

# Plenary Presentation

## **4.7 CASE STUDY: HANCOCK AND MARGERESON VS. T&N PLC - LANDMARK CASE FOR ENVIRONMENTAL EXPOSURE**

JOHN PICKERING

Editors Note. In the event, John Pickering departed from the advertised presentation to include consideration of cases pre-dating Hancock & Margeson and of asbestos exposure guidelines. The actual Congress presentation is reproduced below:

### **ASBESTOS DUST OUTSIDE THE WORKPLACE IN ENGLAND**

JOHN PICKERING

1. I am an English lawyer. Since 1969 I have brought cases for compensation for people injured by asbestos dust.
2. I will talk about two people: John Kennally and Barbara Birchall. John Kennally did not work with asbestos or live near an asbestos factory. When he was 9 years of age his mother, who worked for J.W. Roberts Limited at their asbestos factory in Leeds in the north of England, put her coat over his bed to keep him warm in cold winter weather. That coat had asbestos dust on it. When he was 42 he died of mesothelioma.
3. Barbara Birchall was 17 years old in 1958 when she went to work spinning asbestos fibre in a factory. Later, after she married, she went to live in Australia with her husband and in her fifties she too got mesothelioma and died of it.
4. What both people have in common is that their deaths were caused by blue asbestos imported into England by Turner & Newall (T&N) for making asbestos cloth and for mixing with cement to make a spray material called Sprayed Limpet Asbestos (SLA) for insulation.
5. John Kennally's mother worked for J.W. Roberts Limited, a subsidiary of T&N in Leeds from 1954 until 1958.
6. It was during this 4 year period that she unknowingly brought home asbestos dust on the shoulders of her coat which she placed on the bed of her child.
7. T&N describes itself as the asbestos giant. It may be the biggest asbestos company in the world.

8. During the 1950s it was not generally known that mesothelioma could be caused by breathing asbestos dust. Even T&N only got this knowledge in 1958 from discussions with a doctor who worked in South Africa, Dr. Wagner, who had discovered the connection between asbestos dust and this cancer.

9. When I was investigating John Kennally's case I discovered that about 10 other people who had never worked with asbestos had developed asbestos illness from either living near T&N's Leeds factory or from living with people who had worked at T&N's factory. Since then there have been 40 or 50 others. The **photographs** attached show the factory in Leeds and the houses very close to it.

10. A court case was brought by my firm for one of these people called Arthur Margerson. He had played outside the Leeds factory between 1933 and 1939 on sacks of asbestos dust which had been left there by the company. He was 8 years old in 1933. He developed mesothelioma in 1990 and died in 1991.

11. The court case for him was tried in 1995.

12. In defence the company said that mesothelioma was not known about in the 1930s, 1940s and 1950s and nobody thought then that dust escaping from a factory or carried away on workers' clothing, would cause injury.

13. The judge who tried the case in 1995 awarded damages of £50,000 because he said the company must have known that children playing outside the factory gates on loading bays might be injured by asbestos dust because there was so much dust escaping from the factory that conditions outside would be similar to those inside the factory and it has been illegal in England since 1933 to allow visible dust to enter the air in a factory.

14. There is a department of government called the Factory Inspectorate in England and they had published documents from the beginning of the 20th century warning about the danger of asbestos dust.

15. In order to prepare the case for trial we had to speak to many people who lived in Leeds near the factory. They described how much dust was pushed out of the factory by dust extractors or simply escaped through open windows and doors, so that the surrounding streets were sometimes grey or blue with it.

16. The judge said that the company owed a duty of care not just to its workers but to people who it should have known might be injured, such as children playing outside the factory gates.

17. T&N fought the case over 4 years before it came to trial and fought it again for another year when the judge's decision went to the Court of Appeal.

18. An important part of the case was the rule that all relevant documents have to be disclosed and put on the table to be seen, by both sides.

19. The lawyer for T&N swore on oath that they had no documents in 1991.

20. Luckily, in the United States, lawyers there who were bringing claims against T&N for removal of asbestos spray from buildings which they said was dangerous to those who worked in the buildings, discovered that T&N had thousands of documents which might be relevant to Mr. Margereson's case.

21. We asked a judge to order these to be shown to us but the judge, after listening to a speech by the lawyer for the company, said it was too early and until the case had been properly investigated he would not make an order.

22. In 1992 we again asked a judge to order that the documents be shown to us and he agreed.

23. The company then appealed to the Court of Appeal. It took 14 months before the appeal was heard. On the day of the hearing, but before it was heard, the company admitted they had documents and were willing to show them to us. They promised to do so in 2 months.

24. They did not keep that promise. Instead they disclosed "the old documents" which turned out to be worthless rubbish.

25. A third judge ordered them to disclose the documents. They still did not disclose them.

26. A fourth judge in 1994 ordered that the trial should start in 1995 and gave them a final period of a few months to disclose the documents. They still did not disclose them. Only one month before the start of the trial did they disclose the documents. There were 27,000 pages of relevant material which was delivered to my office in a lorry. It was then too late to read them.

27. But the cases which were going on in the United States were covered by a different rule. In New York City a judge had ordered that T&N must let the American lawyers visit their premises and read the documents. The American lawyers travelled to Manchester in England and took away many documents to copy. They flew these to New York and then posted a set back to me in my office in Manchester, so that for 2 years before the trial of Mr. Margereson's case I was able to read the relevant documents.

28. These showed that Turners had vast knowledge about the dangers of asbestos, going back to the 1920s and 1930s. They had information in 1930 that a man who had never worked for them had asbestos dust in his lungs from living near their factory.

29. They were aware that people who worked near to asbestos sprayers were at risk of injury from the 1940s.
30. They knew that asbestos could cause cancer from the 1940s.
31. They had many workers who had developed asbestosis and died from it, going back to the 1920s.
32. One of their directors, Mr. Waddell, had in fact been an Inspector of Factories employed by the English government to look after the safety of workers.
33. He knew that blue asbestos was especially dangerous in 1958 after talking to the South African doctor who had discovered the link with asbestos dust and mesothelioma
34. But he said that blue asbestos was too big a trade asset to be thrown overboard in a hurry and that the company should fight the cause of asbestos to the last ditch.
35. He said these things when Barbara Birchall was working for the company in the 1960s.
36. The company lost their case again in the Court of Appeal in 1996 and Mr. Margereson's widow received modest compensation of £50,000.
37. Mr. Kennally's widow also received compensation because the company, after losing the trial, agreed to pay her, and Barbara Birchall's husband also received compensation in 1998 after her death. I attach letter which Barbara Birchall wrote to her family after mesothelioma had been diagnosed. This was published in an English newspaper.
38. What lessons are to be learned:-
  - (a) an asbestos company will go to any lengths to oppose claims for compensation. The judge said that T&N used all methods that were legitimate and illegitimate in resisting the claim.
  - (b) you cannot trust those people who are appointed by the state to look after your health. Mr. Waddell, when he knew that asbestos dust could cause asbestosis and lung cancer and the incurable cancer mesothelioma, thought that the profits were too big to justify the expense of protecting his workforce.

The company employed hundreds of young girls like Barbara Birchall and he knew there was a serious risk to their health.

39. England, compared with other countries, has extensive information about the hazards of asbestos. This has been available since the beginning

of the 20th century and there are government inspectors who are supposed to make sure that factories are safe.

40. Despite this, thousands continue to be injured by asbestos dust. Despite well prepared leaflets and information warning about the danger, many companies, including very small ones with two or three employees, take no precautions to protect people against breathing asbestos dust. Although the dangers have been known for 40 years, people in the 1980s were still working without protection.

41. The only effective way to protect people from asbestos dust is by education. They must know of the dangers.

42. The question is, how are they to find out?

43. What are the minimum steps to take?

(a) If you can see the dust it is very, very dangerous.

(b) If you shine a light in a dark workplace and you can see dust, it is very dangerous.

(c) Let as much air as possible into the workroom.

(d) Do not take your work clothes home and shower before going home.

(e) Spray water and wet everywhere where dust may settle.

(f) Work with asbestos as little as possible. The more you breathe the dust, the bigger risk.

(g) Do not smoke tobacco because tobacco and asbestos dust together are very, very dangerous.