

# Mesothelioma

## A patient's guide

February 2009

We are solicitors with 25 years' experience in dealing with mesothelioma claims. Our team has helped thousands of patients and their families recover compensation.

### What our clients say about us:

Bob Baillie contacted Field Fisher Waterhouse in April 2008. He had been diagnosed with mesothelioma at Bart's Hospital. Bob worked for two companies where he was exposed to significant amounts of asbestos, Murray Munro Limited in the 1960s and Ford Motor Company Limited Dagenham. The insurers for Murray Munro were traced and both Defendants were pursued through the Courts under the speedy trial provisions. Interim payment of £40,000 was arranged for July and the case was completed in October 2008, less than six months of first instruction for the sum of £220,000. The case was conducted at no cost to Mr Baillie.



He says: *"Many thanks for all you have done for me. It has been a great pleasure meeting you and a delight to know someone who does not stint on the work he does for others with diseases such as mine."*

**Bob is pictured with his wife and son at his son's 40th birthday in December.**

In 2008 we recovered damages for Don Merritt, who sued Cape Asbestos for his wife Jacky, who died from mesothelioma. She washed his overalls in the 1960s.

He commented: *“My family has been tragically affected and continues to suffer from the consequences of being poisoned by the asbestos dust produced by the handling of Cape’s asbestos products...I’m absolutely certain that most solicitors would have given up the fight for any compensation for me... You have been extremely sensitive throughout the process...”*



Don and Jacky Merritt during their happy marriage



Mr Dingley’s wife said: *“When Alan was diagnosed with mesothelioma a day before his 65th birthday, our world fell apart, and the last thing on our mind was compensation. Our daughter scoured the Internet, found you, and told us she was pursuing the claim on our behalf”.*

*“From our first meeting at our house when you came to gather the relevant information through to the moment we received our cheque for £200,000 we have not been caused any hassle, bother or intrusion. Even when Court was held in our front room, we were made to feel as though it was a normal everyday occurrence. You put us at ease and put our feelings first and foremost”.*

*“We cannot thank you enough, the money means we can do anything we want whilst Alan is still fit enough and active to do so.”*

Our team is renowned for its experience in dealing with asbestos disease claims. In total, we have recovered more than £132m for patients in over 2,025 successful cases.

## In 2008, a record year, we recovered £16 million for patients in 125 successful claims

**£152,000** recovered for the widow of BT engineer.

**£500,000** damages recovered for former employee of oil refinery. The case completed within six months.

**£450,000** recovered for widow of project engineer.

**£330,000** for former chemical engineer at Bradwell power station exposed to asbestos in the early 1970s.

**£308,000** damages in a mesothelioma claim for a widow whose husband was exposed to asbestos from the 1970s onwards as a pipe fitter and supervisor for British Oxygen Company.

**£280,000** damages recovered for a man who died from mesothelioma during his work as a plumber at Guy's Hospital in London.

**£270,000** recovered for a carpenter exposed to asbestos by numerous employers in the 1960s and 1970s. The case completed within seven months.

**£220,000** damages for a former Portsmouth Dock Yard worker. The case completed within three months.

**£219,377** compensation for an engineer who inhaled asbestos dust and fibres whilst working at the Bankside power station and the Deptford Power Station. The case completed within four months of being instructed.

**£210,000** recovered for a widow of Ministry of Defence instructor.

**£210,000** recovered within seven months for a former joiner with mesothelioma.

**£210,000** in a living mesothelioma claim on behalf of a man exposed to asbestos between 1957 and 1962 in a factory where industrial turbines were manufactured.

**£189,000** recovered for a man who worked as a sales director for a construction company.

**£182,000** recovered within six months for a retired Tilbury power station welder with mesothelioma.

**£178,000** recovered for man exposed whilst working at various power stations in the East End of London.

**£165,000** recovered for a former coppersmith with mesothelioma.

**£165,000** for the widow of a man who was exposed to asbestos as an apprentice electrician for Troughton & Young between about 1960 and 1966.

**£158,000** recovered within five months for a retired sugar refinery worker with mesothelioma.

**£153,000** recovered for the widow of a West Country logger.

**£150,000** compensation recovered for a former shipyard worker who worked for a long defunct company at Liverpool Docks. The case was completed within six months.

# We have been involved in two of the most important court cases involving mesothelioma.

## Fairchild, Fox & Matthews

In the Court of Appeal, the insurance industry successfully argued that where a mesothelioma sufferer had worked with asbestos for two or more employers, he could not recover compensation because he could not show in which employment the fatal fibre(s) had been inhaled. This would have barred the right to compensation for most mesothelioma patients.

In January 2002 Field Fisher Waterhouse Partner, Rodney Nelson-Jones, was invited to join the legal team acting on behalf of Mrs Fox and Mr Matthews to appeal to the House of Lords. Rodney worked intensively for four months, producing five major briefing papers for Sir Sydney Kentridge QC, and happily the Court of Appeal decision was overturned by the House of Lords and so restoring the rights to patients to claim for compensation.

## Phillips v L. Syndicate 992 Gunner and Others

In this case, the insurers refused to pay 100% of the compensation award of £205,000 to Mrs Phillips because the insurers only held cover for part of the period of employment. Consequently, Rodney started a fresh court action against the Lloyds Syndicate for the balance of monies owed and gave evidence in the case. As a result, this claim (Mrs Phillips) was successful and judgment was entered on behalf of Mrs Phillips who therefore recovered 100% of her compensation.

## APIL award



Rodney Nelson-Jones was presented with the Association of Personal Injury Lawyers (APIL) award for outstanding achievement at the House of Commons in recognition for the tremendous work done by him over the past 25 years for sufferers of asbestos disease.

**Rodney Nelson-Jones being presented with his award by Andrew Dismore MP**

## Charity fundraising

Our team at Field Fisher Waterhouse not only specialises in obtaining compensation for sufferers of asbestos disease, but has also raised more than £40,000 for Bart's Mesothelioma Research to find a cure for Mesothelioma.

# Lung cancer

Lung cancer can be caused by a variety of agents, the most well-known of which is smoking. The link between asbestos inhalation and lung cancer is also well reported. If a patient has lung fibrosis and a history of substantial exposure to asbestos dust, this is readily diagnosed as asbestosis even if he has also been a smoker. The Department for Work and Pensions (DWP) will also award disablement benefit if lung cancer is accompanied by asbestosis.

If a claimant has lung cancer, has been a smoker, and has been exposed to asbestos but does not have asbestosis, some courts have held that the lung cancer is attributable to exposure to asbestos. We have achieved settlements in lung cancer cases where there is no asbestosis. This is still a difficult legal area and therefore, you should seek legal advice from specialist asbestos solicitors.

## Essential elements for a successful claim

### Duty of care

As with all personal injury claims, it is necessary to show that a duty of care was owed to you, the injured person, by the party who exposed you to asbestos.

If you have been exposed to asbestos as an employee in the course of your employment by an employer, there is usually no difficulty in showing that you were owed a duty of care in those circumstances.

Sometimes there is exposure to members of employees' families, for example as a result of dust carried home on clothing and tools. Or you may have lived near to a factory manufacturing asbestos products. It is possible to show a duty of care in many such cases, but not always.

### Breach of duty of care

It is usually possible to show that there was a breach of duty (negligence) in allowing the exposure to occur and doing little or nothing to prevent this.

Often particular duties will be specified in Acts of Parliament, such as the Factories Act, and failure to comply with these will be breaches of statutory duties.

Everything that you can tell us about the circumstances in which you were exposed to asbestos will help to prove these breaches of duty.

## Damage

This is the physical injury that you have suffered. You will need to prove that you suffer from an asbestos disease and we will obtain a medical report to confirm this. You will also be able to claim for other losses and expenses resulting from the asbestos disease such as a loss of earnings. These items can be included as other “heads of damage”.

## Causation

You must prove that your asbestos disease has at least probably been caused by the party being sued (the defendant). Usually there is no difficulty about this but problems may arise where there has been significant exposure to asbestos elsewhere e.g. during employment by another employer who cannot be sued. You must satisfy the Court that the defendant has made a “material contribution” to your asbestos disease.

If you wish to claim financial loss, you will need to prove that the losses have probably resulted from the asbestos disease. For example, if you are unable to work because of your asbestos disease then you will be able to make a claim for your loss of earnings.

## Limitation

There is a statutory limitation period of three years within which court action should be commenced. Usually, in asbestos disease cases, the period will run from the date on which you knew you had an asbestos disease. The court has discretionary power to override this three year limitation period so it is worth discussing a possible claim even if you think you may be outside the period, but any delay can only cause difficulties.

In a fatal case, the three year limit usually starts at the date of death or on the date when the person bringing the claim on behalf of the deceased first knew of the asbestos disease. It is still very important to see a solicitor as soon after the event as possible whilst memories are fresh.

We will give you advice if we think that “limitation” is likely to present a problem, and we will take action, immediately if necessary, to protect your position as far as possible.

## What we will do

In some cases, we cannot say initially whether or not there will be a successful claim but we will tell you if your case warrants further investigation. Our considerable experience of asbestos claims means that we are familiar with most of the thermal insulation companies, asbestos manufacturers, shipping lines and other employers who have been successfully sued in the past.

## “No win, no fee” agreements

Most cases are now funded by “no win, no fee” agreements. If we think your case has a reasonable chance of success, we will act for you under a “no win, no fee” agreement. This means we are able to deal with most cases with no financial risk to you. The way in which we are able to do this is fairly complex. It does give you financial protection and peace of mind.

For more details, please see our guide to no win, no fee agreements.

## Preliminary investigations

Initially, we will concentrate on gathering evidence to prove the essential elements mentioned above.

- We will see you to obtain a detailed statement. This must include as much as you are able to remember about the circumstances in which you were exposed to asbestos. Often this will mean trying to recall events that happened many years ago. We understand this is difficult but the success of your claim will depend largely on what you can tell us. Your statement will also include details of how you found out about your asbestos disease and the effect this has on you.
- If you are suing an employer, we will write to HM Revenue & Customs to obtain proof of your employment history. Any documents that you have to prove this will also help.
- We will contact any witnesses.
- We will obtain a medical report.
- If the prospective defendant is a limited company then, unless it is already well known to us, we will carry out a search at the Companies Registry and/or of our own extensive records.

## What happens next?

In a simple case, we may be able to advise you at the outset whether to pursue your claim by court proceedings. In a complex case, further work may be necessary before we can do this.

As well as investigating whether you have a claim for an asbestos disease, we will also consider the likely amount of damages that a court would award (quantum).

In many cases we will not look at the value of this claim in detail until the preliminary medical issues have been investigated, but we will always be able to give you a broad outline advice at the beginning of the case.

Our investigation into the value of your claim may take some time and may involve expert accountants' evidence in complicated cases.

Once you decide to issue proceedings, you must take certain steps in order to comply with court rules. The rules also place certain duties on you (as well as on us), especially regarding documents and "statements of truth". The main steps and duties are set out at the end of this leaflet. Please take time to read these carefully.

## Commencing court action

We aim to issue proceedings as soon as possible and proceed to a speedy resolution of your claim. Some cases can take as little as four to seven months to complete. More difficult cases may take longer.

We will issue the case in the High Court. With the help of a barrister and the medical experts, we will draw up the following documents:

- particulars of claim this will set out the facts upon which your claim is based and the allegations of negligence and breaches of duty which we intend to pursue in court on your behalf
- schedule of damages – this will set out the calculable money losses which have been incurred to date as a result of the asbestos disease (it will also include a broad outline of any likely future losses)
- a medical report on your present condition and prognosis

It is usual for both the schedule of damages and the medical report to be updated as your case proceeds towards trial.

## Interim payments

Once a court action has begun, and in rare circumstances before then, it may be possible to apply for an interim payment. This is an early payment of part of the damages that the defendants will be liable to pay. It may be substantial in cases where the final damages are likely to be high.

An interim payment will only be appropriate in cases which are likely to succeed, so that if there is a proper defence to your claim it will probably not be possible to apply for an interim payment.

## Timetable of events

Once proceedings have been served, a timetable of events begins in order to progress your case to trial. The timetable varies slightly from one case to another.

There is usually at least one meeting with your barrister and solicitor before the trial. This is to discuss various aspects of the case and the best way to proceed.

The case may settle if the defendants make an acceptable offer of compensation or it may proceed to trial. The trial length varies depending on the complexity of the case. Some cases are “split” so that one hearing deals with liability and another deals with the amount of damages.

## Before court action

### What we must do

- get a medical report
- collect evidence about any financial losses and/or expenses
- take a full statement from you
- obtain proof of your employment (in a claim against employers)
- contact witnesses
- notify your claim to the other side
- advise you of any offer in settlement
- prepare the court documents to issue court proceedings if appropriate

## What you must do

- sign forms giving access to your medical records
- keep all receipts, P60s, accounts, etc. Give access to information about your earnings and pensions
- check your statement, sign the statement of truth (only) if it is correct, but tell us if it is not correct.
- keep any documents proving your employment history. Sign forms of consent for the HM Revenue & Customs and/or DWP
- provide names and addresses of witnesses to us
- tell us about any changes in your medical condition or financial circumstances which might affect the value of your claim
- give us your instructions reasonably promptly
- read the claim form and particulars of claim carefully to check the facts (we will check the legal breaches of statute etc.), before signing the “Statement of Truth”

## During court action

### What we must do

- tell you about any specific allegations or requests for further information that the defendants make
- prepare a formal list of all documents in your (or our) possession that are relevant to your claim, including the sort of documents mentioned above
- give you advice about the contents of any expert’s report
- give you advice about any offer to settle or payment into court
- tell you the trial date and place

### What you must do

- let us have your instructions promptly.
- check the list of documents, and sign it (only) if it is true (send us all relevant documents which you still have)
- tell us about any change in your medical condition or other matter relevant to the content of the report

- tell us about any change in your circumstances which might affect the value of your claim (medical or financial)
- confirm that you will be able to attend

## Dissolved companies

As an asbestos disease is usually not apparent until many years after the exposure to asbestos, it is often the case that a potential defendant company has been dissolved. This means that the company no longer exists and cannot be sued.

If the relevant insurers of the company can be traced, it is possible to make an application to the Court to restore the company so that it can be sued. We have been successful in doing this for many companies. Unfortunately, if those insurers cannot be traced, it will not be possible to bring any proceedings against that company to recover damages for your asbestos disease.

## Pneumoconiosis etc. (Workers' Compensation) Act 1979

All victims of mesothelioma can benefit from a prompt lump sum payment from the Department for Work and Pensions (DWP) provided they have not already received damages in a civil claim.

The DWP makes payments under two schemes: the first results from the Pneumoconiosis Etc (Workers' Compensation) Act 1979 ("the 1979 Act") and the second is known as the 2008 Diffuse Mesothelioma Scheme ("the 2008 Scheme").

***Payments under the 1979 Act are higher than under the 2008 Scheme and, if a mesothelioma victim satisfies its conditions, he/she should apply under the 1979 Act rather than the 2008 Scheme.***

### The 1979 Act

Payments will be made if the mesothelioma was caused by exposure to asbestos at work.

Payments can only be made if, at the time of payment, no civil damages have been paid. There are further conditions, the most important of which are:

- industrial Injuries Disablement Benefit (IIDB) has been awarded for mesothelioma
- no court action for civil damages has been started

## The 2008 Scheme

This pays lump sums to classes of victims who do not qualify under the 1979 Act. They are:

- victims who were only ever exposed to asbestos dust whilst self-employed
- victims who were exposed to asbestos domestically, eg. a wife who washed her husband's clothes
- victims exposed to asbestos dust whilst living near an asbestos factory

## Application Forms

The application form under both Schemes are the same, the "PWC1". It is available from:

PWC Team, Jobcentre Plus  
Barrow IIDB Centre  
Pittman Way  
Preston PR11 2AB

Freephone : 0800 279 2322

## "Fast tracking" of applications

The experience of our clients suggests that payments for both the 1979 Act and the 2008 Scheme are being processed quickly. Payments are usually received within about a month of the application. Receiving such a prompt payment is of tremendous value to mesothelioma victims and their families. We recommend that victims apply for a lump sum as soon as possible after the diagnosis of mesothelioma is confirmed.

## Industrial Injuries Disablement Benefit

Most sufferers of asbestos disease caused by employment after 4 July 1948 will qualify for this benefit. Application is made through the Benefits Agency of the DWP. A medical examination is not usually required for mesothelioma patients, but those who suffer with other asbestos diseases will need to be examined by the DWP medical board.

If you are already paid another benefit, such as Income Support, the amount you or your partner get may be affected if you are awarded Industrial Injuries Disablement Benefit. Your entitlement to some benefits, e.g. incapacity benefit, will not be affected.

# War pension

If you have an asbestos disease caused by exposure to asbestos during military service, whether in peace or wartime, you should claim a War Disablement Pension instead of Industrial Injuries Disablement Benefit. You can also claim a war pension for an asbestos disease if you were a civilian in HM Armed Forces.

## Where is asbestos found in buildings?

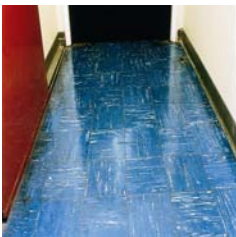
Here are some examples of asbestos-containing materials.



Asbestos pipe lagging



Asbestos roof



Asbestos-containing floor tiles



Asbestos insulation board (AIB)



Perforated AIB ceiling tiles



Door with AIB panel



Rodney is head of the group. He has specialised in asbestos disease claims for over 25 years. A leading legal directory commented that Rodney is "one of the finest personal injury solicitors in the country" and an "outstanding asbestos litigator". In 2002, he received the Association of Personal Injury Lawyers' Award for Outstanding Achievement.

**Rodney Nelson-Jones, Partner**

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Peter has specialised in asbestos-related disease claims since he joined the team in 1993. He gives annual talks to solicitors on asbestos claims for Central Law training. He is a member of the Law Society Personal Injury Panel. He is recommended in the leading legal directories for dealing with high value asbestos related claims and is described as "efficient and hardworking... with great background knowledge... compassionate and empathetic"

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Andrew has specialised in cases involving industrial diseases including asbestos diseases since 1993. He is the immediate past Coordinator of the Occupational Health Group of the Association of Personal Injury Lawyers and an APIL Fellow. He advises the Parliamentary Sub-Committee on Asbestos.

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Harminder is a Fellow of ILEX and APIL with more than 15 years' experience and specialises in acting for victims of asbestos diseases. She has extensive trial experience having been involved in a multi-party test case, which concluded after a six-week trial. Her cases have featured in the Law Reports.

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