Langdale Industrial (Entirely Fictitious) Painting Company

York Industrial Estate

Manchester Road

Leeds

XX33 9NB

22 November 2015

Dear Sirs

**Barbara Rudge v You**

**Occupational Asthma claim**

We are instructed by our above-named client to claim damages in connection with a claim for occupational asthma.

Our client considers that the injuries occurred through your negligence and/or breach of statutory duty and she claims damages accordingly.

Please find enclosed an additional copy of this letter for you to send to your insurers. You must refer the copy letter to the relevant insurers at your soonest. If you do not do so, then this may impact upon your insurance cover and/or the conduct of any potential legal proceedings.

As we consider that our client’s claim would be likely to be allocated to the multi-track and have a value in excess of £25,000, this is a letter of claim sent in accordance with the Pre-Action Protocol for Disease and Illness Claims. At this stage, therefore, matters which arise will be dealt with under that Protocol. We trust your insurers will reciprocate by meeting their obligations under the Protocol.

We should like to deal with liability promptly. Once liability is conceded, we hope that it will then allow us to enter negotiations on quantum and explore the possibility of settlement. If liability is not accepted, and/or you blame anyone else for our client’s injuries, please provide full details so that we may consider your position and take our client’s instructions.

This letter only provides a summary of the factual matrix of this claim, and the reasons why it is that you are liable for our client’s injuries. This summary, however, should not be taken to be complete recitation of the facts, and we reserve the right to amend the claim in due course, should we be instructed to do so. Should court proceedings be issued, then we reserve the right to fully plead the claim as we see fit, without reference to this letter of claim.

**Circumstances of the Exposure**

The circumstances leading to the development of our client’s condition are as follows:-

We are instructed that our client has been employed by you as a Painter for the past 10 years. We are instructed that she worked eight-hour shifts.

Our client’s job involved spraying metal panels with paint. She informs us that, due to poor ventilation in her work area, the air was filled with paint fumes, at all times. As a result, our client was continually inhaling these fumes, as well as dust, for protracted periods of time - sometimes for up to nine hours per day.

Our client informs us that when she first began her employment with you, she was supplied with overalls, gloves and a mask to wear, when she was using the paint spray. Subsequently, the protective equipment and clothing were withdrawn and our client therefore performed her duties without any personal protective equipment.

Similarly, our client informs us that other members of staff, performing the same duties as her, were not provided with adequate personal protective equipment either.

Our client began to develop a cough in June 2014 and sought medical treatment in relation to chest pain on 2nd July 2014. Our client was diagnosed with occupational asthma on 28th August 2014.

Our client contends that injuries, losses and expenses were caused by the matters already outlined above and that, for the reasons outlined below, you are liable for the following reasons in that you:

1. In breach of the Control of Substances Hazardous to Health Regulations 2002, Regulation 6(1), you failed to carry out work likely to expose our client to a substance hazardous to health without having made a suitable and sufficient assessment of the risk created by that work;

1. In breach of the Control of Substances Hazardous to Health Regulations 2002, Regulation 7(2), you failed to avoid the use of a substance hazardous to health at the workplace by replacing it with a process which either eliminated or reduced the risk of injury to our client;
2. In breach of the Control of Substances Hazardous to Health Regulations 2002, Regulation 7(3), you failed to prevent, or adequately control, exposure of our client to substances hazardous to health by applying protection measures appropriate and consistent with the risk assessment;
3. In breach of the Control of Substances Hazardous to Health Regulations 2002, Regulation 10(3)(a), you failed to monitor the exposure of our client to substances hazardous to health at regular intervals or at all;
4. In breach of the Control of Substances Hazardous to Health Regulations 2002, Regulation 10(3)(b), you failed to monitor the exposure of our client to substances hazardous to health when any change occurs which may affect that exposure;
5. In breach of the Control of Substances Hazardous to Health Regulations 2002, Regulation 11(1), you failed to ensure suitable health surveillance of our client;
6. In breach of the Control of Substances Hazardous to Health Regulations 2002, Regulation 11(9)(e), you failed to provide for a review of the health of any other employee who had been similarly exposed;
7. In breach of the Workplace Regulations (Health, Safety and Welfare) Regulations 1992, Regulation 6, you failed to provide adequate ventilation in the workplace;
8. You failed to warn our client of the dangers of working as above or otherwise to prevent her from so doing;
9. You failed to provide or maintain for our client a safe system of work;
10. You failed to provide our client with adequate plant or equipment;
11. You failed to take any or any adequate care for the safety of our client;
12. You failed to undertake a suitable and sufficient assessment of the risks of such work contrary to Regulation 3 of the Management of Health and Safety at Work Regulations 1999 and/or failed to give effect to such arrangements as would have been appropriate to prevent the injury or otherwise protect our client, contrary to Regulation 5 of the same Regulations or at all;
13. You failed to provide any or any suitable personal protective equipment, particularly failing to provide our client with a mask, contrary to Regulation 4(1) of the Personal Protective Equipment Regulations 1992.
14. Exposed our client to a danger or a trap or a foreseeable risk of injury, and did so without warnings of the risks to which our client was exposed;
15. Failed to take any or any adequate care for the safety of our client;

We consider that the nature of the exposure, the longevity of exposure and the absence of any real protection is such that liability ought to be conceded immediately.

We consider this summary is sufficient for the claim to be properly investigated, and a decision on liability given, in good time. The timescale stipulated under the Protocol has commenced. We would remind you that if you contend otherwise, you should advise us within 21 days of the date of this letter.

**Disclosure**

Unless liability is fully admitted, we will expect full disclosure of documents to be provided together with your denial. We reserve the right to make an application for Pre-Action Disclosure, should you not provide disclosure in full.

Please preserve all relevant documents. If relevant documents are only disclosed upon the issuing of proceedings, then we will seek our costs from you in the event that the claim is unsuccessful.

It is our position that documents within the following categories are relevant and that copies should be supplied to us, in the event that liability is not admitted in full. In compliance with the Protocol, these documents should be provided without making a charge.

Please provide the following documents within the next three months, if liability is not admitted in full:

1. RIDDOR report to the Health and Safety Executive;
2. All communication with the HSE and/or local authority concerning working conditions and, in particular, the lack of ventilation and personal protective equipment provided to staff on your premises;
3. Pre and post-exposure earnings information;
4. All personal protection equipment assessments for the duration of our client’s employment with you;
5. Accident book entries relating to our client and any other employee or worker injured through exposure;
6. Pre and post-incident Risk Assessment required by Regulation 3 of the Management of Health and Safety at Work Regulations;
7. Our client’s full occupational health records;
8. Our client’s full personnel records;
9. All emails sent and received regarding the ventilation in the workshop, use of paint sprays and/or occupational asthma from October 2012 until present day;
10. Details of any external or internal assessments regarding the ventilation in the workshop;
11. Details of all complaints since October 2012 to the present day in connection with the lack of ventilation, use of paint sprays and respiratory problems;
12. Inspection records since 2011 in relation to ventilation equipment;
13. Confirmation of the number of other staff with a likely occupational asthma diagnosis;
14. Health surveillance results for our client or other members of staff who had suffered similar conditions;
15. Details of all occupational disease claims submitted against you in the last four years;
16. Documents relating to the assessment of the Personal Protective Equipment to comply with Regulation 6;
17. Documents relating to the maintenance and replacement of Personal Protective Equipment to comply with Regulation 7;
18. Record of maintenance procedures for Personal Protective Equipment to comply with Regulation 7;
19. Records of tests and examinations of Personal Protective Equipment to comply with Regulation 7;
20. Documents providing information, instruction and training in relation to the Personal Protective Equipment to comply with Regulation 9;
21. Instructions for use of Personal Protective Equipment to include the manufacturers’ instructions to comply with Regulation 10;

**Control of Substances Hazardous to Health Regulations 1999**

1. Risk assessment carried out to comply with the requirements of Regulation 6;
2. Reviewed risk assessment carried out to comply with the requirements of Regulation 6;
3. Copy labels from containers used for storage handling and disposal of carcinogens to comply with the requirements of Regulation 7(2A)(h);
4. Warning signs identifying designation of areas and installations which may be contaminated by carcinogens to comply with the requirements of Regulation 7(2A)(h);
5. Documents relating to the assessment of the Personal Protective Equipment to comply with Regulation 7(3A);
6. Documents relating to the maintenance and replacement of Personal Protective Equipment to comply with Regulation 7(3A);
7. Record of maintenance procedures for Personal Protective Equipment to comply with Regulation 7(3A);
8. Records of tests and examinations of Personal Protective Equipment to comply with Regulation 7(3A);
9. Documents providing information, instruction and training in relation to the Personal Protective Equipment to comply with Regulation 7(3A);
10. Instructions for use of Personal Protective Equipment to include the manufacturers’ instructions to comply with Regulation 7(3A);
11. Air monitoring records for substances assigned a maximum exposure limit or occupational exposure standard to comply with the requirements of Regulation 7;
12. Maintenance examination and test of control measures records to comply with Regulation 9;
13. Monitoring records to comply with the requirements of Regulation 10;
14. Health surveillance records to comply with the requirements of Regulation 11;
15. Documents detailing information, instruction and training including training records for employees to comply with the requirements of Regulation 12;

Within these categories, if there are documents which you contend are privileged, please state the grounds of the claim for privilege and sufficiently identify the documents so that we may assess the validity of your claim for privilege. We do not anticipate that you will succeed with any claim for privilege.

Currently, we can only summarise the general nature of our client’s injuries and losses as follows below.

**General Damages**

As you are aware, our client has been diagnosed with occupational asthma. This is, however, just a summary and should not be regarded as a comprehensive description of the injuries, pending receipt of expert medical opinion(s).

Our client’s condition deteriorated since June 2014. After even minimal exercise, our client quickly becomes out of breath.

We wish to obtain medical evidence and will nominate our experts in due course. We consider a Consultant in Acute and Respiratory Medicine would be the most appropriate expert to instruct.

**Expenses and losses**

We expect the claim for expenses and losses will include the following heads.

1. Lost earnings;
2. Medical expenses;
3. Care and assistance;
4. Potential future losses.

We confirm that, when requested in due course, we will provide your insurers with the necessary details for the claim to be registered with the Compensation Recovery Unit.

Please note that our client is willing to consider the resolution of this claim by Alternative Dispute Resolution (ADR). Our view is that the appropriate mechanism of ADR to be negotiation. Please inform us if you consider that any other method of ADR to be appropriate and we will consider your position.

We look forward to hearing from you, as specified above.

Yours faithfully