

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

DDT NO. 378 of 2009

IAN STEPHENSON
Plaintiff

WALLABY GRIP LTD
Defendant

WALLABY GRIP LTD
Cross Claimant

AMACA PTY LTD
Defendant

**CONTRIBUTIONS ASSESSMENT
DETERMINATION**

1. In this matter I have been appointed as Contributions Assessor pursuant to clause 49(1) of the *Dust Diseases Tribunal Regulations 2007* ("the Regulations").
2. The plaintiff by a statement of claim dated 22 December 2009 alleges that he has contracted a mesothelioma as a result of exposure to products containing asbestos supplied and/or manufactured by Wallaby Grip Ltd ("WGL").
3. WGL by a cross claim originally cross claimed against Amaca Pty Ltd ("Amaca") and Babcock Australia Pty Ltd.
4. I have been advised by Messrs Middletons, the solicitors for WGL, that the cross claim against Babcock Australia Pty Ltd has been settled and I have not been advised of the terms of that settlement. That settlement did not

occur until after Messrs Moray & Agnew filed a second cross defendant's reply on behalf of Babcock Australia Pty Ltd.

5. I am unaware as to whether or not Amaca was privy to that settlement nor whether judgment has been entered.
6. I have had no submissions from Amaca or WGL as to the manner in which Babcock's claim should now be dealt with.
7. In accordance with authorities in relation to contribution, any contribution that Babcock Australia Pty Ltd has made by way of settlement of the plaintiff's case ordinarily would be taken into account at the settlement stage of the proceedings, either by judgment or agreement.
8. I propose to deal only with the question of apportionment as between WGL and Amaca.
9. The evidence of the plaintiff contained in his statement of particulars dated 30 April 2010 I reproduce in full as it is comprehensive. The details as to time and date demonstrates an association from the age of 10 in 1954 with asbestos products through work that he performed for his father in the father's business JR Stephenson Constructions.

My father James Roeder Stephenson was an Engineer Fitter and Turner. He ran his own business, JR Stephenson Constructions.

From about 1954 (when I was 10 years old) until about 1963 (when I was about 19 years old) I worked for and with my father during weekends and school holidays. Until the age of about 14 years I was not paid but after that I was. I worked as a labourer and boilermakers' assistant.

Throughout the years that I worked for my father he had between 10 and 15 employees (boilermakers and fitters) working for him. We did quite a number of big jobs installing, maintaining and repairing mostly Babcock and

Wilcox boilers in many commercial and industrial premises throughout Sydney and other parts of New South Wales.

Throughout the years that I worked for my father I worked on many different sites including Lewisham Hospital, Sydney Hospital, St Vincent's Hospital, Bird Brothers Meatworks at Alexandria, Empire Timbers and Amalgamated Timbers. At each of these sites and at others that I cannot now recall, we installed and/or maintained and repaired boilers and the associated connecting steam pipes.

Before he started his own business my father had worked for Babcock & Wilcox doing the same type of work.

Throughout the period that I worked for my father his company had an office and workshop in Elliott Street Balmain.

Throughout the period that I worked for my father, on each site I (and others around me) handled asbestos insulation materials including blue asbestos fibre composition, asbestos rope, pre fabricated asbestos half pipe sections asbestos gaskets (for steam pipe valves). On each site during the course of each day I saw dust from the asbestos insulation materials in the air around me, on my clothes (and the clothes of those around me), on the floor and on my hands. I inhaled this dust.

All of the asbestos insulation materials were purchased by my father from Bells Asbestos and Engineering Pty Limited ("Bells"). My father had an account with Bells throughout the period that I worked for him. I saw invoices and receipts from Bells at the office in Balmain. Also, throughout my work for my father I occasionally went with my father and other workers to the Bells depot in Concord and the factory in Bankstown to pick up the asbestos insulation materials I have described above.

The blue asbestos fibre composition came in hessian bags with Bells written on them. The asbestos rope (of varying thicknesses) was grey in colour and came on wooden spools. The asbestos and half pipe sections were greyish white in colour and came in brown cardboard boxes.

Each of the asbestos insulation materials I have described above were dusty to handle and use. I did not perform any cutting of the gaskets or half pipe sections until I was about 16 years old, but I passed the materials to the tradesmen

and stood next to (within a few feet) of those tradesmen who used a hacksaw or handsaw to cut these materials to shape to fit on parts of boilers and steam pipes. The handling and cutting of the pipe sections created clouds of dust that I saw all around me and that landed on my face, clothes and hair. From the age of 16 years old I also helped to cut these materials and continued to inhale a lot of dust from these materials.

The asbestos rope was cut with a hacksaw or knife which gave off dust. I and others around me did this regularly and I inhaled the dust from the rope. The rope was dusty to handle and gave off fibres on my hands when I handled it.

However, one of the dustiest jobs that I (and others next to me) performed was the making of the asbestos insulation slurry from the blue asbestos fibre composition. We tipped the contents of the hessian bags (which were dusty to touch) into a wooden box or bucket. This gave off clouds of dust which went everywhere and all over me and others working around the area. I then applied water and used my hands to mix it. As I mixed it more dust went into the air and all over me. I inhaled this dust I and others around me regularly performed this job throughout my work for my father. When the slurry was formed the tradesmen (not me) applied it to parts of the boilers and the flanges of steam pipes. I also used sheets of calico to wrap the insulation after it had set. In doing this, I touched and brushed up against the dry insulation which gave off dust in the air and on my clothes. I inhaled this dust.

One of my main tasks was to clean up after my father and the tradesmen using a broom. I swept up the dust and off-cuts from the asbestos insulation materials I have described above on most days throughout my period of work with my father. As I did this more dust went into the air which I inhaled I swept the dust and off cuts into piles then used a shovel and my hands to drop the material into bins. This process gave off more dust which I inhaled

Throughout my work for my father I was never warned by anyone that inhaling dust from materials containing asbestos could be dangerous to my health. I never saw any warning on any of the materials that I or others around me used, about the dangers of asbestos. Had I been warned about the dangers of asbestos I would have taken all available precautions to protect my health including wearing a mask. If no precautions were available I would

not have worked with or around asbestos containing materials.

Between about 1962 and about 1964 I did an apprenticeship as a draftsman with Alluvial Mining Equipment Pty Limited in Sydney. For the first year of my apprenticeship I continued to work for my father on weekends and holidays performing the same work as I have described above. For Alluvial I worked in a drafting office and I was not in contact with asbestos in this job.

From about 1964 to about 1966 I worked for Hodkinson Crane & Equipment Pty Limited at Caringbah. I was still an apprentice draftsman. I worked in an office but there was a factory attached to this business in which welding work was carried out and the welders used asbestos mats. The company made overhead gantry cranes. I was never near any work which involved asbestos mats and I do not think I was exposed to asbestos in this job.

From about the end of 1963 until about 1965 while I was employed by Alluvial Mining Equipment and Hodkinson Crane & Equipment, on some weekends I also worked for my father who owned another business called Sutherland Heating Centre. On these weekends I installed oil heaters which occasionally required me to cut holes (and drill holes) in fibro walls of homes. I used an angle grinder and drill to do this and dust went into the air.

Between about 1967 and about 1969 I worked for Bernard Smith Manufacturing Pty Limited at Alexandria, as a draftsman. I worked in the office and I do not recall any exposure to asbestos in this period of my work

Between about 1969 and about 1972 I was self-employed operating a business known as Stephcon Heating Installation. I installed oil heaters in homes some of which were fibro. Some of the houses that I worked on in the Sutherland region were Housing Commission cottages. The work was similar to that which I have described above with Sutherland Heating Centre. I was occasionally exposed to asbestos when I cut and drilled holes in exterior fibro walls.

Between about 1972 and about 1974 I worked for Malleys Pty Limited in Canberra as a field liaison officer. Malleys operated a white goods manufacturing business. I only attended sites where Malleys products were being installed

if there was a problem. I was not exposed to asbestos in this period of my work

Between about 1974 and 1976 I worked for Raymore Plumbing Supplies Pty Limited in Canberra as a sales representative. I was not exposed to asbestos in this period of my work

Between about 1976 and 19771 worked for Ipex Plastics Pty Limited in Fyshwick in the Australian Capital Territory as a storeman. This company made plastic products only. I was not exposed to asbestos in this job.

In 19771 got a job with Brownbuilt Pty Limited Brownbuilt operates a storage products manufacturing and installation business. I was initially employed as a Sales Representative. I was promoted to ACT Sales Manager in about 1979 and have managed the operations of the company in the Australian Capital Territory since then. I am still working now but have had a lot of time off and I am struggling with pain and my illness (see below). I work from an office in Fyshwick I have never been in contact with asbestos in my employment with Brownbuilt.

I love my work and I am proud that I have been with Brownbuilt for so many years. I had no thoughts or plans to retire. I would have loved to continue working until I was 75 years old My job is not physically demanding and my experience allows me to do it easily.

HOME RENOVATIONS

In about 1955 or 19561 helped my brother-in-law build a fibro house at 127 Caravan Head Road, Oyster Bay. I helped him to cut fibro fat sheets with fibro cutters. It took a few days spread out over about 6 months to build and there was some dust from the use of fibro cutters on the sheets, but not a lot.

10. The plaintiff says that his exposure to asbestos while working for his father between about 1954 and about 1963 was the heaviest period of his exposure to asbestos dust.
11. He further says that he was exposed to asbestos insulation products during that time including blue asbestos fibre composition, asbestos rope,

prefabricated asbestos, half pipe sections and asbestos gaskets. He says *"all of the asbestos insulation materials used during the period were purchased by my father from Bells Asbestos & Engineering Pty Ltd"* (WGL).

12. Additionally, he occasionally went with his father to pick up asbestos insulation materials from Bells' depot in Concord and a factory in Bankstown.
13. Between 1963 and 1964 he had some exposure on weekends and in holidays when he assisted his father at the business.
14. It would also seem between 1963 and 1965 and 1969 and 1972 he had occasional exposure to asbestos while performing oil heater installation.
15. There was also a few days' work spread over six months helping his brother build a fibro house at Oyster Bay in the middle 1950s.
16. Based on the material it would seem likely that exposure after he left his father's employment was relatively minor by comparison to the intensity of the exposure prior to 1963.
17. It is clear that both defendants had actual knowledge or were deemed to have actual knowledge based upon their position as manufacturers and suppliers of asbestos products.
18. It is also likely that after 1966 when WGL ceased to operate, the plaintiff ceased to be exposed to WGL products unless he came into contact with them by virtue of doing heater installation over older materials containing asbestos product.

19. Amaca has submitted that WGL manufactured and supplied asbestos rope, gaskets and purchased for repacking and supply prefabricated asbestos half pipe sections from Amaca.
20. It also imported and supplied asbestos containing insulation products that may have included blue asbestos fibre composition and prefabricated asbestos half pipe sections.
21. Amaca claims that its half pipe products used were amosite and possibly a small amount of chrysotile.
22. WGL has denied that it manufactured or supplied blue asbestos composition at any time. It admits that it manufactured rope and further admits that it acquired premoulded asbestos sections manufactured by James Hardie but does not admit that it supplied it to Mr Stephenson.
23. It denies manufacturing gaskets but admits supplying generally asbestos gaskets between 1954 and 1963.
24. In my view the evidence up until 1963 is overwhelmingly in favour on the probabilities that his father's practice was to acquire product exclusively from WGL. That does not mean, of course, that he did not from time to time acquire other asbestos product or that the plaintiff may not have come into contact as a bystander with products from unknown suppliers and manufacturers.
25. The evidence however is really all one way, that for the relevant period WGL was the sole supplier of product used by the plaintiff's father's business.

26. After 1963 the plaintiff was occasionally exposed to asbestos products including fibro which may or may not have been products of Amaca. "Fibro" is a generic term and whilst Amaca was a major, if not the major manufacturer of fibro in Australia between 1964 and 1972. The material does not support any basis for implicating Amaca.
27. Further, whilst all exposures to asbestos theoretically can contribute to the development of mesothelioma (see Professor Breslin's report), there can be little doubt that after 1964 such exposure was more intermittent and occasional and nothing like the quality of his exposure between 1954 and 1963 and thereafter on weekends and holidays from time to time.
28. I am of the view that the apportionment of the claim between Amaca and WGL should be on the basis that, with the exception of the half pipe sections for which there should be joint responsibility by WGL and Amaca, the responsibility for the plaintiff's mesothelioma should be that of WGL.
29. It is anything but clear what proportion of time was spent by the plaintiff being exposed to such products as there is no time-weighted analysis in his particulars.
30. Based on the paucity of materials to assist me in relation to such apportionment, I am of the view that WGL should bear 100% of the responsibility for the products that it either manufactured or supplied.
31. Doing the best I can, in my view 70% of that liability should be attributable to WGL and 30% to Amaca.

- 32. Both WGL and Amaca, to the extent that there is contribution by Babcocks should obtain relief to the extent of any contribution it has made in the same proportion.
- 33. I appoint WGL by its solicitor as the Single Claims Manager.
- 34. I have forwarded them my memorandum of fees.

Dated 5th day of August 2010

PAUL BLACKET SC
CONTRIBUTIONS ASSESSOR.

