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Reporting on 20 Years of Asbestos Activism

Laurie Kazan-Allen

This issue of the British Asbestos Newsletter (BAN) marks twenty years of publication. At such a significant moment, it feels appropriate to reflect on how far we have come (or not) in the campaign to ban asbestos and achieve justice for UK asbestos victims. In 1990, when the first issue of BAN appeared, national asbestos consumption was 15,731 tonnes¹ (Appendix) – and nearly eleven hundred people in the UK died from asbestos-related diseases.² As a result of the information vacuum which existed at that time and the reluctance of victims to become embroiled in litigation, relatively few personal injury cases were mounted. The vast majority of asbestos sufferers received neither compensation nor appropriate medical treatment. While small groups representing the asbestos-injured had been set up in London (1978),³ Hull (1983) and Glasgow (1985), they were staffed by overworked volunteers with scant financial resources. The shoestring budgets of these groups adversely affected their ability to take on well-resourced corporations with powerful political friends.

Reading through back copies of the newsletter has been a daunting task as the text of the 77 issues runs to nearly 300,000 words. The period covered by the newsletter divides into two almost equal parts; the years before and after UK legislation was enacted to ban asbestos.⁴ As can be seen by the increasing length of issues in recent years, it seems that prohibiting asbestos is just the first step in tackling a country's asbestos legacy. To achieve a broad perspective on the impact asbestos has had on at-risk individuals and communities since 1990, a wide range of subjects was addressed in newsletter articles, including individual cases, medical progress, epidemiological research, legislative developments, government initiatives, corporate news, publications and asbestos events such as conferences, parliamentary meetings and demonstrations. It occurred to me as I read through back issues that an analysis of the news they contained might be informative; if a pattern revealing the key staging posts in the UK struggle to right so many asbestos wrongs was observable, successful strategies might be adopted elsewhere. With this thought, I began to trawl through the BAN archives.

Significant Events and Inspiring Individuals

Although it was clear from the review of BAN coverage that a multiplicity of subjects was covered in the 300+ articles, the majority examined the fight-back of civil society against the vested commercial interests and government inertia that forestalled progress on banning asbestos, improving medical care, broadening access to government benefits, streamlining compensation procedures, raising public awareness and minimizing hazardous exposures. Some topical issues, such as the campaigns to ban asbestos use in the UK or exempt asbestos payouts from the grasp of the Compensation Recovery Unit were revisited on numerous occasions while landmark cases including *Margereson and Hancock v. J. W. Roberts & Sons Ltd.*, *Fairchild v. Glenhaven Funeral Services Ltd.*, *Barker v. Corus (UK) plc* and *Rothwell v. Chemical & Insulating Co. Ltd.* were followed from the initial High Court judgments to the Appeal Court, Law Lords and beyond.

¹ Between 1990 and 1994 more than £41 million was spent on importing asbestos and asbestos-containing materials into the UK. This figure must be viewed as a gross underestimate as it does not include asbestos cement and asbestos friction materials.

² In 1990, the numbers of asbestos-related deaths were: 163 from asbestosis, 862 from mesothelioma and 58 from lung cancer (total 1,083 deaths). Hansard, 19 July 1993, Columns 70/71.

³ This group was based in Enfield, Middlesex, a London suburb.

⁴ The Asbestos (Prohibitions) (Amendment) Regulations 1999 were signed on August 24, 1999 and came into force on November 24, 1999. *United Kingdom Bans Chrysotile*. Issue 36, Autumn 1999.

The decisive action taken by Parliament in 2006 to nullify the iniquitous House of Lords decision in the Barker case⁵ stands out as a highpoint. It was almost unprecedented for a government to, within a matter of weeks, enact legislation overturning a Law Lords judgment. It is worth considering the factors and forces which combined to effect such a huge victory for common sense after, so we thought, all legal options had been exhausted. Why did Parliament get behind the Barker claimants and not the Rothwell plaintiffs despite substantial support for both groups?⁶ It seems that politicians and the public found it hard to stomach unfairness meted out to dying asbestos victims; people with only months to live were a hard target for defendants to attack. Pleural plaque sufferers, on the other hand, were easy prey. Media stories portraying the devastating effect that claims from the “worried well” had had on the U.S. economy were circulated along with scare stories about scan vans, claims handlers and a growing “compensation culture.”⁷ When matters of legal principle are on the line, it seems the first rule of thumb is to have sympathetic protagonists who are invulnerable to attack. Whilst the media found numerous ways to spin the issues surrounding pleural plaques compensation, the personal tragedies of mesothelioma sufferers were generally reported in a sympathetic light.

The second requirement for success is a broad-based coalition working in concert. In the Barker case asbestos victims’ groups, mobilized by the Forum of Asbestos Victims Support Groups, worked closely with trade unions, individual MPs, the Parliamentary Asbestos Sub-Group and legal groups to make representations to MPs and government ministers about the disastrous potential for Barker to impact on victims’ rights. A Westminster protest mounted as the House of Lords hearing on Barker began attracted demonstrators from Glasgow, Liverpool, Manchester, Sheffield, Rochdale, Cheshire and London. Despite appalling conditions on that bitter winter’s day, mesothelioma victims, family members, trade unionists, campaigners and MPs turned out in force to show support for Sylvia Barker and Mary Murray, the widows on behalf of whom these cases were brought.⁸ Judging by the success of the Barker campaign, pressure on elected representatives must not only be exerted but be seen to be exerted. The commitment of trade union officials, in conjunction with the unions’ financial backing of test cases and participation in campaigns, was vital. Working alongside labour activists and asbestos victims has been the Hazards Campaign, which for more than 20 years has helped raise awareness of the UK asbestos epidemic through grass-roots initiatives, political lobbying and publications such as the award-winning Hazards Magazine.

Victims Lead the Way

Asbestos victims, their relatives and members of their community were amongst the first to highlight the dangerous consequences of occupational and environmental exposures. Repeated failures by successive governments to act on the asbestos threat were instrumental in transforming ordinary citizens into lifelong activists. In 1978, the world’s first asbestos group – the Society for the Prevention of Asbestosis and Industrial Diseases (later renamed Occupational and Environmental Disease Association) – was

⁵ Kazan-Allen L. *Righting a Wrong: Parliament to Reverse Barker*. Issue 63, Summer 2006.

⁶ In February 2010, there was a major announcement on the pleural plaques issue. While some claimants will get a lump sum payment of £5,000 others, who did not lodge claims before the 2007 House of Lords decision, will not.

Government announces measures on asbestos-related illness. February 25, 2010. <http://www.justice.gov.uk/news/newsrelease250210a.htm>

⁷ *Mesothelioma Trends in Britain*. Issue 60, Autumn 2005.

⁸ *Apportionment of Liability for an Indivisible Disease?* Issue 62, Spring 2006.

set up in the UK by a mesothelioma widow, Mrs. Nancy Tait.⁹ Five years later, a thermal insulation engineer, Dick Jackson,¹⁰ established the Hull Asbestos Action Group and shortly thereafter former shipyard workers formed Clydeside Action on Asbestos. The work of these individuals, all of whom were volunteers, aimed to address the multiplicity of victims' needs; their pioneering efforts paved the way for the regional asbestos victim support groups which were formed subsequently. It is often the exasperation felt by one individual that sparks off the involvement of others.

When Michael Lees began his crusade to force the Government to tackle widespread asbestos contamination in schools, his was a lone voice in the wilderness.¹¹ With dogged determination, fueled by anger over the mesothelioma death of his schoolteacher wife, Michael lobbied victims' groups, trade unions, MPs and civil servants for this hazard to be given the priority it deserved. The incredible momentum which has now been achieved by the Asbestos in Schools Campaign is a testament not just to his perseverance but also to the positive input and hard work of all those who became part of the coalition backing this campaign. At numerous meetings, interviews and conferences and in thousands of emails and conversations, they worked together to achieve unanimity on priorities and agreement on strategies. With so many personalities and groups involved, achieving a consensus was never going to be easy; without agreement, however, negotiations with officialdom were doomed to fail. That consultations amongst civil society stakeholders progressed was due to an enormous amount of good will, energy and ability to compromise.

⁹ *Nancy Tait: An Appreciation*. Issue 74, Spring 2009.

¹⁰ Dick Jackson, founder of the Hull Asbestos Action Group, died from mesothelioma on October 30, 1994. In *Appreciation of Dick Jackson*. Issue 18, Winter 1995.

¹¹ *Asbestos and the Teaching Unions*. Issue 68, Autumn 2007 and *Campaigners Push for Asbestos Action*, Issue 76, Autumn 2009.

Asbestos Victims and their Organizations

Tony Whitston, Chair: Asbestos Victims Support Groups Forum, UK

It is no coincidence that the people who emerge with the most nobility from this story (asbestos) are the ordinary working-class people who have suffered most. Their gritty determination and fortitude stand in sharp contrast to the indifference and evasions of those running the industry. Many of them have been women. Indeed, it is notable how often crucial events have evolved around individuals such as Alice Jefferson, June Hancock, Nellie Kershaw, Nora Dockerty, and Nancy Tait.

Asbestos victims and their families not only endure the awful consequences of asbestos-related diseases, they contend with a benefits and compensation system that is oppressive and unjust. In that sense, they are truly "victims twice over." Moreover, as mesothelioma deaths have increased they face repeated attempts by the insurance industry to deprive them of the small amounts of compensation that are so hard-won. They have responded to these attacks with the same courage and dignity shown by asbestos victims in past decades.

Nancy Tait MBE, whose husband died from mesothelioma in 1968, provided an invaluable source of information, research and advocacy through the Occupational and Environmental Disease Association until her death last year (2009). Evelyn Margereson, a widow, and June Hancock, who was suffering from mesothelioma, won a landmark case in 1995 to sue for environmental exposure to asbestos. They continued the struggle for justice in the courts begun by Alice Jefferson, whose court battle was captured in the 1982 documentary "Alice a Fight for Life." In 2002, Doreen Fox, an appellant in the Fairchild Case, refused an offer of significant compensation to abandon the appeal, thus securing compensation for all future mesothelioma sufferers.

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Creating a climate in which progress could be achieved on a raft of issues affecting the asbestos-injured was neither easy nor fast. Quantifying the ways people had been disadvantaged by their illnesses and marginalized by an unresponsive bureaucracy was time consuming but essential. On some issues, such as the complexities involved in the insolvency of Chester Street Insurance Holdings Ltd.¹² and the administration of T&N plc, the opening of new channels of communication and the building of new professional relationships were required.¹³

Campaigns mounted over the actions of the Compensation Recovery Unit (CRU)¹⁴ and inadequate provisions for mesothelioma sufferers are classic examples of how mobilization by civil society effected positive change. Both campaigns involved a tremendous amount of behind-the-scenes collaboration by victims' groups, trade unions, non-governmental organizations, politicians, civil servants, legal professionals and others. A significant difference in these two campaigns was the input in the CRU protests of Scottish stakeholders, notably the Glasgow-based group: Clydeside Action on Asbestos (CAA). Indeed it was the CAA which led a Parliamentary lobby in Westminster calling for the abolition of the CRU on November 22, 1995. During the session, speakers from Scotland featured prominently in the debate including the CAA's Ian McKechnie, the MP for Clydebank and Milngavie, Tony Worthington, and Frank Maguire, a Glasgow-based specialist in asbestos litigation.¹⁵

¹² *Dismal Winter for UK Asbestos Plaintiffs*. Issue 42, Spring 2001.

¹³ *T&N Insolvency: Another Blow to UK Asbestos Victims*. Issue 45, Winter 2001-02.

¹⁴ Between 1989 and 1995, the CRU, a branch of the Department of Social Security, recovered millions of pounds in state benefits from victims who had obtained more than £2,500 through court actions against employers and others. *Victory for British Asbestos Victims*. Issue 21, Autumn 1995.

Parliamentary Inquiry into "Clawback" Activities of CRU. Issue 19, Spring 1995.

¹⁵ *Parliamentary Lobby on behalf of Asbestos Victims*. Issue 18, Winter 1995.

It has been "on the shoulders of these giants" that asbestos victims have battled for justice in the last two decades in which annual mesothelioma deaths rose from 895 in 1990 to 2,156, in 2007.

As a series of legal challenges were orchestrated by insurers, asbestos victims and their families lobbied their MPs, wrote to newspapers and spoke on radio and TV. This mobilization was encouraged and facilitated by the emergence of asbestos victims support groups in the early 1990s. The groups forged close relationships with victims and their families and their battles with insurers have dominated the last ten years. In 2005, the support groups formed a national body, the Asbestos Victims Support Groups Forum UK, to speak with one voice on behalf of all those affected by asbestos.

Asbestos victims and their families have campaigned to end exposure to asbestos. Mesothelioma sufferers and their families spoke movingly in the Forum DVD, *Mesothelioma: the Human Face of an Asbestos Epidemic*, warning of the dangers of asbestos today, and they have made a huge impact in the award-winning HSE asbestos campaigns. Together with asbestos victims support groups, they fought for the right to chemotherapy with Alimta, collected over 22,000 signatures calling for a national centre for asbestos-related diseases and each year raise awareness of mesothelioma on Action Mesothelioma Day.

In cities throughout the UK, families bereaved by mesothelioma meet under the auspices of the asbestos victims support groups to campaign for research for better treatment and justice for all asbestos victims. Members, predominantly widows, will not forget their loved ones who have died. They, and countless other victims, are the rock against which the insurers' attacks will be dashed and broken. They are the witnesses to the worst occupational health disaster ever and the shameful treatment of so many people condemned to illness and death.

There is no doubt that the involvement of the Scottish participants was pivotal to the victory achieved in November 1996 when the Government announced the reform of the CRU scheme so that compensators, and not victims, would “be made liable to repay all relevant Social Security benefits paid to the successful plaintiff in respect of his injuries.”¹⁶ As a result of devolution, after 1998 some issues affecting asbestos sufferers north of the border came under the purview of the Scottish Parliament. Consequentially, the efforts of the Scottish groups focused increasingly on Holyrood committees and Members of the Scottish Parliament. The successes they achieved, including the decision by the Scottish Parliament to reinstate the rights of plaques sufferers despite Westminster’s disinclination to do likewise, have been notable.¹⁷

UK mesothelioma treatment, which had developed in an ad hoc way throughout the 20th century, was still in the dark ages well after the new century dawned. In 2003, UK medical specialists reported that:

- most mesothelioma patients never saw a mesothelioma specialist doctor;
- mesothelioma patients were frequently told: “there’s nothing we can do for you”;
- few patients were offered chemotherapy even though new protocols have been effective at relieving symptoms and prolonging life;
- although surgery to remove the affected lung could sometimes prolong life and improve the quality of life, there were only ten thoracic surgeons in the UK who could perform this operation; these operations were further hindered by a lack of NHS surgical beds, operating time, equipment and nurses;
- there was little funding for mesothelioma research in the UK.

A well-attended summit on mesothelioma (2005) provided an ideal opportunity for concerned groups to consult with medical experts, civil servants and politicians over ways in which improvements could be implemented.¹⁸ As a result of the discussions which took place, important decisions were made:

- a Mesothelioma Charter, featuring recommendations for the care and well-being of mesothelioma patients, was drafted;
- an annual day (February 27) dubbed “Action Mesothelioma Day” was designated for holding events to raise public awareness of mesothelioma; the organizational skills and imagination of campaigners led to balloon releases, church services, information sessions and conferences throughout the country.¹⁹

The consensus and funding needed to hold the summit in the first place were the product of growing interaction amongst stakeholders representing a fairly wide spectrum of civil society. The fact that just a year before this meeting, a new nurse-led mesothelioma initiative came into being – Mesothelioma UK – was not coincidental. While staff of the new body carried on the traditions established by Mavis Robinson, founder of the first National Mesothelioma Information Centre (1997), they also engaged with opportunities offered by new technology, developing a popular and user friendly website.²⁰ On a practical level, the internet facilitated the work of grass-roots activists; the construction of websites by asbestos victims’ groups and charities, like the June Hancock Mesothelioma Research Fund and the Mick Knighton Mesothelioma

¹⁶ *News for UK Asbestos Victims*. Issue 25, Autumn 1996.

¹⁷ *The End of UK Compensation for Pleural Plaques?* Issue 69, Winter 2007-08.

¹⁸ *Mesothelioma Summit*. Issue 58, Spring 2005.

¹⁹ *Action Mesothelioma Day*. Issue 62, Spring 2006. *The Asbestos Plague*, Issue 66, Spring 2007.

²⁰ <http://www.mesothelioma.uk.com/>

Research Fund,²¹ helped raise awareness by sharing the stories behind the “Silent Epidemic.”

After a nationwide campaign, the Government adopted a National Mesothelioma Framework (2007) which included guidelines on early diagnosis, treatment options, supportive and palliative care, the role of clinical nurse specialists, research, the provision of information and access to benefits and compensation. It is ironic that even as measures to improve the quality of mesothelioma care were being rolled out,²² the withdrawal of Alimta, the only drug licensed for treatment of this cancer, became ever more likely. As has been seen throughout the UK’s history on asbestos, it is often a case of one step forward and two steps back. Fortunately, the public outcry over denying patients a potential lifeline combined with political lobbying and the submission of additional medical evidence, succeeded in reversing the hostile position initially adopted by the National Institute for Clinical Excellence, the body tasked with overseeing the UK drug prescription regime.²³

Bad News, Good News

In numerous newsletter articles, epidemiological data and statistical research on the national incidence of asbestos-related diseases were reported. There was rarely good news. Government figures released in 1992 showed a continuous rise in the number of British deaths from asbestos-related disease between 1968 and 1988:

“In 1978, the total number of deaths was 499, of which 79% (390) were from mesothelioma. The number of deaths rose to 694 in 1983, of which 82% (569) stemmed from mesothelioma. By 1988, the number of deaths had risen to 1014. Of these, 862 were caused by mesothelioma resulting in a percentage of 85%.”²⁴

In other words, mesothelioma deaths in 1978, 1983 and 1988 were, respectively, 390, 569 and 862. In 2007, there were 2,156 mesothelioma deaths, a 14-fold increase since 1968. In 2009, statisticians predicted that 91,000 men would die from mesothelioma by 2050, the majority (67%) of whom would expire after 2007.²⁵

Even as the scale of the tragedy grew, defendant corporations and their insurers were working on exit strategies to limit their liabilities.²⁶ Victims’ rights to compensation were under constant attack by vested interests wielding commercial, financial and legal weapons.²⁷ Innovative strategies such as the apportionment of liability and the trigger defence to contest mesothelioma claims, the attack on pleural plaque compensation and

²¹ <http://www.junehancockfund.org/>

<http://mickknightonmesorf.mysite.wanadoo-members.co.uk/>

²² *The Asbestos Plague*. Issue 66, Spring 2007.

²³ On January 23, 2008, the National Institute of Clinical Excellence published final guidance recommending the use of pemetrexed disodium (Alimta) for the treatment of malignant pleural mesothelioma in “the majority of people” with this fatal cancer. Treatment thereafter was available on the National Health Service throughout the UK, thus ending a postcode lottery which had seen patients in some areas denied the drug. *Asbestos Issues in Westminster*. Issue 71, Summer 2008.

²⁴ *Statistics: Asbestos Deaths*. Issue 9, Autumn 1992.

²⁵ *Britain’s Mesothelioma Epidemic*. Issue 77, Winter 2009-10.

²⁶ *Tipping the Balance: Exit Strategies of UK Asbestos Defendants*. Issue 64, Autumn 2006.

²⁷ Regarding defendants’ legal strategies, the comments made by Mr. Justice Holland in the case brought against a T&N Ltd. subsidiary (J.W. Roberts Ltd.) by Mrs. Evelyn Margerison and Mrs. June Hancock reverberate to this day: “the conduct of the defense... (reflects) a wish to contest these claims by any means possible, legitimate or otherwise, so as to wear them (the plaintiffs) down by attrition.” *Victory for British Asbestos Plaintiffs*. Issue 22, Winter 1996.

During the protracted history of the Fairchild case, the “misunderstanding” which resulted in the case being delisted from the House of Lords hearings schedule for April 22-24, 2002 remains infamous. *Humane Decision by House of Lords in Fairchild Case*. Issue 47, Summer 2002.

questionable corporate reorganizations²⁸ seriously undermined the rights of victims. In an article entitled “Tipping the Balance: Exit Strategies of UK Asbestos Defendants,”²⁹ the situation was explained as follows: “Viewed as pieces of an evolving national jigsaw, developments relating to T&N, Cape plc and Builders Accident Insurance Ltd. produce a picture of a society where corporate survival takes precedence over life and death issues, common law principles and human rights.”

Through better communication and a higher level of awareness, civil society became more knowledgeable and outspoken on defendants’ dirty tricks. The formation of the umbrella group: “The Asbestos Victims Support Groups’ Forum UK” (the Forum) ratcheted up the effectiveness of groups in England, Scotland and Wales, enabling them to speak out with a single voice. The Forum became a de facto think tank on all issues affecting asbestos victims³⁰ and, within a relatively short time, was an important stakeholder in the national asbestos debate.

The increased number of individuals diagnosed with asbestos disease led, inevitably, to increased numbers of personal injury claims. The short life expectancy of mesothelioma claimants and the time-consuming bureaucracy needed to resolve cases meant that relatively few of the injured lived to see justice done. The setting up of the Royal Courts of Justice asbestos disease list in 2002 provided a much needed shake-up of the judicial handling of these cases. The introduction of procedural measures to streamline this notoriously complex type of litigation, most of which was for mesothelioma, combined with strict deadlines and the early admission of liability led to more cases being resolved during a claimant’s lifetime.³¹ Under the guidance of Master Steven Whitaker, the Royal Courts of Justice (RCJ) began to attract cases from all over the country. In 2009, the RCJ’s asbestos list adjudicated as many as two thirds of the country’s fatal asbestos claims.

²⁸ *Asbestos Compensation Endangered by Insurer Collapse*. Issue 41, Winter 2000-2001.

²⁹ *Tipping the Balance: Exit Strategies of UK Asbestos Defendants*. Issue 64, Autumn 2006.

³⁰ Issues on which the Forum have campaigned assiduously include: government support for mesothelioma research, streamlining benefits procedures and the establishment of an Employers’ Liability Insurance Bureau.

³¹ *Annual UK Asbestos Meeting*. Issue 68, Autumn 2007.

Judicial Innovation at the Royal Courts of Justice

Transcript based on an interview of Master Steven Whitaker (MW), Senior Master and Queen’s Remembrancer, of the Royal Courts of Justice by Laurie Kazan-Allen (LKA) on March 25, 2010.

LKA: *What was the origin of the asbestos disease list at the Royal Courts of Justice?*

MW: Just before the Fairchild decision came out, my predecessor as Senior Master was approached by well known claimants’ solicitors regarding the likely increase in asbestos claims if the decision went in favour of the Fairchild claimants.

The history of the way asbestos claims had been dealt with prior to Fairchild was not particularly auspicious. If there were going to be a lot of claims it did not make sense that they should be dealt with in all sorts of different places without any consistency. It was suggested that a specialist list be set up.

In the pre-Fairchild days, we were running the asbestos claims just like ordinary claims. People would issue the claim form, there would be a defence, and allocation questionnaires would be sent out: it was a very time-consuming process. My task was to find a way to streamline it. After the first few months, it became clear that a new process was needed to get these claims into court for a case management conference more quickly. Procedures were changed and more use was made of IT, not only for claims where victims were still alive but

for claims where they were dead. There did not seem to be any reason to use a different system for the two types of claims because the principles of case management to be applied were the same. As the news spread that there was a system which dealt with these cases very quickly, work started coming in from all over the country.

In May 2002 when I started this list, we probably had no more than 100 claims. Last year (2009), the RCJ's asbestos list adjudicated 850 claims. I estimate that we probably look after about half to two thirds of the country's asbestos claims. Based on our caseload, I believe that annually 1,200-1,500 asbestos claims are being issued nationally. Considering that experts predicted a peak of 2,500 mesothelioma fatalities a year, we are a long way from the peak.

LKA: *I believe you stated previously that your main objective was to settle mesothelioma claims while people were still alive?*

MW: At least settle liability while they're still alive so that we could get them an interim payment, now equal to £50,000. That was the first thing we could possibly hope to do, because you've got to bear in mind that in many instances when these cases get before the court, the claimants only have weeks or months to live. Unfortunately, sometimes even our fast procedures are not fast enough.

But the idea was to try, at least, to get liability eliminated while claimants were still alive, because you've still got the possibility of getting evidence from them either by taking evidence on deposition or by putting questions to them. By eliminating liability before claimants died, we were able to order defendants immediately to disburse a standard interim payment. Having eliminated liability, claimants had the reassurance that the only remaining obstacle was the issue of quantum.

LKA: *What procedural changes were made to speed up the judicial processing of asbestos disease claims?*

MW: One of the most important changes we implemented was the introduction of a "show cause procedure," now part of the Practice Direction. The show cause procedure mandated that once there was sufficient evidence to show that there was a case to answer, defendants had to show cause as to why they shouldn't have judgment given against them. The evidential burden shifted from claimants to defendants. There is no need to distinguish between live claims and dead claims as both benefit from knocking out liability as early as possible, because we know that in 95% of these claims there just isn't a defence.

Our system forces people to eliminate liability as soon as possible; once liability has been settled, the rest is fairly straightforward. In 99.99% of cases, disputes on quantum are settled without recourse to trial. We list about 15 assessments of damages on a Thursday – all these cases are listed on my calendar for the same day. There's hardly a week when they don't all settle. These days, defendants' solicitors, particularly insurers, are looking to try and to see whether they can admit liability as soon as possible.

LKA: *Why would they want to do that?*

MW: Because it shortens the case and makes it less expensive to fight. Because the costs they are going to incur – which they have to pay to the claimants' solicitors – are much higher than the costs they are paying to their own lawyers. You've got to bear in mind that insurers tend to send all their work to panel solicitors; because they guarantee these solicitors a lot of work they're able to keep the fees down at quite a low level. Claimants' solicitors, who have the responsibility for dealing with clients, investigating and defending claims and taking risk under Conditional Fee Arrangements (CFA), are going to charge more. And, of course, they're entitled under the CFA system to reclaim the cost of the "After the Event" insurance policy and the uplift in fees if the claimant wins.

Generally speaking, unless there's a serious point, defendants will now concede liability very quickly if they can. The only cases where I am afraid that is not so will usually be where the

defendant is an extant company, that is still trading, and either has no insurer or a huge excess of insurance; defendants in these circumstances obviously have more of an incentive to fight cases.

LKA: *Did you find much resistance to your attempt to change the system?*

MW: There was resistance from some defendants' solicitors in the first few months but I also managed to combine the procedural changes with, what you might call, a system of e-working. In other words, we tried to cut down using paper; we tried to increase the use of emails for all the interrogatory procedures. It wasn't long before defendants – insurers particularly – began to feel that this was actually a better way of dealing with the claims. It got them dealt with more quickly and more cheaply.

In 2006, when the new working arrangements were formalized in a Practice Direction applicable throughout the country, there was support from both defendants' and claimants' solicitors and insurers.

LKA: *According to government statistics, there are now more than 2,000 mesothelioma deaths a year. Does everyone who contracts mesothelioma bring a claim?*

MW: I think it is much more likely that we capture the majority of claims now. In the first few years, there were a lot of people with mesothelioma who were not making claims because they were not aware there was compensation available. In fact, very often potential claimants did not understand the significance of what they were suffering from.

It was the work of claimants' firms which organized events and conferences for people from the medical profession which helped to raise awareness of the legal options open to this category of patients. I think that now, anybody who presents in a doctor's surgery with mesothelioma or goes to a specialist will be told of the link between their illness and their likely exposure to asbestos and the possibility of gaining compensation.

The point is, of course, not every claim can proceed. It's not so much that they're not being brought or being investigated, it is that there is going to be a proportion that cannot proceed because there is no trace of an insurer and the company went out of business many years before. But, that situation has been improved, because when I started the list in 2002, I suspect that many claims were being defeated because there was a lack of evidence of insurance; now for some years there has been the possibility of doing an ABI (Association of British Insurers) search, and there are people who actively dig for evidence of EL (Employers' Liability) insurance and that's made a great improvement. So that's another considerable change in the last 10 years.

LKA: *What challenges remain?*

MW: There is disquiet over the relatively conservative range of compensation for general damages in England compared, for example, to payouts awarded by courts in Northern Ireland (NI). While the upper range for English victims is £75,000, sums paid out to claimants with similar conditions in NI could exceed £120,000. The proposed abolition of the right of a claimant to recover the uplift in costs and the ATE premium from defendants when a case succeeds is causing consternation amongst the claimants' community. It remains to be seen what effect that would have on these claims if introduced. Although there are gradual advances in litigation regarding asbestos-related lung cancer, these complex cases remain relatively rare.

Looking back on what we have achieved with the asbestos disease list at the RCJ, I have to say that I think that this is the best thing I have done in my professional career as a lawyer. I am proud of the remarkable professionalism of both claimants' and defendants' solicitors who have collaborated with the court to change both the pervading culture and the judicial procedures so that asbestos claimants can receive due process in a more timely fashion.

Judging by the UK's asbestos history, it is clear that campaigning on asbestos issues is a marathon and not a sprint race. It is almost unheard of to achieve a quick result even on the most appalling miscarriage of justice. The reversal of Barker, which at six weeks could, in Parliamentary terms, almost be classed an overnight success, was the result of years of sustained dialogue on asbestos amongst grass-roots campaigners, trade unionists, MPs, civil servants, government ministers, academics, medical professionals and legal practitioners.³² Amongst the bodies involved in the lobbying for government action on Barker was The Asbestos Sub-Group of The All Party Parliamentary Occupational Safety and Health Group. The purpose of The Sub-Group, set up in 2000 at the behest of MPs, asbestos victims' groups and trade unions, was to provide a means to resolve the myriad of problems affecting the lives of asbestos sufferers. At periodic meetings in the House of Commons, procedural issues such as the double diagnosis of mesothelioma victims, difficulties in obtaining state benefits, inequitable government regulations and lack of funding for research and treatment of asbestos-related diseases were discussed. As a result of decisions taken by this body, action was taken to bring these problems to the attention of civil servants and Ministers. The Sub-Group's annual Asbestos Seminar, a well-attended Parliamentary fixture, keeps asbestos high on the UK political agenda by providing an opportunity for domestic issues to be examined in the light of international medical, legal, environmental and corporate developments.³³

That there has been substantial progress made in confronting the country's asbestos legacy is apparent. Unfortunately, when it comes to asbestos, there is no such thing as a definitive solution. Industry stakeholders, asbestos defendants and even government

³² *Justice Delayed, Justice Denied*. Issue 70, Spring 2008.

³³ *Mesothelioma: A National Tragedy*. Issue 51, Summer 2003. *Westminster Asbestos Seminar*. Issue 55, Summer 2004. *Asbestos Seminar in Westminster*. Issue 59, Summer 2005. *Westminster Asbestos Seminar*. Issue 63, Summer 2006.

Ten Years of the Asbestos Sub-Group

Michael Clapham, MP Barnsley West & Penistone*

Ten years ago the Asbestos Sub-Group was formed and I have chaired it over the period. It introduced a new approach by bringing Victims' Support Groups into the House of Commons three or four times a year to mix and meet with lawyers, doctors and MPs. I believe that this collaborative approach has engaged the Group with the issues that victims and their families face on a day-to-day basis and helped achieve great progress over the period.

I recall that the Group's first success was persuading the Department of Work and Pensions to end the dual diagnosis blockage, thus enabling victims diagnosed with mesothelioma to use their consultants' reports to speed up the payment of Industrial Injuries Disablement Benefit (IIDB) at 100% and obtain a maximum lump sum.

The next challenge came with the Chester Street insolvency which posed a threat to many victims. By working with Members of Parliament sympathetic to the case and Ministers like John Battle MP we were able to ensure that victims received payments.

Perhaps the biggest challenge came with the Law Lords decision in the Barker case in May 2006. The decision changed the accepted procedure on which an asbestos victim's compensation was calculated. By mobilizing in Parliament against the decision we were able to persuade the Secretary of State for Justice that this was a grave injustice. By July of that year he introduced the Compensation Act, which overturned the Law Lords decision and restricted the activities of the claims farmers.

To my mind the Group's greatest achievement was the Child Maintenance and Other Payments Act which brought into being the Mesothelioma Payments Scheme on the 1st

*Retired May 2010.

agencies³⁴ constantly chip away at measures to support the injured and protect public and occupational health. Downsizing of bodies such as the Health and Safety Executive negatively impact on the enforcement of the legislation which remains. Financial pressure on trade unions and labor federations is also of concern as the flux in the workforce means that asbestos training needs to be a never-ending process; in times of economic cutbacks, training programs are often the first to go. The fact that the majority of the asbestos victims' support groups have survived the recession is testament to the broad base of support they have established and the dedication of their staff. There is, however, no guarantee that their expertise will not be lost should funding resources continue to evaporate.

If the measures announced on February 25, 2010 by the Ministry of Justice (MoJ) are implemented, and there is no reason to think that they will not, it seems that the tortuous battle to reinstate the rights of pleural plaque sufferers in England and Wales has come to an inglorious end.³⁵ There now exists a two-tier system whereby victims in Scotland are compensated and those south of the border are not. The fact that the MoJ package includes a lump sum payment of £5,000 to some sufferers, those whose claims were submitted prior to the scandalous House of Lords ruling (2007), but disenfranchises others is difficult to stomach. This is a big defeat for civil society and a £1.4 billion victory for insurers. Other injustices which persist include the legal bar which prevents former Ministry of Defence personnel from suing the Crown for asbestos-related illnesses and the difficulty experienced by people with asbestos-related lung cancer in accessing government benefits and personal injury compensation.

³⁴ *Shameful U-Turn by HSC*. Issue 61. Winter 2005-06.

³⁵ *Government announces measures on asbestos-related illness*. February 25, 2010.
<http://www.justice.gov.uk/news/newsrelease250210a.htm>

October 2008. The scheme which was recently topped-up to make payments equal to those under the 1979 Pneumoconiosis Act is available to anyone who is a victim of asbestos. This means that a person who develops mesothelioma from inhaling fatal fibres on the working clothes of an household member and a person who develops it because a nearby factory was using the material are equally eligible for payment under the scheme.

Currently, the Department of Work and Pensions are consulting on an idea developed by the Sub-Group namely the Employers' Liability Insurance Bureau (ELIB). The consultation which was launched on 10th February 2010 also covers proposals to improve the tracing of Employers' Liability Insurance policies. This is necessary because in cases like meothelioma where the disease develops many years after exposure it can prove difficult if not impossible to identify the insurer.

Finally, the support given to the group of consultants lead by John Edwards of the Sheffield Northern General, calling for a national centre for asbestos-related diseases is moving matters forward. The Minister of State at the Department of Health, Gillian Merron MP, has asked officials to provide a strategy document before determining the next steps towards the establishment of such a centre. That document will be available in the autumn (2010).

There is still much to be done and two challenges that spring to mind are firstly monitoring asbestos in schools to ensure it is safely managed and secondly obtaining new medical evidence on the anatomical impact of pleural plaques.

I believe the changes that the Group has achieved will make a real difference to the lives of people who suffer with these terrible asbestos-related diseases. I am immensely proud to have had the privilege of chairing the Asbestos Sub-Group and working with the coalition of attendees – and many thanks to Hugh Robertson of the TUC for his unstinting work on the Group's behalf.

Environmental Asbestos Legacy in the UK

Jason Addy, Manchester Metropolitan University, School of Law³⁷

History is repeating itself with the “three waves” of asbestos exposure first predicted by Dr Irving Selikoff. The first wave of heavy industrial exposure saw the deaths of the asbestos production workers and the second the consequences of exposure from asbestos products in the workplace. The third wave, however, is more subtle and infinitely more sinister: the lasting legacy of a “magic mineral” that was marketed “to last until the end of time” – the persistent exposure to significant amounts of respirable asbestos fibres from the fabric of buildings and within the soil of sites once linked to heavy industrial asbestos use.

Three locations in the UK illustrate the potential third wave of exposure: Barking, Rochdale and Widnes. For decades, the Cape Asbestos factory at Barking dominated the landscape and health of East End Londoners. In the late 1960s the site was demolished and replaced with social housing. Decades later, mesothelioma deaths have occurred amongst those who lived on the Hart Estate and who have never knowingly worked with asbestos. Settled cases suggest the familiar pattern of denial, doubt then a slow grudging acceptance of the consequences of past actions.

Despite the past environmental damage and waste dumping that has occurred, the UK’s former asbestos giants have avoided many of their liabilities. The ongoing controversy over the former Turner & Newall (T&N) site in the Spodden Valley, Rochdale is testament to this golden rule. UK Administrators for Chapter 11-bankrupt Federal Mogul, the U.S. company which bought T&N, sold the 72 acre factory complex in 2004. In correspondence at the time the site was described as “an asset of dubious value – perhaps even a liability.” Property development companies paid £6,250,000 then obtained a mortgage from the Royal Bank of Scotland. A report drafted concluded “of particular note is the absence of any asbestos contamination” yet other documents were unearthed that confirmed the site was sold with a series of reports identifying various high-risk contamination areas throughout the site. Subsequent independent reports have confirmed asbestos waste up to 4 metres deep in parts of the site.

Six years on, plans for an “urban village” of about 600 homes remain on hold without planning permission being granted. However, an asbestos factory site, described by the vendors as of “dubious value” remains an attractive lure as a £100 million+ regeneration project for “much needed homes.”

With shocking historic parallels, the Spodden Valley experience has uncovered repeated examples of denial, obfuscation and the lack of enforcement of effective regulation. Organizations and individuals appear to have attempted to influence, benefit from and drive public policy and profitable decisions for a few that could cost the health and well-being of the many.

The connections between international asbestos industries is also demonstrated by the latest controversial development project for a former asbestos factory site in Widnes. The Everite factory saw asbestos production lasting almost eight decades – Turner & Newall purchased a licence in the early years of the 20th century to manufacture asbestos cement products patented by Eternit. In an ironic twist, ownership of the site in recent years transferred to Marley Eternit.

³⁶ Due to the generous response for short pieces to include in this edition we decided to abandon our original intention to embed all the submissions in the editorial; hence the majority of the submissions are presented here, alphabetically by author.

³⁷ PhD researcher in Environmental and Occupational Disease Litigation.

In January 2010, a significant part of the Widnes site was granted planning permission for over 100 houses, industrial units and a hotel. Halton Borough Council officers recommended approval. The Planning Committee vote was unanimous with 2 councilors describing their past involvement with the site. Another councilor addressed the committee with a passionate presentation in favour of the regeneration project.

Local people were angry – they expressed feelings of disbelief that they had not been heard or that they had not had full access to all the planning documents and reports. There had been no Environmental Impact Assessment for the development plans submitted. At a public meeting, one of the remediation specialists had described the type of asbestos waste present at the site as “safe enough to lick.”

What lessons can be learned? What historic parallels can be demonstrated? Can profitable business models influence “policy led evidence making”? Who commissions experts to ensure that commercial activities are safe? Who guards the guards?

In a post-industrial economy a new crucial economic driver has been the regeneration of brownfield land. It has permeated the banking system where rising land values provided accelerated gearing for new investment products and refinancing debt. “Much needed homes” is the oft quoted mantra of today. Closer inspection reveals that some of these voices are from PR companies and lobbyists. The full irony of this is felt when the land in question was once a dusty, killer asbestos factory. If there was ever the need for the full adoption of the Precautionary Principle it is now. People really must be put before profit.

Asbestos Litigation

Adrian Budgen, Irwin Mitchell Solicitors

As a solicitor specializing in personal injury litigation, I have been handling asbestos cancer cases for exactly 20 years.

I was just 27 when I saw my first mesothelioma client. His name was Irving Sheldon and he was not much older than I am now. Irving’s only significant exposure was whilst serving in the Royal Navy, yet he was barred from bringing a claim against the Ministry of Defence (MoD) by reason of Crown immunity (Section 10 of the Crown Proceedings Act). I thought this was very unjust, so I joined the newly formed Section Ten Abolition Group (“STAG”) and attended various meetings at the House of Commons. Irving’s story was reported in *The Times*, with a picture of him holding an old photograph showing him in his naval uniform. In those days awareness of mesothelioma was very low. Relatively few people had heard of the disease outside of the medical and legal professions. It was called “the forgotten cancer.”

Fast forward 20 years, and there is much greater public awareness of the dangers posed by asbestos and the risk of mesothelioma. However, after much lobbying, Section 10 remains a bar for any serviceman/woman who was exposed before May 1987, the MoD equating inhalation/exposure to injury.

It seems somewhat ironic, then, that we are now (anxiously) awaiting the Court of Appeal’s judgment in what has become known as the Employers’ Liability Insurance Policy “Trigger” Litigation. The Defendants in this litigation are arguing that the “trigger” point for payment on policies of Employers’ Liability insurance should not be the inhalation of the toxic asbestos fibres, as has always been the case, but the onset of the disease (mesothelioma). They say that mesothelioma is not sustained or contracted until 5 years before it manifests itself, by which time all of the cellular changes necessary for malignancy will have occurred and the tumour will have established a blood supply (“angiogenesis”) – for the victim this is the point of no return. This latest assault on mesothelioma compensation in the UK started in 2006, and was the first major challenge in the wake of the Holtby asbestosis decision in 2001.

2001 was definitely an “annus horribilis” for UK asbestos victims. At the beginning of that year we had seen a major insurance company collapse (Iron Trades/Chester Street). This had an immediate impact – the Financial Services Compensation Scheme was established subsequently, thus guaranteeing at least a 90% payout for claimants whose cases had already been settled. Then came Fairchild (Parts I and II) and, to quote a well known PI lawyer, we were “staring into the abyss.”

The Court of Appeal’s decision, in December 2001, was earth-shattering – Tony Blair (then Prime Minister) described it as “very unjust.” Thankfully, the Law Lords overruled the lower court’s decision, in June 2002, and it was back to business as usual. In the October, however, we received another body blow in the shape of the T&N/Federal-Mogul administration order – all pending claims against the T&N group of companies were frozen. It took another 7 years for a compensation fund to be set up, the longest-running administration in UK corporate history. My late client, June Hancock, would have had plenty to say about that – she had courageously taken on the mighty T&N in 1994/5 and successfully defended their appeal in 1996 (a real David–v–Goliath battle).

Other major challenges (Barker and the Pleural Plaques test litigation) have followed, all with the object of saving defendants and their insurance companies money. For claimants the battle goes on.

Palliative Care in Mesothelioma

Helen Clayton

A palliative approach to life-limiting cancer essentially aims to improve quality of life when cure or extended survival is not possible, as defined by the National Institute for Health and Clinical Excellence³⁸ (Fig. 1). Access to palliative care is considered by many to be an international human right.³⁹ Mesothelioma is currently an incurable condition and one of the most highly symptomatic cancers. Breathlessness, pain and psychological distress affect almost all patients and may be particularly difficult to alleviate; many patients experience suboptimal management of these problems.

In the 1990s, Mavis Robinson, OBE, a Macmillan nurse working near a former asbestos factory in Leeds, UK, recognized the severe problems associated with mesothelioma. She set up the Mesothelioma Information Service (a telephone helpline), produced an information booklet, and founded the Mesothelioma Nurses Network – funded by Macmillan Cancer Relief.⁴⁰

Palliative care is the active holistic care of patients with advanced progressive illness. Management of pain and other symptoms and provision of psychological, social and spiritual support is paramount. The goal of palliative care is achievement of the best quality of life for patients and their families. Many aspects of palliative care are also applicable earlier in the course of the illness in conjunction with other treatments.

Palliative care aims to:

- Affirm life and regard dying as a normal process
- Provide relief from pain and other distressing symptoms
- Integrate the psychological and spiritual aspects of patient care
- Offer a support system to help patients live as actively as possible until death
- Offer a support system to help the family cope during the patient’s illness and in their own bereavement

Figure 1: Definition of palliative care (NICE, 2004)

³⁸ NICE 2004.

³⁹ Brennan, Gwyther, Harding, 2007.

⁴⁰ Renamed Macmillan Cancer Support in 2006.

In 2004, following Mavis's retirement, Macmillan funded a new organization: Mesothelioma UK. Liz Darlison, Consultant Nurse, was appointed as the lead, continued the telephone helpline and educational events, and developed a website.⁴¹ Liz set up the Mesothelioma Nurses Action Team (MNAT) and organizes Patient and Carer Days – novel multi-professional events for people with mesothelioma and their families. These successes led to her being named Cancer Nurse Leader of the Year 2007.

In 1996, palliative medicine became a UK medical speciality, which brought with it considerable advances in symptom control in advanced cancer. However, at that time, there was almost nothing in the literature relating specifically to palliation in mesothelioma. As a hospice doctor working with mesothelioma sufferers near the shipyard town of Barrow-in-Furness, I was confronted by major challenges in achieving good control of symptoms, particularly pain and breathlessness. This led to a doctoral study "The experience of mesothelioma in Northern England"⁴² which exposed the shortcomings in palliation in mesothelioma. Publications related to the study, alongside the work of Mesothelioma UK, generated wide interest in the palliative approach and now most major conferences include sessions on symptom control and support for patients.

There is still much that needs to be done, as few patients access palliative medicine or specialist pain management services and many are referred to palliative care too late. Timely referral can undoubtedly reduce unnecessary suffering by enabling best results from an increasing variety of drug and non-drug interventions for symptom control, such as self-help techniques, indwelling pleural and peritoneal drains, percutaneous cervical cordotomy for chest pain, and new delivery systems for analgesics. In current times of financial constraint it is all too easy for the needs of highly vulnerable groups to be ignored but expert palliation in mesothelioma is essential. Palliative care is cost-effective, offers benefit to all with mesothelioma and is a sensible practical approach, particularly for those in resource-poor areas. All patients with mesothelioma should have early access to palliative services, alongside any oncological treatments; this is what should be demanded on behalf of all who suffer from this devastating disease.

Mesothelioma Nursing: Two Decades of Improvement

Liz Darlison, Consultant Nurse, Mesothelioma UK
and the University Hospitals of Leicester NHS Trust.

A workforce census carried out in 2007 demonstrated there were nearly 2000 tumour specific (breast, lung, urology etc.) cancer nurse specialists in England alone; yet despite this resource there are currently just two cancer nurse specialist posts specifically for mesothelioma and a further three for mesothelioma and lung cancer combined.

Lung cancer tumour specific nurse specialist numbers have increased from approximately 50 in 1999 to well over 250 in 2010 and in the main, rather unsatisfactorily, it is left to them to meet the nursing needs of most mesothelioma patients.

It is widely accepted that mesothelioma is perhaps the most challenging of all cancers for patients, carers and health-care professional alike; however, undeterred by the lack of investment and driven totally by a desire to make improvements for mesothelioma patients, nurse leaders and teams have emerged from the body of Lung Cancer Nurse Specialists to drive forward a number of improvements in mesothelioma nursing care:

- With financial support from Macmillan Cancer Support the first National Mesothelioma Information Centre was established in 1997 at the Cookridge Hospital, Leeds by an experienced nurse specialist, Mavis Robinson MBE. Although open for less than five years the centre and its founder Mavis Robinson cemented the nursing commitment to mesothelioma.

⁴¹ www.mesothelioma.uk.com.

⁴²Clayson, 2007.

- Nurses have developed excellent working relationships with the asbestos voluntary sector, namely asbestos support groups, to maximise the provision of benefits and legal information, and support for patients with asbestos-related disease. Systems have been developed to fast-track benefit applications for mesothelioma patients.
- Nurses facilitate and support Action Mesothelioma Day events across the UK; raising awareness about the dangers of asbestos and the need to improve services for those diagnosed with or affected by mesothelioma.
- Nurses supported patients in developing a Mesothelioma Patient Charter outlining patient expectations and needs. The Charter, which was presented to government in 2006 by mesothelioma patients, provided the impetus for the Department of Health to develop the Mesothelioma Framework (MF). Nurses have embraced the MF and continue to address the recommendations it contains.
- In May 2004, Mesothelioma UK, a nurse-led national mesothelioma specific information, support and educational resource centre was opened with financial support from Macmillan Cancer Support. Mesothelioma UK:
 - provides impartial, up-to-date mesothelioma support and information for all mesothelioma patients and their carers, as well as health-care professionals, the legal profession and relevant charities/voluntary groups;
 - provides a free telephone helpline, maintains an up-to-date website, circulates regular newsletters and holds educational events across the UK for patients, carers and health-care professionals;
 - promotes the development of specialist nursing practice and facilitates associated nursing research;
 - promotes the highest possible standards of care to improve the outcomes for patients with mesothelioma in the UK.
- In collaboration with the Royal Marsden NHS Trust, Nurses have developed a global first: an accredited completely online university course at degree and masters level in mesothelioma.
- Global links have been established with countries experiencing similarly high incidences of mesothelioma in order to share best practice and drive initiatives in the UK, such as the establishment of a UK national research centre for asbestos related diseases.
- Nurses have united to form a “mesothelioma community of practice” called the Mesothelioma Nurse Action Team (M-NAT). The team have:
 - developed a mesothelioma patient information pathway;
 - established priorities for research and submitted a number of research grant applications;
 - established representation from nearly all the cancer networks in England, Scotland and Wales to ensure information and expertise are cascaded across all regions.

Much has been achieved over the last 15 years and those involved should be congratulated. Undoubtedly, improvements and advances will continue, despite the role and function of cancer clinical nurse specialists being increasingly “under the microscope” as the NHS seeks to meet targets and control spending. All this whilst maintaining the rhetoric about choice, quality and personalized care!

The incidence of mesothelioma will continue to rise for the next few years and the NHS owes it to this worthy, unique group of people to invest adequately and get the mix of resources right. At the very least, mesothelioma patients deserve access to a cancer nurse specializing in their disease as is the case for a range of other cancers.

Government Benefits and Asbestos Victims: Any Changes?

Dr Philip M. Larkin, Lecturer in Law, University of Buckingham

In practical terms, perhaps the most beneficial change over the past two decades in the position of victims of asbestosis – and other asbestos-related diseases – in the UK in relation to benefits entitlement has been the technological advances which have allowed these individuals, and those who advise and represent them, to access electronic legal information almost immediately.

Examples proliferate on the world-wide web: the charity website of Mesothelioma UK⁴³ not only provides current and accurate information on symptom control, clinical trials and innovative treatments but also explains how to access social security benefits and instigate personal injury legal claims against negligent employers. A definite improvement in the level of consciousness in the issues surrounding asbestos-related diseases is perhaps also evident in the Department for Work and Pensions, with this Department's website offering comprehensive advice and guidance on entitlement to, and how to apply for, Industrial Injuries Disablement Benefit.

Industrial Injuries Disablement Benefit (IIDB), a non-means-tested benefit, which may be claimed along with other benefits such as the new Employment and Support Allowance, remains the main recourse for those incapacitated through asbestos-related illnesses, and for claims lodged after October 1, 1986, benefit may be awarded for pneumoconiosis sufferers (including asbestosis and diffuse mesothelioma) even if disability is assessed at less than the usual 14% standard. Available figures for the uptake of this benefit, supplied by the Department for Work and Pensions, demonstrate a consistent increase in disability benefits for total prescribed asbestos-related diseases throughout the 1990s, passing well above 1,250 known cases. Such take-up rates appear encouraging, and suggest strong government commitment to the financial support of asbestos victims.

Nevertheless, it appears that such superficially encouraging information does not paint an entirely accurate picture. In relation to mesothelioma, once it has been established that the victim worked in the correct industry or, for lung cancer, has another prescribed asbestos illness, they are normally assessed as being very disabled, and almost always terminally ill: the average rate of disability assessment for mesothelioma is about 98%, while for asbestos-related lung cancer it stands at 83%. However, asbestosis itself does not appear to attract the higher levels of benefit that those mentioned above do: figures from 1993 demonstrated that 29% of asbestosis sufferers were assessed at 10% disabled or less, 66% fell in the middle-range between 20 – 70% disabled, while a mere 4% were assessed in the three top percentage bands over 80%. Similarly, bilateral diffuse pleural thickening is only compensated if disability is assessed at 14% or more, and claims are rejected for IIDB if damage is on one side of the lungs only or if it is not considered to be diffuse, no matter how disabled the victim may be. This can be seen to cause somewhat unjust results: during 1995/96, even though IIDB rates were quite low, 62% of victims diagnosed with bilateral diffuse pleural thickening were assessed as being disabled by less than 14%, receiving no compensation whatsoever.

Such statistics make the case for seeking effective and legitimate financial aid through making a claim for asbestosis or mesothelioma compensation through the courts a strong one (thereby requiring the claimant to engage the services of a specialist lawyer). Therefore, while it may be argued that the process by which asbestosis victims may apply for government benefits has become more efficient, it is still difficult for sufferers of some asbestos-related diseases to obtain state support for their condition.

⁴³<http://www.mesothelioma.uk.com/>

Asbestos in Schools

Michael Lees, member of the Asbestos in Schools Group

Most schools in the United Kingdom contain asbestos. Fourteen thousand were built between 1945 and 1975, and many others were refurbished using large quantities of chrysotile, amosite and crocidolite. Because Government policy has been to manage asbestos rather than remove it, most remains in the schools to this day. Much of the asbestos material has deteriorated and been damaged over the years, with the problem being exacerbated by a lack of funding which has meant that neither the school buildings nor the asbestos have been properly maintained.

In 1967 the Factories Inspectorate warned the Department for Education that very low levels of asbestos exposure could cause mesothelioma and that children were particularly at risk. But a warning issued to all schools was nullified by the asbestos industry which forced the Government to retreat, as they claimed their industry would be harmed. Thousands of tons of asbestos therefore continued to be used as the school building programme continued unabated.

In the 1980s, the schools that had been thrown up so rapidly were deteriorating and tests showed that dangerous levels of amosite were released into classrooms from just hitting a wall or slamming a door. The National Union of Teachers called for a national audit of all asbestos in schools, but their requests were refused, as was a request to carry out an assessment of the risks to staff and children. Confidential documents show that the Government refused because if people knew the extent of the problem they would panic and demand the removal of all asbestos – and that would be exceedingly expensive. Consequently, proportionate resources have not been allocated, people have not been trained and, as a recent report shows, many schools are not safely managing their asbestos. The inevitable result is that teachers, support staff and former pupils have died of mesothelioma, and are dying in increasing numbers.

But no longer are Government refusals to carry out the most fundamental principles of risk management acceptable. The concern amongst teachers, support staff, all their unions, asbestos consultants, doctors, solicitors, MPs, victims and the families of those who have died, has now brought them together in a united and powerful force – the Asbestos in Schools Group – to put pressure on the Government to make schools safe. The Group has raised the profile of the issue, and has had discussions with Ministers and the Prime Minister, who acknowledged that there is a serious problem, and one that his Government must address.

As a result, members of the Group are now working with the Department for Schools to improve asbestos management in schools. The Department has now accepted that there will be a policy of transparency and is assessing the standards of asbestos management in all schools; additionally, training is being developed for school staff. The pressure will be continued to ensure that a national audit is carried out to determine the extent of asbestos in schools and the risks to staff and children. The ultimate aim is the removal of all asbestos from schools; that cannot happen overnight, but the Asbestos in Schools Group will ensure that there will be a phased programme of removal, starting with the most dangerous materials. There is a dreadful legacy of asbestos in schools that only now is finally being addressed. We will keep the pressure on and we will ensure that in the future the occupants of our schools are safe from the dangers of asbestos.

Clydeside Action on Asbestos: a Brief History

Harry McCluskey, Secretary: Clydeside Action on Asbestos

In the late 1970s, a group of dedicated men and women who had lost family and friends to asbestos-related disease began to meet in Glasgow. Their common purpose was to address the lack of information and support available to people who had lost loved ones, or who were living with an asbestos related-disease as a result of their work in shipbuilding and heavy industries in Glasgow. The group began to hold weekly meetings in Glasgow City Chambers, and formulated

the founding principles of what was to become Clydeside Action on Asbestos (CAA), a pioneering charity, which during the 1980s, would become a widely acknowledged provider of expert advice and information, and a leading campaigner on behalf of those affected by asbestos-related disease. Its involvement in the success of the campaign to amend the legislation which allowed the recoupment of social security benefits from civil compensation established the reputation of the charity as both an influential and professional organization.

Since this early achievement, the charity has had considerable success in improving the rights of those with an asbestos-related disease through influencing and driving policy and legislation. Throughout 2006, as part of the UK Government's consultation in respect of "Improving Claims Handling for Mesothelioma Cases," Clydeside Action on Asbestos met with the Government Minister concerned, submitted written proposals to the Department of Work and Pensions and provided oral representations at meetings with the Department's policy team on ways to improve support for those diagnosed with mesothelioma. In September 2008, a written response was submitted to the Ministry of Justice. The consultation sought views on the decision of the House of Lords that pleural plaques was not a compensatable condition. The outcome of this consultation remains highly unsatisfactory, particularly given the legal right to pursue civil compensation for pleural plaques in Scotland. This right to compensation (in Scotland) was won following a high-profile campaign led by CAA, which gained widespread support throughout Scotland, resulting in the introduction of the Damages (Asbestos Related Condition) (Scotland) Act 2009.

Initially, the rights of people with mesothelioma and their families were raised with the Scottish parliament in 2002. A Petition was submitted to the Justice Committee which highlighted the unacceptable delays and denials made by defendants in arguing asbestos-related personal injury cases. Those with mesothelioma were dying before their cases could be heard, adding to the distress of their families. As a result, a fast-track procedure for mesothelioma cases was introduced, and the establishment of procedures to promote a more speedy resolution to asbestos-related personal injury cases was agreed.

However, the prompt resolution to mesothelioma compensation cases following the introduction of the new procedures resulted in the total value of damages awarded being lower. Generally, cases settled in life by the sufferer, attracted lower awards than those settled posthumously, because the latter could include an amount of damages for the immediate family's loss. Clydeside Action on Asbestos campaigned rigorously and proposed an amendment to the Damages (Scotland) Act 1976 to remedy the situation – to allow the sufferer to receive compensation in life and allow the immediate family to pursue damages following the death of the sufferer. The campaign resulted in the introduction of The Rights of Relatives to Damages (Mesothelioma) Scotland Act 2007.

In seeking to ensure that those suffering from asbestos-related diseases (and their families) have the resources and information to improve their quality of life, CAA provides a welfare rights service, a network of outreach support groups in Scotland, information about self-management techniques, an interactive website, a Mesothelioma Newsletter, distributed to lung cancer nurse specialists throughout the UK, a Junior Doctors Mesothelioma Handbook, and hosts conferences and Patient/Carer Information Days. We are also involved in a broad consultation with government in establishing an effective way of recording and tracing employers liability insurance.

The continuing rise in the incidence of mesothelioma and the incidence of this disease amongst women has led to more positive measures for obtaining social security benefits, the introduction of the Mesothelioma 2008 Compensation Scheme and positive legal changes in Scotland in relation to civil compensation. While the changes in policy and legislation are encouraging, CAA will continue to promote the rights of people with asbestos-related disease, and continue to work closely with the medical profession to highlight the ongoing need for government commitment to provide core funding for research into the treatment of mesothelioma.

Hazards Campaign

Hilda Palmer

Since its launch in 1987, the Hazards Campaign has made the total worldwide ban on asbestos a major campaigning objective and a key demand in the Hazards Charter.

Alan Dalton's pioneering work on asbestos has been continued through Hazards Magazine, the Construction Safety Campaign, Hazards Centres and Occupational Health Groups, trade unions and safety reps that make up the Hazards Campaign. Through the local Hazards Campaign organizations across the UK we support workers exposed to asbestos, and back safety reps and trade unions campaigning for stronger legislation and stricter enforcement to better protect workers at risk. Some Hazards Campaign organizations have set up specialized Asbestos Victims Support groups, and the campaign for justice for sufferers, especially those with mesothelioma, has been ably taken over by these groups.

In the late 80s and early 90s we organized National Hazards Campaign Week in June each year and focussed on asbestos hazards on one of those days. Asbestos also features heavily in the annual Hazards Campaign conferences for safety reps, and through workshops, meetings and plenary speeches we raise awareness of current issues and support for action. Through the European Work Hazards Network and Conferences, we keep asbestos on the European agenda.

Hazards Campaigner, Tommy Harte, from Birmingham Health and Safety Advice Centre, brought the Canadian "Day of Mourning for people killed at work" on 28th April, to this country and the Hazards Campaign adopted Workers Memorial Day (WMD) in 1992 for the first time, using the twin slogans "Remember the Dead" and "Fight for the Living." The Hazards Campaign has resourced and promoted local events and used WMD to raise the profile of the harm caused by all workplace hazards, especially asbestos, by remembering all those killed by asbestos and demanding action to stop other needless deaths. On International WMD in 2006, the theme was a "Global Ban on Asbestos"; this was followed by "Preventing Occupational Cancer" in 2007. The Greater Manchester Asbestos Victims Support Group was set up at a meeting on Workers Memorial Day, 1994. This year, following much campaigning, the UK government became the 20th country to officially recognize WMD.

Hazards Magazine, under editor Rory O'Neill, has fearlessly and effectively kept asbestos on the agenda, with rarely an issue that doesn't mention some aspect of asbestos nationally and internationally, and many issues with special asbestos features. In spring 1995, what should have been the 91st issue of Hazards was published, as Hazards No. 50. This was because in 1984 Hazards was sued for libel and made bankrupt after the publication of "Asbestos Killer Dust – a worker community guide: how to fight asbestos and its substitutes," written by Alan Dalton. Unfortunately, Hazards and Dalton were right and asbestos has proved to be the worst industrial killer of all time, while Dr Robert Murray, who won the libel case on a technicality, was shown to be an asbestos industry apologist. Sadly, Alan died in December 2003 but we award an "Alan" every year to a campaigning troublemaker most like him!

In 1998, Hazards issue 62, "Industrial Genocide," documented every step of the fight for a total ban on all types of asbestos in the UK, finally achieved in 1999, and the campaigns by Canada and others to portray asbestos as safe and healthy, which still go on.

The epidemic of exposure has moved on from manufacturing, lagging and dock work to maintenance and construction and threatens those working, being educated and living in the millions of buildings still containing asbestos, such as system built schools, hospitals and flats. Long-term but low-level exposure to asbestos fibres, especially for children, is a new wing of the campaign. We are active participants and supporters of the Asbestos in Schools Campaign based on the work of Michael Lees, but taken up by all the teaching unions, and now support-worker unions as well. Many teachers have died of mesothelioma, and we fear many children are at risk due to inadequate management of asbestos in schools.

Asbestos and the Trade Unions: the Role of UCATT

Alan Ritchie, General Secretary: UCATT*

Unions have been at the forefront of the campaign to ban asbestos and win justice for asbestos victims for decades. Thousands of people who have been exposed to asbestos have won compensation through the support of their union. Given the complexity of the law and the determination of the insurance industry to resist asbestos compensation claims, workers with asbestos diseases would have been very unlikely to have won any form of compensation, without the collective power of the union movement.

The high profile campaigns that unions have been involved in recently have pitted them against the insurance industry, which was happy to receive premiums but has fought tooth and nail to oppose paying compensation to workers.

The past decade has seen several of these cases. The most high profile for UCATT was the Fairchild case, where the union supported our member and his family all the way to the Law Lords. The insurers had resisted paying compensation as Mr Fairchild had worked in several companies where he had been exposed to asbestos and could not prove when he was exposed to the fibre from which he developed mesothelioma. If the insurers had been successful the majority of asbestos victims would have been unable to claim compensation. Thankfully, given the enormous costs UCATT would have faced otherwise, the Law Lords ruled in the union's favour.

This was followed by the Barker case where again the insurers tried to reduce compensation payments by arguing that insurers should only pay a proportion of compensation costs in claims where there was more than one insurer and some of the insurers had become insolvent. The case again went to the House of Lords but this time the Law Lords backed the insurers. However, unions were able to pressurise the Government to overturn the decision and the introduction of the Compensation Act 2006 resolved the matter.

In the last three years unions led by UCATT have been at the forefront of the campaign to overturn the ban on compensation for pleural plaques sufferers. UCATT were passionate about the campaign; we knew from experience that if liability could be established for pleural plaques, if the victim then developed mesothelioma they would be more likely to receive compensation during their lifetime. Without having previously established liability many mesothelioma victims die without receiving compensation.

The Government's recent announcement that it did not intend to overturn the ban in England and Wales was highly disappointing and UCATT will continue to campaign to reverse that decision. However, it should be remembered that the other simultaneous announcements on issues such as funding for a national centre for asbestos-related diseases, faster payments for mesothelioma sufferers and the commitment to create an Employers' Liability Insurance Bureau would not have occurred, without the union campaign on plaques.

Perhaps even more important have been union campaigns to have the use of asbestos banned. It is disconcerting to realize that the final ban on the use of asbestos only came into effect in the UK a decade ago. Despite concerns about the dangers of asbestos being first raised early in the 20th century.

For UCATT members the dangers of asbestos have not disappeared. Every day UCATT members are potentially coming into contact with asbestos, especially in maintenance work in residential properties.

Yet the law on notifying workers about the presence of asbestos before they start work remains imperfect. Last year, UCATT commissioned and published academic research on the matter. The report *As Safe As Houses?* written by Linda Waldman and Heather Williams, revealed that social landlords have no duty to manage the internal part of properties, and that when selling a

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private property there is no legal requirement to reveal the presence of asbestos. The report recommended that all social landlords should be made to maintain an up-to-date asbestos register for their properties to ensure that workers were not unwittingly exposed to asbestos.

Construction workers are now at the greatest risk of being exposed to asbestos and developing asbestos-related conditions. This is the reason why UCATT's advice is unambiguous: if you are not a specialist do not work with asbestos and if you think you might be working with asbestos stop work immediately and get it checked out.

For UCATT and unions in general the dangers of asbestos are not theoretical they sadly remain all too real.

Treatment of Asbestos-Related Diseases

Robin Rudd, Co-Director: Barts Mesothelioma Research
Co-Chair: London Lung Cancer Group

There is no effective treatment for asbestosis or benign pleural disease. Surgery is occasionally attempted when disability due to pleural thickening is severe but results are disappointing.

Twenty years ago mesothelioma was generally regarded as untreatable, other than by palliative measures to relieve pain and breathlessness. Over the last 10 years chemotherapy has been used increasingly and there have been randomized trials which have demonstrated that the addition of new agents to older agents significantly improves survival. Those which have been shown to improve survival when added to cisplatin are pemetrexed (Alimta) and raltitrexed (not currently marketed). Alimta is licensed for the treatment of mesothelioma on the basis of randomized trial evidence of prolongation of median survival in vitamin supplemented patients from 10 to 13 months. About 40% of mesotheliomas respond well to this treatment and patients whose tumours respond well may gain substantially more than 3 months whereas those whose tumours do not respond may gain nothing. Side effects of nausea and vomiting can be substantially mitigated by modern anti-sickness drugs and the treatment is reasonably well tolerated by most patients. After a prolonged delay by the National Institute for Clinical Excellence (NICE), pemetrexed became available for treatment of selected NHS patients with mesothelioma in 2008. Many respiratory physicians and oncologists in the UK still have a nihilistic attitude towards treatment of mesothelioma, however, and many patients with mesothelioma are either not offered chemotherapy at all, or are given a negative view of what it may achieve and at what cost in terms of side effects, virtually guaranteeing that they will "choose" not to receive it. New targeted agents are under investigation in mesothelioma but have so far proved disappointing by comparison with lung cancer and there is no agent of established efficacy.

Radical surgery for mesothelioma by extra-pleural pneumonectomy was used 20 years ago and is still used by some surgeons. Surgical techniques have improved and this radical operation involving resection of the lung, the pleura, the pericardium and the diaphragm, can be accomplished with around 5% operative mortality compared with 30% when the operation was first introduced. Descriptions of case series have identified prognostic factors affecting the outcome of surgery and it is clear that longer term survivors are those with early stage disease of the epithelioid sub-type. There is, however, no evidence from randomized trials that surgery prolongs survival compared with no surgery. A trial comparing surgery with no surgery in the UK (MARS trial) recently closed with only 50 patients randomized in three years, far too few for a definitive answer, but with preliminary results suggesting worse survival in those operated upon. The role of less radical surgery in the form of total pleurectomy (leaving the lung in place) is the subject of a new trial in the planning stage in the UK.

The efficacy of surgery for lung cancer has been slightly improved by the addition of post-operative chemotherapy which increases the proportion of long term survivors by around 5%. However, 20% to 50% of patients, depending upon how advanced the cancer is at the time of surgery, eventually die of recurrent disease. In the UK only around 10% of lung cancers present

at an operable stage and only a very small proportion of patients with inoperable cancers can be cured by radiotherapy and chemotherapy. Hyperfractionated schedules of radiotherapy improve survival rates significantly and new chemotherapy drugs significantly prolong survival with lower toxicity for patients with advanced lung cancer. There are also several new non-chemotherapy drugs, which target metabolic pathways which cancer cells depend upon more than do normal cells, which can prolong survival in advanced lung cancer. Unfortunately funding for new agents and for hyperfractionated radiotherapy is commonly not available on the NHS.

The Role of Asbestos Charities: the June Hancock Mesothelioma Research Fund

Kimberley Stubbs, Trustee of the June Hancock Mesothelioma Research Fund

In 1990, when the first issue of the British Asbestos Newsletter was published, my beloved Mum June Hancock was busy preparing for my wedding to Michael. Much to do, lots of laughter and lots of stress! Twenty years later, my chats with Mum are very different – they take place at her graveside, with my two young sons Andrew & Jonathon. Like their cousin Emily, they will never know their Grandma.

June Hancock died from mesothelioma in 1997, as her Mum, Maie Gelder did 15 years earlier.

2010 marks the 13th anniversary of the June Hancock Mesothelioma Research Fund (JHMRF), which was established in June's memory to continue the fight for justice for victims of asbestos. A registered charity (number 1121784), the Fund is one of only two charitable mesothelioma specific research funds in the UK. The lack of central Government funding for research into mesothelioma and other asbestos-related diseases is woeful, abhorrent and inexcusable; however, progress is being made – albeit very slowly – as evidenced by the current discussions surrounding a possible UK “virtual” centre of expertise for such diseases.

The reality remains, however, that without the work of asbestos charities like the June Hancock Mesothelioma Research Fund (www.junehancockfund.org.uk) and the Mick Knighton Mesothelioma Research Fund (www.mickknightonmesorf.org.uk) our patients, carers and their families – present and in the future – would not be benefitting from the innovative awareness raising and information sharing opportunities that have been wholly or partly funded by these charities. Examples would be the hugely successful and beneficial Mesothelioma UK ‘Patient & Carer Days’ and the MARS trial payment of patients’ expenses.

Financing independently reviewed and high quality mesothelioma-specific research projects is another vitally important element of the asbestos charities’ work.

The JHMRF is sponsoring groundbreaking research into how the immune system can be stimulated to fight mesothelioma. Dr Tabi and colleagues Drs Aled Clayton and Saly Al-Taei are investigating how the body's immune system manufactures special cells called T-cells in response to unwelcome pathogens. These are important agents in fighting disease because they latch onto markers (called antigens) on the surface of infected or abnormal cells, and destroy them. It is known that cancers evade the natural defences of the body but how they do this is not fully understood. Dr Tabi's work is investigating the way this happens in mesothelioma.

The JHMRF has also just announced a research award for Dr Stefan Marciniak at Cambridge University. His research will study the relationship between cell stress and mesothelioma. Dr Marciniak runs a research group at Cambridge University and is also a chest physician. Through his research it is hoped that an understanding of why the cancer develops will be achieved, which in turn will help scientists to create new ways to combat the disease.

Dr Kate Hill, founding Trustee of JHMRF commented: “The June Hancock Mesothelioma Research Fund is committed to supporting research that will find new ways to provide real

benefits to patients. We are convinced that Dr Marciniak's work has the potential to make a major contribution to current knowledge about mesothelioma and its treatment."

These research awards, and the awareness raising, and quality up-to-date information sharing activities of the asbestos charities are without doubt critically important in improving outcomes for innocent victims of asbestos disease.

The dictionary defines "charity" as "Love of fellow men, kindness, liberality to those in need or distress ...". The roles adopted by asbestos charities in the UK certainly live up to this definition. Yet much of that love and kindness has an extremely sad story of devastating loss behind it. Every penny has usually been raised by someone grieving the loss of a loved one from an asbestos-related disease. Going back to those wedding plans twenty years ago, love and kindness was at the heart of my family, running like a river through it. Mesothelioma devastated the Hancock family twice. From this, a Charity was born and – with a wonderfully special, dedicated, and hardworking team of Trustees – continues to strive for justice for asbestos victims today. The JHMRF has raised over £750,000. We, like all asbestos charities, realize that much more money is needed from central funds, but we hope in our small way that we can make a difference.

Remembering June's famously unrehearsed line at a Press Conference – "No matter how small you are you can fight, no matter how big you can lose" (on learning of success in her landmark legal battle for negligent environmental exposure to asbestos dust against multinational T&N) – shows just how much can be achieved if you have the will and the determination to seek justice.

Corporate Restructuring

Geoff Tweedale, Manchester Metropolitan University Business School

Asbestos corporations are strange beasts: they don't suffer and face pain like their victims. Yet the courts treat them as real people with a "personality" that enjoys limited liability. While asbestos victims often face death, corporations can be restructured, resurrected and given a new life and identity. Over the last 20 years, corporate restructurings and the exploitation of corporate law has been a constant theme in the British Asbestos Newsletter.

In the 20th century, the dominant UK company was Turner & Newall (T&N). Its negligence in industrial hygiene made it vulnerable to asbestos claims after the 1980s – but not for long. In 1997, T&N was sold to an American multinational engineering company, Federal-Mogul (F-M). Then in an unforeseen development, F-M filed for Chapter 11 bankruptcy in America. Litigation against T&N was suddenly frozen. Hundreds of claims from seriously ill former T&N workers were stalled until 2008, when a modest trust fund (paying 20 pence in the £ for successful claims) was set up for UK victims. T&N's and F-M's executives (and their attorneys) had managed within a decade to achieve the seemingly impossible: to take T&N's liabilities offshore and make most of them evaporate.

Ever since the 1980s – when it persuaded the English courts that it should not be held liable for claims against its Chicago subsidiary – Cape plc has been a past master at using the "corporate veil" to distance itself from liabilities incurred by its subsidiaries. Eventually in 1997, plaintiffs from Cape's South African mines succeeded in launching a class action suit against Cape in London. *Lubbe v. Cape Plc* eventually involved 7,500 plaintiffs and Cape agreed to settle their claims. However, initial promises of £21 million never materialised. In 2003, Cape agreed reluctantly to pay only a third of that total – and only that on condition that the plaintiffs' lawyers destroy their trial records. Meanwhile, to deal with UK claims, Cape succeeded in pushing through the courts a £40m compensation fund for future claims, even though Cape was still solvent. No one expects the money to cover all future liabilities, yet Cape is not legally obliged to top up the fund and admits future claims may not be paid.

Insurers, too, have not been slow to use corporate restructurings to limit or totally block liability. In 2001, a surprise announcement was made that one of the biggest asbestos insurers in the UK was bankrupt. Until then, asbestos coverage for the leading shipbuilding and steel companies had been provided by Iron Trades Holdings Ltd. In 1989, Iron Trades had been reconstructed to form Chester Street Insurance, into which Iron Trades dumped all its old asbestos policies, while spinning off and selling the profitable part of the business to an Australian group. In 2001, Chester Street declared voluntary insolvency and announced that it could no longer provide adequate compensation.

These are only a few of the exit strategies pursued by the asbestos companies, which have been chronicled in the Newsletter. It is difficult not to agree that, “[these] developments ... produce a picture of a society where corporate survival takes precedence over life and death issues, common law principles and human rights” British Asbestos Newsletter (Autumn 2006).

Concluding Thoughts

Laurie Kazan-Allen

That thousands of people in the UK die every year from avoidable asbestos-related diseases is both a personal tragedy and national disgrace. While measurable progress has been made for asbestos sufferers with regards to their legal rights, access to government benefits and treatment options, the fact of the matter is that there are no cures for the majority of asbestos-related diseases. It is encouraging that negotiations on the establishment of a national centre for research on asbestos-related diseases are progressing; however, nothing definitive has yet been achieved.

Reading through the BAN archives, I have been struck by the thousands of details and references. Can life be measured by footnotes and citations; considering the time spent in writing the newsletters, I guess the answer is yes. Thinking about the details, however, led me to reflect on the work put into every Parliamentary submission, asbestos agenda, demonstration and lawsuit. Without the attention to detail, submissions would be dismissed as flawed, agendas would overrun, demonstrations would fail and lawsuits would be lost. Progress in tackling the horrific consequences of our nation’s asbestos legacy has been made in small steps based on painstaking work by asbestos activists. There have been no quick fixes and no overnight successes.

Explaining how change is brought about in Britain, MP Michael Clapham, Chair of the Asbestos Sub-Group, has repeatedly told those attending Westminster meetings that: “Nothing happens in this House without pressure and nothing happens quickly.” This is most certainly true. What is also true is that the mobilization of the people on the asbestos front line, the victims, has played a huge part in the successes which have been achieved. Indeed, of all the underlying themes which have emerged over the last two decades, two of the most important relate directly to the part played by asbestos victims. No improvements have been made, compensation awarded or government benefits granted without a fight; in every instance, the battle to improve the plight of those suffering from asbestos-related diseases was led by the victims and their supporters.

Efforts made by civil society groups to solicit input from social partners on asbestos initiatives were rewarded by increased effectiveness, visibility and impact. When the Health and Safety Executive consulted asbestos victims’ groups and professional trade bodies such as the Institute of Plumbing over plans to raise asbestos awareness amongst

at-risk tradespeople, the result was “Asbestos is a Hidden Killer” (2008/09), an award winning campaign. The critical mass reached on the issue of asbestos in schools, which brought about high-level negotiations in 2009 and 2010 with government officials, including the Prime Minister, was the product of many years of consensus building amongst victims, trade unionists and campaigners. The relationships, personal as well as professional, which underpin the UK network of asbestos activists have been crucial in progressing the shared objectives of banning asbestos and achieving justice for the injured. The time-worn adage “united we stand, divided we fall” has been proved true on numerous occasions.

After more than a hundred years, the use of asbestos in the UK was finally prohibited in 1999; unfortunately, the damage done by decades of consumption could not be reversed by a simple Act of Parliament. Asbestos-related disease will be with us for decades to come; as long as asbestos remains in our infrastructure, new exposures will continue to put lives at risk. It is vital that society does not become complacent about the ongoing hazard posed by asbestos and that we do not lose impetus or expertise in the fight-back against the country’s number one occupational killer. As anyone who has ever lost a loved one to asbestos knows, the effects on human beings of exposure to asbestos are irreversible. With ever tighter budget constraints on governments, councils and corporations anticipated, it is likely that short-cuts will be taken that could compromise occupational and public health. Judging by developments over the last 20 years, it seems that every generation needs to be reminded of the asbestos danger; failure to do so could result in the asbestos epidemic taking even more lives in the decades to come.

Appendix

UK Asbestos Consumption*

Year	Tonnes
1950	107,606
1960	163,099
1970	149,895
1975	137,487
1980	93,526
1985	37,331
1990	15,731
1995	10,143
2000	268

*Source: U.S.G.S. Data Worldwide
Asbestos Supply and Consumption
Trends from 1900 through 2003.