

Compensation for Environmental and Domestic Exposure Cases

Bob Ruers

Former Dutch Senator, founding member of Dutch Asbestos Committee and Solicitor, the Netherlands

Abstract

Before the 1960s asbestos diseases were typically regarded as occupational diseases. This view changed dramatically when Wagner et al. published the results of their South African mesothelioma study, showing that a large part of the mesothelioma victims in the Cape Province had never had any occupational exposure to asbestos. They encountered mesotheliomas in housewives, domestic servants, shepherds, farmers and office workers, as well as men and women who during their youth had lived in the vicinity of asbestos mines or played on the dumps of these mines.

After the Second World War, the production and use of asbestos increased enormously. Asbestos has been used in well over a hundred products, mainly asbestos cement products. The consequences of this widespread use have now become clearly visible. Not only are we confronted with both large numbers of victims, but huge amounts of asbestos cement waste material have found their way into the environment, especially in areas close to asbestos industries, creating even more victims.

In order to receive compensation, asbestos victims need to go to great lengths. Trying a case in court is both expensive and time consuming, especially for victims of non-occupational exposure. Often they experience great difficulties in locating the source of exposure and establishing legal causation. The long latency period works as a disadvantage as well.

Until 1990, the world asbestos cement industry was owned by just a handful of multinationals. These multinationals are blind to the harmful consequences of their products. They refuse to bear any responsibility whatsoever, especially where the third world is concerned. Therefore, it is of utmost importance that asbestos victims and their organisations support and inform each other worldwide. Only in that way can we make sure that all asbestos victims, wherever they live, can obtain adequate compensation for their damages.

Environmental exposure

Before the 1960s asbestos diseases were typically regarded as occupational diseases. This view changed dramatically when Wagner et al. published the results of their South African

mesothelioma study. They found that quite a large part of the mesothelioma victims in the Cape Province had never had any occupational exposure to asbestos. They encountered mesotheliomas in housewives, domestic servants, shepherds, farmers and office workers, as well as men and women who during their youth had lived in the vicinity of asbestos mines or played on the dumps of these mines.

A similar picture arises from the 1964 London study of Newhouse & Thompson. They found nine mesothelioma victims who had no history of occupational exposure; the only exposure was by means of asbestos dust in the clothing of their family members. These studies showed that the risk of contracting asbestos diseases extended beyond the factories and the mines. In later years, numerous studies – e.g. in Germany, Italy, Australia and the United States – confirmed these findings. Those living in the vicinity of asbestos industries or under the same roof as asbestos workers appeared to be at risk as well. The same applied to those laundering work clothes of asbestos workers, those playing at or near the site of asbestos industries and those living near roads along which asbestos was transported. Even walking on roads paved with asbestos cement waste or being present at a site where asbestos cement products are being processed, turned out to increase the risk of mesothelioma.

Asbestos production

During the past century, the production and use of asbestos increased continuously. In 1940 the worldwide production of asbestos was 600,000 tons. In 1950 this was 1.2 million tons, in 1960 it was 2 million tons and in 1970 it was 4.3 million tons. The peak was in 1976 with 5.3 million tons. Since then the production decreased gradually to 4 million tons in 1991. With that a major shift in the use of asbestos occurred. In Western Europe, the United States, Canada, Australia, New Zealand and Japan the use of asbestos decreased substantially between 1970 and 1995: during this period, the total production went down from 2.3 million tons to a mere 434,000 tons. At the same time, the use of asbestos increased from 1.3 to 2.1 million tons in Eastern Europe, Asia (with the exception of Japan), Latin America and Africa, thereby accounting for 80% of the total use of asbestos in the world. In 2001, asbestos mines still produced an astonishing 2 million tons of chrysotile (white asbestos).

Wittenoom and Casale Monferrato

Between 1943 and 1966 a blue asbestos mine was exploited in Wittenoom in Western Australia. The mine employed about 7,000 workers over the entire period of its operation and it relied heavily on migrant workers. The exposure to asbestos dust caused very many cases of occupational respiratory diseases, some of which became apparent during the workers period of work at Wittenoom and some which didn't become apparent until after the worker had left Wittenoom. Wittenoom has been defined a modern industrial disaster. The distribution of asbestos dust in Wittenoom was tremendous: the whole town and its surrounding area were contaminated and as a consequence mesotheliomas developed in people who were not working at the mine.

A similar picture arises from the studies of asbestos exposure in Casale Monferrato in Italy. Between 1907 and 1985 this was where Italy's largest asbestos factory was established. The factory belonged to the Italian Eternit Industries. During the 1950s approximately 1000 workers were employed here. In 1965 their number had increased to 1,600. Since then the number of employees gradually diminished until the factory was closed in 1985. At least until the 1960s, working conditions in Casale Monferrato were very poor. The fibre count was high and safety measures were lacking. This had its consequences on the living conditions outside the factory. Waste material from the production of asbestos cement products was used widely in the surrounding area for the paving of roads and gardens. Just a few years ago, 60% of the gardens in Casale Monferrato and the surrounding villages was covered with asbestos waste originating from the Eternit factory. The past years have shown that mesotheliomas are present in both employees and their family members and those living near the factory. The environmental asbestos contamination in Casale Monferrato is huge. By now, several court cases are pending against the former owners of the Casale Monferrato Eternit factory, the Swiss Schmidheiny family.

Domestic and residential exposure

There are two types of non-occupational or environmental exposure to asbestos: domestic or household exposure and residential or neighbourhood exposure. Exposure through work clothes of family members typically belongs to the first category, as well as exposure caused by contact with asbestos containing products in or around the house. Such exposure can arise from installation, repair or removal of asbestos containing products.

Exposure to asbestos originating from a nearby asbestos factory or mine typically belongs to the second category, as well as exposure by asbestos fibres coming from buildings or vehicles (brake linings). Transport of asbestos by public road is another major source of environmental exposure. Finally, a combination of these sources at the same time is possible, as is shown in Casale Monferrato in Italy.

Margerson and Hancock v. J.W. Roberts Ltd.

Environmental exposure obviously led to a number of personal injury claims for damages. A well known example is the English case of Mr. Margerson and Mrs. Hancock against the company of J.W.Roberts Ltd. As a child Mr. Margerson, who was born in 1926, had played on bales of asbestos at the factory site of Roberts. Mrs. Hancock, who was born in 1936, used to play at the site as well. Both were exposed to asbestos dust. Almost sixty years later, Mr. Margerson and Mrs. Hancock contracted mesothelioma. Their claim for damages was the first environmental exposure case that was brought before the English courts. The High Court of Justice awarded the claim, contending that the circumstances at the Roberts site at the time of the plaintiffs' exposure was in defiance of the 1931 Regulations. The Court dismissed Roberts' defence that the risk of mesothelioma was not discovered until the 1960s, so that the company could not have known of the risk at the time of Mr. Margerson and Mrs. Hancock's

exposure. The Court held that J.W.Roberts had been acting negligently towards plaintiffs by defying the existing regulations in the 1930s.

A similar claim was brought before the Australian courts in 1994. 34 year old Mrs. Olsen had been exposed to asbestos dust between 1959 and 1961, when she lived close to the Wittenoom asbestos mine. The Australian court held that the Wittenoom mine had acted negligently towards Mrs. Olsen because it had failed to warn Mrs. Olsen's family of the dangers of living in the vicinity of the Wittenoom mine.

Grootenhuis v. Eternit

A good example of an asbestos claim based on domestic exposure is the Dutch case of 32 year old Marino Grootenhuis. He was born in 1964 and was diagnosed with mesothelioma in 1996. He himself had never worked with asbestos, but his father used to work at the Eternit factory in Goor between 1969 and 1970 and between 1976 and 1977, processing asbestos. He went home wearing his work clothes, thereby exposing his then 5 year old son to asbestos dust. The Dutch court awarded Mr. Grootenhuis' claim for damages arising out of personal injury. The Court held that the relation between asbestos exposure and mesothelioma was well known in the 1970s. In this respect the Court mentioned the studies of Wagner (1960), Selikoff (1964), Newhouse & Thompson (1965), Böhlich (1968), Stumphius (1969) and Dalgren (1970).

The fact that Eternit was familiar with the risk of mesothelioma put Eternit under a special duty of care not only to its employees, but their family members also. According to the Court, during the 1960s Eternit could and should have been aware of the risk of domestic exposure through working clothes.

Since the case of Marino Grootenhuis four more family members of employees have brought claims for domestic exposure against Eternit. One was the spouse of an employee and the others were daughters of employees. In each of these cases, Eternit accepted liability and paid damages.

Nieborg v. Eternit

Last year Eternit Netherlands was held liable by Mrs. Nieborg-Horsting, born in 1951. She was diagnosed with mesothelioma in 2002. Being a farmer's daughter, she was never exposed to asbestos in an occupational setting. In 1971, however, a new barn was built at the farm where she lived. In constructing this barn, approximately 300 asbestos cement panels originating from the Eternit company were used. These were processed and made to measure at the farmyard. In this way Mrs. Nieborg was briefly exposed to asbestos.

Mrs. Nieborg claim for damages against Eternit was successful. The claim was based on the law of products liability. The Court held that Eternit had acted negligently towards Mrs. Nieborg by failing to warn of the health risks of processing and using asbestos cement panels for building purposes. By 1970 Eternit, being an international company, should have been

aware of these risks. Issuing a consumer warning constituted an obvious and cheap safety measure, according to the Court. The Court therefore held that Eternit had acted severely negligently against Mrs. Nieborg. In appeal, Mrs. Nieborg's claim for damages was upheld. The claim is now pending before the Dutch Supreme Court.

Asbestos cement

Since the end of the nineteenth century, asbestos had been used in hundreds of products. The most important use was asbestos cement. In 1970, 4 million tons of asbestos was produced worldwide. 75% of this was used for manufacturing asbestos cement products. Nowadays, this amount is even higher. By means of these asbestos cement products, enormous amounts of asbestos material found their way into our society. Foremost at risk, obviously, are the construction workers who processed, sawed and milled asbestos cement products. Second are private individuals who used asbestos cement products. In most cases, these were regular consumers, buying asbestos cement products for do-it-yourself-purposes (repairing the home, etc.). Asbestos cement products only have a limited life. When replaced or demolished, the asbestos fibres in these products often end up in the environment. Furthermore, huge amounts of asbestos cement waste material have found their way into the environment, especially in areas close to asbestos industries.

Since the late 1990s, six people living in the vicinity of the Dutch Eternit asbestos company in Goor have contracted mesothelioma after being exposed to asbestos in the environment. The Eternit company in Goor is a subsidiary of the Belgian Eternit holding company. Between 1937 and at least 1980 the Eternit company in Goor disposed of its harmful waste material by offering it to the public for free. Often, farmers used this waste material to pave tracks and farmyards. The six 'environmental' asbestos victims all filed claims for damages against Eternit. So far, Eternit has denied all liability.

Worldwide

Until 1990, the world asbestos cement industry was owned by five multinationals, e.g. Eternit Switzerland, Eternit Belgium, Cape (GB), Turner & Newall (GB) and Johns-Manville (USA). The production of asbestos cement products has been extremely profitable. But these multinationals are blind to the harmful consequences of their products. They refuse to bear any responsibility whatsoever, especially where the third world is concerned. Therefore, it is of utmost importance that asbestos victims and their organisations support and inform each other worldwide. Only in that way can we make sure that all asbestos victims, wherever they live, can obtain adequate compensation for their damages.

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