

Higher penalties for H&S infringements

Mick Antoniw examines the new Health and Safety (Offences) Act, which increases penalties for safety offences

HOT ON the heels of the Corporate Manslaughter Act 2007, the Health and Safety (Offences) Act 2008 came into force in January this year.

The Corporate Manslaughter Act (CMCH) exposed the existing low level of fines being imposed in the magistrates and crown courts for breaches of the Health and Safety at Work Act 1974.

In the magistrates court, the maximum fine was £5,000. Average fines were barely over £4,000. As a result, many cases were referred to the crown court where there are unlimited fines. Even so, the average fine imposed in the Crown Court was just over £33,000.

The Hampton Review on Regulatory enforcement and Inspection, published in March 2005, concluded that: "Illegal operators have incentives to undercut honest businesses, partly because penalties are too low, absolutely but more wrongly because penalties imposed often do not reflect the commercial advantage a business has gained from non compliance."

The Macrory Report, a year later, adopted a similar stance.

So, after a number of failed attempts to increase the level of penalties for safety offences, a private member's bill, the Health and Safety (Offences) Bill 2007, received all party support and received royal assent in October 2008.

The Act increases the powers of the lower courts to fine companies but also gives the option in exceptional cases to impose sentences of imprisonment.

Fines are increased in the magistrate's courts to £20,000 for most offences. This will probably result in fewer cases being referred to the crown courts for sentence as the lower courts will be able to impose larger fines.

Under the new Act it will also be possible for the lower courts to sentence individuals who break health and safety laws to up to six months imprisonment. However, this is an exceptional penalty and the government's intention appears to be that it should be used sparingly and only in the most serious cases.

The Act also increases the number of offences that can be tried in the higher courts and makes imprisonment an option in more offences, but with the same caveat as in the lower courts.

Of course, the CMCH also increases penalties. Guidance from the Sentencing Guidelines Council is still awaited but is likely to result in significantly increased fines for the new offence of corporate manslaughter, as well as unlimited powers for courts to impose remedial orders (a form of corporate probation) and publicity orders.

While both the CMCH and the Health and Safety (Offences) Acts are welcome, increasing

the penalties makes little difference if the Health and Safety Executive (HSE) does not have the resources to properly investigate accidents and then to prosecute offenders.

The tables below show the decline in numbers of HSE inspectors and the corresponding decline in the number of prosecutions.

The current HSE consultation on its future strategy fails to address this fundamental issue. Unless it does, and the number of inspectors is not only brought back to pre-2004 but increased further still, then the imposition of new legislation and penalties will be little more than health and safety window dressing.

HSE's disappearing inspectors

HSE operational frontline inspectors

Year	All	Factory/ agriculture	Offshore	Nuclear
2004	1,483	852	146	148
2005	1,404	822	137	143
2006	1,328	763	122	133
2007	1,312	748	121	134
2008	1,238	706	116	127

HSE's failing enforcement record

Year	Offences prosecuted	Convictions	Worker deaths	Worker deaths (rate/100,000)
2003/04	1,720	1,317	236	0.8
2004/05	1,320	1,025	223	0.8
2005/06	1,056	840	217	0.7
2006/07	1,051	852	247	0.8
2007/08*	1,028	839	229	0.8

Figures are for workers (employees plus self-employed) *provisional figures. Source Hazards.

Making it easier to pursue insolvent firms

The government hopes to introduce legislation to make it easier for injured people to pursue insurers of insolvent employers. But its impact will be limited without an insurance fund of last resort, writes **Ian McFall**

IN THE current economic climate, workers are the biggest losers when employers declare themselves insolvent. Waiting at the end of the creditors' queue, statutory redundancy pay is scant relief for lost wages and benefits.

But what of the employees injured or made ill through work and needing to pursue a compensation claim against an insolvent employer?

Pursuing defunct companies for damages requires that company to be restored to the UK Companies Register.

It is a procedurally complex and costly operation but is a prerequisite to claimants establishing a right of action against insurers.

For victims of the fatal asbestos-related disease mesothelioma, the time taken to achieve the restoration can make all the difference to whether they are able to recover compensation in their lifetime.

But now the government has taken an important step towards making it easier to pursue insurers directly when former employers are or become insolvent.

By resurrecting a Bill first drafted by the Law Commission in September 2002, the Ministry of Justice plans to eliminate much of the procedural complexity and cost of restoring and pursuing defunct companies.

The Third Parties (Rights Against Insurers) Bill, if it becomes law, will enable claimants more easily to pursue insurers directly when their former employers are insolvent.

The Bill is being introduced to Parliament through a new procedure for Law Commission Bills and it is hoped that it will start its legislative passage this spring.

But pursuing an insurer directly depends on knowing who that insurer is. So, while Thompsons fully supports the Bill, its scope will be limited unless the government also establishes an Employers Liability Insurance Bureau (ELIB).

Hundreds of mesothelioma victims across the UK receive no compensation from the employer that caused their illness because the company has ceased trading and an insurer cannot be traced.

While the failure of some employers to obtain insurance is a problem, bigger still is the fact that, even though employers' liability insurance was compulsory since 1972, there was no requirement for employers or insurers to keep records until 1999. And there is no central record of historical employers' insurance policies.

Some insurance companies have also ceased trading while some have been taken over by other insurers.

The problem is compounded by the fact that increasingly asbestos claims are for people who worked for smaller employers – building contractors, plumbing and electrical firms for example – some of which were family businesses. The insurers of employers in the

shipbuilding, heavy engineering and manufacturing industry are usually well known or easier to trace than of firms that may only have traded for a short time and for which there may be no records.

And while the insurance industry runs its own voluntary "tracing scheme", it has been exposed as ineffective by a government report that disclosed that just 41 per cent of enquiries to the scheme were successful with more than 7,000 enquiries failing to trace an insurer.

An insurance fund of last resort for employer liability claims (modelled on the long-established Motor Insurance Bureau fund for victims of uninsured drivers), where the employer no longer exists and was either uninsured or the insurer cannot be traced, would ensure that people injured by that employer would still receive compensation.

It would pay out to around one in 10 mesothelioma sufferers or their families whose claims currently fail.

Nick Starling, the Director of General Insurance and Health at the Association of British Insurers, told BBC Radio 4 PM News on 17 October 2007 that the insurance industry was "committed to making sure that people who are affected by the deadly effects of asbestos, get their compensation quickly."

So Thompsons has called on the ABI to demonstrate that commitment by joining us in our campaign for an ELIB. After all, what's good enough for the motor insurance market is good enough for injured workers.

Without an ELIB, the well intentioned aims of the Third Parties (Rights Against Insurers) Bill will have limited impact for asbestos victims. The underlying problem of untraceable insurers, due to the insurance industry's failure to keep proper records, will remain.

Further details of the campaign at www.thompsons.law.uk/campaigns/campaign-for-an-ELIB.htm

After all, what's good enough for the motor insurance market is good enough for injured workers

Best foot forward

Keith Patten looks at the difficulties created by recent legal rulings on protective footwear

MANY TYPES of protective equipment are provided to workers to allow them to carry out their jobs safely. One obvious and common item of protective equipment is protective footwear.

What workers need to be given and when is dealt with by the Personal Protective Equipment at Work Regulations 1992. These define personal protective equipment (PPE) in very broad terms. But protective footwear is included.

It was not enough merely to issue the equipment and then hope for the best. It was its duty to ensure that the equipment was being used properly

The regulations impose obligations only on employers in relation to their employees. For an agency worker or contractor, therefore, the obligations to comply with these regulations lie on their actual employers, not on the operators of the enterprise in which they are working.

Crucially, the provision of PPE should always be a protection of last resort. The primary obligation on an employer is to try to control the risk in some other way. Only where that proves unsuccessful should they issue PPE against the risk.

So, if the risk is of something heavy falling on the worker's feet, the employer should not provide protective footwear until they have first considered whether or not they are able to remove the risk in the first place.

The core obligation, under Regulation 4, is to provide PPE that is suitable for the risks to which the worker is exposed. This means that, before the obligation kicks in, there does have to be some level of foreseeable risk, judged objectively and on the basis of the things the employer knew or should have known at the time of the accident, not with the benefit of hindsight.

In making these decisions, Regulation 6 obliges the employer to carry out a risk assessment to decide what equipment will be suitable. Therefore, although hindsight is not relevant, the employer is obliged to think proactively about possible risks.

When PPE is provided, there is also an obligation under Regulation 9 to give adequate information, instruction and training in the use of the equipment and, under Regulation 10, to ensure, so far as reasonable, that the equipment is used.

Therefore, the employer's obligations do not end with the provision of the PPE. They must seek to ensure it is used properly.

Maintain in good repair

Regulation 7 also obliges the employer to ensure that any PPE that is provided is maintained in good repair, though this has turned out to be a controversial provision.

A couple of key legal cases illustrate how the Regulations apply in relation to protective footwear. In the case of **Dye -v- William Lee Limited**, decided by Sheffield County Court in 2007, the worker suffered a burn injury when molten material fell onto his foot. He was provided with protective boots but the ones he was wearing were old and had a hole in them.

The employers sought to escape liability by blaming Mr Dye. They said he should not have been wearing old boots with a hole in them and that there were instructions issued not to wear old, worn boots.

The Judge rejected their argument and found for the claimant. It was not enough for the

employer merely to issue the equipment and an instruction and then hope for the best. It was its duty to devise and implement a proper system to ensure that the equipment was being used properly.

Such a system might include inspecting the PPE's condition and implementing measures for enforcing its proper use. So the employers' duty is a continuing one, which does not end when PPE has been provided.

In **Spence -v- South Tyneside MBC**, a Thompsons case for UNISON, Mr Spence, a refuse collector, was issued with boots that were uncomfortable for him and, by the end of his first shift wearing them, his left foot was badly swollen and inflamed.

The Judge accepted our argument that the requirement under Regulation 4 to provide PPE

Comment

Fytche has watered down the protection provided by these Regulations. The problem is that it is a decision of the House of Lords and therefore binding on lower courts.

One possible way around this, still to be explored fully in the courts, is to argue that work boots are not just PPE, but are also work equipment covered also by the Provision and Use of Work Equipment Regulations, which impose separate and, it appears, stricter, maintenance obligations in respect of defective work equipment.

Whether the courts will allow **Fytche** to be circumvented by this route remains to be seen. As it stands, the House of Lords has placed a significant restriction on worker protection by its interpretation of these regulations.



which was suitable, included ensuring that it fit the wearer properly. The boots clearly did not, and therefore were not suitable.

Notably however, the judge found the claimant to be 50 per cent to blame for his injury, and reduced his damages accordingly, because, the Judge said, he had failed to make enough of a fuss about his discomfort at the time.

Controversial decision

As said above, the obligation in Regulation 7 to maintain PPE in good repair has proved controversial. This is as a result of the majority decision of the House of Lords in **Fytche -v- Wincanton Logistics (2004)**.

Mr Fytche drove a milk tanker for the defendants. In sub-zero temperatures he got stuck in snow on a country road and set about clearing it to get himself moving again.

He was provided with a pair of steel toe-capped boots. Unfortunately, one of these had a tiny hole and freezing water leaked in resulting in mild frostbite in his little toe.

The reason the boots were supplied was to protect his feet from something heavy, like a milk churn, falling on them. They were

Once a piece of PPE has been provided, the obligation is to keep it in good repair from a health and safety point of view

not designed or intended for use in the wet or in extreme weather conditions. Mr Fytche had not noticed the tiny hole before the incident.

Mr Fytche argued that the obligation under Regulation 7 was to keep PPE in good repair. The boots were PPE and were not in good repair because they had a hole in them. Therefore, he said, Regulation 7 had been breached.

The House of Lords did not agree. It ruled that the duty to maintain applied only in respect of those aspects of the equipment that made it PPE – the risk that they were issued to prevent.

The boots were provided to protect against crushing injuries. The hole did not make them unsuitable for that purpose and so there was no breach of the regulations. While it was true that the hole was a defect, they were not designed to be waterproof and so that defect did not make them unsuitable as PPE in this context.

But, as one of the dissenting judges pointed out, that is not what the Regulations say. Once a piece of PPE has been provided, the obligation is to keep it in good repair from a health and safety point of view.

That must apply to the piece of PPE as a whole, in this case the whole boot. The part of the boot designed to protect against crushing injuries is the steel-toe cap, but it is meaningless to talk about the steel toe-cap in isolation from the rest of the boot.

Psychiatric injuries in the emergency services

Emergency services workers are likely to witness tragic and traumatic scenes during their careers. **Ben McBride** looks at the difficult issue of claiming compensation for the psychiatric injuries suffered as a result

CLAIMING COMPENSATION for trauma suffered after being involved in a shocking event has been described as the law “most overdue reform” in personal injury and criticised as a “patchwork quilt of law”.

Judgments after public disasters such as Hillsborough have demonstrated the will of the courts to limit the numbers of those who can recover compensation for the effects of witnessing tragedy caused by negligence.

Issues remain about the legal “status” of emergency service workers as victims of

It is because the courts divide victims into two main categories that it is not straightforward for emergency services workers who suffer trauma to claim damages

negligence in these situations and the law is constantly changing.

First what is an injury for which damages can be awarded?

What is psychiatric injury?

If someone is pre-occupied about a terrible event to the extent that they are having flashbacks or sleepless nights or general feelings of stress, anxiety or depression, it has clearly affected them.

However, there are strict guidelines for psychiatrists in coming to a medical conclusion as to whether these feelings amount to a psychiatric injury.

Unless a claimant “passes” the guidelines and receives a clear diagnosis of psychiatric injury, then a court will not award compensation.

Who qualifies for compensation?

It is because the courts divide victims into two main categories that it is not straightforward for emergency services workers who suffer trauma to claim damages.

The “primary” victim

If someone negligently threatens another’s physical safety then the law is clear that the victim can recover compensation for any injury that follows, even if that injury is only a psychiatric injury that the negligent party might not have foreseen.

In the case of **Page -v- Smith [1996 AC155]**, a road accident victim in a minor road crash suffered no physical injury but found his

chronic fatigue syndrome was significantly worsened by the event.

He was able to recover damages because it was foreseeable that he would suffer some injury when someone negligently drove into his car and it did not matter that this was a relatively obscure psychiatric injury rather than the more predictable physical injury.

The “secondary” victim

This is where the courts draw the line on who can receive compensation.

In most traumatic incidents there will be onlookers who are not directly involved in that there is no physical threat to them. They may however, understandably, suffer trauma and, possibly, a psychiatric injury as a result of what they have seen.

Horrible events such as at the Piper-Alpha oil rig and the Hillsborough football stadium, in which hundreds of people died as a result of the negligence of others, were witnessed by thousands of people – both at the locations from a relatively safe distance and on TV.

The courts said that, if someone were an onlooker with no risk of physical injury, then they could only recover compensation if:

- they had a close relationship with a primary victim (a person who suffered serious injury or death) and
- they witnessed the event through their unaided senses rather than through the media.

Given that the “close relationship” requirement once excluded a man from compensation when he witnessed his brother die, it makes it particularly difficult for an emergency services worker to claim even if they



Photo: John Harris, reportdigital.co.uk

have witnessed a close colleague suffer serious injury at first hand, unless they too had reason to fear for their safety.

In the aftermath of the Hillsborough disaster, the court ruled in **Frost -v- Chief Constable of South Yorkshire Police (1999)** that emergency services workers who were not at risk of physical injury, that is primary victims, must be secondary victims to receive compensation.

Given the likely public reaction to the many police officers who witnessed the unfolding horror of Hillsborough being awarded compensation when members of the public were not, especially as the police were themselves being sued for negligence, this ruling was not surprising.

But it did make it very difficult for other emergency services members to claim for psychiatric injury caused by witnessing traumatic events.

But it is still possible to argue for compensation.

Rescuers and emergency services

In a case pursued by Thompsons on behalf of three firefighters who witnessed the death of colleagues in the course of fighting a fire (**Cullin -v- London Fire and Civil Defence Authority, 7 July 1999**), the Court of Appeal said that the test for compensation for rescuers in the emergency services was whether they could reasonably be said to have been in possible physical danger, or reasonably thought they were even if it turned out not to be the case.

If they passed that test of a reasonable belief of danger to themselves in the course of fighting the fire, it did not matter legally that what actually caused their later psychiatric injury was witnessing events that did not directly threaten their health or that were not directly caused by the negligence.

So the fact that the awful realisation of the deaths of their colleagues, caused in part by the negligent way in which the fire was fought,

came when they were relatively safe did not exclude them from compensation as they could reasonably be said to have been in danger during the same event.

Criminal injuries

It is also possible to receive compensation via the Criminal Injuries Compensation Authority (CICA) which administers the government scheme that pays out to those injured by crimes of violence, including arson.

Many traumatic events witnessed by emergency service workers will have been caused by a criminal act. There are similar restrictions on qualification for a CICA payment as there are for civil damages. Thompsons has a specialist department able to advise on such claims, which can be made at the same time as a claim against a negligent party involved in the same incident.

There is a time limit of two years from such an event to make claim.

Compensation for injury

There are many misconceptions about what can be claimed when someone suffers an injury. Nikki Sharp explains what someone might expect to receive in compensation for their accident or disease

WHEN SOMEONE is injured at or away from work, or is diagnosed with a work-related illness, it is important that they understand what compensation they may be entitled to claim.

Various factors will influence the amount of damages that a court will award. This is the calculation that a personal injury solicitor will base a compensation claim on.

These include:

- severity of injury ie loss of limbs or senses, ligament damage
- duration of pain and suffering
- prominence of injury ie its visibility
- need for ongoing treatment

- future deterioration
- pre-existing conditions such as arthritis, made worse by injury.

The more severe the above factors are, the higher the damages are likely to be, though where there is a pre-existing condition, this may reduce the value of the claim.

General & Special Damages

An injured person is entitled to be compensated for the pain and suffering and for the “loss of amenity” experienced as a result of the accident and injury. This means the effect of the injury

on the individual’s ability to carry out everyday activities such as housework, DIY, to look after themselves, to carry on with their hobbies and sporting activities and generally to enjoy life.

These are known as general damages. It is also possible to claim general damages for future losses, which, it is calculated, will be suffered as a result of the injury, such as an inability to work or the loss of promotion prospects.

Special damages are claimed for out-of-pocket expenses that result from the accident, such as damage to clothing and property, loss of earnings, travelling to receive treatment,

Two people may suffer whiplash injuries in the same road traffic accident but the level of damages they receive are likely to be different

prescriptions and the costs of care such as help around the home. These are easier to claim if receipts are kept to show they have been incurred.

Procedure

When the injured person has been referred to a solicitor through the union's legal service and their claim has been assessed, a medical report from a doctor who is an expert in the type of injury or disease will be obtained. This will confirm or provide a diagnosis and will be used to evaluate the amount of compensation that might be claimed.

The medical report must, however, support the claimant's case that the injury was caused as a result of the accident or the disease as a result of exposure to a particular substance for it to be used.

It is also still necessary to establish that liability for the accident lies with the other party – the employer – whatever the medical report concludes.

Assessing damages

Assessing how much should be claimed for an injury is an imprecise art with every case turning on its own facts. A monetary value has to be put on the pain and suffering and also on the prognosis and impact on earnings and future earnings. The claimant's personal circumstances, such as their age and marital/family circumstances, are all factors in assessing a claim.

No two cases will be the same. Two people may suffer whiplash injuries in the same road traffic accident but the level of damages they receive are likely to be different since they are unlikely to suffer identical pain and losses.

While damages are intended to restore the injured person to the position they were in prior to the accident, they often fail to do so.

Judicial Studies Board

Solicitors and Judges do have guidance to go on when assessing how much compensation a particular type of injury or disease is likely to be worth. They will look at previous awards for similar types of cases. And they will also check the guidelines issued by the Judicial Studies Board (JSB).

The JSB guidelines are only that, but they do provide an indication as to how much should be claimed for a certain type of injury, according to its severity.

Case 1

Mrs J was working as a hospital cleaner. During the course of her duties and as she was walking through the ward she slipped on a patch of water on the ward floor, fell and injured her right ankle. An entry was made in the accident book and she was referred to A&E. An x-ray revealed no fracture but severe bruising and ligament damage.

She was signed off work for four weeks and required assistance around the home from her partner with cleaning, housework and other general chores. She also took prescription painkillers for four weeks.

The hospital's insurer admitted liability. A medical report was obtained that confirmed the circumstances of the accident and that Mrs J would continue to have symptoms for 12 months from date of the accident.

The claimant was awarded £3,500 general damages, which was for the pain and suffering and loss of amenity as she was unable to pursue her hobbies of walking and ballroom dancing.

In addition, a figure was negotiated for special damages for lost earnings, prescriptions and gratuitous care.

Comment: If Mrs J had suffered a fracture or more serious injury, the risk of incomplete recovery, the ankle giving way or the development of osteoarthritis might have resulted in damages up to £8,750.

A permanent injury to the ankle with a deformity would have given her £32,000 to £44,500 general damages, not including special damages.

Case 2

A school kitchen assistant received minor burns when removing hot pies from an oven in a school kitchen. No protective gloves had been provided.

Medical treatment was not required but an accident report was completed. The kitchen assistant suffered pain for two weeks but no permanent scarring.

The school admitted liability and the claim for compensation was settled for £1,000.

Comment: Damages can be recovered for what may appear to be quite trivial injuries but which have been caused by the negligence of the employer or other party. Members should not be deterred from claiming because the injury is minor. By claiming they are likely to expose the breach of health and safety regulations and ensure that a similar accident does not happen again.

Hidden dangers ruin lives

Judith Gledhill, Thompsons' head of personal injury, explains the difficulties of proving the impact of invisible fumes at work

MANY WORKERS are unwittingly being exposed to hazardous substances through breathing in fumes at their workplaces.

Fumes from noxious chemicals can cause a variety of diseases including bladder cancer, lung disease and damage to internal organs.

Fume exposure compensation claims are among the most complex and challenging cases that a personal injury lawyer encounters. Not only is it necessary to prove that the employer is liable for the exposure, but also that the exposure caused or made a material contribution to the development of the disease.

What legal protection does a worker have?

Exposure to fumes at work is covered by the Control of Substances Hazardous to Health Regulations (COSHH). The definition of what amounts to a substance "hazardous to health", is extremely wide and includes: solvents, oils, dust, hair dyes, pesticides, paint and other material containing chemicals.

COSHH Regulation 7 states that every employer shall ensure that the exposure of employees to substances hazardous to health is either prevented or, where prevention is not reasonably practicable, adequately controlled.

Regulation 6 says every employer must carry out a risk assessment before permitting any employee to carry out work where employees are exposed to substances hazardous to health.

This appears straight forward. It is clear that employers must carry out risk assessments and either prevent the fume/chemical exposure or provide sufficient personal protective equipment (PPE) to prevent or minimise exposure to the lowest level possible.

But many employers faced with claims deny liability on the basis that they took reasonable steps to prevent exposure to the hazardous

substance, that the exposure to the substance was within relevant exposure limits and that there were other causative factors resulting in the development of the disease.

Proving liability and causation

It is down to the claimant – the person made ill by the exposure – to prove that their employer was negligent or in breach of their legal duties and that, as a result, they developed a disease.

Causation and liability need to be established. That means obtaining the evidence to prove that it was the exposure to the fumes or chemicals at work that caused the disease, and also that the employer was liable for that exposure taking place.

Proving causation can be complicated. Some diseases are caused by numerous factors, not all of them occupational. For example there is a known association between bladder cancer and cigarette smoke. Many workers who were exposed at work to chemicals such as beta-naphthylamine, which are capable of causing bladder cancer, also smoked cigarettes.

Proving whether it was the smoking or the beta-naphthylamine that caused the bladder cancer involves significant investigative work. Scientific and medical research papers need to be studied, documents obtained from the defendants and evidence has to be commissioned from a variety of experts on the disease.

Establishing liability also involves gathering evidence in the form of reports from expert medical witnesses, consultant engineers, chemists and other experts with specific knowledge of the chemical substance and the impact it can have on the human body.

These experts will consider how the claimant was exposed, the extent of the exposure and

the PPE and other safeguards the employer did or could have provided to comply with their legal obligations. Reference will frequently be made by the expert to relevant research papers and studies.

A major difficulty is that exposure to fumes and similar substances has often taken place over a number of years. So the claimant has to provide information about work processes and substances used going back twenty to thirty years. Witnesses may have disappeared, trade names for the substances may have changed and product information sheets may no longer be available. It is therefore vital that experts with a detailed knowledge of the work process and chemicals used are instructed.

Thompsons acted for Tom Owenson. Mr Owenson was employed with a firm of printers, initially as a maintenance engineer and subsequently as a printer. As a maintenance engineer he was employed in the solvent recovery plant where toluene was "recovered" from the air taken away from the printing presses by large extraction units. This air was heavily contaminated with toluene.

Mr Owenson's work included carrying out running repairs, dealing with breakdowns and repairing a solvent filter bank.

He confirmed that, when he worked on the solvent recovery plant, there was always a strong smell of toluene. When working on certain processes, he would frequently experience dizziness, feel giddy and his eyes would smart from the smell of the solvent.

These symptoms are indicative of excessive toluene exposure.

In 2000, Mr Owenson started to feel unwell. He saw his GP and was referred to a consultant nephrologist who examined him, recorded details of his exposure to toluene and concluded that, while he was suffering from kidney disease, it was not a type related



Photo: John Harris, reportdigital.co.uk

to toluene exposure. The consultant said it was safe for Mr Owenson to continue working as a printer with continued exposure to toluene vapour.

Mr Owenson continued to work and continued to experience fatigue and muscle cramps. He was referred to Thompsons by his trade union in 2001.

Expert evidence was commissioned from a consultant nephrologist with expertise in kidney damage caused by toluene exposure. In his opinion, the toluene had had a major effect on Mr Owenson's kidney function and advised Mr Owenson to minimise his exposure to toluene.

Mr Owenson stopped work and was eventually granted ill health retirement.

A compensation claim made to his former employer was met with a blanket denial of liability. They denied that they had exposed Mr Owenson to excessive levels of toluene and that the toluene had caused or made worse his kidney disease.

After reports were obtained from occupational chemists and hygienists, the defendants conceded that, from time to time, they had exposed Mr Owenson to hazardous levels of toluene.

Notwithstanding this concession they continued to deny that the exposure had caused or contributed to the development or worsening of the kidney disease. This was never conceded and was subject to an intense battle and the need to rely on numerous experts on both sides.

Reports were obtained on Mr Owenson's behalf, from experts both from the UK and abroad, who provided evidence that exposure to toluene could cause or make any pre-existing kidney damage much worse.

Significant reliance was placed on the results of studies carried out to consider the evidence of links between the development of kidney disease and toluene exposure.

The defendants obtained evidence from experts with a different opinion who relied on the results of different studies. Eventually, after a lengthy legal process, Mr Owenson's case settled for a considerable sum in November 2008.

Comment

Knowledge about the dangers of different chemicals is constantly changing and developing. Claims involving "Gulf War Syndrome" are based on claimants alleging that they have developed a variety of symptoms from the cocktail of drugs that they were given prior to being dispatched to the Gulf.

Proving that the claimants' symptoms are related to and have been caused or contributed to by a particular drug or a cocktail of drugs is difficult.

Many workers who have previously been exposed to hazardous substances may not link their disease with exposure to substances at work. Medical practitioners may not ask questions about occupational exposures to chemicals when confronted with bladder cancer, kidney disease or other illnesses. It is, however, extremely important that, when such a disease develops, thought is given to historical working practices and exposure to chemicals and other substances in the work place.

Exposure to vapours and fumes from chemicals at work can cause long-term adverse health problems. These dangers really are "hidden" and the consequence of exposure are sometimes not seen for many years.

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Design: www.rexclusive.co.uk

Cover picture: John Harris/reportdigital.co.uk

Print: www.dsicmmgroup.com

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