and Amaca 95%. I understand the submission made by Seltsam but I consider that it is based on calculations that assume certain matters that are not made out on the material upon which I am permitted to rely.

In a matter involving an indivisible disease I am required by the Standard Presumptions to presume that the defendants are equally liable to contribute unless I am satisfied that a variable contribution ought to apply. I am not satisfied that a variable contribution ought to apply, given what is contained in the material upon which I am permitted to rely.

I determine contribution to be Amaca 50%, Seltsam 50%.

I have not been asked to appoint a Single Claims Manager but in the event that this is an oversight and it is necessary for there to be a Single

Claims Manager to I appoint Amaca at random to be the Single Claims
Manager.

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

Toby Tancred

Date 3 September 2008