

OCCUPATIONAL LUNG DISEASE CLASS ACTION CERTIFICATION

KEY QUESTIONS ANSWERED



SEEKING A SUSTAINABLE SOLUTION

The mining industry Working Group on Occupational Lung Disease (OLD) was established in 2014. Initially representing five companies and now extended to six (African Rainbow Minerals, Anglo American, AngloGold Ashanti, Gold Fields, Harmony and Sibanye Gold), it is focusing on issues relating to compensation and medical care for occupational lung disease in the gold mining industry in South Africa.

This publication follows on, among other things, from recent erroneous reports on potential liability levels for the companies following the recent class action certification.

1. What did the class action seek to achieve?

While we cannot comment on the objectives of the claimants, lawyers and NGOs (which may be different), it appears that the aim was to enable claimants to bring their action as a single case rather than as individual cases which would have implications for costs and time.

2. What is the impact of the High Court decision for the companies?

The High Court decision enables the litigation to proceed as a class action. However, both the companies and the claimants' lawyers have indicated a desire to resolve the matter outside the litigation process.

3. Will the companies be appealing against the decision?

The companies have indicated that they are studying the judgment and will each make a decision on appealing in the near future.

4. Is the class action certification an indication that the claimants' case is likely to succeed?

No. The judgment does not include consideration of the merits of the cases. It specifies the processes that the litigation would follow.

DEALING WITH OCCUPATIONAL LUNG DISEASE:

A COLLABORATIVE INITIATIVE BY SA MINING COMPANIES

5. How many claimants do the companies envisage, and for what?

No one knows for sure. We note that Mr Spoor (who leads one group of claimants) used a number of 100,000 in a recent radio interview. Without wanting to understate the seriousness of the industry's silicosis legacy, our view is that they may be an exaggeration.

The judgment mentioned a very wide range of 17,000-500,000. We do not know where those figures were derived from.

It is likely that the upper number includes an estimate of numbers in the TB class too. That raises a number of complex legal issues. In addition, we should point out that any potential compensation for loss of earnings for TB claimants would be very limited and in many instances nothing at all. For many years, through collective agreement, the companies have been paying extensive paid sick leave to employees ill with TB, up to 6 months per year. That is sufficient time for the treatment needed to cure the disease, which treatment is provided by the companies to employees.

6. How will this compensation be structured? What financial commitment will this require from the companies?

The outcome will depend on the negotiations that have been underway for several months. We cannot pre-empt the conclusion of these those discussions or speculate on this.

7. How long will the legal process take?

In a case as complex as this one, it could drag on for up to 15 years. Neither the companies nor the claimants have an interest in this, which is one reason for the constructive negotiations that are underway.

8. How does this relate to the integration of compensation systems?

Should we succeed in having present and future employees transferred from ODMWA to COIDA, this would likely preclude future litigation of this sort. The Constitutional Court has found [in the case of Jooste v Score Supermarket] that COIDA, which provides significantly higher benefits than ODMWA, includes an indemnity which precludes an employee from claiming damages from her employer. See this fact sheet: www.oldcollab.co.za/downloads/send/7-2016/11-factsheet-comparing-coida-and-odmwa

9. How will the liability be split between the companies – who is most liable? The litigation speaks of 32 companies but only six in the working group – explain what will happen to the other companies?

First, the six companies may own more than one of the mines mentioned in the litigation.

Second, the working group is made up of the six companies only. But, there is no reason why other companies cannot join in a settlement, or indeed the replicate the settlement.

10. What does the working group envisage as a settlement? Is it going to be a once off payment to affected people or is an annuity payment possible?

The outcome will depend on the negotiations that have been underway for several months. We cannot pre-empt the conclusion of these those discussions or speculate on this.