

F6-001 Shipyard worker developing pleural plaques³ from inhalation of asbestos contrary to the Ship Building and Ship Repairing Regulations 1960 prior to May 14, 1970 (claiming provisional or alternatively full and final damages)

[NAME OF County COURT]

BETWEEN:

A. B.

- and -

Oceanview Plc

Case No.

Claimant

Defendant

PARTICULARS OF CLAIM

1. Between tax years 1962/63 and 1967/68 the Claimant was employed by the Defendants' corporate predecessors then known as Oxbridge Ship Repairers Limited as a fitter at the Defendants' Oxbridge Dockyard.
2. The Ship Building and Ship Repairing Regulations 1960 applied to the above premises and the work on which the Claimant was employed.
3. While acting in the course of his employment the Claimant:
 - (a) removed lagging from pipe work to be repaired or maintained by him on board ships in the above premises;
 - (b) worked in close proximity to places where ladders mixed powdered insulation material with water to form a paste and applied it as new lagging to boilers, pipe work, valves, plant and equipment;
 each of which operations liberated substantial quantities of dust into the atmosphere in which the Claimant worked including in the confined spaces of boiler rooms and engine rooms, which dust the Claimant inhaled.
4. It is the Claimant's case that the above insulation materials comprised or contained asbestos and that in the circumstances he inhaled injurious quantities of asbestos dust and fibre.
5. The Claimant will contend that the Defendants, during the time of the Claimant's employment during the periods set out in paragraph 1 above, knew or ought to have known that:—
 - (i) inhalation of dust or fibre including asbestos might be dangerous; and/or
 - (ii) the Claimant could and should have been protected against inhalation of dust or fibre including asbestos;
 - (iii) not to protect the Claimant against, or to prevent the Claimant from, inhalation of dust or fibre including asbestos gave rise to a foreseeable risk of causing asbestos induced illness.

³ Pleural plaques alone are not actionable damage since the decision in *Johnston v NEI International Combustion Ltd* [2007] UKHL 39 but there remains the possibility of statutory reversal of the decision, and this precedent is retained as of use in claims for symptomatic non-malignant conditions.

PARTICULARS OF KNOWLEDGE

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The grounds relied upon are matters of expert opinion evidence to be disclosed in accordance with the Rules of Court and without prejudice to this contention, include the facts that:

- (a) the Annual Reports of the Chief Inspecting Officer of Factories from 1899 regularly referred to the injurious nature of asbestos dust and the need for exhaust ventilation and respirators to combat asbestos dust;
- (b) in 1930 the Merewether and Price "Report on the Effects of Asbestos Dust on the Lungs and Dust Suppression in the Asbestos Industry" demonstrated the link between chronic exposure to asbestos dust and the development of asbestosis and recognised that workers were likely to be exposed to dust containing asbestos in various industries including insulation of boilers, pipes and engines; the Annual Report of the Chief Inspecting Officer of Factories in 1929 concluded that asbestosis can lead to complete disablement and death;
- (c) the Workman's Compensation (Silicosis and Asbestosis) Act 1930 added asbestosis to the list of compensatable occupational diseases;
- (d) the Annual Report of the Chief Inspecting Officer of Factories in 1930 warned that exposure to heavy concentrations of asbestos dust for comparatively short periods resulted in the appearance sooner or later of disabling asbestosis;
- (e) the Asbestos Industry Regulations 1931 were passed and came into force on March 1, 1932;
- (f) pleural plaques associated with asbestos were first described by Gloyne in 1933;
- (g) the Annual Report of the Chief Inspecting Officer of Factories for 1938 concluded that dust if inhaled is physiologically undesirable and dust thought then to be harmless might be discovered in the future to be dangerous, and noted the relationship between asbestosis and lung cancer;
- (h) the Annual Report of the Chief Inspecting Officer of Factories for 1945 recognised that the use of asbestos either alone or as part of a mixture for the purpose of heat and sound insulation increased the number of workers exposed to risk of injury to health through asbestosis and called for action;
- (i) the Annual Report of the Chief Inspecting Officer of Factories for 1949 warned that in dealing with the dangers arising in the handling of asbestos, the maintenance of dust control and adequate exhaust ventilation at all points where dust may be evolved, was of the utmost importance and it was necessary to watch for the new use of asbestos in some manufacturing or other processes and the need to prevent the inhalation of asbestos dust or fibre in them;
- (j) the Annual Report of the Chief Inspecting Officer of Factories for 1952 noted the introduction of types of respirators that protected the wearer against the inhalation of dust;
- (k) the Annual Report of the Chief Inspecting Officer of Factories for 1956 specifically identified the removal of old heat insulation lagging as a serious health hazard to those engaged on it;
- (l) papers by Wagner in 1960 and Newhouse and Thompson in 1965 reported the clear association between exposure to asbestos and mesothelioma.

6. As a result the Claimant who is now aged 60 having been born on March 6, 1948, developed asbestos-induced illness in the form of bilateral pleural plaques and has suffered injury, loss and damage:

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PARTICULARS OF INJURIES

[Insert brief particulars and heads of claim—see F1-002 above]

The Claimant is at risk of future development of asbestosis (2 per cent), lung cancer (5 per cent) and mesothelioma (5 per cent) and as a result suffers anxiety for his future health and welfare.

PARTICULARS OF LOSS AND DAMAGE

Details are set out in the attached Schedule of Loss and Damage.

7. The Claimant will contend that his pain, injury, loss and damage were caused or contributed to by the negligence and/or breach of statutory duty of the Defendants their employees or agents acting in the course of their employment.
8. The Defendants, their employees or agents acting in the course of their employment were negligent in that they:—

PARTICULARS OF NEGLIGENCE

- (a) Exposed the Claimant to a major risk of fatal injury through the inhalation of asbestos dust without affording him any or any adequate protection therefrom or giving any or any adequate warning about the risks he ran;
- (b) Caused, permitted, required or suffered the Claimant to be exposed to conditions in which the Defendants knew or ought to have known:
 - (i) that atmospheric asbestos dust was present in confined spaces and other areas in which the Claimant had to work or go;
 - (ii) that asbestos dust was potentially dangerous;
- (c) Failed to provide the Claimant with any or any adequate breathing apparatus or to instruct him adequately or at all to use breathing apparatus at all times when he ran the risk of inhaling asbestos dust;
- (d) Failed to provide any or any adequate extraction plant or equipment in or adequately to ventilate all such spaces and areas as aforesaid whenever asbestos dust was or might have been present in the atmosphere;
- (e) Failed to take any or any adequate measures whether by damping dry asbestos or otherwise to obviate or minimise the risk of asbestos dust and fibre being liberated in the course of work done by or near the Claimant;
- (f) Failed to make any or any adequate provision for respiratory protection to be constantly available to and worn by the Claimant at all times when he was exposed to asbestos dust and fibre as aforesaid;
- (g) Continued to employ the Claimant in work which constantly exposed him to the risks as above and failed to give him any or any adequate warning of the risks he thereby ran;
- (h) Failed to make any or any proper enquiries or to obtain proper or sufficient expert advice as to the known or suspected dangers of asbestos dust and fibre and/or as to the methods or systems such as would protect the Claimant against the said danger and/or to take or heed such expert advice when they knew or ought to have known that it was dangerous not to do so;

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- (i) Caused or permitted the Claimant to work as above or continue to work as aforesaid when they knew or ought to have known that it was unsafe so to do;
 - (j) Failed to provide or maintain for the Claimant a safe place of work;
 - (k) Failed to provide or maintain for the Claimant a safe system of work;
 - (l) Caused, permitted or required the Claimant to be exposed to an avoidable risk of a grave or fatal injury;
 - (m) Failed to take any or any adequate care for the safety of the Claimant;
 - (n) Failed to take the steps set out below as constituting breach of statutory duty.
9. The Defendants their employees or agents acting in the course of their employment for the reasons more fully set out hereinbefore as detailed allegations of negligence were in breach of statutory duty in that they:

PARTICULARS OF BREACH OF STATUTORY DUTY

- (a) in the course of the work referred to above failed to comply with the provisions of reg.53 of the Ship Building and Ship Repairing Regulations 1960 in that they failed to take all practical measures to protect the Claimant against the inhalation of dust or fume or other impurity given off in connection with the processes carried on on board in or on the outside of the vessel or part of the vessel in which dust or fume or other impurity as was likely to be injurious to the Claimant was given off and/or failed to provide and maintain adequate exhaust appliances as near as possible to the point of origin of the dust or fume or other impurities as to protect the Claimant against inhalation;
 - (b) in the course of the work referred to above failed to comply with reg.76 of the said Regulations in that they failed to provide and maintain for use by the Claimant breathing apparatus of a type approved for the purpose of this regulation, when the Claimant was working in or in the vicinity of the application of asbestos by means of spray and/or breaking down for removal of asbestos lagging and/or cleaning of sacks or other containers which have contained asbestos and/or cutting materials containing asbestos.
10. Further, the Claimant claims interest upon such damages as may be awarded to her pursuant to the provisions of s.69 of the County Courts Act 1984.

PARTICULARS OF CLAIM FOR INTEREST

[Insert appropriate claim—see F1-003 above]

AND the Claimant claims:—

- (a) provisional damages exceeding £5,000 on the assumption that the Claimant will not at a future date as a result of the acts or omissions giving rise to the cause of action herein develop the following serious deteriorations in his condition or any of them, namely:
 - (i) malignant mesothelioma;
 - (ii) asbestosis;
 - (iii) lung cancer;
- pursuant to s.51 of the County Courts Act 1984;

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- (b) an Order that if at a future date the Claimant develops each or any of the aforesaid conditions or suffers each or any of the aforesaid deteriorations in his condition he will be entitled to apply for further damages pursuant to s.51 of the County Courts Act 1984;
- (c) further or alternatively damages including damages for risk of financial loss including during the lost years if malignant disease were to develop, exceeding £5,000;
- (d) interest pursuant to s.69 of the County Courts Act 1984.

DATED this day of

STATEMENT OF TRUTH

[I believe] [The Claimant believes] that the facts stated in this Particulars of Claim are true.

I am duly authorised by the Claimant to sign this statement.

Full Name:

Signed:

[Insert name and address of Claimant's Solicitors]

Machine operator developing asbestosis from inhalation of asbestos contrary to the Factories Acts 1937 and 1961 before May 14, 1970 (claiming provisional or alternatively full and final damages)

F6-002

[NAME OF High COURT Registry]

Case No.

BETWEEN:

A. B.

Claimant

Camford Limited

Defendants

PARTICULARS OF CLAIM

1. The Claimant was a machine operator employed by the Defendants between 1957 and 1968 at the Defendants' premises known as Camford Works and situated in Camford.
2. The provisions of the Factories Act 1937 and thereafter the Factories Act 1961 applied to those premises.
3. While acting in the course of his employment at the above premises the Claimant undertook or worked in close proximity to where others undertook:
 - (a) the cutting with circular or band power saws of insulation sheets and sections to size to be incorporated in pre-fabricated shed and garage construction;
 - (b) the sweeping up or clearing of the debris and off cuts generated by the above work;
 which work liberated substantial quantities of dust into the atmosphere which the Claimant inhaled.
4. The Claimant's case is that the above insulation materials comprised or contained asbestos and that in the circumstances he inhaled injurious quantities of asbestos dust and fibre.
5. The Claimant will contend that the Defendants, during the time of the Claimant's employment during the periods set out in paragraph 1 above, knew or ought to have known that:
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PARTICULARS OF KNOWLEDGE

The grounds relied upon are matters of expert opinion evidence to be disclosed in accordance with the Civil Procedure Rules and without prejudice to this contention, include the facts that:-