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17 July 2008

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Dear

Claims for Pleural Plaques, Asymptomatic/ Minimal Pleural Thickening and Asbestosis

I am writing to update you about developments in relation to the above conditions.

You will recall from previous correspondence that there has been a significant change in the law arising from a decision of the House of Lords in October 2007. That decision concerned asbestos related pleural plaques only although many in the insurance industry have taken the decision to apply equally to cases of asymptomatic/minimal pleural thickening and asbestosis.

Since October 2007 it has not been possible to pursue a claim in the Courts for pleural plaques and many claims for asymptomatic/minimal pleural thickening and asbestosis have been held up pending clarification from the Courts as to whether these conditions are compensatable.

The Scottish Executive have now published a Bill which they expect to pass into law by the end of this year. This Bill effectively overturns the House of Lord's Judgment concerning pleural plaques and will allow Scottish sufferers of this condition to pursue their claims for plaques through the Courts in exactly the same way as previously. Furthermore, the Scottish Executive have decided that it is appropriate to legislate to allow claims for asymptomatic/minimal pleural thickening and asbestosis to proceed through the Courts. This effectively cuts through any uncertainty created by the House of Lord's Judgment on pleural plaques as to whether these conditions should be compensatable.

The Government have acknowledged the concern which the House of Lord's Judgment has created. At this stage they have not followed the same course of action as the Scottish Executive. Instead, they have issued a consultation paper. The paper sets out a number of options as to possible measures which may be taken and the Government have invited responses to these proposals by the 1st October 2008.



There are five options set out in the consultation paper which I briefly summarise as follows:-

Option 1:

Do nothing.

This is self-explanatory. It would effectively leave sufferers of pleural plaques in England and Wales without compensation. Uncertainty would continue as to whether pleural thickening and asbestosis producing no or minimal respiratory disability were compensatable conditions. Further Court cases would be required to clarify that point.

Option 2:

Increase support, help and information for people with pleural plaques.

The Government assume that a diagnosis of pleural plaques is accompanied by a general state of anxiety and uncertainty about the implications of the diagnosis, particularly for other more serious asbestos related conditions. The proposal is for the Government to fund the publication and distribution of a leaflet to be handed out to those diagnosed with the condition which explains that pleural plaques is a harmless condition in an effort to tackle the feelings of anxiety. Under this option no compensation would be payable.

Option 3:

Reverse the decision of the House of Lords made in October 2007.

This option would effectively place Claimants such as yourself in the position you were in before the law changed. It would allow you to proceed with your claim for compensation and compensation would be awarded subject to the usual rules of negligence. There is some uncertainty as to the level of compensation that would be payable under this option. I say this because when the challenge to payment for pleural plaques first started the High Court decided that payment should be reduced from an average of £12,500 to £15,000 to £5,000 to £7,000. When the Court of Appeal decided that no compensation whatsoever should be payable they went on to say that had they found differently they agreed that the High Court approach was inappropriate and compensation should be individually assessed to suit the circumstances.

The Government have stated in the consultation paper that this is not their preferred option. They are concerned about the implications of overturning a unanimous House of Lord's decision and the possible impact that this has on the integrity of the law of negligence.

Option 4:

Establishing a No Fault Compensation Scheme for all those who had a diagnosis of pleural plaques up to the time of the House of Lord's decision on the 17th October 2007.

For the purposes of the consultation paper the Government have assumed a fixed payment of £5,000. However, they go on to say, "A lower figure may be more appropriate".

The Government propose that such a Scheme will be similar to an Application for Benefits. No legal advice would be required. No legal costs would be payable. It would not be necessary to prove negligence or breach of duty against any former employer. Applicants would simply need to prove that they have a diagnosis for pleural plaques and that they had exposure to asbestos.

Making an Application under the terms of this Scheme would not prevent anybody presently suffering from pleural plaques from pursuing a further claim in the Courts for any other asbestos related condition that they may develop in the future.

Option 5:

A No Fault Compensation Scheme extended to not only those with a diagnosis of pleural plaques at the time of the House of Lord's decision on 17th October 2007 but to those who have been diagnosed with pleural plaques since then and who may be diagnosed in the future.

Option 5 is effectively the same as option 4 save that it increases the category of potential Applicants to those who have been diagnosed with pleural plaques since October 2007 and who may be diagnosed in the future.

As a leading firm in personal injury specialising in claims for asbestos related conditions Sintons LLP will be responding to the Government's consultation paper.

We would welcome your own views on the consultation paper and we have prepared a brief response sheet for you to complete and return in the pre paid envelope supplied.

If you would like a full copy of the consultation paper it can be accessed at the following web link: <http://www.justice.gov.uk/publications/cp1408.htm> or alternatively please contact this office and we will forward a copy to you.

At this stage, our preferred option would be option 3. We consider that the most appropriate way forward is to follow the example of the Scottish Executive and reverse the decision of the House of Lords. We consider that all sufferers of any category of asbestos related condition are entitled to bring their claims in Court. We believe that the Courts are the most appropriate place to determine the correct level of compensation on a case by case basis. We consider that this option effectively deals with uncertainties relating to claims of asymptomatic and minimal pleural thickening and asbestosis which are not covered by any of the other options set out in the consultation paper.

We acknowledge the costs which will be faced by the insurance industry and Government Departments as a consequence of overturning the House of Lord's Judgment. It is our view that such costs are an inevitable consequence of a long-standing and historic failure on the part of many employers to take the risks of asbestos exposure seriously.

We do not think it can be right that those in Scotland who worked in identical conditions (sometimes for the same employer) and had identical exposure to asbestos are to be given the right to pursue a claim for compensation in the Courts when people like yourself are left with (at best) the right to make a claim under a Scheme for a lump sum payment of (at most) £5,000.

We do urge you to return the response sheet as quickly as possible so that we can communicate your views to the Government in our response to the consultation paper.

If you have any queries or questions please do not hesitate to get in touch with us.

Yours sincerely
M Quigley

RESPONSE SHEET

Name:

Address:

Tel No:

I acknowledge receipt of a letter from my solicitor informing me of a consultation paper produced by the Ministry of Justice concerning pleural plaques.

I understand that the consultation paper puts forward five options. On the basis of the summary of these options supplied to me by my solicitor I wish to express my view as to what I believe to be the most appropriate option:-

[please tick one box]

- Option 1: to do nothing
- Option 2: to increase support, help and information for people with pleural plaques
- Option 3: To change the law of negligence so that compensation can be claimed through the Civil Courts as was the case before the Court of Appeal and House of Lord's decision.
- Option 4: Financial support in the form of a "no fault" payment for those diagnosed with pleural plaques within a fixed period prior to the House of Lord's decision on the 17th October 2007.
- Option 5: Financial support in the form of a "no fault" payment for those diagnosed with pleural plaques both before and after the House of Lord's decision on the 17th October 2007.

I would also wish to make the following further comments about the consultation paper:

[please add anything further which you consider to be of relevance or importance]

Signature

Dated

Sintons LLP
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Date 2nd January 2008
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sarahfawcett@eversheds.com

Dear Sirs,

British Shipbuilders - Policy on Asymptomatic Conditions

I am writing in respect of the potential claim of Mr ██████ against Smiths Docks under your reference CP/HMS/54242/1/C. As the issues are generic we thought it best to respond in a letter of general application. It would be appreciated if you could kindly provide your colleagues with a copy of this letter for their future reference.

Pleural Plaques

We are closing all of our open files in which the Claimant pursues a claim against a British Shipbuilders' subsidiary in respect of pleural plaques only. The Corporation regards these claims, whether litigated or un-litigated, as having been initiated in good faith and therefore we are prepared to close those files on the basis that each party pays its own costs.

This decision has been made in line with the House of Lords' Judgment on Pleural Plaques and more recently Ms Bridget Prentice's parliamentary written answer to Mr Jim Sheridan MP which explained that the Government had decided that it would not be appropriate to legislate on the issue. For the sake of completeness we should also say that British Shipbuilders does not accept the suggestion that a claim which has been found to have no basis in tort might be rescued by being pleaded in contract - a course that no-one has thought appropriate for the last 25 years and which still seems to be entirely wrong as a matter of principle. If, however, that view turns out to be wrong and the Courts are once again prepared to admit claims for pleural plaques then we confirm that British Shipbuilders would not under any circumstances seek to take a time bar point against such a claim based on diagnosis at any time from January 2003 onwards (being three years before the Judgment of the Court of Appeal in "**Rothwell**").

Asymptomatic Conditions

Under this heading we group "early" asbestosis identified by radiography and asymptomatic diffuse pleural thickening. By "asymptomatic" we mean a condition in respect of which an expert physician cannot confirm that the Claimant is at least 5% disabled by his condition. The British Shipbuilders' view is formulated simply on the basis that variances in individual physiology and life experience are such that a clinician cannot reasonably say that he can detect symptoms that have an actual impairing effect of less

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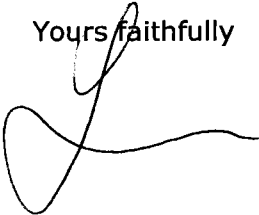
than 5% - particularly in the context of someone with co-morbid conditions that also affect breathing or movement. We recognise that as the law stands the well known House of Lords decision in **Cartledge -v- Jopling** is authority for the proposition that a recognisable progressive medical condition does constitute an "injury". The issue is simply over damages. British Shipbuilders' position is that, as the law currently stands, until the injury is symptomatic then there is no actual adverse physical consequence in respect of which compensation can properly be paid. At the point where a physician is prepared to say, on oath, that there are genuine clinically detectable consequences in the form of a recognisable and assessable impairment of the individual's breathing or movement, then it is of course agreed that there is appropriate subject matter for compensation.

Our client has always distinguished this argument from that relating to pleural plaques and has never felt that the House of Lords was likely to give any definitive opinion on this issue in the pleural plaques test cases. That belief has proved to be correct. The position will, no doubt, at some stage, be determined by a test case. Until that is so we are more than happy to confirm that Claimants who genuinely do have a recognisable medical condition constituting the early stages of a disease properly so called, but do not currently have a disability of 5% or more, will not have a time bar defence raised against them.

The consequence of all of the above is that you may rest assured that should any of your clients progress from being affected by asymptomatic conditions (as defined above) to suffer from a symptomatic disease, they will not be prejudiced by knowledge of that condition in its asymptomatic stage. For the avoidance of any doubt the same applies to those who have at any time been diagnosed with pleural plaques. We hereby confirm that each and every one of those individuals benefits from a general litigation amnesty which will not be withdrawn otherwise than by at least 3 months written notice to that effect. Under these circumstances we trust that you will agree that there is no need for litigation to be commenced now in order to preserve a claim against a British Shipbuilders' subsidiary.

We trust you find this of assistance and would reiterate our request that you should kindly circulate a copy of this letter to your colleagues.

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a long horizontal stroke.