

**CONTRIBUTIONS ASSESSMENT**

**DUST DISEASES TRIBUNAL**

**MATTER NO: 8243 of 2008**

**Amaca Pty Ltd**

**Plaintiff**

**Carrier Air Conditioning Pty Ltd**

**First Defendant**

**CSR Limited**

**Second Defendant**

## **DETERMINATION**

### **INTRODUCTION**

By letter dated 9 November 2011 bearing the signature of the Registrar of the Dust Diseases Tribunal I am appointed Contributions Assessor under Division 5 and Division 6 of the Dust Diseases Tribunal Regulation 2007 in these proceedings.

I have been provided with the file of the Dust Diseases Tribunal in these proceedings. The file in these proceedings contains the following material upon which I rely in making this determination

1. Reply filed by Plaintiff, Amaca Pty Ltd, the First Defendant – “Amaca”
2. Reply filed by First Defendant, Carrier Air Conditioning Pty Ltd (“Carrier”)
3. Reply filed by CSR Limited, the Second Defendant – (“CSR”)

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.

Where I refer to “exposure” or its derivation this is to be taken to mean exposure to and inhalation into the Mr Hallett’s respiratory system of asbestos dust and fibre.

### **MR HALLETT**

These proceedings arise out of proceedings commenced by Mr Gregory Cecil Hallett in the Tribunal against Amaca, Wallaby Grip Limited, Wallaby Grip (NSW) Limited and Wallaby Grip (BAE) Pty Limited. Those proceedings have resolved.

There is not a great amount of detail concerning the exposure of Mr Hallett.

According to the Reply filed by Amaca Mr Hallett was exposed to asbestos for a period of 168 months of which 24 months or 14% occurred while he was employed by Carrier. No other detail of Mr Hallett's exposure is provided by Amaca.

Carrier's Reply is more expansive. Carrier contends that Mr Hallett was employed in various jobs from 1955 to 1979 and that he experienced a total of 19 years and 10 months exposure of which Carrier is responsible for the two years that it employed Mr Hallett.

The Reply filed by CSR refers to a period of employment by Carrier of 24 months out of a total period of 167 months. The CSR Reply describes each period of employment with each separate employer in which exposure occurred.

I do not have the Statement of Particulars or any other evidence containing a description of Mr Hallett's exposure.

### **APPORTIONMENT**

I must assume that Carrier and CSR are liable to contribute. Carrier is a Category 2 Defendant as employer and Amaca and CSR are both Category 1 Defendants.

Carrier employed Mr Hallett for a period of 24 months from 1965 to 1967 out of a total period that was either 167 months, 168 months or 238 months.

I consider that the period of Mr Hallett's exposure set out in the CSR Reply, i.e. 167 months, is the one that I should adopt.

Amaca asserts the existence of a Deed of Agreement between it and CSR that was effective from 24 September 1964 to May 1974. Amaca contends that Mr Hallett was exposed to "partnership products" for 84 months.

CSR does not deny the existence of the Deed of Agreement but says that Mr Hallett's period of exposure to "partnership products" was 96 months and that for the period Mr Hallett was employed by Carrier, contribution between Amaca and CSR of the one part and Carrier of the other must be equal. I consider that the analysis contained in the CSR Reply is one that I should adopt so far as the periods of exposure are concerned.

The period that Mr Hallett was employed by Carrier is approximately 14.5% of the entire period of exposure. For this period I am required by the Standard Presumptions to apportion liability between Amaca and CSR of the one part as Category 1 Defendants and Carrier of the other part as a Category 2 Defendant, 65%-35%, unless I am satisfied that a variable contribution should apply. I am not so satisfied. Therefore I consider that the contribution of Carrier should be 5.075%. For the Carrier period Amaca and CSR are 4.7125% each liable.

The remaining period of Mr Hallett's exposure to "partnership products" is 72 months. This is approximately 50% of the total 143 months remaining exposure which as a percentage is approximately 85% of the entire period of Mr Hallett's exposure. Amaca and CSR are equally liable for this period. 50% of 85% is 42.5% for which CSR is liable for 21.25% and Amaca is liable for 21.25%. Amaca is solely liable for the remaining 42.5%.

The above calculations result in apportionment of Amaca  $42.5\% + 21.25\% + 4.7125\% = 68.4625$ ; CSR  $21.25\% + 4.7125\% = 25.9625\%$ ; Carrier  $5.075\%$ . Allowing for some rounding up

I determine contribution to be:

- Amaca – 68.5%
- CSR – 26%
- Carrier – 5.5%



Toby Tancred

16 November 2011