

CONTRIBUTIONS ASSESSMENT

DUST DISEASES TRIBUNAL

MATTER NO: 30 of 2010 and CC1 and CC2

IAN MAXWELL WALSH

Plaintiff

WALLABY GRIP (BAE) PTY LTD

First Defendant/ Second Cross Claimant

AMACA PTY LIMITED

Second Defendant/ First Cross Claimant

CSR LIMITED

Cross Defendant to First Cross Claim

NSW LAND & HOUSING CORPORATION

Cross Defendant to Second Cross Claim

DETERMINATION

INTRODUCTION

By letter dated 27 April 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 am permitted to rely in making this determination:

1. Plaintiff's Statement of Particulars ("Particulars")
2. First Defendant's Reply
3. Second Defendant's Reply
4. Second Defendant's Amended Reply
5. Cross Defendant to First Cross Claim Reply
6. Cross Defendant to Second Cross Claim Reply

In addition to the material described at 1-6 above I rely on the Standard Presumptions set out in Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007.

I assume that the defendants and cross defendants are liable to the Plaintiff who is a 60 year old male who has contracted mesothelioma.

I will refer to the Defendants and Cross Defendants as:

Wallaby Grip (BAE) Pty Ltd – BAE

Amaca Pty Ltd – Amaca

CSR Limited – CSR

NSW Land & Housing Corporation – NSW LHC

Each Defendant is a Category 1 Defendant save for the NSW Land & Housing Corporation which is a Category 2 Defendant.

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 deceased’s respiratory system of asbestos dust and fibre.

The Plaintiff worked almost all his entire adult life as a plumber and gas fitter. He worked first as an apprentice and then established his own plumbing business in Wagga Wagga.

Relevantly his exposure is alleged to have been during four separate periods:

1. While he was employed as an apprentice plumber with Jim Jaggard Heating and Cooling from 1967 to 1969
2. While he was employed by John Fleming as a plumber from 1970 to 1974
3. While he owned and operated and worked in a business trading as Wagga Plumbing Service from 1974 until about 1986
4. While performing renovations on his home at 1 Graham Avenue, Gumly Gumly, NSW.

During the Jim Jaggard period he says his exposure occurred while cutting asbestos cement sheets - he does not identify the manufacturer - cutting Supersix roofing while installing air conditioning units - he does not identify the manufacturer – while wearing Bestobell asbestos gloves, and working with pipe and block sections made of asbestos including K-Lite - he does not identify the manufacturer.

During the John Fleming period he says his exposure occurred while cutting asbestos cement sheets, cutting Supersix roofing, and using Tilux. He does not identify the manufacturer of any of these products.

During the Wagga Plumbing Service period he says his exposure occurred while working on the construction of new houses, while working with asbestos cement sheets - he does not identify the manufacturer – and while working on NSW LHC houses performing maintenance and repairs using asbestos cement sheets and Tilux. The Plaintiff says that in the mid to late 1980s he moved into mainly commercial work and I assume that he would have had very little exposure after about 1986.

The Plaintiff says that in 1977 and 1978 he renovated his home at 1 Graham Street, Gumly Gumly and that he worked most weekends using Hardiplank and Hardifelx.

His particulars provide no break down of his various exposures as a percentage of the whole.

CONTRIBUTION ASSESSMENT

The BAE Reply attaches correspondence between the solicitors for BAE and the Plaintiff's solicitors that states that the Plaintiff assesses his exposure to various products as a percentage of the whole to be:

- Asbestos gloves – 2 to 3%
- Asbestos mats - 2 to 3%
- Asbestos slurry – 2 to 3%
- Asbestos sectional pipe – 2 to 3%
- Tilux, Asbestos cement sheets, Super 6, Hardiflex and Hardiplank – 88%

BAE admits manufacture and supply of mats, gloves and slurry but denies the manufacture and supply of pipe sections and asbestos cement sheeting. BAE asserts that Amaca manufactured and supplied slurry, pipe sections and asbestos cement sheeting. BAE says it provided warnings on its products from the mid 1970's.

The Amaca Reply denies manufacture and supply of gloves and blankets but admits the manufacture of Tilux, Super 6, Hardiflex and Hardiplank. Amaca says that slurry, pipe sections and asbestos cement sheeting are generic terms that could apply to any number of suppliers. Amaca refers to the warnings it placed on its products from 1978. Amaca says that each Defendant should be equally liable to contribute but I do not accept this submission because it is clear that a different culpability should apply to the different periods of exposure.

The CSR Reply says that it can only be liable for exposure arising from products manufactured and supplied under the Hardie B.I Partnership from 28 September 1964 to 26 June 1974. The only product that CSR admits was manufactured by the partnership is K-Lite.

The NSW LHC Reply attaches a Dust Disease Board Industrial History but unfortunately this does little to advance matters concerning contribution between the parties to this determination because of the sparse detail of the circumstances of exposure described in that history. NSW LHC submits that there are insufficient particulars if the work performed by the Plaintiff on NSW LHC houses to properly assesses its liability to contribute.

The particulars of exposure are very vague. The lack of particulars makes an accurate assessment of liability to contribute impossible. The only evidence from the Plaintiff that assists is the estimate made through a letter from his solicitor that about 88% of his exposure came from Tilux, Asbestos cement sheets, Super 6, Hardiflex and Hardiplank.

It is necessary for me to attempt to make sense of the allegations of exposure and I will therefore do so with a liberal application of the ubiquitous broad brush.

I consider that 5% of the Plaintiff's exposure would have occurred during the Jim Jaggard period but because this period is first in time it is likely to have been most potent in a causative sense under the Peto formula. I therefore determine that the Jim

Jaggard period is 10% liable. I apportion this liability equally between BAE, Amaca and CSR – 3.33% each.

I consider that 10% of the Plaintiff's exposure would have occurred during the John Fleming period. This period is likely to have been more causatively potent than later periods and therefore I determine that the John Fleming period is 12% liable. I apportion this liability equally between BAE, Amaca and CSR.- 4% each.

I consider that 10% of the Plaintiff's exposure would have occurred while he performed his home renovations. While this occurred later than other exposures it occurred at a time that Amaca had actual knowledge of the dangers of asbestos exposure and I therefore determine that this period is liable for 15%.

I apportion the balance of the liability to the period when the Plaintiff was the owner and operator of Wagga Plumbing Service – 63%. A very small proportion of this should be attributed to CSR, say 3%. I apportion 40% of the balance to NSW LHC being 24% and 60% of the balance to Amaca 60% being 36%.

Accordingly I determine contribution to be:

BAE – 7.33% rounded up to 7.5%

CSR - 10.33% rounded up to 10.5%

NSW LHC – 24%

Amaca – 58%

I appoint Amaca as Single Claims Manager.

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

Toby Tancred

Date: 6 May 2010