

inhaled asbestos dust and fibre as a consequence of which the Plaintiff suffered injury in the nature of mesothelioma.

5. In support of the Plaintiff's claim, a Statement of Particulars was filed in the Dust Diseases Tribunal on 25 January 2001 and, so far as is relevant, provided that his exposure to asbestos occurred whilst working as a waterside worker full-time between 1956 and 1965 in Sydney while employed by various stevedoring companies and was not certain as to his exposure whilst working for various stevedoring companies in Melbourne between 1965 and 1966. The Plaintiff asserted that:

- (i) He was exposed to asbestos during his employment as a waterside worker.
- (ii) For 9 years he worked in Sydney at various wharves and that such work included working for various stevedoring companies including Patrick Operations Pty Ltd (hereinafter referred to as "Patricks") and United Stevedoring.
- (iii) While working he unloaded bagged asbestos cargo about 6 times each year, working a full 8 hour shift each day to unload each shipment.
- (iv) For 5 months from December 1965 to May 1966 the Plaintiff worked on the Melbourne wharves but does not recall whether he worked on asbestos cargos in that time.
- (v) The asbestos was packaged in bags made of cloth and loose fibres came into the air either because the bags were damaged, or because of their condition. If raw asbestos spilt out of the bags, the Plaintiff had to clean up the dust and debris and place it in another bag and used his hands and a shovel to do this.
- (vi) The hulls of the ship were lined with asbestos dust and fibre.
- (vii) Exposure occurred whilst working in the vicinity of others who were handling asbestos.

6. On 19 February 2010 Comcare issued a cross-claim against Patricks claiming contribution from Patricks in respect of the Plaintiff's damages.

7. On 8 March 2010 Comcare filed a reply which, so far as is relevant, alleges that:
- (i) The Plaintiff was a registered waterside worker during the period 29 February 1956 to 13 August 1966.
 - (ii) At the time of deregistration (13 August 1966) the Plaintiff was then working at the Port of Melbourne.
 - (iii) The Defendant Comcare should be placed in Category 2.
 - (iv) Patricks should be placed in Category 2.
 - (v) The Plaintiff asserted in particulars that while working on the Sydney waterfront half of his time was spent working with United Stevedoring, Patricks and Phillips, and believes that he most frequently worked with Phillips.
 - (vi) Assuming that approximately 1 of the 6 asbestos cargos for each of the three companies United Stevedoring, Patricks and Phillips each year on the Sydney waterfront, then one-sixth of his exposure would have occurred whilst employed by Patricks, which represents approximately 17% of his total exposure.
 - (vii) The 17% of his exposure should be apportioned 85% to Patricks and 15% to Comcare.
 - (viii) Reliance is placed upon *Stevedoring Industry Finance Committee v James Patrick & Co Pty Ltd (in liq) and Anor* (2005) NSWDDT (*Re Bowie*).
 - (ix) Comcare relies upon the decision of Judge Curtis in the matter of *Ronald John Gibson v Stevedoring Industry Finance Committee and Ors* DDT 89 of 1996.
 - (x) Applying the principles in *Re Bowie*, apportionment should be Comcare 15% of 17% = 2.5%, Patricks 85% of 17% = 14.5%.
 - (xi) Accordingly, Comcare liable for 2.5% plus 83% = 85.5%, Patricks 14.5%.

8. Patricks has not filed a reply.
9. It is clear that the Plaintiff's condition was an indivisible one (mesothelioma).
10. Based upon the material before me, I determine that there was relevantly only one period of employment, being the Plaintiff's employment as a waterside worker.
11. I determine that both Comcare and Patricks are Category 2 Defendants and, accordingly, there is no reason to visit the Standard Presumptions.
12. I determine that, of the Plaintiff's total exposure, since the major employer was Phillips, 15% of his exposure occurred while employed by Patricks.
13. Accordingly, Comcare is to bear 85% of the liability plus its proportion of liability whilst Patricks employed the Plaintiff.
14. I determine that during the period of the Plaintiff's employment with Patricks 85% of the liability for the Plaintiff's exposure to asbestos dust and fibre in that period is to be borne by Patricks and 15% to be borne by Comcare.
15. Accordingly, I determine the total liability of Comcare and Patricks as follows:

Comcare – 85% + 2.25% [15% of 15%]	87.25%
Patricks – 85% of 15%	12.75%

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



J.L. SHARPE

Contributions Assessor

21 April 2010