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(No Embargo)

Asbestos Victims Support Groups Forum UK

Asbestos Judgment 21st November 2008 *Safety Catch Applied to the "Trigger Issue"*

Judgment for status quo in "Trigger Issue" case

Asbestos Victims Support Groups welcome the judgment announced today which confirms that insurers who were "on" risk at the time someone was exposed to asbestos are liable to pay compensation.

In this test case some insurers argued that the wording of employers' liability insurance policies says that the insurance is only "triggered" when an asbestos disease develops and not when the asbestos victims was exposed to asbestos.

Essentially, this is an argument between insurers about who should pay. But, the interpretation of the effective date of an insurance policy is crucial to asbestos victims. Because asbestos disease does not develop until decades after exposure to asbestos occurred, it is likely that the employers will no longer be trading and there will no longer be an insurer to pay compensation when an asbestos disease develops. This would have a devastating effect on asbestos victims.

This judgment puts things back to the way they were: insurers who were on risk at the time of exposure must pay compensation.

Cases delayed pending this judgment. Payment of compensation has been delayed pending the outcome of this case and many mesothelioma sufferers have died while waiting for the Court's decision.

Mrs Byrnes, whose husband Ronald died from mesothelioma, and whose compensation has been held back pending the outcome of this case says:

“Sadly my husband never lived to see his employers accept responsibility for his suffering. He would have wanted to see justice done on my behalf, even if not for him.

“My heartache has been prolonged by the insurers who refused to pay compensation.

“Today’s decision is good news. The insurers should take responsibility and leave it at that. They should stop treating asbestos victims like pawns in a game.”

Insurers continue to escape liability. This judgment does nothing to alter the underlying injustice where insurers continue to avoid liability for paying compensation simply because employers liability insurance cannot be traced as there is no central register of insurance, as there is for example for TV licenses or motor insurance.

Tony Whitston, Chair Asbestos Victims Support Groups Forum said:

“This welcome judgment averts the catastrophic effect this case might have had on asbestos victims as ‘collateral damage’ in an insurers’ war.

But the battle for compensation goes on every day as insurers escape liability for insurance they sold simply because the policies cannot be traced as there is no system to centrally register the policies.

Meanwhile, the government steps into the insurers’ shoes by paying small lump sum payments instead of insurers paying full compensation.

This scandalous situation should cease. Insurers should be required to set up a fund of last resort to pay asbestos victims, as they do for motor traffic victims. Then asbestos victims would not be affected by a case like this.”

For comments from people affected by this case and from the Forum please

Tel: 0161 636 7555 or 07748189837

NOTES TO EDITORS

Mesothelioma is a fatal tumour of the lining of the lung or abdomen, caused almost exclusively by asbestos, with a life expectancy from diagnosis of about 12 months. In 2005, 2,039 people died from mesothelioma. 90,000 people are expected to die from mesothelioma by 2050 from past exposure to asbestos since the epidemic began in the 1960s. About 60,000 people are yet to die from mesothelioma from past exposure.

The “trigger Issue” case commenced on the 3rd. June is one of many test cases in recent years launched by the insurance industry to limit its liabilities for asbestos disease.

In the Fairchild case (2002) the House of Lords overturned an attempt by insurers to say that since no one could say which deadly asbestos fibre killed a mesothelioma sufferer, no employer could be found liable.

In the Barker case (2006) the government overturned a House of Lords decision which allowed apportionment of damages between guilty employers. This would have meant that compensation would have been proportionately lost where employers were no longer trading.

In the Pleural Plaques case (2008) the House of Lords abolished compensation for pleural plaques, which had been compensated in law for over 20 years.

Where a motor traffic victim is injured by an uninsured driver, compensation is guaranteed via the Motor Insurers Bureau – an insurance fund of last resort. Where workers are injured there is no such protection.

Employers liability insurance became compulsory in 1972 and almost all employers have held insurance but insurers hide behind the fact that there was no system to register insurance details.

Government pays lumps sum payments to asbestos victims who cannot trace their insurers despite the fact that the HSE have said that over 99% of employers held employers liability insurance.