

Direction

No. 1 of 2013

Personal Injury Actions relating to alleged ground contamination at the Watling Street Development in Motherwell

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 by residents or former residents of properties situated in Tiber Avenue, Empire Way, Forum Place, Romulus Court, Marius Crescent, Senate Place, Constantine Way, and Cornelia Street in Motherwell for damages arising out of alleged exposure to contaminants.
2. This direction applies to any actions already raised as well as to any new actions and has effect from 11 March 2013.
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.
4. Chapter 43 of the Rules of the Court of Session 1994 shall not apply. Any new action shall be raised as an ordinary action. Any action raised under Chapter 43 shall proceed as an ordinary action without the need for further procedure.
5. Subject to the following provisions or any specific orders of the court, actions shall proceed as ordinary actions and be subject to the rules which apply to such actions.

6. The pursuer shall by the due date set out in paragraph 7:-
 - (a) disclose to the defenders the identity of all medical practitioners or institutions from whom he or she has received medical treatment; and
 - (b) provide a mandate to the defenders for recovery of all his or her medical records.

7. For any particular action, the “due date” will be the latest of the following:-
 - (a) the date falling 4 weeks from the date of this practice direction;
 - (b) the date falling 4 weeks from the date of raising the action; or
 - (c) for actions that remain or are subsequently sisted, the date falling 4 weeks from the date of recall of the sist.

8. If the pursuer considers that any part of his or her medical records should not be disclosed under paragraph 6, that part is to be produced to the court in a sealed envelope together with a note setting out the reasons why it should not be disclosed. The court shall determine, on the application of any party, whether that part of the records should be disclosed.

9. If paragraph 6 is not complied with, the court shall grant an appropriate order for the production of the pursuer’s medical records unless the pursuer shows special cause why such an order should not be granted.

10. So far as reasonably practicable, the nominated judge will discharge the court’s management function with the aim of securing the efficient disposal of the actions. To that end, the court shall have the power to make the following orders:-
 - (a) fixing of by order hearings;
 - (b) setting or varying timetables;
 - (c) determining further procedure;
 - (d) ordering disclosure of information;
 - (e) ordering the production and recovery of documents;

- (f) ordering the production of the reports of skilled persons;
- (g) ordering the sharing of medical records or other information and documents disclosed by one party among other parties;
- (h) ordering the production of affidavits;
- (i) ordering the lodging of witness lists (including the time estimated for each witness and the matters to which they will speak);
- (j) ordering the lodging of notes of argument;
- (k) ordering each party to produce a statement of valuation of claim;
- (l) ordering the appointment of actions to procedure roll hearings or proofs on all or any parts of the action;
- (m) ordering the use of information technology in the presentation of documents and other evidence;
- (n) ordering the reservation of dates in the court diary for hearings;
- (o) sisting actions; or
- (p) such other order as it thinks fit for the speedy determination of the actions.

11. 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.

12. The timetable mentioned in paragraph 10(b) may require the pursuer to:-

- (a) provide to the defenders all expert reports showing or tending to show the presence of contaminants, the location of those contaminants, and concentration levels of the contaminants;
- (b) disclose to the defenders his or her employment history and absence records; and
- (c) provide to the defenders vouching for any pecuniary losses, in particular any prescription costs and alternative accommodation costs.

13. The nominated judge shall give early consideration to whether in order to determine or give guidance on any generic issues in the actions, the lead actions which the parties have identified are appropriate to be progressed at an advanced rate.
14. The nominated judge will review any 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.
15. The nominated judge will be Lord Doherty. In his absence the court's management function may be discharged by another Lord Ordinary.

Brian Gill

Lord President

Edinburgh

26 February 2013