

Asbestos Compensation Update: Time Limits, Alternative Therapy Costs and an Update on Hospice Claims

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What Does the 3 Year Time Limit Mean for People Diagnosed with Asbestos Diseases?

In 1984, a patient had "a transient bout of chest pain" which led to investigations over three years. The doctors noted the presence of pleural thickening but concluded that this was not the cause of the chest pain. No malignancy was then found.

In 2008 his symptoms recurred and he was diagnosed with bilateral diffuse pleural thickening. The Court of Appeal upheld the trial judge's finding that there was no knowledge of significant injury to start the clock running until 2008 when the patient was told he had pleural thickening.

Lloyd v Hoey, Court of Appeal September 9, 2011

In another recent case, a man was diagnosed with pleural plaques in 2002. At that time, pleural plaques attracted compensation. He did not commence a claim within 3 years and then, in 2005, the law changed to prevent compensation for pleural plaques. In late 2005 the Claimant was diagnosed with asbestosis. He began a claim in 2007. His employer argued that he should have started a claim within 3 years of his diagnosis with pleural plaques. The Court decided, and the Court of Appeal agreed, that the patient did not know that he had a compensatable illness until 2005 and so that is when the time clock started to run. The claim was allowed.

Preston v BBH, Court of Appeal October 6, 2011

Both of these decisions will help people diagnosed with asbestos diseases.

Costs of Alternative Therapies

A judge has recently allowed a man suffering with mesothelioma to recover compensation for the costs of alternative therapy treatment including photodynamic treatment and the costs of taking medication obtained online. He also underwent chemotherapy. The court made it clear that it was not endorsing the treatment provided at the clinic. Although there was no evidence that the treatment had extended life expectancy, it was held not to be unreasonable for the Claimant to seek this experimental treatment in the face of a painful disease with a poor prognosis.

Najib v John Laing Plc, QBD October 2011

Hospice Cost Claims

Lyons Davidson has now successfully recovered compensation for the costs of hospice care within two mesothelioma claims. Tens of thousands of pounds will be paid to hospices.

This is following the dropping of the appeal we told you about in our last mailing. Patients and their families are delighted to be able to help hospices in this way.

