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The legal implications of Asbestos exposure

Mesothelioma is a term everyone in the asbestos removal industry should know and understand. It is fatal illness caused by inhaling asbestos fibres. In the UK it will be responsible for the death of around 2000 people this year and an estimated 90,000 deaths in total. The symptoms can take a long time to appear - between 10 and 40 years after asbestos exposure, sometimes longer. Many people suffering the disease now were exposed to asbestos decades ago. Once mesothelioma has developed, symptoms can sometimes be eased but there is no cure. Life expectancy in many cases can be just a matter of months. For a person and their family in this terrible situation claiming compensation can help by providing financial security and bring some sense of acting against a grievous injustice.

Thompsons Solicitors pioneered the right to compensation for asbestos related disease. We won the first ever successful asbestos compensation claim in 1972. Over the last 5 years alone we have dealt with hundreds of claims for mesothelioma and achieved substantial compensation payments for our clients. Anyone diagnosed with mesothelioma should seek legal advice immediately. Generally, court proceedings must be commenced within 3 years from the diagnosis or the date of death. However because the life expectancy of most mesothelioma sufferers usually is no more than 12 - 18 months action must be taken urgently. We pursue claims using a specialist fast-track system in the Royal Courts of Justice which results in the majority of cases being brought to a successful conclusion in less than a year and some within 3 to 6 months.

For any member of a trade union, claiming compensation will be free through the union's legal assistance scheme. Many unions, including GMB, will support former or retired member's claims if they were a fully paid up member at the time the asbestos exposure occurred. The importance and value of trade union membership for anyone employed in the

asbestos removal industry should never be underestimated.

In most cases compensation can be claimed from the employer who was responsible for failing to take adequate precautions to prevent asbestos exposure. Many employers were at fault by failing to warn workers about the dangers of asbestos, take all reasonable steps to reduce the risk of asbestos exposure to the minimum possible or permitted level or by failing to provide suitable and properly maintained respiratory protection. These are not just problems of the past. Any company which allows the type of flagrant abuses of health and safety described in Mark Stanley's "horror stories" article or by Colin Seditas' article "how to show that you do not value your licence" in the March 2007 edition of this publication must expect to be held liable in the event that any of their employees subsequently develops asbestos related disease.

Even if the employer no longer exists it may still be possible to pursue a claim for someone with asbestos related disease if the insurers can be traced. Since 1972 it has been a compulsory obligation for every employer to hold a policy of unlimited insurance to cover claims for work related bodily injury or disease.

Any company trading without full employer's liability insurance, either now or in the past, will itself face paying the bill for damages and legal costs to any worker who develops mesothelioma if they were negligent in allowing the worker to inhale asbestos.

The amount of compensation payable in mesothelioma claims varies in each case and is dependent upon a number of factors including:-

- > Pain and suffering
- > Disability
- > Past and future financial losses
- > Care costs
- > Other expenses.

Mesothelioma claims often result in compensation payments of more than £100,000.

In Scotland the law recognises that the heavy emotional burden of losing a close relative to mesothelioma is borne by the whole family. Compensation for bereavement and the loss of companionship of a family member is paid to husbands, wives, brothers, sisters, sons and daughters of the deceased. Bereavement awards in Scotland are up to £30,000 for widows whilst children and siblings of the deceased receive between £5,000 to £10,000 each.

In England and Wales the law is very different. Only the spouse of the deceased is entitled to a bereavement award and the amount is fixed at £10,000. The result is that in mesothelioma cases families in England and Wales receive tens of thousands of pounds less in compensation than an equivalent family in Scotland.

The law in Scotland also allows mesothelioma sufferers to settle their claim during lifetime while preserving their relative's right to claim bereavement compensation after death. However, in England and Wales a mesothelioma sufferer is faced with the cruel choice of deciding whether to settle their claim during lifetime, knowing that if they do it will deprive their family of bringing a claim which may have a higher value after death.

Thompsons Solicitors has launched a campaign calling for a change in the law on bereavement compensation in England and Wales. You can support the campaign by signing the online petition at www.thompsons.law.co.uk.

Article by Ian McFall
Head of Asbestos Litigation at
Thompsons Solicitors



Independent Asbestos News

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Welcome to the July/August 2007 edition of the Independent Asbestos Newsletter published by

AMAC - The Asbestos Management Auditing Company

Contact: news@amac.org.uk

UNITED KINGDOM ASBESTOS TRAINING ASSOCIATION

Regulating Asbestos Industry Training

Following on from the excellent work carried out by the Asbestos Training Providers Working Group, an association is to be formed for Asbestos Training Providers, the objectives of the association are:

- To promote members best interests at all times.
- To provide a central representative body to consult with Government departments and agencies, European agencies, and all other relevant legislative organisations.
- To be a technical information centre, providing information, guidance and advice to members on all legal and regulatory developments and requirements relevant to asbestos industry training.
- To provide an industry forum for the exchange of non-competitive industry information and training standards.
- To develop and achieve the highest possible training standards for implementation across the whole of the asbestos training industry.
- To ensure members are delivering the highest quality training standards by means of member auditing and assessment or any other means as directed by the executive committee.

The new association will be recognised by the HSE and will have the full backing and support of the HSE / ALU and would represent all of the asbestos training providers currently delivering all types of

asbestos training in the UK. (including basic asbestos awareness training).

The current competent training providers list which presently appears on the HSE website will be managed by the association, and would appear on the training association's website, potential clients searching the HSE website will be directed to the training association's website via a link from the HSE website

section relevant to Asbestos Training Provision.

HSE inspectors assessing contractors for licence renewal will expect contractors to have been trained by a member of the training association if not a contractor may be asked to prove that training has been delivered to its employees in line with the requirements of chapter 4 of HSG 247 the licensed contractors guide.

An Important Extract from the HSE Website

All asbestos removal contractors should note that the HSE / ALU view adequate training as vital and as such will support the above initiative robustly, here is a verbatim paragraph extract from the HSE asbestos web page relevant to training.

INSPECTED BY ENFORCING AUTHORITY INSPECTORS / OFFICERS.

Not using a Training Provider who is recognised by the HSE / ALU inspectors could lead to a delay in having your Licence renewed.

LICENCE HOLDERS WHO DO NOT USE A LISTED TRAINING PROVIDER WILL BE REQUIRED TO VALIDATE THAT THEIR EMPLOYEES TRAINING COMPLIES WITH THE CONTROL OF ASBESTOS REGULATIONS AND THE SPECIFIC TRAINING GUIDANCE REFERRED TO IN CHAPTER 4 OF THE ASBESTOS LICENSED CONTRACTORS GUIDE (HSG 247) WHEN

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HSE Duty to Manage

NDFC Prime Safety

IAG Independent Asbestos Group

Industry Update

Thompsons Solicitors

Next edition: **Sept/Oct 2007**

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To access AMAC services contact us at info@amac.org.uk or call: 01325 460112

A Duty to manage and working with asbestos

The bringing into force of a 'duty to manage' asbestos by HSE in May 2004 was intended to provide a new level of protection for those within the building related trades with the aim that many thousands of lives will be saved through the effective operation of the regulation. However, it is important that maintenance and repair workers continue to remain aware of the potential of exposure to asbestos fibres, and request details of asbestos materials before starting work.

In many cases this information will be available, but where it isn't there will be a need for an assessment of whether asbestos is present to be undertaken before work is started, or presume that asbestos is present and work accordingly. It needs to be borne in mind that as the regulation does not apply to domestic premises, other than in common areas, it is most unlikely that there will be a prepared record of asbestos.

A key issue in protecting against exposure to asbestos is ensuring that workers have received appropriate training. Regulation 10 of the Control of Asbestos Regulations 2006 places a duty on employers to ensure that adequate information, instruction and training is given to those employees who are liable to be exposed

Regulatory Controls for Non-domestic Premises



to asbestos, or those who supervise such employees. The level of detail and the range of topics covered are specified in the regulations and need to be relevant to the job, together with the potential or actual risk of exposure to asbestos.

Those liable to be exposed to asbestos must be aware of:

- i. The significant findings of the risk assessment
- ii. The risks to health from asbestos,
- iii. The precautions which should be observed, and
- iv. The relevant control limit

Individual training needs of employees must be kept under constant review, with refresher training being given at least once a year. The Approved Code of Practice 'Work with materials containing asbestos (L143) is available from HSE Books.

Duty to Manage

The following offers a summary of the duties placed on dutyholders i.e. those with responsibility for the maintenance and/or repair of non-domestic premises, under regulation 4 of the Control of Asbestos Regulations 2006:

- > Take reasonable steps to find asbestos in the premises and to assess its condition;
- > Presume that materials contain asbestos unless there is strong evidence that they do not;
- > Prepare a record of the location and condition of asbestos-containing materials and assess the risk from them;
- > Prepare and implement a plan to manage those risks; and provide information on the location and condition of the asbestos containing materials to anyone who is liable to disturb it.

The NFDC...working with the Asbestos and Construction Industries

The NFDC (National Federation of Demolition Contractors) are clearly identified today as the voice of the Demolition Industry. Demolition has changed rapidly over the years, not least the last two years. The NFDC Head Office at Resurgam House, Staines is administrated by Mr Howard Button the NFDC national secretary, coming from a long established Demolition family business Howard is heavily and passionately involved within demolition training both standard and NVQ to the industry.

Training continues to be the most important element of Demolition and Asbestos Removal, with a percentage of NFDC members holding an Asbestos Removal Licence the NFDC promotes the highest quality and standard of training for their members. As most readers will be aware Asbestos Removal Operatives require professional training to enable them to demonstrate their competency within the workplace and on-site.

Demolition is in itself a "Unique" and highly skilled occupation which the majority of construction companies are unable to carry out. Therefore the initial work to a contract

must be awarded to a professional and recognised demolition contractor. The NFDC provide a comprehensive member data base within the website and many other features of benefit to the industry and related industries. www.demolition-nfdc.com

In today's high profile world of Asbestos Removal, before commencing any construction contract under CDM Regulations 2007 require an Asbestos Survey to be carried out, Asbestos findings to be removed under HSE Regulations and only then can demolition work commence. When the Asbestos Removal and Demolition work is completed construction work can commence.

Prime Safety Group has been appointed one of the Asbestos Training Providers for the NFDC. Prime Safety is represented and contributes to the ATPWG (Asbestos Training Providers Working Group) who are working towards raising standards within the industry. Prime Safety offers a multi discipline of training & H&S training across three industry sectors, Construction, Asbestos Removal and Demolition. In all areas of training the highest of

standards are met and asbestos removal training complies to the HSE/ATPG Code of Conduct. Our services stretch across the UK and Europe.

Prime Safety work in co-operation with Northern Safety Circa cnm training solutions

www.primesafety.com
Editorial contributed by Mr Tony Tynan
www.demolition-nfdc.com



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"what you don't know will always hurt you"
- The 1st law of blissful ignorance

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The Independent Asbestos Group ...Not a Trade Association

Currently there are approximately 700 Asbestos Licence Holders in the UK and there are only approximately 40% (250 - 300) of those licence holders who are members of either of the two asbestos contractor's trade associations, membership of either trade association should provide an asbestos removal contractor with the help and assistance in complying with the ever more complex asbestos legislation requirements.

Running an asbestos removal business is not easy and is very often a lonely, thankless task. Contractors requiring operational help or advice running their operations should be able to access such important information and help from its trade association along with regular updates regarding industry developments, innovations and best practices.

A major HSE / ALU requirement for asbestos licence holders is that they constantly review and endeavour to improve their company performance and procedures. The simplest way to achieve this requirement is by commissioning independent audits designed to review the overall company performance from managerial level through company operations to site level. This facility should be freely and readily available from a contractor's trade association, associated costs being covered by their trade association membership fee.

The 60% of licence holders who have chosen not to join a trade association for their own reasons still have the need to be able to access the same information and

services as their counterparts who are trade association members.

There has not been a third alternative available up until now, however, a group of like minded companies has started to develop the INDEPENDENT ASBESTOS GROUP (I.A.G.) this is NOT A TRADE ASSOCIATION (and never will be!!) It is a varied group of companies, who operate within the asbestos industry, who are interested in developing and raising their company operating standards and procedures. The group is FREE to join and is enjoying a steady growth in the number of companies who want access to the important free services on offer to the group.

I.A.G. members all have access to up to date information regarding innovations and new legislation developments within the asbestos industry, in addition to receiving information I.A.G. members will be regularly consulted for their input into improving and developing safer and better working standards for the industry. If I.A.G. members require help with management reviews, independent auditing or assistance with licensing issues, (such as a reduction in their licence term or additional licensing conditions) these services can be supplied at agreed costs which will prove very competitive and effective when compared with trade association fees.

Generally the aims and objectives of I.A.G. can be summarised as follows:

To instigate and support initiatives which

are designed to improve standards, safe working and best practice within the asbestos industry.

To provide up to date legislation information to companies, or other bodies who have chosen not to be members of a Trade Association.

To share experiences and provide practical solutions relative to the common problems experienced by companies who are involved in the industry.

To provide an opportunity for companies or individuals to have a meaningful voice and contribute opinions or ideas regarding industry issues.

To provide a bi-monthly communiqué to keep the group up to date with legislation changes, industry news and innovation.

In addition to the aims and objectives of the group, related benefits include potential insurance savings, potential training cost savings provided by approved training providers and potential savings related to independent auditing and management assistance.

To access the services of the Independent Asbestos Group e-mail christine@amac.org.uk to register and receive further information.



INDUSTRY UPDATE

Sabre Phantom Respirator Flow Tests / Checker:

Feedback from the Asbestos Training Industry has highlighted continuing problems encountered by Operatives when performing "Flow Tests" on Sabre Phantom Respirators.

Scott Health & Safety recently changed the size of the filter inlet to resolve the problem of pre-filters falling off. The result being that the "Old" flow meter did not fit the new, bigger inlet on the newer filters. Subsequently Scott Health and Safety introduced the current recommended Flow Checker.

It is imperative that all Operatives within the industry using Sabre Phantom Respirators are provided with the correct equipment to ensure their safety and your licence.

To operate within the ever changing legislation that has existed and will continue to exist in the Asbestos Removal Industry, all contractors should undergo voluntary independent auditing on a regular basis.

auditing will keep you moving
prohibition will stop you moving

AMAC independent auditing...keeping you moving

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