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"He is one of the most technically able barristers when it comes to medical and scientific issues."  
(Chambers & Partners, 2021)



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Robert O'Leary practises in the fields of personal injury and industrial disease, representing clients throughout the UK. He has acted on behalf of insurers and institutions, including the UK and Welsh governments, as well as individuals and unions. He has experience of conducting cases at all levels, including in the Supreme Court. He is involved in complex cases from early preparation to resolution. He has particular experience in group and multi-party litigation. He also acts in professional negligence actions arising out of personal injuries litigation.

## Personal Injury

Robert is recognised as a leading practitioner in personal injury litigation. He has extensive experience in multi-track employers' liability, construction site, Animals Act, housing disrepair, assault, abuse / neglect, road traffic, occupiers' liability and military cases, often involving injuries of the utmost severity, as well as cases involving fibromyalgia, chronic pain and psychiatric injuries. He regularly deals with cases involving fatalities.

Robert is adept at working as part of a team and is accustomed to dealing with complex expert evidence on issues of liability, causation and quantum. He regularly advises on difficult legal and factual matters, and his input is often sought on the tactical management of cases in which he is involved.

In addition to dealing with large numbers of cases involving occupational diseases which have arisen as a consequence of work on building sites, Robert regularly deals with claims for both physical and psychiatric injury arising from accidents involving construction workers, including sometimes complex questions of responsibility where several employers work on the same site, consideration of contractual and regulatory issues, and the bringing and defending of Part 20 claims.

Robert has extensive experience of claims for personal injury arising from housing disrepair.

He writes the chapter in Munkman on Employer's Liability dealing with Third Party Violence at Work and has represented medical practitioners and teachers who have been assaulted by third parties at work as well as defending such cases on behalf of the relevant employers. He has also acted in numerous cases involving abuse and neglect in care homes.

He has experience of dealing with personal injury cases at all levels, including in the Supreme Court. He regularly appears against leading counsel.

Robert acted for the Claimant in one of the leading cases to reach the Supreme Court on vicarious liability: *Cox v Ministry of Justice* [2016] UKSC 10 (Supreme Court).

## Selected Cases

Robert has dealt with a wide range of cases including:

- Defence of a claim brought by a female HGV driver who suffered a shoulder injury and complex pain syndrome as a result of a defect in a trailer curtain. The claim was pleaded at in excess of £2m but was settled at a JSM for £600,000.
- Claim for a construction worker in his late 50s who was run over on site and suffered a below-knee amputation as a result – settled for £850,000 after a deduction for contributory negligence.
- Defence of a claim involving traumatic brain injury sustained by a claimant in a road traffic accident caused when the defendant's steer escaped onto the highway valued at over £1m.
- Defence of a claim valued at £2m for fourth party electrical contractor against an electrician injured on a building site when a stack of plaster boards fell on him causing him serious physical and psychiatric injuries.
- Claim for the family of a lady in her 90s who was fatally injured due to the neglect of staff at the care home where she lived.
- Defence of a claim brought by a teaching assistant injured at school by an autistic pupil.
- Defence of a £2m claim brought against a public school for complex regional pain syndrome.
- A fatal accident in which the son of wealthy farmers died in a car accident aged just over 18, involving issues akin to those in the case of *Welsh Ambulance Services NHS Trust v Williams* [2008] EWCA Civ 81, which settled for £1m.
- A claim involving a serious accident in a steelworks and resulting in below knee amputation, valued at in excess of £1.5m.
- A soldier who suffered extreme bullying during service, and developed severe post-traumatic stress disorder and lost his military career as a result.
- Defence of an occupiers' liability claim involving the misuse of disused land and resulting in catastrophic injuries to the Claimant.
- Highways Act cases, including one where the Claimant was seriously injured whilst riding her bicycle along a defective cycle path.
- Numerous claims involving third party assaults in the working environment, which are usually document heavy and take days to try.
- Defence of a fatal accident claim where the deceased suffered a leg fracture as a result of slipping on wet grass at the defendant's care home, but died as a result of a blood clot caused by a DVT when he flew away on holiday after the accident.
- Defence of a fibromyalgia claim, which took 10 days to try, and which included issues of causation, acceleration, prognosis, dishonesty and deliberate exaggeration, and which was ultimately dismissed.

The reported decisions in which he has been instructed include:

- *Williams v Hawkes* [2017] EWCA Civ 1846 – case dealing with the Animals Act 1971.
- *Cox v Ministry of Justice* [2016] UKSC 10 (Supreme Court) [2014] 3 WLR 1036; [2014] ICR 713; [2014]

PIQR P17; [2014] EWCA Civ 132, (Court of Appeal) – Vicarious liability of the Ministry of Justice for working prisoners.

- PIP Breast Implant Litigation – Advising the Welsh Ministers on the recovery of the cost to the NHS of replacing defective implants.
- McG v T (Court of Appeal, 2010) – RTA in Florida between two UK nationals: settled at Court of Appeal mediation May 2010.
- Jones v Rhondda Cynon Taff County Borough Council [2009] RTR 13; [2008] EWCA Civ 1497 – Duties under the Highways Act 1980.
- Ball v Street [2005] EWCA Civ 76, [2005] PIQR P22, C.A. – Strict liability under PUWER.
- Uphill v BRB Residuary [2005] EWCA Civ 60, [2005] 3 All ER 264; Times 8th February 2005; Independent 17th February 2005 – Guidelines case on second appeals.
- Lewis v National Assembly for Wales (2008), Lawtel AC0116055 – Occupier's liability in respect of a disused highway in a catastrophic injury case.

## Industrial Disease

Robert is recognised as a leading practitioner in occupational disease litigation. He has extensive experience in asbestos related injuries, occupational cancers, occupational asthma, NIHL, stress at work, HAVS and work-related upper limb disorders. His work often requires consideration of complex medical, engineering, occupational hygiene, toxicological and epidemiological evidence and scientific literature. He has defended a number of mesothelioma cases where the sufferer is based abroad.

Robert is adept at working as part of a team, including the large teams assembled to deal with group and multi-party litigation.

He has experience of dealing with disease cases at all levels, including in the Supreme Court. He regularly appears against leading counsel.

Robert acts in a large number of asbestos related matters each year for Claimants and Defendants, regularly dealing with high value living and fatal mesothelioma and lung cancer cases, as well as claims concerning asbestosis or pleural thickening. He has been instructed in numerous mesothelioma cases involving claims for immunotherapy treatment.

He is currently working with the in-house solicitors of a multi-national company advising them on the creation of an historical documents database for their asbestos archive.

He is currently involved in hundreds of military claims of significant value for former military personnel who suffered NIHL and / or non-freezing cold injuries as a consequence of their service. In the first of the cohort of such cases to be tried, the Claimant, who suffered NIHL and tinnitus was awarded a total of £545,000 after an agreed liability apportionment of 80:20: *Inglis v MOD* [2019] EWHC 1153(QB).

He has also recently secured damages of £400,000 for a former soldier who suffered a non-freezing cold injury to his hands and feet as a result of exposure to extreme cold whilst on an exercise in Canada.

Robert was junior counsel for the claimants in the Nottinghamshire and Derbyshire Textile Litigation (Parkes v Meridian [2007] B1 (QB), in the Court of Appeal (Baker v Quantum Clothing Group [2009] EWCA 499) and culminating in Baker v Quantum Clothing Group and others [2011] UKSC 17 in the Supreme Court (700+ claimants, 7 test cases, all involving NIHL).

He was instructed by the government in *Jones and others v Secretary of State for Energy and Climate Change (The Phurnacite Workers Group Litigation)* [2012] EWHC 2936 (QB), Swift J. (200+ claimants seeking damages for occupational cancer, COPD and asthma as a result of occupational exposures to dust and fumes).

Robert acted for the claimants in the *Glamalco* litigation (numerous former workers from an aluminium windows and doors factory suffering NIHL) and in the British Telecom “toneset” litigation (thousands of BT engineers who suffered NIHL as a consequence of using line testing equipment known as “tonesets”).

He acted in the generic case of *Robert Gary Watkins v BT* (2010) (Cardiff County Court, 8CF08717) in which admissions of breach of duty for green and unmodified yellow tonesets were secured, thereby paving the way for thousands of former installers, engineers and jointers to obtain compensation for noise induced hearing loss and tinnitus. He was also successful on behalf of a Claimant in what is thought to be the first case involving the moving of the 8kHz anchor point under the LCB Guidelines 2015 (*Phillip Marchant v BT* (2017) (Cardiff County Court, C91YJ273).

He acted in the South Wales Fire Fighter Deafness Litigation, and successfully represented three train drivers against Arriva Trains Wales in claims for upper limb disorders (*Thomas and others v Arriva Trains Wales Ltd* [2009] EW Misc 8 (EWCC), Lawtel AC0123076).

He advised extensively on the recoverability of fixed success fees, dealing with the collation and preparation of complex medical and scientific evidence, and liaising with costs counsel, in the case of *Dalton v BT* [2015] EWHC 616(QB).

Robert has a detailed knowledge of limitation in personal injuries actions having been involved in numerous limitation disputes at first instance and in the Court of Appeal (for example, *Furniss v Firth Brown Tools* [2008] EWCA Civ 182 – noise-induced hearing loss, in which Robert acted for the Claimant and which raised issues of limitation and the burden of proof – and *Parsons and Warren v Perfectskill* [2002] EWCA Civ 130 a claim in which he acted for the Defendants against a group of workers from a private mine who were claiming damages for industrial asthma).

He writes the chapter in *Munkman on Employer’s Liability* dealing with Occupational Cancer.

## Selected Cases

- *RI v FR Limited* [2022] – defence of a living mesothelioma claim pleaded at £1.25m which settled for £800,000 plus immunotherapy treatment.
- *JC v PC & CO Ltd* [2021] – defence of a living mesothelioma claim involving a claimant based in Australia who was exposed to asbestos whilst working as a carpenter in the UK, involving cross border issues, accountancy and care evidence – settled shortly before trial for £430,000.
- *KAT v X Council* [2021] – claim for a lady dying of mesothelioma contracted as a result of asbestos used in the structure and fabric of her council flat which she started to occupy in the early 1980s. Achieved settlement at JSM for the Claimant notwithstanding previous authority absolving a local council from liability in similar circumstances: *Lugay v London Borough of Hammersmith and Fulham* [2017] EWHC 1823 (QB).
- *Scarborough College Ltd v Winter* [2021] EWHC 1549 (QB) – appeal in a mesothelioma case relating to a judgment on liability entered under the Show Cause procedure.
- *MC v MOD* [2020] – NIHL and tinnitus caused by exposure to loud noise in the military. Liability

agreed at 70:30 in the Claimant's favour. Settled for £450,000 after the 30% discount was applied, equivalent to a valuation on full liability of £642,857. Lawtel 28<sup>th</sup> October 2020 AM0203714.

- KR v UCW NHS Trust [2020] (QBD) – Defence of a living mesothelioma claim involving an Australian GP, wife and mother in her 40s involving complex cross border issues, forensic accountancy and actuarial evidence and care evidence. Trial due to be conducted entirely over video link given most of the witnesses in Australia and because of the Covid-19 pandemic. \$6.8m (Aus) claimed. Settled for \$4.8m (Aus) (£2.4m) shortly before trial.
- NM v MOD [2020] – NIHL and tinnitus caused by exposure to loud noise in the military. Liability agreed at 75:25 in the Claimant's favour. Settled for £550,000 after the 25% discount was applied, equivalent to a full liability valuation of £733,334 – Lawtel, 14<sup>th</sup> February 2020 AM0203610.
- Inglis v MOD [2019] EWHC 1153(QB) – NIHL and tinnitus caused by exposure to loud noise in the military. Liability agreed at 80:20. Damages of £545,000 awarded after 20% discount applied. This was Outstanding Case of the Year in the PI Awards, 2019.
- S v MOD [2019] – NFCI caused by exposure to wet and cold conditions in the military. Settled for £400,000.
- B v Royal Mail Group [2019] – what was thought to be a mesothelioma case, turned out not to be when the claimant died and an autopsy was carried out. He had in fact died of a stroke. Claim settled on the basis that but for the diagnosis of mesothelioma during his lifetime, the deceased's warfarin would not have been stopped, and he would not have suffered a blood clot and subsequent stroke and died.
- Dalton v BT [2015] EWHC 616 (QB) – Advised extensively on the recoverability of fixed success fees, dealing with the collation and preparation of complex medical and scientific evidence, liaising with costs counsel, Ben Williams KC.
- Various Claimants v British Telecommunications PLC (Toneset Cases) (on-going) – Multi-party litigation involving thousands of telecommunications engineers suing for noise induced hearing loss caused by the use of amplifier / oscillator equipment at work.
- Jones & Others v Secretary of State for Energy & Climate Change (The Phurnacite Workers Group Litigation) [2012] EWHC 2936 (QB), Swift J. (main judgment); 2 Costs LR 230; [2012] EWHC 3647 (QB) Swift J (costs); [2013] 3 All ER 1014; [2013] EWHC 1023 (QB), Swift J (disbursement credit funding) (Affirmed C.A. [2014] 3 All ER 956) – Group litigation in which hundreds of former Phurnacite workers or their estates sued in respect of occupational cancers and respiratory diseases.
- Baker v Quantum Clothing Group Ltd [2011] UKSC 17 – Employers not liable at common law or under the Factories Act 1961 for noise induced hearing loss sustained by employees before the coming into force of the Noise at Work Regulations 1989.
- Thomas & Others v Arriva Trains Wales Ltd [2009] EW Misc 8 (EWCC); Lawtel AC0123076 – Claims for train drivers who suffered upper limb disorders as a consequence of the controls in the cabs.
- Carter v Freeman Group PLC [2008] EWHC 1752 (QB) (Appeal); (2007) Lawtel AC0116614 (First Instance) – Inheritance of liabilities in asbestos litigation; procedure on appeals in summary judgment applications.
- Furniss v Firth Brown Tools [2008] EWCA Civ 182, C.A. – Limitation of actions in NIHL cases.

## Civil/Insurance Fraud

Robert has 30 years' experience specialising in personal injury and disease cases, including those involving allegations of fraud or exaggeration of loss. He has particular expertise in claims involving somatoform disorders, chronic pain and fibromyalgia which often involve considerations of the interplay between organic and psychological causes for conditions and whether ongoing symptoms are genuine or



deliberately exaggerated. He regularly deals with cases involving covert video surveillance and is skilled at analysing documentary and lay and expert evidence for signs of inconsistency and fraudulent behaviour.

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Notable cases include:

- A 10 day trial in which the Claimant claimed substantial damages arising out of fibromyalgia, but was dismissed after the judge accepted Robert's submission that the evidence established that she had dishonestly exaggerated her symptoms;
- Defence of a claim in which the Claimant was injured in a trampolining accident seeking damages of £1.2m for a complex regional pain syndrome and settled for £100,000 following video surveillance suggesting an exaggeration of symptoms;
- Defence of a £2m claim brought against a public school for complex regional pain syndrome in which issues of fraud and exaggeration arise from video surveillance evidence of the Claimant;
- Defence of an industrial asthma claim by an employee at a private drift mine which was dismissed at trial when Robert's cross examination of the Claimant established that he had deliberately exaggerated his symptoms and lied about his working conditions;
- Defence of a claim £2m claim brought by a care worker assaulted at work but who was found to have exaggerated her resulting injuries.

## Rankings

- Robert is recommended as a leader in his field.
- Robert is one of only about 20 barristers nationally to be listed in the Chambers & Partners National Disease Spotlight Table.

## Qualifications

- 1989-90: Inns of Court School of Law Bar Vocational Course (7/800)
- 1986-89: University of Wales, College Cardiff: LLB (first class)
- Sir Samuel Evans Scholar (1989)
- Sweet & Maxwell Law Prize (1989)
- Cardiff University Law School Prize (1989)

## Memberships

- PIBA

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## Recommendations

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"He has a good eye for detail and is able to make strong judgements on complicated issues."

Chambers & Partners, 2022

"Robert has one of the best technical abilities in terms of complex industrial diseases; he can handle the most complex medical causation arguments with ease."

Legal 500, 2022

"His knowledge of noise-induced hearing loss is encyclopedic."; "He is very impressive and has a wealth of experience in deafness work."; "A very industrious and knowledgeable junior that clients really do warm to."; "He is one of the most technically able barristers when it comes to medical and scientific issues."

Chambers & Partners, 2021

"Has extensive experience and is frequently almost as knowledgeable on the medical aspects of this as the medical experts instructed."

Legal 500, 2021

"He's very personable and likeable in court." "Nobody knows more about military deafness cases than he does." "He has huge experience of NIHL work and handles the big cases with ease."

Chambers & Partners, 2020

"He's very quick with his responses and will fight his corner - he doesn't drop a case he takes on."

Chambers & Partners, 2018

"He is brilliant on his feet and excellent with clients."

Chambers & Partners, 2017

"An employment liability expert, who has experience of complex matters of significant value. He has handled group action litigations, industrial disease claims and cases relating to stress. Strengths: 'Very bright and very experienced as well.'"

Chambers & Partners, 2016

"Undertakes the full spectrum of disease work, and is particularly noted for his encyclopaedic knowledge of the issues surrounding noise-induced hearing loss cases... He is very approachable and easy to work with."

Chambers & Partners, 2015

"Undertakes the full spectrum of disease work, and is particularly noted for his encyclopaedic knowledge of the issues surrounding noise-induced hearing loss cases... He is very approachable and easy to work with."

Chambers & Partners, 2015

"Experienced in group and multi-party litigation."

Legal 500, 2014

"Highlighted for his expertise of major disease cases. He also appeared in Baker v Quantum Clothing Group, illustrating that he is more than capable of taking on the best on a national stage."

Chambers & Partners, 2013