Mesothelioma and asbestosis compensation past, present and future

Asbestos was a building material widely used in the UK from the 1930s up until the 1970s and was valued for its strength and resistance to fire and chemicals. However, what was not known at the time was that tiny asbestos fibres were working their way into the lungs of unknowing workers whenever a block of asbestos was broken up. Years later, these workers start to develop cancers and scarring in their lungs that has developed as a direct result of these fibres. Asbestos-related diseases such as mesothelioma and asbestosis have a long latency period and it can take between 15 and 60 years for symptoms to become apparent. These conditions cannot be cured and statistics from Cancer Research UK show that just 10% of people diagnosed with mesothelioma will survive beyond 3 years. Asbestos-related diseases are a type of industrial illness which clearly requires substantial compensation to be paid to the injured person or their family, if the person has died. The key question is that of who should pay the compensation and how much. If a person suffering from mesothelioma or asbestosis has worked for more than one firm that exposed him to the dangers of asbestos, are the companies jointly liable to pay compensation or can just one company be found to be negligent? A ruling in the case of Fairchild (2002) created the precedent that if one business could be found to have been negligent, that business would have to pay the full compensation award. This was greeted with relief from claimants, who find it difficult or even impossible to track down all the employers who may have exposed them to the risk of asbestos after 30 years. However, this ruling was amended by the House of Lords in the recent case of Barker v St Gobain Pipelines (2006). It was decided that all the companies who had exposed the claimant to asbestos should share the compensation burden. The insurance company of each business would pay compensation in proportion to the risk they caused. This could present the scenario of mesothelioma and asbestosis sufferers only receiving part of the compensation to which they are entitled if they are unable to identify all of the businesses that may have caused their industrial illness. The Pneumoconiosis (Workers' Compensation) Act of 1979 offers people the chance to make a compensation claim if they cannot track down any of their employers during their time of exposure to asbestos. However, if any mesothelioma or asbestosis compensation at all has been awarded to the claimant by the Courts, this fund is made unavailable, meaning that this Act will not be of any assistance to the people who have received partial compensation. A solution must be reached for the thousands of people who are diagnosed with mesothelioma, asbestosis, and other asbestos-related industrial illnesses each year. The legacy of asbestos is still here for years to come. A Health and Safety Executive report in 2003 suggested that diagnoses of these diseases will hit peak figures between 2011 and 2015, when at least 2,500 people a year will be dying from asbestos-related disease. Just what the answer is has not yet been determined. One idea that has been put forward is that of having the equivalent of the Motor Insurers Bureau, which would represent untraceable companies. Insurers would each put into a pool to which claimants could turn after all other options are exhausted. Another option is that the ruling in the Barker case is overturned and the previous method of one company taking full responsibility for compensation is reinstated. However, insurance companies are likely to offer many objections to this suggestion. The most important thing is that the people suffering from mesothelioma, asbestosis and other incurable industrial illnesses get compensation for their injuries. It is recommended that anyone considering making a compensation claim of this type gets specialist representation from personal injury solicitors with particular experience and expertise in this field.

About the Author

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