

First Malignant Mesothelioma Case in Japanese Workers at Thermal Power Plants

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Impressive ratios are available before us: 696 to 1 and 11,871 to 1. “696 to 1” represents the number of power plant class actions filed with US federal courts in the United States to that of equivalent cases in Japan in 1991. “11,871 to 1” is the number of conveners in the class actions in US to that in Japan [1].

Why does Japan have so few asbestos damage suits against power plants? To help understand the problem, I present a case of a male worker who died after asbestos exposure.

He worked in a thermal power plant between 1944 and 1984. During those 40 years, as electrician and maintenance worker, he was exposed to asbestos during outages as well as in maintenance activities on a daily basis. After he was promoted to supervisor, he died at 54.

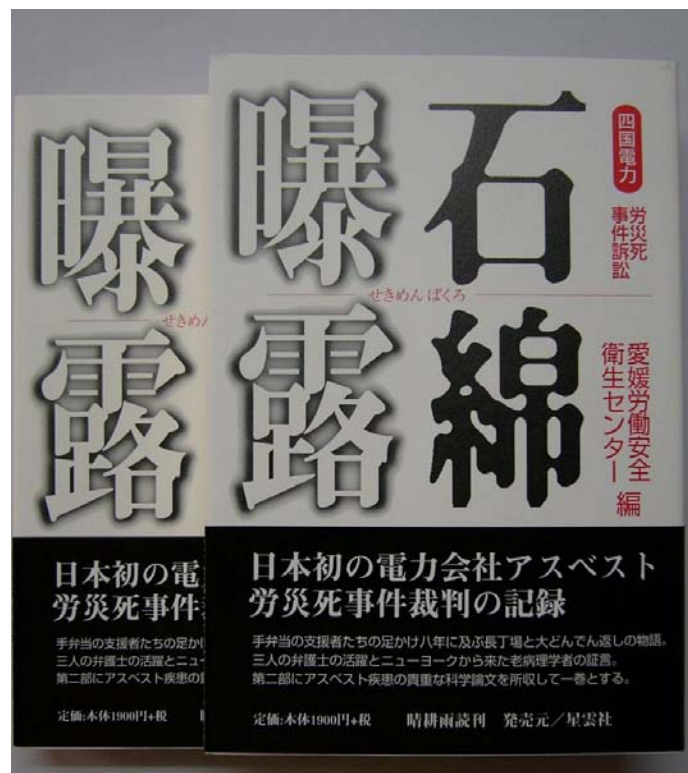
His death certificate states that he died of malignant mesothelioma, although his autopsy report identified the immediate cause of his death as lung cancer. Qualified as a nurse, his wife kept noting his condition and his doctor’s explanations in her diary. The doctor was quoted as saying that her husband’s disease was very rare and due to asbestos. And she noted that the doctor explicitly said that her husband would not receive labor insurance benefits for his health conditions. However, this statement was incorrect, and the doctor failed in his duty because he was not aware of the system; malignant mesothelioma was included in the eligible disease list under the official compensation insurance as many as 6 years earlier.

His wife came to know of the insurance system 8 years later, when her right of claim had already expired under the law which governs the insurance system. So, she filed a lawsuit against the company under another law.

The employer, an electric power company, denied the asbestos exposure and rejected its responsibility for the health hazard by making reference to the autopsy report that the cause of death was lung cancer. The burden of giving evidence of asbestos exposure fell upon the victim’s family.

The exposure occurred thirty years ago. Since then, many components of the power plant have been replaced with advanced ones, without any documentation of the change in working environment over time. The family had no choice but to turn to overseas documents [2,3].

Also, the family collected witnesses from among former coworkers. The family was always anxious about the possibility that the witnesses would be withdrawn under invisible pressure from the company. In addition, the hospital, where the autopsy had been conducted, was uncooperative and refused to give the autopsy documents to the bereaved family. Under the labor accident insurance system, the labor standard inspection office could have visited the workplace and collected necessary documents from the institutions involved, including hospitals. The family, however, had no authority to get information and had many difficulties in producing evidence to put before the court.



The document of first malignant mesothelioma case in Japanese workers at thermal power plants was published.

The diagnosis of malignant mesothelioma is itself strong evidence of asbestos exposure. The autopsy report and an expert opinion dismissed this diagnosis. We asked a prestigious pathologist in the U.S. to help in the legal action. Dr. Yasunosuke Suzuki, Mount Sinai School of Medicine, came to Shikoku, Japan, to give his opinion

before the court. His expert opinion significantly changed the course of the trial, resulting in an out-of-court settlement.

This case demonstrates that damage suits against power plants are extremely difficult in Japan, which partly explains why the cases have been so few. The factors which make damage suits against Japanese electric power companies fewer than in the U.S. include:

- 1) shortcomings of Japanese legal procedures;
- 2) Japanese specific labor accident compensation coverage;
- 3) traditional Japanese employment practices; and
- 4) insufficient dissemination of essential information on insurance coverage.

Of special importance, are the employment practices by which the electric power companies keep directly employed workforce, “official staff,” at a very small size by dumping risky jobs upon contracted and subcontracted workers, who are victimized by labor accidents and hazardous exposures as a result of this risk outsourcing. In fact, asbestos victims are found not among the electric companies’ official workforce, but among the contractors’ and subcontractors’ workers who have occupational history of piping or heat insulating operations.

Another factor which blocks victims from access to insurance coverage is the lack of information dissemination. Our case is very illustrative; the doctor misled the victim’s family by saying that malignant mesothelioma would not be covered by the insurance system. Many doctors give attention to the diseases themselves, but they often neglect the social consequences related to their main focus, including relief for victims.

The need to raise awareness of the compensation scheme for occupational hazards is urgent in Japan.

References

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