

Legal Update

Asbestos cases

Corporate Manslaughter and Corporate Homicide Act 2007

The end to Pleural Plaque Litigation!

- Rothwell v Chemical and Insulating Company Limited and others (and linked appeals)
- The issue – are pleural plaques actionable?
- The Judgment – correct legal interpretation or a policy decision?
- Is this the end of the story?

Taking Rothwell a step further?

- Owen v Esso Expiration and Production UK Limited
- Significance of the Judgment
- How will Claimant lawyers react?
- Hindson v Pipehouse Wharf (Swansea) Limited – interesting but already defunct!

Asbestos – other cases of interest

- Cox v Rolls Royce Industrial Power (India) Limited
No specific measure of the duration of exposure to asbestos during employment is necessary
- Rice and Thompson v Secretary of State for Trade and Industry and another
National Dock Labour Board owed a common law duty of care to registered dock workers exposed to asbestos
- John Pinder v Cape Plc
Disposal of asbestos on a waste tip in 1950s did not create foreseeable hazard

The Corporate Manslaughter and Corporate Homicide Act 2007

“The Corporate Manslaughter Bill is a groundbreaking piece of legislation. This is about ensuring justice for victims of corporate failures. For too long it has been virtually impossible to prosecute large companies for management failures leading to deaths... [The] Act changes this, for the first time companies and organisations can be found guilty of corporate manslaughter on the basis of gross corporate failures in health and safety... We are sending out a very powerful deterrent message to those organisations which do not take their health and safety responsibilities seriously.”

Maria Eagle, Minister for Justice

Scope of the Presentation

- Present position
- The new legislation
- Are you prepared for it?
- Personal liability – does it still exist?
- Consequences

Present Position

- Corporate Manslaughter
- Gross negligence manslaughter
- Health and Safety at Work Etc Act 1974 and Regulations made thereunder

Corporate Manslaughter and Corporate Homicide Act 2007

- Takes effect 6 April 2008
- Application
- “When management failure by senior managers is a substantial element in a gross breach of duty to take care causing the death of employees or others”
- Who are senior management?
- What is a management failure?
- What is a gross breach?

Are you prepared for it?

- Is there a health and safety “culture”?
- Best practice – paramount!
 - Legislation
 - IOD/HSC Guidance
 - Enforcing your systems
- Achilles Heels
 - Contractors
 - Multi site operations
 - Consistency

Personal Liability

There is no provision for personal liability under the new legislation but:

- Manslaughter
- Section 37 HSWA 1974
- Section 7 HSWA 1974

Consequences of Non Compliance

- Fines and costs – current practice
- The new regime – Sentencing Advisory Panel
- Publicity Orders
- Remedial Orders
- Indirect financial/commercial consequences
 - Management time
 - Absences
 - Insurance premiums
 - Tendering disadvantages
 - **REPUTATION**

Those are the risks – how are they avoided?

- Understand the risks associated with your business activities
- Assess, review and manage those risks
- Corporate governance – lead from the top!
- Ensure your policies meet best practice/industry standards
- Enforce your policies – lip service is not an option!

Bond Pearce