

Pleural plaques claims: The House of Lords has published its decision as to whether claimants who have developed pleural plaques can recover damages.

Claimants have been recovering damages for pleural plaques since at least the early 1980s, a position endorsed by the High Court in 2005. In 2006 the Court of Appeal held that no compensation could be recovered by individuals who have developed pleural plaques. The House of Lords, in *Rothwell v Chemical and Insulating Company Limited and others* [2007] UKHL 39, has now unanimously upheld this decision. In *Rothwell* and the linked cases the defendants accepted that they had negligently exposed the claimants to asbestos. The issue for the House of Lords was whether the claimants could satisfy the requirement for a claim in tort that the claimant has sustained damage; moreover that he or she has sustained damage which is not trivial. The claimants made two arguments: that pleural plaques did constitute damage sufficient to complete a cause of action in tort, or alternatively that the plaques combined with the risk of developing another, more serious, asbestos related disease and the corresponding anxiety, together amounted to damage (the 'aggregation' argument). The House of Lords decided that pleural plaques did not constitute damage and that three non-actionable elements could not be aggregated to sustain a cause of action.

The claimants' appeals therefore failed. It has been estimated that the cost of pleural plaques claims could add up to over £1billion, so insurers are set to make considerable savings. The issue might not be quite over yet though: three of their Lordships raised the issue of whether an employee who has developed pleural plaques could bring a claim against his employer for breaching his contract of employment by exposing him to asbestos. It remains to be seen whether claimants' solicitors will now take up this point and pursue claims based on breach of contract. If they do, given the very large number of individuals exposed to asbestos by their employers in the last fifty years, there will be an extraordinarily large pool of potential claimants.