
Local Government Team

Nockolds has a strong multi-disciplined team within the Local Government Sector. Drawing on experience across the entire practice we deliver specialist expertise to secure the objectives of the public sector within the regulatory frameworks that apply.

The members of the team are happy to make themselves available for informal discussions, to act as a sounding board for new ideas or to become a member of panel advisors.

EI Policy Trigger Litigation

Keywords and Statute:

asbestos - causation - diseases and disorders - employers' liability insurance - mesothelioma - personal injury - illness and death of employee long after end of employment - claim against employer's insurer - determination of event triggering insurer's liability : Employers' Liability (Compulsory Insurance) Act 1969

Synopsis:

Traditionally, an insurance company would pay out to mesothelioma sufferers if it had been the employer's insurer at the date of inhalation. However, following the Court of Appeal's decision relating to public liability policies in Bolton MBC v Municipal Mutual Insurance Ltd (2006) EWCA Civ 50, (2006) 1 WLR 1492, some insurers had declined to pay out on employers' liability policies in force at the date of inhalation to mesothelioma sufferers or to the employers liable to them.

The claimants submitted that these insurers were liable because they had been the insurer when the victims inhaled the asbestos and that was when the injury was sustained or the disease was contracted. The Insurers maintained that liability was triggered when the tumour developed as that was when the injury was sustained.

Judgment:

An insurer which provided employers' liability insurance for "injury sustained or disease contracted" had to pay out in a mesothelioma case if it was the insurer at the time the employee inhaled the asbestos fibres, not if it was the insurer when he developed the tumour which would be many years later when the Insurer at the time of the inhalation was not the same as the insurer when the disease was sustained or contracted.

This case has been appealed and was heard by the Court of Appeal in November 2009 when they reserved their judgment, we are still waiting for the judgment to be delivered.