

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 278/09 & 278/09/CC1

Sharon Maree Reid (as Legal Personal Representative of the Estate of the late

Edward James Joseph Reid)

Plaintiff

Exfrig Pty Ltd

Second Defendant

Amaca Pty Ltd

Third Defendant/Cross Claimant

Amaba Pty Ltd

Fourth Defendant

**FMP Group (Australia) Pty Limited (Formerly known as Bendix Mintex Pty
Limited)**

Fifth Defendant

Action Insulation Engineers Pty Ltd

Sixth Defendant

DETERMINATION

INTRODUCTION

By letter dated 1 July 2010 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. Second Defendant's Reply
3. Second Defendant's Amended Reply
4. Third Defendant's Reply
5. Fourth Defendant's Reply
6. Fifth Defendant's Reply
7. Sixth Defendant's Reply
8. Cross Defendants Reply

In addition to the material described at 1-8 above I rely on the Standard Presumptions set out in Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007.

The Plaintiff is the Legal Personal Representative of the late Edward James Joseph Reid. Mr Reid allegedly contracted asbestos related pleural disease and asbestosis during his lifetime. I assume that each Defendant and the Cross Defendant is liable to the Plaintiff.

I will refer to the Defendants in the following way:

- Second Defendant – Exfrig
- Third Defendant/ Cross Claimant– Amaca
- Fourth Defendant – Amaba
- Fifth Defendant – FMP
- Sixth Defendant – Action
- Cross Defendant - CSR

The claims against the original First Defendant are not proceeding.

There is no dispute that the Defendants are in the following Categories:

- Exfrig – Category 2
- Amaca - Category 1
- Amaba - Category 1
- FMP - Category 1
- Action - Category 2
- CSR - Category 1

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 Mr Reid's respiratory system of asbestos dust and fibre.

The Plaintiff alleges that Mr Reid experienced six separate periods of exposure.

Period 1

From 1965/66 until 1967 Mr Reid was employed by Action as a full time welder and foreman. For 12 to 14 months he worked on the construction of the Swanbank Power Station in Queensland. He worked with James Hardie pipe sections and worked in the vicinity of others that were working with James Hardie pipe sections. He then worked at South Sydney Leagues Club and again worked with James Hardie pipe sections and worked in the vicinity of others that were working with James Hardie pipe sections. He next worked at the Sydney Electricity Building for 3 to 4 months. His exposure arose from lagging boilers with asbestos slurry made from loose asbestos powder. He does not identify the manufacturer of this asbestos.

Period 2

Mr Reid then worked for Exfrig from 1968 to 1970 as a full time lagger and foreman. He worked at Marrickville RSL Club for 12 months working with compressed asbestos sheeting. His work was similar to that which he performed at The Sydney Electricity Building. The manufacturer of

this asbestos is not identified. Mr Reid then worked at the David Jones store for 12 months working with James Hardie asbestos sheets.

Period 3

Mr Reid then worked for Thos Clark Pty Ltd from 1970 to 1971 as a full time duct installer. He worked with James Hardie pipe sections. He worked at the GIO Building, an old building in Kent Street and the Winschomb Carson Building.

Period 4

Mr Reid then went to work for A1 Air Conditioning from 1971 to 1972. He worked for this employer for 12 months working with asbestos compressed sheeting in similar circumstances to those that he encountered at Exfrig.

Period 5

Mr Reid then worked for V A Sweeney from 1972 to 1973 as a full time duct installer. He worked with James Hardie asbestos flat sheets.

Period 6

Mr Reid was then self employed from 1973 through to 1999. In 1973 he opened his own business at Arncliffe operating a service station where he worked as a mechanic. He traded here until 1976 when he shifted the business to “Gertrude Street”. His exposure occurred while working with brake linings and pads. He worked with Hardie Ferodo brake linings and subsequently worked with brake pads when they “came in”. He used Bendix Mentix pads. They are described in the Particulars as a “great product”.

Attached to the Particulars is a report of Professor Breslin dated 9 July 2009. This report was prepared following the Professor’s examination of Mr Reid during his lifetime on 1 July 2009. Professor Breslin describes the history of exposure that he recorded thus: *“I would rate this exposure as heavy when with Action Insulation, and mild to moderate with Fridgerite and Thomas Clark and V A Sweeney, and light with his work in the service station at Bayview and Gertrude Street.”*

Mr Reid’s own assessment of the respective dose of each exposure is set out in an Affidavit that he swore on 27 October 2009 and which is helpfully attached to a number of the Reply’s filed by the Defendants.

A transcript of evidence that Mr Reid gave before His Honour Judge Curtis on 27 October 2009 is helpfully attached to the Reply filed by Exfrig. Mr Reid confirmed that the contents of his Affidavit sworn 27 October 2009 were true and correct. Mr Reid was cross examined by Counsel

appearing for Exfrig and Counsel appearing both for Amaca and Amaba. That cross examination did not touch upon issues relevant to the current contribution determination.

The Affidavit of Mr Reid sworn 27 October 2009 states his belief that his respective exposures can be apportioned in the following way:

- 45% to Action
- 30% to Exfrig
- 15% to Thos Clarke
- 5% to V A Sweeney
- 5% to the period when he was self employed

He stated his belief that while working with brake pads and linings he used Hardie Ferodo products 75% of the time and Bendix Mentix products about 25% of the time.

CONTRIBUTION ASSESSMENT

The Replies filed by Exfrig, Amaca, Amaba, and FMP submit that Mr Reid's assessment of the various exposures should be accepted. The Replies filed by Action and CSR contend for a time on risk approach to apportionment based on the number of days Mr Reid was likely to have been exposed.

I consider that Mr Reid was in the best position of any person or entity to assess the respective and relative intensities of his exposures. It is notable that Professor Breslin generally concurs with the assessment of Mr Reid although Professor Breslin does not ascribe percentages to the various periods. I therefore adopt the assessment of Mr Reid.

The Amaca Reply refers to the production of asbestos products under the Hardie B.I partnership from September 1964 to June 1974.

Having considered all of the submissions contained in the Replies I apply the Standard Presumptions without variation.

The Standard Presumptions require that the exposure in Period 1 with Action is to be apportioned between Action of the one part in the amount of 35% and Amaca and CSR of the other part in the amount of 65%. Apportionment for this period is to be Action 15.75%, Amaca 14.65% and CSR 14.65%.

Given that only James Hardie products are specifically nominated in Period 2 with Exfrig the Standard Presumptions require that the exposure in Period 2 is to be apportioned between Exfrig of the one part in the amount of 35% and Amaca and CSR of the other part in the amount of 65%. Apportionment for this period is to be Exfrig 10.5%, Amaca 9.75% and CSR 9.75%.

The exposure in Periods 3, 4 and 5 totals 20%. This exposure is to be shared equally between Amaca and CSR.

The exposure in Period 6 is to be apportioned 3.75% to Amaba and 1.25% as to FMP.

I determine contribution to be:

- Exfrig – 10.5%
- Action – 15.75%
- Amaca – 34.375%
- CSR – 34.375%
- Amaba – 3.75%
- FMP – 1.25%

I appoint at random Amaca as Single Claims Manager.

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

Toby Tancred

Date: 2 July 2010