

# OCCUPATIONAL ILLNESS LITIGATION

THOMSON



TM

SWEET & MAXWELL

# OCCUPATIONAL ILLNESS LITIGATION

**Authors**

ANTONIS GEORGES

and

ANDREW McDONALD

Barristers at  
Number 7 Harrington Street Chambers,  
Liverpool

LONDON  
SWEET & MAXWELL  
2003

Published by  
Sweet & Maxwell Limited of  
100 Avenue Road  
London NW3 3PF  
[www.sweetandmaxwell.co.uk](http://www.sweetandmaxwell.co.uk)  
Set by MFK Information Services, Stevenage, Herts  
Printed in Great Britain by  
Hobbs the Printers Ltd,  
Totton, Hampshire

A CIP catalogue record for this book  
is available from the British Library

ISBN  
0-421-78410-5

*All rights reserved, Crown Copyright legislation is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland. No part of this publication may be reproduced or transmitted, in any form or by any means, or stored in any retrieval system of any nature, without the prior written permission, except for permitted fair dealing under the Copyright, Designs and Patents Act 1988, or in accordance with the terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic reproduction. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made of the publishers. Full acknowledgement of author, publisher and source must be given.*

No natural forests were destroyed to make this produce.  
only naturally farmed timber was used and re-planted.

The views and opinions expressed in this book and the material herein are honestly held by its authors, but neither the authors nor publishers can accept any responsibility or liability whatsoever for the validity or accuracy of those views or opinions. Further neither the authors nor the publishers can accept any liability or responsibility (either direct or indirect) whatsoever for any errors or omissions which may be contained within this book or the material herein. Readers of this book are advised to consult and research the relevant source materials for themselves and not to place reliance upon the views, opinions and material herein.

©  
Sweet & Maxwell Limited  
2003

Occupational Illness: R.0 September 2002

# **OCCUPATIONAL ILLNESS LITIGATION**

**THOMSON**  
—★—<sup>TM</sup>  
**SWEET & MAXWELL**

**AUSTRALIA**

Law Book Co.  
Sydney

**CANADA and USA**

Carswell  
Toronto

**HONG KONG**

Sweet & Maxwell Asia

**NEW ZEALAND**

Brookers  
Wellington

**SINGAPORE and MALAYSIA**

Sweet & Maxwell Asia  
Singapore and Kuala Lumpur

## FOREWORD

One of the unwelcome but virtually inevitable accompaniments of a developed industrial society is the incidence of occupational illness. Claims for compensation must necessarily follow. In some industries a scheme of compensation, statutory or consensual, obviates the need for litigation. But there remains a vast field of claims which can be pursued only by tort litigation.

Tort claims arising from occupational disease are complex—to those who do not regularly practise in this area of the law surprisingly complex. The law governing the duties of the relevant employer is to be found in part in statutes, in part in judicial decisions. The statutes include Acts of Parliament and (more commonly) a maze of statutory regulations. The judicial decisions are not always reported. Before lodging any claim the claimant's legal adviser will have to research the statute law and the cases and will also have to learn a good deal about the disease in question and about the physical conditions in the claimant's place of work. Thus the litigator in this branch of the law does not have an easy ride.

Fortunately, the present book now comes to the rescue. It is above all a practical book. It is not only an invaluable guide to the governing law but is a step by step guide to the proper preparation of a case, including the search for evidence, and to the conduct of the action itself.

The book covers issues generally applicable to any claim arising from an occupational illness, but one of its most valuable features is its discussion of the legal and factual problems arising in relation to particular diseases. The authors have included clear and authoritative accounts of each disease written by experienced medical experts. There are also excellent accounts by engineers and other experts of the working conditions which may give rise to the disease.

A most useful—and in my experience unique—aspect of the book is to be found in the sections which set out logically and systematically what is described as the claimant's solicitor's task. But this does not mean that the book is directed only at solicitors and advocates for claimants. On the contrary, there is a significant section on the defendant's solicitor's task. I should add that the approach of the authors is fully consistent with the objectives of the Civil Procedure Rules. Full and early preparation by both sides on the lines set out by the authors is likely to lead to earlier and fairer settlements. And where no settlement is possible it will at least have enabled the parties to limit the action to the real matters in dispute.

Now that this book is available I cannot conceive of anyone concerned with claims arising from occupational disease—solicitors, barristers, in-house lawyers, trade union officials—who will not regard it as an indispensable working tool.

Sir Sydney Kentridge Q.C.  
October 15, 2002

This edition is dedicated to our wives, Pam and Dwenna,  
and children Jamie and Ross and Matthew and Stefan whose forbearance, love  
and tolerance of their husbands/fathers knew no bounds!

## PREFACE

It is with some surprise mixed with considerable pleasure that we have the opportunity to write a preface to a further edition of this book. The title might have altered slightly but the purpose has not. Those considering purchasing the first edition must have been sufficiently impressed to purchase the book and, as we received no complaints, we presume that we produced a work of some use.

Whether we are self-deluding or not is not for us to say. The publishers clearly feel that the legal fraternity need a further edition and from the comments received to date, there would appear to be a few lawyers who would agree. But the praise for this edition should not go to the general editors. As with the first edition, there have been so many kind, generous and thoughtful people willing to give their time and assistance for little or no reward. To those people we are eternally grateful.

To list those deserving acknowledgment runs the risk that some have been omitted that should have been included. However, taking on board that risk, the general editors gratefully acknowledge the assistance provided by all those persons named in the body of the work at the commencement of their sections. But the list does not end there. Many of those named, in turn, received assistance that warrants recognition and thanks. In order to do justice we have listed as many persons as we can on the following page. If we have omitted any we would be very grateful if those who note the omission should contact us so that we can right the wrong. In addition, the patience and forbearance of the publishers should be mentioned as well and, in particular, the many who prepared and placed the text into a suitable format and those who prepared the index.

We hope that this work does assist in an important area of law that affects the welfare and rights of so many litigants. If we have succeeded in providing such assistance then we each claim all the credit. But, as stated in the first edition, if there be any errors or omissions each of us willingly blames the other general editor.

Andrew McDonald and Antonis Georges  
7 Harrington Street,  
Liverpool.  
August 1, 2002



The general editors gratefully acknowledge the assistance of the following:

Anthony Goff, Barrister, Pearl Assurance House, Liverpool

Mark Roberts, Barrister, 7 Harrington Street, Liverpool

Andrew Edis QC, Barrister, Atlantic Chambers, 4–6 Cook Street, Liverpool

John Pickering of John Pickering & Partners, Solicitors, 19 Castle Street, Liverpool

Allan Gore, Barrister, 12 King's Bench Walk, Temple, London

Amanda Yip, Barrister, Pearl Assurance House, Liverpool

Eleanor Mawrey, Barrister, 9 Gough Square, London

With apologies to those omitted.

## CHECKLIST OF PAGES UP TO DATE TO INCLUDE RELEASE 0

You will see below a complete list of the pages your looseleaf should contain AFTER this Release has been filed. The release number of each page is also listed. If a sequence of pages is indicated with the same Release number, all pages in this sequence belong to the same Release.

If you discover that pages are missing, please turn to the subscriber information page for advice on whom to consult.

PAGE	RELEASE NO.	PAGE	RELEASE NO.
<b>Chapter 1: General Principles and Guidance in the Conduct of Occupational Illness Litigation</b>			
Checklist 1 to 2	0		
Title Pages i to iv	0		
v to viii	0		
<b>Service Information</b>		1001 to 1058	0
		1085 to 1140	0
		1165 to 1176	0
1 to 8	0	1201 to 1220	0
Missing Pages Request Form	0		
<b>Chapter 2: Asbestos Related Conditions</b>			
<b>Table of Cases</b>			
		2001 to 2048	0
TOC/1 to TOC/18	0	2075 to 2102	0
		2125 to 2134	0
<b>Table of Statutes</b>		2151 to 2184	0
		2201 to 2204	0
TOS/1 to TOS/4	0	2225 to 2256	0
<b>Table of Statutory Instruments</b>			
TOSI/1 to TOSI/6	0	3001 to 3044	0
		3071 to 3086	0
<b>Table of Civil Procedure Rules</b>		3111 to 3122	0
		3151 to 3156	0
TOSI/1 to TOSI/4	0	3181 to 3194	0
<b>Contents</b>			
ix to x	0		

## Chapter 4: Industrial Deafness

## CHECKLIST OF PAGES UP TO DATE TO INCLUDE RELEASE 0

PAGE	RELEASE NO.	PAGE	RELEASE NO.
4001 to 4042	0	<b>Chapter 8: Mucous Membrane Disorder</b>	
4051 to 4086	0		
4125 to 4134	0		
4151 to 4154	0	8001 to 8022	0
4175 to 4186	0	8025 to 8038	0
4201 to 4238	0	8051 to 8060	0
		8075 to 8078	0
<b>Chapter 5: Occupational Stress</b>		8101 and 8102	0
		8125 to 8128	0
5001 to 5042	0		
5051 to 5066	0		
5101 to 5108	0	<b>Part IX: Practice Directions</b>	
<b>Chapter 6: Occupational Asthma</b>		9001 to 9010	0
		9025 to 9032	0
6001 to 6014	0	9051 to 9056	0
6025 to 6032	0	9075 to 9078	0
6051 to 6056	0		
6075 to 6078	0		
6101 to 6108	0	<b>Index</b>	
6125 to 6160	0		
		Index/1 to Index/16	0
<b>Chapter 7: Work Related Upper Limb Disorder</b>			
7001 to 7028	0		
7051 to 7072	0		
7075 to 7094	0		
7101 to 7104	0		
7125 to 7138	0		
7151 to 7156	0		

PAGE

RELEASE NO.

CHECKLIST: 2

# Sweet & Maxwell's **Looseleaf Filing Guide**

- 1 CAN YOU FILE THIS RELEASE?**
- 2 OPENING THE BINDER**
- 3 FOLLOWING THE FILING  
INSTRUCTIONS**
- 4 CLOSING THE BINDER**
- 5 FILING ADDITIONAL VOLUMES**
- 6 UPDATING THE FILING RECORDS**



**Sweet & Maxwell**  
A THOMSON COMPANY

# Sweet & Maxwell's Looseleaf Filing Guide

## 1

### CAN YOU FILE THIS RELEASE?

☐ Before you go any further you must check that your looseleaf is up-to-date and that previous Releases have been filed.

☐ To check that the previous Release has been filed, compare the number of the latest Release with the last entry on the Filing Record Card.

☐ If the numbers are not consecutive then do not file the Release.

First, check the Release number at the top of the first page of Filing Instructions in the looseleaf to see if the missing Release(s) have been filed without any entry on the Filing Record Card. If so, note this on the Filing Record Card and proceed to file the new Release.

If not, check to see if the missing Release(s) are available and file them, in consecutive order, using this guide.

☐ If a Release is missing, use the number in the Subscriber Information to contact the Helpline.

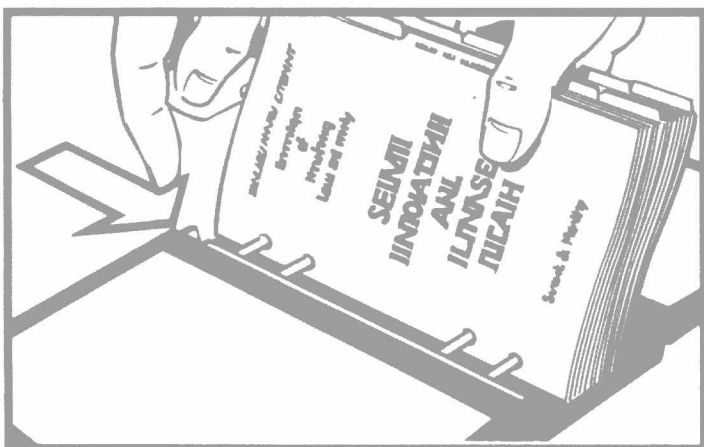
☐ Remove the Cover Sheet and throw it away. The first page of the Release should be the Filing Instructions.

☐ Remember that the Release may be for more than one volume. Instructions for each volume will begin on a new page in the Filing Instructions.

## 2

### OPENING THE BINDER

☐ Open the looseleaf and press the catch at the upper edge of the front of the binder. This enables the binder to be laid flat.



☐ Lift off the lifter bar and place it on the spine with the spikes pointing upwards.

☐ Remove the Filing Instructions from the front of the Release. These will be the last pages to be filed into the volume.

☐ Arrange the binder, Release and Filing Instructions page(s) as shown.

☐ Now follow the Filing Instructions.

## 3

### FOLLOWING THE FILING INSTRUCTIONS

☐ These are arranged in two columns, one which indicates pages to be removed from the looseleaf volume and a second which indicates which new pages to insert from the latest Release.

#### 3A

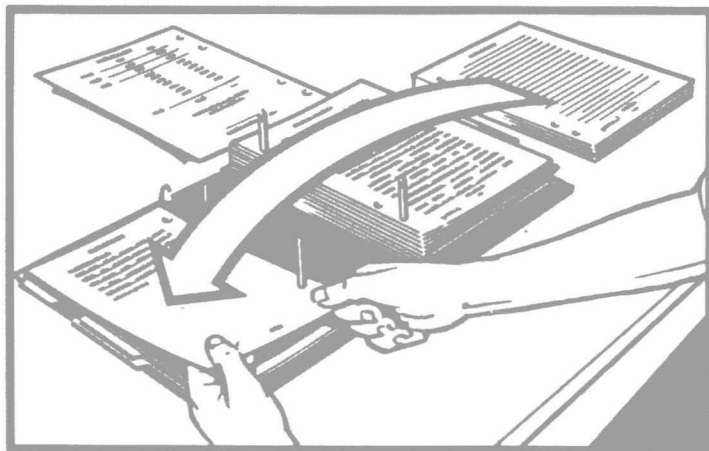
#### REMOVING PAGES

☐ Look at the first entry in the column headed Destroy Old Pages. Lift all the pages in the looseleaf up to this number from the retainer bar and place them face down on the lifter bar which you have previously removed.

☐ Now lift from the retainer bar those pages listed in the first entry to be destroyed and throw them away.

#### 3B

#### INSERTING PAGES



☐ Look at the first entry in the column headed Insert New Pages. Lift the pages listed in this entry from the un-filed Release material and place them on the lifter bar.

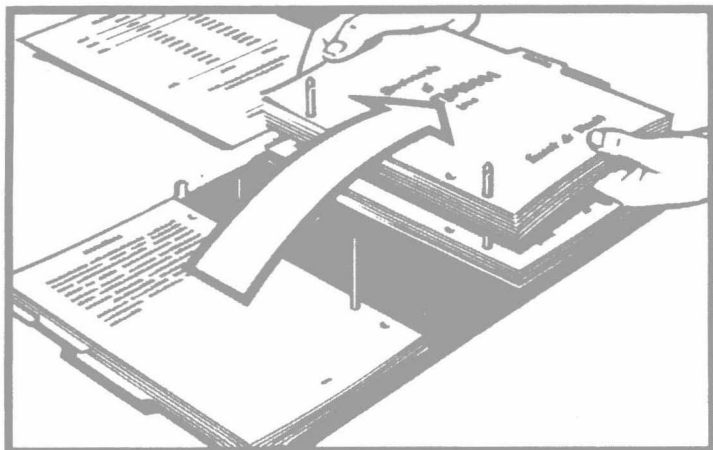
☐ Repeat stages **3A** and **3B** for each entry until all pages for that volume have been filed.

☐ The last instruction for the volume should be to insert the Filing Instructions immediately after the Filing Record Sheet which can be done as you close the binder.

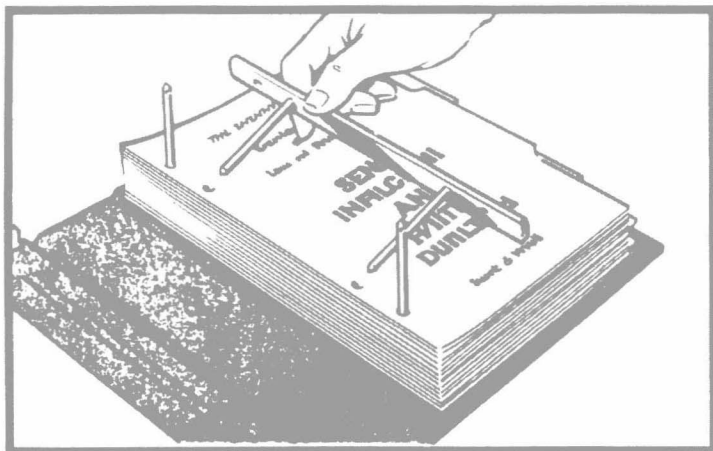
☐ Remember that sometimes you will be instructed to add new pages without destroying old pages, or to remove old pages which are not to be replaced.

## 4

### CLOSING THE BINDER



☐ Now return the pages to the retainer bar, a few at a time.



☐ When all the material has been returned to the retainer bar, replace the lifter bar. Close the volume by bringing the cover of the binder into place and pushing it firmly on to the retainer bar. Make sure that the binder is properly closed before replacing it on the shelf.

## 5

### FILING ADDITIONAL VOLUMES

## 6

### UPDATE THE FILING RECORD

☐ If the Release covers more than one volume then follow stages 2 to 4 until the whole Release has been filed.

☐ Turn to the Filing Record Card. Complete the entry for the latest Release. Insert the Filing Instructions after the Filing Record Card.

## SERVICE INFORMATION

(bringing *Occupational Illness Litigation* up to date to October 2002)

The *Service Information* and *Release Bulletin* will help you in filing and using this looseleaf. It consists of the six elements listed below:

1. **Filing Instructions Pages**—Follow these *Filing Instructions* in filing this Release.
2. **Release Bulletin**—This is a commentary drawing your attention to matters of interest and surveying current developments in *Occupational Illness Litigation*.
3. **Checklist of Pages**—Here you will find listed *all* pages which the volume should contain after you file this *Release*. The heading at the top of each page of the checklist will tell you which *Release* the checklist is up to date to.
4. **Subscriber Information**—Here you will find advice on whom to contact if you run into difficulty in keeping *Occupational Illness Litigation* up to date; the date of the next *Release*; a table of previous *Releases* and how to renew your subscription.
5. **Looseleaf Filing Guide**—This is an explanation, complete with illustrations, of how to file material when a new *Release* arrives.
6. **Explanation of Terms**—This explains what we mean in describing the various components of the Volume.



## **Release Bulletin**

This is Release 0 of *Occupational Illness Litigation*.