

Everatt & Company Solicitors

QBE Risk Managers Forum

Birmingham

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Areas Covered

- Date of Knowledge – the Common Law position
 - Historical Risks – How Emerging Risks Were Managed in Law
 - Today – Proposed Information Sources
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Sheepish Tiger Says Sorry

Today the billionaire golfer alluded to "personal sins" following new allegations that he was having an affair with a Las Vegas cocktail waitress.




Date of Knowledge – the Common Law Position

- Stokes v Guest Keen and Nettlefolds (Nuts and Bolts) Ltd 1968:

“.....the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to have known..... where he has, in fact, greater than average knowledge of the risks, he must thereby keep....”




Historical Risks

- NIHL - Deafness
 - HAVS
 - Asbestos related disease
 - Latex allergy
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Date of Knowledge – NIHL

- Noise and the Worker – 1963
 - Department of Employment “Code of Practice for Reducing for Exposure of Employed Persons to Noise – 1972
 - *Thompson and others –v- Smith Ship Repairs* 1983
 - Noise at Work Regulations 1989
 - The Control of Noise at Work Regulations 2005
- 



Date of Knowledge – HAVS

- Condition first identified by Morris Raynaud in 1862 – “Raynaud’s Disease” – VWF - HAVS
 - BSI “Draft for Development DD43” – February 1975
 - The Control of Vibration at Work Regulations 2005
 - Specific dates of knowledge by industry and activity
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Date of Knowledge – Asbestos related disease


- 1965 Research Paper - “Mesothelioma of the Pleura and the Peritoneum following exposure to asbestos in the London area”.
- 31.10.65 – Sunday Times article “Scientists track down killer dust disease”
- Asbestos Regulations 1969
- “Fast Tracking” and “Show Cause” Practice Direction

Asbestos related disease/Cont.....

- “Fast Tracking” and “Show Cause” Practice Direction
- Living Mesothelioma claims – the Trial will generally not be more than 16 weeks following service of the claim form
- The “Show Cause” procedure – where the Defendant fails to show cause (i.e. that any defence has “real prospects of success”) judgement will be entered for the Claimant and an Interim Payment Order made.




Date of Knowledge – Latex allergy

- Is date of knowledge relevant for liability?
 - Control of Substances Hazardous to Health Regulations
 - *Dugmore –v- Swansea NHS Trust C.A. 21.11.02*
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Information Sources / Informative Websites

- HSE Approved Codes of Practice
 - HSE Guidance Notes
 - Trade Association/Professional Institutions
 - www.hse.gov.uk
 - www.iod.com
 - Specific sources – tailored to the nature of your business and risk
- 



A BRIGHT FUTURE !



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