



Landmark legal cases on asbestos compensation

An update for all concerned with claims and potential claims for asbestos related conditions.

Asbestos: a terrible legacy

Asbestos has been used for centuries – as far back as Ancient Greek times.

Its exceptional qualities particularly in relation to insulation are renowned.

However, in 1930, with the publication of the Merewether and Price Report, people understood more about the terrible danger in inhaling asbestos dust.

It is known that even minimal exposure causes a risk – with potentially serious or even fatal consequences.

As knowledge of the disease grew regulations were introduced.

But enforcement was patchy and many employers didn't reduce or prevent exposure to asbestos.

The long period between coming in to contact with asbestos and developing an asbestos-related disease resulted in the situation we have today.

According to the Health and Safety Executive, the annual number of mesothelioma deaths has increased from 153 in 1968 to 2,037 in 2005.

It is possible that by 2011-2015 the number could peak at as high as 2,450.

Lung cancer deaths which are related to asbestos are probably double this figure.

And there are also victims of asbestosis, pleural thickening and pleural plaques.



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The legal remedy

The law provides a ‘remedy’ for those who have suffered an injury which was someone else’s fault.

Compensation won’t bring back health, but it can help to cover earnings lost and provide for nursing care.

It is clear that those exposed to asbestos in the past, dying in their thousands each year, are victims who are the most deserving of this compensation.

Since 1972, when Thompsons Solicitors fought a landmark case against Central Asbestos Co. Ltd claims for compensation on behalf of victims of asbestos have been possible and are now commonplace.

Curbing the cost of claims

The Employer’s insurance company usually pays the compensation.

But as the number of claims has risen, the insurance industry has sought to curb the cost of claims.

Numerous claims have been contested and the following four cases have proved critically important.

1. Fairchild – 2002 – several employers – who is to blame?

In this case, the deceased mesothelioma victims were exposed to asbestos by more than one employer.

The defendants argued that it was not possible to prove which company was responsible for the ‘guilty’ fibre which years later caused the malignancy, and therefore the case could not be proved against any defendant on the balance of probabilities.

The Court of Appeal agreed.

However, the House of Lords in 2002 applied common sense and found that any company who materially contributed to the risk was liable in full.

While the appeal was taking place, thousands of victims and dependants were left in limbo not knowing if they would receive any compensation, and many mesothelioma sufferers died not knowing if their families would be provided for.

2. Barker – 2006 – several employers – risk related payments

After Fairchild, the insurers tried a different argument.

They argued that even though mesothelioma is an indivisible injury, the compensation from each employer should be proportional to the risk of exposure at each.

This time they succeeded in the House of Lords in a decision in 2006.

The effect was that many victims or their dependants would receive only part of the compensation they were due because it is often impossible to trace all the employers or their insurers.

The irony is that when an insurer can’t be traced, it is usually a result of the insurance industry’s failure to keep and pass on proper records.

After the House of Lords decision, there was a massive campaign by Asbestos Support Groups, Trade Unions and others, in which Thompsons played an important part.

In the end, the Government intervened to overturn the ruling.

By introducing Section 3 of the Compensation Act 2006 the law was restored to enable victims and their families to recover compensation in full.

3. Rothwell – 2006 – pleural plaques – compensation ended

The insurance industry then turned its attention to pleural plaques cases.

For two decades the courts have awarded modest sums in compensation to those suffering from pleural plaques.

The insurance industry challenged this.

Again the fight went all the way to the House of Lords.

And again the Lords decided against the victims, finding that pleural plaques do not amount in law to ‘damage’ and therefore there is no injury to be compensated.

This is despite the inevitable anxiety that comes with the x-ray findings.

In one test case, the claimant was so badly affected that he was diagnosed with a psychiatric illness.

But he was awarded nothing.

Reports suggest that this judgment will save the insurance industry £1.4 billion.

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4. Turner & Newall (T&N)

The Turner & Newall (T&N) group were historically the largest company in the UK involved in the use, manufacture, distribution, sale and installation of asbestos.

Even though T&N had been capable of meeting its liabilities to asbestos victims in the UK it went in to administration in 2001 because of the rising tide of compensation claims against its US parent company.

The effect of the T&N administration was to halt all claims against the company and prevent any new claims.

As a result a Trust has been set up so that payments can be made to asbestos victims – but not the full amounts they would otherwise have been entitled to.

Thompsons served as unpaid volunteers on creditors committees throughout the T&N administration to represent the interests of asbestos victims.



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The 'trigger' issue – 2008 – time of exposure vs time of illness

The next big battle is already taking shape.

Insurers are arguing that under the terms of the policy cover they provided, they are **not responsible unless they covered the employer at the time the victim's disease became apparent.**

This is a change from the past when the insurer would deal with the case if they insured the employer at the time of the exposure to asbestos.

In some cases this may just end up being an argument between insurers.

But in many others it may leave the victims without compensation.

If employers have ceased to exist there will be no insurance cover at the time the disease becomes apparent - several decades later.

The argument looks destined, once again, for the House of Lords.

The future

As the number of people suffering asbestos-related diseases continues to rise and the costs of claims escalate, protracted legal disputes on workers entitlement to compensation are destined to continue into the future.

In the end, our legal system and the courts, with statutory changes where necessary, provide the only place where justice is really done and can be seen to be done – backed up with a modern benefits system kept up to date.

In this climate of adversarial conflict Thompsons Solicitors, the most experienced personal injury firm in the UK, are committed to continuing to seek the best possible results for the innocent victims of illnesses caused by asbestos.

They are also currently pursuing a campaign to achieve parity of compensation for mesothelioma victims throughout the UK.

Further information

Simply call for free expert legal advice. You can also visit our website at www.thompsons.law.co.uk, for more detailed information about mesothelioma and some useful links to other sites.

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