Court of Appeal decides that the Fairchild causation exception applies in lung cancer cases

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COURT OF APPEAL DECIDES THAT THE FAIRCHILD CAUSATION EXCEPTION APPLIES IN LUNG CANCER CASES

The Court of Appeal has recently decided that the Fairchild causation exception applies in a lung cancer case. The case is significant in that to date the Fairchild exception has only been applied to mesothelioma claims, and this is the first time the Court of Appeal has been asked to consider its application to a lung cancer case.

It remains to be seen how the Courts now interpret this decision and whether the Fairchild enclave is now set to experience a period of rapid expansion but it does appear that, where medical science cannot prove that a defendant has materially contributed to a disease, but can prove that a defendant has materially increased the risk of contracting the disease, the Fairchild exception may be applied to establish the necessary causation, and liability will be proportionate to the increase in risk for which the defendant was responsible.

Background

In Carl Heneghan (Son & Executor of James Leo Heneghan, Deceased) v Manchester Dry Docks Ltd & Ors [2016] EWCA Civ 86, the claimant was the son and executor of the deceased, Mr Heneghan, and his widow. Mr Heneghan had died of lung cancer. It was common ground that his lung cancer was caused by exposure to asbestos fibres. He had been exposed to asbestos in the course of