The International Labor Organization developed a standard for the evaluation of chest x-rays for diagnostic purposes, particularly for diagnosing pneumoconiosis. The “ILO” chart utilizes a series of standard films and/or x-ray angles. The doctor reading the x-rays should be a certified B-reader. A radiologist is not necessarily a certified B-reader and an expert’s credentials should always be evaluated. A certified B-reader can review the films to classify the extent of scarring, or profusion, shown on the x-ray. A certified B Reader is a licensed medical doctor who has successfully passed the B Reader Examination.

The form itself demands the B-reader to assess the quality of the x-ray. Please be reminded that a certified B-reader’s analysis is a subjective one and the ILO attempts to create objective criteria.

The ILO clarifies the classification of the level (or severity) of parenchymal disease by using twelve separate fields. These fields range from 0/0 to 3+. It is a rating of the parenchymal field. The first number marked is the B-reader’s actual determination. The second number is the level of parenchymal profusion which was considered by the B-reader.

Thus, the B-reader does the following:

1. Grades the quality of the film itself;
2. Notes the number of fields reviewed;
3. Notes if there is a lung/parenchymal abnormality consistent with pneumoconiosis;
4. If there is an abnormality, the B-reader then classifies the shape of the abnormality and the level of “profusion” or the extent of scarring.

If no parenchymal abnormality is found, the B-reader may continue to assess an
individual to determine if pleural abnormalities are involved. The B-reader is then permitted to rate those as well and determine if there is pleural plaque and the extent of the plaquing.

Other areas of consideration are the costophrenic angle. The costophrenic angle is the shape of the lung, particularly the lower portion of the lung. The B-reader can determine if the disease process changed the shape of the lung or made the lung itself smaller. If the shape of the lung is changed and/or diminished, obviously, the individual’s ability to breathe is greatly compromised. The ILO chart also allows the B-reader to assess other problems such an emphysema in the “other abnormality field.”

In 1986, the American Thoracic Society issued its official statement on lung disease. That statement holds an assessment of 1/1 and the parenchymal field was consistent with disease related to asbestos exposure. It is well known, however, that chest x-rays alone are not the gold standard in diagnosis. Specifically, when making the diagnosis, a physician should also rely upon pulmonary function testing. If pulmonary function testing is absent, the diagnosis may be suspect.
LITIGATING IN THE COAL TAR PIT
BY: Jeanine D. Clark, Esquire
jclark@margolisedelstein.com

Coal tar has been the subject of controversy since the 18th century. However, in recent weeks additional attention has been focused on the compound as a result of its use in parking lot and driveway sealants. While typically a substance where occupational and some degree environmental exposure were concerns, a new study suggests that coal tar may pose substantial health risks to the population as a whole due to residential exposure. It is expected that coal tar will continue to be a contaminant of concern in environmental litigation, but is likely to play an increased role in the coming years in both the employment exposure context as well as in connection with consumer/residential exposure.

Coal tar itself is a byproduct of the coking process. Coal which is heated to very high temperatures without air, off gases methane and ammonia and generates a viscous residue known as coal tar. Coal tar is one of a class of chemicals known as polynuclear aromatic hydrocarbons or PAH’s. Coal tar itself has various uses including as a raw material for plastics, as a solvent, disinfectant, dye, various drug preparations such as for psoriasis and in dandruff shampoos, as well as for construction uses. Specifically, one of the primary uses for coal tar cresols is the preservation of timber for use on everything from log homes to telephone poles to pilings. The material is also a constituent of paint, pipe coating, roadways, driveway seal coating and as a regulated pesticide.

Historically those at risk for coal tar exposure included chimney sweeps and individuals working with wood where coal tar has been used as a preservative, foundry workers, roofers, asphalt workers, as well as those involved in the processing of coal and coke. The Occupational Safety & Health Administration (OSHA) has set an exposure limit of 0.2 mg of coal tar pitch per cubic meter of air based upon a 40-hour workweek, at the rate of 8 hours per day. Coal tar pitch, however, is only one derivation of coal tar. While coal tar itself is a byproduct of coal and coke, coal tar pitch is in fact

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1. Coke is used as a fuel as well as in the process of smelting iron ore. Coke is derived from the processing of raw coal ore and results in the removal of certain gases and volatile components which were contained within the raw coal. See Mineral Resources Education Program of British Columbia at http://www.bcminers.ca/file/bc_mine_information/000136.php (last viewed January 17, 2010).


4. Id.

a byproduct of the various stages of distillation of coal tar. Coal tar pitch is regarded as a human carcinogen by the United States Environmental Protection Agency. Both the EPA and the International Agency for Research on Cancer suggest that coal tar itself is probably carcinogenic to humans. Specifically, with respect to PAH’s, the International Agency for Research on Cancer notes the increased risk of lung cancer has resulted in workers in the coal gasification and coke production industries. There is an established link between workers working with coal tar and an increased risk in lesions and scrotal cancer. However, there is a less definitive link between the product and skin cancer or other cancers generally. As to paving and roofing with coal tar pitch, in United States, Finland and Netherlands as well as United Kingdom there is evidence of an increased risk of lung cancer among roofers. There is also a less definitive statistical increase in the mortality rate for urinary bladder and laryngeal cancer among such workers. Likewise there are indications of increase in urinary bladder cancer and skin cancers among workers occupationally exposed to creosote.

Creosotes do not strictly speaking occur naturally in the environment but are products of a chemical reaction involving burning. Creosotes are derived not only from coal processing but from wood and the creosote bush. During the distillation or breakdown process of coal tar, the first fraction contains, among other compounds, benzene, toluene, xylene and is a lighter consistency with a lower flashpoint. The second fraction typically contains compounds such as naphthalene (a common ingredient in mothballs and plasticizers), and tar acids and bases. The third fraction includes creosotes and metynapthalenes. The fourth fraction includes compounds such as quinoline, anthracene, phnenthrene and carbosol. The fifth and final fraction is coal tar pitch.

PAH’s including coal tar and its various fractions are known to be associated with deleterious effects on fish, tadpoles, mollusks and groundwater. Although coal tar contains components which are often seen in oil spills and underground storage tank leaks such as benzene, toluene and xylene, coal tar releases or contamination are typically seen as more difficult to remediate because the

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7. Id.
8. Id.
9. Id.
11. Id.
12. Id.
13. Id.
The compound dissipates more slowly due to its tar type consistency. In addition to the compounds discussed above, coal tar contains what is seen as a particularly toxic PAH, benzo[a]pyrene. Benzo[a]pyrene is believed to be a strong carcinogen. Other compounds contained within coal tar include various phenols which are both used as solvents, disinfectants and as ingredients in plasticizers.

Known health hazards associated with coal tar in its various fractions include scrotal cancer, skin cancer, skin discoloration and irritation, burns, liver changes, kidney changes, lung disease as well as neurological problems. Percival Pott was a physician in England in the 18th Century. In the course of his work as a physician and prolific surgeon, he was the first to notice a correlation between scrotal cancer and soot contact. Dr. E.L. Kennaway noted in his article published by the British Medical Journal in October, 1955, the relationship between cancer and coal tar. For a summary of the clinical correlation between polyaromatic hydrocarbons including coal tar and various skin cancers, see Chris Carlson, et al., Squamous Cell Carcinoma Of The Skin and Coal Tar Creosote Exposure In A Railroad Worker, ENVIRONMENTAL MEDICINE, January, 2005, Vol. 113, No.1 at 96. Other conditions associated with over exposure to coal tar creosote include chemical burns to the surface of skin and eyes, convulsions, mental confusion, unconsciousness, death, sun sensitivity to skin, reddening, blistering and peeling. Irritation of the respiratory tract is also associated with various coal tar products including creosotes and pitch. PAH’s are stored primarily in the kidneys, liver and fat. See Agency for Toxic Substance and Disease Registry, 1995.

A relatively new series of studies involving coal tar based seal coat products may result in widespread litigation involving property damage and toxic exposure claims. In a September 24, 2008 article published in Environmental Science and Technology, Peter C. Van Metra, Barbara J. Mahlar and Jennifer T. Wilson of the U.S. Geological Survey link coal tar based pavement sealants to increased PAH’s levels particularly in the Eastern United States. The U.S. Geological states article points out that asphalt based pavement sealers are more widely used in the Western half of the United States and the coal tar based products more prevalent in the eastern portion of the country. The article draws the conclusion that the PAH concentrations in dust from the seal coated lots were a factor of about 80 lower than those of seal coated lots in the Eastern United States. Further, the

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This considerable difference cannot be attributed to other sources of PAH’s, such as fall out of industrial emissions, exhaust particles, tire-wear residue, or leaking motor oil, because PAH’s from such sources are equally likely to occur on both unsealed coated and seal coated lots.\textsuperscript{19}

There is a concern that sediment and run-off test results reveal PAH levels well in excess of those which would require remediation in an industrial context and are exposing individuals in a residential context to the elevated levels.\textsuperscript{20} The initial U.S. Geological Survey article has based upon a study of apartments in Austin, Texas.\textsuperscript{21} The coal tar industry has published a series of articles at its website, \texttt{www.truthaboutcoaltar.com}, regarding the Austin study and the purported link between coal tar dust and asphalt sealants. The coal tar industry suggests that there is an insufficient link between the sealants and run-off and dust residue in light of other possible sources of PAH’s.\textsuperscript{22}

In a more recent article, Barbara J. Mahler, Peter C. Van Metra, Jennifer Wilson and Marylynn Musgrove of the U.S. Geological Survey again discuss the correlation between PAH’s, and in particular coal tar and exposure from settled house dust. Concentrations of PAH’s in dust from coal tar based seal coated parking lots was 530 times higher than that of parking lots with other pavement surface types, according to the authors.\textsuperscript{23}

While the debate over whether the settled house dust and resulting exposure to PAH’s is as a result of coal tar based sealants will likely continue, an increase in property damage as well as alleged personal injury litigation is likely to follow in the near future. Coal tar has not been without litigation in the past. Prior legal disputes involving coal tar have ranged from labeling and levels of coal tar in dandruff shampoo to claims for the loss of poultry.\textsuperscript{24} In defending a claim involving alleged coal tar contamination or exposure, it is necessary to be cognizant of surrounding

\textsuperscript{19} Id.


\textsuperscript{22} \url{www.truthaboutcoaltar.com/aboutcoaltar.html}


environmental conditions such as prior uses for the site, adjacent commercial and industrial uses, as well as other sources for PAH’s such as industry, diesel fumes and cigarette smoke.

**NEWS IN TOXIC TORTS**

*Medicare Reporting Compliance* - The Center for Medicare and Medicaid Services (CMS) mandated that pursuant to statute MMSCA, Section 111 that effective January 1, 2010, all liability insurers must collect certain claims statement information and report it to MCS at specific time throughout the calendar year. The liability insurer and/or payer must evaluate an individual’s eligibility as a Medicare/Medicaid recipient through the Medicare/Medicaid database. Each and every settlement offer must be contingent upon the Plaintiff’s agreement that he or she will provide the information required under statute such as name, date of birth, social security number, Medicare eligibility number, etc. Settlement funds cannot be released to a Plaintiff until such information is received. The CMS recently pushed the effective date back to January 1, 2011. In New Jersey, The Asbestos Advisory Committee offered to draft a standardized form for plaintiffs to complete. While Plaintiffs have not objected to using a standardized form, Plaintiffs objected to providing any and all language in releases containing a hold harmless/indemnity agreement for failure to comply with Medicare Secondary Payer Act issues. The Asbestos Advisory Committee is attempting to resolve this issue, standardize the reporting procedure, and to address the indemnity/hold harmless agreement obligations.

*Forum Non-Conveniens* - In the first week of February 2010, the Honorable Sandra Moss of the Philadelphia Court of Common Pleas convened a “special” meeting of Defendants and Plaintiffs counsel. Although Judge Moss hosts attorney meetings on the first Monday of each month, she made it clear that the meeting was to be attended by “decision makers” from all active law firms in asbestos litigation. In summary, Judge Moss “ordered” the following.

Plaintiffs’ counsel from other jurisdictions, including Texas, that decide to file and try cases in Philadelphia are interfering with her ability to settle cases, and the essential goodwill which exists between the Plaintiff and defense bar was compromised. The Philadelphia Court of Common Pleas became attractive to outside jurisdictions due to the relative ease in trying mesothelioma cases. The Philadelphia Court of Common Pleas system is reverse bifurcated and therefore, lends itself to allowing the Plaintiff to try the “easy” portion of the case, i.e. causation before liability. Judge Moss indicated that she now recognizes the flaw in reverse bifurcation system and may be reconsidering this issue in the future. In any matter wherein Texas counsel is involved either through local counsel or directly, a mandatory settlement conference must be had prior to trial. Although Judge Moss indicated that she is at this time
unwilling to grant forum non conveniens motions, she did indicate a willingness to reconsider this position in the near future should her program be unsuccessful.

Recently, at an open forum between the New Jersey Asbestos Bench and Bar, the Honorable Ann G. McCormick indicated her willingness to grant forum non conveniens motions should she be presented with such issues. Also, Judge McCormick has yet to submit her revised Case Management Order to the office of Administrative Courts, but is still proceeding under the rules as set forth in her revised Case Management Order. Her Case Management Order was revised approximately two (2) years ago. Also, Judge McCormick is rejecting motions for summary judgment that are not submitted with deposition testimony, answers to interrogatories, and counsel lists. This now requires that a Defendant purchase the deposition transcript if that Defendant intends to rely upon the Plaintiff’s testimony in support of the motion for summary judgment. Therefore, costs will be exponentially increased due to this necessity.

Dawn Dezii, Esquire
Ph: 856-726-6005
ddezii@margolisedelstein.com

Jeanine D. Clark, Esquire
Ph: 856-727-6034
jclark@margolisedelstein.com

100 Century Parkway, Suite 200  Mt. Laurel, NJ 08054
Fax 1-856-727-6010  www.margolisedelstein.com

Copies of any of the cases, statutes or regulations cited above are available by contacting the authors.

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