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Mesothelioma and Asbestos Lawsuits

Asbestos is the name given to a group of naturally occurring minerals that were used for many years in a number of different products. While its primary use has been in construction, such as in insulation for pipes, tiles, and other building materials, it is also used in the car manufacturing and repair industry in parts such as brakes and clutches. There are other uses too numerous to specifically name.

For years, exposure to asbestos was linked to the development of lung disease, particularly mesothelioma. In 1971, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), issued its first order regulating the use of asbestos. Although asbestos is still being used with strict regulations, [OSHA states](#), “There is no known ‘safe’ level of asbestos exposure for any type of asbestos fiber.”

In fact, there are certain diseases, such as asbestosis and mesothelioma, that are caused solely by the exposure to asbestos. Although most of the people who get these diseases were exposed to the substance while working in certain occupations, like construction, many have contracted an asbestos-related disease when they were only briefly exposed to the substance. Clerical workers in asbestos infested office buildings have come down with an asbestos related disease. Family members of those exposed at work have contracted an asbestos caused disease just by being

exposed to the worker's clothes.

Asbestos caused diseases are insidious. The incubation periods are long. Diseases that are caused by asbestos exposure [may take 10 to 40 years](#) for the effects to show up. There are no known cures for any asbestos caused disease. Medical treatment focuses on alleviating symptoms and keeping the patients as comfortable as possible.

Mesothelioma

Mesothelioma is a [malignant condition](#) of the mesothelium, a thin membrane that covers the majority of the internal organs. It primarily affects the lining of the lungs, referred to as pleural mesothelioma. Peritoneal mesothelium affects the lining of the stomach. The lining of the heart and of the testicles are sites where mesothelioma is found, although more infrequently than in the lining of the lungs and the stomach.

No matter what organ is involved, mesothelioma is always fatal. There is never a "benign mesothelioma." All forms are malignant and there is no known cure. Those with mesothelioma suffer from severe debilitating physical symptoms and often intractable pain. They also suffer from the emotional distress of knowing their days are numbered and they have a terminal disease.

Asbestosis

Asbestosis is a [disease](#) that affects the lung itself, not the lining of the lung as does the cancer of mesothelioma. Like mesothelioma, and as its name suggests, it is caused only by exposure to asbestos. It causes shortness of breath, from mild to severe, and results in lung fibrosis. It also may lead to mesothelioma.

Types of Personal Mesothelioma Lawsuits

There are many avenues that may be used to collect for the damages caused by the asbestos exposure. Some involve personal lawsuits filed by an individual who is suffering from the asbestos-caused disease, or a similar lawsuit filed by family members after the afflicted person dies. Other lawsuits may be brought through class actions or multidistrict litigation.

Personal injury based on negligence. A personal injury lawsuit claiming negligence and seeking damages for mesothelioma caused by asbestos exposure requires the same proof of negligence as any personal injury lawsuit:

- The defendant breached its duty of care to the plaintiff.
- As a result of that breach, the plaintiff was injured.
- The plaintiff's injury, caused by the defendant's breach of his or her duty to the plaintiff,

resulted in damages.

One difficulty in personal mesothelioma lawsuits is identifying the responsible party. Since the disease shows up so many years after exposure, some people have trouble remembering when their exposure occurred. A skilled attorney will help recreate a work history based on life events so that the culprit responsible for the asbestos exposure can be identified.

Damages to which the plaintiff is entitled include payment of: all medical bills, both past and future; all lost wages, both past and future; home care; pain and suffering; and other damages.

Personal injury based on product liability. A negligence claim can be pursued against the manufacturer of a product containing asbestos on the grounds that the manufacturer knew, or should have known, that its product was unreasonably dangerous. Product liability claims have been pursued against the manufacturers of safety equipment designed to protect a worker from asbestos exposure when that safety equipment failed resulting in the worker contracting an asbestos-related illness.

Some products are so dangerous, such as those containing asbestos, that the manufacturer can be held strictly liable for any damage that results even if no negligence was involved.

Wrongful death. Certain family members may file a wrongful death action against those responsible for the mesothelioma or asbestosis suffered by their loved one. The same elements required to prove a personal injury case if the loved one was still alive are required for a wrongful death claim. Damages that may be collected include:

- All medical expenses incurred by the decedent.
- Burial and funeral expenses.
- Loss of companionship and consortium.
- Compensation for the support the decedent would have provided if he or she had lived.
- Pain and suffering endured by the decedent as a result of the asbestos-caused disease.

Class actions. A class action lawsuit is when just one lawsuit is filed on behalf of several people who suffered the same harm by the same defendant. These are usually brought by just one law firm. If the action is successful, all plaintiffs share equally in the award. If the case is lost, the plaintiffs are bound by that decision and, unless they opted out of the class action, they cannot pursue personal lawsuits on their own.

Multidistrict litigation (MDL). These are individual lawsuits filed by different plaintiffs against the same defendant or defendants in federal court. The alleged injuries are similar, but do not have to be identical.

When courts determine that there will be overlap in pretrial discovery, depositions, and similar evidence presented at a trial, the individual cases may be transferred from the district court where

they were filed to one federal district court where all litigation will take place.

The cases continue with the individual lawyers or law firms that filed the case and the damages are individual according to what was suffered by each individual plaintiff. If there is a settlement and one plaintiff disagrees with the terms, that plaintiff may pursue their own lawsuit in the original court where it was filed.

How Long Does an Asbestos or Mesothelioma Case Take

The answer to the question of how long litigation will take for an asbestos caused illness is not easy. Each case is unique. A defendant may readily accept responsibility and settle quickly. On the other hand, some defendants may fight long and hard in an attempt to prove they were not the ones responsible for the asbestos exposure. An attorney may be able to predict how long it will take after reviewing the specific facts of an individual mesothelioma lawsuit, asbestosis lawsuit, or any asbestos lawsuit.

How Long Do I Have to Bring a Lawsuit

A statute of limitations is the time you have to sue after your condition is diagnosed. The time varies by state from just one year to up to three years after the diagnosis. Since the incubation time for asbestos related diseases to be diagnosed, it is important to note the statute runs from the time of the diagnosis. Not from the time of the exposure. There may be other factors involved, depending on law of the state where the patient lives, or where the company responsible for the exposure is located.

The time allowed for family members to file a wrongful death lawsuit is also determined by state statutes. Some states have specific statutes of limitations applicable to mesothelioma lawsuits and asbestosis lawsuits.

How Much is the Average Settlement for a Mesothelioma Case

Again, each case is unique and depends on its own facts. A recent report indicated that the average out-of-court settlement is between \$1 million and \$1.4 million. Jury verdicts average about \$2.4 million. It is not uncommon for a jury award to later be reduced by a settlement between the plaintiff and defendant. The defendant agrees not to appeal, which prolongs the process, if the plaintiff agrees to accept a lesser amount than that awarded by the jury.

Key and Landmark Mesothelioma Cases

Although not a case from the Supreme Court of the United States, a [1973 case](#) from the U.S. Court of Appeals for the Fifth Circuit, *Clarence Borel v. Fibreboard Paper Products Corporation, et al.* is often referenced as the landmark case that set the standard for mesothelioma cases. In its 41-page opinion, the appellate court upheld a substantial jury award to Borel, who died during the litigation and the award went to his widow. The award was based on both a negligence and strict product liability theory.

The defendants appealed to the Supreme Court, but their appeal was turned down. The *Borel* opinion opened the door for further mesothelioma litigation and, with a few nuances carved out by other appeals courts and the Supreme Court, it still provides the standard required to prove both a negligence and strict product liability claim for damages caused by asbestos.

How to Find a Lawyer

The pursuit of a mesothelioma or asbestosis lawsuit is not easy. Work history and place and time of exposure to asbestos needs to be traced. Deciding on the proper venue and type of action to take is sometimes difficult. Injuries suffered by mesothelioma victims are unique to each individual. Choosing an attorney or law firm that has a history of working with mesothelioma sufferers and their families may make a difference in winning or losing at trial or in effectuating a satisfactory out-of-court settlement.

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