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Prosecutions

Principal Contractor and Sub-Contractor Not Liable for Asbestos Removal Work

This case is concerned with circumstances arising from the removal of asbestos from Corus UK Ltd's (the Claimant's) administration building at its Corby works, in Northamptonshire, in 1997. The asbestos removal work was undertaken by Woods Building Services Ltd (the 3rd Defendant) in its capacity as asbestos removal sub-contractor under the supervision of Cavendish (UK) Ltd (the 1st Defendant). It was not until ten years later, that concerns arose as to whether or not the asbestos removal work had been completed satisfactorily, leading to the bringing of these proceedings.

Another company, Cavendish Laboratories Ltd (the 2nd Defendant) was retained by the 1st Defendant for the purpose of undertaking analytical work in the context of asbestos removal. The claim against the 2nd Defendant has been resolved.

Background

The Claimant's administration building was built in the 1960s. Each of its eight floors contained a suspended plaster ceiling known as an Expanet (expanded metal) ceiling. The ceilings were sprayed with asbestos for the purposes of fire protection. The asbestos used was Chrysotile or 'white' asbestos – one of the forms of asbestos regarded as the most dangerous, and a major health hazard. This would not have been appreciated at the time of construction, but awareness of the potential dangers increased with the passage of time.

In 1997, a report prepared as part of an internal asbestos audit confirmed that the Expanet ceilings incorporated asbestos-containing materials (ACMs). In particular, the report described a sample taken from a part of one of the ceilings (a section of sheet material approximately 5mm thick) as 'extremely weak and readily crumbled' resulting in a release of asbestos fibres. The report recommended that any work on this material be conducted in accordance with the requirements of the Control of Asbestos at Work Regulations.

The discovery of the presence of ACMs coincided with the need to upgrade the lighting to meet the latest Health and Safety Executive (HSE) guidelines with regard to lighting in the workplace. This necessitated a complete rewire, but none of the work could be carried out until the asbestos was removed.

Cavendish (UK) Ltd submitted a tender to carry out this work on 17 June 1997. Included in this tender was a statement recognising that the objective of the work was to safely replace light fittings and provide protection from asbestos fibres during these works to all operatives and employees of the Claimant.

The tender set out three options for achieving this – the first being total removal and replacement of the asbestos containing ceiling as part of an occupied phased programme. This was the option that Cavendish (UK) Ltd strongly recommended. The price quoted for this option was £332.821 to be paid in installments as and when each of the eight floors was completed, followed by a final payment in respect of other matters. The tender was accepted on 26 July 1997.

A key phrase used in the Complainant's purchase order was 'For the total removal of asbestos containing ceiling with encapsulation and labelling of [asbestos] over-spray, replacement of suspended ceilings', although the word 'encapsulate' was not used in the quotation in connection with the recommended option, and nor was the method required to carry it out identified.

At this point, Mr Justice Foskett, presiding, notes that it seems clear, at least from a contractual perspective, that the 1st Defendant's obligation was to remove the ceiling completely and replace it, encapsulate any asbestos remaining as a result of overspray, label it, and secure the completion of the rewiring. The Purchase Order also confirmed that Cavendish (UK) Ltd would act as the Principal Contractor and Planning Supervisor and oversee all aspects of the contract including the management of sub-contractors on site. Both the Principal Contractor (Cavendish (UK) Ltd) and the sub-contractor concerned with the asbestos removal work (Woods Building Services Ltd) were aware that the work was subject to certain time constraints, with potential financial consequences for late completion.

Preliminary arrangements for the work were made over the weekend of 23/24 August 1997, with the asbestos stripping work being scheduled to commence Monday 25 August. Work did begin as scheduled but, within a short space of time, there were complaints from staff within the building concerning excessive noise and vibration. In addition, the Managing Director of the Principal Contractor had his attention drawn by the sub-contractor to dust levels within the 'enclosure' – the tent-like structure



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placed around the area where the ceiling was being removed. In addition, the ceiling panels were proving stubborn and difficult to move.

At some stage, it was suggested that the sub-contractor try an alternative method – known as the 'wet strip' method. After a trial, it was reported that the method worked well, would prove more acceptable to the Claimant and would help reduce dust levels in the enclosure. It was also accepted, however, that a lot more 'encapsulant' would be needed to encapsulate the Expamet ceilings (as the new method meant leaving them in place). This would result in lower suspended ceilings.

A meeting between the Claimant and the Principal Contractor was held on 28 August to decide how to address the problems that had arisen. There is no dispute that the working method was changed and that the 'wet strip' method was thereafter adopted, but there is dispute as to precisely what was said at the meeting and with what emphasis.

The works were undertaken in accordance with the 'new' pattern of working and were completed in November 1997. The 1st and 3rd Defendants agreed to share the cost of the additional encapsulant needed. The works were inspected by the Principal Contractor and representatives of the Claimant and were eventually 'signed off'. Payment was made in full in accordance with the figure agreed. The roof voids were not inspected again until ten years later.

The Events of 2007

In March 2007, a workman engaged in installing a fire alarm system entered the ceiling void in one of the offices in the Claimant's administration building. He reported seeing debris that led him to be concerned over the presence of asbestos fibres. Tests on a sample confirmed this.

A company, (Monitor Environment Ltd) was instructed to assess the voids. The company's report concluded that the sprayed coating on the Expamet ceiling was damaged, that the seal was incomplete and that the Chrysotile asbestos was in such a condition as to require urgent attention. The presence of ACM debris was also found on the surface of the new suspended ceiling that had been put in place below the Expamet ceiling.

A company called Ensafe Consultants Ltd was invited to review Monitor's report and provide an 'independent' assessment of the risk. Ensafe's recommendation was that the building should be vacated whilst all the suspended ceilings were removed. It was estimated that this work would take approximately 30 weeks and cost something in the region of £1.1 million, excluding VAT. It was also recommended that a 'full Type 3 Survey' be undertaken immediately to detect the presence of any further ACMs. This survey was carried out at the Claimant's expense.

Mr Justice Foskett notes that this view was not necessarily held by everybody familiar with asbestos within the Claimant's company. Nor was it required by the HSE. The experts in the case agreed that the building could have been rendered usable by far less 'drastic' measures. Nevertheless, it was against the background of Ensafe's advice that the proceedings were issued in August 2007.

The Findings

The findings can be best summed up as follows:

- the Claimant was aware, even in the first version of the contract with the Principal Contractor (1st Defendant) that not all the asbestos would be removed and that encapsulant would be used to prevent the escape of traces of asbestos left in the roof void
- under the revised contractual arrangements, it must have been evident to the Claimant that a larger numbers of areas enclosed by encapsulant would be left, including areas on the retained Expamet ceiling
- the revised approach was entirely reasonable
- the works were undertaken without creating an asbestos hazard (including provision for electric cabling)
- the asbestos difficulties that became evident ten years later were caused by the uncontrolled dragging of wires and cables through the roof voids during the intervening period
- the problems that occurred in 2007 could be solved by means that do not require removal or further cleaning of the surface of the Expamet ceiling.



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Conclusion

Mr Justice Foskett concluded that the events of 2007 constituted no evidence that the work undertaken ten years earlier had been carried out negligently. Consequently, he was not persuaded that either the 1st or 3rd Defendant were in breach of any duty owed to the Claimant. Therefore, the Claimant's claim with regard to liability must be dismissed. He added that, if necessary, the Court would determine the following issue of whether or not the Claimant was entitled to damages in respect of remedial work.

Tower Crane Disaster Firm Goes into Administration

The Health and Safety Executive (HSE) is reminding construction companies of the financial penalties of not carrying out full risk assessments or ensuring their staff are properly trained – after the sentencing of a crane company for health and safety breaches.

The crane company WD Bennett's Plant & Services Ltd was fined £125,000 and ordered to pay costs of £264,299. The company had been found guilty at Chichester Crown Court in March of two health and safety breaches that led to the death of two workers and injured a third.

According to a report in Mirror.co.uk (13 August 2009) WD Bennett's Plant & Hire Services Ltd has gone into administration owing nearly £10m, meaning the fines imposed will probably never be paid.

The company had been charged alongside Eurolift (Tower Cranes) Limited, which pleaded guilty to two health and safety breaches at the beginning of the trial. Eurolift (Tower Cranes) Limited pleaded guilty to breaching section 2(1) of the Health and Safety at Work etc. Act 1974 and Regulation 8(3) of the Construction (Health, Safety and Welfare) Regulations 1996. Eurolift (Tower Cranes) Ltd is also now not trading.

The prosecution followed an incident on a construction site in Durrington, Worthing, on 11 February 2005. The two men who died, Steve Boatman and Gary Miles, had been working on the jib of a crane. A third man, who was severely injured in the incident, was working on the mast of the crane. He was instructed to begin de-torquing the crane's mast bolts and should have done so one-by-one, and then re-tightened each bolt in turn. However, he was not trained in this job and he failed to re-tighten the bolts leaving them part undone. This caused the crane to collapse as it was turned.

Mr Boatman and Mr Miles died from injuries sustained when they were flung from the crane.

Call for Employers to do More to Prevent Back Injuries

Employers are being called upon to do more to prevent employee back injuries by giving staff proper training and carrying out rigorous risk assessments.

The call comes from the union UNISON after one of its members, a sports centre supervisor, received £50,000 in compensation after he was forced to retire when he injured his back lifting a faulty set of swimming pool steps.

David Barber, who had worked at the council-run sports centre for 20 years, said he had complained about the steps a number of times, but had been told that fixing them was not a priority.

Back injuries are one of the most common causes of workplace injury and employers lose millions of pounds in lost working days and in compensation each year.

Rochdale Metropolitan Borough Council, who runs the centre, did not admit liability, but settled the claim after proceedings were issued.

Heather Wakefield, UNISON's Head of Local Government, said: "Mr Barber has not just lost a job he loved, he has also lost his independence. The council has lost a dedicated member of staff because they failed to listen to his warnings over health and safety.

"Back injuries are preventable and yet they are one of the most common forms of injury amongst workers and millions of pounds are awarded in compensation each year. It would make sense for employers to listen to staff and put training in place to prevent these type of injuries.



"Employers must comply with their duties under the Manual Handling regulations and carry out proper risk assessments, or risk paying the price.

"We also want the authorities to enforce the legislation, which would help to provide a deterrent to employers."

Radiator Warehouse Accident

A worker in Doncaster has been injured after a firm failed to ensure safety in the workplace. Michael Debenham suffered two broken legs after a stack of heavy radiators fell on him at a warehouse in West Moor Park, reports the Doncaster Free Press.

Doncaster magistrates' court heard that 4Ls Products had made a number of changes to its protocols involving the stacking of the panel radiators which breached basic health and safety laws.

The firm was fined a total of £15,000 after pleading guilty to a breach of the Health and Safety at Work etc. Act 1974 when it was discovered that it was standard practice to stack the radiators four pallets high with 12 radiators on each pallet.

Councillor Cynthia Ransome, Doncaster council's cabinet member for regulatory and customer services, said: "We take health and safety enforcement very seriously and anyone found not complying with the regulations will be prosecuted."

News

Protect Young People in the Workplace

Across Europe, 18 to 24-year-olds are at least 50% more likely to be hurt at work than older people. Young people are also more likely to suffer from an occupational illness according to the European Agency for Safety and Health at Work (EASHW).

There are many reasons why young workers are at risk. But they are all things that can be avoided or minimised. Employers, educators, health and safety professionals, policy makers, and young workers themselves - all have a responsibility to help keep young people safe and healthy.

The Agency points out that young people:

- may lack physical and psychological maturity
- may lack skills and training
- may be unaware of their employer's duties, and their own rights and responsibilities
- may lack confidence in speaking out if there is a problem.

For their part, employers may fail to take account of the vulnerability of young people, by providing them with the training, supervision and safeguards that they need, and giving them work that is appropriate for them.

The common risks young people face include:

- slips and trips
- dangerous equipment
- lifting loads
- fast, repetitive work
- work in awkward positions
- noise and vibration
- exposure to chemicals, radiation, extreme heat or cold
- stress
- Violence from members of the public.