Industrial Disease Roundup

18th November 2022

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Asbestos Exposure

Watt v Lend Lease Construction (Europe) Ltd [2022]

Asbestos Exposure

- The late Mr Watt was employed by the defenders, formerly known as Bovis Construction Limited ("Bovis"), as a joiner **between January and June 1963**. It was alleged by the pursuers that during his employment he worked on the construction of shop premises including a basement car park in Argyle Street, Glasgow and that he was exposed to asbestos dust whilst cutting and fitting asbestos sheets to an area of the car park ceiling.

- Mr Watt died from mesothelioma in January 2017. Mr Watt's widow, Nicola Watt, brought the action against his former employer for common law negligence and breach of Regulation 20 of the Construction (General Provisions) Regulations 1961 ("the 1961 Regulations").

- Regulation 20 (since repealed) provides: *"Where in connection with any grinding, cleaning, spraying or manipulation of any material,* ***there is given off any dust or fume of such a character and to such extent as to be likely to be injurious to the health of persons employed*** *all reasonably practicable measures shall be taken either by securing adequate ventilation or by the provision and use of suitable respirators or otherwise to prevent inhalation of such dust or fume."*

Asbestos Exposure

- To establish the date of knowledge of the dangers of asbestos as at 1960-63, the pursuer relied upon Wagner's 1961 paper, the mid-1950's Annual Report of the Chief Inspectors of Factories and the HM Factory Inspectorate guidance on working with asbestos.

- The Defenders relied on Swift J's judgment in *Abraham v G Ireson and Sons (Properties) Ltd* [2009] EWHC 1958 (QB), in which Her Ladyship held that the earliest date for which employers can be fixed with foreseeable knowledge is the 1965 Newhouse and Thomson paper

Asbestos Exposure

- In his Opinion Lord Uist stated:
  "I have therefore reached the conclusion that it was not until after the publication of the Newhouse and Thomson paper in 1965 at the earliest that employers could have been aware that asbestos exposure at the level to which Mr Watt was subjected gave rise to the risk of injury. I **therefore do not accept that during the period of Mr Watt's employment with them Bovis should have appreciated that he was at risk of asbestos-related injury and that their failure to do so and to take appropriate precautions for his safety was negligent. It follows that Bovis could not have been aware that the asbestos dust was "likely to be injurious" to him in terms of Regulation. Further, as they did not know, and cannot reasonably have been expected to have known of the risk of injury arising from his exposure to the dust it cannot have been reasonably practicable for them to have taken any steps to protect him from it."**

Asbestos Exposure

- Lord Uist commented that detailed quantitative findings on exposure were not required. It is clear that Lord Uist's approach which did not require proof of precise levels of exposure reflects the authoritative guidance provided by Maurice Kay LJ in *Cox v Rolls Royce of India @ [21];* by Sedley LJ in *Willmore* (CA) @ [7-12]; by Lord Phillips in *Sienkiewicz(@ [108]* and (by implication) by Underhill LJ in *Bussey* @ [62] namely that only qualitative findings as to dose should be made.

Asbestos exposure consequences

- Asbestos exposure is the No. 1 cause of work-related deaths in the world.
- Approximately 100,000 people die from asbestos-related diseases globally each year.
- An estimated 125 million people worldwide remain at risk from occupational exposure to asbestos. Many more millions of people are at risk from non-occupational exposure

Asbestos exposure consequences

“The Guardian”

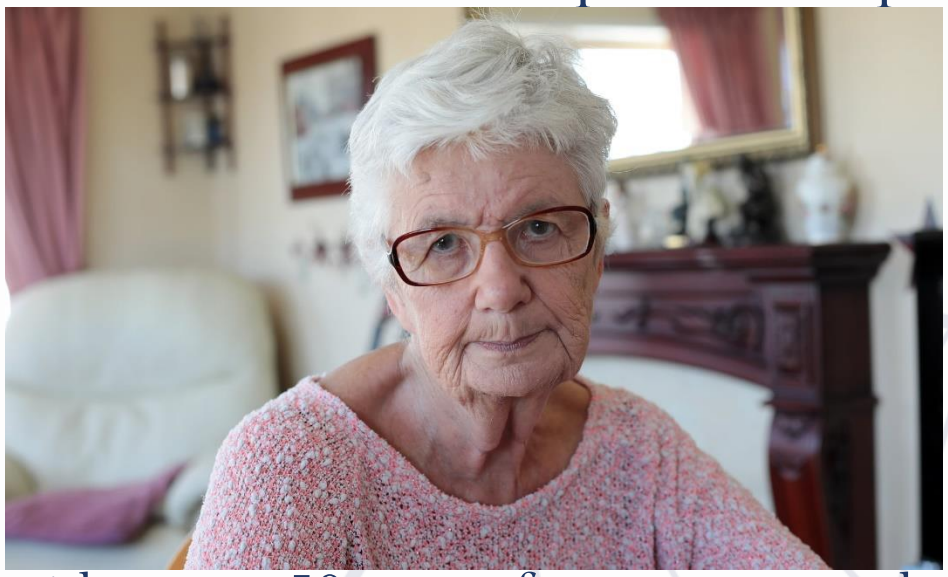
published a headline article on Sunday 7th July 2019

“Britain’s death toll from asbestos at crisis level, figures reveal”

“Deaths from ‘industrial disease’ reaching peak after widespread use between 1950s and 70s”

Asbestos exposure consequences

The article featured an example of the epidemic:



Mavis Nye was diagnosed with cancer 50 years after exposure to her husband's overalls: 'He used to come home with it all in his hair and on his clothes. It was just dust to me.'

Asbestos exposure consequences

The article continued:

"The death toll from asbestos exposure has reached crisis levels in Britain, the Guardian has learned, as people pay the price for "criminal failings by industry and government" made decades ago."

"According to figures from the Health and Safety Executive (HSE) released this week, in 2017 there were 2,523 deaths from mesothelioma, a cancer of the lining of the organs caused almost exclusively by the inhalation of asbestos fibres. This is a similar number to the previous five years."

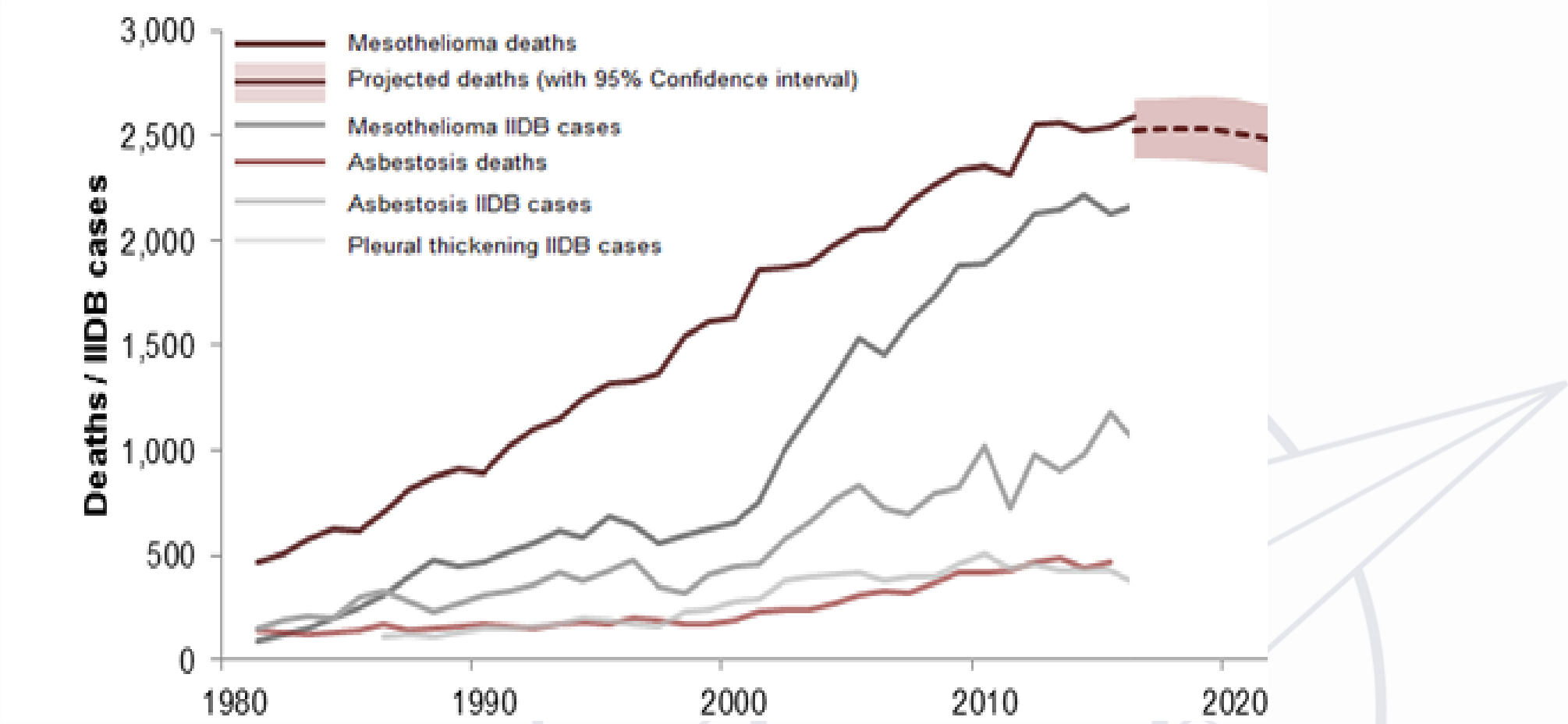
Asbestos exposure consequences

"Rates of mesothelioma, which is always fatal, nearly doubled between 1995, when there were 1,317 deaths, and 2017 when there were 2,523 deaths.

It is estimated that a similar number of people die from asbestos-related lung cancers, but this cannot be so accurately measured as establishing a cause for lung cancer is more difficult (thus a possible 5,000+ deaths).

The HSE predicts that annual numbers will continue at current levels for the rest of this decade"

Asbestos exposure consequences



Asbestos exposure consequences

According to Department of Transport

"There were 1,770 road deaths in the year ending June 2018 (1608 in 2021). This is a similar level to that seen since 2012."

Compare:

1608 deaths in RTA's with a possible figure in excess of 5,000 deaths from exposure to asbestos

Types of Asbestos

Chrysotile

Amosite

Crocidolite

Types of Asbestos

Crocidolite (Blue)

Regarded as the most dangerous form of asbestos, crocidolite is blue/grey in appearance. Crocidolite fibres are of an Amphibole nature meaning they are thin , brittle and needle like in appearance. The fibres can easily be broken down and inhaled into the body where they become trapped in body tissues causing irritation, inflammation and , in the long term, incurable disease.

Types of Asbestos

Amosite (Brown)

Amosite asbestos is also known to be carcinogenic and poses an extremely high cancer risk for anyone exposed to it. Like Crocidolite its Amphibole fibres are needle like in appearance, brittle and have a good tensile strength and resistance to heat.

Types of Asbestos

Chrysotile (White)

Also known as white asbestos, chrysotile was the most commonly used type of asbestos (not only in the UK, but all over the world), accounting for approximately 95% of all commercial asbestos. Chrysotile fibres are of a Serpentine nature , that is they are of a flexible and curved nature, and less likely to become trapped in the lungs and other parts of the body. Chrysotile is carcinogenic but much less potent than crocidolite or amosite

Health Effects of Exposure

MESOTHELIOMA

Mesothelioma forms in membranes of body cavities. Tumours can appear on the lining of the lungs, stomach, heart or testes.

Respectively, these diseases are known as pleural mesothelioma, peritoneal mesothelioma, pericardial mesothelioma and testicular mesothelioma.

There is a latent period of between 10 and 50 years between exposure and the development of symptoms

Mesothelioma is an extremely aggressive fatal cancer. Life expectancy is usually less than 1 year from diagnosis.

Health Effects of Exposure

Lung Cancer

Even though asbestos is only responsible for a small portion of all lung cancer diagnoses, lung cancer is still one of the most fatal asbestos-related malignancies.

Other Asbestos-Related Cancers

Other cancers possibly associated with asbestos exposure include ovarian cancer, laryngeal cancer, esophageal cancer, gallbladder cancer, kidney cancer and throat cancer.

However, studies on the connection between asbestos and these malignant tumors are inconsistent. Asbestos is a suspected contributor to risk, but the link is not definitively established.

Health Effects of Exposure

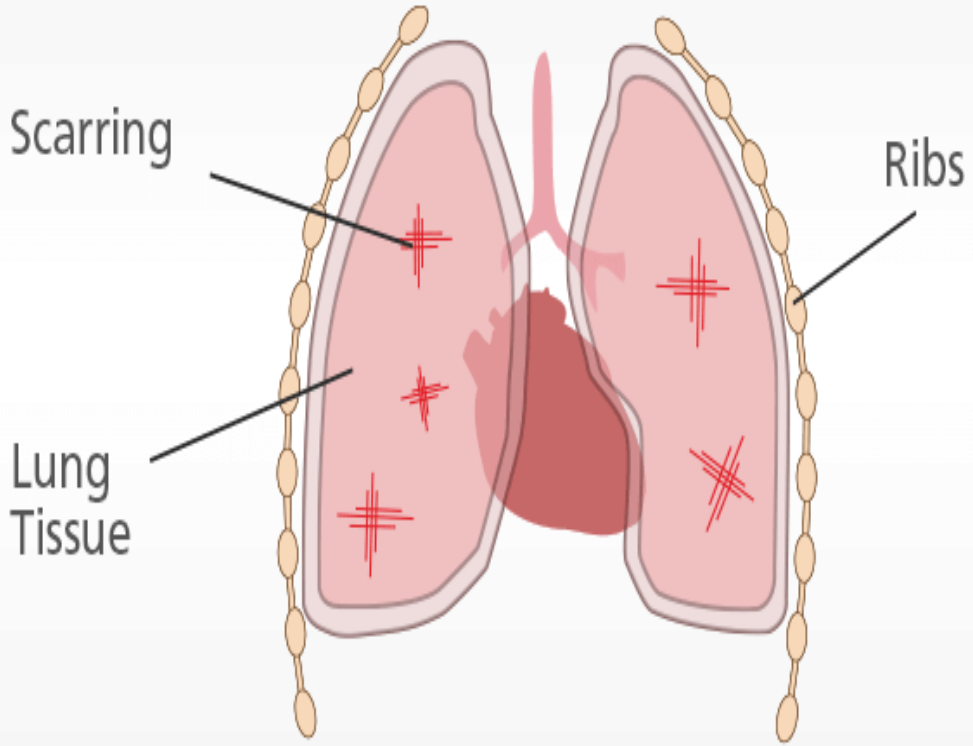
ASBESTOSIS

Asbestosis is a benign yet potentially deadly lung disease characterized by lung scarring and inflammation. It prevents the lungs from expanding and relaxing normally, leading to symptoms such as shortness of breath and chest tightness.

Health Effects of Exposure

Symptoms:

- Shortness of breath
- Coughing
- Tightness in chest
- Chest pain
- Clubbed fingers



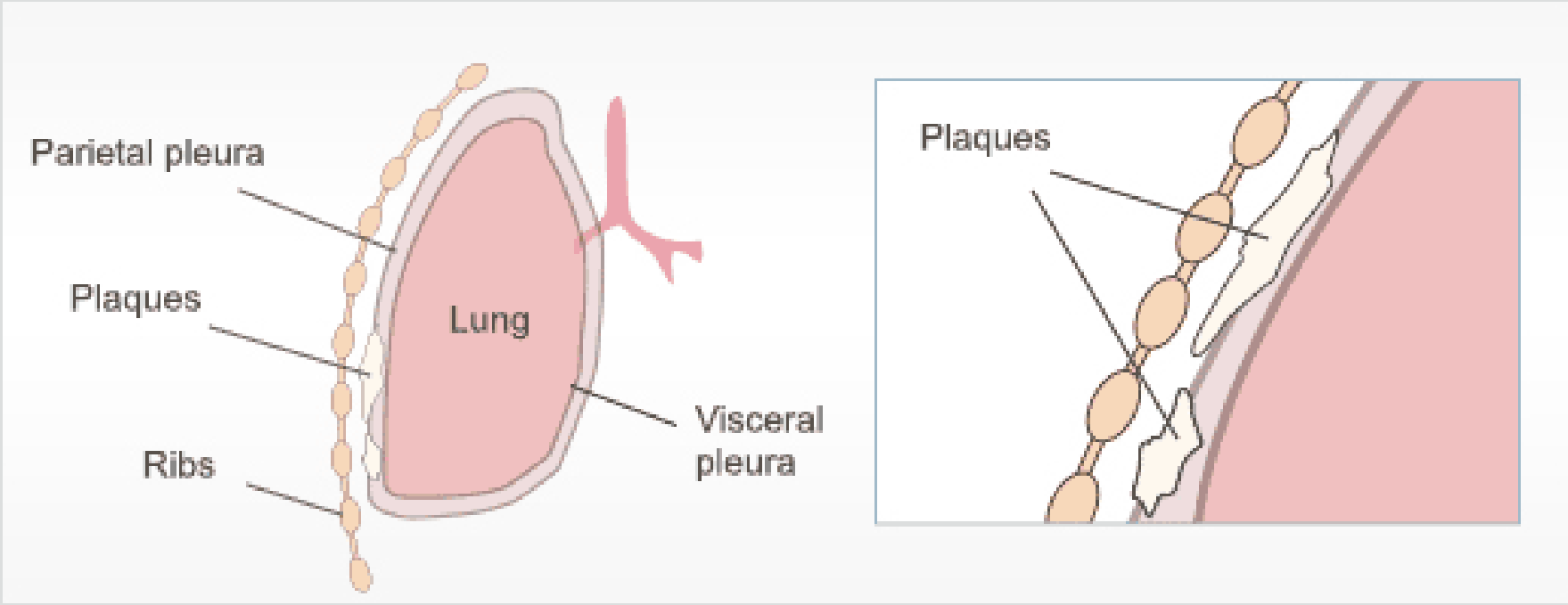
Health Effects of Exposure

Pleural Plaques

Pleural plaques occur frequently after asbestos exposure. These calcified build-ups on the pleural membrane are not considered a serious health issue, but they can make breathing painful if they become very thick.

There is disagreement among experts regarding whether plaques directly lead to cancer or are simply a marker of previous asbestos exposure, with the exposure as the true cause of mesothelioma.

Health Effects of Exposure



Asbestos History of Uses & Harm (Attention Lord Uist)

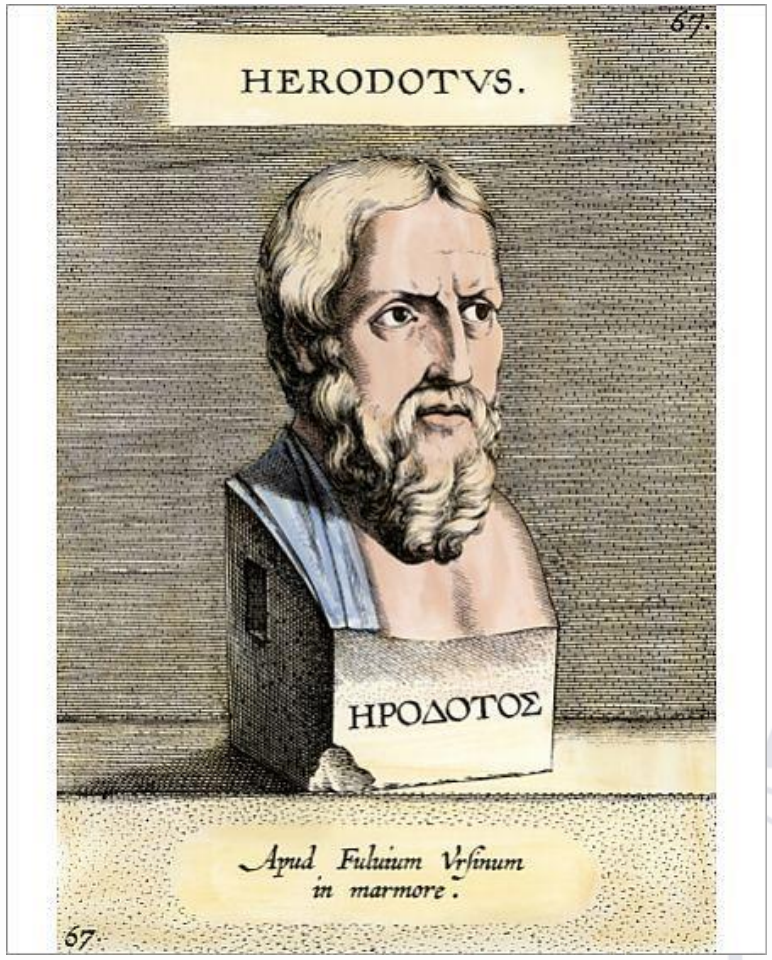
Asbestos occurs naturally on every continent in the world.

Archaeologists have uncovered asbestos fibres in debris dating back to the Stone Age, some 750,000 years ago. It is believed that as early as 4000 B.C., asbestos' long hair-like fibres were used for wicks in lamps and candles.

Asbestos History of Uses & Harm

Between 2000-3000 B.C., embalmed bodies of Egyptian pharaohs were wrapped in asbestos cloth to protect the bodies from deterioration. In Finland, clay pots dating back to 2500 B.C. contained asbestos fibers, which were believed to strengthen the pots and make them resistant to fire.

Asbestos History of Uses & Harm



Around 456 B.C., Herodotus, referred to the use of asbestos shrouds wrapped around the dead before their bodies were tossed onto the funeral pyre. This was to prevent their ashes from being mixed with those of the fire itself

Asbestos History of Uses & Harm

Ancient Romans were said to have woven asbestos fibres into a cloth-like material that was then sewn into tablecloths and napkins. These cloths were purportedly cleaned by throwing them into a blistering fire, from which they came out miraculously unharmed and essentially whiter than when they went in.

Asbestos History of Uses & Harm

- While Greeks and Romans exploited the unique properties of asbestos, they also documented its harmful effects on those who mined the material from ancient stone quarries. Greek geographer Strabo noted a "sickness of the lungs" in slaves who wove asbestos into cloth**. Pliny the Elder, wrote of the "disease of slaves," and described the use of a thin membrane from the bladder of a goat or lamb used by the slave miners as an early respirator in an attempt to protect them from inhaling the harmful asbestos fibres as they laboured.**

Asbestos History of Uses & Harm

Around 755, King Charlemagne of France had a tablecloth made of asbestos to prevent it from burning during the accidental fires that frequently occurred during feasts and celebrations. Like the ancient Greeks, he also wrapped the bodies of his dead generals in asbestos shrouds. By the end of the first millennium, cremation cloths, mats and wicks for temple lamps were fashioned from chrysotile asbestos from Cyprus and tremolite asbestos from northern Italy.

Asbestos History of Uses & Harm

In 1095, the French, German and Italian knights who fought in the First Crusade used a catapult, called a trebuchet, to fling flaming bags of pitch and tar wrapped in asbestos bags over city walls during their sieges. In 1280, Marco Polo wrote about clothing made by the Mongolians from a “fabric which would not burn.” Polo visited an asbestos mine in China to disprove the myth that asbestos came from the hair of a wooly lizard.

Asbestos History of Uses & Harm

Chrysotile asbestos was mined during the reign of Peter the Great, Russia's tsar from 1682 to 1725. A purse made of fireproof asbestos, was brought to England by Benjamin Franklin during his first visit there as a young man in 1725. Paper made from asbestos was discovered in Italy in the early 1700s. By the 1800s, the Italian government was utilizing asbestos fibres in its bank notes. The Parisian Fire Brigade in the mid-1850s wore jackets and helmets made from asbestos.

Asbestos History of Uses & Harm

Large scale asbestos manufacturing was not a flourishing industry until the late 1800s, when the start of the Industrial Revolution helped led to steady growth of the industry. That's when the practical and commercial uses of asbestos, with its myriad applications, became widespread. As the mining and manufacturing of asbestos exploded, so did its dangerous health effects on those who mined and refined the mineral, as well as those who worked with it.

Asbestos History of Uses & Harm

Asbestos' resistance to chemicals, heat, water and electricity made it an excellent insulator for the steam engines, turbines, boilers, ovens and electrical generators that powered the Industrial Revolution. The malleable properties of asbestos made it an important building, binding and strengthening commodity.

Asbestos History of Uses & Harm

Before the late 1800s, asbestos mining was not mechanized. The heavy work of chipping away rock and extracting the asbestos for further processing was performed manually. Horses and drays were utilized for transporting the mined product. But once the commercial applications for asbestos were realized and demand grew, asbestos mining became industrialized. Its manpower multiplied by steam-driven machinery and new mining methods.

Asbestos History of Uses & Harm

It is thought that one of the original commercial mines for Chrysotile asbestos began in Quebec, Canada in the 1870's, followed by the identification of Crocidolite in South Africa in the 1890's. Further countries such as Russia and America began to mine for asbestos commercially.

Asbestos History of Uses & Harm

In 1896, the first asbestos brake linings for new horseless carriages were made by Ferodo, a British company. Three years later, in Germany, the first patent was issued for the manufacture of asbestos cement sheets. High-pressure asbestos gaskets were turned out in 1900 by Klinger in Austria. The first asbestos pipes were developed in Italy in 1913.

Asbestos History of Uses & Harm

The United Kingdom has never had any asbestos mines therefore all asbestos was imported. However, we became one of the world's major users of the product.

By the early 1900s, asbestos production had grown worldwide to more than 30,000 tons annually. Children and women were added to the asbestos industry workforce, preparing, carding and spinning the raw fibres, while men toiled in the mines.

Asbestos History of Uses & Harm

As early as 1897, an Austrian doctor attributed pulmonary troubles in one of his patients to the inhalation of asbestos dust. the asbestos manufacturing process

In England, factories had been routinely inspected since 1833 to protect the health and safety of workers. An 1898 Factories Inspectorate report cited "widespread damage and injury of the lungs, due to the dusty surrounding of the asbestos mill."

Asbestos History of Uses & Harm

In 1906, the first documented death of an asbestos worker from pulmonary failure was recorded by Dr. Montague Murray at London's Charring Cross Hospital. The autopsy of the 33-year-old victim revealed large amounts of asbestos fibers in his lungs.

Asbestos History of Uses & Harm

1924

The first reported medical case of an asbestos related death due to asbestosis. Nellie Kershaw from Rochdale had worked at Turner Brothers Asbestos as a rover spinner.

Asbestos History of Uses & Harm

Dr. E.R.A. Merewether

Joined the staff of the Factory Department of the Home Office in 1927. His position led to him being one of the first to identify the dangers of breathing asbestos fibre. He also identified silicosis in sandblast operators.

Asbestos History of Uses & Harm

In 1928 he joined Dr H. E. Seiler, Medical Officer of Health in Glasgow looking at cases of pulmonary fibrosis in asbestos workers.

Asbestos History of Uses & Harm

A Government Factory Inspector's report by Dr Merewether and Mr Price was presented to Parliament in March 1930. It was titled:

“Occurrence of Pulmonary Fibrosis & Other Pulmonary Affections in Asbestos Workers”

In the report they concluded there was a definite occupational risk in the asbestos industry in the form of a type of fibrosis of the lungs (asbestosis)

Asbestos History of Uses & Harm

Dr. Merewether & Mr Price further advised:

1. That asbestosis was a disease of latency, i.e. that workers exposed to asbestos wouldn't show signs of injury for many years;
2. That asbestos dust had to be controlled through ventilation and the use of respirators.
3. That workers exposed to asbestos should be informed and warned in order to assure "some appreciation of the risk."
4. That the finished products created dust that should be controlled and minimized.

Asbestos History of Uses & Harm

In response to the Merewether & Price report the government passed

The Asbestos Industry Regulations 1931

The regulations came in to force on 1st March 1932. These regulations sought to control the amount of asbestos dust in factories.

Asbestos History of Uses & Harm

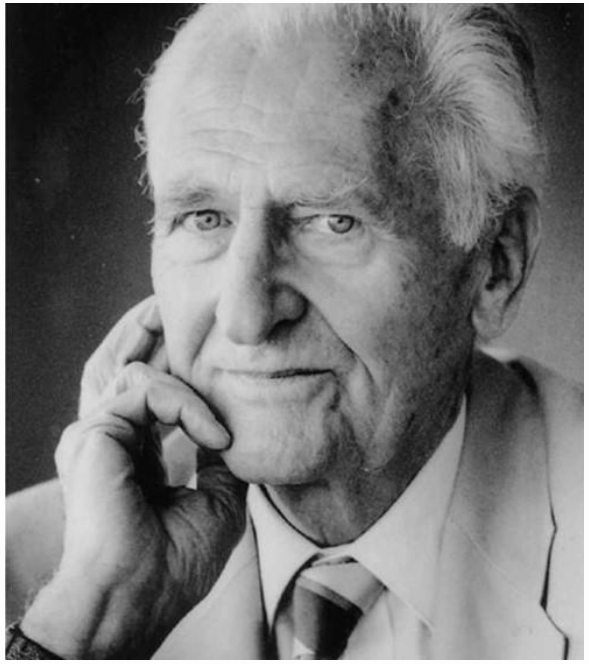
The Factory Inspectors Annual Report of 1938 published in July 1939 commented:

"There can be no doubt that dust, if inhaled, is physiologically undesirable. Moreover dust that is thought today to be harmless may, following research, be viewed in another light to-morrow. It is not many years ago when the dust of asbestos was regarded as innocuous while to-day it is recognised as highly dangerous."

Asbestos History of Uses & Harm

In 1951 Nora Dockerty's family were the first in the UK to receive compensation for her death from an asbestos related disease. Nora had worked at Turner Brothers Asbestos in Rochdale for 13 ½ years

Asbestos History of Uses & Harm



In 1955 eminent scientist Richard Doll's published a report,

"**Mortality from Lung Cancer in Asbestos Workers**"

This was the first major report showing a link between asbestos dust and cancer. He concluded:

"Lung cancer was a specific hazard of certain asbestos workers"

Asbestos History of Uses & Harm

The Shipbuilding and Ship-Repairing Regulations 1960

The Regulations came into force on 31st March 1961. They regulations sought to control the use of asbestos in the shipbuilding industry.

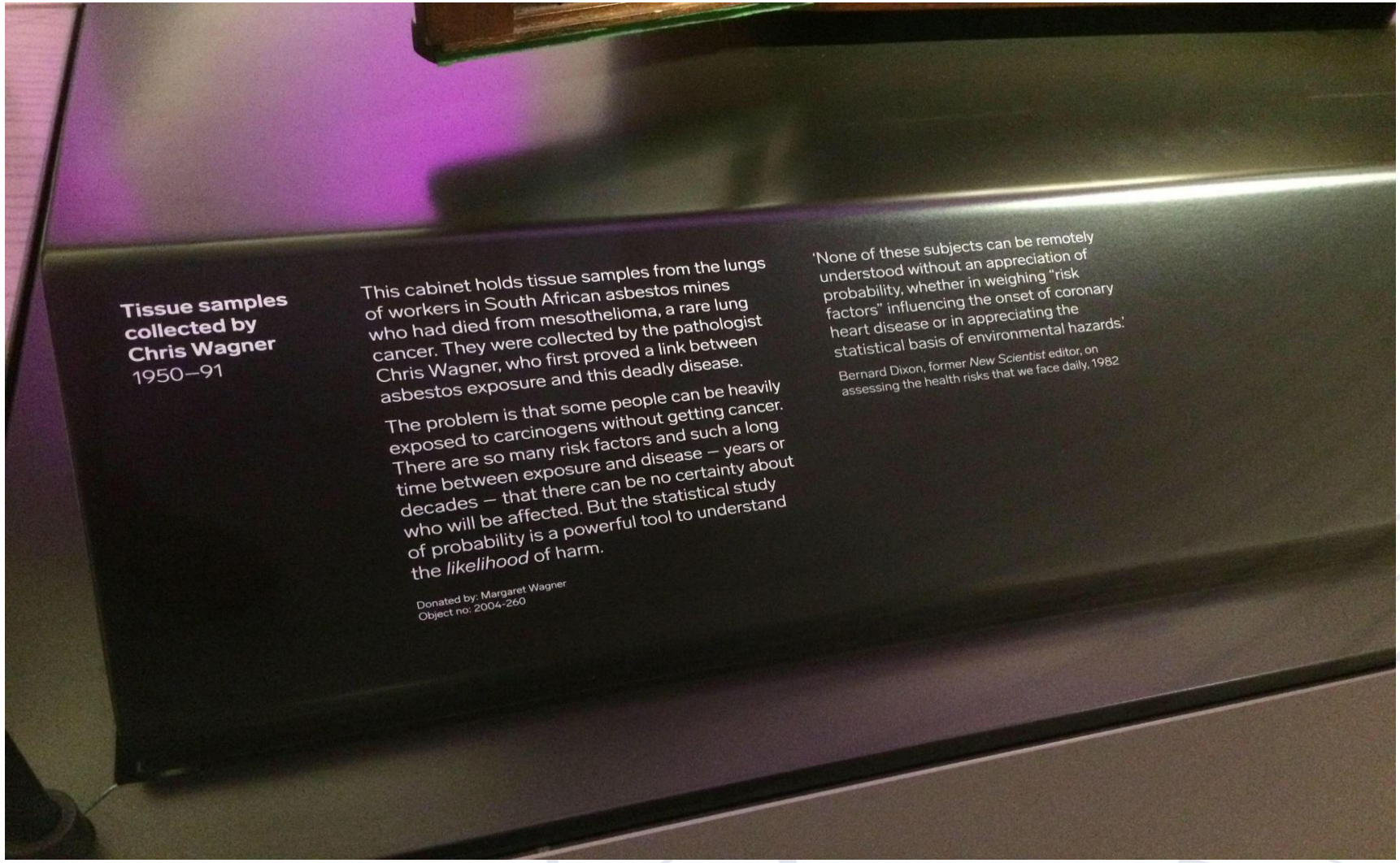
Asbestos History of Uses & Harm

In 1960 pathologist Chris Wagner published a report:

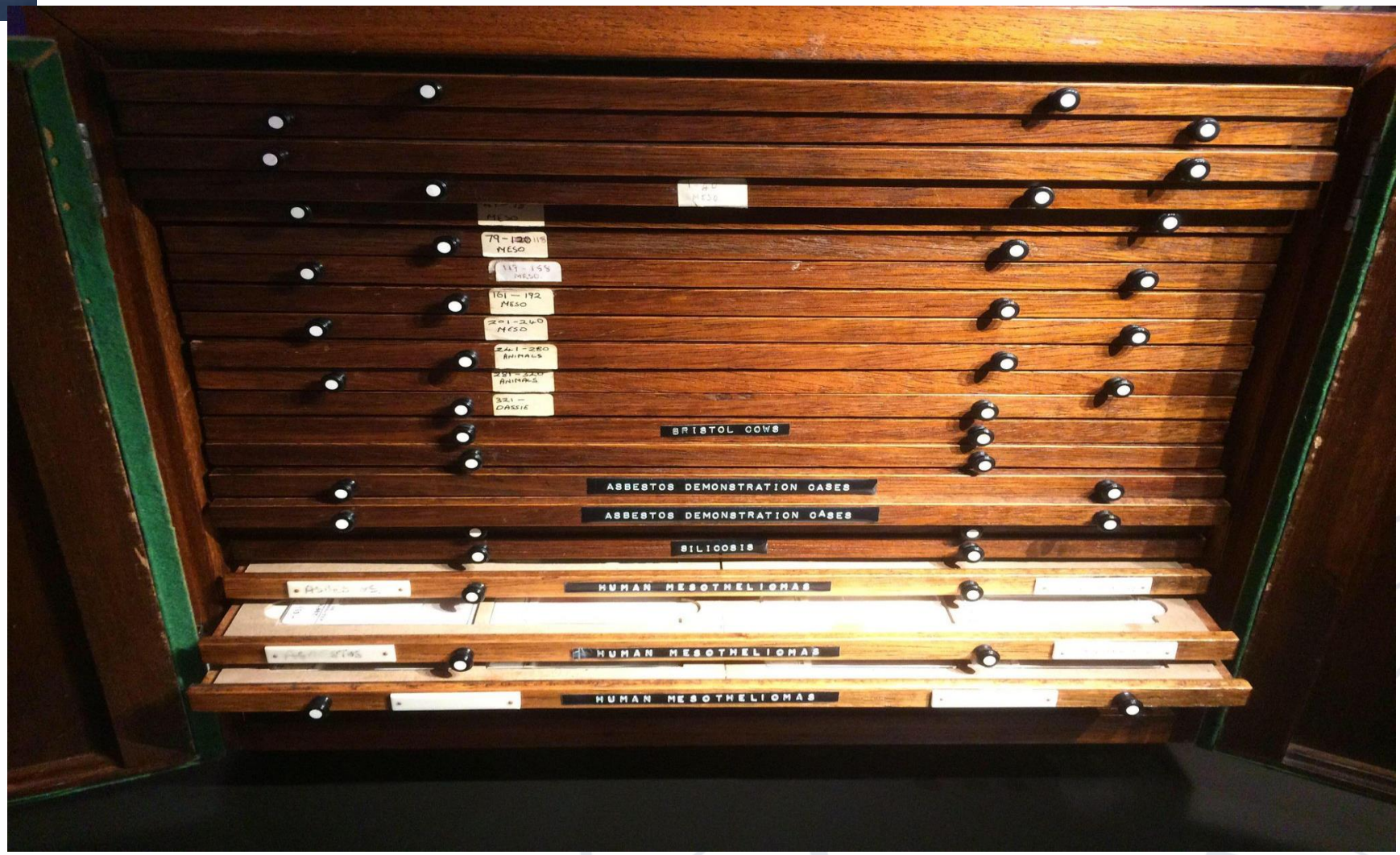
“Diffuse mesothelioma and asbestos exposure in the North Western Cape Province”.

His report showed a clear link between asbestos exposure and mesothelioma, the asbestos cancer.

Asbestos History of Uses & Harm



Asbestos History of Uses & Harm



Asbestos History of Uses & Harm

In 1964 Turner & Newall (the largest producers of asbestos products) solicitors warned the directors:

"We have, over the years, been able to talk our way out of claims but we have always recognised that at some stage solicitors of experience . . . would, with the advance in medical knowledge and the development of the law . . . recognise there is no real defence to these claims and take us to trial."

Asbestos History of Uses & Harm

In 1965 a highly influential report by Muriel Newhouse and Hilda Thompson established a link between mesothelioma and domestic exposure to asbestos:

“There seems to be little doubt that the risk of mesothelioma may arise from both occupational and domestic exposure to asbestos.”

Asbestos History of Uses & Harm

On 31 October 1965 – Headline front page Sunday Times

“Scientists track down killer dust disease”

The article reported the proven link as described in Newall and Thompsons report, between mesothelioma and low level asbestos exposure such as from clothing.

The publication of this article was a landmark in public, parliamentary and legal attitudes to asbestos exposure

Asbestos History of Uses & Harm

The Asbestos Regulations 1969 came into force on the 14th May 1970. These regulations imposed much stricter rules than those under the 1931 Regulations and applied to significantly more areas of work with asbestos. At the same time a voluntary ban was introduced on the import of blue asbestos (Crocidolite) to the UK.

Asbestos History of Uses & Harm

28th June 1971 – Ground-breaking World in Action Documentary – The Dust at Acre Mill - This was a TV documentary on Cape's Asbestos Factory in Hebden Bridge Yorkshire and its dangerous use of asbestos

Asbestos History of Uses & Harm

In1980 a voluntary ban was introduced on the import of brown (Amosite) asbestos to the U.K.

Asbestos History of Uses & Harm

On 20th July 1982 Yorkshire TV showed a prime time documentary "Alice – A Fight For Life"

It ignited public and political debate around asbestos use in the UK.

Alice Jefferson suffered from mesothelioma from exposure to asbestos at work at Cape's Asbestos Mill, Acre Mill.

Asbestos History of Uses & Harm

The Asbestos (Licencing) Regulations 1983 were enacted

The Asbestos (Prohibitions) Regulations 1985 were enacted and banned the import of blue and brown asbestos in to the UK

The Control of Asbestos At Work Regulations 1987

were enacted giving greater protection to employees at work

Asbestos History of Uses & Harm

In 1993 the ground-breaking cases of ***Margereson and Hancock v JW Roberts Limited*** were heard.

It was held that since 1933 JW Roberts should have known children were playing near their asbestos factory in Armley, Leeds where asbestos was manufactured would be exposed to the risk of developing asbestos related diseases.

Asbestos History of Uses & Harm

Asbestos (Prohibition) (Amendment) Regulations 1999

White (Chrysotile) asbestos banned in the UK.

Asbestos History of Uses & Harm

Federal Mogul (U.K) Group (previously the **T & N** Group) went in to administration on the 1st October 2001.

In October 2006 The T & N Asbestos Trustee Company Limited commenced the payment of claims made against two trusts which hade been established to pay damages to those exposed to asbestos by T & N's companies.

Asbestos History of Uses & Harm

The Control of Asbestos at Work Regulations 2002

enacted

Asbestos History of Uses & Harm

In 2002 in the seminal case of ***Fairchild v Glenhaven Funeral Services Limited***, the House of Lords held that a mesothelioma sufferer was entitled to damages from any person who had exposed them to asbestos when they could show that the exposure to asbestos had materially increased the risk of them developing mesothelioma because science could not prove which exposure had caused the mesothelioma when a person had been exposed to asbestos in more than one place,

Asbestos History of Uses & Harm

In 2004 in ***Maguire v Harland and Wolff*** the Court of Appeal held that a shipbuilding company could not have known that a wife washing her husband's overalls which were covered in asbestos dust in the period 1960 to 1965 would be at risk of developing an asbestos related condition.

Note: Exposure was before Newall and Thompson report and the Sunday times article

Asbestos History of Uses & Harm

In 2006 in ***Barker v Corus (U.K) Plc*** the House of Lords held following Fairchild that where the sufferer had been exposed to asbestos with more than one person, each person only had to pay their share and not 100 % of the damages. This meant if a mesothelioma sufferer could not trace all the people who had exposed him or her to asbestos or their insurers then they would not receive full compensation

Asbestos History of Uses & Harm

Section 3 of **The Compensation Act 2006** reversed the unjust effect of ***Barker v Corus***.

The act provided that a mesothelioma sufferer would be entitled to their damages in full from any person who negligently exposed them to asbestos.

Asbestos History of Uses & Harm

The Control of Asbestos Regulations 2006

Previous regulations had banned two of the three main types of asbestos in 1985 and the third in 1999. Second-hand use of asbestos products had also been banned. The 2006 regulations consolidated the previous regulations into one. They prohibit the import, supply and use of all forms of asbestos, set controls for dealing with existing asbestos and layout a licensing regime for those needing to work with asbestos.

Note: The ban only applies to new use of asbestos. If existing asbestos containing materials are in good condition they could be left in place (subject to monitoring and making sure they remain undisturbed) so any property built before 2000 could contain asbestos.

Asbestos History of Uses & Harm

Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007

The Act had the central aim of ensuring that – as an exception to the normal rule – a person dying of mesothelioma could secure damages without thereby preventing members of his/her immediate family making a future claim for damages for distress, grief and loss of society.

The legislation followed a consultation exercise in July-August 2006, which itself followed expressions of concern in Parliament about the dilemma faced by mesothelioma sufferers, i.e. that they could pursue a claim for damages on their own behalf only if they were prepared to accept the consequence that their immediate families would not thereafter be able to pursue claims for damages for emotional harm. The Commission subsequently recommended, in the report on Damages for Wrongful Death (2008), that where a victim dies of mesothelioma, his relatives should retain title to sue for non-patrimonial loss, although the victim has excluded or discharged liability before his death, in accordance with the 2007 Act.

Asbestos History of Uses & Harm

In 2007 in the pleural plaques test cases - ***Rothwell v Chemical & Insulating Co Ltd*** the House of Lords decided that damages could not be recovered by persons suffering from pleural plaques caused by exposure to asbestos because medical effect on the sufferer was negligable.

Asbestos History of Uses & Harm

Damages (Asbestos-related Conditions) (Scotland) Act 2009

The Act had the central aim of ensuring that – notwithstanding the House of Lords ruling in ***Rothwell v Chemical & Insulating Co Ltd*** that asymptomatic asbestos-related conditions (such as pleural plaques) would be recognised in Scots law as constituting actionable harm for the purposes of an action of damages, rather than being considered to be negligible.

Asbestos History of Uses & Harm

The **Diffuse Mesothelioma Payment Scheme 2008** allowed anyone diagnosed with mesothelioma who was exposed to asbestos in the UK to receive a one off lump sum payment from the Government

Asbestos History of Uses & Harm

The **Control of Asbestos Regulations 2012** enacted

Asbestos History of Uses & Harm

The Mesothelioma Act 2014

gave the Government the power to establish The Diffuse Mesothelioma Payment Scheme 2014. This scheme makes damages payments to those who have developed mesothelioma from being wrongly exposed to asbestos at work where their employer no longer exists and no insurer has been found.

A Change in Approach

Bussey v 00654701 Ltd (formerly Anglia Heating Ltd) 2018 [ICR] 1242

- The deceased had worked for the defendants as a plumber (post 1995). The trial judge held, as a matter of fact, that his exposure never exceeded the levels set out in Technical Data Note 13. And that, following *Williams v University of Birmingham* [2011] EWCA Civ 1242, was the end of the matter. The claimant appealed
- Underhill LJ held that the inquiry into foreseeability must be considered in two stages. First, should the defendant have been aware that the exposure to asbestos dust which his work involved gave rise to a **significant risk of asbestos-related injury**? Secondly, if so, did the defendant take proper precautions to reduce or eliminate that risk?
- The majority (Underhill and Moylan LJJ) made a subtle, but important, distinction. They held that in formulating the test for foreseeability, the qualifying adjective "unacceptable" should be omitted since it was "liable to mislead". As Moylan LJ stated, "… *in the context of mesothelioma, **for which no safe level of exposure to asbestos dust has been identified**, the description of the risk as being acceptable has particular problems*."

A Change in Approach

- Perhaps the most important part is the discussion of what amounts to a significant risk. Underhill LJ specifically clarified this point, '*I say "significant" only so as to exclude risks which are purely fanciful:* ***any real risk, albeit statistically small, of a fatal illness is significant.***' In other words, a risk of fatal illness will be deemed significant for these purposes even if it would have been considered statistically slight at the time.

- The court expressly reaffirmed the observation of Hale LJ in *Jeromson v Shell Tankers (UK) Ltd [2001] ICR 1223* (exposure between 1952 and 61) that where there is uncertainty as to the level of exposure then a prudent employer would consider the risks involved in the maximum possible exposure.

- The logical conclusion is obvious. If there is no 'safe' or permissible level of exposure, then the regulations will apply where even only slight exposure is established.

In Scotland

Kay Gibson and Others v Babcock International Limited [2018] CSOH 78

A Scottish post 1965 exposure case dealing with secondary exposure (wife exposed from husband's overalls).

Postscript

The law continues to play "catch up" with the epidemic of serious and potentially fatal health effects of a century of exposure of human beings to Asbestos.

Those responsible for exposing people to asbestos continue in their attempts to minimise responsibility for their actings

Designations and Title to Sue - Pursuer

- Riddell v Arcus – ASPIC - Sheriff Mundy, November 2021

Designations and Title to Sue - Defender

- John Jordan v Anthony O'Reilly – ASPIC - Sheriff Fife,4 December 2020

Designations and Title to Sue – 2010 Act

- Rights Against Insurers Act 2010

- Brooks v Zurich Insurance PLC

Timebar

- **Madden v Duncan Anderson Limited – ASPIC - Sheriff Mundy – 23 September 2021**
- **Kelman v Moray Council – OH – Lady Wise – 24 December 2021**
- **Quinn's Executor v Wrights Insulation Limited OH – Lady Carmichael 27 February 2020**

Procedure

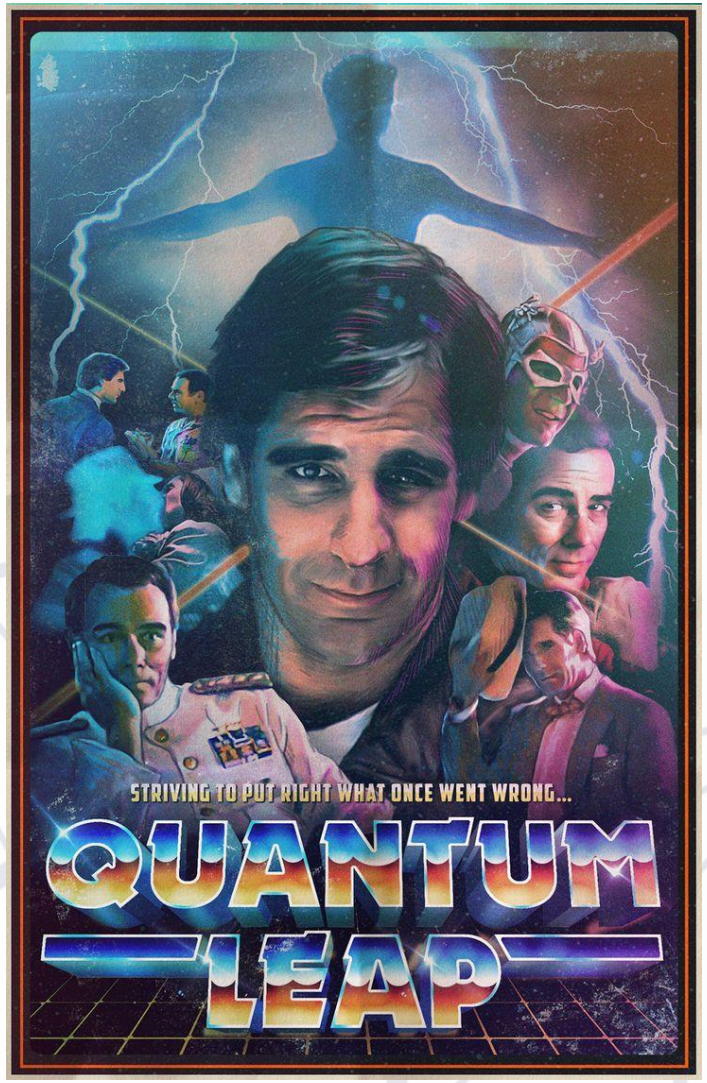
- **McLean v Fairfield Shipbuilding Company 2019 SLT 476 - Lord Burns, Outer House – 9 April 2019**

- **David Matthewson v Scottish Power UK Limited - Lord Clarke, Outer House – 18 March 2022**

- **Pauline Wallace v Colin McAndrew & Partners Limited and Others - Sheriff Campbell KC – ASPIC – 14 May 2021**

Asbestos - Quantum

- Wales v Lord Advocate – August 2015
- Range is now £7,358 to £12041



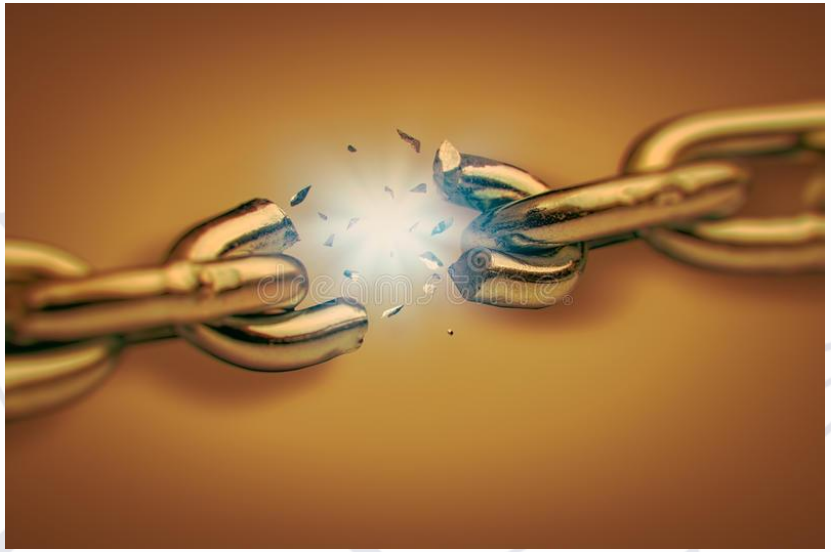
Quantum – Fatal Claims

- Haggarty Gatton v ICI [2021] EWHC 2924 (QB) (English Case) – November 2021
- Deceased aged 63.5
- Life expectance: 22.4 years

Widow	£115,000		£127,184
Older Children (Step)	£40,000	No biological fathers. Deceased Acted as father figure	£44,237.99
Younger Child (Step)	£35,000	Relationship but lived with biological father	£38,708.24

Hand Arm Vibration Syndrome

- Lambert v Proserve [2019] SC Edin 72 – ASPIC – Sheriff – 30 April 2019



Noise Induced Hearing Loss

- **Heasel McDonald v Indigo SunRetail Limited [2022] SAC (Civ) 15**
- **First Instance – ASPIC, Sheriff Mundy March 2021**
- **Sheriff Appeal Court – Sherriff Principal Stephen QC, Sheriff Principal Lewis, Appeal Sheriff Fife – April 2022**

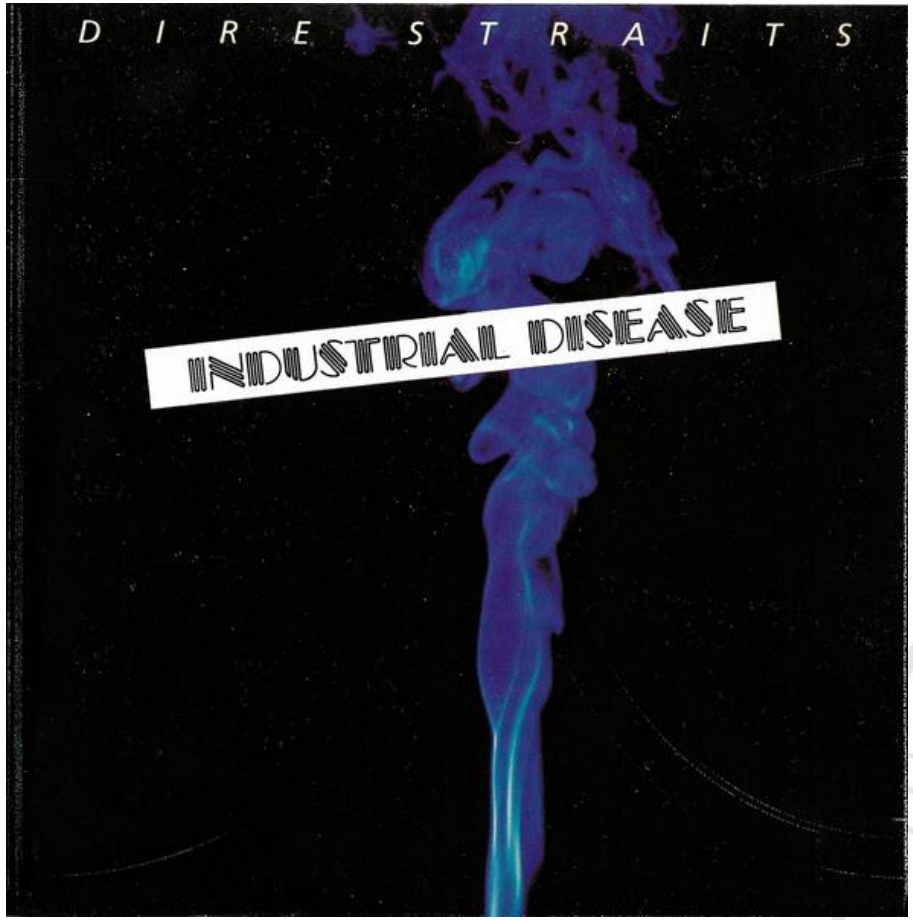
Industrial Disease and QUOCS

- QUOCS Protection removed if pursuer: -
  - acts fraudulently in connection with the claim or proceedings;
  - behaves in a manifestly unreasonable manner in connection with the claim or proceedings; or
  - conducts the proceedings in a manner amounting to an abuse of process
- Tenders – any expenses awarded for failing to beat or late acceptance capped at 75% of the amount tendered

The Future

- Covid 19 Claims?
- Law Commission currently looking at: -
  - definition of relative for the purposes of services
  - Time-bar issues surrounding pleural plaques diagnoses

QUESTIONS?



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