

# Limitation in Disease Claims



Helen Waller

# Limitation in Disease Claims

- ▶ Limitation Act 1980 – the basics
- ▶ What is “knowledge”?
- ▶ The section 33 discretion
- ▶ Particular difficulties in industrial/occupational disease cases
- ▶ Recent jurisprudence

# Limitation Act 1980

## ► Section 11: Personal Injuries

(4) Except where subsection (5) below applies, the period applicable is **three years from**—

- (a) the date on which the **cause of action accrued**; or
- (b) the date of **knowledge** (if later) of the person injured.

(5) If the person injured dies before the expiration of the period mentioned in subsection (4) above, the period applicable as respects the cause of action surviving for the benefit of his estate by virtue of section 1 of the Law Reform (Miscellaneous Provisions) Act 1934 shall be **three years from**—

- (a) the date of **death**; or
- (b) the date of the personal representative's **knowledge**; whichever is the later.

# Limitation Act 1980

## ► Section 14: Actual Knowledge

- (1) ...the date on which he first had knowledge of the following facts—
- (a) that the injury in question was **significant**; and
  - (b) that the injury was **attributable** in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and
  - (c) the identity of the **defendant**; and
  - (d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant;
- and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

# Actual Knowledge

- ▶ Definition: *Nash & Ors v Eli Lilly & Co & Ors* [1993] 1WLR 782; *B v MoD* [2012] UKSC 9
- ▶ Significant injury: *Dobbie v Medway Health Authority* [1994] 1 WLR 1234; *Balls v Reeve* [2021] EWHC 751 (QB)
- ▶ Attribution: *B v MoD* [2012] UKSC 9 (paras 30-39; 68)
  - ▶ Often a need for a diagnosis in disease cases: *Guidera v NEI Projects (India) Ltd* [1990] 1 WLHK 746; *Sir Robert Lloyd & Co v Hoey* [2011] EWCA Civ 1060
- ▶ Identity of D: *Simpson v Norwest Holst Southern Ltd* [1980] 1 WLR 968

# Limitation Act 1980

## ► Section 14: Constructive Knowledge

(3) For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

- (a) from facts observable or ascertainable by him; or
- (b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek;

but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

# Constructive Knowledge

- ▶ Judged objectively: *Adams v Bracknell Forest Borough Council* [2004] UKHL 29
- ▶ Consider facts ascertainable with the help of a solicitor: *Dowdall v William Kenyon & Sons Ltd* [2014] EWHC 2822
- ▶ What about facts obtainable on the internet?
- ▶ Seeking legal advice doesn't necessarily start the clock: *B v MoD* [2012] UKSC 9 (paras 54-56)

# Section 33 Discretion

(3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

- (a) the length of, and the reasons for, the delay on the part of the plaintiff;
- (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11 or (as the case may be) by section 12;
- (c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;
- (d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;
- (e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;
- (f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

# Section 33 Discretion

- ▶ The fact that the defendant company is dissolved won't assist the claimant: *Holmes v S & B Concrete Ltd* [2020] EWHC 2277 (QB)
- ▶ But the inability to identify defendant's insurer might: *Gregory v HJ Haynes Ltd* [2020] EWHC 911 (Ch)
- ▶ The importance of prejudice: *Balls v Reeve* [2021] EWHC 751 (QB)
- ▶ Is the delay understandable and excusable in human terms? *HM3G Ltd v Dunn* [2019] EWHC 882 (QB)

# Limitation in Disease Claims

- ▶ A careful combing of medical records is often required.
- ▶ Press the claimant on what he/she knew or suspected and when.
- ▶ Be realistic about actual/constructive knowledge.
- ▶ In a s.33 application, look carefully at parties' conduct and the balance of prejudice.