



GUIDE TO PLEURAL PLAQUES

What are Pleural Plaques?

The most **common injury** caused by **asbestos exposure** is **pleural plaques**, which **appear** as white or yellow **thickening** on the **pleura**. They often appear frequently bilateral (involving both lungs) and symmetric and occur particularly on the posterolateral chest wall between the 5th and 8th ribs, over the mediastinal pleura and on the dome of the diaphragm.

Pleural plaques typically **develops 20-30 years after exposure** and appear more commonly if the patient has had exposure to asbestos heavily or over a long period of time. They develop in, as many as, **50% of asbestos exposed workers**, but may also occur after low dose exposures.

Studies indicate that **patients with extensive pleural plaques** do have **restricted lung function** and presumptions. This is often presumed the result of underlying asbestosis that x-rays have not detected.

Unlike pleural thickening, **x-rays can easily detect** the well defined margins of **pleural plaques**.

It is not possible to claim compensation for pleural plaques in England and Wales. The law will shortly change in Scotland to enable victims to continue to claim compensation through the courts.

Read the case law overleaf to find out more information.

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The Rothwell decision

The verdict

On 17 October 2007, the House of Lords **rejected** the **claims** of innocent **victims** of asbestos who received a **pleural plaques diagnosis**.

They rejected the claims on the basis that they had **not suffered** a “**compensatable injury**”. The House of Lords attempted to differentiate between what they saw as:

- **serious asbestos** conditions (mesothelioma, lung cancer, asbestosis, etc) and,
- pleural plaques which they considered **less serious**

The law lords stated that as **pleural plaques** is considered **less serious**, people with the disease could **not recover compensation** for their condition.

To date a small number of people have made claims, but thousands of people across the UK will feel the effects this decision has on their case. This is provoking worries among many people about the **consequences** for them as to whether they can **claim compensation** for their injury.

Some of the Judges' comments give **hope** to people with **pleural plaques** even though the House of Lords unanimously rejected Claimant's cases.

Sign our online petition against the ruling (<http://supportservices.simpsonmillar.co.uk/office/petition/default.aspx>).



Background to the case

Prior to the case people who with exposure to asbestos had regularly received a successful compensation claim for pleural plaques.

Pleural plaques refer to a type of scarring to the lung wall caused by inhalation of asbestos dust and fibres. Often the victims' exposure fell due to knowing or reckless behaviour by their former employer or landlord and this action gives rise to the individual's right to seek compensation through the courts. The basic principal of **UK law** states that if a **person exposes** someone else like an **employee** or **tenant** to an **obvious risk of harm**, the **victim** has a

right to make a **claim** if they become **injured**.

However, **pleural plaques** rarely cause **symptoms** and only **detectible** via **x-ray** or **CT scan**. Therefore many victims only **receive** the **diagnosis** during the course of **other routine medical investigations**. The Court's decision now **threatens** the ability of thousands of people to **claim compensation** for their injury.

Today's news will no doubt **devastate** many thousands of innocent **victims** of asbestos and their families. A diagnosis of **pleural plaques** **condemns** a person to a **lifetime** of **never knowing** when a more **serious condition** could **occur**. This impacts on their loved ones as much as it does them.

It is a real human tragedy that the health and wellbeing of 1000s of people living with pleural plaques for 30-50 is being ignored. They will find no consolation in the House of Lords ruling.

Where do we go from here?

Many people will **not give up** the fight. People diagnosed with this condition, their families, support groups, trades union and lawyers will now look to the **Government** to **right this wrong**. We urge you to add your support by signing our online petition (<http://supportservices.simpsonmillar.co.uk/office/petition/default.aspx>) which we intend to present to parliament.

Pleural Plaques – Can I claim?

If you were diagnosed with pleural plaques more than 3 years ago and have not made a claim

What the Judge said

Lord Craig paragraph 49 and 50

“Pleural plaques are a form of injury but they are **not harmful**. They do not give rise to any symptoms nor do they lead to anything else which constitutes damage...I would apply the proposition for the purposes of the Limitation rules. Time has not yet begun to run against any Claimants who may have the misfortune of developing an asbestos related disease in the future”

What this means

Previously **anyone diagnosed** as suffering from **pleural plaques**, (eg on a routine x-ray), insurers argued that the **3 year period** within which their **claim** must be brought had started to **run** from the **date of diagnoses**. Often claimants were **reassured** that they had **nothing to worry about**, many were not even told by their doctors that pleural plaques had been found. Consequently a significant proportion of people **suffering** with **pleural plaques** have **not made a claim** until they go on to be **diagnosed** with a **more serious asbestos disease** such as pleural thickening. If more than **3 years elapsed** since the **discovery** of pleural plaques and

the **onset** of the more **serious illness**, insurers have **argued** that the **claim** is **statute barred**. In the light of the House of Lords decision this will **no longer be the case** and to that extent should help some claimants.

Do you have a claim for breach of contract?

What the Judge said

Lord Craig paragraph 59

“I share the regret expressed by Smith LJ that the claimant’s who are at risk of developing a harmful disease and have entirely genuine feelings of anxiety as to what they may face in the future, should be denied a remedy. But they have **not yet sustained an injury** for which the law can give them a remedy in damages. The question whether employees may have a remedy against their employers in contract has not been explored in the present context...There may be room for the development of the common law in this area”

Lord Scott of Foscote at paragraph 74

“Each of the appellants was employed under a contract of service. Each of the **employers must surely have owed its employees a contractual duty of care**. I would have thought that it would follow that the **employers** were in **breach of the contractual duty**. Damage is the gist of a

negligence action in tort but damage does not have to be shown in order to establish a cause of action for breach of contract. All that is necessary is to prove the breach”

What this means

- Every **employer owes a duty of care** to his employees, which is sometimes set out in writing in a contract of employment; unwritten or "implied" terms by law
- All **contracts** of employment contain an **implied term** that the employer will take steps to **protect** the health and safety of the **employee**
- If the **employer knowingly or recklessly exposes** the employee to harmful **asbestos** dust, a **breach** of the implied term **has occurred**
- If the employee is **later diagnosed** with pleural plaques that would constitute **evidence of breach of duty**

Where a breach in contract has occurred, the Law will either try to put the:

- **claimant** back in the **position prior to the breach** of contract, or
- in the position **prior** to the **contract** itself

Precedents exist for compensation awards for breach of contract where no actual damage (or injury) occurs. For example claims against tour operators regularly include an element of compensation intended to reflect loss of enjoyment of the holiday,

even though the holiday maker may never suffer any actual harm or financial loss.

Lord Scott goes on to make the point that **time limits** are imposed on claiming for **breach of contract**. Time limits:

- claim for **breach of contract is 6 years** from the **date of the breach**,
- **3 years** for a **personal injury claim**

In the case of an employee exposed to asbestos by his employer, in all probability **the 6 years** would have **expired** long before the **detection** of pleural plaques, so **difficulties** lie on how the House of Lords envisage their comments providing assistance to claimants. Claims by people **without a contract of employment**, for example the **wife** who **washed** her husband's dusty **overalls** or the child sitting on their parent's knee, are **not viable**.

Nevertheless it would seem from their Judgements that the House of **Lords do not rule out the possibility of claims** for breach of contract being made by pleural plaques victims against their former employers. This is likely to be a **developing area of law** about which we will keep our clients closely informed.

Pleural Plaques – Symptoms

If you have pleural plaques or pleural thickening with symptoms:

What the judge said

Lord Hoffman (at paragraph 21)

“The question is whether the claimant has suffered damage. That means “is he **appreciably worse off** on account of **having plaques**? The rare victim whose plaques are causing symptoms is worse off on that account.”

Lord Rodger of Earlsferry (at paragraph 88)

“There is a small risk that, if the number of plaques increases, they may then cause the claimants some discomfort”

What this means

After the Court of Appeal Judgement on 26th January 2006 most insurers **refused** to deal with any **claims** for **pleural plaques or pleural thickening irrespective** of whether the individual claimant **suffered symptoms**. They treated all claims the same and simply **refused to pay out** on the basis all of these non-compensatable conditions.

However, Lord Hoffman and Lord Rodger clearly accept that some Claimants, albeit in a minority, **suffer symptoms from pleural plaques**.

Their Lordships made no distinction between:

- **pleural plaques** - isolated areas of scarring on the inner lining of the lung, and
- **pleural thickening** - an extended area of scarring and thickening on the inner lining of the lung

Most Consultant Chest Physicians accept that **heavy areas** of pleural plaques and pleural thickening may well **cause symptoms** of pain and chest tightness as the restricted lung expands and contracts.

If you **suffer from pleural plaques or pleural thickening** and **have symptoms** of pain or chest tightness we advise you to **contact your GP** and ensure these symptoms get recorded in your notes. We also advise you to **seek legal advice** as soon as possible.



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