

The story of the Asbestos Relief Trust – Part 1

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The Asbestos Relief Trust (ART) is seen as a model of efficient occupational disease compensation in South Africa. This short article – Part 1 of a series – describes the background and pioneering seminal processes involved in the birth and early days of the ART.

ASBESTOS MINING IN SOUTH AFRICA

Asbestos was mined in three main areas in South Africa. Crocidolite (blue asbestos) was mined in the Northern Cape province from Prieska in the south to Kuruman in the north, amosite (brown asbestos) was mined at Penge near Burgersfort, crocidolite and amosite in the Pietersburg asbestos fields in an arc starting at Penge in the south and ending in Mailpsdrift in the north in Limpopo province, and chrysotile (white asbestos) was extracted at Msauli in Mpumalanga.¹ The Second World War was a massive boost for asbestos production in South Africa, and it was the world's second most important market-economy producer from 1950 to the 1980s.^{1,2} Production peaked in 1977.³ All asbestos mining had ceased by 2002/3, when chrysotile mining ended, having been preceded by the closure of the amosite mines by 1992 and the crocidolite mines by 1997/8.^{2,4} The mining of crocidolite in the Prieska-Koegas area and the Pietersburg asbestos fields had stopped much earlier, in 1979.⁵ Most of the miners employed by the asbestos mining companies lived in the general areas of the mines on which they worked.

SETTLEMENTS FOR ASBESTOS-RELATED DISEASE VICTIMS

Landmark settlements

2003 was an important year for asbestos-related disease (ARD) compensation in South Africa. In March of that year, both the Richard Meeran-run Cape Plc case, which had started in 1997, and the Richard Spoor-run Gencor case, were settled.^{5,6} The latter resulted in the formation of the ART. Gencor was a major contributor to both of these settlements, providing 29% of the £10.6 million (R138 million) that went to the Cape Plc's set of claimants, and 96% of the R381 million that formed the ART.⁴⁻⁶ An additional sum of R35 million went to environmental rehabilitation, and some R20 million was later added to the ART as supplementary and additional payments.⁶ The Cape Plc list had grown with time and publicity – it started with five claimants in 1997, became 2 000 in January 1999 and rose to 7 500 in August 2001.⁵ It was a closed settlement in that it allowed compensation to only those named on the list, whereas the ART settlement was open, and made provision for compensation to any person who met the compensation criteria set out in the Trust deed, until the year 2028.^{4,7} As ARDs all have long latencies, the open settlement method was clearly a fairer deal. These settlements were groundbreaking in that the companies agreed to compensate the workers in addition to the compensation payable under the Occupational Diseases in Mines and Works Act (ODMWA),⁸



A close-up of crocidolite from the Kuruman area. The fibres visible here are approximately 6 000 times longer than regulated fibres *Photo courtesy of Jim teWaterNaude*

and it was the first class-action type settlement achieved in South Africa (Personal communication, Georgina Jephson, attorney at Richard Spoor Inc. Attorneys). The ART settlement also included environmentally-exposed victims of ARDs.⁶

Three-quarters of the claimants in the Cape Plc case came from Limpopo province and the remainder from the Prieska-Koegas area in the Northern Cape province.⁵ By contrast, most of the claimants in the ART settlement (around 78%) were exposed in the Kuruman area in the Northern Cape province, with the balance exposed at Penge in Limpopo province and Msauli in Mpumalanga province, in approximately equal proportions.⁹

A third settlement was reached in 2006, in a voluntary agreement with the Swiss Eternit Group.¹⁰ This agreement enabled ex-miners of the Kuruman and Danielskuil Cape Blue Asbestos (KCBA and DCBA) mines in the Northern Cape province to apply along the same lines as the open settlement of the ART. The Kgalagadi Relief Trust (KRT) was thus created. The terms were never spelled out but in practice R136 million was paid over for compensation purposes, for payouts until 2026.¹¹ The trustees of the KRT requested the ART to administer the KRT settlement as the two trusts were very similarly structured.

Justice not for all

Along with these successful settlements, the case on behalf of around 400 Swaziland ARD victims from the Havelock chrysotile mine was suspended in 2003 because Turner and Newall, the company that owned the mine, had filed for bankruptcy in 2001.⁵

Because it had been shown that ~85% of the 7 500 named individuals on the Cape Plc list had signs of ARD, they were all compensated in a sweep of pragmatism. All were paid within a year, on a sliding scale: mesothelioma and asbestos-related lung cancer sufferers receiving the highest payments of R71 500 each.⁵ Because Gencor had contributed significantly to this settlement, it was proscribed that no-one who had received compensation under the Cape agreement could be later paid by the ART, even if he or she had worked on the Kuruman or Penge mines when under Gencor control.¹⁰

The ART settlement, being open, meant that money would need to be paid out equitably over the 25 year lifetime of the Trust. Unlike the Cape Plc (which had a named list), there was no indication of either the expected number of successful claimants, or how much money each should receive.⁶ Faced with this huge uncertainty, and needing to administer the new fund judiciously, the trustees employed the services of a prominent health care actuary. He determined both the likely incidence of compensable claims over the 25 year life of the ART, and the amounts that should be paid to individuals in each of the four categories of diseases set out in the Trust deed, viz. asbestosis / pleural thickening with mild to moderate lung function impairment (ARD1), or with severe lung function impairment (ARD2); asbestos-related lung cancer (ARD3); and

mesothelioma (ARD4).^{4,7} Using published papers and some commissioned work, he developed an elaborate model which estimated that some 16 800 individuals would submit claims to the Trust, of which 5 036 (30%) would be successful. This was subsequently revised to 5 162. Of these, 219 (4.2%) would be environmental claimants, 150 (2.9%) would have lung cancer and 556 (10.8%) would have mesothelioma; the balance would have asbestosis and/or pleural thickening.⁴ No definitive figures were provided for the expected ARD1/ARD2 ratio.

In order to calculate the compensation amounts, pain and suffering, loss of future earnings, and medical expenses that individuals in each class of disease were likely to encounter were taken into account, as well as the available funds.^{4,6} The amounts payable vary, but the average compensation since 2003 has been approximately R40 000, R80 000, R170 000 and R350 000 for each of the categories ARD 1-4 described above. These amounts are paid over and above any compensation that the claimants might receive under the ODMWA.

For a case to be compensable, a victim needs to show that he/she was both exposed to asbestos from one of the operations run by the funders of the ART, and has a compensable disease.⁷ The saga of how the ART enabled the fulfilment of these two seemingly simple conditions will be told in Part 2.

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An unrehabilitated crocidolite mine dump near Kuruman Photo courtesy of Jim teWaterNaude

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