Personal Injury ~ September 2023

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**Asbestos Case Focuses on Chemistry Lab Heat Mats Phased Out 50 Years Ago**

Anyone who worked in a chemistry lab or who was at school more than 50 years ago is likely to remember the ubiquitous asbestos mats on which Bunsen burners rested. In a sad case that vividly evoked the past, the High Court considered whether their presence can give rise to employer liability in the 21st century.

The case concerned a man who worked as an NHS hospital lab technician between 1949 and 1960. He was 86 in 2019 when he was diagnosed with mesothelioma, a form of lung cancer almost always associated with asbestos exposure. Following his death, the executors of his estate launched a personal injury claim against the Secretary of State for Health and Social Care.

Ruling on the matter, the Court found that a soft and friable variety of asbestos mat was in use in the lab at the time, which would have given off particles of asbestos on handling. As a result, the man would have been exposed intermittently to very low quantities of asbestos, marginally above background levels. Even such modest exposure would, however, have materially increased the risk of him developing mesothelioma in later life.

The Court noted that it was recognised as long ago as 1938 that asbestos dust is highly dangerous in an industrial environment. At that time, however, concern was focused on shipbuilding yards, power stations and other workplaces where asbestos was habitually handled. It was not until 1965 that the link between mesothelioma and asbestos was identified and only in the mid-1970s was the use of asbestos millboard for heat protection in labs and elsewhere phased out.

In dismissing the executors' claim, the Court noted that asbestos heat mats were at the relevant time still being used in many everyday settings, including schools. Had the man's then employer sought expert advice, it would probably have been told that there was no need to be concerned about any risk of asbestos-related injury arising from their continued use.

Given the man's minimal level of exposure, it could not be said that the employer should have been aware that he was at significant risk of asbestos-related injury. Measured against the state of medical knowledge at the time, such injury was not reasonably foreseeable and the employer had not breached the duty of care it owed him. Whilst expressing the greatest sympathy for his family, the Court concluded that the claim had to fail on the facts.

Whilst the Court found, in this instance, that there was no duty of care breach, there are many examples of employers failing to take appropriate measures to prevent exposure to substances that can damage the health of employees. In these cases, employers may 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.

**Attributing Noise-Induced Deafness to a Particular Source Can Be Tough**

People often have numerous jobs during their long working lives and that can make it extremely hard to pin down a particular workplace as the source of noise-induced deafness. That was certainly so in the case of a man who put his disabling hearing loss down to noise exposure during his work as a plumber and heating engineer more than 35 years ago.

The man, aged in his 60s, sought compensation from two defendants for whom he had worked between 1977 and 1988. He alleged that he had been exposed to excessive noise generated by such tools as angle grinders and hammer drills and that there was a culpable failure to provide him with suitable hearing protection.

Given the passage of so many years, however, his was the only evidence available concerning the environment in which he had worked. In denying liability, the defendants criticised his testimony as inconsistent and lacking in detail. One of them contended that it was inherently implausible that he would have used such noisy tools.

It was agreed that the significant deterioration in his hearing could not be attributed to age alone. Although he had worked as a police firearms officer for nine years after moving on from the plumbing trade, he did not allege that he had been exposed to excessive noise levels in that employment.

In dismissing his claim, however, the court found that expert acoustics and medical evidence presented on his behalf did not establish that he was, on the balance of probabilities, exposed to actionable noise levels whilst working for the defendants. The likelihood was that there was a supervening idiopathic cause of his hearing loss which occurred at a much later date.

Says **<<CONTACT DETAILS>>**, "Whilst this claim was unsuccessful, many others result in damages awards. There are strict standards that apply for permissible noise levels in the workplace and employers whose premises or work type expose their employees to noise should ensure that they comply with these. If employers fail to take appropriate action, an employee who suffers hearing loss as a result may well be entitled to compensation."

**Baby Boy Born Three Minutes Too Late – Clinical Negligence Ruling**

Childbirth is always an anxious time and, for newborn babies, events that occur in a few short minutes can result in a lifetime of acute disability. That was sadly so in the case of a little boy who would have escaped devastating injury had he been brought into the world just three minutes earlier.

The boy was in a profoundly asphyxiated condition when he was delivered. A healthy baby can usually withstand 10 minutes of such asphyxia without suffering permanent brain damage. However, oxygen starvation, arising from compression or occlusion of his umbilical cord, began several minutes before he was born. By the time blood circulation was restored to his brain seven minutes after his birth, it was too late.

After a clinical negligence claim was lodged on his behalf against the NHS trust that bore responsibility for his care, medical experts on both sides agreed that, had he been delivered three or more minutes earlier than he was, he would have sustained no permanent damage to his brain.

Upholding his claim, the High Court found that, had a midwife listened intermittently to his heartbeat in the minutes prior to his delivery, ominous decelerations in its rate would have been detected. Had that occurred, he would have been delivered and resuscitated those three crucial minutes earlier and avoided permanent neurological injury. If not agreed, the amount of his compensation – which is likely to be very substantial – will be assessed at a further hearing.

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."

**Birth Injuries Compensation Helps Disabled Children to Meet Their Potential**

Monetary compensation can never take away the unquantifiable heartbreak involved when a child suffers serious injuries at the very beginning of their life. As a High Court ruling showed, however, what it can do is provide high levels of care and support, enabling young clinical negligence victims to enjoy full lives and meet their potential.

The case concerned a teenage boy who had a low birth weight but was otherwise in good health on delivery. Over the hours that followed, however, his blood sugar levels dropped and he sustained permanent brain damage. Living with epilepsy that cannot be reliably controlled, he has learning, behavioural and social difficulties that make his care and safe management highly challenging.

After a clinical negligence claim was instigated, the NHS trust that ran the hospital where he was born admitted liability. It conceded that inadequate steps were taken post-delivery to ensure he was feeding properly, and that there was a delay in taking a blood sugar reading.

Following negotiations, a final settlement of his claim was agreed whereby he would receive a £9.3 million lump sum, together with annual, index-linked payments to cover the costs of his care and case management for life. Starting at £190,000 a year, those payments will rise to £238,000 a year when he is 19.

Approving the settlement, the High Court noted that his self-esteem, confidence and mental health have suffered due to his awareness that he is different from his peers. He is nevertheless undaunted and is enthusiastic about supercars and spicy food. His disabilities placed a tremendous strain on his mother, who had sacrificed her career to look after him. The progress he had made was a testament to her years of devotion and her great love for him.

Although nothing can truly compensate for mistakes that cause permanent damage to someone's health, a settlement can relieve financial worries and help improve the quality of life of victims of medical errors.

**Boy Who Put Shard of Glass in His Ear Succeeds in Clinical Negligence Claim**

As many parents are only too well aware, children have an unfortunate tendency to put foreign objects into their ears. The consequences can occasionally be serious and, in one case, a little boy who sustained permanent hearing loss following negligent medical treatment won the right to substantial compensation.

The five-year-old boy was taken to hospital by his parents after he inserted what was at first believed to be a small plastic brick into his right ear. It later turned out to be a sharp piece of glass, probably a fractured bead. A number of unsuccessful attempts were made to extract the object before it was eventually removed in an emergency operation.

He was later found to have suffered a perforated ear drum and damage to the chain of three tiny bones in his middle ear. Despite corrective surgery, the end result was permanent hearing loss, requiring him to wear a hearing aid. A clinical negligence claim was subsequently launched against the NHS trust that bore responsibility for his care.

Ruling on the case, the High Court found, on the balance of probabilities, that the damage had arisen whilst a registrar was attempting to manipulate and remove the object. The likelihood was that a surgical instrument – a wax hook – came into direct contact with the delicate chain of bones, causing them to dislodge.

The Court found that the registrar had probably employed an inappropriate technique, or used excessive force, or both. He did not stop attempting to remove the object as soon as he should have done. If not agreed, the amount of the boy's compensation would be assessed at a further hearing. In the meantime, the Court awarded him £13,035 in interim damages.

Says **<<CONTACT DETAILS>>**, "If you or someone in your family has suffered injury while undergoing a medical procedure, we can advise you as to your best course of action."

**Road Accident Victim 'Not Fundamentally Dishonest' – Guideline Ruling**

Every right-thinking person would agree that those guilty of fundamental dishonesty in their pursuit of personal injury claims should leave court empty-handed. As a High Court ruling showed, however, defining exactly what is meant by 'fundamental' is far from straightforward.

The case concerned a man who claimed to have suffered neck, shoulder and head injuries in a road traffic collision. Following a trial, a judge found that his contention that he had sustained a bang to the head, which caused swelling over a period of three to four days, was fundamentally dishonest. On that basis, the entirety of his personal injury claim was dismissed.

Ruling on his appeal against that outcome, the Court noted that, for the purposes of the appeal, there was no challenge to the judge's finding that his claim in respect of the head injury was dishonest. The sole issue before the Court, therefore, was whether that dishonesty was 'fundamental', within the meaning of Section 57 of the Criminal Justice and Courts Act 2015.

Upholding the appeal, the Court noted that his claim in respect of the head injury had not formed part of his case as originally pleaded but only emerged later in oral and written evidence. References to the alleged injury did not substantially affect the way his case was presented and motor insurers defending the claim were not exposed to a risk of significant prejudice.

In reinstating the man's claim, the Court found that there was no scope for a finding that such a minor and very short-lived injury could properly be characterised as being fundamental or going to the root of his case. The judge was therefore wrong to find that he had been fundamentally dishonest. In reaching that conclusion, the Court emphasised that it was not making light of the seriousness of making up evidence.

For advice and guidance on compensation claims, please contact **<<CONTACT DETAILS>>**.

**Tree Surgeon Hit by Falling Branch Receives Six-Figure Award**

If you suffer an accident at work that is not your fault, you can be reassured that a good personal injury lawyer will see to it that you are compensated fairly. In a case on point, a tree surgeon who was struck by a falling branch was awarded six-figure damages against his former employer.

The man, then aged in his late 30s, was holding a chainsaw when a colleague lost control of the heavy branch, which landed on him, causing immediate and searing pain. The spinal fractures he sustained were said to have triggered chronic pain syndrome and disabilities that seriously affected numerous aspects of his daily life and prematurely ended his much-loved forestry career.

After he launched a personal injury claim, judgment was entered against the company that employed him at the time. The company acknowledged that he had developed a chronic pain condition. In contesting the value of his claim, however, it disputed the severity of his ongoing disabilities and the extent to which they could be attributed to the accident.

Ruling on the case, the High Court found that he was anxious to maximise the amount of his compensation. He had at times exaggerated his disabilities and underplayed his physical capabilities. Symptoms arising from pre-existing degenerative changes in his back would in time have led to chronic pain syndrome and the end of his career in any event. Once the dust of litigation settled, focused rehabilitation work would be likely to dramatically improve his condition.

The Court nevertheless found that it was a nasty accident which restricted his day-to-day activities and caused him significant pain, suffering and loss of amenity. His total damages award of £275,063 included substantial sums in respect of care and rehabilitation costs together with past and future loss of earnings.

Says **<<CONTACT DETAILS>>**, "Settlements awarded by the courts depend on the severity of the injuries, which in this case were regrettably severe, as well as on the quality of the legal representation."

**Victim of Extremely Rare Neurological Disorder Receives £425,000 Payout**

Clinical negligence claims involving extremely rare medical conditions can present a particular challenge. However, that did not prevent a man who fell prey to a neurological disease that only recently became known to medical science from obtaining a six-figure settlement.

The man was in his late 40s when he began to suffer a range of unusual symptoms, including sleep disorder, difficulty swallowing and behavioural difficulties. He was referred to a neurologist who found no underlying neurological condition. However, his symptoms continued to deteriorate and, about two years later, hospital tests indicated that he was suffering a form of autoimmune encephalitis.

The man's resulting clinical negligence claim did not allege that the neurologist was negligent in failing to diagnose the condition, the first cases of which were only reported in 2014. It did, however, assert that he should have referred the man for further expert assessment.

Had that happened, it was claimed that he would have avoided a life-threatening episode and been diagnosed and treated nine months earlier than he was, resulting in a better outcome. Despite having made a good recovery, he remains subject to cognitive and respiratory difficulties together with behavioural and psychological problems.

The NHS trust that bore responsibility for the man's care denied that the neurologist was in any way at fault. It also hotly disputed the value of his claim. However, following negotiations, it agreed – without making any admission of liability – to a £425,000 lump-sum settlement of his claim. The High Court had no hesitation in approving the sensible compromise, which did away with the need for a stressful 10-day trial that could have gone either way.

If you or a member of your family suffers damage as a result of negligent medical treatment, we can help you obtain an appropriate settlement. Contact **<<CONTACT DETAILS>>** to discuss your claim.

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