Personal Injury ~ January 2023

**Personal Injury Titles ~ January 2023**

Are Your Autumn Years Blighted by Asbestosis? Consult a Solicitor Today

Delayed Caesarean Delivery Victim Receives Millions in Recompense

Girl Who Sustained Nerve Damage at Birth Receives £2.6 Million in Damages

Landowner Not Liable for Garden Wall Collapse – High Court Ruling

Look Right, Left, Right…and Left Again – Court of Appeal Road Crash Ruling

Mother Sues Private Prison Operator Following Drugs Death in Custody

'Ticking Time-Bomb' Aneurysm Victim Wins Right to Substantial Damages

Victim of Drink/Drugs Driver Receives Justice

**Are Your Autumn Years Blighted by Asbestosis? Consult a Solicitor Today**

Asbestosis is a curse that condemns many thousands of people to endure pain and loss of independence in old age. No amount of compensation can ever make up for their suffering but, as a High Court case showed, it can at least help them and their loved ones to cope with the ravages of illness.

The case concerned a 74-year-old man who was exposed to asbestos whilst working on the maintenance of heating systems in the 1960s. A man who strongly valued his personal dignity, he had spent his life working hard for his family, performing DIY tasks about the house and maintaining the garden of his home.

After he was diagnosed with asbestosis, however, debilitating breathlessness forced him to adopt a sedentary lifestyle. Spending his time indoors, his heating bills went up and he became increasingly dependent on his wife's assistance. He needs costly aids and equipment, including oxygen canisters and dehumidifiers.

After proceedings were launched on his behalf, judgment was entered against the company that employed him during the period of exposure. There was, however, a continuing dispute as to the value of his claim and the extent to which other health conditions unconnected to asbestos contributed to his disabilities.

Ruling on the matter, the Court rejected claims that the extent of his reliance on his wife's care and assistance had been exaggerated. His level of disability had been assessed at 55 per cent, of which 25 per cent was due to asbestosis. The latter percentage was likely to increase to 30 per cent as he grew older. His life expectancy had been cut short by some months.

The Court awarded him £55,000 in damages for his pain, suffering and loss of amenity. Awards were also made in recognition of, amongst other things, his wife's gratuitous care for him, equipment costs, increased utility bills and the loss of his DIY and gardening services to his family. His overall award exceeded £100,000.

If employers fail to take appropriate measures to prevent exposure to substances that can damage the health of employees, they can be liable to pay compensation for the resulting illnesses. If you or someone you know has suffered ill health as a result of exposure to harmful substances in the workplace, contact **<<CONTACT DETAILS>>** for advice. We are experienced in handling claims for all kinds of industrial injuries.

**Delayed Caesarean Delivery Victim Receives Millions in Recompense**

Damages awarded in the most serious clinical negligence cases can seem eye-wateringly high, but every penny is needed to cover the immense cost of a lifetime's care. That was certainly so in the case of a 13-year-old boy whose award settlement included a £12 million lump sum.

Difficulties arose during his mother's labour, but there was an hour-long delay in the performance of a caesarean delivery. He was born pale, floppy and unresponsive. His legal team argued that it was a very clear-cut case of negligence and the NHS trust that bore responsibility for his care swiftly admitted liability.

Suffering from severe cerebral palsy, he has significant learning difficulties although his epilepsy is currently well controlled. Interrupted sleep patterns arising from his underlying brain damage are expected to be permanent. He is disturbed by sudden, loud or low-frequency sounds and is sensitive to bright illumination to the extent that he needs to be kept out of direct sunlight.

Following negotiations, the NHS trust agreed to settle his claim for the lump sum, together with annual, index-linked payments to cover the costs of the professional care and support he will require throughout his life. Those payments will start at £340,000 a year and rise to £360,000 a year when he is 19.

The NHS trust, through its barrister, offered its wholehearted and sincere apologies for the lapses of care that led to the boy's injuries. Lessons had been learned from the incident and the case had prompted safety improvements in the obstetrics unit where he was born. The trust hoped that the settlement would make it easier for his family to negotiate the many hurdles that still lay ahead.

The High Court was happy to approve the settlement and praised the hard work of both sides in achieving a consensual outcome. The boy's parents had shown great fortitude, devotion and strength of character in caring for him and he was blessed to have their unswerving love.

Says **<<CONTACT DETAILS>>**, "Nothing can truly compensate for mistakes on the part of medical staff during a child's birth that cause permanent damage to health. However, a financial settlement enables the family to achieve the best quality of life possible for their child, without the stress of money worries. Our specialist legal team is experienced in handling claims of this kind."

**Girl Who Sustained Nerve Damage at Birth Receives £2.6 Million in Damages**

People live longer and longer and that is one good reason why damages payable to children who are injured at birth would appear to be on an ever upward trajectory. The point was made by the case of a nine-year-old girl who received a seven-figure award for serious nerve damage sustained during her difficult delivery.

Due to the use of excessive traction whilst medical staff struggled to deliver her, the girl suffered permanent damage to the bundle of nerves that controls one of her arms. The injury was the most severe of its kind that it is possible to sustain, affecting the function, sensation and growth of the stricken limb.

After a clinical negligence claim was launched on her behalf, the NHS trust that bore responsibility for her care made a prompt admission of liability. The litigation was thereafter paused for some time to enable an assessment of her long-term prognosis and the value of her claim. However, following negotiations, a trial became unnecessary when the trust agreed to settle her claim for a £2.6 million lump sum.

The High Court had no hesitation in approving the settlement as being in her best interests. The trust was due credit for its swift admission of liability and her parents and wider family were praised for their extraordinary level of care for her.

Negligent medical care can lead to a lifetime of suffering and limitation of opportunity. Experienced legal advisers can help you obtain appropriate compensation. Our specialist legal team is experienced in handling claims of this kind.

**Landowner Not Liable for Garden Wall Collapse – High Court Ruling**

Landowners whose properties adjoin public highways are under a duty to ensure that passers-by are not put at risk by rickety walls or fencing. The extent of that obligation came under analysis in a case concerning a 150-year-old garden wall that collapsed in the midst of a storm.

The wall crumbled in high winds, injuring a passing pedestrian and killing his dog. He sought compensation from the wall's owner, alleging that he had caused or permitted it to fall into a potentially dangerous state of disrepair. He further claimed that the wall was so defective as to constitute a nuisance.

In dismissing his claim, however, a judge found that he had failed to prove his case. Anecdotal evidence that the wall was cracked and affected by a longstanding lean or bulge was unreliable. Much potentially useful evidence had been obliterated when the wall fell into rubble and an expert witness, a chartered surveyor, had identified no fewer than 16 possible causes of the collapse, of which a lack of adequate maintenance was only one.

Rejecting the pedestrian's appeal against the judge's ruling, the High Court was not persuaded by arguments that the circumstances in which the wall collapsed spoke for themselves and indicated a negligent failure to maintain it. It could not be said that the collapse was something that, in the ordinary course of things, could only happen because of a want of proper care on the owner's part.

The judge was the arbiter of fact and reached an entirely legitimate conclusion that the evidence did not establish, on the balance of probabilities, that the wall collapsed due to a state of disrepair, arising from a lack of proper maintenance.

Although in this instance the proceedings were unsuccessful, it may be that you have the basis for a successful claim if you have been injured in similar circumstances. Contact our specialist personal injury team for advice.

**Look Right, Left, Right…and Left Again – Court of Appeal Road Crash Ruling**

Whenever you pull out of a minor road onto a major one, the driving teacher's classic instruction to look right, left and right again should come to mind. However, what is safe depends on all the circumstances and, in one case, the Court of Appeal has ruled that a motorist was duty-bound to look to her left for a second time.

The case concerned a woman who pulled out of a minor road and turned right onto a main road where a motorcyclist collided with her car, sustaining catastrophic injuries. After he launched a personal injury claim, a judge found that the woman bore the lion's share – 55 per cent – of responsibility for the accident. He did so despite finding that the motorbike was travelling at excessive speed.

The judge ruled that, in the particular circumstances of the case, the woman should have looked right, left, right and, crucially, left again before she pulled out onto the main road. Although the motorbike was out of view when she began her manoeuvre, he found that she would have seen it had she looked left for a second time.

Dismissing her appeal against that outcome, the Court noted that it is obvious that a driver emerging from a minor road onto a major road owes a continuing duty of care to vehicles on the major road. She was moving out onto a road on which a regular flow of traffic was to be expected. The junction was unusual in that her view to the left was affected by a bend in the major road.

Prior to the impact, she was wholly unaware of the presence of the motorcycle. Her evidence that she had seen no traffic coming in either direction on the main road demonstrated that she was not keeping a proper lookout. Whatever his speed, the motorcyclist was there to be seen. The judge correctly found that she was under a duty to look left for a second time before moving into the junction and that her failure to do so was the primary cause of the collision.

If you have been injured as a result of an accident on the road, whether you were a cyclist, pedestrian or other road user, you may be entitled to compensation. Contact **<<CONTACT DETAILS>>** for advice.

**Mother Sues Private Prison Operator Following Drugs Death in Custody**

The prevalence of potentially lethal psychoactive drugs in the UK prison system is sadly well known. In the context of a mother's claim that the circumstances of her son's death in custody amounted to a violation of human rights, the High Court considered the extent of a private prison operator's duty to tackle the problem.

The young man was found unconscious in his cell and could not be revived. A post-mortem report concluded that his use of a synthetic cannabinoid was likely to have caused his death. There were indications that he had received drugs from another cell via the prison's plumbing system.

His mother launched proceedings against the private company that operated the prison under a contract with the Ministry of Justice (MoJ). She pointed to, amongst other things, a letter from HM Chief Inspector of Prisons which expressed shock at the blatant use and trafficking of illegal drugs within the prison and the apparent unpreparedness of staff to deal with the issue.

She asserted that the operator was or ought to have been aware that the ingress of drugs into the prison posed a foreseeable risk of injury or death to prisoners. It had, she argued, failed in its duty to take urgent and reasonable measures to reduce the influx of drugs. She contended that, as a result, her son and other vulnerable prisoners were detained in an environment in which they were surrounded by illicit substances that posed a risk to their lives.

The operator denied liability and applied for the mother's claim to be struck out, or for summary judgment to be entered in its favour. It argued, amongst other things, that its degree of control over the prison was constrained by the terms of its contract. Its management of the prison was overseen by civil servants and the primary duty to maintain safety at the prison rested on the MoJ.

In dismissing the operator's application, the Court found force in the mother's argument that the fact that her claim might also have been brought against the MoJ was irrelevant. She had a real prospect of successfully establishing that alleged failings on the operator's part breached Article 2 of the European Convention on Human Rights, which enshrines the right to life. The ruling opened the way for her claim to proceed to a full trial.

If you or a loved one have been injured because a person or organisation that is under a legal obligation to do so has neglected to exercise the level of care that is reasonable in the circumstances, contact us for advice.

**'Ticking Time-Bomb' Aneurysm Victim Wins Right to Substantial Damages**

Clinical negligence often begins with a failure in diagnosis and a lost opportunity for effective treatment. That was certainly so in the case of a woman who suffered a catastrophic stroke after radiologists at a private clinic failed to pick up on an aneurysm that was described as a ticking time-bomb.

The woman was in her early 50s when she reported suffering severe migraines and her GP referred her to hospital for investigation. MRI scanning was performed and the results were sent to the clinic for review. The aneurysm went undiagnosed and, about 10 months later, she suffered a stroke which caused significant brain damage and one-sided paralysis. Her life expectancy is reduced and she will remain highly dependent on others for her day-to-day care.

After legal action was taken on her behalf, the clinic admitted breach of duty. However, an issue remained as to whether she would have chosen to undergo a medical procedure known as coiling had the aneurysm been diagnosed. Although the procedure would, if successful, have greatly reduced or extinguished the threat of stroke and other complications, it was not without risks.

She lacks capacity to make important decisions for herself and was unable to give evidence. However, members of her family with knowledge of her personality said that she would have undergone the procedure. The alternative would have been to live with the aneurysm in the knowledge that it could burst at any moment.

Following negotiations, the clinic agreed to pay 90 per cent of the full value of her claim. It apologised to her and her husband, who had devoted himself to her care, and further agreed to make an interim damages payment of £300,000. If not agreed, the full amount of her award would be assessed at a further hearing. The High Court noted that her husband had received expert and highly skilled legal advice, and had no hesitation in approving the liability settlement.

Errors or delays in diagnosis can lead to tragic consequences and, when this is due to the negligence of medical staff, compensation may be warranted. If you or a member of your family has suffered as a result of improper medical treatment, contact **<<CONTACT DETAILS>>** for advice.

**Victim of Drink/Drugs Driver Receives Justice**

When you get behind the wheel, you necessarily place trust in the good sense and competence of other drivers. However, as was shown by a case in which a gravely injured accident victim received seven-figure compensation, expert personal injury lawyers are always on hand should such trust prove to be misplaced.

The woman, aged in her 30s, was driving home from work in the early hours when another motorist veered across the central reservation of a dual carriageway and collided with her head-on. He was subsequently convicted of driving over the legal limit for both alcohol and drugs. The woman sustained life-changing injuries.

After proceedings were launched on the woman's behalf, the other driver's insurers admitted liability for the accident in full. Following negotiations, they agreed to settle her claim for a lump sum of £3.5 million. In approving the settlement, the High Court noted that it brought the proceedings to a conclusion, without the need for a stressful trial, and offered her a good measure of financial security for the future.

Negotiating a suitable settlement requires awareness of many factors. Our experienced team takes all relevant issues into account in helping our clients achieve the best possible compensation awards.

These articles are provided for general interest and information only. They do not constitute legal advice. Whilst every effort is made to ensure that the content accurately reflects the law in England as at the date of its transmission, no liability is accepted for any loss or damage arising from any act or omission resulting from any information contained herein.