

TUESDAY 31ST JULY 2018

**IN THE COURT OF APPEAL**

ON APPEAL FROM THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

HQ12XX01829

**BEFORE** THE PRESIDENT OF THE QUEEN'S BENCH DIVISION  
**AND** LORD JUSTICE HAMBLEN  
**AND** LORD JUSTICE NEWEY

**B E T W E E N**

CAPE DISTRIBUTION LIMITED

APPELLANT /  
DEFENDANT

- and -

GRAHAM DRING ( FOR AND ON BEHALF OF THE ASBESTOS VICTIMS SUPPORT  
GROUPS FORUM UK)

RESPONDENT /  
APPLICANT

**UPON** the Respondent having applied on 6 April 2017 under CPR 5.4C(2) for permission to obtain from the records of the Court copies of documents filed by the original parties to the litigation (the "Application");

**UPON** Master McCloud making certain interim orders on 6 and 12 April and 10 August 2017 in relation to the Application;

**UPON** Master McCloud having handed down judgment and making a final Order on 5 December 2017 permitting the Respondent to copy certain documents (the "Final Order");

**UPON** the Appellant issuing a Notice of Appeal on 21 December 2017 (the "Appeal");

**UPON** the appeal being transferred from the High Court to the Court of Appeal by Order of Martin Spencer J dated 5 March 2018;

**AND UPON HEARING** Leading Counsel for the Appellant and Leading Counsel for the Respondent;

**IT IS ORDERED THAT**

1. The Appeal is allowed.
2. The Final Order of Master McCloud is set aside.

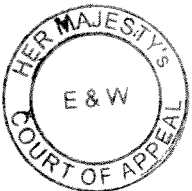


COURT 75  
Appeal No.

B3/2018/0547 AND  
B3/2018/0547 ( A) AND  
B3/2018/0547 (B)

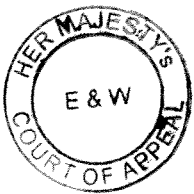


3. The Appellant is permitted to retrieve from the Court Office of the Queen's Bench Division all documents and bundles currently located there save those on the court file, including in particular: (a) all the documents referred to at paragraph 1 of the Order of Master McCloud dated 6 April 2017; and (b) the hard drive containing a copy of Bundle D from the original trial before Picken J, delivered to the Court pursuant to the Order of Master McCloud made on 12 April 2017.
4. The Court shall (so far as they are on the court file and the prescribed copying fee is paid) provide the Respondent with copies of the following documents from the court record pursuant to CPR 5.4C(1):
  - (a) Statements of case (including requests for further information and answers) save for those set out in Appendix 1; and
  - (b) The Claimant's Second Further Particulars of Paragraph 5 of the Amended Particulars of Claim dated 6<sup>th</sup> April 2016.
5. The Appellant's application for permission to appeal is refused.
6. Paragraphs 7 – 8 of this Order are stayed pending the determination by the Supreme Court of the Appellant's application for permission to appeal and, if permission to appeal is granted, pending the determination of that appeal.
7. The Appellant shall, on payment by the Respondent to the Appellant of the Appellant's reasonable copying costs, provide the Respondent with one copy of each of those documents listed in Appendix 2 to this Order.
8. The Application be listed for a further hearing before Picken J (or, if that is not possible, a different High Court judge) to determine:
  - (a) whether any other document sought by the Respondent and not listed in the Schedule, falls within the scope of paragraph 112(2)(ii) and/or (iv) of the Judgment; and
  - (b) in relation to any such document, whether the Court should, in the exercise of its inherent jurisdiction, require the Appellant to provide a copy of it to the Respondent, having regard (among other matters) to the factors at paragraphs 127 and 129 of the Judgment.
9. There shall be no order as to costs below and on appeal.



Appendix 1

Claim Form	24 Apr 2013
Particulars of Claim	17 Mar 2013
Particulars of Claim	17 May 2013
Amended Particulars of Claim	2013
Defence	24 Jun 2013
Defendant's Request for Further Information	25 Jun 2013
Claimant's Reply to Request	04 Sep 2013
Reply to Defence	04 Sep 2013
Claimant's Request for Further Information	17 Nov 2013
Defendant's Response to the Claimant's Request for Further Information (dated 17 November 2013)	25 Jul 2014
Claim Form (Additional Claims CPR Part 20)	30 Jul 2014
Claimant's Amended Particulars of Claim	Apr 2015
Claimant's Particulars of Claim	2016
Additional Particulars to be read in conjunction with the amended Particulars of Claim	14 Jan 2016
Amended Defence	12 Feb 2016
Defendant's Response to the Claimant's Second Further Particulars of paragraph 5 of the Amended Particulars of Claim (dated 6 April 2016)	03 Aug 2016



## Appendix 2

### A. Witness statements

1. Mr John Walkerdine, dated 12 July 2016
2. Mr Christopher James, dated 8 July 2016

### B. Expert reports

3. Prof Sir Alasdair Breckenridge, dated 14 October 2016
4. Prof Roger Willey, dated 14 October 2016
5. Mr Martin Stear, dated 14 October 2016
6. Joint statement of Mr Stear and Prof Sir Alasdair Breckenridge, dated 4 December 2016
7. Dr John-Moore Gillon, dated 22 December 2016 (with his answers to Part 35 questions, dated 20 January 2017)

### C. Written submissions

8. Written opening submissions on behalf of CIH, dated 23 December 2016
9. Written opening submissions on behalf of Concept 70 Ltd, dated 23 December 2016
10. Written closing submissions on behalf of CIH, dated 15 February 2017
11. Written closing submissions on behalf of Concept 70 Ltd, dated 15 February 2017



(The Court sat on 18<sup>th</sup> June 2018 from 10.30 to 16.30 and 19<sup>th</sup> June 2018 from 10.31 to 16.20)

*By the Court*

**TUESDAY 31ST JULY 2018**  
**IN THE COURT OF APPEAL**  
ON APPEAL FROM THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

ORDER

Copies to:

Queen's Bench Division  
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Clerkenwell  
Ref: HZB/CAPE

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\* This order was drawn by A Marie Smith (Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to A Marie Smith, Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand) and quote the Court of Appeal reference number. The Associate's telephone number is