

Reparation Claims against Johns Manville Corporation

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Abstract

The presenter conducted research on the actual situation of a vast number of asbestos lawsuits mainly against Johns Manville Corporation in 1983, and reported for the first time in the social science field in Japan in 1984 the fact that asbestos lawsuits had become the greatest product liability litigation in the U.S. history, warning that Japan would also face serious damages in future ("Asbestos Mass Tort Litigation in the U.S. and Prospective in Japan", L.L.M paper presented at University of Washington Law School and "Management of Occupational Disease – Asbestos-Related Diseases" (in Japanese), 1st edition in 1984/Revised in 1992, Sogo Rodo Kenkyujo, p.215).

In 1982, Johns Manville Corporation filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code. In 1990, lawyers representing the victims visited Japan and requested filing of reparation claims against the firm.

Thus, the presenter, Akira Mori and other lawyers represented approximately 50 victims in Japan and filed a reparation claim via a U.S. law firm since 1990. Unfortunately, the court accepted the following reparation only: 35,561 U.S. dollars in total for 15 victims.

In 1982, Manville in the U.S. filed a petition of bankruptcy under Chapter 11. In 1990, American legal attorneys for asbestos victims came to Japan seeking Japanese claimants against Manville.

Thus, I and Mr. Akira Morita acted as attorney for nearly 50 victims in Japan and applied the petition in the U.S, in association with a U.S. law firm. As a result, only 15 claimants were accepted as victims and received a total of 35,561 dollars in compensation.

I The Johns-Manville's Bankruptcy Case

The Johns-Manville Corporation had been the biggest asbestos maker in the world. In the 1960s, asbestos mass tort litigation suits were issued and in the 1980s, 2 billion dollars as compensation was anticipated. Finally in 1982, Manville filed bankruptcy under Chapter 11. This company had a purpose for reorganization. This landmark mass tort bankruptcy case was filed in order to protect the company from large future claims. Besides this case, A.H.Robins, and Dow Corning corporation also used Chapter 11 resolution of mass tort.

The Asbestos Health Committee took the position that it represented the interests only of the

persons who prior to the Chapter 11 petition date, had evidence of exposure to Manville's asbestos. The bankruptcy court appointed a legal representative for the future claimants. After four years of negotiations among Manville, the Committee, the Legal Representative and the Security Holders, the plan of reorganization (Manville Plan) was accomplished including future victims' relief. The Asbestos Health Trust (the "Trust") was founded. The Trust was designed to compensate all asbestos personal injury victims, including those with future claims through the proceeds of settlement with no punitive damages. All litigation against company or stock holders from victims was stopped by injunction, changing to the Trust as the opposite party.

In 1986, The Manville Plan was submitted to the bankruptcy court for voting. At that time, approximately 6,400 claims had been filed from 16,000 personal injuries. With tens of thousands of additional petitions, the process could delay the reorganization for many years. To avoid this delay, the bankruptcy court adopted special voting procedures by undertaking a comprehensive multi-media notification campaign. As a result, 52,440 claimants submitted voting forms. Of these, 50,275 or 95.8% approved the Manville Plan. In December 1986, the court accepted the Manville Plan.

By December 1994, 240,000 claims had already been filed. The Trust became insolvent. The Trust Distribution Process (TDP) designated seven asbestos-related disease categories and assigned a value to claims. A pro rata share of ten percent was changed to five percent in 2000. As of December 2003, the Trust had settled almost 597,000 claims and had paid out over 3.2 billion dollars. Nevertheless, by the end of 2003, the Trust still had about 44,000 outstanding offers, and 21,000 claims in process. The Trust had approximately 101,200 claims in 2003.

II Claims from Japanese claimants

1. The explanation of Mr. Garruto in Japan

Mr. Garruto and Mrs. Canter, who were handling the claims against Manville in the U.S., came to Japan and explained the Manville procedure to Mr. Endo and Mr. Morita. In cooperation with Attorney Albert Gufterson working for Mr. Endo's legal office, the claim from a labor union with almost 50 asbestos victims was filed in the U.S. X-rays, records and medical reports were also submitted. The diseases were such as lung cancer and asbestosis.

2. Identification of asbestos made by Johns-Manville

The Trust asked the Japanese side to produce evidence of asbestos exposures caused by Johns-Manville, which meant to establish that there was cause and effect between damages or symptoms of asbestos and those caused by Manville products. The Japanese side confirmed that the volume of imported asbestos and the use of asbestos had increased. Nevertheless, it was very difficult to decide whether asbestos supplied by Manville was used at construction sites or shipbuilding yards in Japan and whether it could be distinguished from that of other companies. It was also almost impossible to investigate these matters due to the different

working places and environments. Therefore, the Japanese side thought to make the Trust accept its responsibilities for contaminated working environments on the basis of the market share of asbestos from Manville, which could be ascertained by investigating the proportion of Manville asbestos in the total amount of asbestos imported into Japan. However, it was not possible for the Japanese side to define the proportion of imported asbestos.

3. The amount of compensation

The Trust decided on seven asbestos disease categories counting toward the grade of compensation.

4. Pro rata share

Through the Manville procedure, the amount of compensation was not enough at all. As a result, the total amount of compensation was quite low.

5. Additional evidence

The Trust requested the Japanese side to show the additional evidence to be issued as medical report. However, after several years, it was impossible to collect the new evidence.

6. Cost of claims

In order to claim from the Trust in the U.S., translation costs alone took almost one million yen. Fees to the attorney and doctors were voluntarily based. Payment from the Trust to claimants was deducted by 25% for the attorneys in the U.S. and Japan. Fees for Japanese attorneys were paid with actual cost in Japan.

7. Results for the claimants

	No. of claimants	Payment	Total payment	Date of payment
A	2	\$6,600.00	\$13,200.00	1996/8/25 2000/7/31
B	3	\$2,970.00	\$8,910.00	1996/8/20 1996/8/23 1997/10/15
C	1	\$2,000.00	\$2,000.00	2000/8/3
D	1	\$1,980.00	\$1,980.00	1995/8/9
E	4	\$1,650.00	\$6,600.00	1996/8/19 1996/8/20 1996/12/16 1998/11/19
F	3	\$825.00	\$2,475.00	1996/8/21 1996/8/25 1996/4/29
G	1	\$396.00	\$396.00	1996/8/25
Total	15		\$35,561.00	

※ “Mass Torts Bankruptcies: The Who, The Why and The How” by Georgene Vairo, American Bankruptcy Law Journal, 2004, 78 Am.Bankr.L.J.93