

PL-5-04 Satomi Ushijima (Abstract plus photographs)

Nursery School Children's Asbestos Exposure Lawsuit

Satomi Ushijima

Lawyer, Satomi Ushijima Law Office, Japan

Abstract

The damages suit presented here is an international breakthrough, whereby the court ruled against the defendant and ordered payment of damages even though the victims were yet to be diagnosed. In July 1999, renovation work started at a public nursery school run by Bunkyo City, Tokyo. During the work, the Bunkyo City Government failed to take any asbestos measures, such as the use of enclosures, and let a vast amount of sprayed asbestos scatter, thereby exposing the children attending the nursery school to asbestos. In January 2003, the children, who were exposed to asbestos but had yet to be diagnosed, along with their parents filed a suit against the Bunkyo City Government, seeking a formal apology as well as damages (economical damages and reparations).

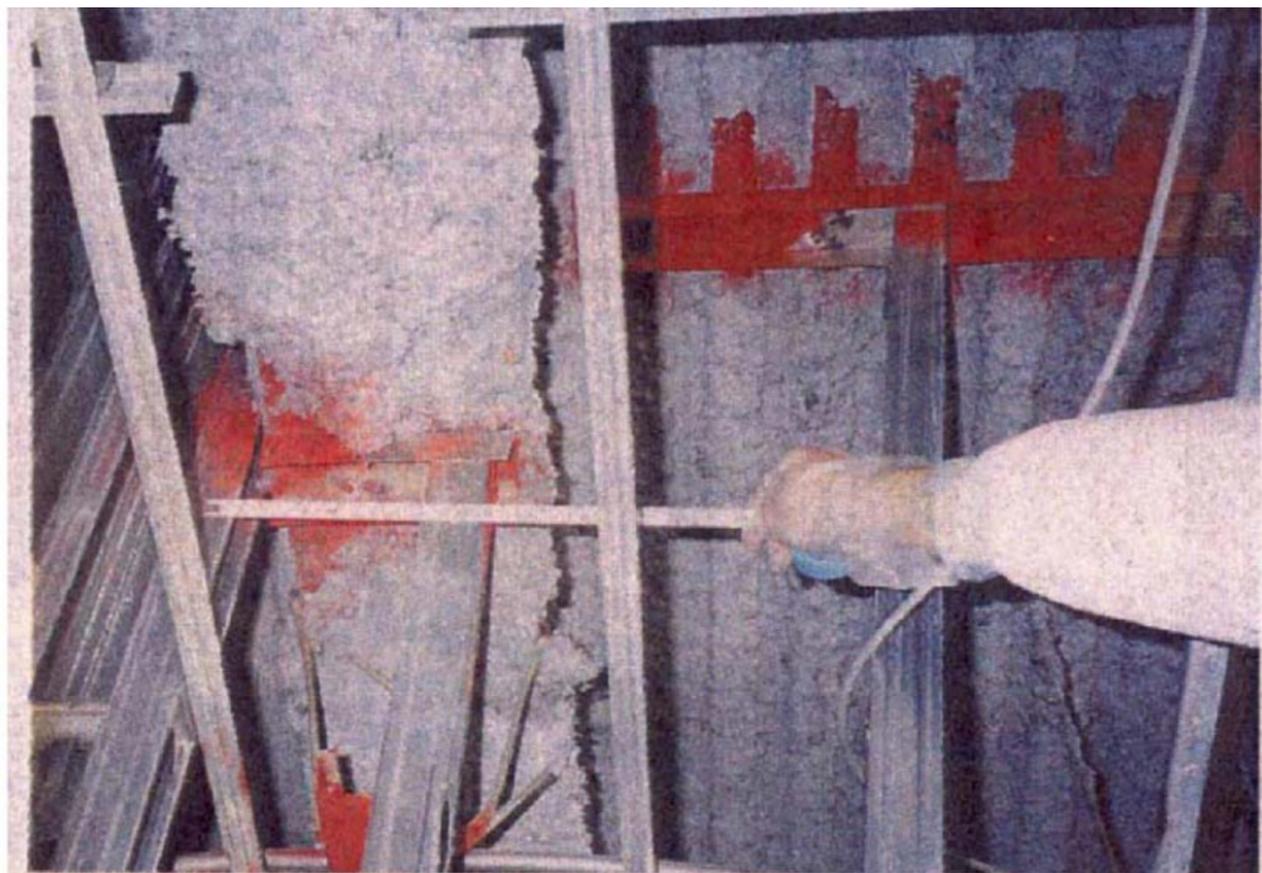
The trial revealed that (i) during the work, which lasted approximately 20 days, the children were exposed to an amount of asbestos equivalent to an ordinary person's lifetime exposure and (ii) the work was done in such a sloppy way that it could be deemed either intentional or exhibited gross negligence (as evidenced by the fact that the name of the asbestos product was clearly written in the design documents, that use of asbestos was naturally presumable based on the year of construction, and that the City Government did not include the cost of suitable enclosures in the budget, despite repeated warnings by the parents and concerned parties). The court gave prominence to the fact that the children, while yet to be diagnosed, sustained actual damages as they would have to undergo checkups in future because of the increased lifetime risk, and recommended a settlement for complete resolution in favor of the plaintiffs and other interested parties.

The settlement, which was reached in April 2004, is summarized as follows: (i) the City Government should apologize to all the children and parents including the plaintiffs, (ii) the City Government and contractors should pay settlements to the children and parents who filed the suit (the total amount being 3 million yen including a solatium of 100 thousand yen per child), (iii) in principle, the City Government should also bear checkup expenses as a health care measure and medical expenses in the event of the onset of asbestos-caused disease, and (iv) the City Government should immediately remove asbestos from all public buildings and proactively educate private sector companies that demolish and/or refurbish buildings as to the existence of asbestos and relevant safety measures.

Today, based on the purport of the settlement, the children and parents who did not file the suit are negotiating with the City Government for the conclusion of an agreement or the formulation of a municipal ordinance, including the payment of a solatium to all affected children. This trial is expected to help develop the concept that in the demolition/refurbishment of buildings containing asbestos, activities that are currently reaching a peak in Japan, it is worth allocating more money to asbestos measures, such as the use of enclosures in terms of economy and public trust, and thereby prevent unnecessary exposure to asbestos in future.







鉄骨や壁に直接吹きつけられていたアスベスト＝東京都文京区の
保育園で、1999年10月撮影（原告側提供）