

Asbestos liability goes global

Case taken from The International Business Environment, second edition (Palgrave, 2006), by Janet Morrison

Asbestos was the name given to a fire-retardant mineral widely used in industry and construction for much of the twentieth century. Over the years, however, it was gradually discovered that the tiny fibres of asbestos cause long-term illness, mainly lung diseases, including cancer. Illnesses can be very slow in developing, as long as 40 years. Workers who have been exposed to asbestos have been seeking compensation from employers and former employers for many years, in what has become a torrent of claims. The possible extent of asbestos litigation is staggering. It was estimated in 2001, that in the US alone, as many as 100 million people were exposed to asbestos in the twentieth century. Claims for compensation could amount to \$200bn. Moreover, because of the large numbers of potential plaintiffs, effects have been felt by an increasingly wide range of corporations, some of which were only indirectly involved in asbestos.

Johns-Mandeville, the largest US asbestos producer, went bankrupt under the weight of claims in 1982, after which a trust fund was set up for future claimants. The trust is still deluged with claims, 101,000 in 2003, and is able to pay as little as 5 cents for every dollar of compensation awarded by the courts. The number of bankruptcies has risen – there were nine in 2001 and eight in 2002. Encouraged by entrepreneurial lawyers, claimants have turned to other possible defendants who are solvent, even though they were not producers. These include car manufacturers, who used asbestos in brake linings. Ford had 41,500 cases filed against it in 2003, up from 25,000 in 2002. Defending these cases is expensive and potentially the company's finances could be affected, whether or not plaintiffs are successful. In fact, most of the claims now being filed are from plaintiffs who are not actually sick, but who fear that exposure to asbestos in the past will cause future illness.

For non-US asbestos-related claims, the situation has been bleak. Turner & Newell (T&N), the largest UK asbestos manufacturer, was taken over by Federal Mogul, a US company, shortly before hundreds of British sufferers from asbestos-related cancer were awarded compensation. Sums awarded in the English courts were small compared to those awarded in the US. However, weighed down by the weight of US claims, Federal Mogul filed for bankruptcy. The plaintiffs then turned on T&N's insurers, who claimed that the particular insurance policy had not covered asbestos-related liabilities.


Companies have tried to settle these large class action cases once and for all, taking in future liabilities. However, this has required advertising widely to alert potential claimants in the class that the move was being undertaken. The effect of the publicity has been to attract even more claimants. Despite the fact that many of these people are not sick, the long latency period, of perhaps up to 40 years from first exposure, means that many more people will become ill and die from asbestos-related diseases. Experts believe that since the use of the mineral peaked in 1973, perhaps half a million people will die from such exposure over the next 35 years. One has said: 'The bankruptcies and lost jobs from asbestos far outweigh the effects of Enron or WorldCom, but it's happening very slowly and it's difficult to get people's attention.'

Sources: Mackintosh, J., 'Asbestos suits against Ford rise by 16,500', Financial Times, 25 March 2004; Bowe, C. and Roberts, D., 'Asbestos lawsuits "affect 85% of the US economy"', Financial Times, 10 September 2002; Roberts, D., 'The toxic time-bomb exploding throughout the corporate world', Financial Times, 9 September 2002.

Case questions

What are the advantages of class action lawsuits from the point of view of plaintiffs and defendants?

In what ways have claims for asbestos-related diseases caused strains in both the legal and corporate worlds?

 Information on asbestos litigation can be found at www.asbestosresource.com/litigation