

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

DDT No. 159 of 2010

BETWEEN: **REGINALD THOMAS WILKINSON**
 Plaintiff

AND: **MONTAGUE L. MEYER (AUSTRALIA) PTY LTD (In**
 Liquidation)
 First Defendant

AND: **AMACA PTY LIMITED**
 Second 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 Defendants.
2. Regulation 49 of the Regulations provides that the determination of contributions each Defendant is liable to make is to be made on the assumption that each of the Defendants are liable and solely upon the Plaintiff’s Statements of Particulars and the Defendants’ Replies to the Claim and thereafter applying the Standard Presumptions Order.
3. The *Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007* (hereinafter referred to as “the Standard Presumptions Order”) provides that the apportionment is to be in accordance with the Table set forth in paragraph 5(1) of the Standard Presumptions Order.
4. In the present matter, Reginald Thomas Wilkinson (hereinafter referred to as “the Plaintiff”) issued a Statement of Claim on 15 June 2010 alleging that

- (i) Between 1949 and about 1958 he was employed as a truck driver/delivery man by a building supply company known as Lidcombe Timber Company Limited, on John Street, Lidcombe.
- (ii) Between about 1958 and 30 June 1964 the Plaintiff was employed as a truck driver and a deliveryman by a building supply company known to the Plaintiff as A. Hudson on Victoria Road, Rydalmere.
- (iii) Between 1 July 1965 and about 30 June 1985 the Plaintiff was employed by Montague L. Meyer (Australia) Pty Ltd (In Liquidation) (hereinafter referred to as "Montague Meyer").
- (iv) Between about 1949 and 30 June 1985 Amaca Pty Ltd (hereinafter referred to as "Amaca") manufactured and/or supplied building products and that in the course of his various employments the Plaintiff was exposed to and inhaled dust and fibre generated as a consequence of handling products manufactured and/or supplied by Amaca.
- (v) He has a pleural mesothelioma.

5. Given the Plaintiff's allegation as to a pleural mesothelioma, the Plaintiff's condition is indivisible.

6. The Plaintiff filed a Statement of Particulars on 15 June 2010 which contained the following relevant allegations.

- (i) Between 6 January 1944 and 20 May 1949 the Plaintiff was employed at the State Abattoir at Homebush Bay as an apprentice fitter and turner and then as a journeyman fitter and turner, and in the course of his employment was exposed to asbestos. (It is to be noted that no allegation in this regard in the Plaintiff's Statement of Claim. The Plaintiff describes his exposure at State Abattoir as being very low.
- (ii) Between May 1949 and 1958 the Plaintiff was employed by Lidcombe Timber and was exposed to asbestos in that as a truck driver he handled asbestos cement sheets of various sizes on a daily basis and worked full-time six days a week. At Lidcombe Timber the Plaintiff describes his exposure as being six

days per week and was of medium intensity. In terms of the total exposure the Plaintiff estimates that this accounts for 20% of his total exposure.

- (iii) Between 1959 and 1965 the Plaintiff was employed by A. Hudson Limited as a truck driver and performed similar duties to that which he described with Lidcombe Timber. In respect of A. Hudson, the Plaintiff describes this exposure as being six days a week of medium intensity and that such exposure accounts for 20% of his overall exposure.
- (iv) Between 1965 and 1990 the Plaintiff was employed by Montague Meyer, firstly at Rydalmere for four years as a truck driver, where the duties were similar to those described above, and thereafter at Platform Street for 10 years as a timber order man, where the Plaintiff unloaded loads of Amaca's asbestos cement building products handling the sheets both for customers and on and off trucks, and that for an additional period from 1982 to 1990 the Plaintiff worked as a timber order man at Sutherland, but handled very little Amaca products. At Montague Meyer the Plaintiff describes his exposure as being six days a week of medium intensity at Rydalmere and high intensity at Platform Street and low at Sutherland. The Plaintiff estimates of his total exposure to asbestos dust and fibre in the order of 60% occurred while working for Montague Meyer.

7. Amaca provided a Reply on 23 June 2002 which, relevantly, alleges:

- (i) That the use of the term "asbestos lagging" and asbestos cement sheets are generic product descriptions of products manufactured and supplied by several manufacturers.
- (ii) Between 1955 and 1965 Amaca manufactured building products containing asbestos known as Hardies Genuine Fibrolight Flat Sheet, Hardies Fibrolight Flat Sheet and Fibrolight Flat Sheet.
- (iii) That Amaca does not know and cannot agree that the Plaintiff was exposed to asbestos cement sheets manufactured and/or supplied by Amaca.

- (iv) That Wunderlich Pty Ltd also manufactured and/or supplied comparable asbestos cement flat sheets during the relevant period.
- (v) That James Hardie Fibrolight Flat Sheets contained approximately 12 to 15% asbestos, mixed with cement and between 1959 and 1965, Crysotile and occasionally a small percentage of Amosite and between 1956 and 1965 Crysotile and occasionally a small amount of Amosite and Crocidolite was used.
- (vi) Amaca should be placed in Category 1 and Montague Meyer should be placed in Category 2.
- (vii) That the Standard Presumptions Order should not be varied.
- (viii) That Montague Meyer should be joined as a Defendant to all other periods of employment.
- (ix) That Amaca did not manufacture asbestos cement building products from approximately 1983.

8. Montague Meyer provided a reply which, relevantly, alleges:

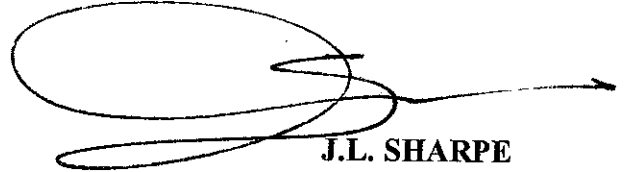
- (i) Amaca is a Category 1 Defendant and Montague Meyer is a Category 2 Defendant.
- (ii) That there should be a variation in the Standard Presumptions Order, given the nature, size and type of operation conducted by Montague Meyer, as compared to the operation of Amaca.
- (iii) That if any warnings were provided by Amaca in 1978, then such warnings would have little to do with a person such as the Plaintiff who simply handled the products without cutting them or in any way being involved in the use of the material, as is depicted upon the warning.

9. Initially the 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 in 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. The first period of exposure is that between 1949 and 1958, which is approximately a 9 year period; the second is between 1958 and 30 June 1964, which is approximately a six year period and the final period is from 1 July 1965 to 30 June 1985. In respect of the third period the Plaintiff alleges that at least from 1982 his exposure was extremely small.
11. It can be thus seen that in elapsed years, the third period comprises approximately 17 years.
12. It is also clear that from the Plaintiff's description of his exposure that the exposure during the third period of his employment [except for the period from 1982] was of a higher level and intensity than had previously occurred.
13. Thus, taking into account not only the elapsed years but also the level of intensity of exposure, I determine the contribution between the three periods to be:
 - (a) First period – 20%
 - (b) Second period – 20%
 - (c) Third period – 60%.
14. I determine that in respect of the third period, Amaca is a Category 1 Defendant and Montague Meyer is a Category 2 Defendant.
15. In the present case the Standard Presumptions take into account the various aspects of the liability of Amaca and Montague Meyer and accordingly, there should be no variation in the Standard Presumptions Order.

16. During the period from 1 July 1965 until 30 June 1985 it can be seen that this falls into Category B between 1 July 1965 and 31 December 1978, wherein a Category 1 Defendant is liable for 65% and a Category 2 Defendant to 35% on the basis of the Standard Presumptions Order and between 1 January 1979 to 30.6.85 a Category 1 Defendant was presumed to be 60% liable and a Category 2 Defendant was presumed to be 40% liable.
17. Doing the best I can with the period 1 July 1965 to 30 June 1985, I determine that the period 1 July 1975 to 31 December 1978 accounts for 65% of the exposure, and the period from 1 July 1979 to 30 June 1985 to 35% of the exposure.
18. Thus the following calculations are liable to be made.
- (i) Amaca bears:
- (a) 20% - for the period 1949 to 1958;
 - (b) 20% - for the period 1958 to 30 June 1964;
 - (c) From 1 July 1965 to 31 December 1978 it bears 60% (period 1.7.65 – 31.12.78) x 65% (percentage liability for this period) x 65% (standard presumption) = 25.35%; and
 - (d) From 1 January 1979 to 30 June 1985 it bears 60% (period 1.1.79 – 30.6.85) of 35% (percentage liability for this period) of 60% (standard presumption) = 12.6%;
- (ii) Montague Meyer is liable for:
- (a) 35% (standard presumption) of 65% (percentage liability for this period) of 60% (period 1.7.65 – 31.12.78) in the period 1 July 1965 to 31 December 1978 = 13.65%; and
 - (b) 40% (standard presumption) x 35% (percentage liability for this period) x 60% (period 1.1.79 – 30.6.85) in the period 1 January 1979 to 30 June 1985 = 8.4%.
19. Therefore, I determine the total liability of the Defendants as follows:
- (i) Amaca - 77.95%

(ii) Montague Meyer - 22.05%

20. Pursuant to clause 61 of the Regulations, I appoint Amaca as the Single Claims Manager as it is the primary defendant defined under clause 61(9).

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line that extends to the right and then loops back under the 'S'.

J.L. SHARPE
Contributions Assessor

25 June 2010