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### Asbestos Overview

Asbestos is a fibrous mineral that has been used as insulation and as a fire retardant in a wide variety of products. Because of its durable, fibrous nature, asbestos can produce dust that, when inhaled, becomes deposited in the lungs -- causing or contributing to the development of illnesses including asbestosis (a fibrous scarring of the lungs) and **mesothelioma** (a malignant form of cancer in the lining of the chest or abdominal cavities).

Because of health concerns, all new uses of asbestos in the United States were banned in July 1989. That year, the EPA published *Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions*, the effect of which was to eventually ban about 94 percent of the asbestos used in the U.S. (based on 1985 estimates). Most asbestos uses established before that date are still allowed, but are strictly regulated by the government. Even with government regulation, asbestos-related lawsuits have been filed regularly since the 1960's, and continue to be filed frequently today.

#### **Determining Responsibility for Asbestos Exposure**

In civil court lawsuits for damages, legal responsibility for injuries caused by asbestos exposure is sometimes determined under the law of product liability. A product liability case arises when someone uses, or is exposed to, a dangerous product that injures them. Liability is usually based on one of three theories: (1) breach of warranty; (2) negligence; or (3) strict liability.

##### *Breach of Warranty*

There are two types of warranties: 1) implied warranties; and 2) express warranties. In an asbestos exposure case, you might be able to recover for a breach of an implied warranty under your state's implied warranty statutes, which are usually found in a state's commercial code. Implied warranties accompany the sale and use of many types of products, including those containing asbestos. In essence, implied warranties provide that a product will be fit and safe for its intended purpose.

Liability for a breach of express warranty may exist if the supplier or seller of a product containing asbestos made a claim about the product that ultimately caused someone to buy or use the product, and that claim later turned out to be false. For example, if a supplier claims that using a particular asbestos product is safe, but the product is in fact unreasonably dangerous, the supplier may be liable to a person who relied on the supplier's statements and was injured by the product.

##### *Negligence*

Liability based on a negligence theory requires proof of four elements: (1) the defendant had a legal duty to provide a safe product; (2) the defendant breached that duty; (3) the breach caused an injury; and, (4) the injury resulted in damages to the plaintiff. Fortunately, in cases where a supplier's negligent conduct may be difficult to prove, courts have developed an alternative theory of liability to allow plaintiffs to recover. That alternative theory is called strict product liability.

##### *Strict Liability*

Like negligence, the strict product liability theory requires the plaintiff to prove four elements: (1) a strict duty to supply a safe product; (2) a breach of that duty; (3) causation; and, (4) damages. However, strict liability differs from negligence in two key ways. First, under a strict liability theory, the existence of a duty is shown when there is a commercial supplier that manufactures or retails the product -- not just a casual seller. Second, under a strict liability theory, the plaintiff does not need to show that the breach of duty is the result of any negligent action. The mere fact that the product was dangerous or defective is enough to establish a breach of the supplier's duty.

Of the four elements in negligence and strict product liability asbestos cases, causation can often be the most difficult to prove. First, in most lawsuits, defense attorneys will attempt to present scientific reports and studies to try to dispute that asbestos can cause the injury alleged. Second, there is usually a substantial amount of time between exposure to asbestos and the appearance of an injury. Defendants may use that passage of time to argue the injury was caused by exposure to another toxic substance, or a product manufactured by someone else. Therefore, in order to prove causation,

the plaintiff must show that the asbestos-containing product can cause the injury claimed, that the plaintiff was exposed to the asbestos in a quantity large enough to cause the injury claimed, and that the plaintiff was not exposed to some other toxic substance or product that could have caused the injury.

### **Who is at Risk for Asbestos Exposure?**

Many people wonder if they are, or have been, exposed to the health risks caused by asbestos. Health hazards from asbestos dust have been recognized in workers exposed in shipbuilding trades, asbestos mining and milling, manufacturing of asbestos textiles and other asbestos products, insulation work in the construction and building trades, brake repair, and a variety of other trades. Demolition workers, drywall removers, and firefighters also may be exposed to asbestos dust.

People whose work brings them into contact with asbestos -- workers who renovate buildings with asbestos in them, for example -- may inhale fibers that are in the air; this is called occupational exposure. Workers' families may inhale asbestos fibers released by clothes that have been in contact with asbestos-containing materials; this is called paraoccupational exposure. People who live or work near asbestos-related operations might inhale asbestos fibers that have been released into the air by such operation; this is called neighborhood exposure.

The amount of asbestos to which someone is exposed will vary, according to:

- The concentration of fibers in the air;
- The duration of exposure;
- The person's breathing rate (workers doing manual labor breathe faster);
- Weather conditions; and,
- Any protective devices the person might be wearing.

Although it is known that the risk to workers increases with heavier exposure and longer exposure time, investigators have found asbestos-related diseases in individuals who had only brief exposures. Workers who develop asbestos-related diseases may show no signs of illness for a long time after their first exposure. It can take from 10 to 40 years for symptoms of an asbestos-related condition to appear. Because of this time-lapse issue, lawyers are often asked if there is still time to make a claim for an injury or illness caused by asbestos.

### **There May Still Be Time To Make A Claim**

Many people who have suffered injuries from toxic substances such as asbestos did not know of the health risks at the time of the exposure. As a result, some states have enacted laws allowing people to file lawsuits for a certain amount of time after the date when their asbestos-related illness was detected, rather than from the date of the exposure. An attorney can tell you whether you still have time to file a lawsuit within the limitation period applicable in your state.

### **Compensation For Asbestos Exposure Injuries**

Many effects of toxic asbestos exposure are permanent and irreversible. Although the law seeks to place an injured person in the position he or she was in before an injury, this usually is not possible. Instead, economic compensation thought to be equivalent to the victim's damage is awarded. A plaintiff who can prove that he or she was exposed to asbestos may be able to recover for both the economic and noneconomic consequences of that exposure, including:

- The cost of past and future medical care;
- The cost of necessary rehabilitation;
- Lost past and future wages;
- Lost earning capacity;
- Lost enjoyment of life;
- Emotional distress; and,
- Past and future pain and suffering.

Another kind of damages that plaintiffs injured by asbestos may be able to recover are "punitive" damages. Punitive damages are intended not to compensate the victim for his or her losses, but to punish the defendant's wrongful conduct. Although punitive damage awards receive a lot of media attention, they are in fact quite rare. The amount of punitive damages awarded is usually based on the wealth of the defendant and the magnitude of its wrongful conduct. Some states require that a portion of punitive damages awards be paid to the state.

### **Getting Help**

If you are concerned about potential exposure to asbestos, or if you or a loved one suffer from asbestosis, mesothelioma, or another medical condition associated with asbestos exposure, you should take action to protect your legal rights by discussing your case with an experienced asbestos/mesothelioma attorney.

Go [here](#) to learn more about the role of an attorney in an asbestos/mesothelioma case.

Click [here](#) to find an experienced asbestos/mesothelioma attorney near you.

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