

# **CONTRIBUTIONS ASSESSMENT**

**DUST DISEASES TRIBUNAL**

**MATTER NO: 8139/2008**

**Frederick Moss**

**Plaintiff**

**The Sydney Olympic Park Authority**

**First Defendant**

**Amaca Pty Limited**

**Second Defendant**

## **DETERMINATION**

### **INTRODUCTION**

By letter dated 26 September 2008 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

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 assume that each defendant sued by the Plaintiff, who is an 80 year old male who has allegedly contracted Mesothelioma, is liable to the Plaintiff.

I will refer to the First Defendant as SOPA and the Second Defendant as Amaca.

SOPA is a Category 2 Defendant and Amaca is a Category 2 Defendant.

## **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 experienced exposure while living in the United Kingdom. He alleges that his exposure in Australia occurred during two separate periods. The first occurred

at SOPA over a period of 18 months and the second occurred while the Plaintiff lived in South Australia from 1966 to 1988.

At SOPA the Plaintiff alleges he was employed as a Bricklayer and that he was exposed while working in the vicinity of labourers working with AC sheets. In South Australia the Plaintiff alleges he was exposed while working on various constructions sites at which AC sheets were used .

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Amaca does not admit manufacture of AC sheets arguing that this is a generic term and does not specifically implicate Amaca. I am required to assume Amaca is liable. Amaca argues that the Standard Presumptions should not be varied. It is not clear to me if this is a submission that contribution should be SOPA 35% and Amaca 65% but if so I do not accept it because of the clear evidence of separate periods of exposure.

I accept the submissions made by SOPA based on a report of Professor Breslin in which a formulation of contribution is undertaken based on the PETO formula.

Professor Breslin expresses a view that the plaintiff's exposure in Australia contributed 22% to his Mesothelioma. Of this 22%, exposure at SOPA would have contributed 3-5% to the plaintiff's Mesothelioma, and exposure in South Australia would have contributed 17-19% to his mesothelioma. I calculate that this results in 18% contribution to the SOPA period and 82% to the period in South Australia.

Of the 18% contribution attributable to the SOPA period the Standard Presumptions require me to apportion 35% to SOPA and 65% to Amaca based on the categorisation of the two Defendants. I cannot identify any reason to alter the Standard Presumptions in the absence of any evidence describing the size and sophistication of SOPA.

I record that SOPA submits it is an innocent defendant and it seeks the agreement of Amaca to this proposition. There is no agreement forthcoming from Amaca evident in the papers upon which I am permitted to rely and I therefore cannot accept this submission.

I determine contribution to be Amaca 93.5% and SOPA 6.5%. I appoint Amaca Single Claims Manager.

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

Toby Tancred

Date : 30 September 2008