

# Asbestos update: “implausible” deniability

13 March 2024



The recent case of [Evans v Secretary of State for Health and Social Care](#), follows the trend of low exposure asbestos cases being defensible, when many feared that the 2018 case [Bussey v Anglia Heating Ltd](#) made that near on impossible. In this case, brought by the daughter of the deceased, the alleged exposure occurred whilst the deceased was working as a carer in Bradwell Grove Hospital. She alleged that a programme of repairs on the hospital buildings during the 1970s caused the release of asbestos fibres and the deceased encountered “visible clouds of dust floating around in the corridor along which I had to walk every day for months”. The judge found that, in the absence of other supporting evidence, he could not accept the deceased’s description. It was held to be implausible that such an environment would have been tolerated in a hospital (given the importance of hygiene) over any prolonged period. The deceased had not described this source of exposure in her previous claims for benefits or in her accounts of exposure given to medical professionals (when she had instead referred to exposure from cleaning her husband’s work clothes). Nor was it proved that any dust to which the deceased had been exposed, contained any significant quantity of asbestos. On cross-examination, the claimant’s expert occupational hygienist conceded that the estimates of exposure in her report were “under-qualified” and the judge found that they did not provide any reliable assistance in determining dose. The defendant’s expert maintained his position that, had the deceased been exposed to asbestos, the dose (whilst small) could not be estimated due to the limitations of the evidence. Any possible exposure to asbestos was not material and was insignificant when compared to the other admitted source of exposure, from washing her husband’s clothes.

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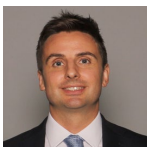
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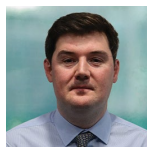
This is a first instance decision, and all of these cases turn on their own facts, but it is a reminder of some important factors in defending asbestos claims.

- The burden of proof is on the claimant to establish exposure to asbestos dust and caution should be adopted in assessing witness evidence relating to events several decades ago.
- A claimant must prove that there was material exposure and that it was in breach of the standards of the day. Just establishing that there was dust produced by works involving asbestos materials is not enough.
- This does not mean that all cases where the only witness evidence is from the claimant/deceased are defensible. Witness evidence must be carefully considered as to whether the allegations are plausible in and of themselves but also as compared to any evidence the defendant has. In this case, the defendant was able to provide some documentation about the nature of the works undertaken, which cast further doubt on the claimant's allegations. It is often the case that a defendant cannot adduce any evidence and those cases will continue to be more difficult to defend.
- Employers, especially local authorities and public bodies, will continue to be targeted even when there was greater exposure elsewhere. In this case, the majority of exposure came from the deceased cleaning her husband's overalls. Presumably, the deceased's husband was either self-employed or his employer no longer exists so there was no paymaster to meet any claim. Employer's liability cover is more easily traceable, even when a company has dissolved, and any inheritance/transfer of liabilities from former local authorities/public bodies will be a matter of public record.
- Choose your expert wisely. Faith in your chosen expert is vital in allowing you to accurately assess the merits of your case with the requisite confidence that their evidence will be preferred at any trial. It appears the claimant's expert did not fully interrogate the evidence in assessing dose in their written evidence, leading to them having to make concessions on cross examination.

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