



EMPLOYMENT AND CIVIL NEWSBRIEF

▼ LORDS DECISION HERALDS VICTORY FOR INSURERS

The House of Lords ruling in the case of *Johnson v NEI International Combustion Ltd, Rothwell v Chemical & Insulating Co Ltd & Ors, Topping v Benchtown Ltd, Grieves v FT Everard & Sons & Ors* [2007] UKHL 39 has dashed the hopes of thousands of Claimants who have been knowingly and negligently exposed to asbestos during the course of their employment.

The case dealt with impact of the development of pleural plaques by a various appellants. This condition is essentially fibrous thickening of the pleural membrane surrounding the lungs. Save in very exceptional circumstances this condition itself is symptom less and does not give rise to asbestos related disease.

Pleural plaques does however signal the presence in the lungs and pleura of asbestos fibres which may independently cause life threatening and fatal diseases such as asbestosis and mesothelioma. The direct point under consideration by the Lords was that the diagnosis of pleural plaques may cause the patient to suffer in future with anxiety or even suffer depression.

The Lords held that the symptom less plaques were not in themselves damage which could form a cause of action. The important point was that, save in the most exceptional cases, the plaques would never cause any symptoms and did not increase susceptibility to other diseases or shorten their expectation of life. They had no effect upon health at all.

Whilst the law allows the risk of future disease to be considered in computing loss the individual must have suffered some compensatable physical injury in the first instance, otherwise there was no cause of action.

The anxiety arising from the risk of developing future disease did not amount to a cause of action and the combination to these two factors, namely anxiety and the risk of future disease again did not themselves amount to a cause of action. It was not possible to add two non actionable components together to amount to and arrive at something which was actionable. One of the appellants developed

clinical depression, a recognised psychiatric condition more serious than mere anxiety. Nevertheless the Lords held that this illness was not a foreseeable consequence of his employer's breach of duty.

Steve Thomas, technical claims manager at Zurich UK General Insurance welcomed the decision stating that insurers have a responsibility to use policy holders money to compensate people who have suffered injury, rather than for a condition without symptoms.

Martin Bare, president of the Association of Personal Injury Lawyers said he felt extreme sympathy and sadness for the victims. *"I am absolutely staggered the Lords have dashed the hopes of these men who have been negligently exposed to asbestos. This ruling effectively tells them they have not been injured, yet their bodies have been invaded by asbestos and each day the clock is ticking."*

The decision does not affect the ability seek compensation for other asbestos related diseases such as asbestosis and mesothelioma.

SILENT SEASONAL KILLER

As the winter chill sets in the Association of Personal Injury Lawyers urges members of the public to be aware of the dangers posed by carbon monoxide. CORGI, the leading authority on gas safety issues, have published figures which show a 40% increase in deaths caused by carbon monoxide poisoning. The danger is very real because when carbon monoxide enters the body it prevents blood from bringing oxygen to cells, tissues and organs. It is both colourless and odourless and is capable of killing within a matter of hours. The symptoms of poisoning are headaches, dizziness, muscle weakness, vomiting and vision problems. Many of the symptoms can also be associated with cold

weather and can be misdiagnosed as flu or fatigue. CORGI advise that it is essential that homeowners have their gas appliances regularly serviced. Carbon monoxide detectors are inexpensive and readily available from DIY stores. Tell tale signs include orange or yellow gas flames, brownish stains on the appliance, a pilot light frequently blowing itself out and an increase in condensation on interior windows. If you live in rented accommodation your landlord has a legal obligation to carry out an annual gas safety check. You also have the right to ask your landlord for the gas safety record.



Employment

Whether acting for a large international firm or a local sole trader, you can be assured that we offer unrivalled expertise and comprehensive services. From simple contractual advice to TUPE guidance and from preliminary contentious action to representation before the Employment Appeal Tribunal, we are proud to say that we can be there to address all your Employment needs. All the lawyers in the team are specialists in their field and full members of the Employment Lawyers Association.



Civil Disputes and Accident Claims

We have a well established Civil Litigation department at Hatch Brenner which is headed by Rosemary Escott, partner. For Personal Injury cases we can offer a free initial consultation when we can advise on a range of funding options (including no win — no fee) ensuring each individual client's circumstances are taken into account. We also have specialist legal advisers dedicated to providing an efficient and comprehensive service covering a wide range of commercial disputes including arbitration/mediation/ADR, County and High Court litigation.



Richard Cassel

Head of Employment Department. Richard specialises in all aspects of employment and discrimination law. He is a highly regarded advocate appearing in the Employment Tribunals on a regular basis, and less frequently in the Employment Appeal Tribunal. Richard has been a Part-Time Chairman of the Employment Tribunals since 1993 and has a considerable experience of Tribunal practice and procedure.
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Sally Davenport

Sally joined the employment team at Hatch Brenner in 2006. Originally from Cheshire, Sally took a Modern Languages degree at Oxford University, and worked in international banking before pursuing her legal career. She worked as a commercial litigation solicitor with Theodore Goddard, one of the largest London law firms, before moving abroad with her family and developing her own business as a legal translator. Sally is fluent in Spanish, German and French. Since returning to the UK she has completed a Masters Degree in Employment Law at the University of East Anglia with distinction. She is a Fellow of the Chartered Institute of Arbitrators and is an advisor at a local Citizens Advice Bureau.
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Rosemary Escott

Head of Civil Litigation Department. Rosemary is a Personal Injury specialist in fatal and serious injury claims, arising out of road traffic accidents, accidents at work, clinical negligence and sexual abuse. Member of the Law Society's Specialist Personal Injury Panel since 1995.
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Mark Fitch

Experienced in a wide range of disputes; enjoys particularly professional negligence claims, contested probate matters and claims against the police. He qualified as a mediator in 2005 becoming one of the youngest members of the Mediators in East Anglia Group.
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Colin Cook

Colin was previously a partner at a firm in Chancery Lane in London where he dealt with a wide range of personal injury claims for both Claimants and Defendants.

He deals with all aspects of personal injury including road traffic accidents, accidents at work, criminal injuries, trips and slips. He is an Accredited Senior Litigator of the Association of Personal Injury Lawyers.
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John Cushing

John is well-placed to assess landlord and tenant claims from both perspectives, having acted for either side in a vast number of possession actions, rent collection matters and damages claims. He also deals with other property-related matters including boundary and neighbour disputes, building disputes, and professional negligence claims. He is highly experienced in debt collection, and regularly appears before the district judges in the local county courts.
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