

ASBESTOS

Brigitte Chandler LLB

The Law Explained

In February 2004, four senior medical consultants, specialists in asbestos disease, warned in the *British Medical Journal* that there is likely to be an increase in asbestos cancer, particularly in the construction industry in the UK, in the next **seventeen years.**

This is as a result of increased imports of asbestos into the United Kingdom after the Second World War. A very versatile material, it was widely used as an insulator in the manufacture of filters, cements, friction products and as a fire retardant.

Used extensively in buildings in the form of light boards, it was a convenient partitioning material with valuable insulation and fire proofing qualities. It was often used for lagging boilers and pipes. It was in the floor and ceiling tiles, roofing soffits and guttering, partitioning in offices, shops and factories and houses, roof tiles and roofing sheets.

It was also used as a tape, rope, felts, blankets and mattresses, gaskets and washers. Bath panels, cisterns, bitumen damp proof courses, pvc panels also often include asbestos products. The above are of course just a few of the asbestos products used in the construction industry and is not meant to be a complete list.

Following inhalation of asbestos dust, it can take at least 10 to 15

years and up to 60 years before illness develops. An incubation period of 40 - 50 years is not uncommon. The dust can be like a time bomb in the lung waiting to develop.

For a man exposed as a teenager and who has remained in a high risk occupation, such as insulation, throughout his working life, the risk of mesothelioma can be as high as one in five. It is believed that there are now about 1,800 deaths each year from this cause in the United Kingdom.

The Health and Safety Executive indicates that 25% of deaths will be in men who worked in the building industry. Unfortunately, it is not only the men who worked with asbestos who are affected, but also their wives and children who were exposed to asbestos from their working clothing which they brought home for their wives to wash.


A major problem in the construction industry is that in many cases, exposure to asbestos may have taken place 50 to 60 years ago. Many companies have now lost their insurance records for

this period and will therefore have to meet any claims themselves without the benefit of insurance. In a small company, this can have terrible consequences and may result in financial ruin for the firm.

Under current legislation, companies now have to retain insurance records for 40 years because of these problems. Any



Brigitte Chandler, one of the UK's leading specialists in asbestos-related law and head of the industrial disease unit at solicitors, Charles Lucas & Marshall, provides an overview for us of the issues facing the construction industry.



company that has exposed employees to asbestos in the past should, therefore, try to get their insurance records together for, say, the last 60 years.

If they do not hold these records themselves, the insurance brokers may have retained this information. Alternatively, past directors and company secretaries may have information or recall past claims brought under the Employers' Liability Insurance policy which may assist to complete the records. Insurance companies will usually not take responsibility for a claim unless they can be provided with the insurance policy and policy number.

However, if this cannot be traced it may be possible to put together an accurate history of insurance with details of past claims from information provided by past directors or senior members of staff and if accurate information is available it may be possible to join the insurers to the action and thus compel them to take over the claim.

Likewise, any employee who has been exposed to asbestos and is worried that the company may no longer exist, in the future if a claim arises, should try to obtain insurance details from that company in advance – in the event that a claim is necessary.

If a claim arises, the management will be asked to obtain evidence as to whether or not that employee was exposed to asbestos and, if so, the extent and the circumstances of exposure. In order to obtain this, the solicitor for the company will have to interview past senior members of staff who were working for the company at the relevant time.

It is therefore important that the records are kept of past members of staff and their addresses so that statements can be taken. If the company has a pension fund then names and addresses of past members of staff will probably be held by the pension fund scheme and may be available for this

purpose.

Further problems can arise if a person was exposed to asbestos perhaps 40 years ago whilst working for a company which has now been taken over by another company. Quite likely, that company has taken over liability for the employees of the company which was taken over and will now have to meet the claim. This information will be held in the company records. In the cases of takeover, it is important to take on insurance information from the company and retain it.

If a company is found liable to meet a claim from a past employee or the past employee's widow, then the claim for an asbestos cancer is likely to be in six figures.

However, often, when claims are presented, the figures may be on the optimistic side. An experienced industrial disease lawyer may be able to substantially reduce the claim for the company and the claim should not necessarily be accepted as it stands. If held liable, the company will also be obliged to pay not only their own costs but the costs of the employee. However, this can also be negotiated downwards.

In every claim, the Claimant, in order to succeed, will have to show that the employer was negligent and in breach of statutory duty. When looking at the issue of negligence, the Court will look at the state of knowledge at the date of exposure. The dangers of asbestos have been known from 1900 onwards but obviously the extent of the knowledge developed considerably over the next seventy years.

Very broadly, before 1965 it was known that extensive exposure could result in illness, but after 1965 following an article in the Times Newspaper, it was known that even a small amount of exposure could be fatal. If there is any doubt as to the extent of exposure to an employee, a Health and Safety officer can be brought in to calculate the exact number of

fibres to which an employee would have been exposed and to ascertain whether or not this would have been negligent at the relevant time.


There are five main illnesses caused by asbestos exposure. The most serious is mesothelioma, a cancer of the pleura of the lung and lung cancer. In addition, there are illnesses known as asbestosis and pleural thickening. Both can result in breathing difficulties.

Finally, there are pleural plaques which show up on x-rays and scans but do not cause any symptoms. Compensation is currently payable for all illnesses. Government disablement pension is also payable for all the illnesses other than plaques. The Government will also pay a lump sum for those who cannot claim damages because their employers are no longer operating and no insurers can be found. Currently there are also some Trust Funds in the USA who will pay compensation to people in England exposed to asbestos who have developed any of the five asbestos related illnesses set out above. This is in addition to the payments from the employer and the Government.

Amounts payable in compensation vary greatly and depend on the degree of illness and the age of the sufferer. The sums payable vary from £4,000 to £500,000. Items which can be claimed include loss of earnings, loss of pension, loss of services which the sufferer previously carried out such as gardening and decorating, items incurred in the course of the illness.

In a recent case before the House of Lords, the court decided that when the claimant has worked for more than one employer who exposed him to asbestos and developed an asbestos related cancer, he can claim the entire damages from any one of his employers.

In these cases the employer will then join in the other employers who exposed the employee to asbestos to obtain a contribution



towards the damages. It is of great benefit to the claimant as it means that if only one company is still operating and the other companies no longer exist, he can obtain all the damages from the one existing company.

However, it is obviously hard in this case for the employer company to be faced with all the damages and if the other companies are no longer in existence, they will not be able to obtain a contribution.

If a company is no longer in existence and has been struck off the companies register, it can be restored to the records for a claim

to proceed, providing insurers can be found to meet the claim. Likewise, a claim can be brought against the estate of a deceased owner if there are insurers who will meet the claim.

Currently, more claims are emerging from wives and mothers who washed contaminated clothing. However, the Courts have recently ruled that there was insufficient knowledge of this danger before 1965 and therefore only wives who washed contaminated clothing after 1965 can bring a claim under the current law.

Brigitte Chandler, specialist in industrial disease law and a solicitor with law firm, Charles Lucas & Marshall, is making a special offer to members of the Institute of Construction Management. If your company is facing asbestos claims and if you do not have insurance for them – or you have an employee who has developed asbestos disease and would like some further information about your legal position – please telephone Brigitte Chandler on 01793 511055 for free legal help.

Rethinking “Rethinking Construction”

It is nearly ten years ago that Sir John Egan set up his think tank on construction when, amongst other matters, he considered the wasteful nature of construction; but things have actually got steadily worse. In the last four years it is estimated that waste from sites has actually risen by an incredible 20% and this at a time when the landfill tax has been bighting home. Sir John dreamed of having sites where materials were delivered just as they were needed and in the correct quantities – obviously a laudable mantra but a quick check of skips on random sites will display an entirely different message. This industry suffers from inaccuracy in a massive degree, with poor purchasing and poor delivery contributing. The pot at the end of the “just in time and accurate” philosophy is packed with added profits but it seems that much of the industry is too busy struggling to keep up with programmes to take much notice.

It is a chilling statistic that 10% of tradesmens' time is taken up either searching for materials on site or waiting for them to turn up – so this is a shortcoming either in the site office or at HQ.

Off-site construction of major components and the incorporation of repetitive units at the design stage can almost eliminate waste but often lead to uninteresting buildings. Suppliers and

merchants need to be in at the beginning and should be asked to provide guarantees of delivery against your forward purchasing agenda – it is not good practice to be punting round for an extra 2% just days before material is required on site but

*IT IS ESTIMATED THAT
WASTE FROM
BUILDING SITES COSTS
THE INDUSTRY
£3bn EACH YEAR*



I have seen it done as a standard practice in some firms. Accurate feed back and confirmation of requirements from the site management team as the job progresses should be regularly monitored but when all

else fails it should be remembered that much material can be recycled by simple separation of waste on site. Most County Councils now publish information listing companies and organisations who will accept

various waste items (*see illustration*).

Of course it is a dream to think that waste can be eliminated but £3bn per year is food for thought and represents an environmental impact as well as a financial one.

Ed.





We of the Southern Region are delighted to confirm that the above social function turned out to be another great success. Numbers who attended were down on previous years, for one reason or another, but quality took over from quantity.

Following the reception and drinks at the bar, the top table distinguished guests were in the traditional manner "clapped" into the dining room.

After the four course dinner, cheese and biscuits and coffee and mints which followed our National President, Les Helliwell, proposed the first toast of the evening. Bouquets and posies were then presented to

the ladies and dancing to Paul Northcott (DJ) commenced and was only interrupted by the main and special raffles, for which many of the prizes were generously donated by those attending from afar. The dance floor was full until 1am when those present took to their carriages or the hotel's splendid accommodation.

Following breakfast our guests departed to all parts of the country, knowing that the Southern Region members, family and friends really appreciated the company of all our friends who attended.

Eric Richards (Toastmaster) FICConstM

Diary dates

May 2006

- 6-7 Scottish Homebuilding and Renovation show
SECC Glasgow
www.homebuildingshow.co.uk
020 7970 4249
- 10 Keeping up to speed with the new JCT 2005 Contracts
Construction Study Centre
Venue – RIBA London
0121 434 3337
(Note: these courses cost £280 plus VAT per day)
- 11-25 CPD Lecture – Practical Post-Contract Management of Building Contracts – Harrogate
www.constructionstudycentre.co.uk
Note: cost is £280+VAT)
- 17 Keeping up to speed with the new JCT 2005 Contracts
Construction Study Centre
Venue – Cairn Hotel Harrogate
0121 434 3337
(£280 plus VAT per day)
- 18 RoadSeminar
Free CPD lectures
Coventry Arena
Construction Certification Service
020 8840 4383
www.cpduk.co.uk
- 22 South West Region open evening
7 for 7.30
Eastleigh Sports and Leisure Centre
Function Room – Buffet provided
Mike Bishop 01962 713000

June 2006

- 2-4 Grand Designs Live
Exel London
www.granddesignslive.com
- 10 **National Rally**
The Wiltshire Golf and Country Club
Wootton Bassett Nr Swindon
Ian Rea 01249 758131
- 14 Road Seminar – Free CPD lectures
York – Novotel Fishergate
Construction Certification Service
020 8840 4383
www.cpduk.co.uk
- 15 Road Seminar – Free CPD lectures
Newcastle – Marriott Gosford Park
Construction Certification Service
020 8840 4383
www.cpduk.co.uk
- 29 Road Seminar – Free CPD lectures
Bristol - Novotel City Centre
Construction Certification Service
020 8840 4383
www.cpduk.co.uk

Ed.

Please send any dates and venues of interest, socially or professionally, to the editor at the address below and in written form.

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SEMEX

YES – IT'S A FREE LUNCH!

An excellent lecture tour is once again being set up round the country by Roger Bullivant. There is a new programme for 2006; it is free of charge, includes a free lunch and certificates of attendance are available. For those of you who have not attended one of these sessions before I can highly recommend them as a means of keeping up to date and assimilating information on new methods. Lecturers are supplied from The Concrete Centre, Helifix, Roger Bullivant, Geothermal, Guildford Timber Frame and others and the content is high calibre and professional. The remaining venues for 2006 are Bolton, Southampton, Newcastle, Reading, Peterborough, Brands Hatch, Birmingham and Cwmbran. Details and registration form from Carol Alpin by fax on 01283 527922 or Email events@rogerbullivant.co.uk