

## TOXIC WASTE

Local authority responsible for birth defects caused by inhalation of toxic substances generated by reclamation of a former steel site - *Corby Group Litigation v Corby District Council* [29.7.09]

A group of 18 Claimants brought a claim against Corby Borough Council and its statutory predecessor, Corby District Council (CBC) in relation to birth defects caused to a group of children born between 1986 and 1999. They claimed that the birth defects were a result of the Council's negligence, breach of statutory duty and public nuisance in connection with the reclamation of a large British Steel site to the east of Corby.

The birth defects are in the form of shortened or missing arms, legs and fingers. The Claimants argued that the defects had resulted from the children's pregnant mothers' ingestion and inhalation of harmful substances generated by the reclamation works.

The reclamation works have been described as the largest in Europe at that time. The Claimants alleged that the Council had failed to undertake full and proper environmental assessments, detailed development control and full and proper analysis. It was also claimed that the Council had failed to provide adequate supervision and had left contracts uncompleted, resulting in contaminated waste being exposed and open to the atmosphere for lengthy periods of time.

### Decision

Mr Justice Akenhead found the Council to be liable as follows, subject to individual Claimants establishing in later proceedings that their particular conditions were actually caused by the defaults identified in the judgment:

- Negligence - accepting the evidence put forward by the Claimants' expert, it was held that during an extended period between 1985 and August 1997, the Council had acted negligently in respect of its control and management of the sites. During that period, the Council owed a duty of care to the Claimants and their mothers to exercise reasonable care and skill in relation to the execution of the works to avoid injury or birth defects to them. In practice, that duty involved taking reasonable care to prevent the dispersion of mud and dust containing contaminants which would lead to the airborne exposure of the Claimants' mothers to teratogens (substances causing foetal defects).
- Breach of statutory duty - it was held that from 1 April 1992, the Council had breached its statutory duties under the Environmental Protection Act

1990.

- Public nuisance - the Council was also found liable for public nuisance in causing, allowing or permitting the dispersal of dangerous and noxious contaminants.

With regard to foreseeability, it was held that it was sufficient for the Council and those involved to foresee that the nearby population could be exposed to hazardous substances and that harm could be caused; it was not necessary to foresee the specific harm that had been caused.

However, the Court held that it could not be demonstrated that birth defects in children conceived after August 1997 could be caused by any breaches of duty or public nuisance, as there had been no significant emissions of the relevant contaminants after that time.

## Comment

This case highlights the significant environmental hazards and risks associated with the reclamation of land and transportation of contaminated waste. It also demonstrates the effect that it can have on the health and welfare of persons residing in surrounding areas.

Although Mr Justice Akenhead commented that the Corby reclamation was a “one-off” reclamation involving a large contaminated steel work site which was close to a town centre, contaminated “brownfield” sites still remain in the UK.

Organisations, local authorities and persons dealing with contaminated waste and/or dangerous toxins (and their insurers) need to be aware of their duty to exercise reasonable skill and care when working on such sites to prevent the escape of hazardous substances. Before any work is carried out at a new site, risk assessments should be carried out to ensure that appropriate measures are put in place and that the work will be executed safely and effectively in accordance with the knowledge available at the time.

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