

## **Direction**

**No. 2 of 2012**

### **Personal Injury Actions in respect of Pleural Plaques and the Damages (Asbestos-related Conditions) (Scotland) Act 2009**

I, the Lord President of the Court of Session, under and by virtue of the powers conferred on me by paragraph (2) of rule 2.2 of the Rules of the Court of Session 1994, having consulted the parties of proceedings already raised to which this direction applies and being of the opinion mentioned in paragraph (1) of that rule, make the following direction.

1. This direction applies to actions for damages arising out of the exposure to asbestos and the resulting development of pleural plaques and hitherto no other asbestos-related condition.
2. This direction applies to an action already raised as well as a new action.
3. Expressions used in this direction which are also used in the Rules of the Court of Session 1994 have the same meaning here as they have in those Rules. Chapter 43 of the Rules of the Court of Session 1994 shall apply, except as modified by this Direction.
4. An action already raised and sisted will remain sisted and a new action will be sisted immediately after calling on the authority of the court without the need for further procedure until the parties have complied with the following provisions.
5. The pursuer will assemble and deliver to the defender or each of the defenders a “pursuer’s pack” which includes the following:

- (a) A summary of the employment history of the pursuer and evidence of that history;
- (b) An explanation of the pursuer's trade or other employment activity which exposed him to asbestos;
- (c) A copy of the pursuer's up-to-date medical records.

The pursuer will intimate to the General Department by email or letter the date of delivery of the pursuer's pack.

6. A defender will within eight weeks of the receipt of the pursuer's pack intimate to the pursuer whether it proposes to settle the pursuer's claim.
7. If a defender elects to pursue settlement the parties will have four weeks from the date of intimation under paragraph 6 above to agree the terms of the settlement and to produce a Joint Minute disposing of the action.
8. If a defender fails to respond to the pursuer's pack in accordance with paragraph 6 above or if it intimates that it does not propose to settle the claim, the pursuer may apply by motion for the recall of the sist. On receipt of that motion the case will be sent to a by order hearing before the nominated judge.
9. The nominated judge will be Lady Clark of Calton. So far as reasonably practicable she will discharge the court's management function. In her absence her functions may be discharged by another Lord Ordinary.
10. The nominated judge or her substitute will manage the actions in which a sist is recalled with the aim of securing their efficient disposal.

11. To that end the court shall have power to make appropriate orders including:

- (a) the fixing of by order hearings;
- (b) instructing the lodging of defences;
- (c) determining further procedure;
- (d) after consultation with the Keeper of the Rolls, allocating a diet of proof and issuing a timetable for the progression of the action by adapting the timetable set out in rule 43.6 of the Rules of the Court of Session 1994 to the circumstances of the particular case;
- (e) ordering the appointment of actions to procedure roll hearings;
- (f) ordering disclosure of information;
- (g) ordering the production and recovery of documents;
- (h) ordering the production of expert reports;
- (i) ordering each party to produce a statement of valuation of claim;
- (j) varying the timetable issued under (d) above.

12. The court may make any of these orders at its own initiative or on the motion of one or more parties, but if acting on its own initiative it must (with the exception of fixing by order hearings) give the parties an opportunity to be heard before making an order.

13. Lady Clark of Calton shall give early consideration to whether it is appropriate to identify a lead action or actions to be progressed at an advanced rate in order to determine or give guidance on any generic issues in the actions.

14. Lady Clark of Calton will also review the actions which remain sisted on a regular basis and not less than every six months in order to avoid unnecessary delay in the determination of those actions and to that end will have power to recall a sist and fix a by order hearing.

*BRIAN GILL*

Lord President

Edinburgh

27 August 2012