

TRANSCRIPT OF AUDIO FILE:

THE FORGOTTEN TOXIN - THE FIGHT TO FINALLY BAN ASBESTOS

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BEGIN TRANSCRIPT:

INTRODUCTION: (music) Welcome to a hard look at the Administrative Law Review podcast from the Washington College of Law. We'll discuss how administrative law impacts your daily life, from regulatory actions by agencies and the litigation over them, to the balance of power among branches of the government. This is a hard look. (music)

[00:00:37]

ALEXANDER NAUM: Hello and welcome. I hope you're all doing well today and escaping the last bits of winter. I certainly cannot wait for spring to come and the flowers to bloom. My name is Alexander Naum and I'm the Senior Technology Editor for the Administrative Law Review. For many people, when hearing the word asbestos, they often assume it's an element of old commercial products that doesn't exist in our society today, and maybe further, that its use is strictly illegal. However, these assertions are far from the truth. [00:01:06]

Not only is asbestos's commercial usage and importation legal, the Environmental Protection Agency, also known as the EPA, is falling behind in regulating it, is falling behind in regulating it. While the EPA did attempt to ban asbestos in 1989, in a final rule under Section 6 of the Toxic Substance Control Act, also known as TSCA, the 5th Circuit overturned this rule in 1991, resulting in asbestos only being banned under five specific product types, ultimately leading to future EPA administrations providing more deference towards manufacturers and plants that use asbestos, rather than a more robust approach to protect workers, families and entire communities from this very toxic substance. A substance, according to the Asbestos Disease Awareness Organization, also known as the ADAO, that killed over 40,000 Americans in 2019 alone and over one million Americans since the initial failed ban. [00:02:08]

To help us understand the gravity of this issue, we're glad to be joined today with Linda Reinstein. Following the sickness and passing of her husband, Alan Reinstein, from mesothelioma, Linda and a colleague of hers founded the Asbestos Disease Awareness Organization, the largest independent asbestos victims organization in the U.S. The ADAO is

dedicated to giving asbestos victims and concerned citizens a united voice to raise public awareness about the dangers of asbestos exposure and to work towards not just a national asbestos ban but a global asbestos ban. Additionally, the ADAO recently successfully sued the EPA over its interpretation of TSCA as it relates to the risk of asbestos.

I would like to remind our listeners that these are the personal views of Linda Reinstein and do not reflect the views of her employers, clients, organizations or other individuals in which these opinions can be imputed. Linda, it's a pleasure to have you on the show and I know that you're calling from L.A. right now, so it's a little bit of a time difference and a weather difference. How is your day going? [00:03:14]

LINDA REINSTEIN: My day is going great and I am so excited to join you on this podcast today, I think it's going to be terrific. And I also want to remind your listeners, as they listen to this conversation, that I am neither a lawyer or a lobbyist. I'm a mesothelioma widow and a public health advocate.

ALEXANDER NAUM: Well it's great to have you on our show and let's start with the first question. What exactly is asbestos and when did its commercial use in the U.S. begin?

LINDA REINSTEIN: So that is the million dollar question. Asbestos is a known carcinogen and it's actually a natural occurring mineral, so you can find it possibly, in the state of California, where I live, in a rock called serpentine, and elsewhere around the nation and other foreign countries. It was once called the magic mineral. It was so inexpensive, heat resistant, it was just the perfect fiber to put into cement, building materials, etc., except it's a known carcinogen. We know the fiber types are commonly known as chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite, and that's important as we get into the conversation a little bit more into the podcast, about what EPA is doing with the six fiber types. [00:04:28]

Now you might find asbestos in building materials, brake pads, insulation, but there's a deeper story to that. We know that asbestos has caused a myriad of diseases and deaths and suffering, but including lung cancer, mesothelioma, asbestosis, ovarian cancer, and other pleural diseases, and it's interesting, as we look back on history, as asbestos was actually known to be a fire retardant back in early Greek culture, so like 2,500 years ago. So they would make asbestos suits and things that would obviously be fire-protected. So we know that asbestos goes back thousands of years but we've known for at least century or more, that asbestos exposure causes disease. [00:05:20]

ALEXANDER NAUM: How long into its commercial use did physicians and researchers discover this toxicity?

LINDA REINSTEIN: So in the UK, they really led the charge much quicker than in the United States. Scientists saw that there were textile workers that developed lung diseases and they went back and looked at their work history and that was really the red flag, I think, for the U.S. Unions have been incredibly important to prevention and workers' health and safety, so we know in the early '20s, that there were insulators and textile workers and others, for instance that worked for Johns Manville, that worked with asbestos in manufacturing. It was in the '20s

and '30s that it became apparent that there was a causal relationship between asbestos inhalation and disease. [00:06:09]

ALEXANDER NAUM: Yeah. I think it's important to stress to our listeners how toxic asbestos is, you know how much asbestos exposure is needed to create disease and what kind of diseases can immerge from asbestos exposure.

LINDA REINSTEIN: That is really important because I think nine out of ten people that I meet after my 18 years of public health work, will think that asbestos is the thing of the past. They don't understand that it can be found in homes, schools, workplaces and in our environment, and it is difficult because it is a nearly invisible fiber right? You can't see it, touch it, taste it or smell it and we know that exposure causes disease. There's no safe level or controlled use. So when we think about what we know scientifically about asbestos and the fact it is such an aggressive carcinogen when it comes to developing different kinds of cancers, and most of them are completely incurable but sadly, they're all preventable. [00:07:10]

ALEXANDER NAUM: How long from exposure from asbestos, does it take for a victim to experience disease?

LINDA REINSTEIN: I think the latency period has made it a perfect white collar crime Alex, because it takes anywhere from ten to 50, five-oh, years from exposure to disease presenting, to really know that you obviously were exposed and you developed a disease. Using my husband Alan's case, he was exposed over 50 years ago before he was diagnosed, and as I've commented to different senators and representatives and others, I asked what did you... "What did you have for breakfast two weeks ago?" Most people, unless they have the same thing every day, they wouldn't know. So because the latency period if so long, it's hard to go back into the archives of your mind and determine where you might have been exposed, that that is why I believe it's the perfect white collar crime. [00:08:08]

Education has been hugely important to the work that ADAO does, because we feel that if we can prevent exposure we can eliminate all asbestos caused diseases, and obviously that's been our mission and vision for almost 20 years.

ALEXANDER NAUM: Yeah and I can imagine, with a latency period that far, it could be really hard for lawyers to prove proximate cause. It could just create so many issues for victims, you know trying to get restitution for everything that just happened to them, you know from their exposure from asbestos. Talking about asbestos litigation, let's talk about the first, the 1926 suit against a manufacturer, Johns Manville. Who brought this suit against Johns Manville and what ultimately happened?

LINDA REINSTEIN: Workers were the first in the trenches to be exposed and then to develop disease; their doctors were very smart. They could come up with a correlation and recognize there was something in the workplace that was causing disease. Now when we look back at what actually happened and how long it took and what the workers got from filing their complaint, it's really pennies on the dollar. So we know that in the late '20s workers did sue and it was a small group, I think it was a little over ten, and the so-called settlement or recovery

was very low, maybe \$30,000. But what that did is it drew a line in the sand where other workers realized that something they were doing in the workplace was causing a health problem for themselves and actually more importantly, even their families. [00:09:40]

When workers used to go home, decontamination wasn't truly something that was widely practiced in the '20s. Workers also tend to smoke, that was—I mean you guys are way smart, millennials, very few people smoke, but in the '20s, '30s and on, it was so common for someone to have a cigarette hanging out of their mouth. It was even in Hollywood, looked as a really star thing to do is to smoke, it gave you this certain ambiance about yourself. And I say that because smoking increased the likelihood of disease by fivefold at least. So you had a worker, possibly a blue collar worker, the worker may have smoked, and when they developed a lung disease, if you were an industry doctor, it would be very easy to say you've just developed lung cancer, and not attribute that back to the asbestos exposure from the workplace. [00:10:41]

ALEXANDER NAUM: And just continuing our discussion around worker led suits against asbestos manufacturers, I know that the industrial insulation worker known as Clarence Borel's suit, had a lasting impact. Can we talk about Clarence Borel and his case against 11 asbestos insulation manufacturers? [00:11:00]

LINDA REINSTEIN: I love Alex, that you're bringing this home to people. So Clarence Borel was the perfect plaintiff to bring a case against those 11 companies that you mentioned. He was a very religious man, he was a preacher, he didn't smoke. He did work as an insulator and he was such an honest man that he was really perceived well in the courtrooms when his case finally went to court. He is documented so many times and I actually had such a unique opportunity. I met his son Bracy, I actually drove out to Missouri and met him, and he had his father's old tool chest, his union book, and we talked about what it was like for his father to work in the industry and then obviously, how did this impact Bracy's life and of course the grandchildren.

Clarence was so unique, as I said, as far as his worker—his work/life balance of course and the fact that he didn't smoke and he didn't drink was a huge bonus for Clarence, because he was able actually to refute a lot, Clarence. Bracy actually went to work as an insulator. He loved his father so much, he actually went to work and lied about his age so he could too, work as an insulator. It was once thought of as a really good job down in Texas. [00:12:21]

Now think about this. You're sitting on the East Coast, I'm in California, and we're just talking obviously, to our computers. But think if you're working around a dusty toxin and what if you aren't given proper personal breathing equipment, if you're not educated, if it's hot in Texas like it always is, that means the dried asbestos that becomes dust is easily inhaled, which can cause disease. Most workers were not educated or warned, in fact that it what ultimately stuck in the Clarence Borel case, was failure to warn. I'm not a lawyer, so I want to be careful how I reference this very pivotal case, but this was the first time a worker was successful in proving that the employers didn't warn and caused their disease. It was so significant.

ALEXANDER NAUM: How did the EPA respond to this case if it did respond? Can we talk more about that? [00:13:26]

LINDA REINSTEIN: Absolutely. So by the time Clarence had developed mesothelioma, which was obviously a signature disease from asbestos exposure, he was no longer able to work, and you can imagine these defendants being held liable in a court as they pursued this trial. Clarence died before there was a plaintiff's verdict but his wife continued on with wrongful death. So as a result of this very pivotal case, the decision came down in 1973, we can look at—and I think this podcast about administrative law is so interesting, is we know that there was the Clean Air Act, so many different things, OSHA began obviously. [00:14:06]

We know that in the '70s, it was really a time for environmental awareness. It wasn't perfect but it was environmental awareness. And you asked specifically, about the EPA, and it was in 1976 that the EPA successfully—Congress passed the Toxic Substances Control Act and it was signed into law, I believe by President Ford, at the time. So it was a landmark step forward to give EPA the tools that it needed to prevent chemical exposures. Perfect? No. But it was a landmark step forward.

When Clarence Borel's case finally went to the higher courts and they got a plaintiff's verdict, it showed that companies would be held liable, obviously they had to pay. Nobody could refill that seat at the table for the Borel family or wipe away the tears and the tragedy, but it did set a precedent for companies to know that failure to warn was a crime. So ultimately, when I do my research, I look back historically, at the different bar charts from government agency, U.S. Geological Survey, you can see that asbestos imports and consumption began to decline in about—on about 1973. I don't want to put so much emphasis on Clarence Borel's case, I think a lot of it was the Clean Air Act and others, but his case was certainly just a pivotal case for the reduction of asbestos imports and use. [00:15:40]

ALEXANDER NAUM: You mentioned a really important thing, you know TSCA. How did the EPA interpret TSCA, you know what happened just like with their interpretation as well?

LINDA REINSTEIN: TSCA, I believe, I really believe, it was written in good faith to prevent chemical exposure, obviously to prevent deadly diseases, protect our environment, you know the true mission and vision, so '76 was a strong year for prevention. However, what I found with my work is that industry will cut any and every corner to continue business as usual, and we've seen that with TSCA. Looking at the timeline of when TSCA was signed into law and then what ultimately happened with using Section 6 of TSCA, meant that the EPA could take action, risk evaluation and management on chemicals. They had the tools but failed. [00:16:36]

ALEXANDER NAUM: Can you talk about what they failed at? I do know that there was a total asbestos ban and then the 5th Circuit, you know it was challenged in the 5th Circuit and then the asbestos ban went away. So can we just talk more about that and what ultimately was the result of the 5th Circuit's decision?

LINDA REINSTEIN: Yeah. A great question. Industry knew that with the asbestos ban, they'd have to change their business practices, right, so we have '76 as TSCA. We also know that

Clarence Borel's product liability case would change how jurors and cases would be tried. So industry tried everything to overturn the asbestos ban and they were successful after two years. There was so much evidence that was used, in fact, I'm staring at a mound of paper on my desk. There was so much evidence that the EPA used to ban asbestos, you would never think that industry would be successful in overturning the ban, but they did it using different elements of TSCA, like a cost burden analysis. Did EPA really do their job and evaluate the cost? They used technicalities to overturn the ban. I think the sad part for me is knowing that we have TSCA and EPA has a robust box of tools. They never went back at TSCA using Section 6 again. They let that ban go and industry won. [00:18:00]

ALEXANDER NAUM: And I know that part of, you know, the 5th Circuit's decision, they still allowed five uses of asbestos to continue to be banned. However, there were other ways that asbestos use continued. Can we talk more about what were those five uses that were banned and how asbestos continues to be used following this decision?

LINDA REINSTEIN: Yeah. So the five uses of asbestos ban were primarily construction uses, but it wasn't enough. It caused great confusion when only five uses were considered prohibited, so that's what creates for me, this misunderstanding where people think asbestos was banned, and their air, water and soil is free of contaminants. It's not. What happened was the construction industry, as well as automotive, ships, airplanes, they continued to use asbestos, because as we talked before, it was a magic mineral. It was heat resistant, impervious to water, it was durable and cheap, so by using asbestos, it still filled the gap in those different product areas.

Now what we've seen since then is those companies that did use manufacture, had workers in the place, in the workplace, they changed their practices. There are safer substitutes and that's really important for agencies and listeners to know, is there are safer substitutes, we don't have to use this. In fact, 70 other countries have banned asbestos. What we see now in our environment is there's only three companies; Olin, Westlake and Occidental, that use asbestos diaphragms in eight plants, eight, to manufacture industrial caustic soda. So the old users of asbestos recognize it's a health risk and have changed their ways, we're only facing opposition to a ban from one industry, the chloralkaline industry. [00:20:03]

ALEXANDER NAUM: And just kind of going off of that, I know that there were other consumer based products that had been found to contain asbestos, including talc-based cosmetics and even some children's toys? Can we talk more about those products and some of the specific damage that they can pose to consumers?

LINDA REINSTEIN: Yeah. A great question. On EPA's website they used to say there were 3,000 products that contained asbestos. That page has been removed, I've saved it in my computer, but what happens if we don't educate Americans that asbestos could be found in consumer products or cosmetics and personal hygiene? Then the only way we find out that there's asbestos contamination, is if NGOs like ADAO, or others, test products to determine if there's presence or absence of asbestos. Now most people know exactly what Johnson & Johnson produced with the white powder, obviously baby powder. Every new mother got a bag

and inside that bag was this very so-called safe leading product, Johnson & Johnson baby powder. [00:21:12]

In the news, we hear so much about J & J and it did cause significant harm, but I want your listeners to know that J & J's product actually falls in the jurisdiction of the FDA, not the EPA, and we have to look at the jurisdictions of these different agencies to figure out how can we best use the knowledge we have and the agency's muscles to protect public health. We did a product testing, it took a year and a half, and we had three labs determine if there was presence or absence of asbestos in the products We determined, after massive testing, that five products did contain asbestos and one of them was actually a kid's toy. What followed after that, I think for this podcast is interesting, is although I paid to have the results hand couriered to CPSC and EPA, no one ever got back, no one ever pulled those product, it remained just sort of in a black hole, mothing was done. [00:22:09]

ALEXANDER NAUM: It's just wild to think that after all this negative attention towards asbestos, its widespread use continued. I can imagine that the asbestos industry engaged in a lot of PR, similar to the PR efforts of the tobacco industry, after they were faced with similar legal challenges and regulation. What did the asbestos industry do in attempts to protect its public image and continue asbestos use?

LINDA REINSTEIN: There's a really dirty playbook that the tobacco and the asbestos industry used, and it was clever and cheap, doubt was their product. They paid for junk science, they used propaganda, disinformation and document suppression. So if you can't prove that either tobacco is safe and/or asbestos is, let's go with unsafe, it creates sort of this illusion that both of those products were safe. They continued this from the early '70s with Clean Air Act, etc., trying to lobby for so-called safe use or actually no liability at all. [00:23:20]

I think for this podcast it's important to point out that in the early '70s there was actually the formation of the Asbestos Information Association, acronym AIA, and who would have thought that would have been founded by manufacturers, asbestos companies using asbestos, and a PR company, to develop a campaign that they could use in Washington and elsewhere to sell their killer products but also reduce their liability. So we have so many documents and there's great work that had been done in courtrooms, and I think when we look at court decisions, all of these cases, as sad as they are, they usually produce something from the discovery. Maybe it's a document, maybe it's another piece of information, that goes into this puzzle, that helps us to be stronger and more communicative to prohibit all uses, but it's just, it's reprehensible to think that we allowed big PR companies and manufacturers literally get away with murder. [00:24:25]

ALEXANDER NAUM: Yeah, just a lot of swindling that's going on, it's just outrageous. However, in 2004, you know as we briefly mentioned, you and a colleague of yours founded the ADAO to combat the asbestos industry's disinformation and to advocate for victims of asbestos-created disease. What motivated you to create this organization? Can we talk more about that?

LINDA REINSTEIN: Sure. I met a really talented man, Doug Larkin, in Washington, D.C., his grandfather had been diagnosed with mesothelioma. We were attending Senator Patty Murphy's ban asbestos briefing and we kind of struck up a friendship and he said, "If you ever need me here's my card," and I'm thinking okay. [00:25:08]

Well at that first trip to Washington, D.C., everywhere I went Alex, whether I was in line to get a Starbucks coffee, waiting for a taxi, people would say oh are you here—because I was with my daughter Emily—are you here for spring break? They'd ask just general questions. Every person I spoke to seemed to have a story. Uncle Henry worked with asbestos, my aunt died of lung cancer. These stories became very apparent to me that it wasn't just Alan Reinstein and Bill Shields, it was a much larger problem than that. So I had meetings with Senators Boxer and Feinstein at the time and I put a picture on the table, of Alan and Emily dancing at a wedding and I said, "Because of asbestos, they may never have that opportunity to dance at Emily's wedding," and I saw the staffers change their posturing. Their eyes welled up with tears, they heard how asbestos was impacting people. [00:26:04]

As a result of Senator Murray's ban bill meeting and my first too, I realized I had to do something, if I didn't try to do something Alan's disease and suffering would just be in vain. One of the offices I went to said you need to speak about more people than just Alan, you've got great information, and with that I thought that's it, I need to start an organization. So I contacted Doug Larkin and we had—we accepted a mutual start and we worked together like brother and sister, like family, to prevent exposure to eliminate all diseases.

ALEXANDER NAUM: It's horrible, what you and your family had to go through and families across the nation continue to go through. Profits are being put above human life. However, in the close to 20 years since your founding of the ADAO, you've made some amazing progress and the organization has made some mazing progress. Can you touch on some of that progress? [00:27:00]

LINDA REINSTEIN: Sure. I want to reference the many people who have made our work possible. Doug can't join us because he died of ALS, but I look back at the history of everybody that believed in our mission and vision and I truly believe that we stand on the shoulders of giants. As a result of ADAO incredible leadership, volunteers, donors and others, members of Congress too, we have—I've had the honor and opportunity to testify at different House and Senate hearings for asbestos issues. We have held numerous actually, annual conferences to raise awareness and in fact, I have a news nugget for you Alex. I just got the legislative language back yesterday, our resolution for Asbestos Awareness Week, April 1st to the 7th, it is going forward. That will be the 18th time I've written a resolution and Senator Tester is amazing, he is our latest and greatest champion, so it's going to be introduced sometime soon, in March.

ALEXANDER NAUM: That's incredible. [00:28:00]

LINDA REINSTEIN: Yeah it's really terrific and because of all the people who have believed in us, we have exceeded whatever goals have been. I think for me, the biggest area of success, and it's been brutal, is looking at what we've done legislatively and with education. It just hasn't been enough and the wheels of justice, we know turn slowly, but the wheels of advocacy turn even slower. So as a result of the Lautenberg Chemical Safety Act that was signed into law in 2016, I realized we had to change our playbook up and figure out what could we do to make sure that the Lautenberg Chemical Safety Act, it was an amendment to TSCA. What could we do to make sure that the bill that we all worked on would be implemented according to the law. President Obama actually signed it into law and Emily and I had the honor to be invited and I really thought we were on to a road of change. We were derailed and sadly, under the Trump administration, we have been dealing with a law that should have been able to ban asbestos and we're looking at a very different climate. [00:29:18]

So as a result of the poorly implemented Lautenberg bill, ADAO has tried to do some other things, including sue the EPA to hold them responsible for what they need to do to protect public health and the environment. And I'm really pleased to say that we did sue three times, we won, and the most important thing is to thank those like Bob Sussman, our brilliant environmental lawyer who led this fierce legal battle, but also the plaintiffs, the different organizations that believed in Bob and me and ADAO, to sign on as plaintiffs, because a lot of people don't want to get involved. Suing the EPA sounds pretty scary, it used to sound pretty scary to me, but if you can't hold the agencies responsible then the laws and regulations are just mere paper and fluff. [00:30:10]

ALEXANDER NAUM: Can we talk more about what the gaps were in that initial rule and you know, what ultimately happened from the success of your lawsuits.

LINDA REINSTEIN: During our lawsuits against the EPA we used three sections of TSCA. We used judicial review, citizens civil actions and citizen petitions, all to bring together the different cases that we've filed. We knew that if EPA was only going to look at the risk of one fiber, that would not be enough to product an asbestos ban, especially after the 1989 failure of EPA's ban. By using TSCA, we were able to sue, and Judge Chen at the 9th Circuit Court agreed, that in order to fully evaluate the risk of asbestos, you need to look at the entire, where asbestos is in homes, schools and buildings. So we sued and we will have a part two of the asbestos legacy study. [00:31:14]

What we're working with now, as a result of the Lautenberg bill, is a part one chrysotile asbestos final rule that will likely ban one fiber in six conditions of use. We have written comments for the docket, we have gone to public meetings, we have begged the EPA, in our own personal meetings, to not single out one fiber. As we spoke about earlier, there are six known fiber types and we're now going to be left with a landmark step forward but it is not a ban and for us to call in the United States that we have a ban on asbestos that's eminent in October or November of this year is just categorically wrong. So that's why we're still fighting hard for legislation. [00:32:00]

The other part, I think that is really important and one of the lawsuits was all about, what I used to call the right to know. In the—in about 2012, I went to Senator Boxer's office, I said, "How

can we prevent exposure if we don't know where these products are?" One staffer did the research and came back and said, "I can tell you where they are but because of confidential business information, I cannot tell you who is doing this." And of course for me in California, Alan had passed away in 2006, Emily was just 13 when she saw her father take his last breaths with me, I thought this is ridiculous. So ultimately, by meeting Bob Sussman, we sued the EPA to go back to a law, it was a 1988 law, about asbestos reporting and go back and ask these companies who is importing and using asbestos and where is it and all of the other questions that consumers and Americans would want to know. We had a favorable decision from the courts and we're also anticipating that the final rule for asbestos reporting will be due out in April or May. I think that those two things, where we sued to have the part two legacy risk ad review and evaluation done, as well as asbestos reporting, that will show the EPA, but more importantly Americans, about what is asbestos, where might it be, and how can they prevent exposure. [00:33:25]

ALEXANDER NAUM: It's definitely not a complete ban but it definitely is a major leap forward and I think it's incredible that your organization was able to achieve this. You did mention one thing, just about like where, the right to know and where asbestos is located and you know, it made me think of just previous conversations we've had about legacy asbestos. So what exactly is legacy asbestos and you know, can you describe more of what that means?

LINDA REINSTEIN: Sure. When we think about what happened with asbestos use in the United States, we know that manufacturing, we know that World War II, we know that it was such a profitable product that it can be found in floor insulation, in wallboard, in brakes in cars. It is the leftover use of asbestos that can be found in products. [00:34:15]

I think for me Alex, one of the biggest parts of asbestos legacy that we have to address, there should never be any argument that climate change is real. Living in California we've had huge fires, we've had earthquakes, and Florida and Texas have seen storms. When structures that are contaminated with asbestos are either damaged or have to be repaired, that means first responders, communities go in, and they're routinely exposed to asbestos as a contaminant in legacy asbestos. So if we're going to finally ban all imports and use, we need to look at the entire picture of asbestos. Where is it, what can we do to prevent exposure, including we can't manage the risk of asbestos, there's no safe or controlled use. So if we can't manage the risk, why would we allow one industry that's excessively importing it now, the chlor-alkali industry, to continue practices and putting communities at risk? [00:35:18]

ALEXANDER NAUM: Just continuing our conversation about legacy asbestos, I mean I can imagine that this creates unique issues for tenants of old buildings, who may be unaware of the asbestos in their homes. Does the Department of Housing and Urban Development, also known as HUD, have rules protecting tenants in federally funded housing, from these roots of asbestos exposure?

LINDA REINSTEIN: Well let's focus back on EPA for a second because it's through NESHAP, which has regulations for buildings that have housing, there are regulations out there, but your point is very good with public housing and HUD. We have some letters that we've written and we believe that this needs to be the next steppingstone for ADAO, because

it's too common that there's toxic public housing. And if we think about how expensive rents are across the nation, if you are—if you, for whatever the reason is, if you need to go into public housing because you don't have the funds, it is unlikely you have the funds to challenge a landlord, challenge whoever owns the building, that you have the funds to move your family out, experience a change of schools. Housing should be simple and consistent and more importantly, safe. So I truly believe that the communities that are disadvantaged, possibly of color, financially disadvantaged, it's an environmental justice issue with toxic public housing and I'm hoping that HUD, we'll have one of our first meetings and we can work on implementing the regulations that we have in place but really working on educational campaigns and holding building owners responsible. If you expose tenants to asbestos then you need, that you—you know it's like lead, you need to be responsible. [00:37:06]

ALEXANDER NAUM: And continuing our conversation about environmental justice, another big issues, the disposal of asbestos and the creation of what are called superfund sites. For our listeners who may not be aware of what that term means, they are locations that are so polluted that they require a long-term response to clean up. Where have these disposal locations historically been place and what communities are disproportionately impacted by these sites?

LINDA REINSTEIN: You're absolutely right. Historically it has been communities that are disadvantaged, it becomes an EJ issue as you know, and because asbestos was the magic mineral, that means it's very hard to get rid of the byproducts of cement possibly contaminated or other products. Let's use a real working example for a minute. Let's look at the tragic trainwreck in Ohio. Nobody wants that soil and that debris transferred to their area. Well it's the same with superfund sites. You have to find someplace that's cost effective, where you can abate and obviously prevent exposure. One of the last times I looked, there's well over 100 superfund sites from asbestos. Because there was so much manufacturing, there was products from Libby, Montana that were trained across to popping and processing facilities. So we look at manufacturing in a ripple effect because it was everywhere, it was truly ubiquitous. [00:38:34]

There's also natural occurring asbestos. So if you mine asbestos and/or you possibly are working on a housing tract, you can disturb asbestos just by going in and doing—and building a home, for instance, in Eldorado Hills. So we have to look back at how difficult it is to manage asbestos as a natural occurring mineral and these superfund sites Alex, it's tragic. I've been to Ambler. Even though they're well intentioned and they know the EPA tries, with erosion and weather, these superfund sites don't always hold the magic key to obviously, housing a toxic chemical.

ALEXANDER NAUM: Just going back to our administrative law discussion, you know this issue really affects many components of society, from workers to tenants to consumers, to our environment and our public health, and likely many other components that I'm missing, but with complex administrative issues like these, it's often better for various federal agencies to work together rather than silo themselves. Can you describe how the ADAO is working to achieve this interagency cooperation and any challenges you may have faced? [00:39:48]

LINDA REINSTEIN: Well first, I totally agree with you, no one should be siloed. This is not a Republican or a Democrat issue and we can't finger-point just at EPA. It should be an issue that all agencies fall under work together because if we can't enforce the laws that we have on the books they're worthless and if we have to improve them, then let Congress go back to the table and let's get this done, but holding agencies accountable, I think, in our three lawsuits for asbestos is quite telling about what often needs to be done. [00:40:18]

The toughest part for me is the agencies, I truly believe they're well intentioned. I've worked with many career staff and they're so dedicated, but there's many toxins, many pulls, there's a lot of politics as we know. It makes it difficult to hold the agencies accountable. I feel that it's been, for ADAO, our relationships have been significant. I try to break it down to where it's understandable, it's repeatable, we can truly make our case with science and evidence that there is no safe use of asbestos and really use the existing laws but advance and take some forward steps together by what we know, to challenge whether it's our Asbestos Awareness Week resolution that's coming, that we can raise awareness. The more awareness we raise leads to education, prevention and elimination. [00:41:11]

It's been tough. I'm still fighting in the sense of fighting, I'm still discussing, with the chlor-alkali industries. You know at a recent hearing for the Alan Reinstein Ban Asbestos Now Act in May, they testified at Senator Merkley, at the EPW hearing, they still claim there's safe use. Now remember, this is over 100 years ago, that we know asbestos is not—it cannot be used safely or controlled but the campaigns that they're still using to try to lobby for continued use, are the same old, tired old playbook from the '70s and '80s. So if we can't get around the doubt as their product and misinformation, all Americans will suffer, so ADAO and others have worked very hard to hold those who use the product and cause the problem, to help clean it up but also step aside. Let us move regulations forward, it's time that we end this man-made disaster. [00:42:09]

ALEXANDER NAUM: And just talking about this current administration, the Biden administration, I know there's been a lot of talks about making environmental justice a priority. In what ways has this current administration interacted with the ADAO? Can we talk more about that s well?

LINDA REINSTEIN: Sure. I think President Biden's work on trying to invest in environmental justice, whether it's funding grants, having public meetings, listening to communities, this is the first administration I've seen that really takes on EJ issues as they have. So I am hopeful, during the next two years, we can continue to execute what President Biden's mission is. He also has a moonshot cancer prevention mission. So if we're working to fund research for a cure, we should equally as hard to fund prevention, and I think that very well fits into his EJ mission and vision. I think that for NGOs, we've never been more aligned. EJ communities want to be part of the solution and they should be, so I see us firing on all cylinders and I'm excited there are some grant opportunities, actually ADAO is going to apply for. So President Biden is investing in working on EJ issues, which is very exciting. [00:43:32]

ALEXANDER NAUM: Outside of your organization's interaction with administrative agencies, and we've kind of talked about it briefly just throughout this episode, I know that your organization is actively pushing Congress to act on the issues and has been pushing Congress for years in fact. Can you talk more about your past bills and the opposition you faced and then what's different about this new bill.

LINDA REINSTEIN: Sure. Let's focus on the past bills. So we've had now, three Congressional Sessions that have introduced the Alan Reinstein Ban Asbestos Now Act. Over the course of the six-plus years, we've now been able to sue the EPA and win, so little by little our bills have become a little bit leaner, like we don't have to put in the asbestos reporting rule anymore, we won, we got a court decision. We don't have to write for legacy in our bill anymore because we know we're going to have part two. So because of everyone's hard work, our bills have been streamlined and I'm hoping that that reduces the opposition. There is no reason for us to be arguing about banning asbestos. [00:44:40]

The biggest problem that we face tends to be what is the transition time for industry. Let's remember, it's three companies and eight plants, and they have been transitioning. And then also the definition of asbestos. There are some groups that don't want to have the AHERA, EPA AHERA definition, because they feel like it's not as up to date as it should be, and that's probably very true, but as all of your lawyers know, you have to go with a definition that has standing, that all agencies are using. We can't make our bill the vehicle to change what NIOSH couldn't do in 2011. [00:45:25]

So we faced some major challenges during the last two Congressional Sessions. I do think that with the introduction this year, of the Alan Reinstein Bill, we call it R-Ban, that we will be able to garner support from both sides of the aisle, from all stakeholders. It's agreed upon that asbestos imports and use to end and it's time all stakeholders come to the table and come up with a working solution that benefits everyone, Americans today and tomorrow. We need to be done with asbestos.

ALEXANDER NAUM: You know there are a lot of issues that divide us as a nation but at the end of the day, I think that most of us want to live in healthy communities and we want our families to be safe. Ensuring the health of our communities should be the number one priority for us all but sadly for some, it's been pushed aside for monetary based interests. I think that the issue with asbestos is a key example of this, which is why I appreciate the work that you and the ADAO are doing in holding regulators and legislators accountable. Do you have any parting thoughts for our listeners? [00:46:25]

LINDA REINSTEIN: As we look back on this podcast, I hope your listeners can see that this has been a long problem, over a century. If we have a short look back at 2022, the lessons that we should have been able to learn and implement have been disregarded. Last year alone, over 300 metric tons of raw asbestos was imported through the ports of New Orleans, Houston and Los Angeles. That to me makes me think no one has learned anything from the past. Coming together, fighting harder and holding those accountable, and I truly believe and administrative

law actions, if we can use what we have at our fingertips with the legal challenges like ADAO did with Bob Sussman's help, we can hold the agencies responsible. [00:47:14]

We're waiting now, for the asbestos reporting rule, it's late, we're waiting for part one, it's late. We're going to have part two, I guarantee you, it will be late. So using these markers as opportunities to be reflective in administrative law, I think can help us reach our goal at the end. I hope everybody feels that they have something to do and to contribute to ending this man-made disaster. Whether it's calling a member of Congress, whether it's educating your family, supporting organizations that do great work, this is a problem that we as Americans share and I always tell people, when I finish meetings, that what we do in the United States matters, but also what we don't do sometimes matters even more. Foreign countries that look to us for leadership are gravely disappointed because we have sided with industry. History is a great teacher to those who listen and I hope everyone that has listened to your great podcast—thank you for this opportunity—can walk away with a nugget about how they can prevent exposure, to truly work to eliminate disease but also use administrative law accordingly to prevent exposure. [00:48:27]

ALEXANDER NAUM: (music in background) Well thank you so much Linda, for your substantial contributions to today's episode and for helping to raise awareness of this very important issue for our listeners. I'd like to also thank the American Bar Association's administrative law section, the Administrative Law Review, and of course our podcast own Eva Pederson, for her support in creating this episode. If you are new to our show and enjoyed the episode, give the episode a like and be sure to follow and share our podcasts with your colleagues, friends and family. Thank you and you'll hear from us soon as we discuss other topics in administrative law. (music)

[00:49:11]

END TRANSCRIPT