

Britain: Asbestos ruling opens way for compensation claims

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Thousands of people dying from asbestos-related diseases can now bring claims for compensation after a landmark ruling by five Law Lords on May 16. The judgement on three test cases, described as the most significant in the history of industrial disease, followed a three-day hearing headed by Lord Bingham of Cornhill.

Lawyers for the widows of two victims and a sufferer from mesothelioma—a form of asbestos related terminal cancer—had challenged High Court and Court of Appeal rulings that compensation could not be paid in a case where a worker was exposed to the dust by more than one employer. The test claimants were Judith Fairchild of Leeds, the widow of Arthur who died in 1996; Doreen Fox of Liverpool, the widow of Thomas; and Edwin Matthews, 54, of Rochester, Kent, a sufferer who was too ill to attend.

The three claimants had taken their cases to the Court of Appeal last year. Despite admitting that the case highlighted a “major injustice crying out to be righted”, Lord Justices Brooke, Latham and Kay ruled that it was impossible to determine which asbestos fibre or fibres had caused the condition and thus which source was liable. On December 11 the appeals were dismissed.

The judges’ decision put the onus on the claimant to prove which defendant was ultimately responsible for causing the condition. If the claimant was unable to do so then their claim failed. This meant that even if claimants had evidence that more than one of their employers had exposed workers to asbestos, there would be no payout unless the claimant could prove beyond reasonable doubt that the illness had been caused while working for a specific employer.

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.

Last week’s House of Lords decision removes such barriers. Mrs Fairchild said: “We got the right result, not only for myself but for the thousands affected by this terrible disease. My husband deserved to win.” She will get compensation of about £191,000 (\$US278,726), while an estimated 500 cases waiting for the ruling will now be settled. A spokesman for John Pickering and Partners, which represented two of the claimants, said, “This is probably the most significant decision in the history of industrial disease compensation in this country.”

About 5,000 people died in Britain last year of asbestos related disease. The figure is set to rise to 10,000 by 2010 and could cost the insurance industry, which welcomed last December’s ruling, an estimated £10 billion in payouts. It takes only one fibre of asbestos to cause mesothelioma and symptoms may not become evident until 40 years after a worker has been exposed to the material. The disease is almost always fatal within two years of its appearance.

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.

But compensation claims then multiplied after third parties also pursued civil actions. First, there were claims by workers in other trades who worked alongside lagers. These were followed by persons who occupied the same household as asbestos workers, 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.

Just two days before the historic ruling, chemical and paint maker PPG Industries Inc signed one of the largest asbestos settlements in US corporate history, agreeing to turn over \$US2.7 billion to people injured by asbestos used by its affiliate, Pittsburgh Corning, to make pipe insulation many years ago. The deal is the latest sign of an explosion of asbestos related legal claims. Some estimates say that claims may cost US companies more than \$US200 billion in total.

The shameful fact is that the dangers of asbestos have been recognised in the UK for over a hundred years. In 1898 factory inspector Lucy Deane warned of the harmful and “evil” effects of asbestos dust. In 1906 a report carried out in a French factory confirmed that asbestos related diseases had caused the deaths of 50 female textile workers. The first legislation relating to asbestos was passed in the UK in 1931—one year after a government report found that two-thirds of long-term workers for a Rochdale factory had asbestosis. But in the last 70 years attempts to tighten controls have failed or have been largely ignored by employers.

The Health and Safety Commission (HSC) is presently calling on the government to amend the Control of Asbestos at Work Regulations 1987 to force office property owners to take stock of the risks from asbestos. Although the importation, supply and use of asbestos are now banned, it is estimated that 4.4 million buildings in the UK still contain it. Of these, nearly two million are in the non-domestic sector.

Since 1999, no new asbestos should have been introduced into buildings (its use was completely banned from that date). However, this still leaves thousands of tonnes of existing asbestos and employers have been told by, among others—the HSC—that where asbestos is in good condition and undisturbed it is safer to leave it than to undertake removal works. Very few employers or office landlords make regular inspections to make such a determination.



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