



Neutral Citation Number: [2020] EWHC 3431 (QB)

Case No: 2019-000145

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 December 2020

Before :

HIS HONOUR JUDGE PLATTS
(sitting as a judge of the High Court)

Between :

JACQUELINE PINNEGAR
(Executrix of the Estate of Peter Skeen, Deceased)
- and -
KELLOGG INTERNATIONAL CORPORATION
-and-
ICI CHEMICALS & POLYMERS LIMITED

Claimant

First
Defendant
Second
Defendant

Ivan Bowley (instructed by **Beecham Peacock Solicitors**) for the **Claimant**
Catherine Foster (instructed by **BLM Solicitors**) for the **Defendants**

Hearing dates: 23rd, 24th and 25th November 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copiers of this version as handed down may be treated as authentic.

HIS HONOUR JUDGE PLATTS

Covid-19 protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30am on Monday 14th December 2020.

His Honour Judge Platts :

1. The claimant is the daughter of Peter Skeen who died as a result of mesothelioma on the 30th March 2017. He was 81 years old. She brings this action on behalf of her father's estate pursuant to the Law Reform (Miscellaneous Provisions) Act 1934 and on behalf of her mother pursuant to the Fatal Accidents Act 1976. Throughout his working life he had worked as a plumber/pipe fitter. For several months during the tax year 1966/67 he worked as a pipe fitter for the first defendant at the second defendant's Wilton site on Teeside.
2. The claimant's case is that during that employment her father was exposed to asbestos when working alongside pipe ladders which materially increased his risk of developing mesothelioma. It is alleged that the exposure was caused by breaches by the defendants of the statutory and common law duties which they owed to him. Mr Skeen was the sole carer for his wife and the claimant's mother who was and remains in ill health. Liability is denied by both defendants but damages are agreed, subject to liability, in the sum of £180,000.
3. Although a number of factual disputes have arisen in the case, the fundamental issue is the extent to which I accept Mr Skeen's account of his exposure to asbestos which he gives in his witness statement signed on the 20th February 2017 shortly before his death. The defendants challenge the reliability of Mr Skeen's account but concede that if his evidence is accepted then that would constitute breach of duty and liability would be established. That said, the discrete issues I have to consider in considering Mr Skeen's reliability are:
 - (a) When did Mr Skeen work at the site?
 - (b) Where on the site did he work?
 - (c) What work did he do? It is not alleged that he himself worked with asbestos, rather that his exposure came from pipe ladders with whom he worked.
 - (d) What was the nature and extent of his exposure to asbestos?
 - (e) Were the defendants in breach of their duty to him (there being no issue before me as to apportionment between the defendants).
4. My consideration of Mr Skeen's account is essentially a fact finding exercise. I have been assisted by expert evidence from Mr Chambers instructed by the claimant and Dr Jones instructed by the defendants. Both experts have expressed views in relation to the issues of fact which I have identified but it is trite to say that this is not a trial by expert and issues of fact are for me to determine on the totality of the evidence. To that end I have been referred to a number of documents disclosed by the second defendant concerning some of its operations at the Wilton site during the mid-1960s. There are no documents disclosed by Mr Skeen's employer, the first defendant.
5. Reference has been made to the way in which some first instance judges have approached issues of fact and assessed the reliability of witnesses in other cases. In particular I was taken to the judgments of Leggatt J in *Gestmin SGPS -v- Credit*

Suisse (UK) Ltd [2013] EWHC 3560, at paras. 16 to 20; His Honour Judge Gore QC in *CXB v North West Anglia NHS Foundation Trust* [2019] EWHC 2053 (QB) paragraphs 8 to 13; and Thornton J in *Smith v Secretary of State for Transport* [2020] EWHC 1954 (QB) paragraph 40. These judgments contain helpful reminders of the factors which might affect the reliability of a witness' recollection and which a fact finding tribunal should bear in mind when considering that witness' evidence, but, as HHJ Gore QC commented, they are not statements of legal principle. As Thornton J said at paragraph 40:

“A proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function....”

6. In assessing the evidence of Mr Skeen, I take into account the following factors:
- (a) The passage of time between his employment and when he was first asked to remember his history of asbestos exposure. He only had to recall this history after his diagnosis of mesothelioma in August 2016 some 50 years after his employment at the Wilton site.
 - (b) At the time he made his witness statement in February 2017 he was very ill.
 - (c) It is probable the he had the assistance of his solicitor and that there were discussions between them before his statement was prepared and signed. That is an inevitable part of the litigation process. The extent to which those discussions might have informed the content of the statement and the words used by Mr Skeen in his statement is a factor which I will have to consider.
 - (d) The defendants have commented that the claimant refused a request for disclosure of attendance notes of the meetings between her father and his solicitor. This request was justifiably refused on the grounds of legal professional privilege. Miss Foster, rightly, drew back from inviting the court to draw an adverse inference from this refusal but invited me nonetheless to take it into account when assessing Mr Skeen's evidence. In my judgment I do not think it would be proper to give any weight to it. To do so would tend to undermine the privilege and, in any event, I do not think that it adds anything to my assessment of the evidence in this case.
 - (e) It is probable that Mr Skeen knew why the statement was being prepared. Indeed, the claimant's own evidence is:

“I can recall the first meeting with the solicitor who came to the house once we became aware of his mesothelioma diagnosis. Myself my father and the solicitor sat in the kitchen He knew exactly what the purpose of the meeting was for. He had a very good recollection of his work history from leaving school until he retired and was

able to give, what I thought to be, a very detailed account.”
(paragraph 18).”

The claimant has not given oral evidence. However, in making reference “to the purpose of the meeting”, I infer that she meant that her father knew a) that the statement was for the purpose of identifying his exposure to asbestos during his working life; b) that that was for the purposes of making a claim; and c) that the claim would essentially be for compensation that would be used to provide care for his wife after his death.

7. The relevant parts of Mr Skeen’s statement are at paragraph 9. It reads:

“Kelloggs did work for ICI Wilton on the new Nylon 7 Plant. When I went to work for this company I was employed as a pipe fitter. I recall that everything to do with Kelloggs was painted green that was their colour. The person who was my gaffer at that time was a Mr Tetley who was a Canadian. We were building oilifines (*sic*). This was a new plant that was being built along an older plant at ICI Wilton. There were ladders working in close proximity to us. I do not know whether they were employed by Kelloggs or ICI or where [*sic*] outside contractors. The ICI plant was expanding rapidly and we had to connect the old pipe work in the older buildings to the new pipe work in the new building. To do this the ladders would knock off the old asbestos lagging. This would expose the steel pipe work. I would use pipe cutters to cut through the pipe and prepare it to be welded. Once it was welded it would then be pressure tested and then the ladders would relag the pipework again. If there was a straight run of pipe then they would have two pre moulded asbestos halves which would wrap around the pipe work and then be secured with silver bandings. The casting [*sic*] to go around the pipe work was pre-moulded but still needed to be cut to size by the ladders using hacksaws. If there was a junction of pipe work or a clear piece then they would also have to mix asbestos powder and then use a trowel to plaster it on. I can recall watching them tip large asbestos bags out into drums and mix it on site until it was the consistency of cement. I didn’t take a great deal of notice of the ladders but we did stop and talk to them as we were all working in the same part of the plant at the same time and our jobs overlapped. At the end of a typical day my work clothing, hair and face would be covered in white asbestos dust...”

Later, at paragraph 19 he said:

“I believe that the longest most heavy periods of exposure to asbestos was whilst working at JM Guthrie and then ICI Wilton for Kelloggs.”

8. In November 2016 Mr Skeen made an application for Industrial Injuries disablement benefit in which he wrote of these defendants:

“I worked alongside the ladders at Kelloggs at ICI. We fitted the pipes and the ladders lagged the pipes. They cut the asbestos to fit around the pipes where we were.”

9. As for the content of the witness statement a number of points are validly made on both sides:
 - (a) The defendants point out that in so far as the claim against them is concerned the evidence lacks detail of when he was exposed, where he was exposed, what he was doing at the time of exposure and the context in which it occurred. There is no description of the work environment whether outdoors or indoors, whether at ground level or at height. There are no references to frequency or duration of the alleged exposure. It is submitted that the reference to new and old pipework in buildings is opaque; and that his statement “*I didn’t take a great deal of notice of the ladders....*” is inconsistent with the statement or inference that it was their work caused him to be covered in asbestos dust.
 - (b) The claimant points out that Mr Skeen gives a detailed and complete account of his work history both before and after his employment with the first defendant; that he was careful to identify during which of his employments he was exposed to asbestos and which not; and that when he could not recall details he said so. His recollection of work with the first defendant does contain detail such as the name of his “gaffer” and parts of the Wilton site, namely Nylon 7 and Olefines, which have subsequently been shown to be probably correct. He gives detail which has little relevance to the claim such as the reference to green markings on pipes which related to the first defendant’s work and his relationship with the ladders. It is pointed out that this was the only job in his working life when he worked alongside ladders and therefore he was more likely to remember events which involved them. Further, it is submitted that his description of the work of the ladders which led to his exposure is consistent and credible.
10. I take all these factors into account when assessing Mr Skeen’s evidence against the various documents to which I have been referred and, in so far as it assists, the evidence of the experts. I now turn to the relevant factual issues.

When did Mr Skeen work at the Wilton site?

11. Inland Revenue records show that he worked for the first defendant within the tax year 1966/67. This was one of five employments within that year. Mr Skeen’s statement makes reference to all of those five. He says he worked for R Quincy in Yarm for “a few months (probably no more than 6months)”; before that he had been self-employed; after R Quincy he went to work for the first defendant at the Wilton where he remained for “approximately 6-8 months”; thereafter he moved to Shouksmiths (a German firm) saying “I was only there for a month or so”; he then describes working for a number of other companies for a few weeks or months at a time – of those, Frank Watson appears in the Inland Revenue records for 1966/67.

12. It is probable that Mr Skeen had available to him the Inland Revenue tax records when he made his statement. However, I have no reason to doubt the broad accuracy of his recollection of the times he spent at each employer within that tax year and I accept it. I reject the suggestion made by Dr Jones that the tax year should be assumed to have been divided equally between five employers identified. There is no evidential basis for this.
13. Based on the history, I find that on the balance of probability that Mr Skeen worked for R Quincy for a few months after April 1966 before joining the first defendant, and that he left the first defendant's employ at least one month before the end of the tax year during which time he worked for Shouksmiths and then Frank Watson. In those circumstances I find that he probably started working at the Wilton site in the summer of 1966 and probably did not work for the first defendant at Wilton after the end of February 1967 at the latest.
14. This finding is highly relevant to the issue to which I next turn namely where Mr Skeen worked on the site.

Where did he work?

15. This has been the focus of much of the argument because the place of work informs the nature of the work he was doing and thus the potential for asbestos exposure. The parties' positions have developed over the course of the litigation:
 - (a) In the letter of claim written to the second defendant on the 21st December 2016 (while Mr Skeen was still alive but before his witness statement) it was stated that he worked on "the new Nylon 7 plant as a plumber". That was repeated in the letter of claim to the first defendant dated the 4th August 2017.
 - (b) Between those letters Mr Skeen had made his witness statement in which he said:

"Kelloggs did work for ICI on the new Nylon 7 plant.... We were building Oilifines (sic). This was a new plant that was being built alongside an older plant at ICI Wilton."
 - (c) Mr Chambers prepared a preliminary report dated 20th March 2018 on the basis of Mr Skeen's statement and the letters of response to the letters of claim from each of the defendants. In that short report he dealt with Mr Skeen's employment at Wilton at paragraphs 11 and 12 making reference to the Nylon plant only in paragraph 11.
 - (d) In the particulars of claim dated 25th July 2018 the claimant asserts that her father "worked on the connection of new pipework to existing pipework in the Nylon Plant."
 - (e) The claim proceeded to a show cause hearing at which the defendant relied on a preliminary report of Dr Jones dated 22nd October 2018 who referred to Mr Skeen's description of "building oilifines" (it is agreed that this was probably a reference to Olefines at the Wilton site) and discussed the

second defendant's Olefine production at Wilton and in particular the Olefin 5 plant.

- (f) Experts reports were exchanged simultaneously on 12 December 2019. At that stage both experts had taken the view that Mr Skeen could have been working at the Olefine 5 plant. Mr Chambers wrote at paragraph 3.11 of his report dated 1 November 2019:

“my understanding is that the Olefine 5 plant at Wilton was completed and commissioned in 1969 and this, or an earlier Olefine plant would seem to be the more likely location of the area that the deceased was working on. This however will be a matter of evidence and is for the court to consider.”

Dr Jones wrote at paragraph 3.9.3 of his report dated 12 December 2019:

“the Olefine 5 is listed as having a start-up date of 1969, so that appears to be the plant on the construction of which the deceased worked.”

16. Mr Chambers has now sought to draw back from the view expressed at paragraph 3.11 of his report in the light of subsequent evidence and disclosure. As result, a good deal of evidence and discussion at trial has been directed to whether or not it is likely that Mr Skeen was working at Olefine 5.
17. There are three documents which touch upon this issue. First, and importantly, there is the “Engineering Specification for Hot Insulation Material and Application” specifically for “No .5 Olefine Plant”. It is apparent from the front sheet of that document that it has undergone three revisions. It was initially dated 8 August 1966 “For Approval”; the first revision was on 10 February 1967: “Approved for Construction”; the second revision was on 22 March 1967: “Revised for ICI comments”; and the final revision on 15 December 1967: “General Revision to as-built requirements”. This is of importance because it is the claimant's case that Mr Skeen was working alongside ladders who were insulating pipes. If the insulation and therefore lagging work started after Mr Skeen had left the Wilton site then his asbestos exposure could not have been at Olefine 5.
18. I have also been referred to a large plan of the site prepared in 2002 entitled “Current and Previous Land Allocation Wilton site” (which I will refer to as “the plan”) and a table in an Excel spreadsheet form of the various plants at the Wilton site prepared in about 2007 (which I will refer to as “the spreadsheet”). Both these documents were prepared significantly after Mr Skeen's employment and the latter document contains the warning that “it has not been verified rigorously with data held in legacy records and all relevant site environmental reports”. There is no evidence as to why these documents were prepared but they are of some general assistance when I assess the reliability of Mr Skeen's account.
19. None of these three documents were available to Mr Chambers when he prepared his report dated 1 November 2019. Having considered them, it is now his view, and indeed the claimant's case, that on the balance of probabilities when Mr Skeen

referred to “oilifines” in his witness statement he was making reference not to Olefine 5 but to a plant identified on the plan and spreadsheet as Butadiene 2.

20. I accept Mr Skeen’s evidence that he worked on what he considered to be an “oilifine” plant. In my judgment, it is highly unlikely that he would have made reference to such a specific term if he had not worked there. His recollection is, in broad terms, supported by the documentation that I have seen. The real question is which Olefine plant did he work on?
21. On the available evidence I find that it is unlikely that he worked alongside ladders on Olefine 5. A reasonable conclusion to be drawn from the revisions to the Engineering Specification is that lagging work on the Olefine 5 plant did not commence until after the insulation specification had been approved by the second defendant on 22 March 1967. I have already found that Mr Skeen probably stopped working at Wilton at the latest by the end of February 1967 and therefore, in my judgment, he was probably not on site when the lagging work on Olefine 5 started. I note that it has never been Mr Skeen’s evidence that he was working on Olefine 5, rather that he was working generally “building oilifines”. The reference to Olefine 5 was an assumption made by the experts based purely on fact that the documents suggested that Olefine 5 was being constructed at the relevant time. In my judgment, because of the respective timings of Mr Skeen’s employment, and the start of the lagging work, this assumption is probably incorrect.
22. The claimant therefore invites me to consider whether the evidence supports any reasonable conclusion that Mr Skeen’s recollection was a reference to another part of the site.
23. The evidence as to what other Olefin plants existed at the Wilton site is contained in the spreadsheet. In the first box of the spreadsheet the description “Olefin” is described as the “works” or “grouping” at the site for petrochemicals and plastics. The section headed “Olefines” identifies a number of plants which from time to time have been in that group. The most relevant of these for present purposes are Olefine 5 and Butadiene 2. Olefine 5 is recorded as having a start-up date of 1969 and is said to be an “asbestos free plant”. Butadiene 2 is recorded as having a start-up date of 1968. There is no further comment about Butadiene 2.
24. In my judgment, given my finding that Mr Skeen was probably not working on Olefine 5 for the reasons I have given, I consider it to be highly likely that his reference to “building oilifines” was a reference to the construction of Butadiene 2. This is for a number of reasons. As Dr Jones has pointed out, primary petrochemicals are divided into three groups depending on their chemical structure. One of those groups is the olefins and included within the group of olefins is butadiene. Butadiene is therefore a type of olefin. The Butadiene 2 plant was being built at about the same time as Olefine 5, and, as is clear from the plan, is broadly in the same area as Olefine 5. It is described in the spreadsheet as part of the Olefines group. It is therefore unsurprising that Mr Skeen and other tradesmen or contractors might have referred to it as such. Its construction was probably in advance of Olefine 5 given that it started up one year earlier. Further, in my judgment, on the evidence available to me, there is no reasonable alternative to account for Mr Skeen’s description, which I accept, of “building oilifines”.

25. I now deal with Mr Skeen's reference to the Nylon plant, and in particular Nylon 7. In the spreadsheet, Nylon works are said to be part of the "fibres division" and Nylon 7 is specifically mentioned as having been part of an expansion in 1965, coming "online" in 1966. There is no reference specifically to Nylon 7 on the plan although I note that those plants listed under Nylon 7 in the spreadsheet (such as ADN crude, Acids 2, Inters 2, HMD, and Catalyst) are all shown as part of the Nylon DuPont plant (as are most of the plants listed under the heading Nylon Works (Nitric acids 1&3, Acids 1, Inters 1, solvents, Nylon polymer, and thermex)). This evidence tends to support and give credence to Mr Skeen's recollection that work was being carried out in the nylon plant during the course of his employment with the first defendant, that he has accurately recalled Nylon 7, and that the ICI plant at Wilton was generally "expanding rapidly". There is no evidence or suggestion that there was any connection between the Nylon plant and the Olefins plants but it seems likely, given Mr Skeen's evidence, that at some stage during his employment with the first defendant he did some work on the Nylon 7 plant during 1966. However, there is no further evidence about the nature of that work and it is not relied on by the claimant in support of her claim.

Mr Skeen's work

26. Mr Skeen was a pipefitter. It is not suggested that he worked directly with asbestos during his employment at Wilton. His case is that he worked alongside ladders who were variously involved in stripping, cutting and mixing asbestos. Consideration must therefore be given as to what lagging work it is likely was being carried out on the Butadiene 2 plant and the extent to which Mr Skeen came into proximity with it.
27. There is very little evidence about the Butadiene 2 plant. However, it is clear from aerial photographs of the site to which I have been referred that, in broad terms, it was similar in structure to the Olefines 5 plant although much smaller in size. Importantly, it is clear that the Butadiene 2 plant consisted of an extensive series of pipes running close to each other both horizontally and vertically.
28. Insulation is only likely to have been required on hot pipes. There is little evidence as to what pipes or vessels required insulation on Butadiene 2. However, it is agreed between the experts that both Olefin 5 and Butadiene 2 would probably have used steam, and that steam may have been, and I find probably was in the absence of evidence of any other source of steam, branched in to the existing network of steam pipes at the site. I am therefore satisfied on the balance of probabilities that there was at least one system of pipework within the Butadiene 2 plant which required insulation. There may have been more.
29. Although the aerial photographs only show the general area rather than the Butadiene 2 plant specifically, I am satisfied that the nature of the plant was consistent with Mr Skeen, as a pipefitter, having worked alongside or in close proximity to other tradesmen carrying out insulation work. There has been some discussion as to whether his work would be carried out on the same pipe as that being insulated. It is pointed out by the defendant, in my view with some justification, that lagging work would only be required once the fitting had been completed and the pipe tested. In those circumstances it seems less likely that a pipefitter would still be working on that pipe at the time it was lagged. However, Mr Skeen does not suggest that he was working on the same pipes as the ladders. He refers to the ladders "working in close proximity

to us”. In my judgment the configuration of the network of pipes as is apparent from the photographs makes it entirely feasible that a pipe fitter could be working adjacent to or in proximity to ladders.

30. Mr Skeen also describes connecting new pipes into old pipes. On the evidence available to me, the only possible connection to existing pipework would be when branching off steam pipes from the existing network. It is quite plausible that this work needed to be done although I accept that, at its highest, this would probably have amounted to no more than 6 connections (an input and output connection on each of three existing steam networks). Further, I accept that such work would probably have taken place at the site of the existing network, somewhat removed from the Butadiene 2 plant itself. That said, the pipe from the existing network into the Butadiene 2 plant and to its intended destination would have to be insulated.
31. Having considered this evidence, I am satisfied that Mr Skeen’s recollection that he worked in close proximity to ladders is accurate. He was able to describe what the ladders did when stripping or “knocking off” old insulation, applying new pre-formed insulation and mixing paste for insulation. He had no other experience of working with ladders and the fact that he was able to describe this work in the way that he did adds weight to the accuracy of his recollection. His description of talking to ladders, to them all working in the same part of the plant at the same time (I note that he does not say he was working on the same pipes) and that “our jobs overlapped” is entirely plausible and, I find, did happen. The “knocking off” of old insulation probably refers to the branching of steam pipes from the existing network. Although his description does lack detail as to the frequency and duration of such contact that is not surprising given the passage of time. I accept this part of his evidence as being accurate and consistent with the other evidence in the case.

Was Mr Skeen exposed to asbestos?

32. There are two aspects to this issue. First, what was the material that the ladders were working with? And, second, if such material did contain asbestos to what extent, if at all was Mr Skeen exposed to it?
33. As to the nature of the insulation material, the experts agree that the lagging to the pre-existing steam pipe work is likely to have contained asbestos. They also agree that if Mr Skeen worked in close proximity to others removing that asbestos lagging he is likely to have been exposed to asbestos dust. Whether he did work in such close proximity to this work I shall consider later.
34. With regard to the application of insulation, I am satisfied that Olefine 5 was an asbestos free plant and that all insulation on Olefine 5 was carried out using non-asbestos-containing materials. There is no good evidence that asbestos materials were used on Olefine 5 and the documentary evidence (the Engineering Specification and the spreadsheet) points to the conclusion that it was not. However, as I have found that Mr Skeen did not work on Olefine 5 when lagging was being applied, the issue becomes whether or not asbestos was used on Butadiene 2.
35. The engineering specification for Olefine 5 provided that the non-asbestos material to be used on hot pipes was Newtherm F and on vessels Magnesia 66. The defendants argue that it is likely that the same or similar non-asbestos materials would have been

used when constructing Butadiene 2 given that it was being constructed at about the same time in the same area of the site. However, Butadiene 2 is not included in the insulation specification for Olefine 5 and there is no equivalent specification for Butadiene 2 available. This has led to a discussion about when these non-asbestos materials became available.

36. The evidence suggests that Newtherm F was only becoming available in 1967. I have seen minutes of a conference on “The Limitations of Thermal Insulation Arising from the Use of Asbestos” dated 11 April 1967 in which it is recorded that Newtherm F “has only been available about one month”, that field tests on durability had not proved conclusive, and that no plastic or paste form was available at that time. Although the defendants argued that a large industrial concern might have had access to Newtherm F before it was readily available elsewhere, there is no good evidence of this and I find it unlikely that it would have been used until it had passed tests of durability. On the available evidence it seems unlikely that Newtherm F was being used before March 1967. Therefore it is unlikely that Mr Skeen was describing Newtherm F being applied either in pre-formed or paste form before he left the Wilton site at the end of February 1967.
37. There is no other good evidence that any other non-asbestos based material was available for insulating hot pipes at the time Mr Skeen worked at the site. There is no evidence as to when Magnesia 66 became available. However, according to the documents I have seen, Magnesia 66 was only specified for use at lower temperatures and, in any event, the evidence suggests that it was pink in colour in order to distinguish it from asbestos materials. This is confirmed both in the record of the conference at Billingham on 11 April 1967, the record of a meeting in July 1967 at the second defendant’s Mond division entitled “The Selection of Thermal Insulation Materials, Elimination of Asbestos” and a further document dated 8 April 1968 which considers the stripping of asbestos lagging at the Olefin works in Wilton. If Mr Skeen’s recollection that the dust to which he was exposed was white is correct then it is highly unlikely that he was exposed to Magnesia 66.
38. Against this background, I conclude that there is no evidence to support a conclusion that any dust to which Mr Skeen was exposed came from a non-asbestos based material. In short, I am satisfied on the evidence before me that such materials were not available at the relevant time or, if they were, they are not consistent with what Mr Skeen describes as a white dust.
39. I am therefore driven to the conclusion on the balance of probabilities that if Mr Skeen was exposed to white dust from the lagging works as he claims then on the balance of probabilities it was asbestos-based material.
40. The defendant, through Dr Jones, has raised the possibility that any dust described by Mr Skeen may have been from concrete. I reject that as being speculative and unsupported by evidence. Whilst it is right that the new plant would have had a concrete base and consequently there was the possibility of concrete dust being present especially during times of drilling, I reject the suggestion that Mr Skeen has mistaken concrete dust for dust being generated by the work of ladders which he has described.

The extent of Mr Skeen's exposure

41. This largely comes back to the extent to which I accept Mr Skeen's description contained in his witness statement. The defendants validly make the point that, in this case, the fact that Mr Skeen developed mesothelioma is not evidence that he was exposed to asbestos with these defendants. He has always acknowledged that he had asbestos exposure in other employments which could equally have caused or contributed to his condition.

42. I make the following observations:

- (a) Mr Skeen's description of his working history generally appears to be accurate and appears to be consistent with his daughter's recollection that he had "a very good recollection of his work history".
- (b) The lack of detail as to the nature and duration and frequency of his exposure at Wilton is, in my judgment, entirely to be expected of a person seeking to recollect events that occurred to some 50 years earlier.
- (c) His account is consistent with the very brief account he gave in support of this application for Industrial Injuries Disablement Benefit.
- (d) In certain matters of detail concerning this employment he has been shown to be accurate. In particular, his reference to the fact that the ICI plant was expanding rapidly, the existence of a new Nylon 7 plant, and his recollection that olefin plants were being constructed at the time are all confirmed by the documentary evidence which has subsequently been disclosed.
- (e) He did not work with ladders at any other time during his working life and therefore his description of the work they did and their use of insulating materials can only have come from his observation of ladders working at Wilton.
- (f) His description that "I can recall watching them tip large asbestos bags out into drums..." implies not just a vague recollection but an actual memory of something which in fact happened which he witnessed.
- (g) The fact that Mr Skeen was able to recollect detail that has no relevance to the claim such as his recollection that the pipework being worked on by the first defendant was painted green and his recollection that there was some animosity between pipefitters or plumbers on the one hand and the ladders on the other adds weight to his general reliability. This part of his evidence is unlikely to have been misremembered or fabricated.
- (h) Although the way the work is described in the statement may have been informed by discussions between Mr Skeen and his advisers, that of itself is unremarkable. What is important is that he has signed a statement of truth confirming that he believes the facts stated in the statement to be true. Dr Jones confirmed that Mr Skeen's description of what the ladders were doing and the way they worked was entirely consistent with normal

practice at the time. I have no reason to suppose that what he describes in the statement is other than an accurate articulation of his recollection.

- (i) For the reasons given above I am satisfied that the material used by the ladders was in fact probably asbestos as Mr Skeen describes.

43. I take into account all the points made on behalf of the defendants about the quality and therefore reliability of Mr Skeen's evidence including the fact that there is no reference to the work being outdoors (which I find it probably was having seen the photographs of the BUTADIENE 2 plant) and that his reference to "buildings" in his description of the work is not entirely accurate.
44. However, looking at the totality of the evidence I find that Mr Skeen's account is broadly reliable and I accept it. Importantly, I accept his evidence that "at the end of a typical day my work clothing, hair and face would be covered in white asbestos dust". It may well be that his exposure was less frequent than that sentence implies, but I am satisfied that on many occasions Mr Skeen's clothing face and hair were covered in a white dust at the end of the day and that that dust was probably asbestos which emanated from the work of ladders. I accept that that probably happened as a result of ladders either stripping asbestos in order to enable the steam pipes to be branched out of and into the existing network; and/or cutting pre-formed asbestos sections with hacksaws; and/or tipping large asbestos bags out into drums in order to mix it on site.

Conclusion

45. In the light of the concession made by the defendants (rightly in my judgment) that "if Mr Skeen was in fact required to work alongside ladders and became covered in asbestos dust by reason of that process then that would constitute a clear breach of duty and liability would be established" I need not go into the various breaches of duty alleged.
46. In short, I am satisfied that Mr Skeen was probably exposed to levels of asbestos dust during his work at the Wilton site. That that exposure was as a result of the tortious act of the defendants and that it materially increased his risk of developing mesothelioma.
47. It follows that the claim succeeds and there will be judgment for the claimant in the agreed sum of £180,000.