

High Court Dismisses Asbestos Contribution Claim

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Author: Kam Jaspal

On 25 October 2022, the High Court handed down judgment in the case of *BAE Systems Marine Ltd v Alfa Laval Ltd* [2022] EWHC 2686 (KB) dismissing BAE's claim for contribution pursuant to section 1(1) of the Civil Liability (Contribution) Act 1978. Kam Jaspal, instructed by Clyde & Co, represented the Defendant. A link to the judgment can be found [here](#).

In the substantive claim, it was alleged that at some time between 1969 and 1975, the deceased, who worked as a design engineer specialising in water filtration systems, had worked at the Barrow-in-Furness dockyard, which was owned and operated by BAE. It was alleged that during the period when the deceased had worked at the Barrow dockyard, he had been exposed to asbestos when working on at least two of the Royal Navy's vessels (a Type 42 Destroyer known as "HMS Sheffield" together with an unidentified submarine).

As part of its defence to the substantive claim, BAE made averments including the following:

1. That it was highly unlikely that the filtration system which the deceased had been charged with designing and overseeing would have been assembled inside the hull as late as 1974.
2. That in any event, any filtration system and/or pipework servicing that system would not have required insulation.
3. That an asbestos survey from a similar Type 42 Destroyer, "HMS Cardiff" (HMS Sheffield's sister ship) made no reference to any pipework being lagged with asbestos insulation.
4. That any asbestos used at the dockyard in the 1970s was restricted to compressed asbestos fibre which was used in gaskets between sections of pipe. Reliance was placed upon the Slee Report.

Notwithstanding the contents of its defence to the substantive claim, BAE went on to settle the deceased's mesothelioma claim and then sought a contribution from Alfa Laval in the sum of £190,696.12. In order to succeed with the contribution claim, BAE needed to show that the deceased had been exposed to asbestos during quite a narrow period coinciding with his employment with Alfa Laval at the Barrow dockyard.

The claim for contribution was denied and many of the averments which had originally been made by BAE in the defence to the substantive claim were adopted by Alfa Laval.

Each party was given permission to rely on a report from an Occupational Hygienist. Those experts agreed, amongst other things, that at the time of the deceased's employment with Alfa Laval:

1. It was likely that most lagging installed in the UK would have been asbestos free.
2. That cold water systems were not typically insulated with asbestos containing insulation.
3. That the MOD had chosen to move away from the use of asbestos lagging, where practicable, from around the mid to late 1960s (HMS Sheffield was launched on 10 June 1971).

The Court did not have the benefit of any evidence from a naval expert and the Occupational Hygienists were unable to assist with questions including:

1. When it was, during the ship building process, that the filtration system was likely installed (and more specifically, when it was that the filtration system was installed in relation to the laying down, commissioning and launching of the ship).
2. Whether the filtration systems were anything other than cold water systems (i.e. whether any of the pipework would even have required lagging).

The claim for contribution ultimately failed. BAE failed to prove that the deceased was exposed to asbestos during the period when the deceased was employed by Alfa Laval at the dockyard.

HHJ Lickley KC (sitting as a Judge of the High Court) found that the evidence the deceased had provided (and upon which BAE relied) was of limited value and that there was no other independent evidence to support the contention that HMS Sheffield was fitted with a filtration system that had been designed and installed by the deceased. Nor was there evidence that such a system involved a hot component that required insulation or evidence of when, during the ship or submarine building process, any filtration system would have been installed.

The Judge found that the deceased was most likely exposed to asbestos at the dockyard in the early 1970s, at which time he was not employed by Alfa Laval.

This case highlights the importance of marshalling robust and relevant evidence in support of a claim for contribution. In this specific case, the court may have been assisted by evidence from a naval expert. That may also be the position in other cases arising from alleged asbestos exposure in the ship building industry.

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