

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 236 OF 2010 AND CC1

Bruce Morrison Monteah

Plaintiff

Eraring Energy

First Defendant

Comcare

Second Defendant

The State of New South Wales

Third Defendant

Babcock International Limited

First Cross Defendant

Babcock Australia Limited

Second Cross Defendant

Power Technologies Pty Limited

Third Cross Defendant

Amaca Pty Ltd

Fourth Cross Defendant

Wallaby Grip Limited

Fifth Cross Defendant

DETERMINATION

INTRODUCTION

By letter dated 29 October 2009 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 Defendants Reply
5. First Cross Defendant's Reply
6. Second Cross Defendant's Reply
7. Third Cross Defendant's Reply
8. Fourth Cross Defendant's Reply
9. Fifth Cross Defendant's Reply

In addition to the material described at 1-9 above I rely on the Standard Presumptions set out in Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007.

I assume that each defendant and cross defendant is liable.

I will refer to the Defendants in the following way:

- First Defendant – Eraring
- Second Defendant – Comcare
- Third Defendant – NSW
- First Cross Defendant – BIL
- Second Cross Defendant - BAL
- Third Cross Defendant - ICAL
- Fourth Cross Defendant - Amaca
- Fifth 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 who is a 65 year old male alleges three separate periods of exposure.

He was employed by Eraring for a period involving three years of exposure on the evidence contained in his particulars. He was next employed by Comcare for one year. He then worked for Tulloch Ltd working entirely on NSW trains.

The Plaintiff does not identify the manufacturer or supplier of any of the asbestos products with which he worked during his three periods of exposure. It is also of

significance that he does not identify the employer of the persons who applied and directly worked with asbestos products during his employment with Eraring.

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Comcare is solely liable for the exposure in its period (12.5%) and NSW is solely liable for the exposure in its period (37.5%).

Therefore there remain three real issues to be determined in relation to the Eraring period.

Issue One – *Categorisation of Defendants*. The Reply filed by WGL that annexes Affidavits of former employees of Eraring causes me determine that Eraring should be placed into Category 1 and Category 2.

Issue Two – *Variation of Standard Presumptions*. The Standard Presumptions should be varied so that apportionment of liability between Category 1 and Category 2 Defendants is equal. I can make no relevant distinction between Eraring on the one hand as a Category 2 Defendant given that it is effectively the State and the six Category 1 Defendants.

Issue Three – *Apportionment between the six Category 1 Defendants*. Each Category 1 Defendant provides cogent arguments in its Reply that if accepted would cause me to determine that its liability should be less than the other Defendants. To repeat each argument is not necessary. A just and equitable outcome is achieved by equal

apportionment save for one adjustment. BIL points out that Eraring only sues it and BAL in respect of exposure at Bunnerong and White Bay Power Stations but not Pyrmont Power Station. This is a good reason to slightly adjust liability as between Eraring and BIL/BAL that then involves a small adjustment of WGL, Amaca and ICAL's liability.

I therefore determine contribution to be:

- Eraring – 30.5%
- BIL – 3.75%
- BAL – 3.75%
- ICAL – 4%
- AMACA – 4%
- WGL 4%
- Comcare – 12.5%
- NSW – 37.5%

I appoint NSW as Single Claims Manager.

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

Toby Tancred

Date: 9 November 2010