



SOLICITORS

ASBESTOS DISEASE NEWSLETTER

Symptomless Asbestosis

Following on from the recent litigation in which the House of Lords held that Claimants could no longer claim compensation for pleural plaques, several cases have been heard in Newcastle County Court concerning symptomless asbestosis. The Defendants argued that, whilst they accepted that the Claimants had been negligently exposed to asbestos and as a result had developed asbestosis, the symptoms were either minimal or not apparent. The Court was required to consider whether the Claimants had suffered harm and whether it amounted to a cause of action in negligence.



*Newcastle-Upon-Tyne
Combined Court Centre*

Out of the four cases, two were successful and two failed. The judge held

that each case was to be considered on its own merits and that for a claim to succeed a Claimant must show a more than minimal effect on his health as a result of a Defendant's negligence.

From a medical perspective the issues considered were whether asbestosis was a progressive condition and whether "CT scan asbestosis" differed from clinical asbestosis. The judge accepted that asbestosis was at least potentially progressive and held that if medical science can identify an effect upon a Claimant before he is aware of any symptoms that can amount to damage, provided it is more than minimal.

The first claim which succeeded involved a Claimant who had fibrosis affecting between 5% and 10% of his lungs with crepitations present. It was estimated that his total respiratory disability was 5% with only 1.6% being attributable to asbestosis. However, the judge accepted that there was a real contribution to

the Claimant's breathlessness, albeit subtle.



The second claim which succeeded involved a Claimant who, having had a CT scan, was found to have asbestosis affecting 5% of his lungs. Again it was felt this was sufficient to contribute to his additional breathlessness on activity. From a total respiratory disability of 5%, 1.25% was felt to be attributable to the asbestosis.

In the two cases which failed, there was no estimate of the percentage of the lung affected and no evidence of any symptoms.

It is therefore clear that whilst no clear rule or formula was created for deciding these cases, Claimants with minor asbestosis will still be able to pursue claims.

Finding an Insurer

Once an asbestos related condition for which compensation can be claimed has been diagnosed, the next task is to identify a Defendant against whom the claim can be pursued. Given that the exposure to asbestos resulting in the condition will have occurred decades earlier, this can often be difficult. Very often companies who employed Claimants are no longer around and the success of a claim therefore depends upon being able to identify the employers' liability insurer for the relevant period of employment. This may sound straight forward but on many occasions can be a difficult obstacle to overcome.

Employers' Liability insurance only became compulsory in 1972 although some employers did take out such cover previously. Unfortunately over the years records of such insurance policies have been lost or destroyed as companies have become dissolved or insurance companies have gone into liquidation or merged.

The Association of British Insurers (ABI) does provide a service whereby an enquiry search can be submitted

in order to locate insurance details for a specific company. The ABI pass the details of the search enquiry onto all insurers who should then carry out a search of their records and inform the ABI of the outcome. This may sound like a fool-proof system, but there is no obligation upon insurers to reply to the ABI. Negative results to search enquiries can therefore sometimes be received even when there was insurance in place which can eventually be traced. Incredibly 70% of all searches fail to provide positive results.

In light of this The Association of Personal Injury Solicitors and the Forum of Asbestos Victim Support Groups have urged the Government to introduce a compulsory database of Employers' Liability Insurers and back it up with an insurance scheme whereby, if the insurer cannot be found, a fund created by a tax on insurance companies would pay the compensation. A Bill was introduced into the House of Commons last January and aims to give effect to a scheme similar to the Motor Insurers' Bureau. Every year hundreds of people with mesothelioma die without getting compensation simply because the

relevant insurer cannot be found. It is therefore believed that such a scheme is vital but it remains to be seen whether it will be introduced.

"Our Client Commitment"

We work in conjunction with Macmillan Cancer Support and the British Lung Foundation and aim to donate £1000 from the costs of each successful case to the charity the client chooses. This further illustrates our commitment to the sufferers of asbestos related diseases.

"Meet the Team"



Craig Howell, Partner



Helena Jones, Solicitor



James Cameron, Solicitor

Contact us on:
0800 058 2737

Issue No. 4 April 2009