



Asbestos and the Law Conference Liverpool Maritime Museum 3rd March 2023

Kindly sponsored by:

- Oriel Chamber
- Keith Bintley Limited
- Thompsons Solicitors



Above, delegates from around the country prepare for the full day event, for those who need them it carried six CPD points so there was to be much to learn.



Chair Peter Cowan, Counsel, opened conference outlining the theme of the day, facilities, and the timings, he went on to introduce each speaker and their remit along with summaries of the morning and afternoons session at the end of each and to bring the day to a close.

The first speaker was Michael Brace who talked about Asbestos in Schools, Michael has specialist interests in industrial disease and personal injury amongst his list; he is ranked nationally in Chambers-UK and Tier 1 in London Bar Industrial Disease. He described the types of buildings of concern and issues such as their refurbishment projects which cause

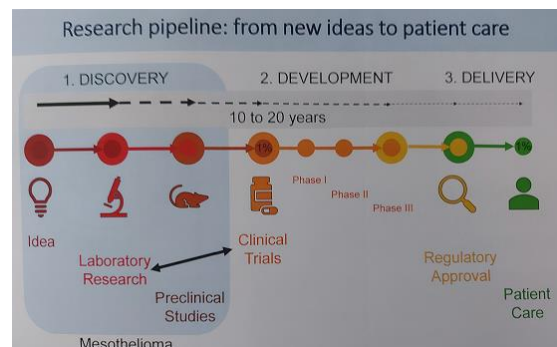


problems and dangers for pupils, staff and visitors. All very similar to much of the post-war industrial estate throughout the country, many schools were designed, and system built to the same spec. Around 14k schools were built after WW2 and almost all prior to 1975 contain asbestos (*APPG on Occupational Health*). Extensive use of asbestos was made due to its light structure and its resistance to fire and important to remember asbestos can be found in any building refurbishment up to as late as 1999. There can be sprayed asbestos, AIB wall panels, asbestos in cement and pipe lagging. It has been known for many years that there was a problem, guidance in 1967 “*Administrative Memorandum 20/67 Inhalation of asbestos dust*” by the Department of Education & Science was released on 18 July 1967. This noted that the use of crocidolite/crocidolite products should be eliminated, and all other forms of asbestos be reduced to a minimum. Similarly, another AM 05/76 directed at LEAs and Governors warned that mesothelioma, beyond doubt, can be caused by inhalation of dust from crocidolite even at low concentrations and for short periods. The HSE Guidance Note EH10 12/76 said all exposure to asbestos should be reduced to a minimum which is reasonable practicable, re-emphasised by HSE EH 10 04/83. There is no known threshold level for exposure from any form of asbestos below which there is nil risk. Advice to schools included that on no account should asbestos dust be swept up or dusted off and control strategy should include identification (*presence, extent, type and location*), assessment of potential fibre release, description of remedial action with the overall essential guiding principle of avoiding release of dust. There are legislative duties, set under the Control of Asbestos at Work Regulations 1987 & 2002; Control of Asbestos regulations 2006 (removal, repair, or disturbance of asbestos), and also under Common Law.



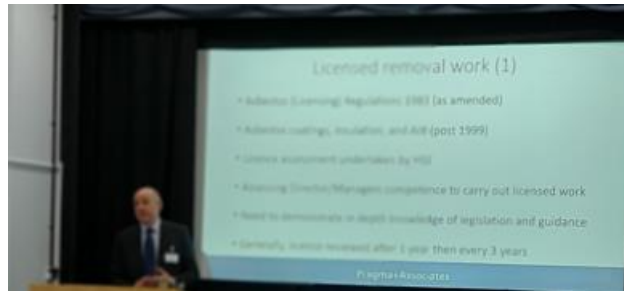
Professor Judy Coulson specialises in Molecular Physiology and Cell Signaling and gave an update on targeted therapies for mesothelioma. Animal testing is historic but no longer acceptable as social values have progressed and she led us to exciting developments in that area. Only 1% of good (*medical*) ideas end up in clinical trials and only 1% of trials end up

going to a patient. There is an organisation called NC3Rs who are long time advocates of non-use of animals in clinical research, but they offer alternatives rather than just saying “no”, a very positive help. Our bodies are made up of 30 trillion cells, building blocks of tissues and organs carefully controlled in healthy tissues. Cancer cells are cells that have “gone wrong”, growing and dividing without control forming tumours and interfering with normal tissues. As people we are all individuals with our own characteristics, mesothelioma is the same, different to an individual patient, so if we can target treatment to that individual, it would be the best therapy. There is much work ongoing on by Liverpool Heart and Chest Hospital modelling with Laboratory tumour suppressors and immune markers which has led to a drug called ADI-PEG20. The research pipeline takes time but eventually leads to clinical trials, here’s the exciting bit of news. The use of rodent species being replaced by hens’ eggs. A combination of patient tissue from diagnostic biopsy and an egg can be combined to test tumour management for an individual with meaningful results within two weeks – personalised medicine. This method



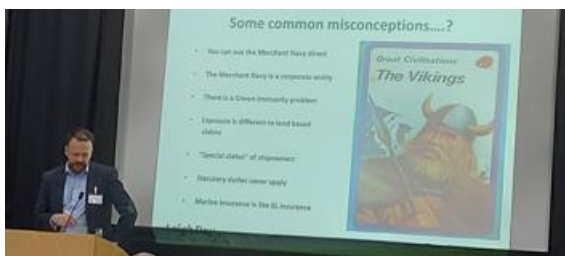
can test five (*or more*) different drugs that genetically suit a specific patient then select the best one for the patients' treatment. A fantastic way forward, still lots to be done but we can see positive light at the end of the tunnel.

David Bradley began his career at the HSL and also worked with the HSE. David's remit was Licenced Asbestos Removal Work and exposure to asbestos dust, Control of Asbestos at Work Regulations 1987 (CAWR87). Generally, a licence is granted by the HSE and reviewed after a year then subsequently every three years. There are around 500 licenced contractors operating under stringent legislation and comprehensive guidance to control exposure to ALARP, failure to do so can lead to mesothelioma or pleural thickening. There is legislation and guidance:



- Asbestos (Licencing) Regulations 1983 (as amended).
- Control of Asbestos at Work Regulations 1987; supporting ACoPs; associated HSE Guidance re asbestos & RPE.
- Healthy & Safey at Work Act 1974.
- Management of Health and Safety at Work Regulations 1992.
- Personal Protective Equipment at Work Regulations 1992.

Regulation 5 of the CAWR87 importantly covers assessment of work which *may* expose employees to asbestos, requiring identifying type of asbestos, degree which to which exposure may occur and the steps to be taken to prevent or reach lowest reasonably practicable exposure. All must adhere to above legislation and guidance, this requires possible enclosures and their use, method employed for removal, selection and use of RPE. Construction of an enclosure can exacerbate a problem if not done suitably. Regulation 8(1) CAWR87 says every employer shall prevent the exposure of his employees to asbestos. 1981 Health and Safety Commission ACoP for work with asbestos insulation and coatings notes that dry removal gives 80-100 fibres/ml and may be in excess, using water spray may reduce this to 5/40 fibres/ml and soaking to 1-5 fibres/ml. CAWR R8(1) concern reducing exposures ALARP using measures other than RPE, such as aforementioned wet methods; wet methods are not popular as much slower. HSE Guidance Note EH52 (1989) notes that "*wherever possible other methods should be considered in preference to dry removal*". Justification for dry stripping should be detailed in the risk assessment for any work. The removal of asbestos with power tools is unjustified in virtually all cases.

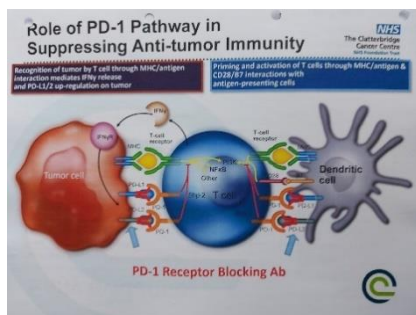


Kevin Johnson, Partner at Leigh Day and has specialised in asbestos cases since 1999, opened the afternoon session. His remit was shipping and associated industries which has obviously affected Merseyside dock workers and ship's crew for many years. In most cases there has been a breach of duty if all reasonable steps to

protect a worker (*or MoP*) have not been taken. Furthermore, it is fair, just and reasonable to expect a duty of care to be discharged. At sea there are issues whether a company is a Blue Water ship owner or a land-based employer, but a ship that is in dock for repair is a notional factory hence under S175 of the Factories Act 1961 (*as well as S151 of FA1937*). The first complaints by dockers over asbestos were recorded in 1947 in Surrey. The Chief Inspector of

Factories letter to Shipbuilding Employers Federation in 1945 noted that “....*all reasonably practicable steps should be taken to reduce the risk (from asbestos exposure) to a minimum*”. This was followed by a letter from the Factory Inspectorate to Union Castle dealing with risks to dockers from exposure, so concerns have been known for many years.

The next speaker was Dr Anthony (Tony) Pope, Consultant in Clinical Oncology from Clatterbridge Cancer Centre informing us on the latest developments in treatment. He considered the vast number of trials around the world being undertaken by private and state actors. There are around 2600 new cases of mesothelioma annually, with a 5 to 1 ratio male to female. There



are three historical subtypes – Epithelioid (69%), Biphasic (12%) and Sarcomatoid (19%); median survival rate median of 12 to 18 months in all cases. Tony informed conference of the various international trials and shared learning that is ever ongoing. The latest photon beam treatment can target areas much better so not damaging the good tissues whilst treating the affected and Tony shared in-depth information from both Clatterbridge and Maryland University. So next we can expect predictive markers for selection, intra-cavity treatment, proton beam RT amongst much continuous investigative work.

Final speaker was Clair Sajewicz, Senior Coroner’s Officer rounded off the conference talking about ‘*Inquest and causation issues in light of the Wandsworth judicial review case*’. Clair is employed by Merseyside Police as a civilian worker, she described the role of the coroner when families are at the most vulnerable following the death of a family member. Coroners are appointed by a local authority with the consent of the Chief Constable and the Lord Chancellor, they can remain in office until aged 75. They apply the Rule of Law which must afford adequate protection of fundamental human rights and is dependant inter-alia on the Independence of the Judiciary. It is essential to be impartial, honest and competent to engender public confidence and dispense justice. Section 22 of the Birth and Deaths Registration Act 1953 refers to death certification and Regulation 41 of the Registration of Births and Deaths Regulations 1987 is where there is a duty on registrars to report certain deaths to the coroner. Clair expanded on some of the complications that have to be confronted and addressed and only the coroner can order a post mortem investigation (S14), also coroner has powers to obtain evidence and call a witness to do so on oath. Similar to accident investigation an inquest will determine Who, When, Where and How when a death has occurred; a report can be made with the remit to prevent reoccurrence.



Some of the delegates assemble outside the Maritime Museum post conference.

MERSEYSIDE ASBESTOS VICTIMS SUPPORT GROUP
Supporting victims and their families for over 25 years

108 Century Building
Tower Street
Brunswick Business Park
Liverpool
L3 4 BJ
www.macsg.org
Tel: 0151 236 1985



www.orielchambers.co.uk

Keith Bintley Ltd www.keithbintley.co.uk



www.thompsons.law