OUTER HOUSE, COURT OF SESSION

[2015] CSOH 111

PD383/14

OPINION OF LORD PENTLAND

In the cause

W W

Pursuer;

against

THE ADVOCATE GENERAL FOR SCOTLAND

Defenders:

Pursuer: Di Rollo QC, Ross; Digby Brown LLP
Defenders: Lindsay QC, Komorowski; Morton Fraser LLP

13 August 2015

Introduction

[1] In this personal injuries action the pursuer seeks provisional damages for pleural plaques. The case came before me for proof on quantum alone, the defender having admitted liability, for the purposes of the action, in his defences. At the outset of the proof senior counsel for the defender confirmed that he accepted that the pursuer was entitled to an award of provisional damages. I heard all the evidence in the case and most of parties' closing submissions at that diet of proof. It emerged in the course of the defender's final submissions that there was an appeal pending in the Court of Appeal in Northern Ireland in the case of *McCauley* v *Harland and Wolff*. Since that case was agreed to be of importance (for reasons which will become clear later in this judgment), I adjourned the proof to await the outcome of the appeal and to hear further submissions in the light of it; the decision in the appeal was expected to be known within a few weeks. Events then took an unexpected turn. Shortly before the proof was due to resume, the defender enrolled a motion seeking leave to have a minute of amendment received and for his pleadings to be amended in terms thereof. The proposed amendment sought to delete the admission of liability and to add an entirely new defence based on Crown immunity under section 10(2) of the Crown Proceedings Act 1947 ("the 1947 Act"). Having heard submissions on whether the amendment should be allowed to be received, I refused the defender's motion; I shall explain my reasons for doing so later in this opinion. Parties then completed their closing submissions, in which they each referred to the judgment of the Court of Appeal in *McCauley*.

The evidence

[2] In addition to his own evidence, the pursuer led medical evidence from Dr Alistair James Dorward, a consultant physician in respiratory and general medicine at the Royal Alexandra Hospital in Paisley. Dr Dorward is the senior physician in the respiratory service there; he has a particular interest in lung cancer, chronic obstructive pulmonary disease, asthma, pleural disease and asbestos related diseases. He is well qualified to provide expert medical evidence in the present case; his expertise, findings and opinion were not challenged. The defenders led no evidence.

[3] The pursuer's evidence may be summarised as follows. He was born on 3 April 1946, making him 69 years of age at the present time. He is a retired electrician. The pursuer explained that he joined the Royal Navy in 1963 as a junior rating. He served until about 1971 when he left, having attained the rank of leading rating.

[4] During his service in the Royal Navy the pursuer was posted to various vessels, including the aircraft carriers HMS Centaur and HMS Triumph. The pursuer served nearly three years on the Centaur and worked on its refit in the Pompey Dockyard in Portsmouth. The pursuer's Royal Naval service took him to Singapore where he was stationed on board HMS Triumph, which was being used as a base for the refitting of other ships on which the pursuer worked as an electrician.

[5] The pursuer explained that, in the course of his duties as an electrician aboard Royal Naval vessels, he often worked in the vicinity of colleagues carrying out lagging work to pipes and cutting asbestos sheeting. The pursuer was exposed to asbestos dust and fibres generated by these operations. He said that he was provided with no protection of any kind against such dust and no measures were taken to prevent him from inhaling it. He received no information about the risks arising from exposure to asbestos dust.

[6] After leaving the Royal Navy, the pursuer worked for a variety of other employers. There was no suggestion that he had been exposed to asbestos dust with any of them.

[7] It was not in dispute that as a result of his negligent exposure to asbestos dust and fibres during his naval service the pursuer developed bilateral pleural plaques. His evidence was that he learned of his condition when he attended an appointment at the Victoria Infirmary in Glasgow with Dr Peter Kewin, a consultant in respiratory medicine. The background to this appointment was that for a number of years the pursuer had suffered from inflammatory bowel disease and had undergone complex surgery for this. The pursuer went for an MRI scan in connection with his bowel condition and following this he was referred to Dr Kewin. At an appointment on 4 November 2013 Dr Kewin informed the pursuer that he had pleural plaques. These had been noted on chest x-rays. The pursuer explained that Dr Kewin told him that nobody had died because of pleural plaques. Dr Kewin advised him that he had three years to make a claim for damages. He told the pursuer that there was about a 5 *per cent* chance the plaques could develop into something more sinister.

[8] Dr Kewin arranged for the pursuer to have a CT scan of his chest. In his letter of 8 November 2013 to the pursuer's general practitioner, Dr Kewin stated that the purpose of the CT scan was to ensure that the recent development of the plaques did not represent the onset of mesothelioma.

[9] High resolution CT scanning of the pursuer's chest was accordingly carried out on 18 November 2013. This showed widespread partly calcified bilateral pleural thickening consistent with parietal pleural plaques from previous asbestos exposure. The scan report stated that there was no evidence of diffuse pleural thickening from benign asbestos-related pleurisy and no pleural effusion to suggest malignancy. There was no evidence of asbestosis or other diffuse interstitial disease. The conclusion was that the pursuer had pleural plaques, but there was no evidence of asbestosis or pleural effusion.

[10] In his evidence the pursuer explained that he had taken little comfort from Dr Kewin's advice that there was only a slight chance that he would develop further lung or respiratory problems. He said that he had no confidence in medical prognoses. In the past he had been given an 80 *per cent* chance that his bowel condition would not worsen following surgery, but unfortunately it did. When he was informed by Dr Kewin that he had a shadow on his lungs the pursuer was troubled and concerned by this; he thought that any sensible person would be likely to react in this way.

[11] The pursuer testified that he had been aware of the potentially devastating effects of industrial lung disease from an early age. He remembered going to the public baths in Cambuslang with his father when he was a child and seeing men a lot younger than he now is who were unable to climb stairs. It was a mining community and it had been a common sight to see men having to use oxygen cylinders for help with breathing. Having experienced all that, the very idea of lung damage was something that the pursuer found particularly troubling.

[12] In November 2014 the pursuer had to attend his general practitioner because of a severe and persistent cough. He was sent for an x-ray. He was worried about matters and explained that whenever he gets a cough his lung problem is at the back of his mind. He is aware of the consequences of developing mesothelioma and explained that he had decided to seek provisional damages because there was always a chance that the plaques would develop into something further.

[13] The pursuer said that he felt a bit cheated by his treatment at the hands of the Royal Navy. He understood that the dangers of asbestos would have been well known by the time he joined up to serve, yet nothing had been done about it.

[14] The pursuer explained that he understood that pleural plaques were harmless in and of themselves. As he put it, he was okay with the plaques so long as they stayed at that. His anxiety related to the 5 *per cent* chance that he would develop something further. The way he saw it, if he was lucky nothing would happen and he would get through the remainder of his life, but if he was unlucky, as to which there was a 5 *per cent* risk, he would not be around in another year. He said that he took little solace from the fact that such an outcome was unlikely.

[15] The pursuer seemed to me to be an intelligent and thoughtful man, whose evidence was credible and reliable. The contrary was not suggested. He is understandably anxious and concerned about the pleural plaques and the possibility, albeit a relatively small one, that these might develop into something more sinister.

[16] Dr Dorward gave evidence under reference to a medical report he had prepared following an examination of the pursuer on 12 February 2014 in connection with the present litigation. He recorded that the pursuer told him that his main concern was on-going bowel problems, which had started in about 2006 when he had been diagnosed with ulcerative colitis. The pursuer had

had to have an ileo-anal pouch. Since then he had experienced problems on almost a continuous basis and these had never quite resolved. As part of a work up for his bowel disease in 2013 the pursuer had undergone a CT scan of his chest and abdomen; this had revealed bilateral pleural plaques.

[17] Dr Dorward recorded that the pursuer worried about his previous asbestos exposure and had pointed out, when Dr Dorward suggested that the risk of complications was small, that the same had been said about his bowel problems, the initial surgery for which had caused him complications ever since. Dr Dorward noted that the pursuer was not breathless and had no cough or sputum. He had smoked from about 18 years old until he was about 35 and had a 15 pack-year history of smoking.

[18] Dr Dorward explained that the pursuer's plaques had caused physical changes to his lungs in the form of bilateral calcified fibrotic scarring to the pleura. The mechanism for this was thought to involve the migration of the inhaled fibres to the lung lining. A similar mechanism gives rise to mesothelioma. 50 *per cent* of those diagnosed with mesothelioma will also have pleural plaques. The plaques are evidence of significant exposure to asbestos. They are best described as a marker.

[19] In the opinion section of his report Dr Dorward stated that pleural plaques are benign disease, that they do not progress and that they will not cause the pursuer problems in the future. They are asymptomatic. He went on to state that patients with pleural plaques arising by reason of asbestos exposure have an increased risk of developing pleural mesothelioma, five times that of the non-exposed population. This gave the pursuer a lifetime risk of developing mesothelioma of around 5 *per cent*. As the pursuer has no evidence of asbestosis, either clinically or radiologically, it was Dr Dorward's opinion that it is unlikely that the pursuer will develop this condition or any further complications.

[20] Dr Dorward has substantial experience in diagnosing and treating industrial lung disease. He considered the pursuer's level of anxiety to be above average. He thought the pursuer to be an anxious individual with a degree of scepticism about the reliability of medical diagnoses.

The Damages (Asbestos-related Conditions) (Scotland) Act 2009

[21] In *Rothwell* v *Chemical & Insulating co Ltd and another* [2008] 1 AC 281 the House of Lords ruled (in conjoined English appeals) that since pleural plaques cause no symptoms and because their presence does not increase the risk of developing any other asbestos related condition or reduce life expectancy, they do not in themselves constitute injury capable of giving rise to a claim in damages in tort. The court concluded that neither the chance of developing a fatal asbestos related disease nor anxiety that the risk of doing so might materialise could amount to damage for the purpose of creating a cause of action in tort. The decision overturned more than twenty years of practice whereby damages had been awarded by courts throughout the United Kingdom for pleural plaques and associated anxiety.

[22] Although not strictly binding in this jurisdiction, the decision of the House of Lords gave rise to some disquiet in Scotland; it was felt to be unjust to deny compensation to persons with pleural plaques; to many people it seemed wrong that the distress and anxiety often triggered by a diagnosis of pleural plaques should not be capable of giving rise to a claim for damages.

[23] In order to make clear that the right to claim damages for pleural plaques remained extant in this country, the Scottish Parliament passed the Damages (Asbestos-related Conditions)

(Scotland) Act 2009 ("the 2009 Act"). This had the effect of reversing the House of Lords decision in *Rothwell* by declaring that asymptomatic pleural plaques amount to a personal injury which is not negligible and that such plaques constitute actual harm for the purposes of an action of damages for personal injuries (section 1(1) and (2)). The Northern Ireland Assembly passed similar legislation – the Damages (Asbestos Related Conditions) Act (Northern Ireland) 2011 ("the 2011 Act").

[24] Neither piece of legislation says anything on the subject of the quantification of damages for the harm deemed to be caused by pleural plaques. Counsel informed me that this is the first case to come before the Scottish courts since the enactment of the 2009 Act in which provisional damages for pleural plaques fall to be quantified.

Quantification of damages in the present case

[25] It seems to me that the most obvious source of guidance as to the appropriate level of award in the present case is to be found in cases where provisional damages were awarded for pleural plaques before the decision of the House of Lords in *Rothwell*.

[26] There is, I was informed by counsel, no reported Scottish case in which provisional damages have been awarded for pleural plaques. In *Nicol* v *Scottish Power plc* 1998 SLT 822 *solatium* of £13,500 (current value about £21,300) was awarded to a 52 year old scaffolder with asymptomatic pleural plaques; he had a 3 per cent increased risk of developing mesothelioma and a 10 per cent heightened chance of developing cancer. He was breathless and had chest pain. His breathlessness had caused him to develop anxiety about the possibility of contracting asbestosis. It is important to appreciate that this was a full and final award of damages and not a provisional award. The decision is, therefore, of little assistance for present purposes. I mention it because counsel for the pursuer placed some reliance on it.

[27] Of greater interest in the context of the present case are a number of decisions of the English courts in which provisional awards were made for pleural plaques before the House of Lords decided the *Rothwell* case.

[28] In *Ford* v *Clarbeston Ltd* [1997] CLY 1947 provisional damages of £4,750 were awarded to a 58 year old man with bilateral pleural plaques. These gave rise to some anxiety on his part. He had a 2 per cent risk of developing a malignant mesothelioma in the future. The award would now be worth about £7,800.

[29] In *Greenhow* v *Rilmac Ltd* (1999) 99(4) QR 4 provisional damages of £6,000 were awarded to a 54 year old man with symptomless pleural plaques. These were likely to progress, but to remain symptomless. He had a 10 per cent risk of developing pleural thickening; a 5 per cent risk for asbestosis; a 3 per cent risk for lung cancer; and a 5 per cent risk for mesothelioma. There was also an increased risk that he would develop laryngeal and gastro-intestinal cancer. The prognosis led to a degree of anxiety. The award would now be worth about £9,300.

[30] In *Heath* v *Cape Distribution Ltd* [2003] 1 QR 13 a 58 year old man developed bilateral calcified pleural plaques which caused underlying physical damage and anxiety, although no symptoms. He was assessed as having a 1 per cent risk of developing diffuse pleural thickening sufficient to cause shortness of breath and disablement; a 1 per cent risk of asbestosis; a 3 per cent risk of malignant mesothelioma; and a 1 per cent risk of lung cancer. Provisional damages were assessed at £6,000; the award now being worth about £8,500.

[31] In *Rantoul* v *Swan Hunter* [2004] CLY 2960 a 62 year old man developed pleural plaques two years before the trial. They did not cause any impairment of lung function or disablement. He had a 1 per cent chance of developing asbestosis, a 3 per cent risk of mesothelioma and a 1 per cent chance of developing lung cancer. Life expectancy, which would have been 20.7 years, was reduced by nine months to reflect the asbestos-related risks of malignancy. The claimant had a history of being treated for malignancy. The knowledge of the malignant risks caused him further anxiety, but did not constitute a discrete condition in itself. Provisional damages of £6,500 were awarded; that would now be worth about £9,000.

[32] In the Court of Appeal in *Rothwell* [2006] ICR 1458 the court expressed the view that if the claimants had suffered actionable physical injury, an award of provisional damages could properly reflect anxiety at the risk of sustaining a serious asbestos related disease consequent on the breach of duty that caused the physical injury. The members of the court (Lord Phillips of Worth Matravers CJ and Longmore and Smith LJJ) agreed that compensation for significant anxiety would normally be expected to fall within a bracket of £4,000 to £6,000, although the facts of an individual case might make appropriate an award falling on either side of this bracket (paragraphs 103, 158, 159 and 162). Uprated for inflation, this bracket would now be between about £5,500 and £8,000.

[33] It is interesting to note that in the 8th edition of the *Judicial Studies Board Guidelines for the Assessment of General Damages in Personal Injury Cases* published in 2006 (i. e. before the decision of the House of Lords in *Rothwell*) the bracket given for provisional awards for pleural plaques excluding any risk of the development of mesothelioma, lung or other cancer or asbestosis, but accompanied by psychological injury causing disability was £4,000 to £6,000. This is in line with the general guidance given by the Court of Appeal.

[34] Some of the awards in the English cases cited to me are somewhat higher than would be suggested by the Court of Appeal's general guidance in *Rothwell* or the JSB guidelines, but not dramatically so. Looking at the broad picture and taking account of all these sources of guidance (the decided cases, the Court of Appeal's views and the JSB guidelines), my impression is that had it not been for the decision of the House of Lords, the current bracket in England and Wales for provisional damages for asymptomatic pleural plaques with associated moderate anxiety would have been between about £5,500 and £9,000.

[35] In Northern Ireland awards of general damages for personal injuries have tended to be somewhat higher than those in England and Wales and in Scotland. Lord Lowry LCJ explained the reasons for this in *Simpson* v *Harland & Wolff PLC* [1988] N.I. 432 – in England and Wales the assessment of damages by juries in personal injury cases generally ceased in 1934 whereas juries continued to be used in Northern Ireland for this purpose until 1987. Nonetheless it is of interest to note what has happened in Northern Ireland since the passing of the 2011 Act, although I think one should still be cautious about attaching too much weight to Northern Irish awards for the reasons I have explained.

[36] In *McCauley* v *Harland & Woolf* [2015] NICA 28 the Court of Appeal in Northern Ireland had to consider a claim by a widow whose husband died in February 2013 at the age of 74. In February 2012 the deceased was informed that he had pleural plaques; these were asymptomatic. On being given the diagnosis, the deceased suffered anxiety and stress; he had seen the effects of asthma on the claimant and he knew of people who had died from asbestos related diseases. The

deceased had not, however, suffered from any identifiable psychiatric condition caused by his pleural plaques. His death was caused by a heart problem and was unrelated to his exposure to asbestos.

[37] It will be seen that whilst the *McCauley* case did not involve a claim for provisional damages, it nonetheless has some similarities to the present case in that the deceased, like the pursuer, had asymptomatic pleural plaques giving rise to anxiety.

[38] The trial judge (O'Hara J) concluded that there was no reason not to revert to using the pre *Rothwell* guidance on quantum while making some allowance for changes in the RPI. He awarded the plaintiff the sum of £10,000 as damages for personal injuries, loss and damage sustained by reason of the defendants' negligence in causing asymptomatic pleural plaques to develop in the deceased's lungs. The defendants argued on appeal that the award was excessive.

[39] The Court of Appeal refused the appeal on the basis that it could not say that the trial judge's award was so far outside the permissible range that an appellate court should intervene. The Court of Appeal did, however, observe that the award was very much at the top end of the range of permissible awards.

[40] In paragraph 27 of its judgement the Court of Appeal provided the following by way of general guidance:

> "In the ordinary course of events the receipt of a diagnosis of pleural plaques, properly explained to the patient, will cause, at least initially, considerable distress, anxiety and alarm. The evidence in this case led the judge to conclude that the deceased did suffer from anxiety which is understandable in the light of his knowledge of other persons who were exposed to asbestos and his appreciation of the problems of asthma from which his wife suffered. In the case of the deceased the period of anxiety was relatively short for reasons unconnected to his exposure to asbestos and the assessment of damages must take account of the period of distress. In the ordinary course of events, it will be in the period immediately after the diagnosis that the shock, anxiety, distress and alarm would be most intensely felt and, in the absence of subsequent medical scares, plaintiffs will in many cases begin to live with the diagnosis and try to put the matter to the back of their mind. Each case will of course be fact specific and dependant on the individual's response to the situation. However it is unlikely that any case of distress and anxiety caused by a diagnosis of pleural plaques, absent some evidence of grave psychiatric sequelae, will recover outside the bracket of £5,000 – £15,000 however long the stress or anxiety lingers on."

[41] Counsel for the pursuer submitted that in the present case an award of provisional damages in the sum of £15,000 should be made. In my opinion, that would be substantially too high. It would be at the very top of the Northern Ireland bracket and much higher than the present day value of any award ever made in any comparable case of which I am aware in the rest of the United Kingdom. There is, as I have already noted, nothing in the terms of the 2009 Act to suggest that the intention was to increase the level of damages for pleural plaques. Counsel for the defender submitted that the appropriate award would be £5,500. In my view, this would be too low. It would be at the low end of the uprated pre *Rothwell* range of awards in England and Wales, to which I have already referred.

[42] In deciding upon the appropriate figure in the present case, it seems to me to be important to acknowledge that the pursuer has a greater than average level of anxiety; Dr Dorward, who has seen many patients with pleural plaques, confirmed that. The pursuer is now 69 years of age and has a normal life expectancy. So he may have to live with the knowledge of his condition and the associated worry for a good number of years. I accept that, as time passes, the pursuer may come to terms with the fact that he has plaques and that he may become somewhat less anxious about the possibility of deterioration in his condition. Nonetheless, I consider that this is a case in which the pursuer does have a significant anxiety problem caused by the plaques and that this is likely to persist at some level in the future. His anxiety (whilst significant) does not, however, amount to a serious psychiatric illness or psychological disability. Doing the best I can to reflect the whole circumstances of the pursuer's case, I consider that the appropriate figure for an award of provisional damages is £8,500. That figure seems to me to be broadly in line with the level of awards made in England and Wales before the *Rothwell* decision when uprated for inflation. My impression also is that such an award would not be regarded as inappropriate according to current Northern Irish practice.

[43] I shall allow interest on £4,250 at 4 per cent per year from 4 November 2013 to the date of decree and thereafter at 8 per cent per year.

Amendment

[44] In attempting to support the motion for amendment, counsel for the defender explained that, surprising as it may seem, those acting for the defender had not appreciated until the pursuer gave evidence that he had been in the Royal Navy and that Crown immunity could, therefore be invoked. The usual certificate issued by the Secretary of State in armed forces cases was accordingly not granted until after the first diet of proof because it was only at that stage that those concerned realised that immunity could be pleaded. Counsel was unable to provide any convincing explanation as to why the Ministry of Defence or its representatives handling the claim had authorised the making of an admission of liability at a stage before the claim had been investigated properly. It seems obvious that this step should not have been taken until the claim had been investigated and the status of the pursuer at the time of the alleged exposure established.

[45] Section 10(2)(a) of the 1947 Act provides *inter alia* that no proceedings in delict shall lie against the Crown for personal injury due to anything suffered by a member of the armed services if that thing is suffered by him in consequence of the nature or condition of any ship used for the purposes of the armed forces or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces. Section 10(2)(b) requires, as a further precondition of immunity, that the Secretary of State should have certified that the thing suffered has been or will be treated as attributable to service for the purposes of a disability pension. It is a notable feature of the Minute of Amendment that it contains no averments as to the nature or condition of any ship on which the pursuer served and no averments as to the nature or condition of any equipment or supplies. It is, therefore, irrelevant on the ground that it fails to meet the statutory prerequisites for claiming immunity. That failing, on its own, would be enough to justify refusal of the motion to amend.

[46] In any event, the proposed amendment comes far too late, in my opinion. At the eleventh hour, it seeks to change completely the whole basis on which the litigation has been conducted

throughout. If it were to be allowed, there would require to be substantial further procedure; this might well extend to the proof having to be reopened and to further evidence having to be led; understandably, the evidence led at the proof about the nature of the pursuers' exposure to asbestos and the conditions in which it occurred was in short compass. There would be great prejudice occasioned to the pursuer by such a prolongation of the proceedings; he has already gone through the ordeal of having to testify in court about personal matters, including his medical condition. Any such prejudice would not be adequately compensated for, in my view, by the payment of expenses, even the expenses of the action to date (which the defender conceded). Moreover, I was informed that if Crown immunity were to be successfully invoked the pursuer would probably not receive any pension payment from the Crown due to the relatively low level of his disability and, of course, he would not be entitled to any damages. It seems to me that it would be grossly unjust to allow the defender to pull the rug from beneath the pursuer's feet in this way at a late stage in the litigation, particularly where the difficulty that has arisen is one for which the defender must take responsibility. Counsel for the defender accepted that the defender may have a claim against those appointed to handle the claim on his behalf; so he may be able to recover by that means any loss suffered to the public purse through having to pay damages in a case where Crown immunity might otherwise have been capable of being invoked.

[47] In the whole circumstances, I had little difficulty in coming to the conclusion that the interests of justice would not be served by allowing the amendment to be received.

[48] I should mention that I heard some argument on the question as to whether it was competent for an unequivocal judicial admission of liability contained in pleadings to be withdrawn. It is unnecessary for me to express a concluded view on the point since I consider that the discretionary power of the court should not be exercised in favour of allowing the proposed amendment to be received. It seems to me, however, that there is no reason in principle why it should not be competent to amend to withdraw an admission of liability, although it might often be difficult to justify the allowance of such an amendment. The court's powers to allow amendment of pleadings are, as is well-known, extremely wide and are designed to promote the interests of justice according to the particular circumstances of the individual case. It is true, as counsel for the pursuer submitted, that a judicial admission of liability is treated as conclusive, but this is in the sense that the admission dispenses with the need for proof of the admitted fact. It does not follow that the admission cannot be withdrawn by amendment. There could be circumstances (no doubt of an exceptional nature) in which it might be necessary to allow an admission of liability to be withdrawn in the interests of justice, for example where it could be shown that the admission had been procured as a result of a fraudulent scheme or where it could be proved that the defender was suffering from mental incapacity at the time he purported to give instructions that the admission be made.

Form of order

[49] Counsel for the pursuer submitted that the pursuer should be entitled to apply for a further award of damages in the event that he develops any asbestos related condition in the future. In view of the terms of section 12(1)(a) of the Administration of Justice Act 1982, I do not consider that this would be the appropriate form of order in the circumstances of the present case. That provision makes clear that an award of provisional damages may be made where there is proved

or admitted to be a risk that in the future the injured person will develop some serious disease or suffer some serious deterioration in his physical or mental condition. The uncontested medical evidence in the present case showed that the pursuer was at risk of developing mesothelioma, but not any other condition. Mesothelioma being the only proven risk, it seems to me that the pursuer is entitled to seek further damages only in the event that he develops that particular condition. My interlocutor will make that clear.

Expenses

[50] Since I have not been addressed on these, I shall reserve all questions as to expenses.