

# ASBESTOS UPDATE

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## CLYDEBANK SEMINAR ASKS FOR REVERSAL OF FAIRCHILD

It was in February 2001 that legal precedents were reversed in the case of Arthur Fairchild. Mr Justice Curtis let both defendants off the hook declaring that he was unable to apportion liability between them for the occupational asbestos exposure experienced by the late Mr Fairchild. This legal ruling was astonishingly upheld by three high court judges in December 2001. The judge said that it would be wrong to find that both companies had contributed to the disease, since it was equally probable that only one of them did. It could not be determined when ‘a’ fibre had triggered off the initiating causes of the malignancy, or whether one fibre or more than one had initiated the disease.

Fairchild has been represented through the Scottish Courts via a decision by Lord Carloway who allowed Scottish cases to be amended to include this decision. Lord Carloway has stated however that the Scottish courts may not follow Fairchild

This judgement and the subsequent Carloway decision has put our members (mesothelioma sufferers) in an impossible position of having to prove exactly where they breathed in an asbestos fibre . There was no medical reason why this was dealt with in this way. The medical profession do not say that you can catch mesothelioma from a single fibre. So why should the judiciary be allowed to use this argument if it cannot be substantiated by the medical profession.

The Clydebank Asbestos Group believes that this judgement leaves our members in an impossible position and is calling for all strands of the Labour and Trades Union movement to come together to oppose this legal abomination. We say that Mesothelioma victims have suffered enough from the corporate torturers and call on the government to ensure that the Fairchild Judgement does not prevail.

## UNFINISHED BUSINESS (CHESTERST.)

The Clydebank Asbestos Group welcomes the intervention of the government to enable a 90% settlement for sufferers whose companies were insured by Chester Street holdings. But it remains our position that if it is morally correct to grant 90% damages, it is also morally correct to grant 100%. We also reiterate our call for a full public enquiry into the behaviour of the directors in the period directly before insolvency was declared.



## LEGAL PETITION TO THE SCOTTISH PARLIAMENT

The Clydebank Asbestos Group are supporting the legal petition presented to the Scottish Parliament by **Clydeside Action against Asbestos**. We feel that the length of time that a case takes to go to court due to the legal manipulations by the defenders is completely unacceptable. We welcome the introduction of a High Court Judge-Lord Mackay of Drumadoon) to oversee cases every Monday and should go some way to deal with the logjam.

But this will not be enough to deal with procedures in Court which allow the defenders just to say denied ; denied ; denied for every piece of information supplied by our clients. This amounts to nothing more than a blanket denial of the facts. We want a proper court system which can review procedure and powers of the court of session to ensure that the real issues between the parties are identified, delay is minimised., that interim payments and Jury Trials are made available to such victims on the basis of the real issues between the parties and take such other steps necessary to achieve this goal. If the Scottish Parliament is to show what

*“If the Scottish  
Parliament is to show  
what it can do for the  
Scottish people, then  
surely it can deliver  
for the most  
vulnerable people in  
our society  
I.e.mesothelioma  
victims”*

## SARAH DYBAL : OBITUARY

The Clydebank Asbestos Group had it's Annual General Meeting in September 2001. There were no major changes to the office bearers. However it is with great regret that I have to report the death of our Secretary Sarah Dybal. Sarah had been a long standing volunteer within the group after the unfortunate death of her husband David who died of mesothelioma. This encouraged Sarah to devote her time to helping other asbestos sufferers against the injustices perpetrated by their employers. Sarah's passing came as a complete shock to the group members and her presence within the group will be sorely missed.

The group has since elected a new secretary in Margaret Lilly. Margaret

## FOR FEDERAL MOGUL SEE TURNER AND NEWALL

At a recent Seminar in Clydebank, details started to emerge about the recent administration announcement from Federal Mogul (Turner and Newall)

It is now clear that if Turner and Newall had remained a United Kingdom Company, then asbestos victims would have continued to be paid. However because Federal Mogul - the company who took Turner and Newall over - has gone into administration, the compensation payment system is now on hold. Since October 2001 we have had a situation where compensation cheques have bounced, court cases have stalled, and payments have stopped.

It has been stated that there will be a creditors meeting on the 11th February, but there is no guarantee that the victims of asbestos entitled to compensation will be represented.

The Labour M.P. for Leeds West, John Battle has tabled a series of questions to be answered by the Department of Trade and Industry (D.T.I.).

At the time Turner and Newall plc was purchased by Federal Mogul were any investigations undertaken by government departments into the terms of the sale?

Does the Government believe that a D.T.I. Enquiry should be held into the matter of the takeover of T&N by Federal Mogul.

Although several solicitors representing asbestos claimants have attempted to see copies of the certificates issued to Turner and Newall under the Employers Liability (Compulsory Insurance) Act, they have not succeeded.

Why isn't it possible for claimants representatives to see these certificates? Why isn't it possible for them to receive information about the history of T & N'S Employer's Liability coverage?

Is it the case that the Health and Safety Executive has, over the years, been satisfied that T&N has had insurance coverage which complies with government legislation?

What was the evidence that enabled them to come to that conclusion? Who were the insurers? What were the policy numbers? What are the dates of the policies.

Does the arrangement where a company is self insured and has a captive insurer (As T&N is believed to have had ), comply with the Employers' Liability (Compulsory Insurance) Act?

On the 26th November, 1996, T&N announced that it had structured a financial package to cap their asbestos related liabilities. This package included : a provision of 373million by T&N and 500 million insurance cover provided by a consortium of European reinsurers. At that time Sir Colin Hope said: "The proposals are intended to bring to an end the uncertainty surrounding the asbestos issue that has overshadowed the Group for so many years. Together with the provision already in the bal-

The Clydebank Asbestos Group committee members are as follows....

### Secretary

Margaret Lilly

### Chair

Sam Irvine

### Vice Chair

Eddie Docherty

### Treasurer

David Colrairie

- Jimmy Cloughley
- Robert Dickie
- Colin MacQueen
- Thomas Petrie
- Joan Baird
- Carol Ann Wright

### Monitoring Officers

- Tom Gorman
- John Hepburn

### Administrator

- Janice Strain

Asbestos Advice      Counsel-

***“cheques have bounced, court cases have stalled and payments have stopped”***

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"The Clydebank Asbestos Group will wait in eager anticipation, for answers to these very pertinent questions"

We're on the web  
[www.clydebankasbestos.org.uk](http://www.clydebankasbestos.org.uk)

*"The torch is  
carried forward by  
Margaret Lilly"*

  
Clydebank Asbestos  
Group

"The Clydebank Asbestos Group has recently received continued funding from the Community Fund which will enable us to carry on our work for the next three years" We would like to take this opportunity to thank them

ance sheet we now have over 1 billion of cover, about three times the central estimate of the present value of liability". The question remains ; where has this money gone? (P.T.O.)

Carried from previous page...

In 1996, T&N plc acquired insurance cover of 500 million for asbestos - related liabilities. Under the terms of the policy, this cover would be triggered once T&N paid out 690 millions to asbestos claimants. Now that T&N has stopped paying claims when, if ever, will this money be available to asbestos victims? [

Under the administration order, how long will it be before claimants will receive compensation? Some claimants whose cases are settled prior to 1st October, have received cheques which have bounced. On-going cases have been frozen. Is there any way for these cases to proceed and for funds to be released to pay claims.

Is it unlawful to bounce compensation cheques when a company is still trading?

**CLYDEBANK ASBESTOS GROUP,  
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If you think you are suffering from an asbestos related disease— contact us.

If you need a benefits check, contact us at the above address.  
We do home visits.

Registered Charity No. SC0 22856