

## Linkwise Newsletter

We write to provide you with an update as to what is happening generally in the claims we are making against the retailers who have been selling the Chinese made furniture.

### 1 Background Information

The first claims came to light in September 2007. The number of cases has steadily grown since then so that in May 2008 there were approximately 950 claimants and by September 2008 about 2,000 claimants. The High Court ordered that the existence of the litigation be advertised in the national press. That advertising has produced over 3,000 further claimants so that at present there are a total of in excess of 5,000 people claiming injury from using a Chinese made sofa. Unfortunately, the unexpected explosion in the number of claims means that whilst we are trying to make progress with some of the longer standing cases (see below) inevitably the onerous obligations that the Court set us as the lead solicitors to compile a register of all claimants has required us to focus on gathering information on the new claims so that the Court can understand the "big picture". Our top priority both for the new claimants and older claimants is to send out and get returned the questionnaires that have been prepared that will allow us to make progress with identifying which cases can be settled quickly and simply with appropriate medical evidence, and those where further investigations into liability are required.

### 2 Liability

It is now accepted by the main Defendants, that is to say Argos, Homebase, Land of Leather and Walmsleys that any furniture that contains the fungicide Di Methyl Fumarate (DMF) is defective. They have accepted liability in cases where we can show DMF was used during the manufacturing and storage of the sofa. They have provided to some extent lists of all the models which they accept did contain DMF. However, they still require each individual claimant to show that the symptoms they have were caused by the DMF. Proof of this is likely to be simply that somebody's symptoms are typical of DMF sensitisation. "Typical" means that symptoms came on no sooner than about 2 weeks after the furniture was used for the first time and within 12 months of first usage. Anybody whose symptoms came on in under 2 weeks or over 12 months from first usage would probably need to undertake patch testing, which involves applying a sticking plaster to the skin which contains a small amount of the chemical. The skin under the plaster is then inspected after a few days to see whether there has been a reaction. We are also currently investigating the problem that a large number of claimants have complained of, that is to say breathing difficulties or respiratory problems either in addition to dermatitis or sometimes as their only symptom. DMF is known to be a strong irritant but because there is so little previous experience of it having been used, and therefore causing injury, we are having to undertake a lot of research to establish whether it is likely to have caused such respiratory problems and if so how can this be proved.

### 3 Medical Evidence

Understandably, anybody who believes that they have had typical symptoms and where the retailers have admitted the sofa probably contained DMF will be keen to receive compensation for their injuries and financial losses. We are currently working with the



Defendants' insurers to establish a system for obtaining medical evidence in these cases. It is not entirely clear whether they will require us to ask clients to have patch testing done, because of the cost and inconvenience involved. We would certainly hope that by January 2009 we will be in a position to send such claimants to doctors to obtain medical reports and then assess how much compensation they should receive.

4 Other ranges of furniture.

Claimants whose furniture does not come from the main retailers named above or whose furniture comes from those retailers but they have denied liability will want to know what we are doing. The most important step that we can take is to identify those retailers or model ranges that they are selling which recur frequently. This is the best indication that such models may have contained DMF. We are gradually identifying the most commonly affected models and sending samples to a scientific laboratory to test them for the presence of DMF. This is a time consuming and expensive procedure. Once we have got back the results of those tests we will be in a much better position to assess whether people who have had those models have indeed been sensitised or injured by DMF. Again we would hope that the testing will be completed in January.

If for any reason you have not returned the questionnaire that we have sent to you previously, please do so as soon as possible. For those who have returned their questionnaires we will be in touch again shortly.

Next Steps

The Court has listed the case for further case management on 27<sup>th</sup> February 2009. We would hope to have resolved by this date all the outstanding issues concerning which models have been contaminated and what medical evidence is needed. We are also hoping to have agreed with the insurers levels of compensation for different types of injury and financial loss.

Land of Leather update

On 12<sup>th</sup> January 2009 there was widespread reporting of the fact that Land of Leather, one of the main Defendants in the sofa litigation, has called in administrators. Clients whose cases are against Land of Leather may be concerned about the implication of this.

So far as we know, Land of Leather have been fully insured in respect of claims made against them as a result of selling defective products and we would certainly anticipate that there will be no problem in respect of any personal injury and consequential losses i.e. treatment cost, travel etc. Whether the insurance will cover the cost of defective sofas that have not yet been exchanged is not entirely clear and we will ask their solicitors to advise. A lot may depend upon the precise wording of the policy of insurance.

New clients may find that Land of Leather are even more reluctant than they were before to arrange exchanges or refunds and it would be useful for us to find out over the course of the next few weeks whether we get feedback from clients attempting to get such refunds or exchanges done.

We understand that Land of Leather are continuing to trade therefore the administration may simply be to protect the directors from accusations of trading whilst insolvent.