

How his administration of mesothelioma claims, particularly with reference to his Practice Direction, improved the mesothelioma claims process? Essentially, we would like to know what works well and why.

I recognised early in the existence of the asbestos list in the QBD in 2002, that to the vast majority of claims there is no defence with any real prospect of success yet previously it was commonplace for every issue to be defended and claimants run right up to trial thus enabling defendants to be make unrealistically low offers in respect of damages. Many victims were dying before the issue of liability could be disposed of.

The primary purpose of the mesothelioma list is to enable the issue of liability to be determined as early as possible on a summary basis, something that is possible in 97 – 98% of cases. Once liability is resolved as an issue the case can proceed, after interim payment of damages, to an assessment of damages. Less than 1% of claims that go to assessment fail to settle before an assessment hearing.

Living Victims

A summary judgment on liability issues allows an order for an interim payment to be made to living victims hopefully before death. I should stress that it is **not** the aim necessarily to have total resolution of the claim in the case of living victims before death (though this does happen in many cases). This is because many claims are worth a great deal more on a fatal basis and the settlement of those claims before death would put dependants at a significant disadvantage. In such cases (following Court of Appeal authority) the assessment of damages will be held over till after death, but the issue of liability will have been disposed of during lifetime at a point when the living victim will often be able to clarify the evidence. In other cases the victim will die after judgment on liability has been given and the claim will then have to be re-pleaded on a fatal basis. This can usually be done without undue delay and the matter timetabled to assessment. Therefore the essence of the system is the early elimination of liability as an issue so that an interim payment of damages and costs can be ordered.

Deceased Victims

The same case management principles can be applied to claims in which the victim is dead. The urgency is less but the opportunity to streamline the claims and eliminate liability as an issue at as early a stage as possible is still there. This promotes savings in costs and reduces the burden on the court's resources.

Show Cause

The speedy and summary resolution of liability is achieved by a court imposed summary judgment filter, known as the “show cause” procedure. Once the claimant has produced sufficient evidence to establish exposure in breach of duty, the evidential burden shifts to the defendant to produce the evidence on which it relies to demonstrate that it has a real prospect success in its defence. The overall burden of proof remains on the claimant. In fact it is the existence of the procedure rather than its actual use that promotes early elimination of liability issues. It has made defendants make an earlier and more pragmatic set of decisions as to whether to

pursue defences. The result is that in the vast majority of claims judgment is entered and a timetable to assessment set at the first and what is usually the only 30 minute Case Management Conference hearing the court has to conduct, or the defendants are given some extra time to make a decision and, if they decide not to show cause judgment is entered automatically. Those comparatively infrequent claims that need a hearing at which the defendants will show cause add a further hour or hour and a half. The show cause procedure is normally conducted on a 'costs in the case' basis. There is no risk on costs to defendants who attempt to show cause. There are some rare cases where it is obvious from the start that there is a defence and they tend to be timetabled straight to trial. A proportion of cases, maybe 10 percent will need a second Case Management Conference of 30 minutes because everything could not be concluded at the first Case Management Conference. Overall the use of the court's resources in comparison with other types of claim is very small. The vast majority of claims need no more than a 30 minute hearing. All hearings except assessments of damages and trials are held on the telephone to save costs.

All of this also promotes speedy resolution by settlement and occasionally by trial. The aim in most cases is to come to a resolution within 6 months of issue. The average is probably more in the region of 8 months.

What works well therefore is (1) the show cause procedure (2) the universal use of telephone Case Management Conferences (3) the extensive use of email for the promulgation of documents by parties and by the Court in the course of the litigation (3) the standardisation of procedures (4) the certainty of outcomes that tends to be produced by a consistent expert approach to the management of the claims.

The Senior Master

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