

South African asbestos victims win compensation, but claim halved

Neil Hodge
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A four-year legal battle to call a UK company to account for its asbestos mining practices in South Africa three decades ago ended shortly before Christmas, with a £21 million out-of-court settlement.

Some 7,500 South Africans who worked for or lived near the asbestos mining and milling operation, run until 1979 by one of its subsidiaries, were suing Cape Plc. The claimants were exposed to dust levels up to 30 times the UK limit. It takes only one fibre of asbestos to cause the most serious asbestos-related disease mesothelioma 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.

The case was the biggest group action ever brought before an English court. The four-year fight had previously come before both the Court of Appeal and the House of Lords twice. In 1999 the Court of Appeal ruled that the cases should be heard in South Africa, but last year the House of Lords ruled that sending the cases there would be a "denial of justice".

However, the claimants--300 of whom have died since the action began--were forced to reduce their claim by £29 million because the company was judged to be unable to pay any more. This means that the average amount awarded to each of the 7,500 claimants is a paltry £2,800--around one-fortieth--the lowest amount a claimant in the UK would expect for contracting an asbestos-related disease such as mesothelioma.

The level of payment to each claimant will broadly correspond to the severity of the asbestos-related disease that he or she suffers. Mesothelioma sufferers may be awarded up to £5,250; asbestosis victims up to £3,250; pleural thickening/pleural effusion patients up to £1,600 and people with pleural plaques a maximum

of just £700.

The agreement, arrived at with the help of the South African government and the premiers of the Northern Cape and Northern Province, is still provisional and depends on the company's ability to raise the funds. The first £11 million is to be paid by June 30 this year through a trust fund, with the balance to be paid at the rate of £1 million over the following 10 years. Cape will also pay £2.5 million towards the claimants' legal aid costs.

The settlement is essentially favourable to Cape Plc. In return, the South African government will have to undertake not to fund future legal claims against the company and not to pursue it for any costs related to the rehabilitation of former mines and plants. The company also resisted any acknowledgement of liability for the respiratory diseases prevalent among its former miners. The company's press statement insisted that providing compensation was "subject to the satisfaction of certain conditions, and without admission of liability".

Given the extraordinary difficulties that claimants have had to overcome to receive a compensation payment, the legal costs involved, the financial state of the company and the lack of government help, recourse through the courts will be limited to a persistent minority.

"It is clear that if the case went to trial and Cape lost they would go into liquidation. What we've done is achieve the best we could in the circumstances," said Richard Meeran of law firm Leigh, Day & Co, which acts for many of the claimants. "I don't pretend that this is some kind of triumph but I think it will constitute some sort of justice for the claimants. The company has been held to account and it's an important deterrent. It's not a victory but if you look at where we started a few

years ago, when everyone told us we were wasting our time, then it's a good result," he added.

Cape closed its UK asbestos plant in 1968 due to the high incidence of asbestos-related diseases. The company has settled compensation claims by hundreds of its former UK employees out of court without challenging liability at trial, but it has aggressively defended and prolonged the litigation brought by its former South African workers. "To date, Cape has settled UK cases for compensation but has used every legal loophole to shirk responsibility for the thousands of South African victims," said Clare Riches of the pressure group Action for South Africa, the successor to the Anti Apartheid Movement.



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