

# **CONTRIBUTIONS ASSESSMENT**

**DUST DISEASES TRIBUNAL**

**MATTER NO: 265/2009 & 265/2009/CC1**

**Alexander Macdonald**

**Plaintiff**

**Amaca Pty Ltd**

**First Defendant/Cross Claimant**

**Wallaby Grip (BAE) Pty Ltd**

**Second Defendant**

**Bluescope Steel (AIS) Pty Ltd**

**Third Defendant**

**CSR Limited**

**Cross Defendant**

## SUPPLEMENTARY DETERMINATION

By letter dated 9 March 2010 bearing the signature of the Registrar of the Dust Diseases Tribunal I was appointed Contributions Assessor in these proceedings. I provided my Determination of contribution on 18 March 2010. By letter dated 26 March 2010 Bluescope seeks a review under Clause 49(10)(b) of the Dust Disease Tribunal Regulation seeking to correct a mistake arising from accidental slip or omission.

It is convenient to set out in full the grounds upon which Bluescope seeks a review:

*“Clause 49(4) of the Regulation specifies that the Contributions Assessor must make the Determination solely on the basis of the plaintiff’s Statement of Particulars, the Defendant’s Replies and the Standard Presumptions. The Standard Presumptions do not allow for the Third Defendant (who was not the Plaintiff’s employer) to be categorised as both a Category 1 and Category 2 Defendant. Schedule 5(3) of the Standard Presumptions Apportionment Order states that if a defendant in any particular case, falls within both categories (i.e. as an installer and employer of the claimant) then a separate share is to be calculated by the Contributions Assessor for the role of that defendant. If “i.e.” is given its usual meaning of “that is”, only those who can be categorised as both installers and employers can fall into both categories.”*

I do not agree with the argument made by Bluescope in seeking the review. When the wider spirit and intention of the Standard Presumptions is taken into account it is clear that the reference to “i.e.” in Clause 5(3) is an error in drafting and should more properly be “e.g.” I am

fortified in this view by the context of the Standard Presumptions and the terms of Clause 5(2) and (3) that state:

*“For the purposes of determining the apportionment, the Contributions Assessor is to determine into which of the two categories each defendant falls (except for any defendant that is to be excluded from the apportionment, as agreed by the defendants). The two categories are:*

- (a) Category 1 which includes all those corporations, authorities, and legal entities who engage in a business which relates to the period of exposure and which can be described as Miners, Manufacturers, Suppliers and/or Installers<sup>10</sup> of asbestos or of products, plant and equipment which contained asbestos<sup>11</sup>, and*
- (b) Category 2 which includes all other defendants. These would ordinarily be all corporations, authorities, and legal entities who engage in a business which relates to the period of exposure and which can be described as Users of asbestos or products, plant and equipment which contained asbestos, Occupiers of Premises which contained asbestos or where asbestos or products, plant and equipment which contained asbestos were situated or Employers of staff who in the course of, or as an incident to, their employment were exposed to asbestos.*

**Note.**

<sup>10</sup> It is not intended to include retail shops or outlets within the meaning of the term Supplier in Category 1. Retail shops or outlets are included in Category 2. Similarly, it is not intended to include a user of asbestos products, such as a small building company, which uses bonded asbestos sheeting in building works.

<sup>11</sup> For example, the category of installer would include the designer and manufacturer of particular plant or equipment which included asbestos as part of its design, as well as a company which is engaged to install the plant in accordance with the manufacturer's instructions.

- (3) If a defendant, in any particular case, falls within both categories (i.e. as an installer and employer of the claimant) then a separate share is to be calculated by the Contributions Assessor for the role of that defendant which falls within each category.*

The reference in the above extracts of the legislation refers to “installer” by way of illustrating the example where a Defendant can be both a Category 1 and Category 2 Defendant.

In this situation Bluescope is a Category 1 Defendant because it is an installer and a Category 2 Defendant because it is an occupier of premises containing asbestos.

I make no variation of the Determination of contribution set out in my Determination dated 18 March 2010.

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

Toby Tancred

Date: 31 March 2010