



GOLD MINE WORKERS WITH SILICOSIS FILE MOTION FOR CLASS ACTION
Mine workers and their families seek to hold accountable dozens of mining companies

JOHANNESBURG, SOUTH AFRICA, December 21, 2012 – Today, South Africa human rights lawyer Richard Spoor filed an application for class certification of an action for damages in the South Gauteng High Court on behalf of tens of thousands of current and former gold mine workers, as well as dependents of deceased workers, who contracted silicosis as a result of their work in South African gold mines.

The applicants are Bongani Nkala, a 59-year-old former mine worker from Mthatha, and 30 other former mine workers, all of whom contracted silicosis as a result of their exposure to crystalline silica dust, also known as quartz dust, while employed at the mines.

Nkala and his co-applicants seek the court's permission to undertake the litigation as representatives of all current and former gold mine workers who contracted silicosis and dependents of deceased mineworkers who died after contracting silicosis.

There are 30 respondent gold mining companies that owned or operated 78 different gold mines from 1965 to the present.

The respondents include Harmony Gold Mining Company Limited, Avgold Limited, AngloGold Ashanti Limited, Gold Fields Limited, Village Main Reef Limited, Simmer and Jack Mines Limited, DRDGold Limited, ERPM Limited, Anglo American South Africa Limited, African Rainbow Minerals, Randgold and Exploration Company Limited, JCI Limited and their subsidiaries.

The respondents were either the owners of gold mines that they operated or, as in the Case of Anglo American South Africa, African Rainbow Minerals (previously AngloVaal) and JCI, parent companies that exercised control and direction over their subsidiaries' mining operations.

Silicosis is a wholly preventable disease, yet, for more than 100 years, the South African gold mining industry has continued to cause thousands of new cases of silicosis per year with no consequence. The purpose of the litigation, says Spoor, is to put an end to the impunity that the mining industry enjoys and to hold it accountable for the harm that it does. The vast majority of former mine workers with silicosis have never been compensated and receive no medical benefits.

"We seek no more than the application of the 'polluter pays' principle to be applied to an industry that generates sick men as surely as it produces great wealth for its shareholders. Mine workers do not control the environment in which they work; environmental conditions underground are determined by the mine owner through the provision of proper ventilation. When mine owners skimp on the cost of providing proper ventilation, workers get sick. These men have become ill through no fault of their own, yet, when they do, they are simply dismissed, and they and their families are left to languish in poverty and disease," Spoor said.

Silicosis is a chronic and debilitating lung disease caused by the inhalation of the tiniest (respirable) crystalline silica dust particles. Crystalline silica, also known as quartz, is found in association with gold in the Witwatersrand and Free State goldfields and is raised into the air during mining and blasting.

Silicosis is a chronic and progressive disease that cannot be cured. The impact of silicosis on the life span and general health and functioning of the worker concerned depends upon the severity of the disease and its complications, which include progressive massive fibrosis, tuberculosis (to which silicotic persons are particularly susceptible) and heart disease.

The purpose of a class action is, first and foremost, to secure access to justice for the thousands of potential claimants who would, otherwise, by virtue of their isolation in remote rural areas and their poverty, never be able to bring their claims in a court.

Its secondary purpose is to reduce the cost of litigation, for plaintiffs and defendants, and to reduce the burden on the courts, which might be called upon to try thousands of individual claims dealing with substantially the same issues.

Class actions have the further advantage that they are binding upon all the members of the class, unless potential class members choose to opt out. Therefore, the action has the potential to resolve, once and for all, litigation that could potentially drag on for decades to the great prejudice of employers and the affected mine workers. The litigation holds the promise of resolving a legacy issue that has the ability to dog the industry for many years to come.

The current litigation was made possible by the March 2011 decision of the Constitutional Court in the matter of Thembekile Mankayi. In this case, the court determined that mine workers with lung disease were not precluded from suing their employers by the provisions of section 35 of the Compensation of Occupational Injuries and Diseases Act (COIDA). COIDA was, until this ruling, construed as a bar to employees from recovering civil law damages from their employers in respect of any occupational injury or disease.

Among today's filings were the affidavits for Mokholofu Boxwell, Maeburu Regina Lebitsa and Siporono Phahlam.

Mr. Boxwell is a former gold mine worker living in Butha-Buthe, Lesotho, who worked in four different mines over a 23 year period and is a proposed class representative who has been diagnosed with silicosis. In his affidavit, Mr. Boxwell states, "I could see, taste and smell dust while I worked underground, particularly after blasting took place during a shift and we were not evacuated from the mine . . . I cough heavily all the time and I have constant chest pains. Apart from no longer being able to provide for my family, I am no longer able to partake in community activities. I feel depressed and alone."

Mrs. Lebitsa, a widow and resident of Ha-Motsoane, Naeli, Lesotho, is a proposed class representative of the dependents of deceased mineworkers. She was married to Lekhooanyana Isaac Lebitsa for almost 26 years. Mr. Lebitsa was retrenched from the mine at the age of 42 when his employer discovered him in ill health. "In early 2005, my husband was certified to be suffering from tuberculosis and silicosis in the second degree...." Mrs. Lebitsa attested. "When he returned from the mines, his health deteriorated and, as he became weaker, his ability to support his family was severely undermined. The support he provided me was fully terminated when he passed away in 2010."

Siporono Phahlam, a 59 year-old former miner is another potential class representative who has been diagnosed with silicosis and has trouble walking even a few yards without stopping. "We weren't given masks and were sent in after they [the mining companies] would blast and blast, not even waiting 15 minutes. The doctors say I won't get better, and all I want is to have my voice heard. I don't want future miners to suffer like I do," he said.

Richard Spoor Inc Attorneys is undertaking the litigation with the support of Motley Rice LLC, a U.S.-based plaintiffs' law firm with extensive experience in class actions and large scale occupational health and safety litigation. The experience, skills and resources they bring to bear are critical to the success of the litigation—litigation that few, if any, South African law firms are equipped to undertake alone.

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