

Asbestos - Employers' Liability Policy Trigger Issues

01 August 2007

Summary

The High Court in London has issued a Practice Direction concerning the commencement and treatment of claims involving employers' liability policies and industrial disease.

This Practice Direction has important implications for those who handle claims in respect of mesothelioma and other industrial diseases under employers' liability policies. The Practice Direction establishes a system whereby existing and new actions - where certain "**Employer's Liability Policy Trigger Issues**" are engaged (the "Trigger Issues") - are transferred to the Queen's Bench Division of the High Court. This allows the Court, the parties and other interested parties to decide whether the claim should form part of a group of leading claims to be tried by the Court concerning the treatment of industrial diseases, and in particular mesothelioma, under employers' liability policies. The deadline for the selection of these leading claims is 12 October 2007.

Any claim which is not designated by the Court as a "leading claim" is likely to be stayed pending judgment of the leading claims.

Implications

Those who handle claims in respect of mesothelioma and other industrial diseases arising under employers' liability policies should urgently consider whether these claims involve issues substantially similar to the Trigger Issues. If they do, there is an opportunity to participate in providing views and positions on the Trigger Issues to the Court. If any party wishes to participate actively, they will need to make the necessary application to the Court by 12 October 2007.

Detail

The Employers' Liability Trigger Issues dealt with in the Practice Direction are as follows:

1. an employers' liability insurance policy has been or is alleged to have been provided to an employer during which period the employer exposed an employee to asbestos;
 2. the employee is diagnosed as suffering from mesothelioma after the period of insurance;
 3. the employer is alleged or found to be liable to the employee in respect of the mesothelioma; and
 4. the policy wording is expressed as providing cover in respect of injuries "sustained", "contracted" or "occurring" (or some other similar provision) during the period of cover provided by the policy and an insurer contends either:
 - 4.1 that the policy wording does not oblige the insurer to indemnify the employer in respect of its liability to the employee arising from the employee's contracting mesothelioma; or
 - 4.2 that the policy wording obliges the insurer that was on risk at the time that the mesothelioma first began to develop to indemnify the employee.
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All claims that address the Trigger Issues pending in a County Court or in another registry of the High Court will be transferred to the Queen's Bench Division and assigned to Master Whitaker. Those already commenced in the Queen's Bench Division will also be assigned to Master Whitaker (if they have not been already). New claims involving the Trigger Issues must be commenced in the Queen's Bench Division and will be assigned to Master Whitaker.

Master Whitaker will oversee the case management of these claims and decide whether each should be referred to Mr Justice Burton for consideration to be included in the group of leading claims, or whether the claim should be stayed pending judgment on the leading claims.

Mr Justice Burton will have the final decision (with the input of the parties to the claim and other interested parties) over whether a claim referred to him by Master Whitaker should be included in the group of leading claims. He also has the power, on the application of an interested non-party to decide whether a claim which raises similar issues to the Trigger Issues concerning another industrial disease may be included in the group of leading claims.

The selection of leading claims is to take place by 12 October 2007.

The group of five leading claims already designated is:

Ruth Melanie Fern (Personal Representative of the Estate of Leslie Edwin Screach (Deceased)) v Thorpe Campbells Holdings Limited (1) and BAI (Run Off) Limited (In Scheme of Arrangement) (2), Claim No HQ06X02919

Anita Gayle Fleming (1) and Joan Eddleston (2) v Norwich Union Insurance Company Limited (1) and Independent Insurance Company Limited (in provisional Liquidation) (2), Claim No HQ07X01388

Thomas Bates & Sons Limited v BAI (Run Off) Limited (In Scheme of Arrangement), Claim No HQ07X00744

Municipal Mutual Insurance Limited v Zurich Insurance Company (A Company Incorporated in Switzerland) (1) and Adur District Council (2) and Others, Claim No HQ07X02055

Akzo Nobel UK Limited (1) and Amec PLC (2) v Excess Insurance Company Limited, Claim No HQ07X01800

Conclusion

Any insured, insurer or reinsurer has a short window of opportunity to influence the scope and management of these claims, which will have seismic effects on UK employer's liability claims on both insurers and reinsurers.

[Practice Direction: Employers' Liability Policy Trigger Issues \(transfer of existing and new claims to the central registry of the Queen's Bench Division and selection and assignment of lead cases\)](#)

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