

W.R. Grace & Co: Dealing with Asbestos Torts


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**Causation and
Material Risk:
Principle or Policy?**

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What is Causation?

- Proof the defendant caused the injury in a Legal and factual sense.
- Show the causal connection between the defendants breach of obligation, and the damage suffered by the plaintiff.
- In a case of battery causation is easily established.



**Cases
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Cases with multiple possible defendants

- When it's impossible to prove liability medically or scientifically.
- 'Material increase of risk' principle helps to find liability when all of the defendants have contributed to the risk.
- This principle was confirmed in *Fairchild v Glenhaven funeral services* [2002]UKHL 22
- Defendants admitted negligence in exposing claimants to asbestos.

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Material increase of risk principle applied.

- One strand of asbestos dust could have caused the injury but it's impossible to say which employer was liable.
- The court wouldn't deny the injured claimant a remedy.
- Lay the burden across all employers who had materially increased the risk.
- 'Material increase of risk' principle began with the McGhee case and confirmed by Fairchild case

McGhee v National Coal Board [1973] 1 WLR 1

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Material Risk Policy?

- Lord Wilberforce referred to the decision to use 'material increase of risk' as a matter of of policy and justice in the McGhee case.
- He also mentions how the defendants should not escape liability due to the claimants 'evidential difficulties'.



Our thoughts on material increase of risk being a policy

- We agree with Lord Wilberforce as did the courts in Fairchild.
- The use of this principle is policy which can be adopted by the courts to bring about justice where it may otherwise go unserved.
- The Irish courts agree with this policy because they have considered McGhee in:
Best v Wellcome Foundation Ltd. [1993] 3 IR 421.
- In the Civil Liability Act 1961 we have legislated for this. It states that the burden of liability should be spread across all defendants 'where one or more of them is responsible for damage and it is impossible to prove who exactly is responsible'.

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*Thank You
For Your
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