

Indust Law

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Thomson Snell & Passmore recovers damages for exposure to asbestos in early 1940s

Mainstream knowledge about asbestos hazards became available to employers and industry in 1965 following a Sunday Times article. Before then, published material was confined to HMTI reports and scientific or medical journals.

Generally speaking, the further back in time from 1965 a person's exposure to asbestos was, the tougher the battle to recover compensation will be.

The case

From 1941 to 1943 Mr I was employed as an apprentice fitter at factory premises in Yorkshire where asbestos rock was processed and various asbestos-based products were manufactured. In the course of his employment, Mr I carried out repairs and maintenance on the machinery in the factory, regularly working in all areas of the factory including the carding, pressing, spinning and weaving departments. He repaired and maintained carding machines as well as twisting, doubling and spinning machines. In particular, he worked on carding machines on a number of occasions, replacing the rollers after they had worn down and replacing the doffer cylinders which were alongside the rollers. During the course of his work on these machines he was exposed to large quantities of asbestos dust which he inhaled.

Mr I was aged 16 and 17 when he undertook this work. Sadly, Mr I went on to develop malignant mesothelioma.

Our role

Despite exposure being more than 20 years before the Sunday Times Article, we were able to make a forceful claim for Mr I on the basis that the employer was a company engaged specifically in the manufacture of asbestos products, so would have had more access to material warning about the danger of asbestos. ↓ Continued on page 2.



From the Editor

Welcome to the February 2011 edition of Thomson Snell & Passmore's Indust Law update, highlighting some key issues relating to chemical poisoning and asbestos.

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We were able to negotiate an excellent settlement for Mr I within six months of his diagnosis which allowed him to plan for his limited future.

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Even more compelling was the ability to argue that it was illegal to have employed Mr I in this capacity given his age.

We were therefore able to argue that at the time of Mr I's exposure to asbestos his employers knew or ought to have known that the inhalation of asbestos dust gave rise to a foreseeable risk of injury, particularly as he was aged 16 when his employment commenced. Regulation 12 of The Asbestos Industry Regulations 1931 provided that no young person should be employed as Mr I had been. We also alleged breaches of the Factories

Act 1937.

Time was of the essence for Mr I because he had a low life expectancy. As a widower, his claim was worth more if it could settle during his lifetime. Without a partner, Mr I would need to pay for care and assistance as his health inevitable deteriorated.

Fortunately, we were able to negotiate an excellent settlement for Mr I within six months of his diagnosis which allowed him to plan for his limited future. ■

Recent case - a provisional settlement of a pleural thickening claim

This case study demonstrates the expertise of our Chemical Poisoning & Asbestos team who recently recovered a provisional settlement for a client with pleural thickening. The provisional settlement allows him to seek further compensation if he later develops mesothelioma, asbestosis or lung cancer.

We very much hope that Mr S will not go on to develop mesothelioma, asbestosis and / or lung cancer in his lifetime, but if he does, he will be entitled to return to court and seek further compensation.

The case

From 1963 to 1973 Mr S was employed as a plumber and plumbing foreman by the same employer. During the course of this employment Mr S worked at various construction sites where major refurbishment works were being undertaken.

Asbestos in various forms was used by Mr S and his colleagues who inevitably inhaled asbestos dust throughout the working day. As a result of this exposure to asbestos, Mr S developed pleural plaques and diffuse pleural thickening affecting his right lung base, a mild lung abnormality causing him some symptoms of breathlessness. It was not disputed that because of his occupational asbestos exposure, Mr S had risks of developing mesothelioma, asbestosis and lung cancer (the latter due also to his previous smoking habit).

Choosing a provisional settlement

In this case, a variety of issues remained contentious, not least the reasons for disability. The claimant could not say that his disability

was purely due to asbestos exposure because of his smoking history so he had to accept compensation would be proportionate to the disability due to asbestos exposure alone. The claimant might have decided to settle his claim on a full and final basis, but the defendant could not make a sufficiently tempting offer in this regard. Accordingly, the case settled on a provisional basis for a fair amount consistent with the Judicial Studies Board Guidelines.

Options for the future

We very much hope that Mr S will not go on to develop mesothelioma, asbestosis and/or lung cancer in his lifetime, but if he does, he will be entitled to return to court and seek further compensation. He will be safe in the knowledge that he already has a judgment in his favour and all issues regarding employment history, asbestos exposure and a defendant able to meet a further claim are resolved already. A later claim will be able to proceed more quickly.

Options when settling non-fatal medical conditions cases - the availability of provisional damages

Anyone who has been exposed to asbestos carries the risk of developing mesothelioma. In this article we discuss the options available and highlight what factors should be considered.

Non life-threatening asbestos injuries are suited to provisional awards and are specifically catered for in the Judicial Studies Board Guidelines.

What is a provisional award?

A provisional award enables a claimant to seek additional damages if certain diseases or deteriorations develop in the future. The trade off is that the initial award will be lower.

Legislation enables claimants to return to court and claim further damages at a future date if they develop the relevant disease or deterioration specified in the first settlement.

When is a provisional award appropriate?

Non life-threatening asbestos injuries are suited to provisional awards and are specifically catered for in the Judicial Studies Board Guidelines. The guidelines assist in assessing the claimant's award for pain, suffering and loss of amenity.

Part 41 of the Civil Procedure Rules deals with damages. The supplementing Practice Direction 41A deals specifically with provisional damages. The order will specify the disease(s) or type(s) of deterioration that are assumed will not occur and will entitle the claimant to further damages if it (or they) do occur at a future date. The order will go on to give an award of immediate damages and specify the period(s) within which an application for further damages may be made in respect of each disease or type of deterioration.

A monetary award is the only way that the courts can compensate a claimant. As we all know, a

person with mesothelioma will have a variety of other needs as the condition takes hold. Nursing care would be a certainty and certain equipment will be required. What must also be considered is the inevitability of death and the potential for the statutory award of bereavement damages (in appropriate cases).

Factors to consider

The difference between a provisional settlement in a non-fatal asbestos injury case and a mesothelioma claim could easily run into six figures.

In no particular order, a client when weighing up their options should consider his or her:

- age
- health
- wealth
- future plans
- type of asbestos exposed to
- intensity of exposure to asbestos.

Every case is case different. The decision of how to settle a case must be made by the client. All we can do is make sure that every client understands what he or she needs to take into account and where necessary indicate a recommendation.



This article considers the possible impact of the recent decision on asbestos exposure upon residents of Kent.

Controversial court decision on liability insurance policies

Asbestos use in Kent

Although asbestos is now effectively banned as industrial material, it was previously used heavily by industries in Kent. British Uralite was based in Higham just outside Gravesend, Turner & Newell had premises in Erith and it was also used at Chatham Dockyard and the British Rail works at Ashford. These businesses employed many thousands of people between them.

Asbestos and the insurance industry

The peculiar feature of asbestos diseases is that symptoms often appear several decades after the exposure. The present extent of asbestos related diseases was largely unforeseen at the height of its use by industry. This has resulted in the insurance industry sustaining huge losses in meeting compensation claims arising from asbestos exposure.

With a view to limiting their losses, insurers have regularly taken cases to court with a view to making it more difficult to claim compensation or to limit the extent of the compensation payable. One of these stances is the interpretation of liability insurance policies. Some insurers have argued that liability will not arise under the policy

if the disease did not in effect manifest itself during the lifetime of the policy. The significance of this is that by the time the disease gives rise to symptoms, the employer is often no longer trading and the policy long since expired.

Late last year, the Court of Appeal gave judgment in a number of cases concerning the interpretation of employers' liability policies. There was not full agreement between the judges. Two of the three Court of Appeal judges did not agree that "sustained" meant "caused". This ruling as it stands will mean that many former employees will not be able to succeed with claims. However, if the wording of the policy used the word contracted (instead of sustained) claims can still be made.

Current situation

The position remains uncertain as a further appeal to the Supreme Court is expected. However, this does not mean that claimants will be entirely uncompensated. Substantial compensation can be obtained using a statutory compensation scheme, although any amounts recovered under this scheme are likely to be much less than what a civil claim might secure.

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Thomson Snell & Passmore raises £21,000 for hospices



Thomson Snell & Passmore is proud to 'adopt' a charity for two years and our official support for EllenorLions Hospices and Hospice in the Weald has just come to an end. Staff, with support from clients and contacts, have raised over £21,000. Teams from the firm have taken part in a number of fundraising activities, including sponsored walks, the National three Peaks Challenge and racing in the annual Dragon Boat Festival at Bewl Water. More information on our activities can be found in the Community & environment section on our website.

Staff were recently invited to nominate a charity for 2011-2012 and, with an overwhelming response, Kent Air Ambulance Trust (KAAT) was selected. KAAT relieves sick and injured people across the South East and surrounding areas by providing a Helicopter Emergency Medical and air ambulance service for the benefit of the community.

Although this newsletter highlights some key issues relating to chemical poisoning & asbestos law, it should not be considered comprehensive and is not a substitute for seeking professional advice on a specific issue.