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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **21/12/2022**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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BETWEEN:

JAMES MOORE

Plaintiff

and

HARLAND & WOLFF PLC

and

AES KILROOT POWER LTD

and

SOMEWATCH LIMITED

and

UNION INSULATION CO LTD (in liquidation)

Defendants

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Mr Frank O'Donoghue KC leading Mr Philip Dornan (instructed by Agnew Andress Higgins Solicitors) for the plaintiff
Mr David Ringland KC leading Mr Michael Maxwell (instructed by DWF Solicitors) for the first defendant
Mr Colm Keenan KC leading Mr Stewart Spence (instructed by Tughans Solicitors) for the third defendant

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McALINDEN J

[1] The plaintiff was born on 31st March 1951. He is by occupation a company director. Having never worked in any environment in which he was exposed to asbestos dust or fibres, in 2012 he underwent radiological investigations for another chest condition and these investigations revealed

the presence of bilateral pleural plaques which to this day remain asymptomatic. The plaintiff alleges that his exposure to asbestos dust and fibres must have occurred in a domestic setting during his childhood and early adulthood. It is the plaintiff's case that the plaintiff's late father worked at various times and locations as a pipe lagger, which work resulted in his clothing being heavily contaminated by asbestos dust and fibres and it was in this context that the plaintiff was exposed to asbestos dust and fibres when the plaintiff's father returned home from his places of work, wearing clothing heavily contaminated by asbestos dust and fibres. The plaintiff alleges that by this means he was exposed to asbestos dust and fibres in the domestic environment over a prolonged period from the time of his birth on 31 March 1951 up until 11 September 1974 when he moved out of his parents' home at 69 Newcastle Street, Belfast, following his marriage.

[2] By a Writ of Summons issued on 13 March 2015, the plaintiff commenced a claim for damages including provisional damages against the four defendants listed above. This was followed up by service of the Statement of Claim in this action on 29 June 2016 and the plaintiff's claim was further fleshed out in a number of sets of Replies to Particulars served between June 2017 and April 2018. The plaintiff discontinued his action against the fourth defendant on 8 September 2017, this defendant being a company in liquidation with no relevant insurer identified. The plaintiff also subsequently discontinued his Action against the second defendant as there was a dearth of cogent evidence relating to the plaintiff's father's employment by that defendant at Power Station East in Belfast. The matter came on for hearing on 8 November 2021 and was heard over a number of days, the last being 11 November 2022. During the course of the hearing, Mr Simpson KC who initially appeared for the first defendant, leading Mr Maxwell, retired from practice and was replaced by Mr Ringland KC. I am indebted to all counsel for the three parties before the court for their comprehensive, erudite and helpful written submissions and for senior counsels' candid and well-marshalled oral arguments. I found it of great benefit to have before me in this case seven counsel who between them have amassed over 250 years of experience dealing with cases of this type. That deep well of expertise and experience has been of great assistance to the court in its efforts to do justice to the parties to the action.

[3] It is agreed by the parties that the plaintiff's father, the late Mr James Moore, worked as a pipe lagger for various sub-contractors providing pipe lagging services in the Belfast Shipyard from 1948 up to 1983. There were periods of time when he was employed by Newalls, Cork Insulation and Union Insulation but these entities are not before the court. There were periods of time when he was employed by Cape Contracts Limited and in that regard Somewatch Limited is the successor in title to the liabilities of Cape Contracts Limited and is before the court as the third defendant. It is further agreed between the parties that following the England and Wales

Court of Appeal case of *Maguire v Harland and Wolff plc and another* [2005] EWCA Civ 1, liability for secondary or familial exposure to asbestos dust and fibres can only accrue in respect of exposure after the end of October 1965, because the risk of injury as a result of secondary or familial exposure to asbestos dust and fibres was not reasonably foreseeable before that date.

[4] What this means is that although the plaintiff alleges that he was exposed to asbestos dust and fibres in his family home for the period between 31 March 1951 and 11 September 1974, (a total of 8,566 days), the period of exposure which is potentially compensatable is the period between 1 November 1965 and 11 September 1974 (a period of 3,237 days). It is further accepted by the parties before the court that of those 3,237 days when the plaintiff's father was working as a pipe lagger in the Harland and Wolff shipyard, Cape Contracts Limited/Somewatch Ltd was the employer of the plaintiff's father for a total of 601 days, there being three discrete periods of employment with Cape between 1 November 1965 and 1 July 1966, 8 October 1969 and 24 October 1969, and 10 November 1969 and 16 October 1970. During the remainder of the 3,237 days when the plaintiff's father was working in the shipyard as a pipe lagger he was employed by Newalls, Cork and Union.

[5] In correspondence directed to the solicitors for the plaintiff by the first defendant's solicitors, dated 25 November 2021, the first defendant, states that:

> "solely for the purposes of this Action but not further or otherwise, Harland & Wolff do not dispute the principle that until the mid-1970s workmen particularly insulators on occasions brought home work clothes contaminated with asbestos dust and particles and that family members were exposed to the dust and particles and years later developed pleural plaques."

[6] This correspondence was brought to the court's attention when the hearing of the matter recommenced on 28 September 2022. On this occasion, the court was also informed that the third defendant was "prepared to concede that there would have been exposure to asbestos up to 1970 in relation to laggers, one of whom was obviously the plaintiff's deceased father, and that exposure would have led to family exposure up to 1970." I interpret this concession to relate to the 601 day period made up of the three discrete periods between 1 November 1965 and 1 July 1966, 8 October 1969 and 24 October 1969, and 10 November 1969 and 16 October 1970.

[7] During the course of oral submissions on 11 November 2022, one final matter was agreed between the parties to the effect that the principles set out

in the England and Wales Court of Appeal case of *Holtby v Brigham & Cowan (Hull) Ltd* [2000] 3 All ER 421 should be applied in this case. What that means is that in a case arising out of the sequential exposure of a plaintiff to asbestos dust and fibres by two or more defendants where it is alleged that the injury or condition that the plaintiff has developed is dose related and dependent upon cumulative exposure (pleural plaques being one such condition), the onus of proving causation is on the plaintiff; it does not shift to the defendant. The plaintiff will be entitled to succeed if he can prove that the tortious defendant's conduct made a material contribution to his injury or condition. Strictly speaking, the defendant is only liable to the extent of that contribution but if for some reason the issue of apportionment is not raised by the defendant, the plaintiff will succeed in full.

[8] However, if the issue of apportionment is raised (as in this case) the question which has to be answered is whether, at the end of the day and on consideration of all the evidence, the plaintiff has proved that the defendants are responsible for the whole or a quantifiable part of his injury or condition. The question of quantification may be difficult, and the court only has to do the best it can, using its common sense to achieve justice not only to the plaintiff but to the defendant and among defendants.

[9] The outworkings of this approach in a case of this nature is that, in the absence of complicating factors, such as periods of increased or reduced exposure, or exposure to blue asbestos, which is known to be particularly dangerous, it is appropriate and just to divide responsibility between defendants on a time exposure basis. Following on from the earlier decisions of *Crookall v Vickers Armstrong Ltd* [1955] 1 WLR 659 and *Thompson v Smiths Shiprepairers (North Shields) Ltd* [1984] 1 All ER 881, it is also appropriate and just, in a case where such exposure has occurred both before and after the point in time when the courts have determined that the risk of injury as a result of exposure to asbestos dust and fibres became reasonably foreseeable, for the plaintiff only to be able to recover against any defendant on a time exposure basis for culpable exposure and not for non-culpable exposure.

[10] Before examining the evidence in this case, one other issue relating to apportionment must be addressed and that is the issue of the apportionment of liability between a main contractor and one of a number of sub-contractors engaged in the construction of a ship for an asbestos exposure related injury (asbestosis) suffered by an employee of the sub-contractor as a result of working on that ship. This issue was addressed in the Northern Ireland case of *Henry Doggart Patterson v Harland and Wolff plc and APV plc.* In that case, the plaintiff, Mr Patterson, was employed directly by Harland and Wolff for a period of time and was exposed to asbestos dust and fibres during that period of employment. Thereafter, he was employed by AVP for a much shorter period of time during which period of employment he was exposed to asbestos dust and fibres when AVP was engaged by Harland and Wolff as

one of many sub-contractors involved in the construction of a large ocean-going vessel then under construction at the Harland and Wolff shipyard.

[11] Campbell LJ heard the matter at first instance and in his judgment which was delivered on 24 November 2000 and assigned the neutral citation [2000] 2173, he apportioned liability between the defendants on a straight time-intensity basis (75% Harland and Wolff and 25% AVP). The sub-contractor appealed this apportionment and the Court of Appeal made up of Carswell LCJ, Nicholson LJ and McCollum LJ gave judgment on 19 October 2001 and the judgment which was delivered by Carswell LCJ is reported at [2001] NIJB 422.

[12] The main issue which the Court of Appeal had to grapple with was whether Harland and Wolff should have been fixed with a larger share of liability than that which resulted from a straight time-intensity calculation.[1] It was argued on behalf of AVP that Harland and Wolff was not just a mere occupier of the vessel under construction but it was in control of the working operations of a host of sub-contractors on board the vessel under construction and was responsible for the co-ordination of the work of those sub-contractors on board the vessel, including the pipe laggers who created a significant amount of the asbestos dust and fibres that were inhaled by the plaintiff when he was working onboard the vessel as an employee of AVP.

[13] The Court of Appeal agreed with the submission that Harland and Wolff was the main contractor for the construction of a very large vessel and that it brought on board that vessel a host of sub-contractors with very many employees. The court concluded that this placed a more direct responsibility upon Harland and Wolff than that which rested on a mere owner/occupier who entrusted work to competent contractors. The Court of Appeal certainly did not absolve AVP of all responsibility to take steps to minimise the risk to its employees, but the court stated that it did not regard the sole responsibility to protect those men as having rested with AVP.[2]

[14] The court concluded that Harland and Wolff brought sub-contractors onto the vessel to do work which it knew or ought to have known would create a risk to all employees in the vicinity of the pipe lagging work which included asbestos cutting and asbestos spraying. The court held that Mr Patterson was exposed to dust created by other sub-contractors as well as that which came from his own work. The court was of the opinion that on the facts of the case there was a duty upon Harland and Wolff to take steps to minimise the risk to the sub-contractors' employees by taking such precautions as providing ventilation, exhaust appliances and co-ordinating dust control among the various trades and firms engaged on the vessel.

[1] See page 425 j.
[2] See page 427 a.

[15] The court considered that there was a concomitant liability on Harland and Wolff towards Mr Patterson along with that which was owed to him by his employer AVP. The court divided that liability equally between them, with the result that the overall apportionment shifted from 75% Harland and Wolff, 25% AVP to 87.5% Harland and Wolff to 12.5% AVP.[3] In the context of the present case, the *Patterson* decision provides important guidance when it comes to considering whether there should be any concomitant liability between Harland and Wolff and Stonewatch for the period of time when the plaintiff's father was employed by Cape as a pipe lagger on various vessels, when Cape was engaged by Harland and Wolff as one of a number of sub-contractors involved in the construction of those vessels in the Harland and Wolff shipyard.

[16] I now turn to address the evidence which was adduced by the parties during the hearing of this action. The plaintiff's evidence was that from the time of his birth up until the time of his marriage, he lived with his mother and father at 69 Newcastle Street, off the Newtownards Road. This was a small two-bedroom terrace house. There was a living room and a kitchen downstairs with an outside toilet. When the plaintiff's brother was born in the early 1960s, he shared a bedroom with his younger brother. His father worked as a pipe lagger in the shipyard and in the winter, he would have worn a great coat over his work overalls on his way to and from work. He also took a rucksack containing his lunch to work. When he came in from work in the evening, he would throw the overcoat over the banister at the bottom of the stairs which led from the living room up to the bedrooms and he would wear his overalls while having his dinner with the family. On cold nights the same coat would have been placed on top of the boys' bed for extra warmth and the boys would also have hidden under the coat and played inside it. The plaintiff has a memory of going down to the local sweet shop every Friday evening with his father and his younger brother in order to buy sweets and Airfix models and his father would have been wearing his great coat on those occasions. The father's work overalls were washed in the kitchen by the plaintiff's mother every week and the dust would have been shaken out of the overalls in the back yard prior to them being hand washed in the kitchen sink. The overalls were then dried outside on a line in good weather. In poor weather, they were dried inside on a clothes rail raised to the ceiling by a pulley system.

[17] The plaintiff's clear recollection was that his father's great coat and overalls felt prickly to the touch. The plaintiff informed the court that his father was diagnosed with an asbestos related chest condition prior to his death and, indeed, received compensation for that condition. I have been provided with correspondence dated 13 November 1999 which indicates that the plaintiff's father's claim was settled in the sum of £10,000 plus costs.

[3] See page 427 d.

Cape's liability which was calculated on a time/exposed basis with a cut-off date of 31 December 1970 was £928.57. It is immediately obvious that Cape's apportionment was 9.2857%. The plaintiff's mother is also deceased. It would appear that she did not suffer from any chronic respiratory illness and as far as the plaintiff is aware there was no clinical or radiological evidence to indicate that she had been exposed to asbestos dust and fibres. The plaintiff's younger brother has also gone on to develop pleural plaques. However, it would appear that in an early part of his working career, he worked as a pipe lagger. The plaintiff makes no case that he was exposed to asbestos dust and fibres by reason of his brother's employment. In relation to the correspondence dated 13 November 1999, I do not consider that this correspondence can be interpreted as meaning that the plaintiff's father settled his case on the basis that exposure to asbestos did not take place after 1970. I interpret the correspondence to mean that Cape's liability did not extend beyond that date.

[18] The plaintiff gave evidence that he never worked in any setting where asbestos dust or fibres were generated. The bulk of his working life was spent either in retail or running a confectionary business. He stated that he did suffer from asthma and bronchiectasis (he has a significant history of tobacco smoking) and it was when he underwent a CT scan in 2012 to investigate his underlying chest problems that he discovered that he had pleural plaques. The doctors told him at that time that this condition was related to exposure to asbestos dust and fibres and suggested that he seek legal advice.

[19] The plaintiff gave evidence that the knowledge that he has pleural plaques has caused him great worry which has been exacerbated by the fact that two people he knew developed asbestos exposure related chest conditions as a result of secondary/familial exposure and both have now died from those conditions. However, the plaintiff accepted that he has not been prescribed any psychotropic and anxiolytic medications at any stage following the diagnosis of pleural plaques.

[20] The medical evidence adduced on behalf of the plaintiff consisted of reports prepared by Professor McGarvey, a Consultant in Respiratory Medicine, Drs Lawson and Clarke, Consultant Radiologists and Dr Bell, a Consultant Psychiatrist. This medical evidence demonstrates that the plaintiff does indeed have calcified pleural plaques with no present evidence of other asbestos related lung disease, although he is at risk of developing this over the course of his lifetime. As indicated above, he does suffer from the un-related chest conditions of asthma and bronchiectasis and a previous significant smoking history is noted. It is Professor McGarvey's opinion that the plaintiff has developed pleural plaques as a result of domestic exposure to asbestos dust and fibres following on from his father's employment as a pipe lagger. The plaintiff is at risk of developing much more serious asbestosis related chest conditions.

[21] It is Dr Bell's opinion that the plaintiff has developed a chronic adjustment reaction particularly since his underlying and unrelated chest conditions have deteriorated and he has become aware that two acquaintances have recently died as a result of exposure to asbestos dust and fibres. The plaintiff worries that his worsening chest symptoms are signs of the development of asbestosis or cancer. This adjustment reaction is characterised by irritability and anxiety. It is worthy of note that the plaintiff has not required any medication to deal with this adjustment reaction but it would seem that back in 2002 and 2003 he was prescribed two courses of anti-depressant medication, although the plaintiff was unable to recall why these medications were prescribed.

[22] The plaintiff was cross-examined by both Mr Simpson KC and Mr Keenan KC. In addition to suggesting that as the plaintiff reached his teenage years, he would have been spending less time in the family home in the evenings and would not have been playing under his father's coat and would not have been present when the plaintiff's mother was shaking out his father's overalls, certain important matters about the duration of his alleged exposure to asbestos dust and fibres were specifically put to him.

[23] It was put to the plaintiff that the correspondence in this case dated 29 June 2015 (email) and 1 July 2015 (hard copy post) that was sent by the plaintiff's solicitors to Harland and Wolff specifically stated that the plaintiff was exposed to asbestos dust and fibres in the home from 1951 to 1965. The plaintiff was prepared to accept in cross-examination that the information contained in this correspondence could only have come from him when giving his instructions to his solicitor. However, the plaintiff was adamant that he remained in the house with his parents and brother until he married in 1974. It was also put to the plaintiff that when he first saw Professor McGarvey on 13 November 2015, he told Professor McGarvey that:

> "He believes he came into contact with asbestos as a child when living in the family home … This would have continued from a very young child until he was 12 or 13 years of age."

On the basis of this history, the exposure would have ended at the latest in early 1965.

[24] The Plaintiff accepted in cross-examination that Professor McGarvey had accurately recorded every other aspect of the history given to him by the Plaintiff and his explanation for the sentence in the report "This would have continued from a very young child until he was 12 or 13 years of age" was that this referred to the Plaintiff playing with his late father's great coat.

[25] However, this explanation does not carry much weight because, when cross-examined by Mr Keenan KC, the plaintiff accepted that he would have stopped playing with his father's coat before the age of 12 or 13. It was put to the plaintiff by Mr Simpson KC that the reason why the plaintiff had told his solicitor that he was exposed up to 1965 and had told Professor McGarvey that he was exposed up to the age of 12 or 13 was that the great coat which the plaintiff's father used to wear to work from the early 1950s onwards was no longer worn by him by the mid-1960s. However, the plaintiff disagreed with that suggestion.

[26] When cross-examined by Mr Keenan KC, the plaintiff accepted that he could not be sure of some dates but he was sure that he remained living with his parents and brother in the family home until he was married and that "I was still in the same house where the same things were still happening, so you have to assume that I was still exposed." However, Mr Keenan KC then put the following question to the plaintiff:

> "Even if you are correct in saying that you were exposed after your 12th or 13th birthday, do you accept that any exposure there was then was much, much less than would have been in the earlier years, when you were playing with the coat?"

The plaintiff stated in reply:

> "I think that's possible, yes."

[27] The plaintiff's wife Ann Moore then gave evidence. Her ability to remember dates was better than her husband's. Their courtship commenced in 1970 and it wasn't long before she was visiting the plaintiff's house two to three evenings per week. She had her dinner with the family and the family always ate together when the plaintiff's father returned from work. The plaintiff's father always kept his overalls on when eating his dinner and she remembered him wearing a great coat over his overalls in the winter months when he came in from work. In the summer months he would have worn an old suit jacket. When he came in from work, she remembered that he always hung the coat over the banister. Mrs Moore remembered the plaintiff's father's overalls being washed in the kitchen sink. They were shaken out before being washed. Sometimes they were shaken out in the kitchen. They were always washed separately. She would have seen this take place on approximately six occasions.

[28] Mrs Moore gave evidence that when she married the plaintiff in September 1974, they moved to a house in Laburnum Street, off the Ravenhill Road. The couple would still have regularly visited the plaintiff's parents and would have had dinner with them, probably visiting twice per week for fish

and chips. In addition, the plaintiff would have called in to see his parents on his way home from work. She remembered that the plaintiff's father continued to work for another eight or nine years after she married the plaintiff and she remembered the plaintiff's father retiring from work. Her clear recollection was that he continued to wear a heavy coat or a jacket over his overalls in the period between her marriage to the plaintiff and the retirement of the plaintiff's father.

[29] The next witness to give evidence on behalf of the plaintiff was Mr Charles Simmonds, an 83 year old gentlemen. Apart from a five-month period in 1973, he worked continuously as a welder on ships at the Harland and Wolff shipyard in Belfast from 1956 to 2002. He stated he was familiar with the work of pipe laggers as day after day, often for the full duration of a shift, they worked alongside him on various vessels on which he was carrying out welding work. These pipe laggers would have covered pipes with asbestos using a spraying machine and it was common for the dried and hardened asbestos to have to be cut thereafter using hacksaws. As a result, a lot of asbestos dust and fibres were released into the air.

[30] When Mr Simmonds started work in the shipyard, asbestos was being freely used and pipe lagging using asbestos was the standard method of insulating pipes. However, no precautions were taken to minimise exposure to asbestos dust or fibres. No protective equipment was supplied. No masks or respiratory equipment were used until the late 1970s or early 1980s and it was only in the late 1980s and early 1990s that Harland and Wolff brought ventilation equipment onto vessels under construction.

[31] Asbestos was still being used to lag pipes in ships up to the late 1980s or early 1990s. In relation to the issue of clothing, Mr Simmonds' evidence was that some workmen bought their own overalls outside the shipyard and other workmen bought them from the Harland and Wolff staff who sold sets of second-hand overalls for five shillings a set. Mr Simmonds stated in his evidence that the overalls of pipe laggers were usually covered in asbestos dust and this chimes with Carswell LCJ's description of "white men" in the *Patterson* case. Mr Simmonds confirmed that he had worked in both the construction and refurbishment of ships in the shipyard and in the 1960s and 1970s most of the work was construction work and he was able to recall the names of three postal vessels that were constructed during that period in which asbestos was extensively used, namely the Amazon, the Aragon and the Arlanza.

[32] Mr Simmonds confirmed that although he did not know the plaintiff's father personally, he had heard of him, and he knew several men who had worked with the plaintiff's father as pipe laggers. They would have talked to Mr Simmonds about "Ginger Moore." Mr Simmonds confirmed that the welding workforce and the "red leaders" were directly employed by Harland

and Wolff and the pipe laggers and other trades were employed by sub-contractors but all the various trades worked together in the same areas of the ships, side by side and, in some instances, two pipe lagging sub-contractors had employees working on the same vessel at the same time. When cross-examined by Mr Simpson KC, Mr Simmonds accepted that squads of pipe laggers employed by a sub-contractor would have come on board a ship with their own foreman and these foremen would have directed the work of those pipe laggers. He also accepted that there was fluid movement of pipe laggers between the various pipe lagging sub-contractors. When cross-examined by Mr Keenan KC, Mr Simmonds agreed that the Harland and Wolff foremen were in overall charge of the supervision and co-ordination of the work between the various sub-contractors working on a vessel at the same time. He was also clear that the pipe lagging sub-contractors' employees were usually working on the ships at the same time as other trades and often side by side with other trades.

[33] In cross-examination, Mr Simmonds confirmed that there were no washing facilities in the shipyard and there were no lockers. If welders or pipe laggers brought lunchboxes to the shipyard, the workers would have left their lunch boxes underneath the ship under construction beside fires that were lit, and they would have eaten their lunches beside these fires. Sometimes they ate their lunches on board the vessels and all the various trades would have sat together. Mr Simmonds also confirmed that he also brought a great coat to work in the winter and his wife also regularly washed his overalls in the kitchen sink at home. Mr Simmonds stated that sometimes when it was cold during the winter months, he would have worn his great coat while actually working on a vessel and if the coat was not being worn, he would just have left it beside him in the part of the vessel where he was working. Either way, his coat was often covered in asbestos dust and fibres. Mr Simmonds was adamant that there were no washing facilities, or clothes changing or storing facilities when he worked in the shipyard and no warnings were issued about the dangers of asbestos dust or fibres.

[34] The plaintiff's younger brother David Moore was also called to give evidence. Mr David Moore was born in November 1960 and he confirmed that the plaintiff continued to reside with him and their parents at 69 Newcastle Street until the plaintiff got married in 1974 and that the plaintiff regularly visited his parents thereafter. Mr Moore confirmed that his father worked as a pipe lagger in the shipyard and that he sometimes wore a boiler suit and sometimes a pair of dungarees. He wore an overcoat in winter and a suit jacket in the summer. He wore a flat cap, a shirt and tie and a pair of work boots. Mr Moore confirmed that when his father came home from work, he took off his cap and his coat and draped the coat over the banister at the bottom of the staircase in the living room. He usually was still wearing his boilersuit or his dungarees when he ate his dinner and the family always had dinner together in the living room. The coat usually stayed draped on

the banister until the plaintiff's father put it on again the next morning unless the plaintiff's father put it on to go out again later that same evening. The boys sometimes played in the coat and put on the flat cap or checked the pockets of the coat for money. During the winter nights, the coat was placed on the boys' double bed to keep them warm. Mr Moore thought that the coat was put on the bed throughout the winter and not just on colder nights. Their mother could have put the coat on the bed and sometimes one of the boys did this.

[35] Mr Moore confirmed that he continued to live with his parents after the plaintiff moved out following his marriage. Mr Moore moved out in the early 1980s and his father retired shortly thereafter. The coat was still placed on top of the bed in the mid to late 1970s and even up to when Mr Moore moved out of the house. Mr Moore confirmed that his mother handwashed his father's work clothes in the large kitchen sink and that these overalls and dungarees needed a good shake out before they were washed. Sometimes this took place in the kitchen. He confirmed that he would have witnessed his mother doing this on occasion, but he would not have been present in the kitchen every time his mother was either shaking out or washing the work clothes.

[36] During cross-examination by Mr Simpson KC, Mr Moore agreed that sometimes he and his brother were out of the house playing when their father returned home and that sometimes their father would have eaten his dinner before they returned home.

[37] Mr Stephen Andress, a principal in the firm of Agnew Andress Higgins, was also called as a witness in this case and parts of his file including his attendance notes relating to consultations with the plaintiff, various notes made by him on the file and various items of correspondence were also produced to the court and the other parties, legal professional privilege having been waived by the plaintiff. These documents formed the basis of the evidence that Mr Andress gave to the court both in examination-in-chief and under cross-examination.

[38] The first document that was referred to in evidence was the handwritten note of the plaintiff's initial instructions dated 12 February 2013. It is clear from this document that Mr Andress obtained an employment history from the plaintiff and was instructed by the plaintiff that he had not been exposed to asbestos during the course of his employment but that the plaintiff's father had worked as a pipe lagger for Cape. On the same date Mr Andress dictated a set of instructions to his secretary in the following terms:

> "Open a new file for James Moore. We are not sure of the Defendants just yet, but it will probably be Cape and others.
>
> His father's date of birth is 22nd April 1918 all I need is the National Insurance. His father died on the 6th October 1995.
>
> Send for the GP notes and hospital notes and when we get the National Insurance Number of Mr Moore's father send it to the Inland Revenue. Send both James Moore and James Moore Senior – his father's authorities to get the employment from Newcastle-Upon-Tyne. It could take 4-6 months and then I will get Mr. Moore in again when I get that.
>
> When we get the GP notes and hospital notes I will decide what medical evidence we need to get.
>
> A CT scan and pulmonary function tests are up at the BCH, so when we are asking for the notes and records ask for those.
>
> If I am asking witnesses do they know Mr. James Moore Snr his nickname is Ginger Moore.
> MR ANDRESS"

[39] Following this, a letter was written by Agnew Andress Higgins to the plaintiff on 15 February 2013 requesting the plaintiff to provide details of his late father's National Insurance number. The letter states:

> "This is to enable me to obtain his employment record from the Inland Revenue to see who his employers were from 1965 onwards."

The letter went on to request the plaintiff to write out a history of his exposure to asbestos. The letter continued:

> "I understand you went to the shops with your father on a Friday and hid in his overcoat, but I really need a full exposure history from as far as you can remember and particularly from 1965 onwards. I need a description of the house that you lived in, explaining where your father got changed, where his overalls were, where his coat was left

> and where the asbestos exposure would emanate from within the house or anywhere else."

There can be little doubt that the main focus of this letter was Mr Andress's desire to obtain instructions from his client concerning the nature and extent of the plaintiff's secondary exposure to asbestos dust and fibres in the period after 1965.

[40] The next document referred to by Mr Andress was a letter he received from the plaintiff dated 23 March 2013. It is clear from this correspondence that there was a consultation arranged for the following week and the plaintiff was going to bring his late father's National Insurance details and a post-mortem report to that consultation. The following history of exposure to asbestos is then included in the letter:

> "My father was a pipe covered in the shipyard a hardworking man like so many others of those days.
>
> Our house was very small a typical two up two down terrace house off the Newtownards Road.
>
> It consisted of a small living room with the stairs and banister rail coming into the living room this is we're my father hung his work coats when he came in from work.
>
> It is also the place where we spent most of our time.
>
> The rest of the house consisted of a small back kitchen and two small bedrooms upstairs.
>
> I remember as a child the coats on the banisters and the stuff all over my father's cloths but never thought much about it, we past those clothes every night going to bed.
>
> My father was a very kind and loving man he took me to the sweet shop every Friday night and gave me my pocket money, we sometimes played a game I would hide in his coat on the stairs and he would ask of anyone had seen me then I would jump out and he would take me to the shop.

> PS In winter the house was very cold due to no heating and sometimes the heavy coats would be put over the beds for extra heat.
>
> We had no washing machine so all the clothes would be washed in the sink in the little kitchen."

It is clear that this letter does not deal specifically with the issue of the dates of exposure. The references to "a child", playing a game with the coat and going to a sweet shop do not really chime with the plaintiff being aged 14 years and over. This account appears to be an account of the plaintiff's exposure primarily in the period prior to 1965.

[41] The plaintiff's father's report of autopsy was prepared following a post-mortem examination performed by Dr Derek Carson on 8 October 1995. It records the cause of death as:

> "1(a) bronchopneumonia due to (b) chronic bronchitis, emphysema and pleural fibrosis.
>
> II Congestive heart failure due to hypertension and old myocardial infarction. In a section of the report dealing with the microscopic examination of lung tissue the following appears: In general terms the long-term changes were more in keeping with chronic infection than with asbestosis. However, a number of asbestos bodies were seen and the possibility that asbestos exposure had contributed to the picture could not be excluded."

[42] There is a subsequent email on the file from the plaintiff to Mr Andress dated 27 March 2013 in which the plaintiff states that his wife recalls that the plaintiff's father received "£7000 around 1980 for a claim on his chest he accepted this but was advised that he should have rejected the amount." The recollection attributed to the plaintiff's wife's is inconsistent with the contents of the correspondence referred to in paragraph [17] above which provides details of the settlement of the plaintiff's father's claim in 1989 for £10,000.

[43] The next document referred to by Mr Andress in his evidence was another file note dated 9 June 2014. It would appear that Mr Moore telephoned Mr Andress seeking an update and as a result of this conversation, a decision was taken to write a letter of claim to Cape. It would appear that the plaintiff telephoned Mr Andress's office again on 30 June 2014 and informed the office that his brother David knew more about where his

father worked and the plaintiff gave the office his brother's mobile telephone number.

[44] The next document referred to by Mr Andress was a handwritten attendance note dated 10 July 2014. This document gives brief details of the plaintiff's father's employment history on the basis of the plaintiff's brother's recollection. Mr Andress specifically noted that he needed the plaintiff's father's HMRC schedule for the period post 1965. Mr O'Donoghue KC asked Mr Andress the following question:

> "What's the significance of post – for post – 1965?"

Mr Andress answered as follows:

> "Well, there's no claim for damages for secondary exposure prior to 1965."

[45] The next document referred to by Mr Andress was another typed file note dated 26 January 2015. This was prepared following a conversation with the plaintiff. It would appear that Mr Andress had been in touch with HMRC but had been unable to obtain a schedule of the plaintiff's father's employment as these records related to a deceased individual. It was decided that once the plaintiff's father's "union cards" had been provided to Mr Andress by the plaintiff, Mr Andress would have a Writ of Summons issued against one of the Cape companies and would then issue a Section 32 application in order to obtain details of the plaintiff's father's employment records from HMRC.

[46] It would appear that HMRC did provide details of the plaintiff's father's employment records by correspondence dated 24 April 2015. The next document referred to by Mr Andress in his evidence was another typed file note dated 27 May 2015 following a consultation with the plaintiff in his office on that date. It would appear that the plaintiff was able to inform Mr Andress that a Mr Tommy Meekin would have known his father and who he worked for. The note reveals that both Tommy Meekin and his wife were clients of Mr Andress and Mr Andress telephoned Mr Meekin and informed him that he needed to know "where Ginger Moore would have worked from 1965 onwards with Mersey, Newalls, Andersons, Cork, Cape and Union." As a result of the information received from Mr Meekin, Mr Andress directed that certain steps be taken but the importance of this note is that Mr Andress's main focus was to obtain as much information as possible as to the places where the plaintiff's father worked after 1965.

[47] The next piece of correspondence referred to by Mr Andress in his evidence was a letter from Cape Intermediate Holdings Ltd dated 30 June 2014 that also appears at page 158 of the trial bundle. This correspondence

confirmed the dates on which the plaintiff's father worked for Somewatch Ltd in the period between 28 October 1952 and 22 April 1983, including the periods specifically referred to in paragraph [4] above.

[48] Mr Andress then referred to a number of letters of claim, all dated 9 June 2015, that were sent to a number of entities including Cape Intermediate Holdings plc in which it was alleged that the plaintiff's father "worked for Cape Contracts Ltd between 1964/65 to 1983. As a result of this our client has pleural plaques due to secondary exposure." It is clear that the thrust of this letter of claim was the plaintiff's exposure to asbestos dust and fibres in the period post 1965. Another letter of claim of the same date that referred specifically to Cape Insulation and Asbestos Products identified the relevant period of employment as occurring between 1969 and 1971. The letter of claim that referred specifically to Andersons Insulation Co Ltd identified the relevant period of employment as occurring between 1965 and 1967. The letter of claim that referred specifically to Harland and Wolff identified the relevant period of employment as occurring between 1961 and 1964. Finally. the letter of claim that referred specifically to the plaintiff's father working for Newall's and Cape at Kilroot Power Station identified the relevant period of employment as occurring between the 1960s and the 1970s.

[49] When asked by Mr O'Donoghue KC about the letter that was directed to Harland and Wolff that referred to the period between 1961 and 1964, Mr Andress confirmed that those dates "were factually in accordance with the HMRC schedule."

[50] It would appear that Mr Bowman of C&H Jefferson replied to this letter of claim on 22 June 2015 stating:

> "By your own admission, your client's alleged exposure to asbestos ended in 1964."

With respect to Mr Bowman, no such admission was contained in Mr Andress's letter. Mr Andress's letter simply stated that the plaintiff's father worked for Harland and Wolff from 1961 to 1964. However, I can readily understand why Mr Bowman would have seized upon this point because the letter of claim directed to Harland and Wolff was clearly deficient in that it should have gone on to explain that the plaintiff's father was employed by a number of pipe lagging contractors in the period subsequent to 1965 in the Harland and Wolff shipyard and that the plaintiff was seeking damages for secondary exposure in the period after 1965 against Harland & Wolff in its capacity as head contractor with overall responsibility for working conditions in the shipyard, which is the case that the plaintiff now seeks to make against the first defendant.

[51] Mr Andress candidly acknowledged and sought to rectify this deficiency in his response to Mr Bowman sent by email on 29 June 2015 which was followed up by hardcopy correspondence dated 1 July 2015. In this letter he pointed out that the plaintiff's father was employed by Newalls, Cork, Andersons and Cape post 1965. He goes on to state:

> "Our instructions are that for all these companies he mainly worked for Harland & Wolff on board ships as a pipe lagger/coverer and he was exposed to a considerable amount of asbestos which he took home on his clothes. Our client was exposed to asbestos from the secondary exposure from his father's clothes. This was the only asbestos exposure our client had."

[52] If this letter had concluded with this statement, then there would have been no doubt that the plaintiff was alleging exposure after 1965. However, the letter did not conclude in these terms. Instead, it concluded with the following two sentences:

> "Our client's father was born in 1918 and started work in 1938. Our client was born in 1951 and was exposed to asbestos from 1951 until 1965."

[53] This last sentence seems to positively confirm the very point that Mr Andress had set out to refute in this correspondence. Mr Andress in his evidence explained this in the following manner:

> "The letter is to explain to Geoffrey that I should have informed him that the case in relation to Harland and Wolff was as owner/occupier of a shipyard, where our client was exposed to asbestos, and not that we were claiming for '61 to '64 and that's basically it. And then I managed to – having sent the wrong letter of claim, I then managed to put the wrong date on the letter to Geoffrey Bowman, being '65 instead of '75, but the letter makes it quite clear that we are suing – that we are going to sue Harland and Wolff as owners/occupiers of a shipyard and that we are suing Newalls, Cork, Andersons, Cape or whoever we can post-65 for exposure after 1965."

In essence, Mr Andress's evidence was that the "date at the end was a mistake."

[54] Mr Andress also wrote to the plaintiff on 29 June 2015 informing him that letters of claim had been directed to a number of parties. The letter goes on to make the following requests and statement:

> "Could you please let me have the dates when you lived at Chadolly Street, Belfast, when you left and how often you visited your father. As you are aware I am trying to establish the amount of asbestos exposure you had after 1965."

The plaintiff responded by making an undated handwritten statement on the copy of the letter he received in the following clear and unequivocal terms:

> "I never lived in Chadolly Street. I lived with my mother and father full-time in 69 Newcastle Street until 11-9-1974 after which I visited almost every day."

The plaintiff then signed this statement.

[55] Although the request made by Mr Andress specifically referred to the "amount" of asbestos exposure the plaintiff had after 1965, when I asked Mr Andress what information he was seeking from the plaintiff, he stated that that the request for information was badly worded in that what he needed to know was which companies the plaintiff could sue. He stated:

> "It's badly worded, but it means that some of the companies that were declared on the schedule, you couldn't pursue, so we were basically wondering what we – which ones we could pursue and what percentage of a case we could get."

In essence, it was Mr Andress's case that he needed to know "who was responsible and who we could sue." It was pointed out to Mr Andress that, having regard to the contents of the plaintiff's reply, the plaintiff seems to have interpreted his request as a request for information on the "amount" of exposure and he agreed with this.

[56] Mr Andress was questioned about a further document which was disclosed by him during the course of his evidence. This was a further attendance note of a consultation with the plaintiff dated 21 June 2016. This attendance note reads as follows:

> "Client lived in a 2 up 2 down house.
>
> Father always hung his overalls on the knob at the bottom of the stairs which was the living room of

> the house. TV in living room. 69 Newcastle Street N'ards Road.
>
> Left the family home in 1975.
>
> Father retired 1983.
>
> Client lived Bloomfield Avenue when he married – close to home. Client would call down at home 2 times a week on the way home from work."

[57] It is important to note that this record of a consultation specifically refers to overalls hanging on the knob at the bottom of the stairs and that there is no reference to a great coat. It is also important to note that this attendance note refers to the plaintiff leaving the house in 1975 whereas the handwritten statement made by the plaintiff sometime after 29 June 2015 set out in paragraph [54] above indicates that the plaintiff left the home on 11 September 1974.

[58] For the sake of completeness, I have been provided with a copy of a further item of relevant correspondence in the form of a letter dated 30 November 2018 written by Mr Andress to Tughans, the solicitors for the third defendant. The relevant paragraph reads as follows:

> "Furthermore, we would advise that 1970 is not the cut-off date in relation to this case. Our client lived at home where his late father brought asbestos until 1975 and continued to visit on a regular basis until 1983. The cut-off date in the father's case is not relevant to this action."

[59] In relation to the discrete issue of the history contained in Professor McGarvey's reports, Mr Andress confirmed that he did not provide Professor McGarvey with any instructions dealing with the issue of the time or duration of exposure.

[60] Under cross-examination by Mr Simpson KC, Mr Andress accepted that there was no document in the bundle of documentation produced to the court by him from his file that records the plaintiff as saying that exposure extended beyond childhood or occurred other than in childhood. Mr Andress stated:

> "I think that's right, there's no document, but there's no need for a document … I got clear instructions."

Mr Simpson KC then asked:

> "Right, well then – so inside your file, having searched it, there are no written instructions from your client detailing exposure other than in childhood. May the court take that as correct?"

Mr Andress confirmed that this was indeed correct.

[61] In respect of Mr Andress's assertion that the reference to 1965 in his email to Mr Bowman dated 29 June 2015 was a mistake and that he meant 1975, Mr Simpson KC enquired as to the significance of the year 1975 and Mr Andress responded by saying:

> "Because he left home around '74/'75. That was my client's instruction."

Mr Simpson KC then posed the following question:

> "So your client's instructions were that there was no exposure to asbestos after 1975?"

Mr Andress's first response was:

> "Not particularly."

At a subsequent stage of his cross-examination, he stated:

> "I felt, and its only my view, I felt that he had asbestos exposure, he felt he had asbestos exposure and I felt it was from his father, until he left home."

Mr Simpson KC then posed the following question:

> "And does that mean that he gave you instructions and there are instructions in writing somewhere that he was exposed to asbestos up until the time he left home?"

Mr Andress confirmed there was no such document. Mr Simpson KC pressed the matter by asking:

> "I want to make sure that there's no document anywhere that ever records your client saying that he was exposed up to 1975."

Mr Andress confirmed that there was no such document and Mr Simpson KC then pointed out the plaintiff had left the house in 1974. Mr Andress stated that initially there was some doubt as to whether the plaintiff left the house in 1974 or 1975.

[62] Mr Simpson KC then asked Mr Andress to explain why the case as pleaded alleged exposure up to 1983 and why the email of 29 June 2015 did not allege exposure up to 1983. Mr Andress answered this question by stating that although plaintiff visited his father's house regularly after he had moved out when he got married, when he (Mr Andress) started the case, his view was that the bulk of the plaintiff's exposure occurred up to 1975 when the plaintiff left the house and thereafter the exposure was "to a lot lesser extent..."

[63] During further exchanges between Mr Simpson KC and Mr Andress, it became very clear that although the plaintiff's written instructions in Mr Andress's file solely related to his exposure in childhood, Mr Andress, with his knowledge and experience of asbestos related litigation, came to a conclusion that as the plaintiff's father worked as a pipe lagger and would have been heavily exposed to asbestos dust and fibres throughout his working life and would have carried asbestos dust and fibres home on his person and clothing throughout that time, the plaintiff must, therefore, have been subject to significant secondary exposure to asbestos dust and fibres up to the time the plaintiff left the family home when he got married in 1974 and that after that time even though he visited the family home regularly his exposure would have been a lot less significant. Irrespective of the Mr Andress's undoubted level of expertise in asbestos litigation, I do not consider that the nature, extent or duration of the plaintiff's exposure to asbestos can or should be decided on the basis of, or even taking account of, the opinions formed by Mr Andress, based on his knowledge of the working practices and working conditions of pipe laggers working in the Harland and Wolff shipyard at the relevant time. Whether or not there was exposure after 1965 in this case, and if there was, the extent of that exposure are issues to be determined on the basis of the admissible evidence in the case and not on the basis of the opinion of one of the parties' legal representatives.

[64] Mr Andress's testimony concluded the evidence that was adduced on behalf of the plaintiff in this case. The third defendant did not seek to adduce any evidence and the first defendant adduced evidence in the form of a statement dated 29 November 2000 with attachments prepared by the late Norman Hume that was admitted under the provisions of the Civil Evidence (Northern Ireland) Order 1997. This was followed by the oral evidence of Dr Alan Jones, PhD, MPhil, BSc, a specialist in occupational hygiene with a special interest and expertise in the health risks associated with asbestos. He is presently a senior Consultant in the Institute of Occupational Medicine. His 122 page report is dated 19 February 2020. In addition to this report,

Dr Jones helpfully provided the court with a copy of the important paper written by John T Hodgson and Andrew Darnton in 2000 entitled "The Quantitative Risks of Mesothelioma and Lung Cancer in Relation to Asbestos Exposure."[4]

[65] The statement of the late Norman Hume which was witnessed by Mr Geoffrey Bowman reveals that Mr Hume worked as a clerk in the Purchasing Department (formerly the Contracts and Buying Department) of Harland and Wolff between 1948 and 1978. One of his duties was to obtain indemnities from sub-contractors. A standard indemnity form was in existence when Mr Hume first took up his post in 1948. This form was enclosed with each contract sent to a sub-contractor where the work involved the sub-contractor or its employees entering Harland and Wolff's premises to carry out work on ships, buildings or other structures. The sub-contractor engaged in such work had to sign and return the indemnity form before the work commenced and each completed indemnity form was kept in the indemnity ledger which was stored in the strong room of the Purchasing Department. Mr Hume's statement reveals most sub-contractors complied with these arrangements although a small number of sub-contractors may have worked on the Harland and Wolff site without an indemnity form being completed and it was often the case that a sub-contractor was on site for a number of days before the indemnity form was returned.

[66] According to the statement, it was Mr Hume's recollection that Cape, Newalls and Anderson Insulation were reliable sub-contractors in that they could be depended upon to complete the indemnity form that was enclosed with any contract. In his statement, Mr Hume referred to a copy of an indemnity form completed by Andersons Insulation Company Ltd dated 5 November 1952 which was attached to his statement. In 1972, at Mr Hume's instigation, the system was changed whereby if a sub-contractor was engaged in a number of jobs in the shipyard at the one time, one indemnity form would cover all those contracts. A copy of this revised indemnity form which was introduced in 1972 was also attached to his statement. Mr Hume's statement refers to the fact that it was sometimes the case that a sub-contractor would individualise the indemnity contracts by inserting its own clauses into them. According to Mr Hume, Harland and Wolff generally accepted these amendments.

[67] The significance of Mr Hume's evidence in respect of the issue of the existence of a valid and effective indemnity or series of indemnities covering the work carried out by Cape at the Harland and Wolff shipyard at the time when the plaintiff's father was employed by Cape was the subject of written and oral submissions at the end of the hearing but upon the receipt of Mr Hume's statement in evidence, it immediately became apparent to the court that it would be very difficult for the first defendant to rely on any such

[4] Ann. Occup. Hyg., Vol 44, No. 8, pp. 565-601, 2000.

alleged indemnity against Cape in respect of the period when the plaintiff's father was employed by Cape at the Harland and Wolff shipyard when no such indemnity agreement or agreements had been provided to the court and even if the court were to conclude that some form of indemnity agreement or agreements had been entered into by Cape which covered the plaintiff's father's employment, there was absolutely no evidence to indicate whether or not Cape had made any material amendments to the applicable indemnity agreements that had been accepted by Harland and Wolff and this uncertainty as to the actual content of the relevant agreements would certainly militate against their enforcement.

[68] The evidence of Dr Jones was received over two days on 28 and 29 September 2022. Dr Jones provided a detailed insight into the state of scientific knowledge in the 1960s and 1970s which formed the basis of the *Maguire* decision which excludes liability for secondary exposure to asbestos dust and fibres in respect of any exposure which occurred before the end of 1965. In this respect his evidence was illuminating and uncontroversial. The other issues addressed by Dr Jones were, firstly, the status in law of the first defendant during the time when the plaintiff's father was not directly employed by the first defendant in its shipyard but was instead employed by a sub-contractor in the first defendant's shipyard and, secondly, the existence or non-existence of any duties or obligations imposed by the relevant regulatory framework on an occupier to prevent asbestos contamination being taken home on the work clothes of an employee of a sub-contractor working in the premises of the occupier.

[69] Dr Jones' evidence in relation to the nature and extent of the various duties and obligations imposed under the relevant regulatory framework and the persons or entities to whom those duties attached was carefully considered by the court but the propositions put forward by Dr Jones were, in effect, elaborately dressed up submissions on the law and were premised on the assumption that in law the first defendant was a mere occupier of premises. On probing Dr Jones, it became clear that this was an impermissible assumption, having regard to the fact that Dr Jones had not carried out and had not been instructed to carry out any analysis of any issues relating to the actual role or roles played by Harland and Wolff in the construction of ships in its shipyard at the relevant time which would have a bearing on whether in law Harland and Wolff was more than a mere occupier of the shipyard at the relevant time. When this issue was raised with Mr Ringland KC during final oral submissions, he indicated that the defendant did not seek to rely to any great extent on the evidence of Dr Jones in this case.

[70] Having set out in detail the evidence that was adduced by the parties, I now turn to address the issues in the case. On the basis of the medical evidence adduced by the plaintiff on the specific issue of diagnosis, which

was largely unchallenged, I am satisfied, on the balance of probabilities, that the plaintiff has developed pleural plaques (radiologically diagnosed in 2012) and that this condition has developed as a result of the plaintiff's exposure to asbestos dust and fibres. It is impossible to determine when the plaintiff developed pleural plaques or how much exposure it took for the plaintiff to develop this condition. All that can be said is that the risk of developing pleural plaques as a result of exposure to asbestos dust and fibres is dose related and dependent upon cumulative exposure. Following on from the case of *McGhee v National Coal Board* [1972] 3 All ER 1008, in order to succeed in this case, the plaintiff only has to establish, on the balance of probability that a defendant's breach of duty materially contributed to the risk of the plaintiff developing pleural plaques, even though it remains uncertain that any particular period of exposure was the actual cause.

[71] I accept the plaintiff's evidence that he never worked with asbestos and, to the best of his knowledge, never worked in environments in which asbestos dust and fibres were generated. Having regard to the evidence, I am satisfied that the plaintiff's exposure to asbestos occurred in the domestic environment and the source of the asbestos dust and fibres in the domestic environment was the person and clothing of the plaintiff's late father who worked for the bulk of his working life with asbestos as a pipe lagger; an occupation which involved the production and generation of copious amounts of asbestos dust and fibres; so much so, that pipe laggers were known as "white men." I accept in its entirety the evidence of Mr Simmonds as summarised in paragraphs [29] to [33] above. I also have regard to the specific concessions made by the first and third defendant as set out in paragraphs [5] and [6] above.

[72] The main issues of controversy in the case are the issues of the duration and intensity of the plaintiff's exposure in the domestic environment. It is clear that the plaintiff's father worked as a pipe lagger for years before the plaintiff was born in 1951 and continued to work as a pipe lagger up to the early 1980s, probably 1983. The plaintiff resided with his parents in a small two up two down terraced house at 69 Newcastle Street off the Newtownards Road from the time of his birth in late March 1951 up to the time of his marriage in September 1974. Thereafter, he regularly visited his parents. The temporal limits of possible exposure are, therefore, between 1951 and 1983.

[73] Although the case as pleaded by the plaintiff alleges some exposure up to 1983, it was accepted by and on behalf of the plaintiff at the hearing of this matter that he was not contending that there was any significant or material exposure after he moved out of the family home in September 1974.

[74] It was also accepted by all the parties that on the basis of the *Maguire* decision, no liability can attach to either the first defendant or the third defendant for any secondary exposure experienced by the plaintiff which

occurred prior to the end of 1965. It is accepted by all the parties that the duration and intensity of the plaintiff's secondary exposure to asbestos dust and fibres between 1951 and 1965 clearly contributed to the risk of the development of pleural plaques but any such concession does not come to the assistance of the plaintiff in his quest for compensation. What the plaintiff has to establish on the balance of probabilities is that the duration and intensity of exposure he was subject to in the domestic environment in the period between the end of 1965 and the first half of September 1974 was such as to materially contribute to the risk of development of pleural plaques.

[75] The defendants, with justification, vigorously challenge the plaintiff's evidence relating to this issue. Firstly, they draw attention to the history given to Professor McGarvey as set out in paragraph [23] above. Secondly, they draw attention to the correspondence written by Mr Andress to Mr Bowman on 29 June 2015 and 1 July 2015 as discussed in paragraphs [51] to [53] and [61] to [63] above. Thirdly, they draw attention to the contents of the attendance notes prepared by Mr Andress relating to consultations with the plaintiff and the written instructions given by the plaintiff to Mr Andress and they argue that all these matters clearly point to no significant or material exposure occurring after late 1965.

[76] In relation to the correspondence written by Mr Andress to Mr Bowman, dated 29 June 2015, I am prepared to accept that the reference to 1965 was an unfortunate mistake and that Mr Andress meant to refer to 1975. However, in relation to the attendance notes and written instructions, I am entirely satisfied that these mainly describe the plaintiff's exposure during his childhood years and that Mr Andress, recognising this, did attempt to obtain from the plaintiff further details of the plaintiff's exposure post-1965 but that little by way of additional information was provided by the plaintiff. The request for instructions sent by Mr Andress to the plaintiff dated 29 June 2015 which is discussed in paragraphs [54] and [55] above specifically refers to the "amount" of asbestos exposure after 1965 and I believe that, primarily, this is the information that Mr Andress was seeking by sending that letter to the plaintiff. This is how the plaintiff appears to have interpreted the request. However, there was little by way of additional information relating to exposure in the period after 1965 provided by the plaintiff in response to this request.

[77] I am also entirely satisfied that the history recorded by Professor McGarvey in his first report is an accurate record of the history provided by the plaintiff to Professor McGarvey and that Professor McGarvey was informed by the plaintiff that the plaintiff believed that he came into contact with asbestos as a child when living in the family home and that the main source of asbestos was the plaintiff's father's great coat and that this exposure would have continued from when the plaintiff was a very young child until he was 12 or 13 years of age.

[78] In light of these findings, how can the plaintiff's case possibly succeed? The plaintiff in his evidence was adamant that he remained living with his parents in his parents' small house until he got married in September 1974. He was adamant that, all year round, his father's overalls and, in the winter, his father's great coat would have been contaminated with asbestos dust and fibres in the period after 1965, just as they were before 1965. The overalls were still worn by his late father during the evening meal in the family home and they were still shaken out, washed and dried every week or fortnight after 1965 and the great coat was still draped over the banister every winter evening and put on the bed during cold winter nights after 1965 just as had happened before 1965. As he stated in his evidence:

> "I was still in the same house where the same things were still happening, so you have to assume that I was still exposed."

This point was also forcefully made by Mr Andress in his evidence but as I have stated above at paragraph [63] above, I cannot decide this case on the basis of Mr Andress's opinion as to the nature and extent of exposure after 1965.

[79] At this juncture I remind myself of the evidence given by the plaintiff's wife Ann as to the routine in the plaintiff's parents' house in the period after 1970 and the evidence of the plaintiff's brother, David. I specifically note that David's recollection was that the great coat was placed on the bed every evening in the winter and that this evidence contrasted with the plaintiff's evidence that it was only placed on the bed during cold nights.

[80] In addition, to the above matters, four other specific pieces of evidence have to be carefully considered when determining this hotly contested issue. The first two pieces of evidence are the concessions made by the defendants. In essence the first defendant in principle accepts that up to the mid-1970s workmen working in the Harland & Wolff shipyard particularly insulators on occasions brought home work clothes contaminated with asbestos dust and particles and that family members were exposed to the dust and particles and years later developed pleural plaques. The second defendant makes the same concession in respect of the period up to 1970.

[81] The third piece of evidence is the plaintiff's answer to Mr Keenan's question which is set out in paragraph [26] above where Mr Keenan KC asked the plaintiff:

> "Even if you are correct in saying that you were exposed after your 12th or 13th birthday, do you accept that any exposure there was then was much,

> much less than would have been in the earlier years, when you were playing with the coat?"

The plaintiff stated in reply:

> "I think that's possible, yes."

[82] The fourth piece of evidence is the expert opinion evidence of Professor McGarvey as contained in his two reports dated 29th November 2015 and 25 October 2018. Professor McGarvey's two reports were admitted in evidence without the need of formal proof but the opinions contained therein were not agreed by the defendants. In his first report which was prepared following a consultation with the plaintiff on 13 November 2015, Professor McGarvey stated in the "Summary and Conclusion" section at page 4 that:

> "Mr Moore told me that for most of his childhood through the mid-1950s and early 1960s he would regularly play with his father's work overcoat. It is almost certain that his father's work coat was covered with asbestos dust and this is the likely source of Mr Moore's asbestos exposure. Therefore, it is probable that the bilateral pleural plaques on the CT scan are due directly to this source of asbestos exposure."

[83] In his second report which it would appear was prepared without a second consultation with the plaintiff ever taking place, Professor McGarvey stated at page 2 "it is likely that he had domestic exposure to asbestos through contact with his father's contaminated work overalls." At page 4 he stated:

> "It is almost certain that his father's work clothes were covered with asbestos dust. Mr Moore is likely to have been exposed to this at home up until his father stopped working or Mr Moore left the family home. It is my view that Mr Moore has calcified pleural plaques that have arisen as a direct consequence of domestic exposure to his father's contaminated work clothing."

[84] There is an interesting change of focus between Professor McGarvey's first report and his second report. In the first report, the secondary exposure is firmly and definitely linked to the plaintiff's contact with his father's great coat, with such contact occurring up to the early 1960s. On the basis of this first report, if considered in isolation, there would be no expert medical

evidence in this case linking the development of pleural plaques to any period of exposure after 1965.

[85] In his second report, Professor McGarvey links the development of pleural plaques to contact with the plaintiff's father's contaminated overalls in the domestic environment. The duration of exposure is stated to be "up until his father stopped working or Mr Moore left the family home." The history recorded and opinion given in the second report are materially different from those set out in the first report. What fresh information was provided to Professor McGarvey to enable him to refer to overalls as opposed to the great coat and to enable him to link exposure to the period of time up until the plaintiff's father stopped work or the plaintiff left home?

[86] The only other documentation that Professor McGarvey refers to in his second report are the pulmonary function tests performed on Mr Moore on 29 March 2018 and the report prepared by Dr Clarke, Consultant Radiologist, dated 29 March 2018. Neither of these documents contain anything approaching a history of exposure. So where did this information come from? Mr Andress was specifically asked by Mr O'Donoghue KC whether he had given Professor McGarvey a history or instructed him in relation to a history of the plaintiff's exposure. Mr Andress replied:

> "No the correspondence to Professor McGarvey is simply 'Please let us have an appointment to see our client and give us a report on medical terms.' I think the habit of writing details about exposure is very much hit and miss and shouldn't be there. …Well, in relation to Dr McGarvey I did not give him a history or instruct him in relation to a history of exposure."

This was Mr Andress's clear and unequivocal evidence.

[87] So how was Professor McGarvey able to set out the history of exposure and provide the opinion that is contained in his second report dated 25 October 2018? Having given the matter careful consideration, I believe that there are two possible sources. Firstly, there are the pleadings. The first pleading setting out a history of exposure is the Statement of Claim which was served on 29 June 2016 and the last pleading which contained a history of exposure is the plaintiff's replies to the third defendant's Notice for Particulars dated 20 April 2018. Paragraph 5 of this document states:

> "As per the Statement of Claim, the plaintiff was exposed to asbestos dust and particles from his father's working close when he resided at the family home between 1951 to 1975 and to a lesser

> extent when he visited his father between 1975 and 1983."

[88] The other possibility is that Professor McGarvey was provided with the attendance note dated 21 June 2016 or was provided with the salient information contained in that attendance note which is set out and discussed in paragraph [56] above. This attendance note specifically refers to overalls. It specifically refers to the date of the plaintiff's father's retirement and it specifically refers to the date (1975) when the plaintiff left the family home. There are striking similarities between the contents of the attendance note and the history and opinion contained in Professor McGarvey's second report. Whatever the source of the information which formed the basis of the history recorded and the opinion set out in Professor McGarvey's second report, this source is neither identified nor disclosed in the report.

[89] On the basis of this second report prepared by Professor McGarvey, if it were to be considered in isolation, it could be argued that, on one interpretation of the opinion expressed in this report, there is expert medical evidence in this case linking the development of pleural plaques to the period of exposure between 1965 and the date on which the plaintiff left the family home in 1974. However, on close examination of this report, I am not satisfied that this is the case as I shall explain below.

[90] However it is to be interpreted, this second report cannot be viewed in isolation, and it must be considered along with the first report. I cannot ignore the fact that the histories in the two reports are materially different as are the opinions on exposure. I cannot ignore the fact that the first report was prepared following a consultation with/examination of the plaintiff. There was no further examination of the plaintiff prior to the preparation of the second report. I also cannot ignore the fact that Professor McGarvey does not set out the source of the history contained in his second report which enabled him to come to the materially different opinion set out in his second report. I remind myself of the terms of the expert declaration attached to Professor McGarvey's second report, and, in particular, paragraph 4 thereof, which states:

> "I have indicated the sources of all information I have used."

[91] I should add at this stage that as the evidence on behalf of the plaintiff was coming to a close, I specifically raised with Mr O'Donoghue KC the issue of whether Professor McGarvey needed to be called as a witness or whether further comment needed to be obtained from Professor McGarvey to deal with the nature and extent of the link between the alleged exposure post 1965 and the risk of the development of pleural plaques. Mr O'Donoghue KC informed me that he did not consider there was any need for any further

input from Professor McGarvey but he stated that he would give the matter some further consideration.

[92] When the hearing reconvened for the purpose of final oral submissions on the afternoon of 11 November 2022, I specifically raised this issue again with Mr O'Donoghue KC and I indicated that the court had to consider the issue of whether post 1965 exposure occurred and then go on to look at the issue of whether the medical evidence supports the proposition that the post 1965 exposure materially contributed to the risk of the development of pleural plaques and I queried whether the medical evidence properly addressed this second issue.

[93] Mr O'Donoghue KC submitted that the medical evidence in the case was initially obtained "on the basis of a misunderstanding as to the time periods of exposure" but that the opinion evidence of Professor McGarvey in his second report is clear in that what he is saying is that the plaintiff's condition of pleural plaques has arisen as a direct consequence of domestic exposure to the father's contaminated work clothing and that this exposure continued up until the plaintiff married and moved out of the family home. Mr O'Donoghue KC, submitted that this lengthy period of continued exposure between 1965 and 1974 must have materially contributed to the risk of the development of pleural plaques.

[94] However, there is a difference between saying that the plaintiff was exposed to asbestos dust and fibres from his father's work clothing from 1951 up until 1974 and that the plaintiff's "pleural plaques … have arisen as a direct consequence of domestic exposure to this father's contaminated work clothing" and saying that "the period of exposure between 1965 and 1974 materially contributed to the risk of the plaintiff developing pleural plaques." Professor McGarvey does not expressly make this second statement in his second report. This specific issue is not addressed by Professor McGarvey at all and that is why I raised the matter with Mr O'Donoghue KC and I now must decide this hotly contested issue on the basis of the evidence before to the court.

[95] Taking into account all this relevant evidence, in order to determine the issue at the heart of this case, I consider that I am required to ask myself the following question. In this case, where a plaintiff is claiming compensation for the development of pleural plaques and where the Defendants are hotly contesting the issue of whether the period of exposure relied upon by the plaintiff materially contributed to the risk of the plaintiff developing pleural plaques, is it permissible for the court to conclude that the relied upon period of exposure of approximately nine years' duration, which followed an earlier period of non-culpable but causally relevant exposure of approximately fourteen years' duration, materially contributed to the risk of the plaintiff developing pleural plaques, where the plaintiff has conceded that

it is possible that the exposure during the relied upon period was much, much less than it would have been in earlier years and the expert opinion evidence in the case is materially inconsistent, with an unsupportive first report and a second report which does not directly address the issue at the heart of the case and which reaches conclusions based on a history of undisclosed/undeclared origin?

[96] Having carefully considered all the evidence in this case, I am compelled to answer this question in the negative. In relation to the issue at the heart of this case which is an issue of fact I find that the plaintiff has failed to satisfy me on the balance of probabilities that the exposure to asbestos dust and fibres in the domestic environment in the period subsequent to the end of 1965 made a material contribution to the risk of the plaintiff developing pleural plaques. There are just too many short-comings, deficits and contradictions in the plaintiff's case for me to be able to simply sweep them all aside and conclude that because there was a period between 1965 and 1974 when the plaintiff probably experienced some exposure to asbestos dust and fibres then that exposure must have materially contributed to the risk of him developing pleural plaques, particularly when that period followed on from a 14 year period of what was in all likelihood a longer period of more intensive exposure.

[97] In coming to this conclusion, I appreciate that there has been a move towards dealing with pleural plaques cases in this jurisdiction on a simple time exposure basis. Despite the difficulties in grappling with the issue of the intensity of exposure, I consider it appropriate to remind practitioners that the issue of intensity of exposure cannot be ignored and in cases where it is raised as an issue it will have to be addressed and it is for the plaintiff in each such case to prove on the balance of probabilities that the relevant exposure (on a time/intensity analysis) has materially contributed to the risk of the development of pleural plaques.

[98] In light of this finding, the plaintiff's claim fails, and it is, therefore, unnecessary for me to go on to consider the issues of apportionment between the first and third defendants and the appropriate level of damages. I, therefore, enter judgment for the first and third defendants against the plaintiff with costs and I make an order for taxation of the first and third defendants' costs in default of agreement.