

McPolin, Laura

From: Oonagh McClure (Thompsons Solicitors) [OonaghMcClure@Thompsons.law.co.uk]
Sent: 02 September 2010 12:17
To: McPolin, Laura
Subject: FW: Pleural plaques
Attachments: Thompsons McClure response draft damages final.doc

Dear Laura

I attach our response to the Consultation. I hope this will be of assistance.

Yours sincerely
Oonagh McClure

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06/09/2010

The Draft Damages (Asbestos-related Conditions) Bill (Northern Ireland) 2010

Response from Thompsons McClure Solicitors

September 2010

About Thompsons and Thompsons McClure Solicitors

Thompsons is the UK's most experienced trade union and personal injury law firm. It has a network of 28 offices across the UK, including the separate legal jurisdictions of Northern Ireland and Scotland.

In Northern Ireland the firm operates as Thompsons McClure Solicitors.

Thompsons and Thompsons McClure act only for trade union members and the victims of injury, never for employers or insurance companies. At any one time, the firm will be running 70,000 personal injury claims.

The firm participates regularly in government consultations on legislative issues.

As a firm Thompsons has acted in almost every major asbestos test case in the UK and at any time we will be acting for hundreds of people and their families claiming compensation for asbestos related disease. In the Pleural Plaques test litigation we were instructed on behalf of Unite the Union in the lead test case of *Johnston v NEI International Combustion Limited* and also represented Mr Grieves, one of the other three appellants in the House of Lords.

The draft Bill

We welcome the decision by the Department of Finance and Personnel to go with option 3 put forward in the 2008 consultation, to restore symptomless pleural plaques as an actionable condition. The publication of the draft Bill will be a relief to the many people in Northern Ireland for whom pleural plaques represents a physical marker of irreversible asbestos induced damage to their lungs and, despite the absence of symptoms, causes very real worry that they may develop a fatal illness.

However, we are concerned that the draft Bill as it stands will leave a finite but important category of claimants without compensation – those whose cases were struck out by the Courts or were discontinued or withdrawn as a result of the House of Lords decision in 2007. We put forward a suggested amendment to the Bill in our response to the consultation questions below.

Consultation issues

1. Do you think the Bill will achieve the objective to ensure that claims for asymptomatic pleural plaques, pleural thickening and asbestosis can continue to be brought in Northern Ireland?

Yes the Bill will achieve the objective going forward, but the way it has been drafted means that it may leave those whose claims were struck out, withdrawn or discontinued after the House of Lords ruling without a remedy.

2. Do you think the Bill will achieve the objective to ensure that claims which could not be brought or progressed because of the Johnston case and which might be time-barred can still be brought?

No.

In Northern Ireland pleural plaques claims on which court proceedings had been commended prior to the Court of Appeal decision in January 2006 were stayed pending the House of Lords appeal. Following the House of Lords ruling the defendants were entitled to apply for those stayed cases to be struck out or discontinued or to insist they were withdrawn.

The situation in Scotland was different. The Scottish government announced soon after the House of Lords ruling in 2007 that it would introduce a Bill to ensure that the judgment did not take effect in Scotland. Cases issued in the Scottish courts have remained stayed.

It could be argued that the Northern Ireland cases which were struck out, discontinued or withdrawn were (as per part 3(1)(b) of the Bill) "determined" and are therefore excluded from the protection of the Bill. To avoid this unintended consequence for a finite group of pleural plaques sufferers we suggest the following amendment to **part 3, Limitation of actions**:

3. —(1) This section applies to an action of damages for personal injuries—

(a) in which the damages claimed consist of or include damages in respect of—

(i) asbestos-related pleural plaques; or

(ii) a condition mentioned in section 2(2) which has not caused, is not causing or is not likely to cause impairment of a person's physical condition; and

(b) which, in the case of an action commenced before the date this section comes into force,

(i) has not been determined by that date, or

(ii) has been struck out, withdrawn or discontinued after 17 October 2007 on the grounds that it disclosed no cause of action.

3. Do you think the provisions in the Bill are human rights compliant?

Yes.

4. Do you agree with the department's conclusion that the provisions in the Bill are Section 75 compliant and that an EIA is not required?

Yes.

5. Do you agree with the department's conclusions about the likely impacts of the Bill?

Yes.

Further information:

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