

EAST AYRSHIRE COUNCIL

COUNCIL MEETING – 7TH MARCH 2002

CLYDEBANK ACTION ON ASBESTOS GROUP – MOTION AGREED BY WEST DUNBARTONSHIRE COUNCIL ON 28TH NOVEMBER 2001

Report by Depute Chief Executive/Director of Corporate Resources

1.0 PURPOSE

- 1.1 To invite Council to consider the terms of an approach from West Dunbartonshire Council inviting support for the position they have adopted in respect of former workers suffering from asbestosis, or related illnesses, whose legal claims for compensation against their former employer, Turner and Newall Limited, have been adversely affected by the actions of US based company Federal Mogul since acquiring ownership of Turner and Newall Limited.

2.0 BACKGROUND

- 2.1 In March 2001 Clydebank Action on Asbestos Group initiated a campaign of support for former workers suffering from asbestosis, and their families, in response to what was described at the time as the 'Chester Street' scandal. In essence, this involved a UK insurance company, Chester Street Insurance Holdings Limited which collapsed in financial ruin leaving many workers with outstanding compensation claims for employment related asbestosis and little or no prospect of receiving any payment. Amongst the group of workers affected were approximately 1500 in Scotland, with many living or formerly employed in the shipyards and related industries in the Clydeside area.
- 2.2 As part of their campaign, CAAG approached West Dunbartonshire Council for support, as well as various other public and political figures including the Secretary of State for Scotland. In turn, West Dunbartonshire Council passed a motion fully supporting CAAG and the families they represented and undertook to enlist the support of all other local authorities in Scotland by referring the matter to each of them for their consideration.
- 2.3 Thereafter, by May 2001 a formal agreement was reached between the Treasury Department of the UK Government and the UK insurance industry which ensured that all asbestos sufferers, and their families, who had claims outstanding against Chester Street Insurance Holdings Limited would receive 100% of all compensation to which they were found or agreed to be legally entitled.

3.0 CONSIDERATION

- 3.1 As a follow on to this earlier action, CAAG then raised the issue of former workers with asbestos related claims outstanding against Turner and Newall Limited, who have been adversely affected in the pursuit of their compensation claims by the actions of Federal Mogul since it acquired ownership of Turner and Newall Limited.
- 3.2 Turner and Newall Limited previously employed many workers on Clydeside in the manufacture of asbestos and the coating of pipework in ships to prevent fire from breaking out in their engine rooms. Many of the former employees subsequently developed incurable asbestos related diseases due to exposure to asbestos dust at their workplace.
- 3.3 Ordinarily, such claims would be pursued against the company's Employers Liability Insurers, but it has since apparently been established that the insurance cover obtained by the company, during at least part of the relevant period giving rise to some of these claims, specifically excluded asbestos related claims. This has the legal effect that many of the workers therefore require to pursue their compensation claims directly against Turner and Newall, itself, rather than the company's Insurers.
- 3.4 Further, US based company Federal Mogul recently acquired Turner and Newall, in the knowledge that the company faced hundreds of outstanding asbestos related compensation claims. Federal Mogul, as the new owners, then opted to place the company into voluntary administration. This is a legal mechanism available to any company which no longer considers itself to be solvent and allows it to opt to appoint a trustee to run its affairs, rather than wait for creditors to take such action themselves.
- 3.5 The legal effect of this action for the claimants is that all outstanding debts, and potential debts including their compensation claims, are effectively frozen pending completion of the formal administration process, whilst the company itself is entitled to carry on trading. It should be noted, however, that the company cannot retain any profits it may make from its continued trading, as these have to fall within the administration and be disbursed to creditors in due course.
- 3.6 In real terms, the net effect will be to drastically delay any payment in respect of these claims, which in turn may prompt individual claimants to settle claims for far less than they might otherwise be worth, in order to secure some payment sooner rather than later. Additionally, even those who hold out for the full value of their claims may find that ultimately there are insufficient funds available to meet in full all sums due to creditors. In the meantime, Turner and Newall can continue to trade.
- 3.7 Having been approached by CAAG in respect of the Turner and Newall affair, West Dunbartonshire Council unanimously approved the following motion at a meeting of their full Council on 28th November 2001: _

“This Council reaffirms our commitment to achieving justice for asbestos victims and their families.

Furthermore, this Council condemns the legal loopholes being utilised by Federal Mogul Corporation, the parent company of Turner and Newall in order to deny rightful compensation to those in our community who were affected by asbestos poisoning whilst in their employment.

In particular, Council notes that there may be former Turners Asbestos Cement, Dalmuir workers who fall within this category.

Council notes that it is less than 12 months since this Council supported a successful campaign during the Chester Street scandal. Council now agrees to repeat the actions we took at that time. This will include contacting every Council in the United Kingdom asking them to condemn the activities of Federal Mogul and ask that they express their concern to Tony Blair, Prime Minister, Gordon Brown, Chancellor of the Exchequer, Helen Liddell, Secretary of State for Scotland, and Jack McConnell, First Minister of the Scottish Parliament.

In addition to the above, this Council agrees full support, including financial if required, to the Clydebank Asbestos Group to assist their efforts in this campaign.”

3.8 West Dunbartonshire Council subsequently wrote to this Council, as well as all others in the United Kingdom seeking support in respect of this matter.

4.0 POLICY/LEGAL IMPLICATIONS

4.1 None arising directly from the terms of this report.

5.0 FINANCIAL IMPLICATIONS

5.1 None arising directly from the terms of this report.

6.0 RECOMMENDATIONS

6.1 Members of Council are asked to :-

- (i) note the approach from West Dunbartonshire Council and the position it has adopted in respect of the actions of Federal Mogul since acquiring Turner and Newall Limited
- (ii) to affirm in principle its support for all former employees of Turner and Newall Limited with outstanding asbestos related compensation claims which have been adversely affected by the actions of Federal Mogul in this matter and

- (iii) to remit to the Depute Chief Executive/Director of Corporate Resources to advise West Dunbartonshire Council of the terms of the decision taken by this Council and also to intimate same to such other parties as Council may consider appropriate.

Fiona Lees
Depute Chief Executive/Director of Corporate Resources
FL/DM/CMCT

4th March 2002

BACKGROUND PAPERS

1. Letter dated 21st December 2001 from West Dunbartonshire Council

Members wishing further information should contact David Mitchell, Head of Administrative and Legal Services, telephone 01563 576061.

Implementation Officer: David Mitchell, Head of Administrative and Legal Services

AGENDA