

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

DDT No. 98/2010

RONALD JOHN PORTER
Plaintiff

AMACA PTY LIMITED
First Defendant

SELTSAM PTY LTD
Second Defendant

CONTRIBUTION ASSESSMENT DETERMINATION

1. The Registrar of the Dust Diseases Tribunal has referred this matter to me pursuant to clause 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 of the Regulations provides that the Contributions Assessor to whom the matter is referred is to determine the contribution that each Defendant is liable to make and I must make such determination on the assumption that the Defendants are liable and solely on the basis of the Plaintiff's Statement of Particulars and the Defendant's Replies.
3. In addition, I am to have regard to the Standard Presumptions as to apportionment, which are those set forth in the *Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007* (hereinafter referred to as "the Standards Presumptions Order").
4. Ronald John Porter (hereinafter referred to as "**the Plaintiff**") commenced proceedings in the Dust Diseases Tribunal on 23 April 2010 by means of a Statement of Claim which, relevantly, alleged:

- (a) From about 1964 to 1968 the Plaintiff was employed by Daley Homes as a labourer and carpenter and in the course of such employment, was exposed to asbestos dust and fibre which emanated from asbestos cement fibro sheets manufactured and/or supplied and/or distributed by either Amaca Pty Ltd (hereinafter referred to as "Amaca") or by Seltsam Pty Ltd (hereinafter referred to as "Seltsam").
 - (b) From about 1968 to 1970 the Plaintiff was employed by Robinson Homes as a labourer and carpenter and in the course of such employment, was exposed to asbestos dust and fibre, which emanated from asbestos cement fibro sheets manufactured and/or supplied and/or distributed by either Amaca or Seltsam.
 - (c) From about 1971 to 1991 the Plaintiff was employed as a subcontractor and up until about late 1977, the Plaintiff undertook handling, stacking, carding, cutting asbestos cement fibro sheets manufactured and/or supplied, and/or distributed by Amaca or Seltsam, as a result of which he was exposed to asbestos dust and fibre.
 - (d) During the period from late 1977, Amaca was the only manufacturer of Asbestos Cement Fibro sheeting in Australia, and supplied such asbestos cement fibro sheeting within New South Wales, and the Sydney Metropolitan area.
 - (e) As a result of the Plaintiff's exposure as aforesaid, he claims to suffer from asbestos-related pleural disease, bilateral calcified pleural plaques and shortness of breath.
5. It can be seen from the Plaintiff's Statement of Claim, that the Plaintiff's claim is a divisible one.
6. On 23 April 2010, the Plaintiff filed a Statement of Particulars which, so far as is relevant, provided:

- (a) Employment with Daley Homes from January 1964 until about 1968. The majority of the materials were Versilux, used for the internal sheetings. Fibro asbestos sheeting required for the external construction was of a different construction and "Shadowline" was used on the exterior properties. Shadowline, because of its thickness, could only be cut with a power saw. Versilux was cut with either fibro cutters or a power saw, but it was cut inside the house, in confined circumstances. Super 6 asbestos was used for the roofs of the houses and cutting was performed using a power saw. Construction at Daley Homes was approximately one home per month. The asbestos materials used by the Plaintiff were most likely purchased from Campbell's Hardware in Brisbane.
- (b) The Plaintiff was employed by Peter Robinson Homes in 1968, after having been employed for four months by the Department of Public Works in Brisbane. The Plaintiff's duties with Peter Robinson Homes was identical to those performed with Daley Homes. However, the Plaintiff identifies Tilux being used in the bathroom and that needed to be cut with fibro cutters. In the late 1960s, the Plaintiff's exposure to asbestos occurred mainly with external sheeting, given the introduction of gyprock.
- (c) In 1971 the Plaintiff was employed by Tony Hanson Homes. The homes used two asbestos fibro sheets on the outside. The Plaintiff spent a full two weeks out of a three to four week period. Cutting and storing asbestos sheeting, which was performed inside the shell of the home, once the roof and walls had been put in place. The Plaintiff estimated construction of one home per month.
- (d) In approximately 1976 the Plaintiff commenced his own business called RJ and LJ Porter Holdings Pty Ltd, performing cinema duties to those he previously performed. The Plaintiff worked on a hands-on basis until 1983, when he ceased working in the business. The asbestos materials used by the Plaintiff were most likely purchased from Buderim Lumber on the Sunshine Coast.

- (e) In 1984 the Plaintiff was employed by White Industries as a Site Manager and Supervisor. The Plaintiff supervised the cutting of asbestos cement fibro sheeting for use in the wet areas of bathrooms and laundries but most of the building work involved concrete.
- (f) The Plaintiff describes his exposure with Daley Homes as being high; again high with Peter Robinson Homes; extremely High with Tony Hanson Homes and high with RJ & LJ Porter.
- (g) The Plaintiff estimates his exposure as being:

Daley Homes	-	10%
Peter Robinson Homes	-	20%
Tony Hanson Homes	-	50%
RJ & L J Porter Holdings	-	20%
- (h) In respect of each of the asbestos materials used, the Plaintiff estimates that 95% of the materials were James Hardie products and 5% were Wunderlich products.
- (i) All the Plaintiff's exposure occurred in Queensland.

7. Amaca provided a reply which, inter alia, alleged:

- (a) Amaca admits to manufacturing Versilux, Shadowline, Super 6 sheeting and Tilux. In respect of asbestos fibro sheets and asbestos cement fibro-sheeting Amaca admits that it manufactured products of that nature but that up until July 1977 Seltsam supplied products of the same nature.
- (b) Amaca and Seltsam should both be defined as Category 1 defendants.
- (c) From 1964 until 1970 the Plaintiff worked as a carpenter in the Brisbane area of Queensland. Amaca accepts that James Campbell & Sons stocked James Hardie products and operated in the Brisbane area. However, James Campbell

& Sons used greater amounts of Wunderlich products and that the assessment should be on the basis of an equal exposure.

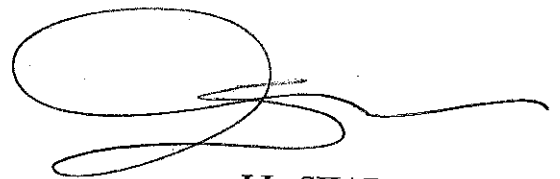
- (d) The Plaintiff states in his particulars that from 1971 until 1977 when Seltsam stopped manufacturing asbestos products, the Plaintiff was engaged to work in the Sunshine Coast area of Queensland. The Plaintiff further specifically notes that he obtained his asbestos products from the Sunshine Coast area from Buderim Lumber. Buderim Lumber was a 100% supplier of Wunderlich products. Accordingly, Amaca asserts that during the period 1971 to 1977 it should be assumed that the Claimant was significantly exposed to Wunderlich products.
- (e) Between 1977 and 1982 the Plaintiff's exposure would solely have been to the products of Amaca.
- (f) Amaca apportions the periods as follows:

		Percentage of overall exposure	Contribution	
			Amaca	Seltsam
(a)	1964 - 1971	39%	19.5%	19.5%
(b)	1971 - 1977	33%	11%	22%
(c)	1977 - 1982	28%	28%	
	Overall apportionment		58.5%	41.5%

8. Seltsam filed a reply on 28 May 2010 which, relevantly, provides:

- (a) Does not admit that it manufactured or supplied Versilux, Shadowline, Super 6 sheeting, Tilux, "Asbestos fibro sheets", "Asbestos cement fibro sheeting".
- (b) The Plaintiff does not identify any asbestos containing products manufactured and/or supplied by Seltsam.

- (c) In any event, Seltsam ceased manufacturing and supplying asbestos containing products after July 1977.
 - (d) Versilux, Shadowline, Tilux and Super 6 were products manufactured and supplied by Amaca. "Fibro" and "asbestos cement fibro sheeting" are generic terms.
 - (e) Both Amaca and Seltsam should be placed in Category 1.
 - (f) There is no proof of any exposure to Seltsam products.
 - (g) That the Plaintiff himself apportions the liability of 95% to Amaca and 5% to Seltsam.
9. In the present case it is not necessary to determine the existence of any separate periods of exposure, given that the two defendants are both Category 1 defendants.
10. The question comes down to whether I accept the Plaintiff's bald assessment of the 95% Amaca, 5% Wunderlich as being an accurate reflection of what happened. It is clear from the materials provided by Amaca that Wunderlich did play an important part in the supply of asbestos material in Queensland through the nominated agencies referred to. However, the Plaintiff has specifically identified Amaca's products.
11. Doing the best I can, it seems to me that the appropriate determination should be that Amaca is 80% liable and Seltsam 20% liable, and I so determine.
12. Pursuant to clause 61 of the Regulations, I appoint Amaca as the Single Claims Manager as it is the primary defendant as defined under clause 61(9).



J.L. SHARPE

12 August 2010