

PIP Breast implants - What price mental anguish?

As the British press continue to report the furore over issues of safety of the PIP implants in light of the action taken by the French Government; we should spare a thought for those women who, reportedly, have had them implanted as part of their breast cancer treatment and who wait anxiously and somewhat helplessly for a definitive answer as to whether they are harmful to their health and must be removed.

A significant number of women have had the implants inserted during reconstruction surgery following treatment for breast cancer and so for them the anxiety and distress is surely palpable.

Reconstruction surgery usually heralds the end of long and painful treatment which often includes a mastectomy or partial mastectomy. The surgery is often seen as the light at the end of the tunnel, a chance for women who have lost a breast or part of a breast to regain some self esteem by having the breast effectively rebuilt. It often heralds a new beginning which is combined with a decision to change a lifestyle in order to prevent a recurrence of the disease. So to discover that the implant may well be harmful must land a devastating blow to them.

It is therefore worth pondering how the law views mental anguish in such circumstances?

In the case of *Rothwell v Chemical and Insulating Company Limited (2007) UKHL 39* the claimant had been exposed to asbestos in the course of his employment and developed an asbestos related condition namely pleural plaques. The condition did not produce any symptoms but carried with it a risk of future malignancy in the form of mesothelioma or asbestosis. The Judge at first instance held that the combination of the risk of future injury and the claimant's anxiety about the risk was a compensatable injury and a cause of action in itself.

However in 2006 and 2007 the Court of Appeal followed by the House of Lords overturned the Judges decision stating that the risk of future injury and the fear of future injury, even if it resulted in a recognisable psychiatric condition is not a compensatable injury nor a cause of action in itself. It was said that "*Damages are given for injuries that cause harm not for injuries that are harmless.*"

If you apply this thinking to the women who have not yet suffered physical damage through rupture of the implant but are anxious and distressed about the future risk, then they are not entitled to be compensated.

As the scale of the problem begins to unfold and fears increase, there are likely to be significant numbers of women who will feel justifiably aggrieved that their real anxiety and distress is not legally recognised.

Having dealt with a number of breast cancer cases over the years I believe the time has now come for a challenge to the thinking which prevailed in the Rothwell case and it remains to be seen whether public outrage and government pressure will ultimately lead to change in legal thinking.

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