

Britain: Asbestos ruling will limit compensation payments

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A December 11 decision by the UK Court of Appeal will make it more difficult for certain asbestos victims to claim compensation, and is sure to save insurers tens of millions of pounds.

The judgement was made regarding six appeals brought by workers who had contracted mesothelioma caused by exposure to asbestos. It takes only one fibre of asbestos to cause the disease—a form of terminal lung cancer—and symptoms may not become evident until 40 years after exposure to the material. The disease is almost always fatal within two years of its appearance.

Three of the six appeals in question involved victims who had suffered multiple exposures to asbestos from more than one source. Lords Justices Brooke, Latham and Kay were asked to rule on whether each or all persons responsible for the sources should be held liable. Despite admitting that the case highlighted a “major injustice crying out to be righted”, the judges ruled that it was currently impossible to determine which asbestos particular fibre or fibres had caused the condition, and thus which source was liable. The appeals were therefore dismissed.

The judges’ decision puts the onus on the claimant to prove which defendant was ultimately responsible for causing the condition; if they are unable to do so, their claim fails. The judges also decided that except in special circumstances, an individual should not be able to claim compensation from the occupier of premises where he or she was exposed to asbestos as a result of ongoing activities in those premises.

The judgement relates specifically to mesothelioma—other conditions caused by accumulated exposure to asbestos, including asbestosis, are unaffected. It impacts on a high proportion of mesothelioma victims who could normally expect compensation of at least £100,000. Since last week’s

decision, dozens of cases have been put on hold and thousands more will be affected. “Through no fault of their own, they have been deprived of a remedy through the courts because of a technicality, even though their employers were insured and those insurers took the insurance premiums,” said Patrick Walsh, a solicitor acting for one of the six.

Currently, around 1,500 people die from mesothelioma each year in the UK. But the number of cases is not expected to peak until 2020. An estimated 10,000 people will die from the disease in that year—twice the number killed annually on the roads, according to Thompsons, a law firm acting for a number of the victims.

December’s ruling will probably mean that insurers are less exposed to compensation claims. Since cases brought on behalf of mesothelioma sufferers began to reach the courts more than two decades ago, courts have compensated victims of the disease and employers have settled cases on the understanding that all asbestos exposure increases the risk of victims developing the disease.

Compensation claims then multiplied after third parties also pursued civil actions. First, there were claims by workers in other trades who worked alongside those using asbestos for lagging. These were followed by people who occupied the same household as asbestos workers, and could have been exposed to fibres on the other person’s clothes; followed again by persons who claimed for environmental exposure because they lived close to asbestos factories. More recently, there have been “product liability” claims by secondary users, such as carpenters and plumbers, who used materials containing asbestos in the course of their work.

Over the years, self-insuring asbestos manufacturing

companies have gone into liquidation. Insurance companies have increased their reserves on a year-on-year basis to meet the cost of potential future claims.

The December ruling could also push on to the government the cost of compensating many asbestos victims. The three appeal judges said they had insufficient information to rule on whether the cases were covered by the Pneumoconiosis (Workers' Compensation) Act 1979. Instead, the judges thought it might be possible for mesothelioma sufferers to claim under a scheme designed to compensate victims of pneumoconiosis, a lung disease that affects miners. In that event, said the judges, "the cost to the exchequer may run into tens of millions of pounds each year".

If mesothelioma victims were not covered, they added, then "these cases have revealed a major injustice crying out to be righted either by statute or by an agreed insurance industry scheme". As the number of asbestos victims taking out court cases dwindles in the wake of bankruptcies and closures, claimants and their lawyers are likely to look further afield for organisations from whom to claim.

As a result of the ruling, Edwin Matthews, 54, from Kent, lost £155,000 awarded to him by the High Court earlier this year, in a case against Associated Portland Cement Manufacturers (1978) and British Uralite Plc.

Outside the court, Mr Matthews said, "I feel cheated. This is not really my money, as I see it. It was for my family. We are now faced with probably having to sell our house." The six claimants were refused permission to appeal to the House of Lords, though it is still open to them to renew their application directly to the Law Lords for leave to appeal.



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