

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

**DDT No. 2011/4**

**BETWEEN:                   LINDA MARIE MARTIN AS LEGAL PERSONAL  
REPRESENTATIVE FOR THE ESTATE OF THE LATE  
RONALD ARCHELL  
Plaintiff**

**AND:                         CSR LIMITED  
First Defendant**

**TOWER INSURANCE LIMITED  
Second Defendant**

**CONTRIBUTIONS ASSESSMENT DETERMINATION**

1. The Registrar of the Dust Diseases Tribunal has referred this matter to me pursuant to Regulation 49(1) of the *Dust Diseases Tribunal Regulations 2007* (hereinafter referred to as “the Regulations”) for a determination of apportionment as between the Defendants.
2. Regulation 49 requires me to determine the contribution of each Defendant on the assumption that the Defendants are liable and on the basis of the Plaintiff’s Statement of Particulars and the Defendants’ Replies. Thereafter I am required to apply (if relevant) the standard presumptions as to apportionment as set forth in the *Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007* (hereinafter referred to as the “Standard Presumptions Order”).
3. Ronald Archell (hereinafter referred to as the “the Deceased”) commenced proceedings in the Dust Diseases Tribunal on 10 January 2011 against CSR Ltd (hereinafter referred to as “CSR”) claiming damages consequent upon his exposure to asbestos.

4. On 14 January 2011 the Deceased amended his Statement of Claim to bring a claim against CSR and also against Silicate & Dolomite Co of Australia Pty Ltd (hereinafter referred to as "Silicate & Dolomite") and the Plaintiff alleged that between April 1967 to about January 1993 he was employed by CSR and that between 1954 and 1967 the Plaintiff was employed by Silicate & Dolomite. In the course of both periods of employment, the Plaintiff alleges exposure to asbestos dust and fibre.
5. On 6 July 2011, Linda Marie Martin, as legal personal representative of the estate of the late Ronald Archell (hereinafter referred to as "the Plaintiff") was substituted as the Plaintiff in place of the Deceased.
6. On 6 July 2011 the Plaintiff filed a Statement of Particulars which, so far as is relevant, disclosed:
  - (i) The Deceased was exposed to asbestos dust and fibre while working for Silicate & Dolomite between August of 1954 and 12 February 1967 where he worked in the course of his employment as a boiler attendant.
  - (ii) That the Plaintiff was exposed to asbestos dust and fibre while employed as a boiler attendant by CSR between 24 April 1967 and 27 January 1983.
7. Annexed to the Statement of Particulars is an affidavit of the Deceased who described the work at Silicate & Dolomite as being extremely dusty. The Deceased's work involved repairing, maintaining, cleaning and stripping out the boilers and, in the course of the Deceased's employment, he worked alongside ladders performing duties relating to the removal and application of the old insulation. As to his employment with CSR, the Deceased alleges that he was a boiler attendant involved in the repairing and maintaining of the boilers, which was identical to the work he did at Silicate & Dolomite. Included with the Statement of Particulars are a number of medical records and reports, which are not strictly relevant in terms of this determination.

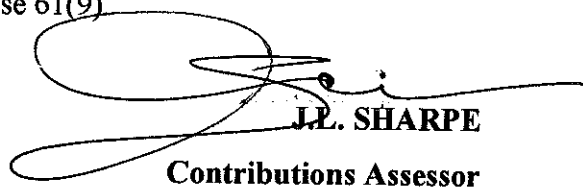
8. On 3 August 2011 CSR filed a Reply which, so far as is relevant, alleges the following:
- (i) Employment is confirmed from 24 April 1964 to 27 January 1983 (a period of approximately 19 years).
  - (ii) CSR and Silicate & Dolomite should be categorised as Category 2 Defendants.
  - (iii) CSR relies upon the Deceased's affidavit.
  - (iv) On the basis of the alleged exposure, apportionment should be CSR 50% and Silicate & Dolomite 50%.
  - (v) Employment with Silicate & Dolomite was for a period of approximately 23 years.
9. On 18 August 2011 the Plaintiff filed a Third Amended Statement of Claim, which sought to substitute Tower Insurance Ltd for Silicate & Dolomite in respect of insurance held on behalf of Silicate & Dolomite.
10. On 23 September 2011 Tower Insurance Ltd filed a Reply which, so far as is relevant, alleges the following:
- (i) Silicate & Dolomite and CSR should be Category 2 Defendants.
  - (ii) CSR was a substantially larger and more sophisticated employer and, by reason of the later period of the Deceased's employment, CSR was better placed and had more knowledge of the dangers associated with exposure to asbestos dust and fibre.
  - (iii) At all relevant times during the whole of this period CSR was a recognised manufacturer and supplier of asbestos-containing products and, by reason of its engagement in this industry, was possessed of significantly greater

knowledge of the matters and risks pertaining to asbestos exposure and attendant risks.

- (iv) Silicate & Dolomite should be responsible for 40% and CSR 60% or, on a time basis, Silicate & Dolomite 44% and CSR 56%.
11. Initially the Contributions Assessor must determine the existence of any separate periods of exposure pursuant to clause 5(8) of the Standard Presumptions Order and make a determination of what proportion of the whole each separate period bears having regard to the number of such periods, the length of each period, the duration of and intensity of exposure to asbestos present in each such period. It is thus not appropriate to determine the relative contribution simply on the basis of the lapsed years between the various periods of exposure.
12. Based upon the material before me, and in particular the Statement of Particulars provided by the Plaintiff, I determine that the two periods of employment were roughly equal. Doing the best I can on the material before me, I determine the contributions between the two periods to be equal.
13. I determine that CSR and Silicate & Dolomite are both Category 2 Defendants.
14. Therefore, I determine the total liability of the Defendants as follows:

CSR	50%
Silicate & Dolomite	50%
Total	100%

15. Pursuant to clause 61 of the Regulations, I appoint CSR as the Single Claims Manager as it is the primary defendant defined under clause 61(9)

  
**J.L. SHARPE**  
Contributions Assessor

21 October 2011