



# WORKING TOGETHER

**MAY NEWSLETTER 2011**

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## WELCOME TO THE MAY EDITION OF WORKING TOGETHER.

After most of us enjoyed an extended Easter break, our thoughts now turn to summer.

In this edition, we review recent decisions including the ruling by the Court of Justice of the European Union (CJEU) which states that from December 2012, insurers will be unable to charge different premiums on the basis of the insured person's gender.

We also look at the continued casualties of the latest round of Government cuts, one of which is the 35% slash to the Health & Safety Executive (HSE) budget, which has resulted directly in the abandonment of the HSE "The Hidden Killer" campaign. The stated aim of "The Hidden

Killer" campaign was to raise awareness about the danger of asbestos exposure, within the workplace, home or environment.

The implications of the New Family Procedural Rules mean that the Court is not willing to hear a family or matrimonial case until the parties have tried to mediate and agree settlement between themselves. We review what this will mean to individuals.

Finally, we also detail our continued fund-raising efforts on our charities page, in addition to separate articles on our sponsorship of the Sick Children's Trust and also Dominic Hurley – a Paralympic hopeful!

## THE COURT OF JUSTICE OF THE EUROPEAN UNION

The Court of Justice of the European Union (CJEU) has ruled that from December 2012, insurers will be unable to charge different premiums on the basis of the insured person's gender.



Historically, insurers have used gender to assess the financial risk when fixing insurance premiums as statistical evidence has shown that sex does have a bearing on the size and frequency of claims. In particular with road traffic accident claims.

Maggie Craig, acting director general for the Association of British Insurers said: "This gender ban is disappointing news for UK consumers and something the UK insurance industry has fought against for the last decade. The judgment ignores the fact that taking a person's gender into account, where relevant to the risk, enables men and women alike to get a more accurate price for their insurance."



Young males are currently charged more for motor insurers than young female drivers due to statistics showing they are more likely to be involved in a serious accident. Figures show that a male driver under 21 is twice as likely to be involved in an accident than a female under 21. The ruling may see insurance premiums drop by 10% - 25% for young male drivers but rise by 25% for females under 25. This could lead to an increase of £500 - £1000 per annum for some motorists.

Adrian Webb of Esure said 'If young men's premiums are artificially reduced, this could lead to more opting to choose more powerful vehicles,' he said. "It is particularly alarming given that the head of the Association of Police Officers in the UK in 2005 noted that the biggest killer of young women in Britain is their boyfriend's and male friends' driving."

Motoring organisations are concerned this could lead to increased accidents.

At Simpson Millar LLP we have a specialised Road Traffic Accident department. For more information please visit our website or call us on 0800 634 1633.

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# ASBESTOS THE HIDDEN KILLER



One of the lesser publicised casualties of the latest round of Government cuts is the 35% slash to the Health & Safety Executive (HSE) budget, which has resulted directly in the abandonment of the HSE “The Hidden Killer” campaign. The stated aim of “The Hidden Killer” campaign was to raise awareness about the danger of asbestos exposure, within the workplace, home or environment.

The HSE has estimated that by 2040 there will have been 90,000 deaths caused by asbestos. That’s 90,000 preventable deaths. It is chilling to learn that the majority of these deaths are yet to come, because asbestos kills 30-40 years after first exposure to the deadly fibres, and asbestos and asbestos products are still very widespread.



The asbestos legacy is so vast that it is estimated that thousands of our schools, public buildings, commercial buildings and homes still contain asbestos, which if disturbed and inhaled has the potential to kill.

It is because of this legacy that it is so vital that the next generation of electricians, plumbers, builders, construction workers, architects, planners and works managers – to name but a few – are systematically educated about the dangers of asbestos.

As occupational disease lawyers we know only too well what it means to look into the eyes of someone who has been diagnosed with mesothelioma and witness their fear and bewilderment.

“Asbestos was everywhere – like snow - we didn’t know it was dangerous”; they will say, or “But we were told it was ‘safe’ asbestos”; or even “Everyone turned a blind eye, I didn’t think it would happen to me”

“Everyone turned a blind eye, I didn’t think it would happen to me”.

The widespread legacy of asbestos use in the past, and the daily danger this continues to present if the asbestos is disturbed is a message that needs to be conveyed to our young people and it is the duty of our Government to ensure that this is done. It is outrageous that the HSE campaign has been halted in this way.

Figures published recently indicate that deaths in the construction industry continue to rise. The reality behind these figures is that many of these deaths have been caused by asbestos and many more will occur in the future.

The current advice of the government is that an occupier is not in breach of duty provided any asbestos in their property is sealed away such that it cannot be disturbed, for example beneath tiling, or plaster. There is a requirement that a register of the location of asbestos is maintained to protect future workers.

But what happens when an occupier brings in sub-contractors many years later to alter the building or carry out refurbishment work? What happens if the register is lost or not kept up to date? There is no safe dose of asbestos.

Deaths from mesothelioma are expected to peak at around 2015-2016, with overall deaths caused by asbestos including asbestosis and lung cancer bringing the figure to nearer 4,000 per annum.

Deaths of construction workers in particular are expected to rise disproportionately to the total, largely because of the hidden legacy of asbestos in our buildings and environment.

Construction workers involved in renovation, refurbishment and demolition of 20th century buildings are most likely to be affected. For this reason education about the look and feel of asbestos, about its common uses, about its most likely location in older buildings and about the dreadful diseases that it can cause, remains as vital as ever.

Asbestos is not a problem of the past, more people will die in the next 12 months from asbestos related illness than any other workplace cause.



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# PLEURAL PLAQUES

**Simpson Millar is proud to have recovered in excess of £245,000 compensation for victims of pleural plaques under the Ministry of Justice extra statutory scheme announced by Jack Straw in the spring of 2010 just before the general election. The Scheme was introduced following the House of Lords (as it then was) decision in October 2007 not to reinstate pleural plaques as a compensatable condition.**

Until 26th January 2006 a diagnosis of pleural plaques was legally recognised as a condition compensatable in law and provisional awards ranged from around £5,000 to £10,000. Many thousands of claims were successfully pursued through the Civil Courts spanning a period of nearly 30 years.

Pleural plaques are permanent scarring to the lung walls and are usually only discovered incidentally when a routine x-ray is carried out. Up until 2006 many doctors would explain to patients whose x-ray indicated pleural plaques that they should seek legal advice. The claims were estimated to have cost the insurance industry billions of pounds and the decision to render pleural plaques incompensatable has been estimated to have saved the insurance industry billions more.

To Trades Unions, victims and many lawyers both the House of Lords decision in the first place and the subsequent failure of government to reverse the decision by Act of Parliament is nothing less than scandalous. Pleural plaques are typically a disease of working people – ladders, plumbers, electricians, builders and other construction workers, heavy industry and shipping/building are amongst the most

commonly affected. Incidence of pleural plaques is higher in areas where there has been shipbuilding or heavy industry and closely mirrors our industrial heritage. It has been estimated that up to 70% of men working in industry in the 1960s and 1970s probably developed pleural plaques.

Pleural plaques are only caused by asbestos exposure. Asbestos is not a naturally occurring mineral in the UK however in the 60s and 70s the UK was a major destination for asbestos mined elsewhere such as in Canada and South Africa.

Because the mineral asbestos and related compounds are not found naturally in the UK, when pleural plaques are diagnosed in a UK worker, the presumption is that that person's exposure to asbestos was probably negligent. Pleural plaques used to be considered to be an injury, since they are only caused by asbestos exposure it followed that the victims injury was probably caused by the negligence or breach of duty of someone else. Where the employer or their insurer could be traced, the victim was entitled to be compensated and the Courts upheld claims on "the polluter pays" principle.

All of this changed in the 2006 when the House of Lords ruled that pleural plaques did not amount to an injury because they do not cause symptoms – a ruling which remains hotly contested by the claimant lawyers and trade unions. In one fell swoop thousands of claims had to be abandoned (at huge lost cost to the victims, their lawyers and Trade Unions) whereas the insurers who had collected the employment liability premiums for all those years got off scott free.

The Scottish Parliament has legislated in favour of pleural plaques victims. We are now therefore in a situation in that someone living north of the border diagnosed with pleural plaques has a valid claim that the Court will uphold on the basis he has been injured due to another's fault; whereas his neighbour living south of the Scottish border with the exact same condition does not. Northern Ireland looks likely to follow suit in favour of pleural plaques victims but Westminster is adamant that the Supreme Court decision will be allowed to stand.

The introduction of the extra statutory scheme was a very small consolation to those pleural plaques victims who were advised prior to the House of Lords decision in 2007 that they were able to claim and on that basis embroiled on litigation. However the criteria laid down by the scheme is extremely narrow and for every successful applicant there are dozens more who won't qualify.

As Trade Union Solicitors Simpson Millar have contacted those former clients who appeared likely to qualify and we are in the process of recovering compensation for them under the scheme at no cost to the victim.

We will continue to campaign for the rights of victims of pleural plaques and for equality between all UK victims of asbestos irrespective of the principality in which they find themselves. We understand that far from being a symptomless condition a diagnosis of pleural plaques causes anxiety and distress to victims and their loved ones. It is wrong that they have been denied the remedy of calling those responsible to account via the Courts.

We have asked every successful applicant under the extra statutory scheme if they will voluntarily donate £10.00 of their £5,000 award to the charity Mesothelioma UK. We are pleased to report that almost without exception our clients have readily agreed and we intend to make a presentation to this charity when the Ministry of Justice Scheme closes in summer 2012.

If you have any questions or concerns about pleural plaques or any other asbestos condition please do not hesitate to contact our friendly experienced team.

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# DOMINIC HURLEY

## SPONSORSHIP



In February 2011, Simpson Millar LLP began supporting local Paralympic hopeful, Dominic Hurley. Dominic lives in Rotherham with his wife, Doreen and 1 year old daughter, Nina.

In 1994, Dominic sustained a serious brain injury when he fell from his moped whilst in Cyprus on a University placement.

Since his accident, Dominic has worked hard to achieve his cycling ambition and will hopefully make his dream of winning a gold medal become a reality at London 2012.

As well as his bid for the 2012 Paralympics, Dominic is also a keen fundraiser for national and local charities including, Headway –The Brain Injury Association, Comic Relief, Children in Need, to name a few.

To date Dominic's fundraising efforts have raised over £50,000 for charities.

Due to the extent of his fundraising and work with the charity, Headway –The Brain Injury Association, in December 2010, Dominic was awarded the Headway National Achiever Award at the annual luncheon held at The Dorchester in London. The award was presented to Dominic by Olympic athlete, James Cracknell.

Simpson Millar LLP have provided Dominic with cycle clothing and more importantly, cycle helmets and we will continue to support Dominic in his bid to gain a place in the cycling squad heading for London in 2012.



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# FAMILY MEDIATION

## Do you have to mediate with your spouse when you divorce?

New Family Procedural Rules mean that the Court is not willing to hear a family or matrimonial case until the parties have tried to mediate and agree settlement between themselves.

## So what does this mean for the average family?

It is still possible for anyone to start divorce proceedings without having to mediate. Mediation only becomes an issue if children or financial issues cannot be resolved and the Court is asked to intervene. Before either the husband or wife, mother or father can ask the Court to intervene, they must first consider whether mediation is an option, and attend a mediation assessment appointment. The mediator is then responsible for assisting the disputing couple to reach an agreement, or if this is not possible, a certificate is given to the parties to enable them to go to Court.

The Court proceedings can then be issued, and the Judge will become involved. However, that is not the end of the road for mediation. In all cases, a Judge will continue to consider suitability for mediation throughout the case, and can make a referral back to mediation at any time if it is felt appropriate.

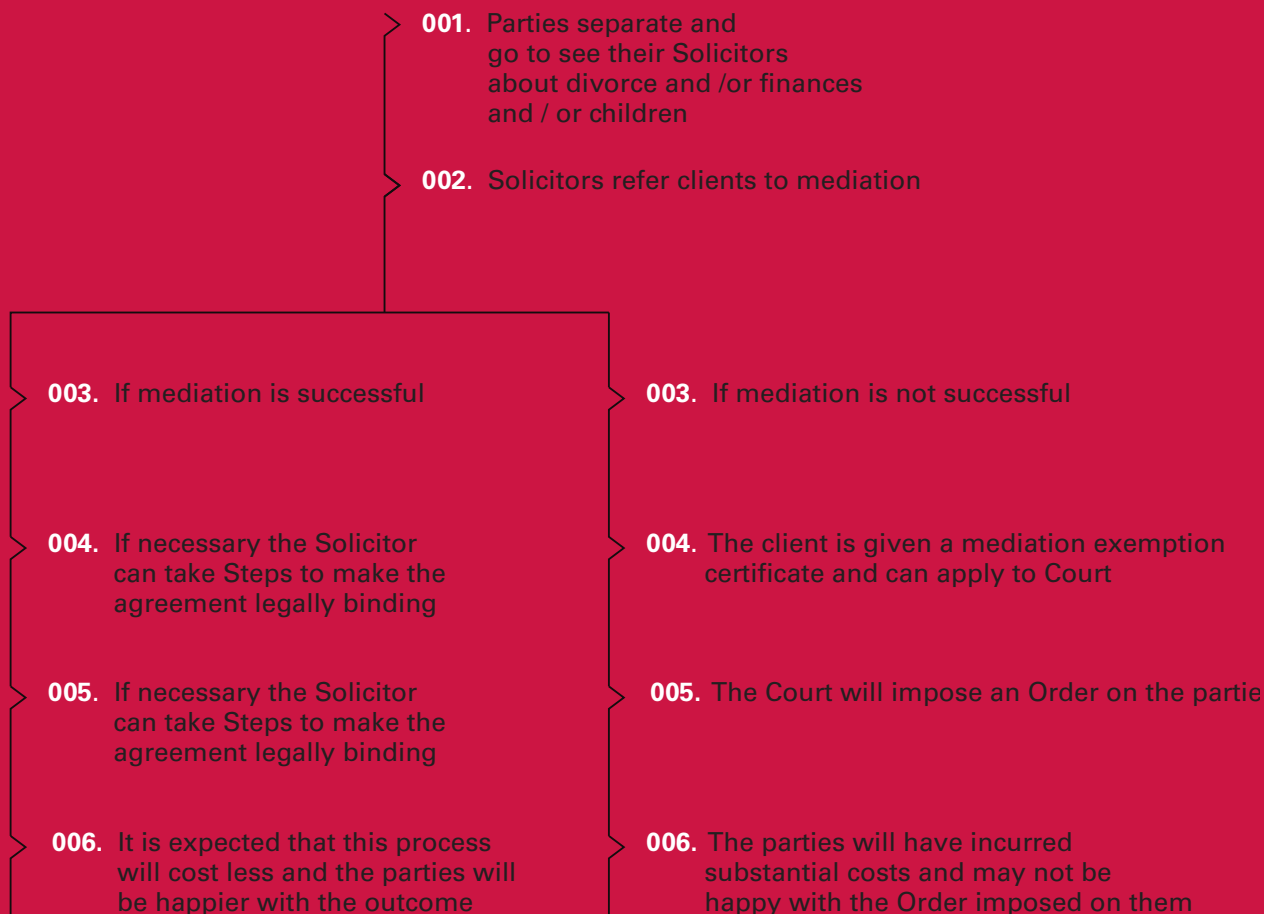
## So what are the benefits of mediation?

There is an immediate cost benefit to mediation, because it is significantly cheaper than Court proceedings. However, more importantly, it is an opportunity for the parties to reach an agreement which they are content to live with, and to establish a working relationship for the future. This is particularly important where there are children involved.



“Mediation only becomes an issue if children or financial issues cannot be resolved and the Court is asked to intervene.”

## So what will the process look like?



At Simpson Millar, we have always advised our clients about the benefits of mediation and we have regularly referred our clients to mediation for some years now. Clients who participate in mediation report that they feel more in control of the outcome, and that they have found a way to communicate with their estranged partner in the future. This must surely be a good thing.

For more information about Family Mediation, and the support that we can give you throughout the process, contact Emma Pearmaine, Partner, Head of Family, Simpson Millar LLP on **0844 858 3200** or contact via email at **[emma.pearmaine@simpsonmillar.co.uk](mailto:emma.pearmaine@simpsonmillar.co.uk)**

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# THE SICK CHILDREN'S TRUST



**Unfortunately for some parents, their worst fears become a reality and their child is taken into hospital. This can be through illness or an accident and can mean a long stay in hospital.**

If a child requires specialist care, the hospital they are treated at may not be near to the family home, this means that the family could be separated, which at times can be a strain to the family and the ill child or the child is so ill that the family do not wish to leave the child alone in the hospital.

The Sick Children's Trust provide families with high quality accommodation so they can stay together and be with their child when they need them the most. The accommodation is provided free of charge to the families and the charity rely purely on donations to keep the houses open.

The charity has 7 "homes from home" located in/near to hospitals around the country and since 1984, they have helped over 30,000 families stay together whilst a child is seriously ill in hospital.

- Rainbow House located at Great Ormond Street Hospital
- Crawford House located at The Royal Victoria Infirmary Hospital
- Stevenson House – located at The Royal London Childrens Hospital
- Eckersley House – located at The Leeds General Infirmary
- Treetop House – located at The Sheffield Childrens Hospital
- Acorn House – located at Addenbrooke's Hospital
- Guilford Street House – located at Great Ormond Street Hospital.

Simpson Millar LLP have sponsored the running cost of three rooms in three homes for the next 12 months and will support the charity in raising awareness of the hard work they do in order to keep families together, along with fundraising to provide extra funds for the homes.

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# CHARITY NEWS

## CWUHA and Just a Drop

£106.72 donated to Just a Drop and CWUHA from monies raised at the Christmas Reception at Doncaster Racecourse.

## RNLI

£187.60 raised for the RNLI on 28th January for their RNLI SOS Day which included dress down money and Select Our Station game.

## British Heart Foundation

£170.14 raise for the British Heart Foundation on 25th February for their Wear Red Day.

## Red Nose Day

£223.25 to Red Nose Day on 18th March being dress down and Pick A Pose games.

## Kids Company

£140 donated to Kids Company on 1st April following a request from Oliver Studdert and we received a lovely thank you card which was made by one of the children.



## Sick Children's Trust

Simpson Millar donated 500 crème eggs and staff knitted over 800 chickens and the Sick Children's Trust raised £900 by selling the chicks.

Simpson Millar staff donated over 70 easter eggs for their raffle.

£50 Leeds dress down money on 21st April donated to Sick Children's Trust to buy ingredients for them to bake buns & cakes to sell at their cake sale in May.



## Disclaimer

Calls from mobiles may be charged and costs may vary depending on your service provider. © Simpson Millar Solicitors LLP 2011.

This newsletter contains information on current legal issues applicable at the time of printing. Note there may have been changes subsequently which have not been incorporated in to this material. This newsletter is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice.

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