

Occupational Health Special Interest Group
Bloomsbury Hotel, London, Tuesday, 5 April 2011

OCCUPATIONAL HEALTH UPDATE

The Damages (Asbestos related-conditions) Bill

(NIA 10/10)

Northern Ireland plaques Bill passed its final stage in the Northern Ireland Assembly, now awaiting Royal Assent. Overturns *Johnston v NEI International Combustion Ltd* and gives people suffering from pleural plaques in Northern Ireland a means to pursue a claim for damages.

To be confirmed whether insurance industry to follow suit from efforts in Scotland and challenge the Bill?

Industrial Injuries Disablement Benefit

IIDB goes up on 14.4.2011

e.g. 100% disability (meso) - from £145.80 to £150.30

Drake v Foster Wheeler Limited

[2010] EWHC 2004 (QB); [2011] 1 All E.R. 63; [2010] P.I.Q.R. P19

Appeal abandoned by Defendant so position remains unchanged that hospice care costs can be recovered via subrogated claim.

Ivan Hinchliffe (Executor Of The Estate Of Aubrey Whitehead, Deceased) V Corus UK Ltd

[2010] EWHC 2871 (QB) 22/11/2010

Asbestosis claim struck out on limitation.

Asbestosis victim develops breathing difficulties in April 2002, instructs solicitors in December 2004 and subsequently dies 15 February 2009. Proceedings issued on 12 January 2010.

Finding that date of knowledge was either after April 2002 (for the purposes of Section 14, Limitation Act 1980) or at the latest, December 2004 when solicitors instructed. Claim therefore statute barred by December 2007 at the latest.

Court considered all the factors under a Section 33 discretion, but found that the fact the victim had died during the period of delay amounted to “insurmountable prejudice” to the Defendant because he could not be cross-examined on the evidence.

Currie v Rio Tinto PLC & Others

(2010) QBD 6/10/2010

Lawtel reference - LTL 23/3/2011

Asbestosis claim struck out where widow refused to agree to post-mortem taking place.

Defendants successfully applied to strike the claim out under CPR 3.4.2 where widow refused a post-mortem in asbestosis claim. Death of victim in Australia where post-mortem does not occur as a matter of course. Claimant refused post-mortem requested by Defendants the day after the deceased’s death. Court found that in light of the question as to whether the deceased’s exposure was sufficiently substantial to give rise to asbestosis, the lack of post-mortem leading to the absence of histopathological evidence gave rise to a risk of injustice and obstructed the just disposal of proceedings.

McLeod v Crawford

[2010] CSOH 101, OH (Lord Woolman) 23/7/2010

Scottish case – solicitors found not negligent when they failed to advise asbestos victim of provisional damages offer, he accepted offer on final basis but then goes on to die from asbestos related condition.

Davies v National Grid

Queen's Bench Division District Registry (Cardiff), 13 January 2008

The court will not grant an adjournment to allow for a post-mortem after death.

Godbert -v- MOD

Queen’s Bench Division, 16 February 2011

To be reported on Lawtel.

Finding of causation in favour of Claimant asbestosis victim where Defendants argued alternative diagnosis of idiopathic pulmonary fibrosis. Helpful assessment by Mr Justice Langstaff, not only of the factors which should be considered in assessing diagnosis, but also the weight which should be attributed to each of those factors in assessing diagnosis.