



IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Claim No. HQ06X02919

BETWEEN

**RUTH MELANIE FERN (PERSONAL REPRESENTATIVE OF THE ESTATE
OF LESLIE EDWIN SCREACH (DECEASED))**

Claimant

-and-

**(1) THORPE CAMPBELLS HOLDINGS LIMITED
(2) BAI (RUN OFF) LIMITED
(IN SCHEME OF ARRANGEMENT)**

Defendants

-AND-

Claim No HQ07X01388

BETWEEN

**(1) ANITA GAYLE FLEMING
(2) JOAN EDDLESTON**

Claimants

-and-

**(1) NORWICH UNION INSURANCE COMPANY LIMITED
(2) INDEPENDENT INSURANCE COMPANY LIMITED
(IN PROVISIONAL LIQUIDATION)**

Defendants

-AND-

Claim No. HQ07X00744

BETWEEN

THOMAS BATES & SON LIMITED

Claimant

-and-

**BAI (RUN OFF) LIMITED
(IN SCHEME OF ARRANGMENT)**

Defendant

-AND-

Claim No. HQ07X02055

BETWEEN

MUNICIPAL MUTUAL INSURANCE LIMITED

Claimant

-and-

**(1) ZURICH INSURANCE COMPANY
(A COMPANY INCORPORATED IN SWITZERLAND)
(2) ADUR DISTRICT COUNCIL AND OTHERS**

Defendants

-AND-

Claim No. HQ07X01800

BETWEEN

**(1) AKZO NOBEL UK LIMITED
(2) AMEC PLC**

Claimants

-and-

EXCESS INSURANCE COMPANY LIMITED

Defendant

**PRACTICE DIRECTION
EMPLOYERS' LIABILITY POLICY TRIGGER ISSUES**

**(TRANSFER OF EXISTING AND NEW CLAIMS TO THE CENTRAL
REGISTRY OF THE QUEEN'S BENCH DIVISION AND
SELECTION AND ASSIGNMENT OF LEAD CASES)**

Application

1. This Practice Direction applies until further notice to any Claim in which:
 - 1.1 an Employers' Liability insurance policy ("the Policy") has been or is alleged to have been provided to an employer ("the Insured") for a period of insurance ("the Period of Insurance") during which the Insured exposed an employee to asbestos;
 - 1.2 after the expiry of the Period of Insurance, the employee has been diagnosed as suffering from mesothelioma;
 - 1.3 the Insured has been alleged or held to be liable to the employee in respect of the mesothelioma as a consequence of the exposure during the Period of Insurance;
 - 1.4 the Policy wording was expressed as providing Employers' Liability cover in respect of injuries and/or diseases "sustained" or "contracted" or "occurring" (or some similar wording) during the Period of Insurance;

and an insurer contends (whether by way of claim, defence or counterclaim) either

- (a) that such Policy wording does not oblige the insurer to indemnify the Insured in respect of the insured's liabilities to the employee arising from the employee's development of mesothelioma ["the EL Policy Trigger Issue"], or
- (b) that such Policy wording obliges the insurer which was on risk at the time that the mesothelioma first began to develop, to indemnify the Insured.

Existing Claims in the High Court

- 2 Any Claim to which this Practice Direction applies which was commenced in the general list of the Central Registry of the Queen's Bench Division prior to the date on which this Practice Direction was issued shall,

following filing of a defence, be assigned in the first instance to Master Whitaker for the purposes set out below.

- 3 Any Claim to which this Practice Direction applies which was commenced in the High Court of Justice prior to the date on which this Practice Direction was issued but which is proceeding otherwise than in the general list of the Central Registry of the Queen's Bench Division shall be transferred, following the filing of a defence, to the general list of the Central Registry of the Queen's Bench Division and assigned in the first instance to Master Whitaker for the purposes set out below. Solicitors should act promptly in making any applications necessary for such transfer pursuant to CPR Parts 30.2 (4) and 30.5. Such applications are to be made by letter drawing attention to this Practice Direction and no application notice pursuant to CPR Part 23 need be issued. The Court may, in any event, make an order for transfer on its own initiative at any stage in the proceedings pursuant to CPR Parts 3.1.2(m) and 3.3.1(1).

Existing Claims in the County Court

- 4 Any Claim to which this Practice Direction applies which was commenced in a County Court prior to the date on which this Practice Direction was issued shall, following the filing of a defence, be transferred to the general list of the Central Registry of the Queen's Bench Division and assigned in the first instance to Master Whitaker for the purposes set out below. Solicitors should apply promptly to transfer such cases pursuant to Section 42(1) of the County Courts Act 1984. Such applications are to be made by letter drawing attention to this Practice Direction and no application notice pursuant to CPR Part 23 need be issued. The Court may make an order for transfer on its own initiative at any stage in the proceedings pursuant to Section 42(3) of the County Courts Act 1984 and CPR Parts 3.1.2.(m) and 3.3.1 (1).

New Claims

- 5 Any new Claim to which this Practice Direction applies shall be commenced in the general list of the Central Registry of the Queen's Bench Division pursuant to CPR Part 7.
- 6 Any such Claim shall be assigned in the first instance to Master Whitaker (or if assigned to another Master shall be re-assigned to Master Whitaker) for the purposes set out below.
- 7 Any new Claim to which this Practice Direction applies which is issued in the High Court or the County Court otherwise than in accordance with paragraph 5 above shall, following the filing of a defence, be transferred to the general list of the Central Registry of the Queen's Bench Division, whereupon it shall be assigned in the first instance to Master Whitaker for the purposes set out below. Solicitors should act promptly in making any

applications necessary for such transfer pursuant to CPR Part 30.2.4 and/or CPR Part 30.5 and/or Section 42(1) of the County Courts Act 1984. Such applications are to be made by letter drawing attention to this Practice Direction and no application notice pursuant to CPR Part 23 need be issued. The Court may in any event make an order for transfer on its own initiative at any stage in the proceedings pursuant to CPR parts 3.1.2(m) and 3.3.1(1) and/or Section 42(3) of the County Courts Act 1984.

Assignment to Master Whitaker

8 Upon a Claim being assigned to Master Whitaker in accordance with this Practice Direction:

- 8.1 The Claim will be recorded on a Register to be maintained in the Central Office of the Queen's Bench Division by Master Whitaker;
- 8.2 Master Whitaker will consider the issues raised in the Claim and determine (if necessary after considering representations made by the parties) whether:
 - (a) such Claim should be referred to Mr Justice Burton for consideration by him as to its suitability for inclusion as part of a group of lead cases in which the EL Policy Trigger Issue falls to be determined ("the Lead Cases"); or
 - (b) such Claim should be stayed pending the conclusion of the trial of the Lead Cases.

Assignment to Mr Justice Burton

9 The following cases shall be assigned to Mr Justice Burton for the purposes of future case management and trial:-

- 9.1 *Ruth Melanie Fern (Personal Representative of the Estate of Leslie Edwin Screach (Deceased) v Thorpe Campbells Holdings Limited (1) and BAI Run Off Limited (In Scheme of Arrangement) (2)* [Claim No. HQ06X02919];
- 9.2 *Anita Gayle Fleming (1) and Joan Eddleston (2) v Norwich Union Insurance Company Limited (1) and Independent Insurance Company Limited (In Provisional Liquidation)(2)* [Claim No. HQ07X01388];
- 9.3 *Thomas Bates & Son Limited v BAI (Run Off) Limited (In Scheme of Arrangement)* [Claim No. HQ07X00744];

9.4 *Municipal Mutual Insurance Limited v Zurich Insurance Company (A Company Incorporated in Switzerland) (1) and Adur District Council (2) and Others* [Claim No. HQ07X02055];

9.5 *Akzo Nobel UK Limited (1) and Amec PLC (2) v Excess Insurance Company Limited* [Claim No. HQ07X01800]

These 5 cases shall form part of the Lead Cases.

10 Mr Justice Burton shall be assigned to manage and try all the Lead Cases. Any interim applications in respect of the Lead Cases

10.1 shall be heard by Mr Justice Burton or, upon his direction

10.2 by Master Whitaker.

11 Mr Justice Burton shall determine, after consideration with the parties listed at paragraph 9 above and such other interested parties as he may direct:-

11.1 whether any Claim referred to him by Master Whitaker should form part of the Lead Cases;

11.2 upon application, on notice, by any party to other interested parties, whether a Claim which raises similar issues to those set out in paragraph 1 above in relation to other industrial diseases should also form part of the Lead Cases;

12 Mr Justice Burton shall have power to extend the definition of “the EL Policy Trigger Issue” set out in paragraph 1 above to encompass any Claim or Claims arising out of any disease other than mesothelioma in which:

12.1 an Employers’ Liability insurance policy (“the Policy”) has been provided to an employer (“the Insured”) for a period of insurance (“the Period of Insurance”) in respect of which period, it is asserted, the Insured incurred a liability to an employee in respect of the disease in question;

12.2 the employee has developed the disease in question;

12.3 the Insured has been alleged or held to be liable to the employee in respect of the disease in question as a consequence of any act or omission on the part of the Insured during the Period of Insurance;

12.4 the Policy wording was expressed as providing Employers' Liability cover in respect of injuries and/or diseases "sustained" or "contracted" or "occurring" (or some similar wording) during the Period of Insurance;

and an insurer contends (whether by way of claim, defence or counterclaim) that such Policy wording does not oblige the insurer to indemnify the Insured in respect of the insured's liabilities to the employee arising from the employee's development of the disease in question.

13 The selection of the cases which shall form part of the Lead Cases (in addition to those set out at paragraph 9 above) shall be made by 12 October 2007.

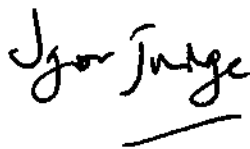
14 Any applications in relation to EL Policy Trigger Issues shall be made on notice to Mr Justice Burton.

Failure to Comply

15 Any delay or increase in costs occasioned by unjustified failure to comply with this Practice Direction may be considered on assessment of costs.

Making of this Practice Direction

16 The making of this practice direction has been approved, in relation to the County Courts, by Lord Phillips of Worth Matravers, Lord Chief Justice of England and Wales.



The Rt Hon Sir Igor Judge
President of the Queen's Bench Division

26 July 2007