

Case Study: Death of a Hotel Boiler Maintenance Man from Mesothelioma

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Abstract

1. Outline of the case

(1) Victim's job description

The victim joined the defendant firm in 1963 and since then had been responsible for the maintenance of building services inside machine and boiler rooms at the Sapporo Royal Hotel until he died in April 2002. The building services workers at the hotel were in charge of the operation of boilers installed in an underground boiler room to provide hot water and heating for the hotel. They were also responsible for other asbestos-related jobs as described below.

They were in charge of replacement of asbestos-containing packing materials used on the flanges of boiler combustion chambers. The replacement work involved the cutting, tying or installing of packing asbestos. Plate- and string-type packing asbestos were used. The plate-type was cut and tapped by the workers. The string-type would scatter just by unlacing.

The building services workers were also responsible for getting into the space above the suspended ceiling (under the roof) to repair and/or inspect ductworks. Asbestos had been sprayed on the underside of the roof, which flaked onto the floor. In some locations, the space between the roof and ducts was as small as 40 cm, and the workers had to make physical contact with the sprayed asbestos. Asbestos would exfoliate and scatter in the air just by touching.

On the walls of the boiler room, asbestos had been sprayed everywhere above waist height. The building services workers were in charge of the replacement of flange gaskets once or twice a year. In so doing, they had to look at the back of high-pressure header-type boilers. The space between the back of the boilers and asbestos-sprayed walls was as narrow as 30 to 40cm. Asbestos would scatter into air when just rubbed with their uniforms.

The boiler room was swept by the workers once a month, during which time fallen asbestos dust would swirl on the floor. The machine and boiler rooms had an air intake system, which let air in from the 3rd level rooftop by turning on an underground fan to introduce air into the machine room. However, no air ventilation system was in place.

The sprayed asbestos on the walls of machine and boiler rooms had deteriorated to such an extent that its fibers would scatter into air just by touching.

The victim's physical condition started deteriorating around April 2001. On 21 June in the same year, he was diagnosed with asbestos-caused malignant pleural mesothelioma. He died of the disease in April 2002.

He qualified for worker's compensation on the basis that he developed malignant pleural mesothelioma due to the “asbestos-scattering” work environment he was in at the hotel.

(2) Safety measurements adopted by the hotel

Although the building services workers were doing asbestos-related jobs at the hotel, the defendant firm (i) failed to provide an air ventilation system to prevent the retention of dust on the worksite, (ii) not only failed to provide dust respirators but also failed to provide any education about the risk of asbestos dust, and even (iii) failed to instruct the workers to spray water on site. The firm also (iv) failed to appoint any health controller or provide checkups until around 1980 when it started providing checkups for night-shift workers, but even after that still failed to consider asbestos risks in checkups or to give detailed explanations about the results of checkups to the workers, and furthermore, (v) failed to completely remove the sprayed asbestos at the hotel after its surface was found to be deteriorating.

2. Purpose of Filing Suit

After the victim's death, the bereaved family requested the hotel to accept responsibility for the fact that the victim had died of malignant pleural mesothelioma because of the work environment, apologize to the family and take relevant measures to prevent similar accidents. However, as the firm did not accept its responsibilities and refused to apologize, the family decided to file suit against it to clarify its legal responsibilities on the basis of breach of duty to adopt necessary safety measures.

3. Defendant's Actions after the Filing of Suit

The defendant has been categorically denying everything from basic facts, such as the details of asbestos-related jobs, to the relationship between the work at the hotel and the development of malignant pleural mesothelioma, as well as the hotel's legal responsibilities including the duty to adopt necessary safety measures.

4. Progress of Suit

The 1st oral proceedings were held on 27 August 2004, and the 2nd on 15 October in the same year.