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No Embargo Time

Successful mesothelioma claim after insurance denial

A 76 year old grand-father from Halewood, Merseyside has succeeded in his claim for compensation for the asbestos related cancer, mesothelioma, after insurers of his past employer initially denied being on cover.



Ronnie Cadwallader at home.

Following the settlement Mr Cadwallader commented:-

“My case proves that the insurance scheme for trying to trace policies just doesn’t work, it is totally hit and miss.”

Ronnie Cadwallader was very fit and active before he developed mesothelioma. He had never had any serious illnesses in the past and people often commented that he looked many years younger than his actual age. He went swimming most days in his local pool and had a wide social network, with a keen sense of humour and a zest for life. He especially enjoyed spending time with his 9 year old grand-daughter.

He developed chest pain in September 2007 and underwent various investigations including a biopsy. This led to the devastating news on the 30th November 2007 that he had mesothelioma, the same day as his son’s birthday. Since then he has bravely and stoically battled against the illness for over 2 years, whilst trying to bring a claim for damages against his former employers at the same time.

He was exposed to asbestos in his former work as a welder/metal worker. His duties involved stripping off asbestos lagging on pipes, turbines, boilers, etc when carrying out various maintenance and repairs. However, the two firms who were responsible for exposing him to asbestos have stopped trading and went out of business many years ago. He initially instructed local solicitors who tried to trace the previous employer liability insurers of one of his employers, Carolina Engineering Ltd. This included making an application in January 2008 to the Association of British Insurers under their voluntary Code for tracing insurers. The response was negative.

He instructed us in June 2009 and we submitted a fresh enquiry to the ABI. This time the response came back positive confirming that Zurich was on risk for a period of his employment between 1950-1955 and 1957-1960. Armed with this information we urgently pressed on with the claim. We started court proceedings using a fast track system and obtained a quick judgment for liability against his employer, who produced no evidence to deny the claim, resulting in a prompt payment of interim damages of £50,000. If we had accepted the original ABI advice at face value then the claim would have failed and no damages would have been recovered.

The case was listed for trial on the 10th November 2009. An initial offer from the defendant was refused, but following negotiations an improved offer of £140,000 was accepted. After government benefits that Ronnie had already received were deducted, he will get damages of just over £115,000 in his hand. From when we took over the case it took us just over 4 months to settle the claim, but Ronnie's claim had not been able to proceed until we traced the insurers and if we had not submitted another ABI search then the case would probably have failed.

Ronnie was delighted with the settlement and commented:-

“My family and I can't thank Kevin Johnson and his team at John Pickering and Partners enough. The support and understanding they showed whilst dealing with this complex and difficult matter was outstanding. My case proves that the insurance scheme for trying to trace policies just doesn't work, it is totally hit and miss.”

Ends

Editor's Notes

The local solicitors who initially dealt with the claim submitted an unsuccessful application to the ABI in January 2008. It is not clear what changed in the period between the first ABI search and our enquiry in June 2009 to lead to such a totally different result. Many believe that the ABI scheme lets down asbestos victims badly.

Even though Ronnie Cadwallader was eventually able to recover compensation, this case provides ample evidence of the failings of the ABI scheme.

Employer liability (EL) insurance has been compulsory by law since 1972, and many employers had EL cover in place prior to this date. However, there is no system for recording historical EL insurance policies, which means that if employers are defunct then asbestos sufferers or other victims of disease or injury may face massive difficulties in tracing an insurer to meet their claim. Many people are denied their rightful compensation because of this failure by the insurance industry to keep adequate records, when otherwise they would have a perfectly valid claim.

Some of the insurance details of larger employers like ship-repairers and other heavy industry, or lagging companies who have faced many past claims, may already be known. However, this is not the case with all employers and many asbestos sufferers and other people with serious illness and injuries go uncompensated because of the failure of insurers to ensure that their records were retained.

The ABI's own website advises that enquiries should only be re-submitted:

“...if you find out new information, such as dates of employment that fall outside of those you originally submitted, or a different name for the employer at the time the claimant was employed.”

http://www.abi.org.uk/EL_Code/Employers_Liability_Tracing_Service_Frequently_Asked_Questions.aspx.

In the case of Ronnie Cadwallader and several other claimants that we have acted for, this advice is plainly wrong. Perhaps the worrying issue is how many claims have gone uncompensated when initial ABI responses came back negative and this surely begs the question; when, if ever, can the ABI tracing scheme be relied upon with any confidence?

The DWP Review Statement on the ABI Code for 2006-2007 found that an average of 35% of insurance traces were successful during this period. The average was a modest 41% for recent policies issued after 1999 (when laws were introduced making it compulsory for employers to retain insurance records) and 39% for post-1972 policies. For searches prior to 1972, the figure was a hugely disappointing 25%. Given the long latency periods for many industrial diseases, such as mesothelioma for example, which often takes 30-40 years or more to come to light; this abject failure to trace pre-1972 policies is a compelling indictment of the Code's failings. Success rates have been consistently poor in recent years, with only 23% of searches being successful in 2004-2005. For more information about the DWP review of the ABI Scheme for 2006-2007 follow this link <http://www.dwp.gov.uk/docs/elci-codeofpracticestatement2006-07.pdf>.

We believe that the ABI tracing scheme has failed and is not fit for purpose. Since its inception in 1999 success rates have been consistently poor. In recent years it was not uncommon for claimant advisors to fail to receive any reply at all when they had submitted applications under the scheme. As Ronnie Cadwallader's case shows, the scheme simply cannot be relied upon. How can claimant advisors accept a negative response at face value from the scheme given such obvious failings? The ABI has tried to introduce some improvements to the scheme such as a designated point of contact in mesothelioma enquiries, but we say that this amounts to tinkering with a system that is fundamentally flawed. The ABI tracing scheme is voluntary. There are no sanctions or penalties for insurers who fail to comply. Indeed, some would question why insurers would consider it is in their own best interests to commit significant resources to the scheme, especially in such parlous financial times, when their only "reward" for such diligence is a potential civil action against an employer that they once insured and who is now defunct and without assets. Surely the lessons of the credit crunch and the banking and other financial sectors must be learnt; that self-regulation does not offer sufficient protection for the public.

We believe that the only way to help asbestos sufferers and other innocent injured victims is to set up a statutory fund similar to the Motor Insurers' Bureau (MIB). The MIB pays compensation to victims where drivers were uninsured or untraced through a levy on the insurance industry. We fully support the campaign for an Employers' Liability Insurance Bureau (ELIB). Just like motor insurance, employer liability insurance is compulsory by law (since 1972), so the moral and legal case for ELIB is compelling. The government is currently looking into this issue and we call upon the government to urgently introduce legislation to make ELIB possible. Anything short of ELIB is not acceptable to the innocent victims who will continue to go uncompensated.

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About John Pickering and Partners LLP

John Pickering and Partners LLP- Specialist [mesothelioma compensation](#) solicitors

We are a specialist personal injury law firm. We have been handling claims for industrial disease for over 30 years. Most of our work involves acting for asbestos disease victims. We only act for the sufferers of asbestos diseases and never act for the organisations that caused the asbestos exposure or their insurers. We have an ethical approach and pledge to donate 10% of our net profits every year to good causes that help asbestos sufferers.

[Click here](#) to find out about our donations to good causes. We have also been involved in most of the landmark judgments that shape this area of law. Find out more [about us](#) or find out about [our reported cases](#). We are on the panels of several asbestos support groups and are ranked highly by legal guides. [Click here](#) to find out more about what others have said about us.

[John Pickering and Partners LLP](#) is a niche legal practice that has represented Claimants in the leading asbestos "test cases" in the last ten years. The firm represented Sylvia Barker in *Barker v Corus (UK) Plc*, a case that highlighted the legal tactics of employers and insurers trying to cut back their compensation liabilities to mesothelioma sufferers, and which prompted the amendment of the Compensation Act 2006 to ensure full compensation for mesothelioma claims. The firm represented two of the three Claimants in the *Fairchild appeal*, in which the insurance industry tried unsuccessfully to block compensation altogether for mesothelioma sufferers unable to identify which of two or more sources of asbestos exposure had caused their illness.

The firm represented Alice Jefferson, a mesothelioma sufferer, whose illness and compensation claim against Cape Asbestos were featured in the important documentary "*Alice: A Fight For Life*." Shown by Yorkshire Television in July 1982, the programme was an important catalyst for legal change and public awareness of the plight of mesothelioma and other asbestos disease sufferers and a prompt for important legal reform.

Mesothelioma is a type of cancer that affects the lining of certain bodily organs. It most commonly affects the lining of the lungs (the pleura) but it can affect other areas including organs in the abdominal cavity (the peritoneum).

According to the [British Lung Foundation](#), more than 2,000 people are diagnosed with mesothelioma every year in the UK and there is one mesothelioma death every five hours. The number of deaths from mesothelioma increased from 153 in 1968 to 1,969 in 2004 and is expected to peak at 2,450 between 2011 and 2015.

The [British Lung Foundation](#), supported by John Pickering and Partners LLP, launched the first Action Mesothelioma Day on 27th February 2006, to raise awareness about mesothelioma, to improve the treatment and care of mesothelioma patients, and to lobby for better funding for research into mesothelioma and for the protection and education of people who work with asbestos.

If you need advice about an asbestos related illness, [contact us](#) now for information about making a claim for compensation.

[Contact us](#) to find out more about your entitlement to claim compensation if you have been diagnosed with mesothelioma or another asbestos related condition.