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Excerpt

Robert Hatten

From: Christiane G. Burrell

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To: Will Harty; Robert Hatten

Subject: Excerpt Excerpt British Asbestos Newsletter: During the relevant period (1952-1957), a reasonable employer would and should have known that asbestos dust was "highly dangerous."

"The Merewether and Price Report (1930), the Asbestos Industry Regulations (1931), Section 47 of the Factories Act (1937), Annual Reports of the Chief Inspector of Factories in 1938, 1943, 1949, and 1956, correspondence from the Chief Inspector of Factories to shipbuilding and ship repairing companies in 1945 and to power station companies in 1949 and 1954 were used to support the conclusion that **during the relevant period, a reasonable employer would and should have known that asbestos dust was "highly dangerous."** Citing the judgment in the Margerison v Roberts case, Machell echoed Justice Russell's comments: "liability only attaches to these defendants if the evidence demonstrated that they should reasonably have foreseen a risk of some pulmonary injury, not necessarily mesothelioma." Forced to choose between the precedents of Gunn v Wallsend Slipway & Engineering Company Limited (1988) and Owen v IMI Yorkshire Copper Tube (1995), Machell opted for the later agreeing that the dangers posed by asbestos were "sufficiently uncertain in their extent and effect, in the 1950's, for employers to be under a duty to minimise exposure." The risk from substantial and regular exposure to asbestos could not be "brushed aside as far-fetched." Shell was negligent; simple precautions were not taken, expert advice was not sought. "If proper care had been taken in considering the potential circumstances of a marine engineer's work, in the context of the available literature, these exposures would not have continued unprotected. In reality, Shell (in common with many employers) did not give a second thought to their marine engineers' potential exposure to asbestos dust." Pauline Chandler, Mr Jeromson's solicitor, said: "Since the judgment was given I have been contacted by a number of marine engineers who... were actually employed by Shell and are concerned about their own future health because they can identify with the description of work given by the Claimant's witnesses in this case. This judgment would benefit not only them but lots of other people who have had limited, intermittent or occasional exposure to asbestos during their working lives." During Mr Dawson's employment with Cherry Tree, he was occupationally exposed to dry asbestos fibres at regular intervals. Between 1946 and 1948, he prepared and applied six batches of asbestos flock to dry cleaners' presses every week. The case against Cherry Tree succeeded under Regulation 2 of the Asbestos Industry Regulations 1931 which stipulate that "mixing or blending by hand of asbestos shall not be carried on except with an exhaust draught effected by mechanical means so designed and maintained as to ensure as far as practicable the suppression of dust during the processes." Machell agreed with the interpretation of the term, "as far as practicable" as given in Brooks v Coates, 1984 by Justice Boreham: "I take practicable in this context to mean a precaution which could be taken or undertaken without practical difficulty." As the provision of an exhaust draught to suppress the dust would not have necessitated any practical difficulties, the claimant established a breach of Regulation 2 ..."

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