



**Unite – the Union Evidence Submission to the
Scottish Parliament Justice Committee:**

**Damages (Asbestos-related Conditions) (Scotland)
Bill**

Executive Summary

Pleural plaques are recognised by medical experts as a sign of irreversible damage to the lining of the lung caused by a history of exposure to asbestos which carries an increased risk of malignant diseases such as the deadly cancer mesothelioma.

The House of Lords decision of October 2007 to uphold the Court of Appeal's judgement will increase the anxiety of many people who have been exposed to asbestos in their working lives. The judgement overturns some 20 years of legal precedents regarding pleural plaques and denies people the right to hold negligent employers liable for developing this disease.

People with pleural plaques should be compensated for the genuine injury that asbestos exposure has caused. Put simply, this is a matter of social justice. Rather than provide a blow-by-blow legal analysis of this matter, Unite will use this submission as an opportunity to show the very real and human impact of pleural plaques and reiterate our anger at the opportunist agenda set by the UK insurance lobby.

The introduction of the Damages Bill by the Scottish Government should ensure the the House of Lords judgement does not have effect in Scotland. It is a necessary and just step and will bring some peace of mind to people in Scotland who have been exposed to asbestos through their working lives and subsequently diagnosed with pleural plaques.

1. Background

- 1.1 Unite in Scotland represents the interests of around 200,000 working people and their families. Unite is the UK's largest trade union with 2 million members in a range of industries including transport, construction, financial services, manufacturing, print and media, the voluntary and non-profit sectors, local government and the NHS.
- 1.2 We believe that everyone in society who is unfortunate enough to suffer from occupational-inflicted diseases should receive full compensation to take into account the pain, suffering and financial hardship brought about by injuries inflicted as a result of the negligent actions of employers. This should include adequate compensation for family members to reflect their pain, anxiety and suffering throughout their loved one's illness and after their death.
- 1.3 There is no accurate record of how many cases of pleural plaques are diagnosed each year in Scotland. However, the latest available figures show that there are in the region of 200 actions raised per year in relation to pleural plaques in Scotland.¹
- 1.4 In February 2005 the High Court in Manchester ruled that sufferers of pleural plaques had the right to seek compensation for the psychological stress they would endure in the knowledge their condition could become fatal. In January 2006 the Court Of Appeal removed the right to compensation for sufferers of asbestos related pleural plaques.
- 1.5 The House of Lords decision to uphold the Court of Appeal judgement in October 2007 ended a right to compensation of up to £15,000 which has existed for 20 years.

¹ Scottish Government Proposed Bill to Reverse House of Lords Judgment in *Johnston v NEI* Partial Regulatory Impact Assessment, 5th February 2008

2. Highlighting the Insurance Lobby Agenda

- 2.1 The House of Lords judgment of October 17th 2007 is not binding in Scotland but it has upheld the 2006 Court of Appeal decision which stipulated that a medical condition which has no impact on health could not be compensated and it can be interpreted accordingly. The decision has skewered twenty years of legal precedence which served to compensate sufferers of pleural plaques in the UK who were exposed to asbestos in the workplace.
- 2.2 It is clear that the UK insurance lobby has fought a virulent campaign to exempt and dilute their liability, and their clients' liability, for pleural plaques by blurring the lines between what is and what is not a genuine medical condition and illness. Insurers are claiming that the increase in pleural plaques cases is evidence of the so-called compensation culture, fuelled by schemes like 'scan vans' and opportunist law firms. The mantra from industry bodies such as the Association of British Insurers throughout has been to spin the line of a fight against a US-style compensation culture emerging in the UK. ²
- 2.3 Unite is unequivocal in our anger over the industry's abandonment of their responsibility for a serious disease. Pleural plaques are brought about by exposure to asbestos. It is the 'calling card' for the development of more serious and terminal asbestos-related illnesses. It is only right that negligent employers who exposed workers to asbestos should be liable for the anxiety, pain (mental and physical) and the detriment in the quality of life sufferers of pleural plaques experience that their condition could develop into the fatal cancer mesothelioma. The House of Lords judgment has reinforced our view that insurers are simply placing profit before people.

² Michael Harrison, 'A wrong-headed ruling on asbestos', Independent, Jan 26th 2006

- 2.4 Unite is firm in our view that the real cause of the increase in pleural plaques is the widespread and indiscriminate use of asbestos in many industries until the early 1980s and a failure by employers to protect workers.

3. Case Studies – The Human Impact of Pleural Plaques

Mr. Ron Marsh (aged 66) Stonehaven

- 3.1 Mr. Marsh had been diagnosed with pleural plaques after a drawn-out process following a routine, unrelated operation at St. John's Hospital in Livingston. X-rays revealed a shadowing of the lungs which his GP later referred to as pulmonary fibrosis. It wasn't until Mr. Marsh later moved to Stonehaven in Aberdeenshire that a visit to the Chest Specialist at the Aberdeen Royal Infirmary confirmed pleural plaques which were a marker for asbestos exposure.
- 3.2 Mr. Marsh had worked since his early twenties to retirement age in white collar employment but during his teenage years in the late 1950s / early 1960s he had worked part-time in a Glasgow iron foundry. Employed as a labourer he routinely handled and cut asbestos sheeting without any protective equipment. In his 50s, Mr. Marsh recognised he was becoming increasingly breathless as maintaining his active lifestyle became more difficult. It wasn't until the diagnosis of pleural plaques was made that the pieces came together.
- 3.3 Mr. Marsh was able to carry-on his occupation until retirement but the seeds of anxiety were sown. *“Pleural Plaques is a time-bomb. The Doctor could call me tomorrow to tell me I have mesothelioma and sufferers have to live with that prospect every minute of every day. It's undoubtedly deteriorated my quality of life... I'm more worried, anxious, lethargic... my health is poorer.”*

- 3.4 Despite his condition, Mr. Marsh still considers himself somewhat fortunate. *“I was able to work to retirement-age despite my diagnosis but there are people who have lost their livelihoods in the prime of their lives due to pleural plaques and are desperate for support. This Bill can give peace of mind to many in Scotland but what about the excluded majority across the rest of the UK?”*

Mr. Patrick Craig (aged 78) Balloch

- 3.5 Mr. Craig worked as a labourer in the shipyards for a year when he left school. He then went on to become a seaman for around seven more before settling in the construction industry as a scaffolder based in Glasgow where he worked for the best part of thirty years.

- 3.6 Mr. Craig vividly remembers being exposed to asbestos in these industries, particularly while working in the ship boiler rooms. In particular, Mr. Craig recalls that when a ship had to be refitted, *“The asbestos had to be broken off the ships piping and my job was to sweep up what was left.”*

- 3.7 He only found out that he had pleural plaques around four years ago when he took a bad chest infection and the doctor referred him for an x-ray in an effort to identify if there was a more serious underlying problem. *“The x-ray revealed pleural plaques which came from being exposed to asbestos throughout a large part of my working life.”*

Mr. Neil Johnstone (aged 65) Glasgow

- 3.8 When he left school Mr. Johnston worked as a mechanic at two sites in the city for the best part of twenty-two years where he was exposed to asbestos. *“The locations where I worked both had asbestos sheeted roofs...there were no masks or protective equipment then.”*

3.9 Mr. Johnstone recalls that while his local GP had diagnosed pleural plaques in 2003 it was some time after this that he became fully aware of his condition and its implications on his health and quality of life after visiting a consultant at Gartnavel Hospital in Glasgow. Mr. Johnstone said, *“My life has changed. It’s left me so frustrated. I can’t get out and about the way I used to. I can’t catch up with friends or go for a game of snooker which I enjoyed doing for years until pleural plaques stopped me.”*

4. Conclusion

4.1 Unite wholly welcomes the Damages Bill which will bring some peace of mind to diagnosed sufferers of pleural plaques and their families in Scotland. Crucially, it will also provide support for those who will be diagnosed with pleural plaques in the future as a result of occupational asbestos exposure.

4.2 The devastating legacy of asbestos is widespread in the communities of towns like Clydebank and Grangemouth where asbestos was routinely used in the shipbuilding and petro-chemical industries. Generations of workers negligently exposed to asbestos now suffer from asbestos-related respiratory problems and diseases such as pleural plaques, pleural thickening, asbestosis, lung cancer and mesothelioma. The worst is yet to come. It is estimated that the peak mortality attributed to mesothelioma will come between 2011 and 2015, with the highest number of deaths per year being between 1,950 and 2,450.³

³ Hodgson, J.T. et al. (2005) British Journal of Cancer **92**

4.3 Pleural plaques are the first stage in a continuum which ends in asbestos-related fatality. We have highlighted the real life examples of the misery pleural plaques inflicts on everyday lives. It is a harsh reality that in the UK the majority of people who suffer from pleural plaques - and who will be diagnosed with pleural plaques - are exempt from receiving recompense.

4.4 Unite will use this intervention in Scotland as a strong foundation to fight for legal parity across the rest of the UK. We will continue to counter and highlight the protectionist greed of the insurance industry and their efforts to dilute culpability. We will continue to tackle head-on the scourge of health and safety injustice in the workplace.

Unite would like to thank the individuals who contributed personal statements to this submission and to both the Clydebank Asbestos Group and the Clydeside Action on Asbestos Group.

For further information please contact:

Andrew Brady (andrew.brady@unitetheunion.com)

Peter Welsh (peter.welsh@unitetheunion.com)

Unite – the Union Scottish Region
Campaigns, Policy & Research Unit
John Smith House
145-165 West Regent Street
Glasgow
G2 4RZ

Tel: 0141 248 7131

www.unitetheunion.org.uk