

In the Supreme Court

SAMUEL PHILLIPS

On Appeal from the Court of Appeal

Between

SHERBORNE COUNTY COUNCIL

(Appellant)

- and -

FOSTER

(Respondent)

**SKELETON ARGUMENT
on behalf of the Foster (“the Respondent”)**

Introduction

1. This skeleton relates to the second ground. Namely that the principle in *Fairchild v. Glenhaven Funeral Services Ltd* [2002] UKHL 22 was apt for, and correctly applied to the facts of the case.

Submissions

2. The facts of the case come within the rule established in *Fairchild* as informed by *McGhee v. National Coal Board* and confirmed by *Barker v. Corus*.
 - a. As per Lord Simon of Glaisdale in *McGhee v. National Coal Board* [1973] 1 WLR 1, the council’s willingness to allow the respondent to work in an environment that was detrimental to her health represented a substantial contribution to the injury.
 - b. The criteria established by their Lordships for the application of the *Fairchild* principle are broad enough to include breakdowns occasioned by stress at work and are satisfied by the facts of this case.
 - c. When discussing the application of the *Fairchild* principle in *Barker v. Corus UK Ltd* [2006] 2 AC 572, their Lordships acknowledge the likelihood of a natural increase in its ambit.

3. Even if the existing case law does not fully allow for the application of the principle in this specific case, it would be appropriate for this court to consider expanding its applicability.
- a. Stress at work and concomitant physical and mental harm caused thereby have become as dangerous to the working population as asbestos, if not more so.
 - b. As seen in *Fitzgerald v. Lane* [1987] QB 781, strict application of the ‘but for’ test can produce artificial and unjust outcomes resulting in the burden of liability falling disproportionately on the parties.

Conclusion

4. For the reasons stated above, we respectfully request your Lordships deny this appeal.

**SAMUEL PHILLIPS
(JUNIOR RESPONDENT)
CITY UNIVERSITY – 20th March 2010**

