

Hansard: Amendments agreed 19th July 2006.

Compensation Bill

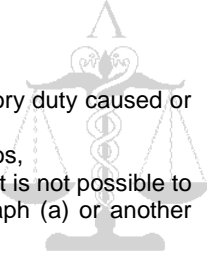
The effect of the Barker judgement was reversed within a matter of weeks. This Bill provides that joint and several liability applies to these kinds of claims.

The bill was amended in response to the Barker judgement, regarded by politicians as unjust on the grounds that it could have the effect of delaying or denying full compensation. The active clause:

“Mesothelioma: damages

(1) This section applies where-

- (a) a person (“the responsible person”) has negligently or in breach of statutory duty caused or permitted another person (“the victim”) to be exposed to asbestos,
- (b) the victim has contracted mesothelioma as a result of exposure to asbestos,
- (c) because of the nature of mesothelioma and the state of medical science, it is not possible to determine with certainty whether it was the exposure mentioned in paragraph (a) or another exposure which caused the victim to become ill, and
- (d) the responsible person is liable in tort, by virtue of the exposure mentioned in paragraph (a), in connection with damage caused to the victim by the disease (whether by reason of having materially increased a risk or for any other reason).



(2) The responsible person shall be liable-

- (a) in respect of the whole of the damage caused to the victim by the disease (irrespective of whether the victim was also exposed to asbestos-
 - (i) other than by the responsible person, whether or not in circumstances in which another person has liability in tort, or
 - (ii) by the responsible person in circumstances in which he has no liability in tort),

and

- (b) jointly and severally with any other responsible person.

(3) Subsection (2) does not prevent-

- (a) one responsible person from claiming a contribution from another, or
- (b) a finding of contributory negligence.

(4) In determining the extent of contributions of different responsible persons in accordance with subsection (3)(a), a court shall have regard to the relative lengths of the periods of exposure for which each was responsible; but this subsection shall not apply-

- (a) if or to the extent that responsible persons agree to apportion responsibility amongst themselves on some other basis, or
- (b) if or to the extent that the court thinks that another basis for determining contributions is more appropriate in the circumstances of a particular case”.

Comment

The Bill allows the claimant to obtain full compensation from any one of any number of defendants including those who were responsible for periods of both negligent and non negligent exposure.

Clause 4 allows the defendants to determine contributions in whatever way they can agree. This would be after it had been agreed as to the extent of contributory negligence on the part of the claimant. It may be that one day this includes assessment of different kinds of asbestos, different exposure intensities and different degrees of relevance of exposure, but time-on-risk is pragmatic.

The claimant has no incentive to provide the defendant with a full employment history or any other exposure history.
