

IN THE SUPREME COURT OF THE UNITED KINGDOM

UKSC/2025/0002

STATEMENT OF FACTS AND ISSUES

in the cause

(FIRST) ELAINE CROZIER OR VEALE, 3 Halsey Drive, Lynefield, Auckland, 1042, New Zealand; **(SECOND) GWEN CROZIER OR LAMB**, 50 Oldwood Place, Livingston, West Lothian EH54 6UJ; **(THIRD) GEMMA ELIZABETH VEALE**, 41 Farrand Road, Kumey, 0891, New Zealand; **(FOURTH) KIERAN NATHAN LAMB**, 50 Oldwood Place, Livingston, West Lothian EH54 6UJ; **(FIFTH) CAITLIN ANNE VEALE**, 3 Halsey Drive, Lynfield, Auckland, 1042, New Zealand; **(SIXTH) AIDAN ETHAN LAMB**, 50 Oldwood Place, Livingston, West Lothian EH54 6UJ

PURSUERS AND RESPONDENTS

against

SCOTTISH POWER UK LIMITED, 320 St Vincent Street, Glasgow, G2 5AD

DEFENDERS AND APPELLANTS

Introduction

1. The appeal is taken against an interlocutor of the First Division, Inner House, Court of Session dated 4 June 2024. On 4 June 2024, the Inner House of the Court of Session refused the Appellant's reclaiming motion and adhered to the interlocutor of the Lord Ordinary, Lord Stuart, dated 27 July 2023.
2. The dispute between the parties arises out of the statutory interpretation of Section 5 of the Damages (Scotland) Act 2011 ("the 2011 Act").

Relevant Facts

3. The facts are set forth in the opinions of the Lord Ordinary, Lord Stuart at [1] – [3] and the Lord President, Lord Carloway at [1] – [3]. In so far as they are relevant to the appeal, they may be summarised as follows:-
 - 3.1. Robert Crozier had been employed by the Appellant as a mechanical fitter between 1969 and 1992.
 - 3.2. In 2014 he sued the Appellant for damages, having developed pleural plaques and asbestosis as a result of being exposed to asbestos in the course of that employment ("the 2014 Action").

- 3.3. Part of the damages claimed in the 2014 Action related to the risk of Mr. Crozier developing mesothelioma.
- 3.4. It was open to Mr. Crozier to seek provisional damages in accordance with s.12 of the Administration of Justice Act 1982. Mr Crozier did not seek provisional damages.
- 3.5. Mr. Crozier settled the 2014 Action on a full and final basis on 7 October 2014. Decree of absolutor was pronounced on 26 February 2015.
- 3.6. At the time of settlement, Mr. Crozier did not have mesothelioma.
- 3.7. Mr. Crozier died of mesothelioma, a form of cancer, on 15 October 2018. The cause of the mesothelioma was exposure to asbestos.
- 3.8. Following Mr. Crozier's death from mesothelioma, the Respondents, who are members of the late Mr. Crozier's immediate family, raised the present action.
- 3.9. The Respondents seek damages for the anxiety and distress which they suffered in contemplation of Mr. Crozier's death, their loss and grief upon his death and the loss of his society and guidance. They found upon section 4(3) of the 2011 Act.

Issues for the Court

4. The Appellant contends that the action is rendered incompetent by settlement of the 2014 Action by the late Mr. Crozier on a full and final basis, with the Appellant having been awarded decree of absolutor. They found upon section 4(2) of the 2011 Act, interpreted in the context of sections 3 to 5 of the 2011 Act, and contend that the Respondents' right to claim damages upon the late Mr. Crozier's death is precluded by the settlement of the 2014 Action.
5. The Respondents accept that section 4(2) of the 2011 Act provides that, as a generality, no claim for damages for a wrongful death can be brought by the relatives of a deceased person if the deceased has settled his own claim for damages flowing from the same wrong. The Respondents rely upon section 5(1), which they argue provides an exception to that rule and applies in the circumstances of Mr Crozier, who died of mesothelioma but was not suffering from mesothelioma at the time of settlement.
6. The issue in this appeal is one of statutory interpretation: whether the conditions of section 5 of the 2011 Act are met, entitling Mr Crozier's relatives to claim damages for

their own loss following his death from asbestos related mesothelioma, notwithstanding that Mr Crozier raised and settled the 2014 Action on a full and final basis.

Counsel for the Defender and Appellant

[SIGNATURES OF SENIOR AND JUNIOR COUNSEL FOR THE APPELLANT]

Counsel for the Pursuers and Respondent

[SIGNATURES OF SENIOR AND JUNIOR COUNSEL FOR THE RESPONDENT]

Annex

Chronology of Proceedings

12 April 2021	Action raised by Elaine Crozier or Veale and Others against Scottish Power UK Plc in the Court of Session Outer House.
15 June 2023	The Debate before the Lord Ordinary, which took a little more than half a day
27 July 2023	Opinion of Lord Stuart in favour of Elaine Crozier or Veale and Others, reported at 2023 SLT 755; 2023 SCLR 553; neutral citation [2023] CSOH 50.
August 2023	Reclaiming motion lodged by Scottish Power UK Plc to the Court of Session Inner House.
14 May 2024	Hearing on the Reclaiming motion, which lasted half a day.
4 June 2024	Opinion of the Lord President, Lord Boyd of Duncansby and Lady Wise in favour of Elaine Crozier or Veale and Others, reported at 2024 SC 373; 2024 SLT 607; 2024 SCLR 463; neutral citation [2024] CSIH 14

26 July 2024	Motion lodged on behalf of Scottish Power UK Plc, in terms of Rule of Court 41A.3(3), to fix a hearing on Scottish Power UK Plc's application seeking permission to appeal to the UK Supreme Court.
10 October 2024	Permission granted by the Lord President, Lady Wise and Lord Armstrong to appeal to the UK Supreme Court.