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Robert Hatten

From: Christiane G. Burrell
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Subject: John Crane: Applicable statutory law

The following two English statutes apply to employees exposed to asbestos dust in the 1960s:

Section 63(1) of the Factories Act 1961 (re-enacting Section 47(1) of the Factories Act 1937):

"In every factory in which, in connection with any process carried on, there is given off any dust or fume or other impurity of such a character and to such extent as to be likely to be injurious or offensive to the persons employed, or any substantial quantity of dust of any kind, all practicable measures shall be taken to protect the persons employed against inhalation of the dust or fume or other impurity and to prevent its accumulating in any workroom, ..."

Section 47(1) of the Factories Act 1937:

"In every factory in which, in connection with any process carried on, there is given off any dust or fume or other impurity of such a character and to such extent as to be likely to be injurious or offensive to the persons employed, or any substantial quantity of dust of any kind, all practicable measures shall be taken to protect the persons employed against inhalation of the dust or fume or other impurity and to prevent its accumulating in any workroom, and, in particular, where the nature of the process makes it practicable, exhaust appliances shall be provided and maintained, as near as possible to the point of origin of the dust or fume or other impurity, so as to prevent it entering the air of any workroom."

Please note below excerpt from British caselaw:

The defendant breached its statutory duty to safeguard the deceased from exposure to asbestos during his employment at its wood mill and breached the common law duty to provide him with a safe place to work.

ANTHONY EATON (AS ADMINISTRATOR OF THE ESTATE OF MICHAEL JOHN EATON, DECEASED) v JAMES LATHAM PLC (2004)

QBD (McKinnon J) 11/2/2004

The claimant alleged that the death of the deceased was due to exposure to asbestos during the deceased's employment with the defendant and sought relief under the Law Reform (Miscellaneous Provisions) Act 1934. The deceased had been employed by the defendant in the boiler house of its wood mill between 1961 and 1964. The boiler house contained asbestos lagging that was not maintained properly. The claimant contended that the deceased was exposed to asbestos dust and fibres emanating from asbestos lagging and that the defendant was in breach of its duty of care in failing to take any measures to protect him.

HELD: The deceased worked in the boiler house regularly and often. His duties involved a number of dry sweepings per day. The asbestos lagging was not maintained and the hot conditions in the boiler house caused the asbestos lagging to crumble. Relatively minor disturbances to the asbestos lagging released respirable fibres and resulted in the deceased being exposed to asbestos. The probability was that this had led to the deceased's mesothelioma. The Factories Act 1937 and 1961 applied to the boiler house. There was no dispute that the risk of harm was foreseeable. There was no evidence that anyone from the defendant company gave any thought to the presence of asbestos and the defendant was in breach of its common law duty to provide the deceased with a safe place of work. Judgment for claimant.

"Lawtel": 16.3.04

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