

# Paying the Price – In More Ways than One

By Anjali Atul Mehta Smiltins

A prison sentence is inevitably accompanied by threats and fears regarding one's wellbeing. Our initial thoughts of such dangers typically include violence amongst prisoners, sexual assault and harassment, and hostility from prison employees. Yet another comparably menacing hazard likely would not make this preliminary list.

On a recent trip to San Francisco, I satisfied a lifelong curiosity by finally visiting Alcatraz Island. Peering into each cell invited so many thoughts – about what took place in each cell, what crimes warranted the inmates' time at the place which elicited infamous resident Al Capone's realization, "It looks like Alcatraz has got me licked." And, for my 6-year-old niece, "Did they really have to shower in front of each other?" As I marveled at the preservation of the structures, I could not help but think about how asbestos played a part in the initial construction and subsequent repairs – at Alcatraz and also at countless prisons still in use today.

If an inmate qualifies, it is encouraged and often mandatory for prisoners to perform work throughout the institutions. Such jobs carried out by inmates include automotive repair, janitorial duties, food services and prison maintenance. Prison

maintenance can comprise of building construction and repair. As a result, prisoners were and continue to be faced with exposure to asbestos.

Chillicothe Correctional Institution was opened in 1925 as a youth reformatory, controlled by the federal government. In 1966, the state acquired the institution. It since has operated as a men's medium security prison. In a structure of that age, it is unsurprising that asbestos would be utilized in its construction. In 2008, a claim was brought against the Ohio Department of Rehabilitation and Correction, the State of Ohio and the Chillicothe Correctional Institution, along with several members of the prison's administration, in response to the then current conditions of Chillicothe Correctional Institution, despite all asbestos allegedly being removed from the premises in 2005. The 33 prisoners and four former prisoners, who brought the claim, argued intentional exposure to unreasonably dangerous levels of unabated, exposed and/or friable asbestos. In spite of the supposed abatement and complete removal of asbestos, inmates of Chillicothe Correctional Institution collected samples of a powdery substance found on the housing floors as well as insulation from pipes to be sent to their attorney. Upon testing of the samples, suspicions regarding the continued presence of asbestos were confirmed. Further investigation by asbestos consultation experts, Chryatech, Inc., revealed that the majority of the disconcerting material was found in dormitory areas. Not only were inmates alleging the presence of asbestos within the institution, but also their direct exposure to the substance as a result of being forced to work with and remove asbestos. Inmates claimed that such work, with and around, asbestos was performed without proper instruction, knowledge, or safety equipment.

In 2011, a settlement was proposed providing injunctive relief. The agreement described the abatement process and the intent to begin abatement of three areas in particular within 30 days of the court's approval of the agreement. These areas included five dormitories

and the hospital. Fortunately, funds were available for the three priority sections of the Chillicothe campus; unfortunately, there were 13 additional locations named as requiring attention and abatement. The Chillicothe Correctional Institution was advised to request funding to address the asbestos yearly until all areas had been completely remediated. Several of the class members lacked confidence that Chillicothe Correctional Institution would adhere to its conditions yet, following two years of settlement negotiations, the court ultimately approved the agreement.

In May 2015, Barron Brown, one of the class members of the originally filed suit, filed a request for reinstatement of the case to address the Chillicothe Correctional Institution's incomplete abatement of the asbestos from the facility. Brown argued that the defendants never intended to tackle the asbestos issue. In support of his request, Brown attached documents alleging the Institution's failure to request the appropriate permits for abatement to proceed at the prison. As the court lacked jurisdiction to enforce a party to act in accordance with the Private Settlement Agreement, Brown's request to reopen the case was denied.

Chillicothe Correctional Institution currently houses 2,764 inmates. The Ohio Department of Rehabilitation and Correction site only accounts for 127 inmates who currently are on death row, despite the death sentences all of the prisoners are serving.

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