

**IN THE DUST DISEASES TRIBUNAL
OF NEW SOUTH WALES
DDT No.21 of 2009**

BETWEEN: Douglas Upston
Plaintiff

AND: Rexel Australia Ltd
First Defendant

AND: Delta Electricity
Second Defendant

AND: Wallaby Grip Limited
Third Defendant

AND Wallaby Grip (BAE) Pty Ltd
Fourth Defendant

AND Wallaby Grip (NSW) Pty Ltd
Fifth Defendant

AND Alstom Australia Limited
Sixth Defendant

AND Amaca Pty Limited
Cross Defendant

CONTRIBUTIONS ASSESSMENT DETERMINATION

Further Amended under the "Slip Rule"

1. The Registrar of the Dust Diseases Tribunal has referred this matter to me under cover letter dated 23 April 2009 pursuant to clause 49(1) of the Dust Diseases Tribunal Regulations 2007 ("the Regulations") for a determination of apportionment as between the Defendants and the Cross-Defendant.
2. Regulation 49 of the Regulations provides, so far as is relevant:

"49(4) The contributions assessor to whom a matter is referred is to determine the contribution that each defendant is liable to make and is to make such determination on the assumption that the defendants are liable and solely on the basis of:

- (a) the plaintiff's statement of particulars and the defendant's replies to the claim; and

(b) standard presumptions as to apportionment determined by the Minister for the purposes of this clause by order published in the gazette.”

3. Regulation 47(1) provides: “A reference in this Division to a defendant includes a reference to a cross-defendant.”
4. It can be seen from the above that regard can only be had to the statement of particulars provided by the Plaintiff and replies as filed by the Defendants and Cross-Defendants, and not to any other document (including the statement of claim).
5. The Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007 (hereinafter referred to as the Standard Presumptions Order) provides that apportionment is to be in accordance with the table set forth in paragraph 5(1) of the Standard Presumptions Order.
6. Regulation 5 of the Standard Presumption Order provides:

(1) Where defendants, by the requisite time, cannot agree upon an appropriate apportionment between themselves in any one claim, then the apportionment set out in the following Table will apply:

Index	Date of exposure	Standard presumption for each Category of defendants 6	Extent of variation for each Category of defendant
Period A	Before 1 January 1961 7	Category 1: 75 percent Category 2: 25 percent	An increase or decrease by an amount up to 20 percentage points
Period B	Between 1 January 1961 and 31 December 1978 8	Category 1: 65 percent Category 2: 35 percent	An increase or decrease by an amount up to 20 percentage points
Period C	Between 1 January 1979 and 31 December 1989 9	Category 1: 60 percent Category 2: 40 percent	An increase or decrease by an amount up to 20 percentage points
Period D	After 1 January 1990	Category 1: 40 percent Category 2: 60 percent	An increase or decrease by an amount up to 30 percentage points

Note:

6 The standard presumptions are designed, principally, to take account of the relative state of knowledge that can be attributed to the broad categories of defendants in each period. In Period A, for example, the standard presumption is designed to reflect actual knowledge of the dangers of asbestos for Category 1 defendants and an absence of actual or constructive knowledge for Category 2 defendants. In moving from Period A through to Period D, the standard presumptions are designed to reflect the increasing level of knowledge of Category 2 defendants, to the point that, in Period D, it can be assumed that all defendants (and the community generally) have actual knowledge of the dangers of asbestos.

7 This date reflects the established link between asbestos exposure and mesothelioma set out in the article by Wagner & ors in the *British Journal of Industrial Medicine* : see *Bendix Mintex P/L v Barnes*(1997) 42 NSWLR 307 at 329G.

8 This date reflects the fact that in 1978, James Hardie & Co Pty Ltd first displayed warnings on their products containing asbestos, and the advice of the Australian National Health & Medical Research Council about reduction of exposure to asbestos to a minimum: see *Bendix* at 331 B-C.

9 This date reflects the conclusion of the first calendar year of operation of the DDT, by which time it can be confidently asserted that there was not, or ought not to have been, any knowledge differential within the community.

(2) For the purposes of determining the apportionment, the Contributions Assessor is to determine into which of the two categories each defendant falls (except for any defendant that is to be excluded from the apportionment, as agreed by the defendants). The two categories are:

(a) Category 1 which includes all those corporations, authorities, and legal entities who engage in a business which relates to the period of exposure and which can be described as Miners, Manufacturers, Suppliers and/or Installers¹⁰ of asbestos or of products, plant and equipment which contained asbestos¹¹, and

(b) Category 2 which includes all other defendants. These would ordinarily be all corporations, authorities, and legal entities who engage in a business which relates to the period of exposure and which can be described as Users of asbestos or products, plant and equipment which contained asbestos, Occupiers of Premises which contained asbestos or where asbestos or products, plant and equipment which contained asbestos were situated or Employers of staff who in the course of, or as an incident to, their employment were exposed to asbestos.

Note:

¹⁰ It is not intended to include retail shops or outlets within the meaning of the term Supplier in Category 1. Retail shops or outlets are included in Category 2. Similarly, it is not intended to include a user of asbestos products, such as a small building company, which uses bonded asbestos sheeting in building works.

¹¹ For example, the Category of installer would include the designer and manufacturer of particular plant or equipment which included asbestos as part of its design, as well as a company which is engaged to install the plant in accordance with the manufacturer's instructions.

(3) If a defendant, in any particular case, falls within both categories (ie as an installer and employer of the claimant) then a separate share is to be calculated by the Contributions Assessor for the role of that defendant which falls within each Category.

(4) If there is more than one defendant in either of Category 1 and Category 2, then the Contributions Assessor is to treat each defendant as equal in contribution to the percent share of that Category unless satisfied that a variable contribution ought apply.

(5) The standard presumptions are intended to take account of, and strike an appropriate balance between the two broad categories of defendants having regard to all of those matters set out in clause 3 (Factual considerations). There will be cases where it is appropriate for the Contributions Assessor to vary the standard presumptions within the variation band specified in Column 4 (Extent of variation for each Category of defendant) of the Table to subclause (1). However, a different percentage figure from the standard presumption within the variation band is not to be applied by the Contributions Assessor unless the

Contributions Assessor is satisfied that it is appropriate to vary the standard presumptions in the particular circumstances of the individual case. A number may not be determined which falls outside the variation band specified in Column 4 of that Table 12.

Note:

12 For example, a case might arise where the Contributions Assessor considers that the apportionment between an employer and supplier should be adjusted because the employer is considered particularly culpable in this particular instance. The Contributions Assessor could adjust the apportionment in the first index period by up to 20 percentage points, that is from 25 percent to 45 percent, but no higher.

(6) In calculating the appropriate variation, the Contributions Assessor is to have regard to the facts, matters and circumstances which make the case unusual, which may include, but are not limited to, the following facts, matters and circumstances:

(a) the state of actual knowledge of a Category 2 defendant (but not a Category 1 defendant, which is taken to have had actual knowledge at all times),

(b) the identity, capacity, size and state of sophistication of a particular defendant, including the industry, and nature of the industry, in which the defendant was engaged,

(c) the number of defendants identified within each Category as being at fault in connection with the claimant's claim 13,

(d) the steps which the particular defendant took, ought to have taken and/or was capable of taking, to minimise the risks of harm from the manufacture, supply, installation, exposure to and use of asbestos.

Note:

13 For example, if there is more than one Category 1 defendant in periods B or C, and only one Category 2 defendant, the Contributions Assessor might wish to increase the collective share of the Category 1 defendants so that their individual shares are larger than the share of the one Category 2 defendant to reflect their greater culpability, if appropriate.

(7) Where the disease the subject of the claim is an indivisible disease (ie mesothelioma or lung cancer), the apportionment above will apply to the whole of the claim unless the Contributions Assessor is satisfied that by reference to the existence of separate periods of exposure, a differential determination of the contribution of each such exposure period ought to be made. If so, a determination will then be made of what proportion to the whole each separate period of exposure bears having regard to the number of such periods, the length of each such period, and the duration of and intensity of exposure to asbestos within each period 14. The standard presumptions will then be applied to each separate period. Where periods of exposure span the index periods specified in the Table to subclause (1), the Contributions Assessor is to adjust the standard presumptions to reflect the changing apportionments in different index periods, unless one of the periods is immaterial 15.

Note:

14 An example of one method of such an apportionment is to be found in *Bitupave Ltd v NSW Associated Blue Metal Quarries Pty Ltd (In Liquidation) & Anor* [1996] NSWDDT 7 (1 November 1996); (1996) 13 NSWCCR 634 .

15 The Contributions Assessor could decide that an index period is so immaterial that it does not warrant any adjustment. For example, where an exposure occurred for equal periods in index period A and index period B, then the Contributions Assessor ordinarily would adjust the standard presumption accordingly. Where, however, only a small part of the exposure occurred in Period B, the Contributions Assessor might decide to make no adjustment.

(8) Where the disease is a divisible disease (ie asbestosis or pleural disease), the independent Contributions Assessor will first determine (on the basis of the papers) the existence of any separate periods of exposure. A determination will then be made of what proportion to the whole, each separate period of exposure bears having regard to the number of such periods, the length of each such period, and the duration of and intensity of exposure to asbestos within each period 16. The Contributions Assessor is to treat each separate period as equal in contribution to the disease unless satisfied that a variable weighting ought apply. The Contributions Assessor will then apply to each separate period the proportions set out in the table above. Where periods of exposure span the index periods specified in the Table to subclause (1), the Contributions Assessor is to adjust the standard presumptions to reflect

the changing apportionments in different index periods, unless one of the periods is immaterial 17.

Note:

16 An example of one method of such an apportionment is to be found in *Bitupave Ltd v NSW Associated Blue Metal Quarries Pty Ltd (In Liquidation) & Anor* [1996] NSWDDT 7 (1 November 1996); (1996) 13 NSWCCR 634 .

17 See note 15.

7. In the present matter Douglas Upston (hereinafter referred to as "the Plaintiff") brought proceedings by Statement of Claim filed on 6 February 2009 against Rexel Australia Ltd (hereinafter referred to as "Rexel") and Delta Electricity (hereinafter referred to as "Delta"). The Plaintiff alleged firstly that he was employed by Bell's Asbestos as a logger and worked on the construction of power stations for the Electricity Commission of New South Wales and in the course of his employment he was exposed to and inhaled asbestos dust and fibre, and secondly while employed by Rexel at a power station of the Electricity Commission in the course of his employment he was exposed to and inhaled asbestos dust and fibre.
8. The Plaintiff filed an Amended Statement of Claim on 29 April 2009, which joined Wallaby Grip Ltd (hereinafter referred to as "WGL"), Wallaby Grip (BAE) Pty Ltd (hereinafter referred to as "BAE") and Wallaby Grip (NSW) Pty Ltd (hereinafter referred to as "WG (NSW)"). In this Amended Statement of Claim the Plaintiff alleged that WGL or BAE or WG (NSW) employed him in the 3-year period from 1962-1966. The Plaintiff alleged that for a period of about 1 year in the mid to late 1960s Rexel employed him as a labourer. It was alleged in the original Statement of Claim that the 1-year period with Rexel occurred after his employment with "Bell's Asbestos". The allegation as to the employment being after Bell's Asbestos was not repeated in the Amended Statement of Claim.
9. For the purposes of this Contribution Assessment WGL, BAE or WG (NSW) will be considered as one entity, and will be simply referred to as "Wallaby Grip".

10. The Plaintiff alleged that he has contracted mesothelioma amongst other asbestos-related conditions.
11. Delta issued a Cross-Claim against WGL, WG (NSW), Rexel, Alstom Australia Ltd (hereinafter referred to as "Alstom") and Amaca Pty Ltd (hereinafter referred to as "Amaca").
12. On 7 May 2009 Amaca issued a Cross-Claim against CSR Ltd (hereinafter referred to as "CSR"). In the present assessment, I have disregarded any claim against CSR.
13. On 11 May 2009 the Plaintiff issued a Further Amended Statement of Claim which, in addition to the existing Defendants (i.e. Rexel, Delta, WGL, BAE and WG (NSW)) added Alstom.
14. On 12 May 2009 the Plaintiff filed a Form 1 which contained the following allegations:
 - (a) Between 1963 and 1965 (hereinafter referred to as the "first period") while employed by Wallaby Grip as a logger he was exposed to asbestos.
 - (b) Between 1966 and 1967 (hereinafter referred to as the "second period") the Plaintiff was employed by Alstom and/or Rexel as a trade's assistant and was exposed to asbestos.
 - (c) Between 1976 and 1978 was employed by Mid-coast Minerals Pty Ltd as a maintenance fitter and was exposed to asbestos.
 - (d) Between 1979 and 1981 the Plaintiff was employed by DJ Constructions Pty Ltd as maintenance fitter and was exposed to asbestos.

- (e) While working for WGL in the first period the Plaintiff worked on construction of the power stations at Vales Point and Munmorah as a trainee logger and logger. He worked every day and described the level or intensity of exposure as extremely high and that it comprised not less than two-thirds of his total exposure.
- (f) While employed by Alstom in the second period the Plaintiff worked on the number 4 turbine at Vales Point Power Station as a trade's assistance and the level or intensity of exposure as very high and that it, in terms of overall exposure, constituted between 25-30%.
- (g) Between 1976 and 1978 while employed by Mid-coast Minerals Pty Ltd he worked as a maintenance fitter on pumps, tractors and trucks and, in particular, performed maintenance on brakes and the level of intensity of exposure as very low and equated to be less than 5%.
- (h) Between 1979 and 1981 the Plaintiff was employed by DJ Constructions Pty Ltd and during this time he was employed as a maintenance fitter on earthmoving equipment and the level of intensity of exposure to asbestos was very low, being less than 5%.
- (i) Between 1984 and 1988 Central Coast Cranes employed the Plaintiff as maintenance fitter on cranes and the level or intensity of exposure to asbestos was very low and equated to less than 5%.
- (j) The Plaintiff may have had domestic exposure to asbestos but is unable to state with any certainty as to this having occurred, although he may have had some exposure when changing brakes on his own vehicles.
- (k) The Plaintiff has provided an affidavit sworn on 3 May 2009 wherein he gives extensive evidence as to his exposure to asbestos while working with Bell's (see paragraphs 7-15) and while working for Alstom (see paragraphs 16-24).

- (l) The Plaintiff deposes in his affidavit that the period between 1963-1966 was "by far the heaviest exposure to asbestos I have ever had in my life".
15. It is clear from the Plaintiff's allegations that the exposure to asbestos that occurred during the second period occurred while employed by either Rexel or by Alstom. There is no assertion by the Plaintiff, which would inculcate Rexel as distinct from Alstom, and it is apparent that the only entity liable for the exposure with English Electric is Alstom. For the purposes of this contribution Assessment I have treated the second period as being the responsibility of Alstom, and accordingly have discounted entirely the involvement of Rexel.
16. It is also clear that the Plaintiff's possible other exposure to asbestos is minimal or insignificant and I have proceeded on the basis that the possible other exposures are irrelevant.
17. Delta filed a Reply on 12 May 2009 which asserted as follows:
- (a) While employed as a logger by WGL and/or WG (NSW) or BAE, Delta was the occupier of Vales Point and Munmorah Power Stations.
 - (b) WGL and WG (NSW) supplied/manufactured asbestos products to which the Plaintiff was exposed.
 - (c) Amaca supplied and manufactured asbestos products to which the Plaintiff was exposed.
 - (d) CSR supplied and manufactured asbestos products to which the Plaintiff was exposed.
 - (e) Rexel as a contractor installed products, plant and equipment, which contained asbestos at the Vales Point Power Station.

- (f) Alstom as contractor installed products, plant and equipment, which contained asbestos at both Vales Point and Munmorah Power Stations.
- (g) While employed by Rexel and/or Alstom in the mid or late '60s at Vales Point Power Station Delta was the occupier of the Vales Point Power Station and that otherwise each of the Defendant or Cross-Defendants was either employer or supplier of asbestos products.
- (h) Rexel and/or Alstom should be placed in Category 1 as it was a supplier of asbestos or asbestos containing products, designer of products, plant and equipment which contained and/or required asbestos and manufactured, supplied or installed products, plant and equipment which contained or required asbestos.
- (i) Additionally, Rexel and/or Alstom should be placed in Category 2, as it was the Plaintiff's employer during the second period of exposure.
- (j) Delta should be placed in Category 2 because it was the user of products, plant and equipment, which contained asbestos and occupied premises which contained asbestos.
- (k) WGL, WG (NSW) and BAE should be placed in Category 1 as each was a corporation that engaged in a business which related to the period of exposure and it was a manufacturer of products which contained asbestos, supplied asbestos products and installed products.
- (l) Additionally WGL, WG (NSW) and BAE should be placed in Category 2, as it was the Plaintiff's employer.
- (m) Amaca should be placed in Category 1.
- (n) CSR should be placed in Category 1.

- (o) Rexel and/or Alstom had constructive knowledge from their inception in 1957/1963 respectively through the actual knowledge of the parent company English Electric Company Ltd.
- (p) Rexel and/or Alstom are deemed to have actual knowledge as at all material times as a Category 2 defendant by virtue of being a Category 1 defendant.
- (q) Rexel and/or Alstom are deemed to have actual knowledge at all material times as a Category 2 defendant by virtue of being a Category 1 defendant.
- (r) Delta only had constructive knowledge before 31 December 1969 and only had limited actual knowledge from 1 January 1970 and only had actual knowledge from 25 November 1974.
- (s) WGL, WG (NSW) and BAE had constructive knowledge from 1932 through the actual knowledge of WGL.
- (t) WGL, WG (NSW) and BAE are also deemed to have actual knowledge as a Category 2 defendant by virtue of being a Category 1 defendant.
- (u) The standard presumption should not be varied.
- (v) On a time basis the first period accounts for 75% of the time and the second period 25% of the time.
- (w) The first period be divided 65% equally among the Category 1 parties and 35% equally among the Category 2 parties.
- (x) In the second period, which represents 25% of overall exposure, divide 65% equally among the Category 1 defendant and 35% amongst the Category 2 defendant.

- (y) Thus the total apportionment is Rexel 15.875%, Alstom 15.875%, Wallaby Grip 26.125%, Hardies 13%, CSR 13% and Delta 17.5%, total 100%.
18. WGL, BAE and WG (NSW) provided a joint Reply filed on 13 May 2009 which alleges the following:
- (a) Wallaby Grip acquired actual knowledge of the dangers of the use of asbestos in the mid-1970s and that, prior to that, it ought to have known that exposure to asbestos gave rise to risk of personal injury.
 - (b) Does not admit that it employed the Plaintiff.
 - (c) The Plaintiff's allegations that he was exposed to half pipe sections, loose composition, sprayed asbestos in brake lining was disputed on the basis that Wallaby Grip did not manufacture asbestos half pipe sections, brake lining, asbestos spray, but did admit that it was of a number of manufacturers and suppliers of asbestos composition between 1963 and 1967, was one of a number of suppliers of asbestos spray between 1963 and 1967, was one of a number of suppliers of James Hardie 85% magnesium and K-Lite range of composition and half pipe sections between 1963 and 1967.
 - (d) James Hardie [Amaca] was the sole manufacturer of 85% magnesia half pipe sections.
 - (e) Rexel should be placed in Category 1 and also placed in Category 2.
 - (f) Delta should be placed in Category 2.
 - (g) WGL was in operation from 1963 until 30 September 1966.
 - (h) BAE commenced operations on 1 October 1966 and ceased operations on 31 December 1979.

- (i) At no time did WGL and BAE operate simultaneously.
- (j) WG (NSW) did not commence operations until 1 January 1967.
- (k) WG (NSW) and BAE should be considered for apportionment purposes as one defendant.
- (l) Alstom should be placed in Category 1.
- (m) Amaca should be placed in Category 1.
- (n) The standard presumption should be varied in relation to Delta to take into account its actual knowledge of the danger of asbestos since at least February 1964 being the date on memorandum B7, B8 from Eraring Energy, the standard list of documents filed 31 January 2006.
- (o) The standard presumption should be varied as against Delta because of the decision of Johns J in *Nichols v Pacific Power and Ors* in relation to Delta being aware in the early 1950s of the danger and the development of asbestosis from exposure to asbestos dust, and in taking into account the findings of Curtis J in (*Re Ross Lloyd Barlow*) *Delta Electricity v Power Technologies Pty Ltd* the standard presumption should be varied against Delta as it was the largest generator of electricity in New South Wales and one of the largest employers in New South Wales and had actual knowledge.
- (p) The standard presumption should not be varied against any other Defendant.
- (q) The entirety of the Plaintiff's employment occurred during period B of the standard presumptions.

- (r) The apportionment between the first period and the second period should be 70% and 30%.
- (s) During the first period Delta should be apportioned 60% of the Category 2 liability with the remaining 40% to Wallaby Grip and that as a result the following apportionment should be made: Amaca 15.17%, Rexel 15.17%, Alstom 15.17%, Delta 14.7%, WGL 9.8%.
- (t) During the second period, Category 1 liability to be determined equally between the Category 1 Defendants and Category 2 liability to be determined equally between the Category 2 Defendants and that the apportionment should be: Amaca 4.875%, Rexel 4.875%, Alstom 4.875%, BAE 4.875%, Delta 3.5%, Rexel 3.5%, Alstom 3.5%, total 30%.
- (u) Thus a final apportionment should be Delta 18.2%, Rexel employer 23.5%, Alstom 23.5%, Amaca 20.1%, WGL (employer) 9.8%, BAE/NSW 4.9%, total 100%.

19. Alstom provided a Reply which alleges the following:

- (a) Admits that it was present at the Vales Point Power Station undertaking repairs on the number 4 turbine.
- (b) Alstom was contracted to provide services to Delta to construct and maintain some of the turbines at Vales Point.
- (c) WGL, WG (NSW) and BAE should be placed in Category 1.
- (d) All other Defendants and Cross-Defendants should be placed in Category 2.
- (e) The standard presumption should be varied to the maximum of 20% in respect of Delta because it had actual knowledge of the dangers of

asbestos prior to the Plaintiff's period of employment in support of which it relies upon the memoranda of 1 May 1958, 29 August 1958, 27 February 1964 and 16 March 1964.

20. Rexel provided a Reply which alleges as follows:
- (a) It did not employ the Plaintiff.
 - (b) The Plaintiff asserts that English Electric Company, which became Alstom, employed him and at no time was it called Rexel.
 - (c) That Rexel never employed the Plaintiff, nor was it ever present at any of the power stations whilst the Plaintiff worked there.
 - (d) Rexel relies upon the same memoranda referred to by Alstom and submits that the standard proportion should be increased by 20% as against Delta.
21. Initially a contributions assessor must determine the existence of any separate periods of exposure pursuant to clause 5(8) and make a determination of what proportion of the whole each separate period bears having regard to the number of such periods, the length of each period, the duration of and the intensity of exposure to asbestos and the exposure of asbestos present in each such period.
22. Based on the material before me, I determine the contribution between the two periods to be:
- (a) the first period of employment (1 January 1963 to 31 December 1965) – 70%;
 - (b) the second period of employment (1 January 1967 to 31 December 1967) – 30%.

23. The second step is to determine into which Category each of the Defendants/Cross Defendants are to be placed.
24. In the first period, Amaca and Wallaby Grip fall into Category 1.
25. In the first period, Delta and Wallaby Grip fall into Category 2.
26. In the second period, Amaca, Alstom, Wallaby Grip falls into Category 1. Delta and Alstom fall into Category 2.
27. In the both periods Category 1 defendants the presumption as to apportionment 65% and Category 2 defendants for 35%.
28. The next step is to determine whether the Standard Presumptions should be varied.
29. In the present case, the standard presumptions should not be varied for the reasons advanced by Delta.
30. The final step is to determine the apportionments.
31. The following apportionment can then be made in the first period:

Amaca		$70\% \times 65\% \div 2$	22.75%
Wallaby (supplier)	Grip	$70\% \times 65\% \div 2$	22.75%
Wallaby (employer)	Grip	$70\% \times 35\% \div 2$	12.25%
Delta		$70\% \times 35\% \div 2$	12.25%

32. In the second period Amaca, Alstom, and Wallaby Grip are placed in Category 1; Delta and Alstom are Category 2.

33. The apportionment in this period 65% for Category 1, and 35% for Category 2.

34. Accordingly, the following calculations can be made:

Amaca	$30\% \times 65\% \div 3$	6.5%
Alstom	$30\% \times 65\% \div 3$	6.5%
Wallaby Grip	$30\% \times 65\% \div 3$	6.5%
Delta	$35\% \times 30\% \times 50\% =$	5.25%
Alstom	$35\% \times 30\% \times 50\% =$	5.25%

35. Thus, the total apportionment is as follows:

Amaca	29.25% [22.75% + 6.5%]
Wallaby Grip	41.5% [22.75% + 12.25% + 6.5%]
Delta	17.5% [12.25% + 5.25%]
Alstom	11.75% [6.5% + 5.25%]

36. Pursuant to clause 61 of the Regulations I appoint Wallaby Grip as the Single Claims Manager as it is the primary Defendant defined under clause 61(9).


J.L. Sharpe

18 May 2009