

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. CACE18014125 DIVISION 27 JUDGE Martin Bidwill

Teresa Birch, et al

Plaintiff(s) / Petitioner(s)

v.

Glaxosmithkline LLC, et al

Defendant(s) / Respondent(s)

_____ /

ORDER GRANTING MOTION FOR LETTERS ROGATORY

THIS CAUSE came before the Court upon Defendants Johnson & Johnson and Johnson & Johnson Consumer, Inc.'s (collectively "Defendants") Motion for Letters Rogatory to Obtain International Judicial Assistance from the United Kingdom Pursuant to the Hague Evidence Convention (the "Motion"), filed on March 24, 2020. The Court has reviewed the Motion, the Opposition filed by Plaintiffs, heard the argument of counsel, and is fully advised in the premises.

It is hereby ORDERED AND ADJUDGED that:

1. The Motion is hereby GRANTED.
2. The Court will issue the Letter of Request attached to the Motion, with revisions as agreed to by the parties, or revisions made over objection.
3. Consistent with the protocol established during a telephonic hearing on April 7, 2020, in light of the current Covid-19 crisis, counsel for the defendants shall assemble the scanned image of the signature page with the remainder of the letter, as well as the attachments, and shall file and serve the complete package.

DONE and **ORDERED** in Chambers, at Broward County, Florida on 04-07-2020.


CACE18014125 04-07-2020 1:29 PM

CACE18014125 04-07-2020 1:29 PM

Hon. Martin Bidwill

CIRCUIT JUDGE

Electronically Signed by Martin Bidwill

Copies Furnished To:

Andrea Cox , E-mail : Mia-ctdocs@saul.com

Andrea Cox , E-mail : andie.cox@saul.com
Andrea Cox , E-mail : jessica.barrero@saul.com
Ashley C. Drumm , E-mail : pthouse@carltonfields.com
Ashley C. Drumm , E-mail : ADrumm@carltonfields.com
Ashley C. Drumm , E-mail : gmoore@carltonfields.com
Caitlyn R McCutcheon , E-mail : caitlyn.mccutcheon@morganlewis.com
Caitlyn R McCutcheon , E-mail : heather.nugent@morganlewis.com
Caitlyn R McCutcheon , E-mail : yasmin.tayyab@morganlewis.com
Marvin D. Harris , E-mail : gmoore@carltonfields.com
Marvin D. Harris , E-mail : mharris@carltonfields.com
Marvin D. Harris , E-mail : pthouse@carltonfields.com
Matthew J. Conigliaro , E-mail : devans@carltonfields.com
Matthew J. Conigliaro , E-mail : tpaecf@cfdom.net
Matthew J. Conigliaro , E-mail : mconigliaro@carltonfields.com
Michael David Sloan , E-mail : solit@carltonfields.com
Michael David Sloan , E-mail : msloan@carltonfields.com
Michael David Sloan , E-mail : wpbecf@cfdom.net
Rebecca S. Vinocur , E-mail : aayala@rsv-law.com
Rebecca S. Vinocur , E-mail : rvinocur@rsv-law.com
Stephen J Krigbaum , E-mail : sgarrick@carltonfields.com
Stephen J Krigbaum , E-mail : wpbecf@cfdom.net
Stephen J Krigbaum , E-mail : skrigbaum@carltonfields.com
Stuart Lance Cohen , E-mail : sjamhour@insurancedefense.net
Stuart Lance Cohen , E-mail : smoss@insurancedefense.net
Stuart Lance Cohen , E-mail : scohen@insurancedefense.net

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY,
FLORIDA

TERESA BIRCH and ROBERT BIRCH,

Plaintiffs,

v.

GLAXOSMITHKLINE, LLC, etc., et al.,

Defendants.

ASBESTOS LITIGATION

CASE NO. 18-014125 CA 27

**LETTER OF REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE
PURSUANT TO THE HAGUE CONVENTION ON THE TAKING OF EVIDENCE
ABROAD IN CIVIL OR COMMERCIAL MATTERS**

The Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, presents its compliments to the appropriate judicial authority of the United Kingdom of Great Britain and Northern Ireland and respectfully requests international judicial assistance to obtain evidence in the form of oral examination under oath and the production of specified documents. Both the oral examination under oath and the specified documents are intended to be used at trial in a civil lawsuit before this Court in the above-captioned action. A trial date has been set for May 4, 2020.

This request is made pursuant to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the "Hague Evidence Convention"), of which the United States and the United Kingdom are both signatories. This Court is a competent court of law and equity, which properly has jurisdiction over this civil proceeding. Defendants, Johnson & Johnson and Johnson & Johnson Consumer, Inc. (collectively "Defendants"), contend or assert that the witnesses listed below have relevant knowledge of the subjects set forth in Section 8.a., as well as the documents specified in Section 11. International judicial assistance is necessary because these witnesses and documents are located in the United Kingdom.

According to Defendants, the witnesses' testimony and specified documents will be used to establish Defendants' primary defense at trial:

- that Plaintiff Teresa Birch was exposed to asbestos from her mother's work at an asbestos factory, British Uralite¹, and not from Johnson's Baby Powder.

The testimony and documents sought by Defendants are relevant to this defense, which may influence the final determination of any liability in this action. This request is made with the understanding that it will in no way require any person to commit any offense, or to undergo a broader form of inquiry than would be required if the litigation were being conducted in England or Wales. In the proper exercise of its authority, over the objections and opposition of the Plaintiffs, this Court has determined that the testimony and documents sought from the following witnesses (collectively the "Witnesses"), as set forth in Section 8.a. and Section 11, cannot be secured except by intervention of the appropriate judicial authority of the United Kingdom:

- i. Andrew James – a solicitor in the United Kingdom with Hodge Jones & Allen LLP, who submitted a claim to the United Kingdom's Department for Work & Pensions (attached as **Exhibit A**) on behalf of Plaintiff Teresa Birch, which stated: "We believe that her [Teresa Birch's] exposure to asbestos was from washing the clothes of her mother who worked at an asbestos factory employed by British Uralite Plc."
- ii. Marika Townsend – a former nurse in the United Kingdom who: (a) conversed with Plaintiff Teresa Birch about her entitlement to compensation, (b) introduced Plaintiffs Teresa Birch and Robert Birch to solicitor Andrew James (post-diagnosis), and (c) provided documents to Plaintiffs Teresa Birch and Robert Birch for use in submitting

¹ It is undisputed that Teresa Birch's mother worked at the British Uralite factory in Higham, Kent from approximately 1966 to 1974.

- an application to the United Kingdom's Department for Work & Pensions.
- iii. PricewaterhouseCoopers LLP (UK) ("PwC") – the United Kingdom branch of the international accounting firm PricewaterhouseCoopers, which was appointed as receiver of British Uralite after it ceased trading in 1987.
 - iv. Margaret R. Ravate – former worker at British Uralite who provided a sworn witness statement in *Matthews v. Associated Portland Cement and British Uralite PLC*, QB-2001-10111 (Manchester District Registry), which discussed the work and conditions at British Uralite's factory in Higham, Kent (attached as **Exhibit B**).
 - v. John L. Grieves – former worker at British Uralite who provided a sworn witness statement in *Matthews v. Associated Portland Cement and British Uralite PLC*, QB-2001-10111 (Manchester District Registry), which discussed the work and conditions at British Uralite's factory in Higham, Kent (attached as **Exhibit C**).
 - vi. Glenys Plank – former worker at British Uralite who provided a sworn witness statement in *Matthews v. Associated Portland Cement and British Uralite PLC*, QB-2001-10111 (Manchester District Registry), which discussed the work and conditions at British Uralite's factory in Higham, Kent (attached as **Exhibit D**).
 - vii. Ann Hendricks – former worker at British Uralite who provided a sworn witness statement in *Matthews v. Associated Portland Cement and British Uralite PLC*, QB-2001-10111 (Manchester District Registry), which discussed the work and conditions at British Uralite's factory in Higham, Kent (attached as **Exhibit E**).
 - viii. Unite the Union (as successor-in-interest to the Amalgamated Engineering Union) ("AEU") – the AEU was a trade union that represented workers at British Uralite's factory in Higham, Kent where Teresa Birch's mother worked.

Each of the Witnesses is domiciled in the United Kingdom. None of the Witnesses are domiciled or doing business in the United States. In conformity with Article 3 of the Hague Evidence Convention, the undersigned Circuit Judge of the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida has the honor to submit the following Letter of Request:

1. **Requesting Authority:**

The Honorable Martin J. Bidwill, Circuit Judge of the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida

2. **Requested Authority:**

Central Authority for the United Kingdom
The Senior Master
Foreign Process Section
Room E16
Royal Courts of Justice
Strand, London WC2A 2LL
United Kingdom

3. **Person to Whom the Executed Request is to be Returned:**

Michael D. Sloan, Esq.
Carlton Fields, P.A.
525 Okeechobee Blvd., Suite 1200
West Palm Beach, FL 33401
United States of America
Telephone: +1.561.822.2979

4. **Specification of Date by Which the Requesting Authority Requires Receipt of the Response to the Letter of Request:**

As soon as reasonably practicable, in order to ensure that evidence may be obtained prior to trial, which is currently set for May 4, 2020.

5. **Name of the Case and Any Identifying Number:**

Teresa Birch and Robert Birch vs. GlaxoSmithKline, LLC, etc., et al., Case No. 18-014125 CA 27 (Broward County, Fla.).

6. Names and Addresses of the Parties to the Proceedings and Their Representatives:

<u>Party</u>	<u>Address</u>
<u>Plaintiffs Teresa Birch and Robert Birch</u>	96 Timber Bank Vigo Village Gravesend DA13 0SW United Kingdom
<u>Defendant Johnson & Johnson</u>	One Johnson & Johnson Plaza New Brunswick, NJ 08933
<u>Defendant Johnson & Johnson Consumer, Inc.</u>	199 Grandview Road Skillman, NJ 08558
<u>Defendant Publix Super Markets, Inc.</u>	3300 Publix Corporate Parkway Lakeland, FL 33811
<u>Attorneys for Plaintiffs Teresa Birch and Robert Birch:</u>	Rebecca S. Vinocur, Esq. REBECCA S. VINOCUR, P.A. 5915 Ponce De Leon Blvd. Ste. 14 Coral Gables, Florida 33146 Telephone: +1.786.691.1282 Facsimile: +1.786.691.1283 Daniel J. Woodard, Esq. Brendan J. Tully, Esq. James A. Plastiras, Esq. PHILLIPS & PAOLICELLI, LLP 747 Third Avenue, 6 th Floor New York, New York 10017 Telephone: +1.212.388.5100 Facsimile: +1.212.388.5200
<u>Attorneys for Defendants Johnson & Johnson (“J&J”) and Johnson & Johnson Consumer, Inc. (“JJCI”)</u>	Stephen J. Krigbaum, Esq. Ryan S. Cobbs, Esq. M. Derek Harris, Esq. Michael D. Sloan, Esq. CARLTON FIELDS, P.A. 525 Okeechobee Blvd, Ste. 1200 West Palm Beach, Florida 33401 Telephone: +1.561.659.7070 Facsimile: +1.561.659.7368

	<p>Matthew J. Conigliaro, Esq. CARLTON FIELDS, P.A. 4221 W. Boy Scout Boulevard, Ste. 1000 Tampa, Florida 33607 Telephone: +1.813.229.4254 Facsimile: +1.813.229.4133</p> <p>Diane P. Sullivan, Esq. WEIL, GOTSHAL & MANGES, LLP 17 Hulfish Street, Ste 201 Princeton, New Jersey 08542 Telephone: +1.609.986.1120 Facsimile: +1.609.986.1199</p> <p>Jack Nolan, Esq. WEIL, GOTSHAL & MANGES, LLP 767 Fifth Avenue New York, New York 10153 Telephone: +1.212.310.8329 Facsimile: +1.212.310.8007</p>
<p><u>Attorneys for Defendant Publix Super Markets, Inc. (“Publix”):</u></p>	<p>Andrea Cox, Esq. SAUL EWING ARNSTEIN & LEHR LLP 200 S. Biscayne Blvd., Ste 3600 Miami, Florida 33131 Telephone: +1.305.428.4500 Facsimile: +1.305.374.4744</p> <p>Kevin D. Rising, Esq. BARNES & THORNBURG LLP 2029 Century Park East, Ste 300 Los Angeles, CA 90067 Telephone: +1.310.284.3888 Facsimile: +1.310.284.3894</p>

There are no other active Defendants remaining in this case.²

² Proceedings against Defendant Imerys Talc America, Inc. have been stayed pursuant to its bankruptcy filing in the United States Bankruptcy Court for the District of Delaware.

7.a. Nature and Purpose of the Proceedings for Which Evidence is Required:

This is a civil action pending in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. Plaintiffs assert claims arising under Florida common law for negligence and strict liability against J&J and JJCI, and for negligence against Publix. The parties are actively conducting fact discovery in anticipation of trial. A civil jury trial is currently set for May 4, 2020.

7.b. Summary of the Claims³:

This is a product liability personal injury action brought by Plaintiffs, Teresa Birch and her husband Robert Birch, against Defendants J&J, JJCI, and Publix.

Plaintiff Teresa Birch alleges that she developed pleural malignant mesothelioma in July 2017 as a result of her daily use of Johnson's Baby Powder from 1961 to approximately 1997, which was allegedly contaminated with asbestos and was designed, manufactured, marketed, supplied, licensed, sold and/or distributed by J&J and JJCI and purchased by Mrs. Birch from Publix in 1992 and 1994.

Plaintiffs allege that, as a result of her injuries, Plaintiff Teresa Birch is entitled to damages for her mental and physical pain and suffering and medical expenses. Plaintiff Robert Birch maintains a claim for the loss of services and support of his wife as a result of her illness.

Plaintiff Teresa Birch alleges that J&J, JJCI, and Publix failed to adequately warn as to the dangers and health hazards of the asbestos contamination of the products that they manufactured and sold, under theories of strict liability and negligence, and are liable for Plaintiffs' damages.

³ The factual assertions set forth in Sections 7.b. are Plaintiffs' allegations, which the Defendants dispute, and do not represent the Court's factual findings.

7.c. Summary of the Defenses or Counterclaims⁴:

Defendants assert that Johnson's Baby Powder does not now, nor did it ever, contain asbestos. This is a defense in each case where J&J and JJCI find themselves accused of selling asbestos-contaminated talcum powder products. A central component of presenting this defense at trial, as a practical matter, is finding any exposure to asbestos that may have actually caused the plaintiff's disease.

7.d. Other Necessary Information or Documents for Background on This Case:

Please see for reference:

- i. Defendants' Supplement to Their Motion for Continuance (attached as **Exhibit F**),
- ii. the Court's Order Granting Continuance of Trial (attached as **Exhibit G**), and
- iii. the Revised Judgement Entered in *Matthews v. Associated Portland Cement and British Uralite PLC*, QB-2001-10111 (Manchester District Registry) (attached as **Exhibit H**), which discussed the working conditions and use of asbestos at British Uralite's factory in Higham, Kent.

8.a. Evidence to be Obtained and Persons to be Examined:

It is requested that the appropriate judicial authority of the United Kingdom compel the testimony of the following Witnesses, under oath, on the following specified questions or subjects, which Defendants claim the Witnesses have knowledge concerning, according to Defendants' investigation to date, which is summarized in relevant part on pages 2-3 above:

⁴ The factual assertions set forth in Section 7.c. are Defendants' allegations, which the Plaintiffs dispute, and do not represent the Court's factual findings.

- i. Andrew James – Specific Questions Sought to be Asked at Examination
- a. Question 1: Who were the sources of the specific factual representations in Hodge Jones & Allen LLP’s 18 August 2017 letter (attached as **Exhibit A**) to the United Kingdom’s Department for Work & Pensions, that: “[w]e believe that her [Teresa Birch’s] exposure to asbestos was from washing the clothes of her mother who worked at an asbestos factory employed by British Uralite Plc”?
 - b. Question 2: Did Teresa Birch, Robert Birch, or anyone else acting on their behalf (and specify who) approve the 18 August 2017 letter (attached as **Exhibit A**) before it was sent to the United Kingdom’s Department for Work & Pensions?
 - c. Question 3: For each of the people identified in the responses to the prior two questions (No. 1 and No. 2), what did each state to you: (a) regarding the specific factual representation as to British Uralite in the 18 August 2017 letter (attached as **Exhibit A**), or (b) regarding approval of the letter for submission?
 - d. Question 4: When and how did you receive communications from Teresa Birch or Robert Birch (and specify for each), including whether conversations were by telephone, e-mail, videoconference, or in person?
 - e. Question 5: Did anyone raise questions or corrections with respect to the 18 August 2017 letter (attached as **Exhibit A**), either before or after it was submitted, and specify who raised questions or corrections and what specific questions or corrections they raised?
 - f. Question 6: Have you had any conversations with Brendan Tully, Dan Woodard, James Plastiras, Rebecca Vinocur, or any other attorney acting on behalf of Plaintiffs Teresa Birch and Robert Birch on the subject of British Uralite or other sources of asbestos exposure for Teresa Birch that are unrelated to Johnson’s Baby Powder? If so, specify the other party to your conversation, as well as the date, the time, the method of communication (e.g., telephone, e-mail, videoconference, or in person), and the contents of such communication.
 - g. Question 7: Were you careful in submitting the representations reflected in the 18 August 2017 letter (attached as **Exhibit A**) to the United Kingdom’s Department for Work & Pensions? If so, specify whether it was your practice to review submissions to the United Kingdom’s Department for Work & Pensions with your clients before you submitted them.
 - h. Question 8: Do you have any knowledge concerning British Uralite’s manufacture and use of asbestos products at its factory in Higham, Kent? If so, please specify the source(s) of such knowledge.

- i. Question 9: Did you ever inform the United Kingdom's Department for Work & Pensions of Teresa Birch's common law claims filed in this Florida case? If so, what was their response? If not, why not?
 - j. Question 10: Have you produced all the documents requested of you in Section 11 of this Letter of Request? Specify what documents, if any, you are withholding and the basis therefore, and specify whether the documents you have produced are authentic.
- ii. Marika Townsend – Subjects Sought to be Addressed at Examination
- a. Subject 1: Professional relationship with Andrew James, Hodge Jones & Allen LLP, Brendan Tully, and Phillips & Paolicelli, LLP.
 - b. Subject 2: Communications with Teresa Birch, Robert Birch, Andrew James, Hodge Jones & Allen LLP, Brendan Tully, or Phillips & Paolicelli, LLP, with respect to any claims for compensation on behalf of Teresa Birch.
 - c. Subject 3: Communications regarding British Uralite and its manufacture of asbestos products.
 - d. Subject 4: Have you produced all the documents requested of you in Section 11 of this Letter of Request? Specify what documents, if any, you are withholding and the basis therefore, and specify whether the documents you have produced are authentic.
- iii. PricewaterhouseCoopers LLP (UK) – Subjects Sought to be Addressed at Examination
- a. Subject 1: British Uralite's manufacture and use of asbestos products, including the specific asbestos fibre types utilized.
 - b. Subject 2: The reason for British Uralite's liquidation.
 - c. Subject 3: Government investigations into asbestos dumping at the site of British Uralite's former factory in Higham, Kent, from approximately 2000 to 2002, including investigations by the Health & Safety Executive and Environment Agency.
 - d. Subject 4: Prior lawsuits against British Uralite alleging injuries based on asbestos-related illness.
 - e. Subject 5: Have you produced all the documents requested of you in Section 11 of this Letter of Request? Specify what documents, if any, you are withholding and the basis therefore, and specify whether the documents you have produced are authentic.

- iv. Margaret R. Ravate – Subjects Sought to be Addressed at Examination
 - a. Subject 1: Items Discussed in Witness Statement (attached as **Exhibit B**)
 - b. Subject 2: Any Other Recollections of Working at British Uralite from 1972 to 1973.
- v. John L. Grieves – Subjects Sought to be Addressed at Examination
 - a. Subject 1: Items Discussed in Witness Statement (attached as **Exhibit C**)
 - b. Subject 2: Any Other Recollections of Working at British Uralite from October 1964 to August 1969.
- vi. Glenys Plank – Subjects Sought to be Addressed at Examination
 - a. Subject 1: Items Discussed in Witness Statement (attached as **Exhibit D**)
 - b. Subject 2: Any Other Recollections of Working at British Uralite from October 1966 to April 1967.
- vii. Ann Hendricks – Subjects Sought to be Addressed at Examination
 - a. Subject 1: Items Discussed in Witness Statement (attached as **Exhibit E**)
 - b. Subject 2: Any Other Recollections of Working at British Uralite in the 1960s for four months.
- viii. AEU Representative – Subjects Sought to be Addressed at Examination
 - a. Subject 1: Documents, records, and recollections related to operations and conditions of British Uralite’s factory in Higham, Kent between 1966 and 1974.
 - b. Subject 2: Have you produced all the documents requested of you in Section 11 of this Letter of Request? Specify what documents, if any, you are withholding and the basis therefore, and specify whether the documents you have produced are authentic.

8.b. Purpose of the Evidence or Judicial Act Sought:

The oral examination of the above Witnesses (in Section 8.a.), as well as the specified documents requested (in Section 11), will attempt to be used at trial by Defendants to establish that Plaintiff Teresa Birch was exposed to asbestos via take-home exposure from her mother’s work at British Uralite between 1966 to 1974.

Defendants will also attempt to submit and use the oral examinations and specified documents at trial in this case.

The oral examinations and specified documents requested cannot be secured without intervention by the judicial authority of the United Kingdom.

9. Identity and Address of Any Person to be Examined:

- i. Andrew James: Hodge Jones & Allen Solicitors
180 North Gower Street,
London NW1 2NB
United Kingdom
- ii. Marika Townsend: London Asbestos Support Awareness Group
Farthings, Rickmansworth WD3 4JQ
United Kingdom
- iii. PwC (UK): PricewaterhouseCoopers LLP
1 Embankment Place
London WC2N 6RH
United Kingdom
- iv. Margaret R. Ravate: 52 Chatham Grove
Chatham ME4 6LY
United Kingdom
- v. John L. Grieves: 7 Hadley Close
Meopham, Gravesend, DA13 0NX
United Kingdom
- vi. Glenys Plank: Gypsy Court, Bash Road
Shatterling, Canterbury CT3 1EQ
United Kingdom
- vii. Ann Hendricks: 19 Chatsworth Close
Ross-on-Wye HR9 7XH
United Kingdom
- viii. AEU: Unite House
128 Theobalds Road
Holborn, London WC1X 8TN
United Kingdom

10. **Questions to be Put to Persons to Be Examined or The Subject-Matter About Which They Are to be Examined:**

Please see the specific questions and subjects identified above in Section 8.a. for each of the Witnesses.

11. **Documents to be Inspected:**

i. Andrew James

- a. Document 1: The engagement letter with Teresa Birch, which defines the scope of Hodge Jones & Allen LLP's engagement to act as solicitors on her behalf.
- b. Document 2: The fee-sharing agreement between Hodge Jones & Allen LLP and Phillips & Paolicelli, LLP, with respect to Plaintiff Teresa Birch's claims for compensation for an asbestos-related illness.
- c. Document 3: The e-mail correspondence between the solicitors of Hodge Jones & Allen LLP and the attorneys of Phillips & Paolicelli, LLP referencing British Uralite or Teresa Birch's mother's work at an asbestos factory.
- d. Document 4: The documents you sent to the attorneys of Phillips & Paolicelli, LLP referencing British Uralite or Teresa Birch's mother's work at an asbestos factory.
- e. Document 5: The documents that provided that basis for your representation in the 18 August 2017 letter (attached as **Exhibit A**) to the United Kingdom's Department for Work & Pensions that: "[w]e believe that her [Teresa Birch's] exposure to asbestos was from washing the clothes of her mother who worked at an asbestos factory employed by British Uralite Plc."
- f. Document 6: The documents that demonstrates the date you sent to Teresa Birch, Robert Birch, or the attorneys of Phillips & Paolicelli, LLP the 18 August 2017 letter (attached as **Exhibit A**) to the United Kingdom's Department for Work & Pensions.
- g. Document 7: The e-mail correspondence between you and Marika Townsend with regard to Teresa Birch.
- c. Document 8: The documents in your possession addressing or referencing British Uralite's manufacture and use of asbestos products at its factory in Higham, Kent.

- ii. Marika Townsend
 - a. Document 1: The documents you provided to Teresa Birch, Robert Birch, Andrew James, Hodge Jones & Allen LLP, Brendan Tully, or Phillips & Paolicelli, LLP for purposes of submitting a claim for compensation for an asbestos-related illness on behalf of Teresa Birch or Robert Birch.
 - b. Document 2: The documents Teresa Birch, Robert Birch, Andrew James, Hodge Jones & Allen LLP, Brendan Tully, or Phillips & Paolicelli, LLP provided to you for purposes of submitting a claim for compensation for an asbestos-related illness on behalf of Teresa Birch or Robert Birch.
 - c. Document 3: The e-mail correspondence between you and Andrew James, Hodge Jones & Allen LLP, Brendan Tully, and Phillips & Paolicelli, LLP, with regard to Teresa Birch.

- iii. PricewaterhouseCoopers LLP (UK)
 - a. Document 1: The documents in your possession referencing investigations by the Health & Safety Executive and Environment Agency into asbestos dumping at the site of British Uralite's former factory in Higham, Kent between the years of 2000 and 2002.
 - b. Document 2: The documents in your possession referencing British Uralite's manufacture and use of asbestos products.
 - c. Document 3: The documents in your possession referencing the reason for British Uralite's liquidation.
 - d. Document 4: The documents in your possession from asbestos-related lawsuits against British Uralite in the United Kingdom, including the following:
 - i. *Matthews v. Associated Portland Cement and British Uralite PLC*, QB-2001-10111 (Manchester District Registry),
 - ii. *Chowne v. British Uralite*, QB-2014-000889
 - iii. *Gregory v. British Uralite*, QB-2014-001037
 - iv. *Heard-White v. Cellactite/British Uralite*, QB-2015-001388
 - v. *Easton v. British Uralite*, QB-2016-001883
 - vi. *Gibbons v. British Uralite*, QB-2019-001093
 - vii. *Beadle v. British Uralite*, QB-2014-001850

- iv. AEU Representative
 - a. Document 1: The documents in your possession referencing the operations and conditions at British Uralite's factory in Higham, Kent between 1966 and 1974.

12. Request for Administration of Oath or Affirmation:

This Court requests that testimony be taken under oath or affirmation. Pursuant to Florida Statute 90.605, this Court requests that each witness be required to declare that he or she will testify truthfully, by oath or affirmation administered in either the form set forth in Florida Statute 90.605 (“Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?”) or in the form customarily used in the United Kingdom to awaken a witness’s conscience and impress on him or her the duty to testify truthfully.

13. Time and Place for Execution of this Request:

The examinations of the Witnesses shall take place remotely by videoconference at a location agreed to by the Witnesses and the parties. The examinations shall be taken under the Florida Rules of Civil Procedure, except to the extent such procedure is incompatible with the internal laws of the United Kingdom. This Court requests: (1) that the examinations be taken orally; (2) that the examinations be taken before a commercial stenographer and videographer selected by Defendants; (3) that the stenographer be permitted to record the examinations by audio and video means; (4) that the stenographer be allowed to record a verbatim transcript of the examination; (5) that counsel for Plaintiffs and counsel for Defendants be notified as soon as possible of the date, time, and place of the examination, along with any other pertinent information, including what authority has been appointed to preside over the deposition; (6) that counsel for Plaintiffs and counsel for Defendants be permitted to question the witness regarding

the subjects described in this Request; (7) that a maximum of 4 hours be allotted for the examination of each of the Witnesses; (8) that the examinations be closed to the public; and (9) that each Witness be examined as soon as possible.

Per the governing procedure in the United Kingdom, counsel for Defendants will limit themselves to such questions as would be permissible at trial. *See Smith v. Phillip Morris Companies*, [2006] EWHC 916 (QB), ¶ 31 (comparing the discovery regimes of the United Kingdom and United States and noting that the breadth of oral discovery in the United States is greater). As such, the subject matter of the pretrial depositions sought will be “restricted to the evidence admissible at trial.” *Blagman v. Apple, Inc.*, No. 12 CIV. 5453 ALC JCF, 2014 WL 1285496, at *4 (S.D.N.Y. Mar. 31, 2014) (quoting *Apple Computers, Inc. v. Doe*, [2002] EWHC (QB) 2064, 2002 WL 31476324 (Queen’s Bench Division Sept. 18, 2002)).

If the evidence cannot be taken according to some or all of the procedures described above, this Court requests that it be taken in such manner as provided by the applicable law of the United Kingdom for the formal taking of testimonial evidence. When required, this Court will provide similar assistance as requested herein to the appropriate judicial authorities of the United Kingdom.

14. Specification of Privilege:

The law of the United Kingdom shall apply to any attorney-client and/or work product doctrine privilege dispute with respect to the oral examination of the Witnesses or document production by the Witnesses pursuant to this Letter of Request. All disputes regarding the assertion of the attorney-client and/or work product doctrine privilege will be resolved by the appropriate judicial authorities in the United Kingdom.

15. Fees and Costs:

Should there be any costs associated with the service herein, including the required fees and costs incurred in executing this letter of request, in serving process to compel the appearance of the witness and his attendance, and in preparing a transcript of the proceedings, pursuant to Article 26 of the Hague Evidence Convention, it will be the responsibility of the attorneys for Defendants to reimburse the judicial authorities of the United Kingdom for any costs and fees. Please direct any correspondence or communications concerning costs to J&J and JJCI's counsel listed in Section 6.

16. Request For Notification Of The Time And Place For The Execution Of The Request And Identity And Address Of Any Person To Be Notified:

Please notify the counsel listed in Section 6 regarding the time and place for the execution of the Request.

17. Request For Attendance Or Participation Of Judicial Personnel:

No attendance of judicial personnel is requested for the examinations of the Witnesses. Defendants plan to question these witnesses about the subjects listed in Section 8.a. Pursuant to the Florida Rules of Civil Procedure, depositions may be taken with or without involvement of judicial personnel. See Florida Rule of Civil Procedure 1.300.

18. Reciprocity:

In the furtherance of justice and by the proper and usual process of this Court, the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida assures the judicial authorities of the United Kingdom that it is willing to provide similar cooperation and assistance to the judicial authorities of the United Kingdom in the event that the United Kingdom requests similar assistance.

Date of Request: _____, 2020

Signature of Requesting Authority: Circuit Judge of the Circuit Court of the
Seventeenth
Judicial Circuit in and for Broward County, Florida

Martin Bidwill, Circuit Judge

Dated: _____



hodge jones & allen
solicitors

PWCA Team
Barrow Benefit Centre
Post Handling Site B
Wolverhampton
WV99 1RX

Hodge Jones & Allen LLP
180 North Gower Street
London NW1 2NB

DX 2101 EUSTON
www.hja.net
ajames@hja.net

Direct tel: 0207 874 8458
Direct fax: 0207 874 8305
Switchboard: 020 7874 8300

Our ref: 1023397.0001/ANJ
Your ref:

18 August 2017

APPLICATION UNDER 2008 DIFFUSE MESOTHELIOMA SCHEME

Dear Sirs

Our Client Mrs Teresa Birch
Date of Birth: 26th March 1957
National Insurance No: YY203454D
Address: 96 Timber Bank, Vigo, Village, Meopham, Kent, DA13 0SW

We enclose our client's completed PWCA application form and Form BI100 PN(A) confirming diagnosis.

We believe that her exposure to asbestos was from washing the clothes of her mother who worked at an asbestos factory employed by British Uralite Plc.

We confirm that no compensation has been received nor court proceedings commenced in respect of any common law claim.

We would be grateful if you could send us a copy of the letter confirming the outcome of the application. Please do not hesitate to contact us should you have any questions.

Yours faithfully

Hodge Jones & Allen LLP

Hodge Jones & Allen LLP



**INVESTORS
IN PEOPLE** | Gold



Hodge Jones & Allen LLP is a limited liability partnership, registered in England and Wales. Registered No. OC336075. Registered office: 180 North Gower Street, London NW1 2NB.

Hodge Jones & Allen LLP is authorised and regulated by the Solicitors Regulation Authority.

A list of members is available for inspection at the office.

Exhibit A

TBirch-DW&P-000001

Mesothelioma and other lung diseases

Application for a payment

Fill in this form if

- you suffer from diffuse mesothelioma or another lung disease, or
- you were the partner of a sufferer who has died, or
- you are, or are acting for, a child or a young person or other dependant of a sufferer who has died.

Please read the notes before you fill in this form.

How the Department for Work and Pensions collects and uses information

When we collect information about you we may use it for any of our purposes. These include dealing with:

- social security benefits and allowances
- child support
- employment and training
- financial planning for retirement
- occupational and personal pension schemes.

We may get information about you from others for any of our purposes if the law allows us to do so. We may also share information with certain other organisations if the law allows us to.

To find out more about how we use information, visit our website at www.dwp.gov.uk/privacy-policy or contact any of our offices.

Notes

What is the Pneumoconiosis etc (Workers' Compensation) Act 1979?

People who suffer from some lung diseases caused by specific dusts can get help under the Pneumoconiosis etc (Workers' Compensation) Act 1979. You can make a claim if you cannot get damages from the employer or training provider who caused or contributed to a lung disease.

The lung diseases you can claim for are:

- diffuse mesothelioma
- pneumoconiosis (including silicosis, asbestosis and kaolinosis)
- primary carcinoma of the lung (where there is accompanying evidence of asbestosis or/and bilateral diffuse pleural thickening)
- bilateral diffuse pleural thickening
- byssinosis.

If you have one of the lung diseases, including diffuse mesothelioma and it was caused by your work or whilst on an approved employment training scheme or course, we will consider a payment under the Pneumoconiosis etc (Workers Compensation) Act 1979:

- if you are entitled to Industrial Injuries Disablement Benefit for one of the lung diseases
 - if no court action for damages has been brought in relation to the lung disease and no out of court settlement received
 - if the employer or training provider who caused or contributed to dust exposure has stopped trading, or
 - if the employer or training provider is still trading, there must be no realistic chance of getting damages, or
 - the work which caused the lung disease was more than 20 years ago.
- Complete **Part 1** and **Parts 4** to **11** of this form.

Note – You will need to provide evidence that you are suffering from one of the diseases listed. For example, a letter from your nurse, doctor or consultant showing that you have the disease and the date you were diagnosed.

What is the 2008 Diffuse Mesothelioma Scheme?

Under this scheme you can get a single lump sum payment if you suffer from diffuse mesothelioma. This does not have to have been caused by work or training. But if you got this disease because of the work or training you used to do for an employer or training provider, you may be entitled to a payment under the Pneumoconiosis etc (Workers Compensation) Act 1979.

If you have diffuse mesothelioma and you did not get it from work or training, complete **Parts 1, 4** and **Parts 6** to **11** of this form. We will consider the payment under the 2008 Diffuse Mesothelioma Scheme.

Note – You will need to provide a letter from your medical practitioner, for example, a nurse from the lung cancer nurses network, or your doctor or consultant. The letter must show the date you were diagnosed with the disease.

When must I apply?

You must apply as soon as you know that you have a lung disease.

- If you are claiming under the 1979 ACT, you must claim within 12 months of the date you became entitled to Industrial Injuries Disablement Benefit.
- If you are claiming under the 2008 Scheme, you must claim within **12 months** of the date you were diagnosed.

If you delay, we might not be able to pay you.

Note – If you go on to get any other compensation, we may recover the money we paid you under these schemes from the compensation.

Partner and dependants

If a person has

- suffered from one of the lung diseases, **and**
 - has died, **and**
 - has not claimed a lump sum payment
- their dependants or partner can make a claim, but must do so within 12 months of the date of death. Please include the death certificate with the application.

You can find more information about both schemes on our website www.gov.uk

How do I apply?

Fill in this form and return it to:

**PWC Team
Barrow Benefit Centre
Post Handling Site B
Wolverhampton
WV99 1RX**

Freephone **0800 279 2322**.

Please fill in this form with **BLACK INK** and in **CAPITALS**.

Part 1: About you

Surname or family name

Miss Ms Dr Rev Bifcat

All other names - in full

TERESA (TESS)

Any other surnames you have been known by or are using now.

TRUSZKOWSKA

Please include maiden name, all former married names and all changes of family name.

Address

96 TIMBERBANK
VIC0
NR NEORHAM
KENT Postcode DA13 0BW

Home phone number

Code 01932 Number 872033

Mobile phone number

Email address

tesa-bird@cs74.yahoo.co.uk

Date of birth

26 / 3 / 1957

National Insurance (NI) number

You can find the number on your National Insurance (NI) numbercard, letters about your benefit or payslips.

Letters Numbers Letter
44 20 34 S4 D

Reason for claiming

I am the sufferer Go to Part 4.
I am the surviving partner Go to Part 3.
I am a dependant of the late sufferer Go to Part 2.

How to fill in this form

- If you suffer from one of the lung diseases listed, fill in **Part 1** and then go to **Part 4**.
- If you are claiming compensation on behalf of your partner who has died from a lung disease fill in **Part 1** and then go to **Part 3**.
- If you are, or are acting for, a child or a young person or other dependant of a sufferer who has died of a lung disease fill in **Part 1** and then go to **Part 2**.

• We use **partner** to mean:

- a person you are married to or a person you live with as if you are married to them, or
 - a civil partner or a person you live with as if you are civil partners.
- We use **child** to mean a person aged under 16.
- We use **young person** to mean a person aged 16 to 21 who is not in full-time employment.
- We use **dependant** to mean a person who is permanently not able to support themselves.

• Remember, if you need help filling in this form, or any part of it, phone 0800 279 2322.

Part 3: About the sufferer

Their surname or family name

Mr Mrs Miss Ms Dr Rev

All other names - in full

Any other surnames or family names they have been known by.

Please include maiden name, all former married names and all changes of family name.

Their last address

Postcode

Their date of birth

/ /

Their date of death

/ /

If you have the death certificate, send it to us with this form.

Their National Insurance (NI) number

You can find the number on their National Insurance (NI) numbercard, letters about their benefit or payslips.

Letters	Numbers	Letter
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Now go to **Part 4.**

Remember, if you need help filling in this form, or any part of it, phone **0800 279 2322.**

Part 4: About the lung disease

If you are the sufferer, which lung disease are you suffering from?

or

If you are applying on behalf of the late sufferer, which lung disease was the cause of the sufferer's death?

Tick the boxes that apply.

- Diffuse mesothelioma
- Asbestosis
- Pneumoconiosis
- Bilateral diffuse pleural thickening
- Byssinosis
- Primary carcinoma of the lung (where there is accompanying evidence of asbestosis or/and bilateral diffuse pleural thickening)

Was this contracted at work?

- No Please go to the next page.
- Yes Please go to the next question.

If you are the sufferer, do you get, or have you ever applied for, Industrial Injuries Disablement Benefit (IIDB)?

or

If you are applying on behalf of the late sufferer, did they get, or did they ever apply for, Industrial Injuries Disablement Benefit (IIDB)?

- No Please go to Part 5.
- Yes Please go to Part 5.

Remember, if you need help filling in this form, or any part of it, phone 0800 279 2322.

Part 4: About the lung disease continued

Only answer these questions if you contracted diffuse mesothelioma outside work or training.

What is your GP's name and address?

DR DYER
BOLOUGH GREEN MEDICAL CENTRE
QUARRY HILL ROAD
KENT Postcode TN15 8RQ

If you have a specialist nurse, what is their name?

--

What is the name of your consultant?

--

What is the hospital address?

MADONNE HOSPITAL
HERMITAGE CAVES
WATSTONE
KENT Postcode ME16 9OC

We need to see a letter from your medical practitioner, for example, a nurse from the lung cancer nurses network, or your doctor or consultant. The letter must show the date you were diagnosed with the disease.

Were you exposed to asbestos in the UK?

No

Yes

How long have you lived in the UK?

--

Now go to **Part 5**.

Remember, if you need help filling in this form, or any part of it, phone 0800 279 2322.

Part 5: The employment history

It is important that you fill in this form fully. We need to know the employment history from leaving school up until retirement.

Dates of employment		Employer.		Type of work	Exposure to harmful dusts Please tell us the name of the dust.	Exposure to asbestos	
From	To	Name and address of the workplace	Business at the workplace			No	Yes
/ /	/ /						
/ /	/ /						
/ /	/ /						
/ /	/ /						
/ /	/ /						
/ /	/ /						

Continue on a separate sheet of paper if there were more than six employers. Make sure you put your full name and National Insurance (NI) number on each sheet you use.

Now go to **Part 6**.

● Remember, if you need help filling in this form, or any part of it, phone **0800 279 2322**.

Part 6: Compensation or court action

Have you been paid any compensation because of the disablement?

For example:

- damages awarded by the court
- an out of court settlement
- compensation from an employer
- payment from Armed Forces Compensation Scheme, or
- payment from Coal Workers Pneumoconiosis Scheme.

No Yes

Are you waiting to hear about any compensation because of the disablement?

No Yes

Do you have a solicitor or any other legal representative acting on your behalf in bringing court action or a claim for compensation?

No Yes Please tell us about them below.

Name

MORGAN JONES + ALLEN

Address

180 WARETH GOWER ST
LONDON

Phone number

Postcode NW1 2NS

Solicitor's reference number

Code 0200 Number 7674 8458

LDZ 3397. 0201 - ANJ

If at any point during your application you should get any compensation or start a court action because of the disablement, you should tell us straight away.

Note - it is important that you tell us the reference number your solicitor has given you. If you do not know the reference number, ask your solicitor about it.

Use this space to tell us about any claim for compensation you have ever made from any source in connection with any lung disease. Please give details of the claim and when it was made.

If there is not enough space, please use a separate sheet of paper. Make sure you put your full name and National Insurance (NI) number on each sheet you use.

Now go to Part 7.

Remember, if you need help filling in this form, or any part of it, phone 0800 279 2322.

Part 7: How we pay you

We normally pay your money into an account.

Many banks and building societies will let you collect your money at the post office. However, we cannot pay money into a Post Office account.

We will tell you when we make the payment and how much it will be for.

Finding out how much we have paid into the account

You can check your payment on account statements. The statements may show your National Insurance (NI) number next to any payment we have made. If you think the payment is wrong, get in touch with the office shown in **Part 9**.

If we pay you too much money

We have the right to take back any money we pay that you are not entitled to. This may be because of the way the system works for payments into an account.

For example, you may give us some information, which means you are entitled to less money. Sometimes we may not be able to change the amount we have already paid you. This means we will have paid you money that you are not entitled to.

We will contact you before we take back any money.

What to do now

- Tell us about the account you want to use on the next page. By giving us your account details you:
 - agree that we will pay you into an account, and
 - understand what we have told you above in the section **If we pay you too much money**.
- If you are going to open an account, please tell us your account details as soon as you get them.
- If you do not have an account, please contact us and we will give you more information.

About the account you want to use

- You can use an account in your name, or a joint account.
- You can use someone else's account if
 - the terms and conditions of their account allow this, and
 - they agree to let you use their account, and
 - you are sure they will use your money in the way you tell them.
- You can use a credit union account. You must tell us the credit union's account details. Your credit union will be able to help you with this.
- If you are an appointee or a legal representative acting on behalf of the claimant, the account should be in your name only.

Please tell us your account details on page 9.

It is very important you fill in all the boxes correctly, including the building society roll or reference number, if you have one. If you tell us the wrong account details your payment may be delayed or you may lose money.

You can find the account details on your chequebook or bank statements. If you do not know the account details, ask the bank or building society.

• Remember, if you need help filling in this form, or any part of it, phone **0800 279 2322**.

Part 8: Declaration

- I declare that the information I have given on this form is correct and complete as far as I know and believe.
- I understand that if I knowingly give information that is incorrect or incomplete, I may be liable to prosecution or other action.
- I understand that I must promptly tell you if I get compensation from elsewhere for the disease I have claimed for.
- I agree that
 - the Department for Work and Pensions
 - any doctor advising the Department
 - any organisation with which the Department has a contract for the provision of medical services
 may ask any of the people or organisations mentioned on this form for any information which is needed to deal with
 - this claim for payment
 - any request for this claim to be looked at again
 - and that the information may be given to that doctor or organisation or to the Department.
- I also understand that the Department may use the information which it has now or may get in the future to decide whether I am entitled to
 - the payment I am claiming
 - any other benefit or entitlement I have claimed
 - any other benefit or entitlement I may claim or be awarded in the future.

This is my claim for dust-related compensation

Signature

T. Birch

Date

17/7/2017

Part 9: What to do now

Send this claim form to:

PWC Team
Barrow Benefit Centre
Post Handling Site B
Wolverhampton
WV99 1RX

Do not delay, or you could lose money.

BI 100-PNU
SS 12/02

Office stamp

Industrial Injuries Disablement Benefit

About the patient

Please attach a details sticker or fill in the boxes IN BLOCK LETTERS.

Surname: Mr (Mrs) Miss, Ms BIRCH.

Other names: TERESA

National Insurance (NI) number: YY 20 34 54 0

Address: 96 Timberbank.
VIGO VILLAGE, MEOPHAM,
GRAVESEND, Kent
Postcode: DA130SW

About the illness

The above named person has been diagnosed as suffering from Diffuse Mesothelioma.

Symptoms prior to this date but referred to respiratory team.

The date of onset: 25 / 4 / 2017

Name of the consultant who made a diagnosis (IN BLOCK LETTERS): DR Mankegopal MS Harnees
Phips

The loss of faculty is confirmed as impaired function of the pleura, pericardium or peritoneum.

I confirm that I am:
please tick the box that applies

Specialist cancer nurse Lung CNS

Specialist respiratory disease nurse

Signature: [Signature] Date: 24 / 7 / 17.

Name (IN BLOCK LETTERS): LR Gilham Hospital: Medway and Tunbridge Wells NHS Trust

Position: Lung cancer CNS Tunbridge Wells Hospital

Phone number: 01892 635358 Tonbridge Road
Pembury
Tunbridge Wells
Kent
TN2 4QJ

Social Security Office

Part of the Jobcentre Plus network,
Department for Work and Pensions

Social Security Acts

Decision on the claim made under the 2008 Diffuse Mesothelioma Scheme

Part 1 Customer's details

Sufferer's Full Name

NINO

Dependant's details, if appropriate

Full Name

NINO

Part 2 Reason for referral to Decision Maker

Claim dated 22 8 17

Details

- claims

SIC		Cause code		Prepared by (initials):	CH	Date:	23/08/2017
Claim under the 2008 Diffuse Mesothelioma Scheme made on 22/08/2017							
Medical evidence states that the claimant is suffering from the disease diffuse mesothelioma							YES
The sufferer was exposed to asbestos in the United Kingdom							YES
No compensation has already been received from any scheme							YES
There is no entitlement under a Ministry of Defence scheme							YES
Date of diagnosis* / date of death 08/06/2017.							
Age of sufferer at the date of diagnosis* / date of death*					60	years	
Claimant is entitled to a payment under the scheme							YES
Amount £ 41106							
Any other information							
.....							
.....							
.....							
.....							
* Delete as appropriate							

Please turn over →

**Decisions – claims, revisions, supersessions, etc,
determination of questions and reconsiderations**

■ **Part 3 Decision**

Lump sum payment

Awarded Disallowed

Details of decision

Include details of any award or disallowance.

Give the reasons for the decision, including the law and supporting evidence as appropriate.

All conditions of entitlement are satisfied for a payment under the 2008 Diffuse Mesothelioma Scheme

Continue on a separate sheet of paper if necessary

Legislation

Signature Name in BLOCK CAPITALS

Office

Date Phone Code number

System / Notified to customer on form / letter on

papers noted Initials Date



**Department
for Work &
Pensions**

Mrs Teresa Birch
96 Timberbank
Vigo
Gravesend
DA13 0SW

Office mailing address

Barrow IIDB Centre,
Post Handling Site A,
Wolverhampton,
WV98 2BR

Telephone 0800 279 2322

If you have textphone, you can call

0345 608 8551

**If you get in touch with us, tell us this
reference number: YY203454D**

Date: 23 August 2017

About your claim for a payment from the 2008 Diffuse Mesothelioma Scheme

Dear Mrs Birch

You made a claim on 22/08/2017. I am writing to tell you that you are entitled to a single payment of **£41,106**. The payment is based on a person's age at the time the disease was diagnosed.

This amount will be credited to your bank account during the next 10 days. If payment is not received please contact this office.

If you are in receipt of any state benefits, you should advise them of this award.

What to do if you think this decision is wrong?

If you think our decision is wrong whilst considering the 79 Act you can ask us to look at it again. You must make your request in writing within 3 months of the date of this letter if you think the decision was made in ignorance of a fact. Or within 12 months if there has been a change in your circumstances.

If you think the decision is wrong under the 2008 Scheme please get in touch with us by telephone or in writing **within one month of the date of this letter**. If you do not contact us within one month of the date of this letter we may only be able to change the decision from the date you contact us. Our telephone number and address are on the front page of this letter.

You can appeal against this decision, but you cannot appeal until we have looked at the decision again. We call this a **Mandatory Reconsideration**.

Workers Compensation Unit

You can contact us Monday to Friday 09:00 – 17:00

TBirch-DW&P-000017

You, or someone who has the authority to act for you, can:

- ask for an explanation of the decision, or
- ask for a written statement of reasons for the decision, if we have not already sent one
- ask us to look at the decision again, to see if it can be changed. There may be some facts you think we have overlooked, or you may have further information that affects the decision.

When we have looked at the decision again, we will send you a letter explaining what we have done. We call this a **Mandatory Reconsideration Notice**. This will include the information you need to be able to appeal.

Yours sincerely

Mr C E Hale

CC Hodge Jones & Allen REF: 1023397.0001/ANJ

Workers Compensation Unit

You can contact us Monday to Friday 09:00 – 17:00

SOP1 PAYMENT



Shared Services Connected Limited

Department for Work and Pensions

If you know the Supplier and Site Code of the payee, please fill them in using the boxes below:

Supplier Number:		Site:	
Payee Type	CUSTOMER	Unique Payee Reference	
Payee Name	Mrs Teresa Birch		
Address Line 1	96 Timberbank		
Address Line 2			
Town/City	Vigo, Gravesend, Kent		
Payee Postcode	DA13 0SW		
Remittance Email Address			
VAT Registration Number			
Payment Method	Domestic Payment		
Sort Code	309712	Bank Account Number	00415278
Name of Bank/Building Society	Lloyds		
Account Name	Mrs Teresa Birch		
Building Society Roll Number			
Invoice/Tax/Claim Effective Date	23/08/2017		
Period Effective From	23/08/2017	Period Effective To	23/08/2017
Unique Payment Reference	PNEUMO 1039932/17/8S		
Description of Payment (max 200 characters)	WORKERS COMPENSATION PAYMENT		
GL Accounting:			

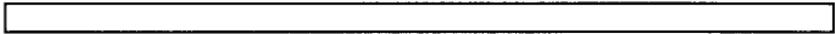
Accounting String Values	VAT	Description	Net Amount
0391.10382182.5511202938.0000000.00000000	UK ZERO	AO21	41106.00
Purchasing Category Code			
Total Amount of VAT £			0.00
Total Amount including VAT £			41106.00

		<i>(SSCL Use Only)</i>	
Completer Name	Colin Hale	Completed Date	23/08/2017
Email	COLIN.HALE@JOBCENTREPLUS.GSI.GOV.UK	Telephone No.	01229 8422758
Office Name and Address			
Phoenix House, Stephen Street, Barrow in Furness, Cumbria, LA14 1BY			

By approving this SOP1 I confirm: *(SSCL Use Only)*

1. The details supplied represent a valid payment due to the named payee and have been checked for accuracy. 2. Official Documentation is held locally to support the SOP1 Authority submitted and this will be available for six years after payment for post payment checks if required. 3. No other request to pay has been sent to SSCL previously for the approved payment. 4. This form is approved in line with any Delegated Financial Authority levels / Approval Guidance appropriate to my business area.

Approver Name	Joanne Baker	Date Approved	23/08/2017
Email	jo.baker@dwp.gsi.gov.uk	Grade/Job Title	Admin Officer



*Filed on behalf of the Claimant
M Ravate
1st Statement
Exhibit: 0
Statement made:*

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

Claim no. MA190458

B E T W E E N:-

EDWIN MATTHEWS

Claimant

- and -

THE ASSOCIATED PORTLAND CEMENT
MANUFACTURERS (1978) LIMITED

1st Defendants

- and -

BRITISH URALITE PLC

2nd Defendants

WITNESS STATEMENT OF MARGARET RAVATE

000088

Exhibit B

S T A T E M E N T

GC MATTHEWS G10104

I, MRS MARGARET RAVATE (NEE POCOCK), of 54 Shanklin Close, Walderslade, Chatham, Kent ME5 7QL, date of birth 11/6/46, WILL SAY:-

1 I am a housewife. Although we have not been in touch for many years, I knew Eddie Matthews from childhood. We lived opposite each other as children growing up and our mothers were friends.

2 I worked at British Uralite factory in Higham in Kent for about 12-18 months from about 1972. I cannot remember the exact dates. I do not remember Eddie Matthews working at British Uralite. Perhaps he started work there after I left. It is possible we were there at the same time and just never bumped into each other. The women worked separately from the men there. There was no canteen there.

3 I did exactly the same job as Eddie Matthews did at British Uralite. I worked in the main shop moulding asbestos pipes. I worked in an area where it was all women, so Mr Matthews and I would not have been working in the same area even though we did the same job.

4 The women did the smaller, lighter asbestos pipe mouldings and the men did the heavier, larger pipes. We were all making pipes for drainage. In other areas of the factory asbestos cement sheets were made, flat sheets and corrugated. Ornamental asbestos pipe fittings were also being made.

5 The wet asbestos material came down to us on the ground floor from the first floor where the mixture was made up. On the first floor they mixed bags of dusty asbestos powder with water to make the paste. Then it was brought down to us on the ground floor to mould into shape. We moulded it by hand pressing the asbestos against the moulds we worked to. We did not wear gloves. I often had friction burns from rubbing the asbestos as I worked on the moulds

I believe that the facts stated in this witness statement are true.

Signed *M. P. Newb* Dated *5-04-01*

000087

and my wrists were often bandaged and covered in plastic.

6 There was asbestos dust all over the place in the factory. I cannot really describe it. At the end of the working day my hair was white because it was covered in asbestos dust. When I wore black shoes to work they had a coat of white dust on them by the end of the day. There was a company bus which took me to work and back. Lots of women working at the factory got this bus. We were given cotton aprons to wear to work. They were filthy with asbestos dust by the end of the day.

7 I had to go home after work to have a bath or a shower to get the asbestos dust off me before I went out. There was no way I could go out straight from work because of the dust on me.

8 I made about 50 pipes a day. When I had finished moulding them I put them in the oven to dry. I then took them out of the oven and filed the seams. We used wire brushes to file the seams, where the pipes were joined. Brushing them with a wire brush when they were dry created more asbestos dust. I had to brush every pipe I made so I wire-brushed about 50 pipes a day and it took a couple of minutes to do each one. There was always someone wire-brushing alongside me, creating dust, even when I personally wasn't.

9 There was dried asbestos dust all over place where I worked and throughout the rest of the factory. The wet asbestos paste we worked with dried very quickly and we worked in the thick of it. There was a constant build up of asbestos dust around the work floor and surfaces. There was a man allocated to sweeping up our section. He went round with a sweeping brush and swept up dry. He stirred up the dust if anything as he worked around us. There was no way he could keep on top of the dust, there was too much of it.

10 The man who brought the asbestos down from the first floor to my section on the ground floor had asbestos caked on his face after being up on the first floor. The women in my section

I believe that the facts stated in this witness statement are true.
Signed... *M. R. ...* Dated... *5-06-01*

000038

used to tell him to wipe it off his face. The dust was bad on the ground floor but even worse up there on the first floor.

11 My mouth was always dry because of asbestos dust. We were not given masks to wear. We were never warned of the dangers of working with asbestos. There was no extraction or ventilation that I remember. There were no showers at work. We were never sent for medicals or x-rays.

12 The only ventilation was the windows, but many of these were stuck and did not open. There was a haze of asbestos throughout the factory. It was so bad that you couldn't see clearly, it hung in the air. The windows were covered in a build up of asbestos dust.

13 There was no canteen for us. When we had our teabreaks we put a large kettle to boil in the same oven we baked the asbestos pipes in. It went in alongside them. We sat around our workbenches to eat our lunch in amidst all the asbestos dust.

14 The offices were in a building to the right of the factory, a separate building. Even in the offices there was a build up of asbestos dust. The office windows had a build up of asbestos dust on them so that you could not see out clearly.

15 The factory boss had a car and a chauffeur. I was friendly with the chauffeur. The chauffeur had a hard job to keep the car clean because of the asbestos dust in the air around the factory. If he parked it at the factory before long it had a build up of white asbestos dust on it. That was not acceptable to the boss, so the chauffeur had to take the car to the garage down the road from the factory after dropping the boss off at the factory where the car had to be cleaned and polished. At the end of the day the boss took a taxi to the garage to meet the chauffeur and car there, so as to avoid the car getting more dust on it by coming to meet him at the factory.

16 This happened regularly, every day or every other day. The boss arrived in the chauffeur

I believe that the facts stated in this witness statement are true.
Signed... *A. R. - [Signature]* Dated... *05-04-01*

000633

driven car and then left at the end of the day in a taxi to meet the car at the garage. Sometimes it had to be done more than once a day depending on which visitors were coming to the factory with the boss.

17 I was very upset to hear that Eddie Matthews is so ill. It is a terrible worry for everyone who worked at the British Uralite factory. So many people have got asbestos disease who worked there and all of us who worked there worry about getting it.

I believe that the facts stated in this witness statement are true.

Signed *M. R. Davis* Dated *05.04.01*

000030

GC MATTHEWS G10104

- 1. Statement on behalf of Claimant
- 2. J. Grieves
- 3. First Statement
- 4. Exhibits:
- 5. Dated:

IN THE HIGH COURT OF JUSTICE

CLAIM NO. MA109458

QUEEN'S BENCH DIVISION

MANCHESTER DISTRICT REGISTRY

BETWEEN:

EDWIN MATTHEWS

Claimant

AND

THE ASSOCIATED PORTLAND CEMENT
MANUFACTURERS (1978) LIMITED

First Defendants

AND

BRITISH URALITE PLC

Second Defendants

WITNESS STATEMENT

I, JOHN GRIEVES, of Hillbrow, Ash Road, Hartley, Longfield, Kent, DA3 8EY, date of birth 23/2/1940, WILL SAY AS FOLLOWS:-

- 1. I am self-employed. I worked at British Uralite's asbestos factory in Higham, Kent between October 1964 and August 1969. I do not remember Mr. Matthews

I believe that the facts stated in this witness statement are true.

Signed.......... Dated.....1-6-01.....

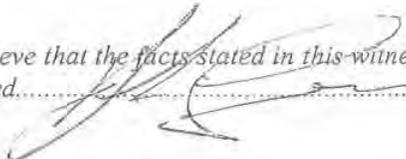
800035

Exhibit C

but I can confirm what the working conditions were at British Uralite.

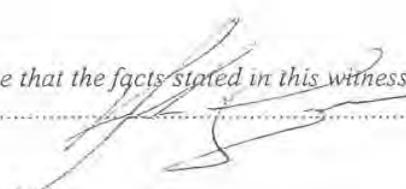
2. I had just got married and I was in my early twenties when I went to work there at the asbestos factory as a maintenance fitter in the engineering department. My job was to maintain and repair the machinery being used throughout the asbestos factory.
3. The conditions inside the British Uralite factory were terrible. There was asbestos dust all over the place. It was on every surface and every person. In one section of the factory bags of raw asbestos fibre were slit open and the fibre was beaten up so that it broke down into a crumbly substance and could be used in the processes around the factory. On the ground floor workers made asbestos products, including pipes and sheets from the wet asbestos mixture.
4. Every single process in the factory created asbestos dust. In another section of the factory there were electric lathes which were used to trim the asbestos pipes once they had been made by sanding them down. The pipes were cut to size and the ends were squared off using these electric lathes. There was asbestos dust everywhere when the lathes were operating. The process was done dry and created a lot of asbestos dust. The lathes operated around the clock, nonstop.

I believe that the facts stated in this witness statement are true.

Signed.......... Dated.....1-6-01.....

5. The men in my department worked in close contact with asbestos on a daily basis all day every day and there was really no escape from asbestos dust inside the factory. The asbestos dust got on our clothes and in our hair. We wore cotton overalls to work and they were covered with dust at the end of a working day.
6. It was the same for everyone working inside the factory. We all left with a coating of asbestos dust on our clothes and in our hair. There were no showers or facilities for washing at the factory. I took my work overalls home for my wife to wash.
7. You could see the asbestos dust hanging in the air throughout the factory, both on the ground floor and the first floor. The windows were clouded up with asbestos dust as well. I was never given a mask to wear and I was never told that I was putting my health at risk by working at the factory.
8. I was the A.E.U. union representative at British Uralite.
9. There was no ventilation or extraction system to the best of my recollection. The factory was a very dusty place to work.

I believe that the facts stated in this witness statement are true.

Signed.......... Dated.....1-6-91.....

*Filed on behalf of the Claimant
G Plank
1st Statement
Exhibit: 0
Statement made:*

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY**

Claim no. MA190458

B E T W E E N:-

EDWIN MATTHEWS

Claimant

- and -

THE ASSOCIATED PORTLAND CEMENT
MANUFACTURERS (1978) LIMITED

1st Defendants

- and -

BRITISH URALITE PLC

2nd Defendants

WITNESS STATEMENT OF GLENYS PLANK

Exhibit D

STATEMENT

GCMATTHEWSG10104

I, MRS GLENYS PLANK of Oaklands Farm, Wood Hill, Priestwood, Meopham, Kent DA13 ODA, date of birth 5/11/48, WILL SAY:-

1 I am a school cleaner. I worked at British Uralite's factory in Higham, Kent in the 1960's between October 1966 and April 1967. I do not know Edwin Matthews.

2 My job at the asbestos factory was in the department where the asbestos was moulded into pipes. I worked for a time on the ground floor and then moved to the first floor. I worked moulding pipes all the time I was there.

3 I worked at a workbench with wet asbestos sheets moulding them to form pipes. Bits of the wet asbestos fell about the place as we worked and then dried quickly leaving asbestos dust and debris there. The wet asbestos we worked with was like dough and it dried like dough dries when you are baking bread.

4 After moulding the pipes we put them in the oven to be baked. When it came out of the oven it was dry. It was taken to another bench to be filed down by a power sanding machine. That created a lot of asbestos dust and it was not far from where I worked. The factory was a very dusty place. There were bits of asbestos all over, on every surface.

5 At the end of the working day I had asbestos dust on my clothes and in my hair. I had bits of asbestos stuck under my nails, and on the fronts of my nails.

6 We were never given protective clothing apart from rubber gloves. We were never given masks to wear. There were no facilities for showers or washing at the asbestos

I believe that the facts stated in this witness statement are true.

Signed  Dated 9.4.01

000104

factory. We went home in our work clothes. We wore cotton pinafores to work. I went to work everyday on a coach provided by the factory which took a lot of the women who worked there to work. When the coach dropped us off at the factory we had to walk through other departments in the factory before we got to our own. I walked past men cutting up asbestos sheets with power saws everyday.

7 There were lots of dusty processes going on around the factory. There was a place where they took the reject pipes and destroyed them. The process was rather like shredding. They had a machine which shredded them up into smaller pieces and they could be reused. It was a terribly dusty process and created a lot of asbestos dust.

8 When I worked at the asbestos factory I had a large handbag which I kept next to my workbench during the day. As I worked, bits of wet asbestos fell off the bench all over my handbag. It got bits of dried asbestos stuck on it everyday. Because of this by the time I left British Uralite the only thing my handbag was fit for was to be used in the garden shed by my Dad to keep his tools in, which he did.

9 The asbestos dust hung in the air inside the factory all the time. You could see it in the air. It was a very dusty place. We were never warned of the dangers of working with asbestos. We had no idea that our health was in danger. We just accepted the conditions and got on with our jobs.

10 I have read newspapers articles about others who worked at the asbestos factory at Higham and who have got asbestos disease and I worry about getting an asbestos disease myself, because of all the asbestos dust I worked in at the factory.

I believe that the facts stated in this witness statement are true.
Signed.......... Dated 9-4-01

- 1. Statement on behalf of Claimant
- 2. Ann Hendricks
- 3. First Statement
- 4. Exhibits: None
- 5. Dated:

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

CLAIM NO: MA109458

B E T W E E N:-

EDWIN MATTHEWS

Claimant

- and -

**THE ASSOCIATED PORTLAND CEMENT
 MANUFACTURERS (1978) LIMITED**

First Defendants

- and -

BRITISH URALITE PLC

Second Defendants

WITNESS STATEMENT

**MRS ANN HENDRICKS of 21 Chatsworth Close, Ross on Why, Hertfordshire, HR9 7XH,
 date of birth 9.12.39 will say:-**

- 1. I am retired. I worked at British Uralite's asbestos factory in Hy am, Kent in the 1960's.
 I worked there for about 4 months in all.

- 2. I do not know Edwin Matthews, but I can confirm what the working conditions were like

I believe that the facts stated in this witness statement are true.

Signed: Ann Hendricks Dated: 25.01.2020

Exhibit E

000267

- 7. There was no ventilation or extraction at the factory to the best of my recollection.

I believe that the facts stated in this witness statement are true.

Signed: Al. Hernandez

Dated: 05.01

650114

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY,
FLORIDA

TERESA BIRCH and ROBERT BIRCH,

Plaintiffs,

v.

GLAXOSMITHKLINE, LLC, etc., et al.,

Defendants.

ASBESTOS LITIGATION

CASE NO. 18-014125 CA 27

**DEFENDANTS JOHNSON & JOHNSON CONSUMER, INC. AND JOHNSON &
JOHNSON'S SUPPLEMENT TO THEIR MOTION FOR CONTINUANCE OF TRIAL**

Defendants file this Supplement to their Motion for Continuance of Trial. The Motion focused on Defendants' need to obtain critical discovery from the United Kingdom. One missing item arrived late Friday, February 21, 2019, after this Court held its calendar call in this case. Its significance cannot be overstated. It confirms that Defendants have been prejudiced by what appears to have been a fraudulent failure to produce what may be the single most important document to the defense of this case. At a minimum, a brief continuance and follow-up discovery are necessary.

The missing item is an August 18, 2017 letter from Teresa Birch's U.K. lawyer to the U.K. Department of Work & Pensions. It accompanied her benefits application, stating on her behalf:

We believe that her exposure to asbestos was from washing the clothes of her mother who worked at an asbestos factory employed by British Uralite Plc.

Ex. 1 (the "Letter"). Plaintiffs hid the Letter from Defendants throughout this entire litigation.

Defendants received it from the Department of Works & Pensions through investigators.

The Letter's existence is directly contrary to Plaintiffs' repeated representations that they produced all documents in their possession relating to Teresa Birch's U.K. benefits applications.

Exhibit F

The Letter's contents are directly contrary to Plaintiffs' repeated statements that they are unaware of any exposure to asbestos-containing products manufactured by companies not included in this litigation and to Teresa Birch's denials that her mother came home with asbestos dust on her clothes.

The Letter's contents are also directly contrary to Plaintiffs' effort to minimize if not eliminate references to British Uralite. As just one example, Plaintiffs have filed a motion in limine to prevent Defendants from referring to her mother's worksite as an "asbestos factory," supposedly because no evidence supports that description, when the Letter described the plant using that exact same phrase: "*an asbestos factory.*"

There can be no dispute that Plaintiffs' U.S. attorneys and her U.K. attorneys work closely together. At her deposition, Teresa Birch discussed both sets of attorneys and even how Andrew James (her U.K. attorney) and Brendan Tully (her U.S. attorney) met together with her at her home. Depo. at 25-29. Teresa Birch also stated that Andrew James had looked into asbestos exposure from her mother's worksite. *Id.* at 512.

Having just obtained the Letter, Defendants are examining its full consequences, but two things are immediately clear:

- Defendants will be severely prejudiced without a continuance, and
- Defendants should be permitted a brief period to conduct follow-up discovery.

The important matter of sanctions and whether the prejudice can be cured can be addressed with a full motion detailing Plaintiffs' wrongful conduct in affirmatively hiding the Letter. At this point, given the pending hearing on Defendants' continuance motion and the pending trial date, Defendants focus now on the following key events that show Defendants' diligence in seeking the discovery that Plaintiffs withheld. All emphasis in quotations is added.

#1. July 2018 Requests for Production

Request 49 sought:

Any and all writings, recordings and/or *documents* and ESI *evidencing or alleging exposure by you to asbestos or asbestos-containing products not responsive to other document requests* in this case, in any form, including drafts of statements by you or any family members, co-workers, or other persons with knowledge of your potential exposure to asbestos or asbestos-containing products.

Plaintiffs responded: “Plaintiffs have *no such documents* in their personal possession.”

That response was false. Teresa Birch has attorneys in the United States and the UK who have worked together on her behalf. The UK attorney not only had the Letter, he wrote it. But Plaintiffs represented that it did not exist. To whatever extent the reference to Plaintiffs’ “personal possession” was intended to avoid addressing documents in their attorneys’ possession, such a response is not only legally improper under the standards governing document production but also evidences the attorneys’ and Plaintiffs’ intent to hide the Letter from Defendants.

#2. August 2018 Requests for Production

Request 21 sought:

All documents relating to workers’ compensation or disability claims filed by you or on your behalf, including any documents submitted to or received from any United Kingdom benefit and compensation funds such as the Industrial Injuries Disablement Benefit (“IIDB”), Pneumoconiosis Etc. (Workers’ Compensation) Act 1979, *Diffuse mesothelioma payments (the ‘2008 scheme’)*, or Diffuse Mesothelioma Payment Scheme (“DMPS”).

Plaintiffs responded:

Plaintiffs object to Request No.: 21 as overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving [their] objections, *annexed hereto as Exhibit G are documents pertaining to Plaintiff, Teresa Birch’s claim for 2008 Diffuse Mesothelioma Scheme Payments.*

Critically, *Exhibit G contained her application for benefits but omitted the most relevant,*

pertinent, and compromising document of all, the Letter. It *also* omitted two additional pages within the application that included reference to Teresa Birch's UK attorney and law firm.

Request 25 sought:

With respect to any *disability claim* made by your or on your behalf, please produce all forms, applications, adjudications, and documentation.

Plaintiffs responded: "See Response No. 21"

Request 26 sought:

With respect to any applications for pension(s) made by your or on your behalf, please produce all forms, applications, adjudications, and documentation.

Plaintiffs responded:

Annexed hereto as Exhibit G are *documents pertaining to Plaintiff, Teresa Birch's claim for 2008 Diffuse Mesothelioma Scheme Payments.*

Once again, *Exhibit G contained her application for benefits but omitted the Letter.*

Request 44, a catch-all request, sought:

Any and all writings, recordings and/or documents and ESI evidencing or alleging exposure by you to asbestos or asbestos-containing products not responsive to other document requests in this case, in any form, including drafts of statements by you or any family members, co-workers, or other persons with knowledge of your potential exposure to asbestos or asbestos-containing products.

Plaintiffs responded:

Plaintiffs object to Request No. 44 to the extent that it calls for the productions of documents protected by the attorney-client privilege or by the work-product doctrine. Subject to and without waiving the objections, *Plaintiffs have no such documents in their personal possession.*

Once again, this statement was false. Plaintiffs had not produced the Letter.

#3. July 11, 2018 Answers To Master Interrogatories

Master Interrogatory 29 asked:

Have you worked with or around asbestos containing products manufactured by companies not named as Defendants in this suit? If so, state the company(s).

Plaintiffs responded:

Plaintiffs object to Interrogatory No. 29 on the grounds that the request is overly broad and would require Plaintiff, Teresa Birch, to ascertain the manufacturer of each product to which she was exposed. However, in the spirit of cooperative discovery, Plaintiff, *Teresa Birch*, states that at this time, she is not aware of being exposed to asbestos-containing products manufactured by companies not included in this action. Pending further investigation, this response may be supplemented.

That statement was false. When she applied for benefits in the UK, she told the Department of Work & Pensions that “her exposure to asbestos was from washing the clothes of her mother who worked at an asbestos factory employed by British Uralite Plc.”

#4. February 2020 Answers To Interrogatories

Interrogatory 2 asked:

Identify *all documents in your or your attorneys’ possession relating to your lump sum payment of £41,106.00 from the Department of Work & Pensions (“DWP”) in August 2017, including but not limited to: (a) your claim form(s) to the DWP, (b) any correspondence to the DWP related to your claim, or (c) any responsive correspondence or determinations by the DWP related to your claim.*

Plaintiffs answered:

Plaintiffs object that Interrogatory No. 2 on the grounds that it is over broad and unduly burdensome. Subject to and without waiving these objections, *annexed hereto as Exhibit A are documents responsive to this request.*

But, once again, the “responsive” documents Plaintiffs provided *omitted the Letter as well as the two additional pages within the application that identified the U.K. attorneys who submitted it.*

Plaintiffs did not produce those two missing pages until they filed their opposition to Defendants’

continuance motion, and at that point Plaintiffs *still withheld the Letter, which accompanied the entire application.*

Interrogatory 3 asked:

Identify all documents in your or your attorneys' possession referencing any payments from the DWP or the basis for any compensation determination made by the DWP, including but not limited to: (a) your claim form(s) to the DWP, (b) any correspondence to the DWP referencing your claim, or (c) any responsive correspondence or determinations by the DWP about your claim.

Plaintiffs answered:

Plaintiffs object that Interrogatory No. 3 on the grounds that it is over broad and unduly burdensome. Subject to and without waiving these objections, Plaintiff refers Defendants to Response to Interrogatory #2.

Interrogatory 5 asked:

Identify all documents in your or your attorneys' possession referencing your mother's work at British Uralite or British Uralite's line of business and operations from 1966 to 1974.

Plaintiffs answered:

Plaintiffs object to Interrogatory No. 5 on the grounds that it is vague, over broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence and is best covered as a request to produce documents and not an interrogatory. Subject to and without waving these objections, *Plaintiff is not in possession of any documents referencing her mother's type of work at British Uralite or British Uralite's line of business and operations from 1966 to 1974.*

This answer was false. Plaintiffs have been in possession of the Letter and never produced it.

#5. Teresa Birch's Deposition

At her deposition, Teresa Birch was asked numerous questions about her mother's work at British Uralite. Teresa Birch denied that her mother could have come home from work with asbestos dust on her clothes:

Q: All right. And what did her clothes look like when she came home from the factory?

[Plaintiff's Counsel]: Object to form.

THE WITNESS: My mom was spick-and-span. She went to work spick-and-span. She came home spick-and-span.

* * *

Q: If it's determined that your mother's work at British Uralite, over the course of ten years, when she was working with, continuously being exposed to asbestos and that asbestos was on her when she came into contact with you and that asbestos was brought back to the family home where it entered into the laundry and everybody was exposed to it in that way, would you agree with me that that exposure to asbestos is something that should be factored in to whether or not that caused or contributed to your illness?

A: Absolutely –

[Plaintiff's Counsel]: Objection to form.

THE WITNESS: not. . . . Can I tell you why?

Q: Okay.

A: Because my mom was absolutely spot on spic-and-span. She never left the house without looking tidy. She never entered the house. She never – even when she went to work, she would have been spotless. She came home spotless.

Depo. at 123, 472-73.

Defendants Have Been Prejudiced And The Requested Continuance Is Necessary

There can be no dispute that Plaintiffs' act of hiding the Letter throughout this litigation has unduly prejudiced Defendants in their ability to develop the evidence and their defenses. Defendants must be permitted a brief continuance not only for the reasons set forth in the Motion but to conduct follow-up discovery regarding the Letter. To be forced to proceed to trial next week without these opportunities would be extremely prejudicial to Defendants, through no fault of their own, and create error before this complex trial even begins. *See, e.g., Porter v. State*, 736 So. 2d

716 (Fla. 2d DCA 1999) (holding that denial of a continuance constitutes an abuse of discretion where the ruling results in undue prejudice to the movant's case).

Among other things, Defendants should be permitted to re-depose Teresa and Robert Birch. In all likelihood, one or both of them gave the UK attorney the information contained in the Letter, and one or both of them likely received a copy of the Letter after it was sent. These matters are critically important to Defendants' defense. Defendants should be permitted a brief period to conduct this and other important follow-up discovery.

/s/ Matthew J. Conigliaro

Matthew J. Conigliaro

Florida Bar No. 63525

mconigliaro@carltonfields.com

CARLTON FIELDS, P.A.

4221 W. Boy Scout Blvd., Suite 1000

Tampa, Florida 33607

813-229-4254

Ryan S. Cobbs

Fla. Bar No. 912611

rcobbs@carltonfields.com

M. Derek Harris

Fla. Bar No.: 097071

dharris@carltonfields.com

Michael D. Sloan

Fla. Bar No.: 104385

msloan@carltonfields.com

CARLTON FIELDS, P.A.

CityPlace Tower

525 Okeechobee Blvd., Suite 1200

West Palm Beach, FL 33401

561-659-7070

*Counsel for Defendants Johnson & Johnson
and Johnson & Johnson Consumer, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2020, a copy of this document was served on all remaining parties by filing and service through the Florida Courts e-Filing portal.

/s/ Matthew J. Conigliaro
Matthew J. Conigliaro
Florida Bar No. 63525



hodge jones & allen
solicitors

Hodge Jones & Allen LLP
180 North Gower Street
London NW1 2NB

DX 2101 EUSTON
www.hja.net
ajames@hja.net

Direct tel: 0207 874 8458
Direct fax: 0207 874 8305
Switchboard: 020 7874 8300

Our ref: 1023397.0001/ANJ
Your ref:

18 August 2017

PWCA Team
Barrow Benefit Centre
Post Handling Site B
Wolverhampton
WV99 1RX

APPLICATION UNDER 2008 DIFFUSE MESOTHELIOMA SCHEME

Dear Sirs

Our Client: Mrs Teresa Birch
Date of Birth: 26th March 1957
National Insurance No: YY203454D
Address: 96 Timber Bank, Vigo, Village, Meopham, Kent, DA13 0SW

We enclose our client's completed PWCA application form and Form BI100 PN(A) confirming diagnosis.

We believe that her exposure to asbestos was from washing the clothes of her mother who worked at an asbestos factory employed by British Uralite Plc.

We confirm that no compensation has been received nor court proceedings commenced in respect of any common law claim.

We would be grateful if you could send us a copy of the letter confirming the outcome of the application. Please do not hesitate to contact us should you have any questions.

Yours faithfully

Hodge Jones & Allen LLP

Hodge Jones & Allen LLP



Hodge Jones & Allen LLP is a limited liability partnership, registered in England and Wales. Registered No. OC316075. Registered office: 180 North Gower Street, London NW1 2NB.

Hodge Jones & Allen LLP is authorised and regulated by the Solicitors Regulation Authority.

A list of members is available for inspection at the office.

TBirch-DW&P-000001

IN THE CIRCUIT COURT OF THE 17th
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

TERESA BIRCH and ROBERT BIRCH,

Plaintiffs,

v.

GLAXOSMITHKLINE, LLC, etc., et al.,

Defendants.

ASBESTOS LITIGATION

CASE NO. 18-014125 CA 27

Filed In Open Court
CLERK OF THE CIRCUIT COURT

ON FEB 25 2020

BY RSP

ORDER GRANTING DEFENDANTS JOHNSON & JOHNSON AND JOHNSON & JOHNSON CONSUMER, INC.'S MOTION FOR CONTINUANCE OF TRIAL

THIS CAUSE came before the Court on February 25, 2020, upon Defendants Johnson & Johnson and Johnson & Johnson Consumer, Inc.'s Motion for Continuance of Trial ("Motion").

The Court has reviewed the Motion, the record, and is fully advised in the premises.

It is hereby ORDERED AND ADJUDGED that:

1. The Motion is hereby GRANTED. THE TRIAL OF THIS CASE IS CONTINUED TO THE COURT'S MAY 4, 2020 TRIAL PERIOD.

DONE AND ORDERED in Broward County, Florida this 25 day of February

2020.

Martin J. Bidwill
Honorable Martin J. Bidwill
Circuit Judge

cc: All counsel of record

IN THE HIGH COURT OF JUSTICE AT MANCHESTER
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

Case Number: C20010111

Courts of Justice,
Crown Square,
Manchester.

Wednesday, 11th July 2001

BEFORE:

THE HONOURABLE MR. JUSTICE MITTING

Between:

EDWIN MATTHEWS

CLAIMANT

and

ASSOCIATED PORTLAND CEMENT

1st DEFENDANT

and

BRITISH URALITE PLC

2nd DEFENDANT

MR. ALLEN Q.C. appeared on behalf of the Claimant.

MR. FEENEY appeared on behalf of the 1st Defendant.

MR. OWEN Q.C. appeared on behalf of the 2nd Defendant.

Transcript from the Palantype notes of Cater Walsh & Co.,
Suite 410, Crown House, The Bull Ring,
Kidderminster. DY11 2DH.
(Official Court Reporters and Tape Transcribers)

REVISED JUDGEMENT

Wednesday, 11th July 2001

A MR. JUSTICE MITTING: Edwin Matthews is fifty four. From 1962
until 1984 he worked in a variety of jobs, which brought him
into contact with asbestos and its malign product, asbestos
dust or fibres. On 20th March 2000 he was diagnosed as
B suffering from mesothelioma. He claims damages for personal
injury from two out of his fifteen employers. It is admitted
that he was exposed to asbestos dust while in their
employment and that each were in breach of statutory and
C common law duties, owed to him for so exposing him. The
questions I have to determine are (first) did either or both
cause his mesothelioma and (secondly) if both did, what
apportionment should be made between them.

D The basic facts are not significantly in dispute,
although substantial areas of uncertainty remain, as to the
quantity of asbestos fibres to which he was exposed in each
employment. The claimant's evidence about his employment by
E the second defendant, British Uralite Limited, is set out in
undisputed passages in his first witness statement, in
paragraphs 26 to 37, which read:

"-British Uralite Limited 1973

F Between January and February 1973 I was employed by
British Uralite Limited at their factory at Canal Road
Higham, Kent. I worked there for about five or six
weeks. I worked in their factory where asbestos
drainage pipes were being manufactured. The process was
in an experimental stage and may well have changed
later on.

G 27. I worked on the ground floor of the factory. On the
first floor of the factory dry asbestos fibre was mixed
with water and cement into a wet paste. It was then
channelled downstairs to the ground floor where I
worked. I took the wet asbestos paste and formed
collars and pipes around moulds, using my hands. Once

I had done this, the moulds were stacked up and placed into an oven. The oven consisted of a room made of timber on the factory floor. The formed pipes which were about ten centimetres in diameter and one metre in length, stood inside the oven whilst the heat was applied. After the pipes had been heated up for the appropriate period of time they were removed and stacked away.

28. Although I worked with the wet asbestos paste bits of the asbestos paste fell onto the floor and fell onto my work station. The asbestos paste dried off very quickly. When dry it was asbestos dust. There was asbestos dust on my work station and dust all over the floor. I walked on it, raising dust.

29. Conditions in the factory were terrible. There was asbestos dust in the air all the time. The asbestos dust from the first floor circulated down - it may have been an open timber staircase connecting the floors - so that the air was always full of asbestos dust.

30. Sometimes I went up to the first floor. The asbestos dust in the air was so bad up there that it was like a haze. You could hardly see. It was really appalling. Throughout the factory there was no ventilation and no extraction system. No masks were provided and no-one was warned of the dangers of working with asbestos.

31. Throughout the factory asbestos sheets, flat and corrugated, and asbestos ornaments as well as asbestos pipes were being manufactured.

32. Part of my job was to remove the cooked asbestos pipes from the oven and stack them. Once cooked they were dusty. Removing them from the oven and handling them as I stacked them, I disturbed more asbestos dust.

33. The factory was notorious in the locality for its appalling working conditions. The turnover of staff was high and nobody stayed there for very long. You used it as a stop-gap until you could find a better job.

34. The well-known radio programme called "Workers' Playtime" was once broadcast from the factory. The radio station broadcast from various factories around the country for half an hour each week. One of the reporters involved in the broadcast from the British Uralite factory commented about the asbestos dust in the air in the factory. He referred to the "haze" of asbestos dust.

35. I swept up once a day using sweeping brush around my work bench. I swept up asbestos dust and bits of dried asbestos paste. I swept up dry and did not

damp down. Sweeping up dry like this stirred up the asbestos dust.

A

36. We ate our lunch and took our breaks throughout the day on the factory floor. We sat on forms all around the ground floor. We sat in the thick of the asbestos dust and ate our sandwiches.

B

37. I have never forgotten the conditions at the British Uralite factory. At the end of the day I was covered in asbestos dust. I was white from it. It was in my hair and all over my clothes."

C

His evidence about his employment by the first defendant, Blue Circle (now known as Associated Portland Cement) is at paragraphs 38 to 44 of his witness statement and, likewise, is substantially undisputed:

D

"Between 26th February 1973 and 27th February 1981 I worked for Blue Circle Enterprises. The firm is now known as the Associated Portland Cement Manufacturers Limited. I worked for them at their premises at Martin Earles Works in Strood, Kent. I worked there for eight years.

E

39. I came into contact with asbestos in this job during my last four years with the firm, when I worked as a boiler man. There was a large boiler in the boiler house and it was lagged with asbestos. All the surrounding pipe work from the boiler which travelled both inside and outside the premises was also lagged with asbestos.

F

40. The pipes carried either steam or hot oil. The asbestos lagging was held in place on the pipes with chicken wire. The asbestos lagging was dry and dusty.

G

41. I estimate that I spent about forty five minutes to one hour every day in the boiler house throughout these four years 1977-1981. The boiler house was in a confined space and the air in there was poor quality. The asbestos dust hung in the air. I swept up using a sweeping brush and shovel in the boiler house about once a week. There were bits of asbestos dust and asbestos debris from the lagging on the floor when I swept up. I swept up dry. Sweeping it up stirred the asbestos dust into the air.

H

42. I did not carry out repairs to the boiler or pipe work myself and I did not strip asbestos lagging off myself, but I was present when others did it. I worked right next to fitters stripping off lagging, within one or two metres of them. I estimated that in total,

adding up all the times this happened, I spent at least two days out of the four years working alongside fitters stripping asbestos.

A 43. They pulled off asbestos lagging by hand or chipped at it with a hand tool. The asbestos lagging fell to the floor. It was swept up at the end of the job using a dry sweeping brush and shovel by the men doing the stripping. They created a great deal of asbestos dust and debris when they stripped asbestos lagging off pipes. Sweeping up at the end of the day stirred up the asbestos dust into the air. Working next to them, I got this asbestos dust on my clothes and in my hair.

B 44. Many of the pipes were just above ground level and we walked across the pipes, standing on the asbestos lagging. Walking on the asbestos lagging in this way meant that it crumbled into asbestos dust. This happened inside and outside. The only ventilation in the boiler house was the entrance door. The door was always kept shut in the winter to keep the heat in. I wore a martindale mask - a metal frame with a gauze pad during my time at Blue Circle."

C The claimant was also exposed to significant quantities of asbestos dust while working from May 1965 to May 1967, for Maidstone Sack & Metal, in particular, on one day, when stripping lagging from a boiler in Chatham Dockyard. It is unnecessary for me to recite the history of his work for that employer.

D Expert engineers, instructed by the claimant - Mr. Deary, and for the second defendant, Uralite, Mr. Beauchamp - have produced charts in which they attempt to show numerically to two decimal places, the quantities of exposure in percentage terms, at each employer. Mr. Deary's first table shows, that on certain assumptions, sixty one percent of the asbestos dust, to which the claimant was exposed, occurred at British Uralite and just over five and a half percent at Associated Portland Cement.

G During the course of the case and, as a result of

evidence from the claimant, which suggested that his hours of work at British Uralite were longer than seven hours, Mr. Deary revised his estimate, so as to increase the percentage of exposure at British Uralite to seventy two point six percent and to reduce that at Associated Portland Cement to below five percent. Mr. Beauchamp's figures suggested that the exposure at British Uralite was forty percent and at Associated Portland Cement twenty seven point zero seven percent.

These figures, as Mr. Deary and Mr. Beauchamp freely acknowledge, are speculative, for at least the following reasons: (First), they are based upon impressionistic descriptions by the claimant and the witnesses, of the circumstances in which he worked. (Secondly), the base figure and fibres per millilitre are estimates taken from a wide range. For example, careful research in a naval context by Harris, showed that quantities of fibres produced by stripping out lagging in the engine rooms of ships, ranged from seventy six fibres per millilitre to eleven hundred fibres per millilitre. (Thirdly), the type of asbestos to which the claimant was exposed in each circumstance is unknown. This matters, because blue and brown asbestos are ten times more dangerous than white asbestos. (Fourthly), small changes in the assumptions can produce radical changes in the percentages.

I unhesitatingly accepting the evidence of Dr. Rudd, an eminent - perhaps, indeed, the pre-eminent medical expert in this field that they are highly speculative exercises, other

A than for the purpose of identifying which were the major exposures and which were the minor. As to that, all four experts, Dr.s Rudd and Hinds and the two engineers, are unanimous in their view. Mr. Beauchamp, in paragraph 142 of his report, said this:

B "I believe, based on the evidence, that the Claimant certainly had substantial exposure over varying periods in three of the employments, namely Maidstone Sack & Metal and with the First and Second Defendant."

Mr. Deary, in his summary, put it thus:

C "On the evidence available to me, it is likely that the Claimant was exposed to and inhaled significant quantities of asbestos dust after he was in the employment of Maidstone Sack & Metal, British Uralite and Blue Circle. In my view, during the material periods, those firms should have been aware of the risks to health associated with the inhalation of asbestos dust in the manner the Claimant describes."

D Dr. Rudd, in the conclusion of his principal report, said this:

E "In the case of Mr. Matthews, Dr. Hind and I have agreed that exposures with Maidstone, British Uralite and Blue Circle each materially contributed to the risk that he would develop mesothelioma. On the basis of the usual medical approach to causation of the disease the appropriate conclusion is that each of those exposures materially contributed to causation of the mesothelioma."

F I add that Dr. Hind does not agree with that last conclusion. Dr. Hind's view, in his report, was this:

G "Based on the information to hand, I agree with Dr. Rudd, that Mr. Matthews's alleged occupational exposures to asbestos at Maidstone Sack & Metal, British Uralite and Blue Circle Enterprises should be considered to have materially contributed to this man's risk in developing a malignant mesothelioma."

H All four accept that his exposure to asbestos fibres in other employments was probably minimal and did not significantly increase the risk of contracting mesothelioma.

A
B
C
D
E
F
G
H

The precise mechanism by which asbestos fibres cause the growth of malignant mesothelial cells is unknown. According to Dr. Rudd, with whom Dr. Hinds agrees - and whose evidence I unhesitatingly accept - the cause may be direct, or indirect or a combination of both. Direct causes suspected are: (first), damage, by grating, to the D.N.A. of the mesothelial cell. (Secondly), interference with the D.N.A. repair mechanisms. Indirect causes suspected are: (first), the engulfing of asbestos fibres by macrophages which release chemical mediators, which may bring about D.N.A. damage or interfere with recovery mechanisms. (Secondly), asbestos fibres may stimulate the proliferation of cells, increasing the chance of survival and proliferation of malignant cells. It is unknown whether malignancy is caused or set off by the action of one fibre or many fibres. What is undisputed is the epidemiological evidence, not, indeed, dissimilar to that which identified smoking as a cause of lung or bronchial cancer. Absent identifiable exposure to asbestos dust, the occurrence of mesothelioma in the general population is one in a million per year (in other words fifty or sixty cases per year). Within the population exposed to identifiable asbestos dust, the incidence rises to fifteen hundred per year. At high levels of exposure, the risk of developing mesothelioma rises to ten or fifteen percent. Expressed more simply, a general population risk of one in ten thousand increases to one in ten amongst those with a high level of exposure or, to put it another way, it is a thousand times more likely that they

will contract mesothelioma.

A The disease takes about ten years from inception to
symptoms, and occurs, typically, more than thirty years
after exposure to asbestos fibres. Both Dr. Rudd and Dr.
B Hinds, are of the opinion, which I accept, that the exposure
of the claimant to asbestos fibres in each of the
defendant's employments, has materially contributed to an
increase in the risk that he would contract mesothelioma.
C Dr. Rudd thought that, from the medical point of view, it
was possible to say that exposure to asbestos fibres at both
employers caused mesothelioma to occur in this claimant.

Dr. Hind disagreed. In truth, this question is not a medical
D one, but a question of law and fact, for the Court to
determine. The basic principle of law is not in doubt. The
claimant must prove, on the balance of probabilities, that
the defendant's breach of duty caused his injury. That
E simple formula begs the question of how he can prove it,
when the precise causal mechanism is, on the present state
of medical knowledge, unknown. The answer is given, or at
least very strongly suggested, by two House of Lords
F decisions McGhee and Wilsher. In McGhee the pursuer was
enveloped in a cloud of brick dust at work, in circumstances
which involved no breach of duty by his employer. In breach
of duty, his employers did not afford him facilities for
G showering to remove the dust after work. He bicycled home
covered in dust. He contracted dermatitis. The aetiology of
dermatitis was unknown, like that of mesothelioma. He lost
in the Court of Session and in the Inner House, on the issue

H

of causation, and appealed to the House of Lords. Four Lords gave speeches which substantially concurred with each other.

A Lord Reid at 1973 1 WLR page 4 letter B, said this:

B "It was held in the Court of Session that the appellant had to prove that his additional exposure to injury caused by his having to bicycle home unwashed, caused the disease in the sense that it was more probable than not that this additional exposure to injury was the cause of it. I do not think that that is the proper approach. The Court of Session may have been misled by the inadequacy of the appellant's pleadings. But I do not think that it is now too late to re-examine the whole position.

C It has always been the law that a pursuer succeeds if he can show that fault of the defender caused or materially contributed to his injury. There may have been two separate causes but it is enough if one of the causes arose from fault of the defender. The pursuer does not have to prove that this cause would of itself have been enough to cause him injury. That is well illustrated by the decision of this House in Bonnington Castings Ltd V. Wardlaw [1956] A.C. 613. There the pursuer's disease was caused by an accumulation of noxious dust in his lungs. The dust which he had inhaled over a period came from two sources. The defenders were not responsible for one source but they could and ought to have prevented the other. The dust from the latter source was not in itself sufficient to cause the disease but the pursuer succeeded because it made a material contribution to his injury.

E The respondents seek to distinguish Wardlaw's case by arguing that then it was proved that every particle of dust inhaled played its part in causing the onset of the disease whereas in this case it is not proved that every minor abrasion played its part.

F In the present case the evidence does not show - perhaps no one knows - just how dermatitis of this type begins. It suggests to me that there are two possible ways. It may be that an accumulation of minor abrasions of the horny layer of the skin is a necessary precondition for the onset of the disease. Or it may be that the disease starts at one particular abrasion and then spreads, so that multiplication of abrasions merely increases the number of places where the disease can start and in that way increases the risk of its occurrence.

G I am inclined to think that the evidence points to the former view. But in a field where so little appears to be known with certainty I could not say that that is

H

A proved. If it were, then this case would be indistinguishable from Wardlaw's case. But I think that in cases like this we must take a broader view of causation. The medical evidence is to the effect that the fact that the man had to cycle home caked with grime and sweat adding materially to the risk that this disease might develop. It does not and could not explain just why that is so. But experience shows that it is so. Plainly that must be because what happens while the man remains unwashed can have a causative effect, though just how the cause operates is uncertain."

B Later on, at page 5B, he said this:

C "There may be some logical ground for such a distinction where our knowledge of all the material factors is complete. But it has often been said that the legal concept of causation is not based on logic or philosophy. It is based on the practical way in which the ordinary man's mind works in the everyday affairs of life. From a broad and practical viewpoint I can see no substantial difference between saying what the defender did materially increased the risk of injury to the pursuer and saying that what the defender did made a material contribution to his injury."

D Lord Simon, at page 7 letter G, said this:

E "The Lord Ordinary held that such a breach of duty was established. He held, however, that there was not established a sufficient causative connection between that breach of duty by the respondents the appellant's injury. The medical evidence showed that the fulfilment of what was held to be the respondent's common law duty to provide adequate washing facilities would, if they had been used (and the appellant had used shower baths immediately after work when they had been available in earlier years), have materially reduced the risk of dermatitis. Neither consultant would, however, go so far as to say that washing after work would have made it more probable than not that the appellant would have escaped dermatitis. The consultant called for the appellant averred, indeed, that no one could say such a thing - implying that no doctor could, in the present state of medical knowledge, make such an assertion in any circumstances. The Lord Ordinary held that the appellant, to succeed, had to prove a causative connection between the respondents' breach of duty and his own injury and that this involved proving that it was more likely than not that what had caused the appellant's injury was the respondents' breach of duty. Merely to show that compliance with that duty would have materially reduced that risk of injury was insufficient: it was necessary to go further, and show that such compliance would on a balance of

probabilities have avoided the injury. The First Division upheld these findings."

At letter D, he went on to say:

"In my view, a failure to take steps which would bring about a material reduction of the risk involves, in this type of case, a substantial contribution to the injury. In this type of case a stark distinction between breach of duty and causation is unreal. If the provision of shower baths was (as the evidence showed) a precaution which any reasonable employer in the respondents' position would take, it means that such employer should have foreseen that failure to take the precaution would, more probably than not, substantially contribute towards injury: this is sufficient prima facie evidence. That "material reduction of the risk" and "substantial contribution to the injury" are mirror concepts in this type of case appears also from Viscount Simond's speech in Nicholson's case [1957] 1 W.L.R. 613, 618-620 where he was applying the concept of "substantial contribution" laid down in Bonnington Castings Ltd. V. Wardlaw:

". . . it was practicable for the respondents to have reduced the risk. . . It follows that owing to the default of the respondents the deceased was exposed to a greater degree of risk than he should have been, and, though it is impossible, even approximately, to quantify the particles which he must, in any event, have inhaled and those which he inhaled but need not have, I cannot regard the excess as something so negligible that the maxim 'de minimis' is applicable."

Citing from Lord Kilbrandon's speech in Gardner V. Motherwell Machinery and Scrap Co LTD. [1961] (H.L.(Sc.)) 1, page 3 he observed:

"Where a workman may have not previously suffered from a disease contracted it after being subjected to conditions likely to cause it, and also showed that it started in a way typical of disease caused by such conditions, he established a prima facie presumption that his disease was caused by those conditions; and that, since in the present case the employers had failed to displace that presumption, they were liable to the workman in damages at common law. To hold otherwise would mean that the respondents were under a legal duty which they could, in the present state of medical knowledge, ignore."

Lord Kilbrandon gave his reasons, (beginning of page 9 C):

A "My Lords, the facts relating to the nature and conditions of the pursuer's work, to the facilities provided by the defenders, and to the pursuer's having contracted an industrial dermatitis in consequence of those conditions of work, are undisputed. Medical science, has, however, not yet been able to provide an indubitable account of how those conditions actually give rise to that disease, although the fact of causation is, according to the evidence in this case, unanimously accepted."

B At letter G, he went on to state:

"It is, in the present state of medical knowledge, impossible to say that if the pursuer had taken a shower he would certainly not have got the disease, and it is equally impossible to say another man, in exactly the same case of the pursuer, could on the contrary certainly have got it.

C In that state of facts, what the pursuer has to establish, as a condition of his substantiating a claim against the defenders, is that their admitted breach of the duty which they owed to him caused or materially contributed to the damage which he has suffered. He has proved that there was a precaution, neglected by the defenders, which, if adopted by them, as their duty in law demanded, would have made it less likely that he would have suffered that damage. The argument against him, as I follow it, is that that only shows that the provision of a shower bath would have reduced the risk of injury: it does not show that in his case he would more probably not have contracted the disease had the bath been provided."

E At page 10 letter C, he said:

F "This is a case in which the actual chain of events in the man's body leading up to the injury is not clearly known. But there are effective precautions which ought to be taken in order to prevent it. When you found it proved (a) that the defenders knew that to take the precaution reduces the risk, chance, possibility or probability of the contracting of a disease, (b) that the precaution has not been taken, and (c) that the disease has supervened, it is difficult to see how those defenders can demand more by way of proof of the probability that the failure caused or contributed to the physical breakdown."

G He states his conclusions:

H "I agree with the Court of Session that the pursuer's case, in so far as it relates to the actual conditions of work, fails, but in my opinion he has succeeded in showing that his injury was, more probably than not,

caused by, or contributed to by, the defender's failure to provide a shower-bath."

Lord Salmon said at page 11 C:

A "The pursuer contracted dermatitis. The question is: was the dermatitis proved to have been caused or materially contributed to by the defenders' negligence? The Court of Session answered this question in the defenders' favour on the ground that although the uncontradicted medical evidence established that adequate washing facilities would have materially reduced the risk it was impossible in the present state of medical knowledge to say that they would probably have prevented the pursuer from contracting dermatitis. The medical witnesses could not say that it was more likely than not that these precautions which reasonably careful employers should have taken would have prevented the injury but only that such precautions would have materially reduced the risk of injury. The Lord Ordinary concluded that materially to increase the risk of injury does not amount to causing or materially contributing to the injury and that according on the balance of probabilities no causal connection had been established between the defenders' negligence and the pursuer's injury. He, therefore, absolved the defenders."

D At letter G he went on to say:

E "I, of course, accept that the burden rests upon the pursuer to prove, on a balance of probabilities, a causal connection between his injury and the defenders' negligence. It is not necessary however, to prove that the defenders' negligence was the only cause of injury. A factor, by itself, may not be sufficient to cause injury but if, with other factors, it materially contributes to causing injury, it is clearly a cause of injury. Everything in the present case depends upon what constitutes a cause. I venture to repeat what I said in Alphacell Ltd. v. Woodward [1972] A.C. 824, 847:

F "The nature of causation has been discussed by many eminent philosophers and also by a number of learned judges in the past. I consider, however, that what or who has caused a certain event to occur is essentially a practical question of fact which can best be answered by ordinary common sense rather than abstract metaphysical theory."

G In the circumstances of the present case it seems to me unrealistic and contrary to ordinary common sense to hold that negligence which materially increased the risk of injury did not materially contribute to causing the injury."

Page 12, letter G he went to on to say:

A "My Lords, I would suggest that the true view is that, as a rule, when it is proved, on a balance of probabilities, that an employer has been negligent and that his negligence has materially increased the risk of his employee contracting an industrial disease, then he is liable in damages to that employee if he contracts the disease notwithstanding that the employer is not responsible for other factors which may have materially contributed to the disease: Bonnington, Castings Ltd V. Wardlaw [1956] A.C. 613 and Nicholson V. Atlas Steel Foundry and Engineering Co. Ltd. [1957] 1 W.L.R. 613. I do not find the attempt to distinguish those authorities from the present case at all convincing.

B
C In the circumstances of the present case, the possibility of a distinction existing between (a) having materially increased the risk of contracting the disease, and (b) having materially contributed to causing the disease may no doubt be a fruitful source of interesting academic discussions between students of philosophy. Such a distinction is, however, far too unreal to be recognised by the common law."

D Lord Wilberforce suggested that the burden of proof in such cases might be reversed, a suggestion which was disapproved in Wilsher. In Wilsher the facts were very different. The claimant was born prematurely and developed blindness, a condition then labelled as retrolental fibroplasia, and now known as retinopathy of prematurity. Five possible causes of that condition were identified of which one, the administration of excess oxygen, was attributable to a breach of duty on the part of the defendants. The trial judge held (first) that the administration of excess oxygen increased the risk of retrolental fibroplasia. (Secondly), that this cast upon the defendants the burden of proving that the plaintiff's blindness was not caused by that breach of duty. The House of Lords held that he was wrong on both counts.

Lord Bridge gave the single speech, which began at page 1081, at letter F, in 1988 1 AC cases. He said:

A "There was in the voluminous expert evidence given at
the trial an irreconcilable conflict of opinion as to
the cause of Martin's R.L.F. It was common ground that
a sufficiently high level of P.O.2 in the arterial
blood of a very premature baby, if maintained for a
sufficiently long period of time, can have a toxic
effect on the immature blood vessels in the retina
B leading to a condition which may either regress or
develop into R.L.F. It is equally common ground,
however, that R.L.F. may occur in premature babies who
have survived without any artificial administration of
oxygen and that there is evidence to indicate a
correlation between R.L.F. and a number of other
conditions from which premature babies commonly suffer
C (e.g. apnoea, hypercarbia, intraventricular
haemorrhage, patent ductus arteriosus, all conditions
which afflicted Martin) although no causal mechanisms
linking these conditions with the development of R.L.F.
have been positively identified. However, what, if any,
part artificial administration of oxygen causing an
unduly high level of P.O.2 in Martin's arterial blood
played in the causation of Martin's R.L.F. was
D radically in dispute between the experts.

There was certainly evidence in support of the
plaintiff's case, that the high levels of P.O.2 in
general and, more particularly, the level of P.O.2
maintained when the misplaced catheter was giving
misleadingly low readings of the level of the level of
the arterial blood were probably, at least, a
E contributing cause of Martin's R.L.F. If the judge had
directed himself that it was for the plaintiff to
discharge the evidence of proving causation, on the
balance of probabilities, and had indicated his
acceptance of this evidence in preference to the
contrary evidence of the authority, a finding in favour
of the plaintiff would have been unassailable. That is
why it is conceded by Mr. Henry Brooke, for the
F authority, that the most he could ask for if this
appeal succeeds, is an order for re-trial and a
causation issue. However, the burden of the relevant
expert evidence led to call the authority to summarise
it in very general terms, was to the effect that any
excessive administration of oxygen which resulted in
the misplacement of the catheter and did not result in
G the P.O.2 in the arterial blood it raised to a
sufficiently high level, for a sufficient length of
time, to have been taken as playing any part in the
causation of Martin's R.L.F. One of the difficulties is
that underlying this conflict of medical opinion, there
was not only a profound difference in view about the
aetiology and causation of R.L.F. in general, but also

H

A a substantial difference as to the inferences which were drawn from the primary facts, as ascertained from the clinical notes about Martin's condition and treatment at the material time, and amplified by the oral evidence of Dr. Wild, the senior house officer in charge, as to what the actual level of P.O.2 in Martin's arterial blood were likely to have been during the critical period between ten p.m. on 16th December, when Martin was first administered pure oxygen through a ventilator and eight a.m. the next morning, when after the discovery of the mistake about the catheter the level of oxygen administration was immediately reduced. Having found the authority negligent, in relation to the five periods when the P.O.2 level was unduly high, the judge added:

B "There is no dispute that this materially increased the risk of R.L.F."

C This statement (as it is now accepted) was a misunderstanding of the evidence. Whilst it is common ground that one of the objects of monitoring the P.O.2 level in the arterial blood, of a premature baby in 1978, was to avoid or reduce the risk of R.L.F. It was certainly not accepted by the defence, that any of the levels to which Martin was subjected were sufficient in degree or duration to have involved any material increasing that risk. This misunderstanding was one of the factors which led the judge to the conclusion that Martin had established a prima facie case on the issues of causation. He then said:

D "It is open to the defendants, on the facts of this case, to show that they are not liable for this negligence because, on the balance of probabilities, this exposure did not cause Martin's R.L.F."

E Analysing McGhee, Lord Bridge expressed the opinion that Lord Wilberforce's reasons expressed a minority opinion. He cited the passages from the majority, which I have already set out, at length, in this judgment and said at page 1088, letter A to C:

F "But where the layman is told by the doctors that the longer the brick dust remains on the body, the greater the risk of dermatitis, although the doctors cannot identify the process of causation scientifically, there seems to be nothing irrational in drawing the inference, as a matter of common sense, that the consecutive periods when brick dust remained on the body probably contributed cumulatively to the causation

of the dermatitis. I believe that a process of inferential reasoning on these general lines underlines the decision of the majority in McGhee's case.

A He re-stated the point in unambiguous terms at page 1090, beginning at letter D:

B "The conclusion I draw from these passages is that McGhee V. National Coal Board [1973] 1W.L.R. 1 laid down no new principle of law whatever. On the contrary, it affirmed the principle that the onus of proving causation lies on the pursuer or plaintiff. Adopting a robust and pragmatic approach to the undisputed primary facts of the case, the majority concluded that it was a legitimate inference of fact that the defenders' negligence had materially contributed to the pursuer's injury. The decision, in my opinion, is of no greater significance than that and to attempt to extract from it some esoteric principle which in some way modifies, as a matter of law, the nature of the burden of proof of causation which a plaintiff or pursuer must discharge once he has established a relevant breach of duty, is a fruitless one."

C He approved the dissenting judgement of Sir Nicolas Browne-Wilkinson V.- C., in the Court of Appeal, when he said:

D "In the present case the question is different. There are a number of different agents which could have caused the R.L.F. Excess oxygen was one of them. The defendants failed to take reasonable precautions to prevent one of the possible causative agents, (e.g. excess oxygen) from causing R.L.F. But no one can tell in this case whether excess oxygen did or did not cause or contribute to the R.L.F. suffered by the plaintiff. The plaintiff's R.L.F. may have been caused by some completely different agent or agents, e.g. hypercarbia, intraventricular haemorrhage, apnoea or patent ductus arteriosus. In addition to oxygen, each of those conditions has been implicated as a possible cause of R.L.F. This baby suffered from each of those conditions at various times in the first two months of his life. There is no satisfactory evidence that excess oxygen is more likely than any of those other four candidates to have caused R.L.F. in this baby. To my mind, the occurrence of R.L.F. following a failure to take a necessary precaution to prevent excess oxygen causing R.L.F. provides no evidence and raises no presumption that it was excess oxygen rather than one or more of the four other possible agents which caused or contributed to R.L.F. in this case.

E F G The position, to my mind, is wholly different from that in the McGhee [1973] 1 W.L.R. 1, case where there

H 17

A was only one candidate (brick dust) which could have caused the dermatitis, and the failure to take a precaution against brick dust causing dermatitis was followed by dermatitis caused by brick dust. In such a case, I can see the common sense, if not the logic, of holding that, in the absence of any other evidence, the failure to take the precaution caused or contributed to the dermatitis. To the extent that certain members of the House of Lords decided the question on inferences from evidence or presumptions, I do not consider that the present case falls within their reasoning. A failure to take preventative measures against one of five possible causes is no evidence as to which of those five caused the injury."

B
C In other words, Lord Bridge approved Sir Nicolas Browne-Wilkinson's exposure of the fallacy which he stated in the last sentence of that passage.

D It is to be noted, that Lord Bridge and the House of Lords in Wilsher did not depart from or overrule McGhee, but accepted that it was an example of the adoption of a robust and pragmatic approach to the question of causation where the precise aetiology of a disease was unknown. Adopting that robust approach, my firm conclusion in this case is that the claimant's exposure to asbestos fibres in the employment of the two defendants, did materially contribute to, and so cause his mesothelioma. I reach that conclusion by a simple, direct process of reasoning, readily understandable to a layman. The claimant was exposed by each defendant and by both defendants, to asbestos fibres, in quantities sufficient greatly to increase his risk of contracting mesothelioma, on the evidence of Dr. Rudd, by up to a thousand times the general population risk. They owed him statutory and common law duties to take steps to minimise that risk. They failed to do so. He contracted the very disease against which it was their duty to take those

steps.

A In those circumstances, like Lord Reid in McGhee, I can
see no substantial difference between saying that what the
defendant did materially increased the risk of injury to the
claimant and saying that what the defendants did made a
B material contribution to his injury. It seems to me wholly
artificial to require a claimant to prove which fibre, or
fibres, inhaled in whose employment in precisely what
C circumstances, caused or set off or contributed to the
process by which one or more mesothelial cells became
malignant. In principle, it is just as artificial as
requiring proof in a case in which a pool of liquid,
collected from separate sources, has caused injury, of
D precisely which molecule was the mechanical cause of injury.

Even though the precise mechanism by which the
claimant's mesothelioma was caused or set off cannot be
established, those conclusions point, inexorably, to the
E finding that the defendants' breaches of duty materially
contributed to his contracting the disease. In other words,
the evidence which I have heard proves, on the balance of
probabilities, that their breach of duty caused his injury.

F That chain of reasoning sounds, remarkably like that
expounded by Mustill L.J. in Wilsher cited in the report of
Wilsher in the House of Lords at page 1084 C to E:

G "If it is an established fact that conduct of a
particular kind creates a risk that injury will be
caused to another or increases an existing risk that
injury will ensue; and if the two parties standard in
such a relationship that the one party owes a duty not
to conduct himself in that way; and if the first party
does conduct himself in that way; and if the other
party does suffer injury of the kind to which the risk

H

related, then the first party is taken to have caused the injury by his breach of duty, even though the existence and the extent of the contribution made by the breach cannot be ascertained."

A

Phillips J. in Bryce V. Swan Hunter 2 Lloyds Reps. page 426 placed some reliance on that passage which, when he gave that judgement, represented the then current state of the law. Lord Bridge, (it is to be noted) did not criticise that formulation as such, but only in the context of a case in which there were five potential causes of the injury. Pushed that far, it contained the fallacy identified by

B

C

Sir Nicolas Browne-Wilkinson, but applied to facts in which there is only one possible cause, as here, it is no more than a re-statement of the robust approach to causation found in McGhee and is good law. If, as here, the question

D

is "Has each defendant contributed materially to the exposure to asbestos fibres which is the sole and undisputed cause of mesothelioma?", the answer is "Yes". That is sufficient to discharge the burden on the claimant in

E

proving causation. In reaching that conclusion, I have not overlooked Mr. Owen Q.C.'s and Mr. Feeney's argument that the reasoning in McGhee was founded on the fact that damage

F

was cumulative. That, however, seems to me to erect a fact present in that case into a proposition of law for all cases. I do not think it is such. Nor have I overlooked the

G

judgment of Curtis J. in Fairchild who, on every similar evidence to that given to me, adopted a different chain of reasoning and reached an opposite conclusion. As his

H

judgement is to be the subject of an appeal, to be heard in November of this year, and as I intend, if asked, to give

permission to appeal in this case, I need say no more about it. The Court of Appeal will, I hope, have the opportunity of deciding which of us is right, on a question of principle, which will affect all or almost all mesothelioma cases.

I deal now with the question of contribution. Each defendant claims contribution against the other. I can deal with this matter very shortly. For the reasons already expressed about the limited utility of the efforts of Mr. Deary and Mr. Beauchamp to apportion exposure with mathematical precision, I am quite unable to distinguish on the balance of probabilities, between them. To do so, would be to found a conclusion upon mere speculation. The responsibility for the damage must, therefore, be equally apportioned between them. For the same reasons, I have not felt able to accede to the claimant's alternative case, against British Uralite alone, based on the premise that the majority of his exposure to asbestos fibres was experienced in their employment. For the reasons given, this claim succeeds against both defendants.