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**To: All Branches**

Dear Colleagues,

## **Health and Safety Court Reports News From The HSE, TUC, Solicitors, Press & Media**

For the interest and information of health and safety reps, see below selection of reports on various cases.

### **Company owner jailed and firm fined £700,000 after death of employee**

A garden supplies company owner has been jailed and the firm has been fined £700,000 after a worker was crushed to death by a robotic packing arm. Andrew Tibbott, 48, suffered fatal injuries on 14 April 2017 at the premises of Deco-Pak Ltd in Hipperholme, West Yorkshire, after attempting to clean a sensor on the automated bagging production line. Safety systems for the production line, known as the RM machine, were deliberately disabled or bypassed within weeks of its installation in early 2015. These features included safety fencing and a system which would automatically shut down the power if anyone stepped inside the production area. Unsafe practices continued at the company in the two years before Mr Tibbott's death, and there was no promotion, planning or ongoing review of health and safety. Prosecutors also highlighted that senior management at the company were notified on numerous occasions about the bypassing of safety systems and the likely consequence of accidents and injury. On 14 January 2022, Deco-Pak Ltd was convicted of corporate manslaughter following a trial. Company director Rodney Slater was convicted of gross negligence manslaughter on 24 April 2023 and was sentenced to five years' imprisonment at Leeds Crown Court. Michael Hall, was convicted of Gross Negligence Manslaughter following a trial and pleaded guilty to consenting or conniving to the company's breach of section 2(1) Health and Safety at Work Act 1974 by virtue of s37(1) of the said act. Deco-Pak Ltd was convicted of corporate manslaughter and pleaded guilty to failing to discharge an employer's duty owed under s2(1) Health and Safety at Work Act 1974. It was fined £700,000 and ordered to pay £90,000 in court costs on 9 June 2023.

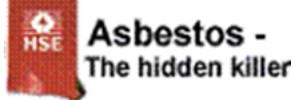
**(HSE news release).**

### **Asbestos on husband's overalls led to wife's deadly cancer**

A retired chef died as a result of the asbestos cancer mesothelioma, an inquest has concluded. Jill Moore of Hoddesdon in Hertfordshire died aged 71 on 11 November 2016. The inquest, held in Ipswich, heard that prolonged exposure to asbestos on her husband Brian Moore's overalls during his work as a mechanic between 1965 and 1990, had caused the mesothelioma diagnosed in November 2015. Assistant Suffolk coroner Kevin McCarthy said examination of Mrs Moore's own work record showed no evidence she was ever exposed to asbestos. But, for 20 years, her late husband Brian had come into contact with asbestos materials in brakes and

clutches as part of his work as a vehicle mechanic. Mr McCarthy said Mrs Moore had spoken of washing her husband's work clothes twice weekly and shaking dust from his overalls. In 2014, after going to her GP, she was diagnosed as suffering from mesothelioma and told she might only have six months to live. The coroner said a family statement described Mrs Moore as 'tenacious, full of life and a fighter'. He recorded a conclusion that Mrs Moore died as a result of an industrial disease.

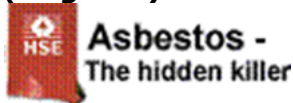
**(Daily Mirror. Daily Mail. Metro).**



### **High Court rules on mesothelioma 'lost years'**

A High Court ruling could mean higher payouts for the dependants of people who die from work diseases. The judgment of Judge Walden-Smith came this month in the case of Andreou v S Booth Horrocks & Sons Ltd. Stelios Andreou, 77, was exposed to asbestos in the 1960s when he was apprenticed to a heating and plumbing engineer. His lawyer Harminder Bains, from law firm Leigh Day, obtained the judgment against the employer on behalf of her client, who was diagnosed with the fatal lung disease mesothelioma in 2016. The compensation for his 'pain and suffering' was agreed at £90,000, the highest award allowed for this component of a mesothelioma claim. The judge however rejected a bid by the defendant to dismiss another component of a claim, the 'lost years services' assessment. Mrs Justice Walden-Smith ruled that the assessment of the value of the lost years claim, which refers to compensation for the amount Mr Andreou would have provided to his wife if he had not contracted mesothelioma, can be adjourned until after his death. The judge ruled: "It would not be right in my judgment for the claimant or the claimant's estate or his widow in due course not to be able to make a claim for something to which he is entitled simply by reason of it having been brought into these proceedings. This discrete matter will therefore be adjourned." Harminder Bains said: "I welcome the judge's decision to adjourn the hearing until after the death of Mr Andreou. This judgment should mean fairer compensation for anyone diagnosed with a life shortening illness, or who has suffered a severe injury, and are faced with the choice of whether to bring claims in their lifetimes, or after their death via their estates."

**(Leigh Day Solicitors news release).**



### **Heart attack plumber wins workers' rights fight**

A plumber has won a legal employment rights battle in the latest significant court ruling over freelance operations in the modern workplace. Gary Smith wanted to reduce his working days at Pimlico Plumbers following a heart attack. The Court of Appeal agreed with a tribunal that said he was entitled to basic workers' rights although he was technically self-employed. The TUC has welcomed the ruling and has called on the government to clamp down on 'shady' employment practices. The case centred around the distinction between Mr Smith's status as either a self-employed contractor or a worker for the company. He was VAT-registered, and paying tax on a self-employed basis, but worked solely for Pimlico Plumbers for six years. After he suffered a heart attack in 2010, he wanted to cut his five-day working week, which he had been signed up to work with the firm, to three. However, the firm refused and took away his branded van, which he had hired. He claims he was dismissed in 2011. He argued that he was entitled to basic workers' rights - which would include the national minimum wage and paid holiday and the ability to bring discrimination claims. The Court of Appeal agreed with an employment tribunal decision in favour of Mr Smith, dismissing Pimlico Plumbers' appeal. Mr Smith's solicitor Jacqueline McGuigan said he was "tightly controlled" by Pimlico Plumbers and unable to work for anyone else. Commenting on the ruling, TUC general secretary Frances O'Grady said: "This case has exposed once again the growing problem of sham self-employment. Unscrupulous bosses falsely claim their workers are self-employed to get out of

paying the minimum wage and providing basics like paid holidays and rest breaks." She added: "The government must crack down on these shady employment practices by beefing up the law. But the best form of protection for working people is to get together with a group of mates and join a union in your workplace."

**(TUC news release. Court judgment. [BBC News Online](#). [The Guardian](#)).**

### **Disabled people hide impairments to stay in work**

More than half of disabled workers have experienced bullying or harassment at work because of their impairments, a study has found. Nearly six out of 10 (58 per cent) disabled people feel at risk of losing their jobs and one in two (53 per cent) has experienced bullying or harassment at work because of their impairments, according to the research by disability charity Scope. The findings, based on 501 interviews and published ahead of the 17 February end of the consultation period on the government's green paper on work, health and disability, have highlighted the issues disabled people face in work. Scope discovered one in five (21 per cent) hide their disability from employers and one in four (24 per cent) say their current employer is not supportive of their disability. Mark Atkinson, chief executive of Scope, said: "These figures demonstrate that employers and government need to be doing much more to support disabled people in the workplace." He added: "It's clear that support for disabled people both in and out of workplace need to radically improve. If the government is serious about halving the disability employment gap it must set out reforms which not only lead to a change in employer attitudes but also offer disabled people better access to in work support."

**([Scope news release](#). [Morning Star](#)).**

### **Poor management linked to worker suicides**

Two separate inquests have revealed how poor management or witnessing horrific traumas in the workplace can leave workers suicidal. A February 2017 inquest into the death of an award-winning nurse concluded that he "killed himself while the balance of his mind was disturbed". Amin Abdullah, 41 suffered mental health issues following a delayed disciplinary process and dismissal from his job with Imperial College Healthcare NHS Trust. The inquest at Westminster Coroner's Court, London, heard Amin died on 9 February 2016 after setting himself on fire in the grounds of Kensington Palace, London. His problems started when he made statements in support of a colleague who had been the subject of a complaint by a patient. This prompted the Imperial College Healthcare NHS Trust at Charing Cross Hospital to initiate disciplinary proceedings against him. Lengthy delays in progressing the disciplinary process and a failure to provide details of the charges against him, led to Amin – who had won a clinical excellence award in 2014 - experiencing extreme distress, anxiety and difficulty sleeping. He was dismissed from the trust on 21 December 2015. His appeal against his dismissal was set for 11 February 2016, but Amin set fire to himself three days before it was due to be heard. A second February 2017 inquest heard a colleague of murdered police officers Fiona Bone and Nicola Hughes filled out his own death report before being found dead in a park. Andrew Summerscales was believed to be one of the first on the scene after Dale Cregan had killed the PCs in 2012. The 46-year-old, who left the police in 2015, was found hanged in August 2016. The inquest at Stockport Coroners' Court heard he was found wearing a tag used by police for identifying bodies which he had filled out himself. His doctor said the former PC had been diagnosed with post traumatic stress after the murder of his colleagues. The inquest also heard that Mr Summerscales had been at Hillsborough in 1989, when 96 Liverpool fans lost their lives in a crush on the terraces. Coroner Joanne Kearsley concluding that he had taken his own life, adding Mr Summerscales had endured traumas in his life.

**([Leigh Day Solicitors news release](#). [BBC News Online](#)).**

### **Heavy work and shifts make it harder to get pregnant**

Being employed as a shift worker or in a physically demanding job could make it harder for a woman to get pregnant, a new study has concluded. Scientists found working outside of normal office hours or having a strenuous job may lower a woman's chances of conceiving via IVF. The US-based study looked at 473 women attending a fertility clinic and was published in the journal Occupational and Environmental Medicine. Women with physically demanding jobs

had a lower ovarian reserve – the number of remaining eggs - than those whose work did not regularly involve heavy lifting. Among those going through IVF at the clinic, women with more physical jobs had a lower total reserve of eggs and fewer mature eggs. Women who worked evenings, nights or rotating shifts had fewer mature eggs than those working normal hours. The researchers cautioned that the findings were drawn from a sample of women attending a fertility clinic so may not apply to those trying to conceive naturally. However, the paper concluded: "Women working non-daytime shifts and those with physically demanding jobs had fewer mature oocytes retrieved after controlled ovarian hyperstimulation. Our results provide insight into possible mechanisms linking these occupational exposures with decreased fecundity." Lidia Mínguez-Alarcón, Irene Souter, Paige L Williams and others. [Occupational factors and markers of ovarian reserve and response among women at a fertility centre](#), Occupational and Environmental Medicine. **([London Evening Standard](#))**.

### **HSE cost recovery dispute process to be 'independent'**

The Health and Safety Executive (HSE) has announced that it is to consult on proposals to make the dispute process for its cost recovery scheme fully independent. HSE said the scheme, Fee for Intervention (FFI), was introduced in October 2012 to shift the cost of regulating workplace health and safety from the public purse to businesses which break the law ([Risks 672](#)). It said FFI "ensures the cost burden of HSE intervention is picked up by those companies and not taxpayers." Under the scheme, if an HSE inspector identifies serious health and safety failings in the workplace about which they need to write to the dutyholder, then that dutyholder has to pay the costs of the HSE visit. If the inspector simply issues verbal advice there is no charge. If there is disagreement on HSE's decision, the dutyholder can dispute it. Until now, disputes were considered by a panel which consisted of two members from HSE and one independent person. However, after reviewing the current process HSE has said it "will consult with relevant stakeholders with a view to making the process fully independent." The FFI disputes process was due to face a legal challenge, with a judicial review at the Royal Courts of Justice set for 10 and 11 May 2017 ([Risks 778](#)). A spokesperson for HSE said: "HSE has always kept the dispute process under review and following a recent application for a judicial review we believe the time is right to move to a dispute process which is completely independent of HSE."

**([HSE news release and Fee for Intervention scheme guide](#). [Construction Enquirer](#))**.

### **Contractor jailed after casual labourer's fatal fall**

A Manchester building contractor has been jailed following the death of a casual labourer who fell nearly seven metres through a fragile roof. Karel Lascos, 45, had been carrying out repair work at Witney Mill, Manchester when the incident occurred on 23 November 2013. Saleem Hussain had been engaged by the warehouse owner, who believed him to be a competent building contractor, to carry out repair and maintenance work on the warehouse roof. He then hired two people to do the work. A subsequent Health and Safety Executive (HSE) investigation found that neither worker was qualified to carry out work at height. They had accessed the roof via a ladder in order to repair and seal leaking guttering. No safety precautions were in place to protect the two men from the danger of falling through the fragile roof. Manchester Crown Court heard that Saleem Hussain failed to assess the risks or put a safe working method in place. No suitable training or equipment to work on the roof had been provided. He pleaded guilty to a criminal safety offence and was sentenced to eight months imprisonment. HSE principal inspector Mike Sebastian said: "The dangers of falls through fragile roofs and working at height are well known. Simple steps such as removing the need to access the roof directly by using mobile working platforms, or boarding out the roof, or using safety harnesses, can and should be used to prevent accident and injury. Mr Hussain's failure to take any such actions resulted in a tragic and needless loss of life."

**([HSE news release](#))**.

### **Company Fined £2 million and Managers jailed for health and safety failings**

A company has been fined £2 million and its directors jailed after two employees drowned in a tanker demonstrating the courts' increasingly robust approach to those who avoid the cost of implementing proper safety measures. Greenfeeds Limited, which is now in liquidation, was given the fine at a sentencing hearing at Leicester Crown Court last week after being convicted of corporate manslaughter. Gillian Leivers was jailed for 13 years after being convicted of gross negligence manslaughter and a health and safety offence. She was also disqualified from being a company director for 15 years. Her husband, managing director Ian Leivers, was jailed for 20 months having being convicted under s.37 Health and Safety at Work Act. The company's transport manager, Stewart Brown, received a one-year suspended sentence for breaching the Health and Safety at Work Act. Background to the case; Nathan Walker, 19, and Gavin Rawson, 35, both died in a tanker that contained about six tonnes of food waste. Mr Walker was cleaning the inside of the tanker when he collapsed and drowned after being overcome by the carbon dioxide fumes that had built up. His colleague Mr Rawson then died while trying to rescue him. During the six-week trial, the court heard that numerous health and safety failings at the family-run food waste company in Leicestershire had been identified during the investigation. These included a lack of adequate health and safety procedures for cleaning the tankers, the lack of a suitable and sufficient risk assessment and a failure to provide breathing apparatus or PPE. Critically, these failings were longstanding despite staff repeatedly alerting senior management as to the risks involved and the need for safety equipment and training, plus the fact that Greenfeeds had previously been convicted following a similar incident that took place in 2005. That death had not led to any review of the company's safety procedures. In his sentencing remarks, Judge Peter Fraser stated that the dangers were obvious and that the deaths were completely avoidable, adding that the tragedy represented a dereliction of duty that appeared to be motivated by a desire to avoid the costs of implementing proper safety measures. We are now starting to see the impact of the sentencing guideline introduced in 2018 being put into practice by the courts.

### **Two Company Directors Jailed following Death of a Roofer in Hove**

Earlier this month, for example, two construction company directors were jailed following the death of a roofer in Hove. Prosecutors successfully argued that Graham Tester would not have fallen to his death had there been adequate protections, such as scaffolding or safety barriers, in place. Steven Wenham, of Total Contractors, was convicted of gross negligence manslaughter and jailed for five years. John Spiller, of Southern Asphalt, was convicted of an offence under the Health and Safety at Work Act and jailed for 15 months. Both companies also received fines, of £190,000 and £120,000, respectively. The case of Total Contractors & Southern Asphalt serves as a salutary reminder of the consequences of a failure to plan and prevent an avoidable work at height accident. Greenfeeds demonstrates the costs of putting profit before safety and a failure to heed warnings. While each of these cases relates to a different specific risk, together they act as examples of a sentencing trend towards tougher penalties for serious health and safety failings. 23 Jun 2022

Yours sincerely



**Dave Joyce**  
**National Health, Safety & Environment Officer**