

1965 is the Watershed: Watt v Lend Lease Construction (Europe) Ltd

Posted On: 08/03/2022

Author: Philip Turton

Philip Turton considers the decision of Lord Uist in the Scottish mesothelioma case of *Watt v Lend Lease Construction (Europe) Ltd* [2022] CSOH 23, an interesting decision from north of the border (judgment [here](#)).

Nicola Watt was the widow of James Watt who died of mesothelioma in 2017. She brought a claim against his former employers, who had previously been Bovis Construction Ltd ("Bovis"). Mr Watt had been employed by Bovis as a joiner for six months in 1963, working on the construction of shop premises and being exposed to asbestos dust as a result. In a statement taken during his lifetime, the deceased described work building a car park to which he and other joiners fitted asbestos ceilings, cutting asbestos sheets to be used as ceiling tiles which generated dust. The fixing of the tiles, constructed from about 15-20 asbestos sheets, generated more dust, which blew down onto his face when he was working above head height. The work occupied a period of 3-4 days during which time work with the sheets was constant. No protective equipment was provided.

On the basis that the risk of mesothelioma was not widely known until the publication of the Newhouse and Thomson paper in 1965, Lord Uist directed himself that the issue in question was that of foreseeability. The straightforward question, the Defenders having taken no step to measure or guard against asbestos exposure, was whether they should have reasonably foreseen at the time that the exposure gave rise to a risk of asbestos related injury, which was then generally thought to be associated with heavy exposure giving rise to asbestosis. Lord Uist did not consider that an employer such as Bovis would have been aware of more specialist papers available in medical publications which had begun to be published from about 1960. The watershed was 1965, which came after the period of the deceased's employment.

In reviewing the authorities in the area, which the judge considered turned on their own facts, he placed weight upon the decision of Swift J in *Abraham v G Ireson and Sons (Properties) Ltd* [2009] EWHC 1958 (QB). The degree of exposure in the present case also being short-lived and light, the Defenders could not have been aware, prior to 1965, that asbestos exposure at the level which the deceased described gave rise to a risk of injury. In the premises Bovis could not have appreciated a risk of injury and their failure to take appropriate precautions to safeguard Mr Watt was not negligent. Similarly, they would not have appreciated that the exposure was "*likely to be injurious*" so as to give rise to a breach of the dust provisions in regulation 20 of the Construction (General Provisions) Regulations 1961, nor was it reasonably practicable for them to have taken steps under that provision.

This case, which is dependent on its facts, serves to emphasise the importance of the 1965 watershed and the difficulty Claimants face in relation to low exposure prior to that date.

Downloaded From:

<https://ropewalk.co.uk/blog/1965-is-the-watershed-watt-v-lend-lease-construction-europe-ltd/>