

Airborne

Asbestos awareness and advice newsletter
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roydswithyking.com/asbestos

Widow of Swansea welder wins High Court battle: Lloyd v Humphreys & Glasgow [2015] EWHC 525 (QB)

We recently settled the claim for the widow of a Swansea welder who died from mesothelioma in 2012. With our help Mrs Lloyd won a significant High Court ruling with important implications for other victims of industrial diseases.

In a decisive judgment, Her Honour Justice Laing allowed the claim Mrs Lloyd brought on behalf of her late husband Cliff to proceed, even though it was beyond the normal three year time limit for bringing such claims and despite the fact that there had already been a previous "full and final" settlement against three of his former employers.

Cliff Lloyd developed mesothelioma many years after working in South Wales, including at Port Talbot, Swansea. His widow made the claim against his former employers Humphreys & Glasgow, with the help of Royds Withy King's industrial diseases expert Helen Childs.

Another specialist firm had considered the case and turned it down, saying that it was an abuse of process to allow it to proceed, and in any event it was out of time.

Mr Lloyd's claim was previously handled by another firm of solicitors who settled for full and final damages against three of his previous employers just months before he died from mesothelioma. A further significant employer was not included in the settlement. They were in the middle of a long-running litigation about which insurer/employer should deal with such cases, and were not dealing with any asbestos-related claims in the meantime. The High Court judgment confirmed that individuals could pursue claims against defendants who were missing from previous settlements.

Following the High Court judgment, Humphreys & Glasgow's lawyers continued to dispute the case, but admitted liability several months later. The claim has now settled for a substantial six figure sum.

Helen Childs, head of our Industrial Diseases team, who pursued the claim on behalf of the Lloyds, said: *"This judgment is very good news for Mrs Lloyd and potentially for hundreds of other families. The case was recognised as being of great importance and will impact significantly on the way mesothelioma claims are handled. Anyone who develops mesothelioma or lung cancer should seek specialist legal*



Clifford and Julien Lloyd

advice. Particularly anyone who develops mesothelioma or lung cancer having settled a previous claim against some but not all of their prior employers."

Speaking after the settlement, Mrs Lloyd said: "We are relieved that we were at last able to see justice done. Cliff was a fit man until industry ruined him. He lost his hearing and then he lost his life all through working in dreadful conditions. He was a grafter. He was a loving, hands on, friendly man who loved



Mrs Julien Lloyd releases doves during the Action Mesothelioma Day ceremony, Swindon, July 2016

to make toys for his children, nephews and grandchildren. We had such plans for our retirement. I know what I have lost, his companionship, his love, my best pal and my gentle husband of 55 years, a father and grandfather who we all miss dreadfully. Cliff suffered terribly and died the most horrible and painful death. I would hate to think of other people having to go through what we went through."

Since settling this case, Helen Childs has also concluded another fatal mesothelioma case for almost £100,000 following a full and final settlement for pleural plaques against some but not all previous employers many years before.

The Clifford Lloyd Education Fund

Mr Lloyd had a thirst for knowledge and told us that if life had dealt him a different hand of cards he would have loved to have been a teacher. As a tribute to him, we have established the Clifford Lloyd Education Fund and are offering discretionary £250 bursaries to professionals involved in the care and treatment of patients with mesothelioma and lung cancer. The bursaries are to assist with the

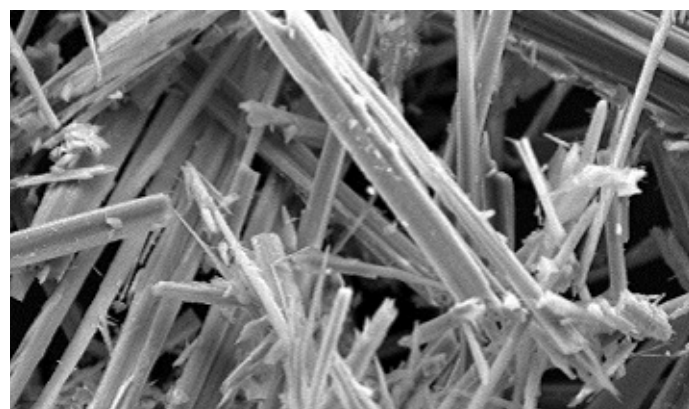
costs of attending the National Lung Cancer Forum for Nurses and British Thoracic Oncology Group annual conferences.

To apply for a Clifford Lloyd bursary, please visit www.roydswithyking.com/asbestos/bursaries

Terrorism: The asbestos deaths caused decades later

During the 20th century, the developing world became fascinated with an apparently revolutionary material. It was light, strong, flame resistant and an exceptional insulator that could be easily mixed or woven into other materials. But little did we know that one day asbestos was to become a time bomb that would affect future generations in a way that few could have imagined.

Exposure to asbestos dust and fibres can cause a



number of debilitating and fatal illnesses including mesothelioma and lung cancer. Today, the dangers associated with asbestos exposure are well known and there are a number of strict regulations for the safe handling and removal of asbestos to prevent exposure. Nevertheless, there is still a significant risk posed if asbestos is disturbed unknowingly.

Who is at risk?

Mesothelioma can be caused by inhaling even small levels of asbestos dust. This can make pinpointing the source of the disease difficult. More and more frequently, we are seeing people who have developed mesothelioma, yet have never worked with asbestos. As recently as 2015, however, a new and alarming source of potential exposure has emerged that very few would have considered; that of terrorism.

Manchester 1996

The media has in recent months reported the upsetting case of Stuart Packard who sadly died of mesothelioma at the age of 40 in December

2015. Mr Packard was called out as an emergency security guard following the IRA terrorist attack in June 1996 when the Arndale Shopping Centre in the heart of Manchester was bombed.

The attack itself and the subsequent demolition work led to clouds of dust being released into the atmosphere. Many of those buildings contained huge amounts of asbestos. The terrorist attack itself did not actually cause any deaths, but almost two decades later, Mr Packard, the first fatality of the 1996 Arndale bomb, developed mesothelioma from which he died.

The potential for further deaths of this nature is unthinkable. Many thousands of people could potentially be affected. Whether the IRA terrorist attack in 1996 will take any more lives remains to be seen.

Brighton 1984

Prior to the Manchester IRA bombing, on 12 October 1984 The Grand Hotel in Brighton was also the subject of a terrorist attack. The attack took place during the Conservative Party Conference and was aimed at Margaret Thatcher and her Cabinet. It tore the hotel apart. At the time 5 people lost their lives and 34 more were injured. Asbestos dust and debris from the hotel covered the sea front at Brighton.



One of the first men to the scene was Jonathan Woods, an anti-terror officer from the Metropolitan Police Force. He too developed mesothelioma from which he died in 2015. In addition, further members of the emergency services including police, paramedics and firefighters were on the scene and therefore potentially exposed to asbestos at the time.

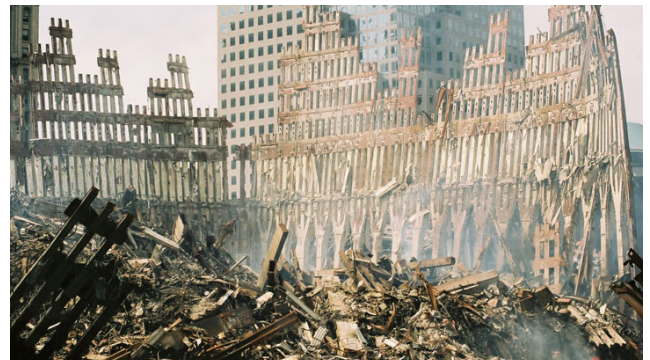
Sussex Police Force have recently written to many police officers and firefighters involved in the emergency and rescue operations, and Conservative Party members who were staying at the hotel at the time to warn them that they may have been exposed to asbestos. Again, due to the

lag time from exposure and onset of mesothelioma we do not know how many further lives this terrorist attack will take.

New York 2001

This problem is not just something which will only affect the UK. Everyone remembers the terrorist attack on the World Trade Centre on 11 September 2001. The Twin Towers were built in the 1960s and it is estimated that 400 tonnes of asbestos was used in its construction. An advert publicised the importance of asbestos in the construction of the Twin Towers stating:

"When the fire alarm went off, it took two hours to evacuate New York's World Trade Centre. That is why today's buildings have asbestos cement walls and even floors containing asbestos. Asbestos. We could not live the way we do without it. When life depends on it you use asbestos."



No one could have imagined that four decades later the Twin Towers would collapse, unleashing a cloud of carcinogenic dust over lower Manhattan. 3,000 people died at the time, but survivors of the attack are now left to ponder the awful thought that one day they may develop mesothelioma linked to terrorism. There were 30,000 first responders to the scene including firefighters, police officers, paramedics and building workers. Thousands of residents living and working nearby could also have been affected.

Can we do anything to prevent asbestos deaths due to terrorism?

During all of the attacks mentioned in this article, the emergency services and members of the public courageously waded in to try and save lives without thinking of their own. They were selfless in their efforts to help others and in doing so have sadly put their own health at risk.

Unfortunately, due to the random nature of terrorism there is probably little that can be done

to prevent asbestos being emitted during attacks. If asbestos was removed from all public buildings then further loss of life due to unpredictable exposure could be avoided, but calls for this are unlikely to be heeded in the short term at least.

At an Asbestos Sub-Committee meeting at the House of Commons in 2015, it was proposed that a mandatory requirement be placed on employers and owners of public premises to identify and remove asbestos from buildings by 2035. Whether this is realistic given the likely scale and costs involved is questionable. Indeed, perhaps we should be concerned about the potential dilution of asbestos health and safety regulations when the UK leaves the European Union.

However, for members of the public who bravely help and bystanders in close vicinity of an attack, there is regrettably little that can be done to reverse past, or prevent future exposure. Only time will tell as to the extent of suffering caused by these acts of terrorism.

Action Mesothelioma Day 2016

On Action Mesothelioma Day we organised a service in Swindon, a town which has been disproportionately affected by mesothelioma due to its industrial heritage, in particular the railway works which has left a legacy of asbestos disease.

Patients, families and friends of victims as well as the Mayor of Swindon, Councillor Eric Shaw and representatives from Prospect Hospice and other local charities attended the ceremony in the Mesothelioma Memorial Garden in Queen's Park, to remember those who have lost their lives to mesothelioma and to raise awareness of the devastating consequences of asbestos exposure.

Julien Lloyd, the widow of Cliff Lloyd, who died from mesothelioma in 2012 aged 77 after working for more than 20 years as a welder, released white doves and Sandra Barnett, who lost her husband Rex, the former mayor of Swindon to mesothelioma, laid a wreath. Dr Suzanne Bartington attended in honour of her late father Geoffrey who died from mesothelioma in 2008. She spoke at the ceremony and stressed the importance of raising awareness of mesothelioma.



Pictured (left to right): Helen Childs of Royds Withy King, Mrs Kay Ewing, Mrs Sandra Barnett who lost husband Rex Barnett (ex Mayor of Swindon) to mesothelioma in 2013, Dr Suzanne Bartington who lost her father to mesothelioma, mesothelioma patient Mr Wesley Ewing.

Free asbestos drop in clinic and Swindon Asbestos Support Group

In conjunction with our event on Action Mesothelioma Day we launched a free monthly legal drop-in clinic and support group. Both are held on the first Wednesday of every month. The drop in clinic is held between 9am and 2pm at our Swindon office - 34 Regent Circus, Swindon, SN1 1PY, and the support group at Bake'n'Roll Café, Unit 2, Empire House, Groundwell Road, Swindon, SN1 2LT from 2pm until 4pm. If you or your family have been affected by asbestos disease, please join us at the support group for tea, cake and a friendly chat and advice.



Recent settlement news

£230,000 compensation for family of former Swindon Railways apprentice

In September 2016, our specialist asbestos disease solicitor, Jennifer Seavor, concluded a claim for Mr M who had been diagnosed with mesothelioma in January 2016.

Mr M was exposed to asbestos in the 1960s during his apprenticeship as a fitter, turner and erector at Swindon Railway Works. Mr M worked on brake mechanisms, chipping off old asbestos brake linings, chamfering new linings and riveting them in to place. He also worked alongside his colleagues who were mixing up and applying asbestos lagging to pipes in steam locomotives and cutting and drilling asbestos insulation boards to line train cabins.

Mr M was clear that if possible, he wanted to settle his claim during his lifetime, even though his claim was more valuable if settled after his lifetime in his wife's name. We were able to negotiate settlement of his claim during his lifetime but for close to what the value would have been if settled on a fatal basis. Included in the compensation award was a payment of £14,500 for Prospect Hospice, which had provided palliative care and support to Mr M throughout the course of his illness. Sadly Mr M passed away days after the settlement offer was negotiated. While no amount of money can compensate Mr M's family for their loss, Mr M died in the knowledge that his wife and family would be financially provided for.

Claim for former ship builder / metal worker settles for in excess of £200,000 within nine months of instruction

Mr T was 71 years old when he was diagnosed with mesothelioma in January 2016.

He described extensive exposure to asbestos during the course of his apprenticeship with Vickers Armstrong as well as during subsequent building work, including the Department of Work and Pensions building in Long Benton in Newcastle.

Mr T was a single man with no dependants, so it was imperative that his claim be settled during his lifetime, or his family would have missed out on any compensation for the income he would have received during the lost years. In Mr T's case this would have resulted in a reduction in the value of the claim of at least £80,000.

This was one of the rare cases where we felt it necessary to obtain a nursing care report to deal with Mr T's care needs. As he lived on his own, it was likely he would need commercial care as time went on.

Court proceedings were issued, and at the first hearing the defendants conceded liability. They proposed obtaining their own medical evidence, and we made an offer in settlement to them in early October 2016. This was accepted in late October and the case settled for in excess of £200,000.

Secondary exposure mesothelioma claim settles for over £400,000

Our Industrial Diseases team secured over £400,000 in settlement for a secondary exposure mesothelioma claim for the wife of former Westbury Cement manager within 13 months and just days before trial.



Mrs R was married to a manager of Westbury Cement works in the 1960s. Sadly, he died of cancer in the 1980s. Mrs R never worked with asbestos herself, so when she became unwell late in 2014 and was diagnosed with mesothelioma just before Christmas, she was shocked and devastated.

She instructed Helen Childs in our Industrial Diseases team in January 2015, and described how her husband had worked as a manager at Westbury for several years. Westbury were huge cement works, which have recently been closed down.

Mrs R's brother had also worked in the cement industry, so he was able to describe how asbestos was used in the kilns during the cement manufacturing process, and in the fabric of the cement works. Mrs R was able to describe how her husband was often dusty when he came home from work, and how she would shake the dust from his work clothes and launder them.

We were also able to establish that the use of asbestos was widespread at Westbury, from evidence given in other claims we have pursued for workers there.

Mrs R was working when she became unwell, in a job she described as her vocation, and could no longer continue. She was no longer able to maintain her garden or house or care for her husband. Their lives were turned upside down by her diagnosis and its implications.

Court proceedings were commenced in the specialist asbestos claims division of the High Court in London in March 2015, and medical and care evidence was obtained. The claim was served on the defendants in June. The specialist asbestos claims judges require defendants to give good reason why judgment should not be entered against them. In this case the defendants admitted responsibility for Mrs R's illness shortly before the court was due to consider the evidence in August 2015. A timetable was put in place for an assessment of the compensation due to Mrs R, and it was listed for a final hearing in March 2016.

Mrs R faced a dilemma about whether to settle her claim personally during her lifetime, or for the executors of her estate to settle it after her death. In common with many in her situation, the claim for the estate was significantly more valuable. Mrs R decided she wished to settle the claim personally, even if it resulted in a lower settlement.

With less than a week to go to the trial, the defendants made a substantial offer in settlement and the claim was concluded just over a year after our solicitors were first instructed.

Multi-defendant asbestosis case settles on a provisional damages basis

Mr L was diagnosed with asbestosis in 2013. He had spent several decades working as an industrial pipefitter for Matthew Hall Ltd, but had also worked for more than ten other pipefitting firms for shorter periods. When an individual develops asbestosis, it is important that all their previous employers are included in a settlement - or the settlement is reduced. In Mr L's case we were able to track down 95% of his previous employers or their insurers, and proceedings were commenced against more than ten defendants. The claims have been settled for £18,000, and Mr L has a provisional damages order. This means that if he goes on to develop a more serious asbestos related condition he can immediately seek further compensation.

Is your patient's lung cancer connected to asbestos exposure?

It is well known that mesothelioma, an aggressive and incurable form of lung cancer, is almost always connected to exposure to asbestos. Mesothelioma can develop after even low levels of exposure to asbestos. However, there are a number of other types of lung cancer where the connection to asbestos is not as clear cut. There are around 2,500 recorded deaths due to mesothelioma in England and Wales each year, and research suggests that there are probably about as many asbestos-related lung cancer deaths. However, lung cancer caused by asbestos exposure/industrial disease is often not identified and goes unrecorded.

We sometimes hear from our clients who have been diagnosed with lung cancer that they have not been asked about their asbestos exposure, in particular if they have smoked. As there are no specific clinical signs which indicate that a lung cancer is connected to asbestos exposure, how can you identify when your patient's lung cancer may be connected to asbestos?

What do you need to know?

1. All types of lung cancer can be caused by asbestos.

It is important to remember that all types of lung cancer can be caused by asbestos exposure. The four main types are squamous cell carcinoma, adenocarcinoma, small cell carcinoma and large cell carcinoma. There is no difference between a lung cancer caused by asbestos exposure and a lung cancer

which, for example, may be naturally occurring or caused by another carcinogen such as tobacco smoke. The signs and symptoms are exactly the same.

2. You do not need to have been diagnosed with asbestosis.

It is not necessary to have been diagnosed with asbestosis (fibrosis in the lungs caused by asbestos exposure) or any other asbestos-related disease for your patient's lung cancer to be related to their asbestos exposure.

3. There is a time lag between exposure to asbestos and diagnosis.

There is a minimum period between exposure to asbestos and the development of a lung cancer. The minimum lag time is 10 years from your patient's first exposure to asbestos to the development of a lung cancer, so any exposure your patient may have had in the 10 years prior to diagnosis will not have caused or contributed to the development of their cancer.

4. Lung cancer can be related to asbestos even if your patient is a smoker.

Importantly, both smoking and asbestos can contribute to the development of lung cancer. If your patient is a smoker or was a smoker in the past and has also been heavily exposed to asbestos, they are at an even greater risk of developing lung cancer. The way tobacco smoke and asbestos work together increases the risk of development of lung cancer.

5. We need to show heavy exposure to asbestos to link it to lung cancer.

The '*Helsinki Criteria*' helps us to identify when a lung cancer can be linked to asbestos exposure. Your patient will have to show that he/she was exposed to a certain level of asbestos during their working life or have a certain level of asbestos fibres in their lungs; however, obviously the latter cannot be identified during your patient's lifetime. Lung cancer is a dose-related disease meaning that the higher level of asbestos exposure, the greater the risk that your patient develops lung cancer. To attribute lung cancer to your asbestos inhalation the criteria requires:

a. An estimated cumulative exposure to asbestos of:

- 25 fibre/ml years of exposure to blue and brown asbestos;
- 40 fibre/ml years of exposure to a mixture of blue, brown and white asbestos; or
- 100 fibre/ml years of exposure to only white asbestos.

These are engineering terms. To assess whether your patient's exposure has met this level, consideration has to be given to the type of asbestos your patient was exposed to, the likely concentration of asbestos dust in the air from the various tasks he/she performed, and the duration and frequency with which he/she performed the tasks. A specialist solicitor may be able to give an opinion. However, input from an expert engineer may be required to give an assessment. A level of 25 fibre/ml years is usually met when a person has had either one year of heavy exposure, i.e. using asbestos every day for a year, or 5-10 years of moderate exposure. Remember that even if your patient was not always using asbestos or asbestos-containing materials themselves, others working near them may have been, exposing them to dust.

b. Alternatively, if a post mortem examination is undertaken following your patient's death, lung tissue samples can be taken, and asbestos fibre counts done to establish how many asbestos fibres were in your patient's lungs. If the tests show a certain number of asbestos fibres, then this can also prove that your patient's lung cancer has developed as a result of their asbestos exposure. However, fibre counts can sometimes give false negative results due to a number of factors. In particular, white asbestos breaks down and is not retained in the lungs over long periods of time. Through a process called clearance, blue and brown asbestos fibres are regularly clearing from the lungs, blue fibres every 6-7 years and brown fibres every 20 years. This means that as the years pass from their asbestos exposure, the number of fibres in your patient's lungs is gradually reducing.

As you will appreciate from this article, it is not easy to say whether a person's asbestos exposure has caused or contributed to the development of their lung cancer. However, certainly if your patient has had heavy and/or prolonged exposure to asbestos, then it is likely to have been causative. We recommend that if your patient has had asbestos exposure, that they should be advised to seek specialist legal advice regarding the possibility of whether they may be able to pursue a claim for compensation.

Meet our Industrial Diseases team

"The firm has been magnificent, totally professional and caring with our situation. Genuine people who are there to help."

Royds Withy King client



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