

IN THE DUST DISEASES TRIBUNAL
OF NEW SOUTH WALES

DDT No 174 of 2010

BETWEEN: **ALLAN WATERS**
 Plaintiff

AND: **BHP BILLITON LIMITED**
 First Defendant

AND: **BLUESCOPE STEEL (AIS) PTY LIMITED (FORMERLY BHP
STEEL (AIS) PTY LIMITED)**
 Second Defendant

AND: **ANGLO COAL (DARTBROOK) PTY LIMITED (FORMERLY
BELLAMBI COAL COMPANY PTY LIMITED)**
 Third Defendant

CONTRIBUTIONS ASSESSMENT DETERMINATION

1. The Registrar of the Dust Diseases Tribunal has referred this matter to me pursuant to clause 49(1) of the *Dust Diseases Tribunal Regulations 2007* (hereinafter referred to as “the Regulations”) for a determination of apportionment as between the Defendants.
2. Regulation 49 of the Regulations provides that the contribution that each Defendant is liable to make is to be made on the assumption that the Defendants are liable and solely on the basis of the Statement of Particulars and Replies and the application of the Standard Presumptions as set forth in the *Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007* (hereinafter referred to as “the Standards Presumptions Order”).
3. In the present matter, the Plaintiff issued a Statement of Claim on 25 June 2010 alleging that:

- (i) Between a date in about 1944 and a date in about 1949 the Plaintiff was employed by BHP Billiton Ltd (hereinafter referred to as "BHP") as an apprentice boilermaker/welder at its steelworks premises in Newcastle carrying out work throughout the steelworks and on board vessels which belong to BHP which were then docked at the steelworks. In the course of his employment with BHP, the Plaintiff was exposed to asbestos dust and fibre.
- (ii) Between 1952 and 1953 the Plaintiff was employed by three different contractors over a period of 12 months as a boilermaker/welder performing work solely at steelworks at Port Kembla which were operated and controlled by Bluescope Steel (AIS) Pty Ltd (hereinafter referred to as "AIS"), and in the course of such employment the Plaintiff was exposed to asbestos dust and fibre.
- (iii) From 17 July 1962 to 2 June 1967 the Plaintiff was employed as a boilermaker/welder by AIS and carried out work at the Kemira Colliery and in the course of such employment was exposed to asbestos dust and fibre.
- (iv) From 5 June 1967 to 10 June 1988 the Plaintiff was employed as a boilermaker/welder and carried out work at the premises of Anglo Coal (Dartbrook) Pty Ltd (hereinafter referred to "Bellambi") premises at the South Bulli Colliery. In the course of this employment until about early 1985, the Plaintiff was exposed to asbestos dust and fibre.
- (v) As a result of the Plaintiff's exposure as aforesaid, the Plaintiff has contracted the condition of mesothelioma.

4. The condition of mesothelioma is an indivisible one.

5. On 4 August 2010 the Plaintiff filed a Statement of Particulars which relevantly provides:

- (i) That in addition to the periods of exposure referred to in the Statement of Claim, in about 1957 he built his own home and had some exposure to asbestos dust and fibre.
- (ii) In about 1944 the Plaintiff commenced his apprenticeship at BHP as a boilermaker/welder and worked there for 5 years until 1949. The Plaintiff's work allowed him to move around different section of the steelworks and also on BHP ships. In this period the Plaintiff performed a large amount of repairs and maintenance in and around the steelworks and, in particular, worked in close proximity to the ovens and furnaces and, in particular, when the furnaces were being stripped down, a large amount of asbestos dust was created in the work environment which the Plaintiff inhaled. Similar experience occurred when the ovens were being rebuilt. Additionally, there were asbestos lagged pipes around the steelworks and the Plaintiff performed pipe maintenance or was present when lagging was performed. Onboard the various BHP ships the Plaintiff had exposure to asbestos dust and fibre, particularly in relation to numerous steam and hot water pipes in the engine and boiler rooms.
- (iii) At AIS the Plaintiff was exposed to asbestos dust and fibre by reason of the fact that numerous activities were going on around the furnace, including building the coke ovens, and the Plaintiff was present while asbestos blocks were used to insulate the ovens and cut to size.
- (iv) At Kemira Colliery the Plaintiff performed welding work which included the use of asbestos blankets which were very dusty. Additionally, asbestos shields were used and these were being used approximately twice per week which involved handling asbestos blankets and the Plaintiff was exposed to asbestos dust and fibre. When he performed work involving pipeline maintenance, he was exposed to asbestos dust and fibre, including removal of asbestos lagging and was present while others performed work nearby using asbestos products including the re-lagging with pipe sections and otherwise of the pipe.
- (v) At South Bulli Colliery the Plaintiff worked as a boilermaker/welder and remained there until June 1988 when he sustained a shoulder injury. His work

included welding which used asbestos blankets approximately twice per week. Pipe maintenance was performed and this involved repairing, replacing and installing steam and hot water pipes which were insulated with asbestos lagging. The Plaintiff removed the asbestos lagging but for the asbestos lagging off the pipe, and this was a very dusty job. The lagging was brittle and broke up when removed. Often there were leaks, and this involved complete removal of the pipe. Additionally, the Plaintiff worked in close proximity to other boilermakers, welders or fitters who were disturbing asbestos lagged pipes and using asbestos blankets and thereby was exposed to asbestos dust and fibre. In relation to asbestos lagging, there were numerous labourers installing asbestos half pipe sections around steam and hot water pipes and, in doing so, asbestos dust and fibre was released into the atmosphere in the presence of the Plaintiff. In addition, the labourers used asbestos cloth and asbestos rope to wrap around the steam and hot pipe, and the Plaintiff was exposed to asbestos dust and fibre in such circumstances. In relation to welding of locomotives, the Plaintiff was exposed to asbestos dust and fibre and regularly used asbestos blankets. The exposure to asbestos ceased in 1985.

- (vi) The Plaintiff describes significant asbestos exposure from about 1962 until the early '80s when he used asbestos materials in the performance of his work at both Kemira Colliery and South Bulli Colliery by reason of the fact that he worked in an environment where significant amounts of asbestos lagging were used.
- (vii) The Plaintiff's exposure at BHP and AIS and at the collieries was very high.
- (viii) The Plaintiff assesses his exposure as being 15% at BHP, 5% at AIS, 25% Kemira Colliery and 55% South Bulli Colliery.

6. BHP filed a Reply on 16 August 2010 which relevantly provides:

- (i) Employment is admitted but not for the period as alleged.

- (ii) The Plaintiff's alleged exposure at BHP was insignificant in comparison with the other periods of exposure.
- (iii) Employment records claim that the Plaintiff was registered as an employee from 1 July 1943 and was discharged on 11 May 1949.

7. AIS provided a Reply on 20 August 2010 which relevantly provides:

- (i) The Reply is limited to the liability of AIS in respect of the period 1952-1953 during which time AIS was sued as an occupier whereas AIS in the period 1962-67 is separately represented.
- (ii) In the period while it was an occupier, AIS does not admit that the Plaintiff was employed by various contractors and that the Plaintiff did not personally handle asbestos while at AIS premises and denies that the Plaintiff was exposed to asbestos blocks while performing duties near the coke ovens and denies that the asbestos blocks were used in the construction of the coke ovens.
- (iii) The First Defendant should be Category 2, the Second Defendant Category 2 and Third Defendant Category 2.
- (iv) Until 1968, the alleged exposure period should be given equal weighting as to knowledge and levels of knowledge, but thereafter 20% weighting should be added.
- (v) The apportionment should be calculated on a time on risk basis, but allowing for the extra weighting.
- (vi) Accordingly, BHP should be 17%, AIS 20% and Bellambi 63%.

8. Bellambi filed a Reply which materially provides as follows:

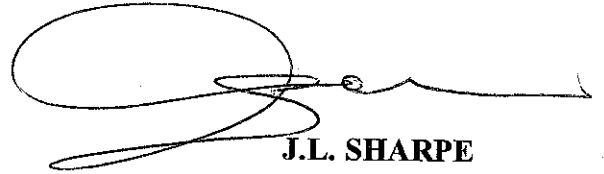
- (i) Denies breach of duty.

- (ii) All Defendants should be placed in Category 2.
 - (iii) Standard presumptions should not be altered.
 - (iv) The appropriate assessment should be 25% BHP, 25% Bluescope (occupier's liability), 25% Bluescope (Kemira Colliery) and 25% South Bulli Colliery.
9. Initially the Contributions Assessor must determine the existence of any separate periods of exposure pursuant to clause 5(8) of the Standard Presumptions Order 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 intensity of exposure to asbestos present in each such period. It is thus not appropriate to determine the relative contributions simply on the basis of elapsed years between the various periods of exposure.
10. Based upon the material before me, I determine the contribution between the periods to be:
- (i) BHP – 17%
 - (ii) AIS – 5% while at Port Kembla and 25% while at Kemira Colliery
 - (iii) Bellambi – 53%
11. I determine that BHP, AIS and Bellambi each fall into Category 2.
12. Therefore, I determine the total liability of the Defendants as follows:

BHP	17%
AIS	30%
Bellambi	53%

Total	100%
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13. Pursuant to clause 61 of the Regulations, I appoint Bellambi as the Single Claims Manager as it is the primary defendant defined under clause 61(9).



J.L. SHARPE

13 September 2010