

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 281 of 2009

Kathy Wagemaker

Plaintiff

Department of Health and Human Services

First Defendant

Amaca Pty Ltd

Second Defendant

DETERMINATION

INTRODUCTION

By letter dated 18 December 2009 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 a 60 year old female who has allegedly contracted mesothelioma, is liable to the Plaintiff

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

The Category into which each Defendant falls is in contest. Amaca argues that Launceston should be placed into Category 1 as an installer of asbestos and Category 2 as an employer. I consider that Launceston was not in the “business” of installation of asbestos and therefore consider that Launceston should be placed into Category 2 only.

I record that in making this determination I have taken into account what has been included by the Defendants at Part 8 of each of the Replies filed by those parties.

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 alleges that she was employed at Launceston General Hospital as a nurse from 1966 to 1971.

She says that while employed at Launceston she was exposed in the following way:

- While walking through corridors that had overhead pipes. These pipes vibrated from time to time and dust fell from these pipes. She walked through one of these corridors at least three to four times per day
- While walking near a laundry that contained a boiler from which vibrating lagged pipes emerged thereby creating dust

- Sitting in the laundry that was dusty

The Plaintiff does not identify the manufacturer or supplier of the asbestos that was situated in Launceston.

The Plaintiff alleges that she performed home renovations on two houses in which she lived thereby being exposed.

The first house was in Jeannette Avenue, Springwood, Queensland. The garden at this house contained a lot of construction debris and asbestos off cuts. The plaintiff says that she worked in the garden with “absolute zeal and interest” for some months and during this period was exposed.

During the construction and subsequent extension of a laundry and construction of a rumpus room the plaintiff was exposed while being in the presence of workers handling and working with asbestos and while cleaning up asbestos debris at the end of the day.

The second house was in Chambers Flat Road, Park Ridge, Queensland. It is difficult to identify from the particulars how the plaintiff says that she was exposed during this period and certainly she does not attempt to identify Amaca products beyond referring to cladding.

CONTRIBUTION ASSESSMENT

The task of determining contribution is complicated by the vague and imprecise nature of the Plaintiff's allegation of exposure.

The Plaintiff worked at Launceston for five years. My impression of her exposure there is that it would have been light and intermittent although she does not describe it in this way in her particulars. Nonetheless the exposure occurred over a long period of time.

The exposure the Plaintiff experienced while living in the house at Springwood would have been brief but I consider on occasion very intense.

Doing the best that I can and applying the broad brush I conclude that the dose intensity of exposure with Launceston and the dose intensity of exposure to Amaca products would have been approximately equal.

As for the relative culpability of Launceston and Amaca I make no distinction. Each defendant has and makes good arguments as to why the other ought to be more liable. Launceston argues that Amaca was in the business of asbestos, and it refers to an opinion of Professor Henderson that implicates exposures after Launceston more strongly in causation. Amaca says that Launceston was the State and had available to it the scientific and medical knowledge sufficient to equip it with knowledge of the dangers of asbestos.

Amaca does not raise the issue but I consider the fact that the Launceston exposure occurred first in time to be a relevant factor in a causative sense. This is balanced by the fact that by the late 1970's Amaca had long been equipped with knowledge of the dangers of asbestos. Against this proposition Amaca argues that it began to place warnings on its asbestos products in 1978.

At the end of it I consider that these alternate arguments balance each other and that the defendants should be held equally liable to contribute. I determine contribution accordingly and at random appoint Launceston to be Single Claims Manager.

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

Toby Tancred

Date: 21 January 2010