

Statement of plaintiffs, their attorneys and supporters on the Tokyo High Court ruling on October 27, 2017

## 1. Conclusions of the ruling

On October 27, 2017, Civil 5<sup>th</sup> Decision of Tokyo High Court (Honorable Chief of Judge, Atsuo Nagano) has issued a ruling for a so-called “construction asbestos litigation” brought by victims of asbestos related disease like mesothelioma, lung cancer, etc due to the exposure to asbestos dust during their working at construction work sites and bereaved family members of deceased victims and admitted the responsibilities of the government and former manufacturers of asbestos containing construction materials to compensate the plaintiffs.

The ruling reversed a ruling by Yokohama District Court on May 25, 2012 which totally dismissed claims by the plaintiffs and ordered compensation payments to both of the government and manufacturers as a high court for the first time.

The government compensation responsibility in similar “construction asbestos litigations” under the State Redress Act has been admitted by six district court rulings and it can be said such government responsibility was solidly established by the Tokyo High Court ruling. Regarding manufacturers’ compensation responsibility the precedent district court rulings have variously discussed interpretation and application of joint tortuous act under the Civil Code and the framework shown by the Tokyo High Court in its ruling will have a big impact on other “construction asbestos litigations” examined at several district and high courts all over Japan.

## 2. Government responsibility

### (1) Illegality of non-exercise of regulatory authority under the Occupational Safety and Health Act

The ruling admitted that medical knowledge exposure to asbestos dust could cause asbestosis had been established by around March 1956 and that medical knowledge exposure to asbestos dust could cause lung cancer and mesothelioma had been established by around 1972. Also medical knowledge even a small amount of asbestos exposure could cause lung cancer and mesothelioma was being established around 1978.

Giving the above the ruling admitted the illegalities in the below points for non-exercise of regulatory authority by the state under labour related laws and regulations in the light of a theory that such regulatory authority to protect workers life

and health should be exercised “at proper timing and in proper way” established in the Supreme Court ruling for “Sennan asbestos litigation against the government” on October 9, 2014.

At latest on January 1, 1981, the government should have obliged employers to make their workers to wear dust protective masks when the workers engaged in works to cutting asbestos containing construction materials etc with punitive provision, and should have amended the contents of warning labels for asbestos containing materials, warning signs at work places using such materials and safety education for involved workers in relation to dangerousness of exposure to asbestos dust and necessity of wearing dust protective mask. The ruling judged illegal that the government failed to do so. [The government finally did so on April 1, 1995, 14 years later.]

## (2) Responsibility for self-employed workers and business person

The ruling applied the illegality of non-exercise of regulatory authority by the state under labour related laws and regulations only to employees covered by those laws and regulations. However the ruling considered that whether a person corresponded to “employee” or not “should not necessarily be held to nominal form of labour provision but should be determined with focusing on employ-dependency relationship from the view point of actual status of labour provision as work under command and control and of real property of remuneration and considered 7 plaintiffs as “employees”.

Also the ruling ordered manufactures to pay compensation for 14 plaintiffs who were not considered as “employees” too. This is one of important meanings of the ruling.

## (3) Compensation amount and reducing factors

The ruling admitted standardized compensation amount (consolation money) as; 25 million JPY for died case due to asbestos related disease, 22 million JPY for mesothelioma, lung cancer, diffuse pleural thickening or grade 4 asbestosis case, 18 million JPY for grade 3 asbestosis case and 13 million JPY for grade 2 asbestosis case.

Then the ruling reduced compensation by the government to one third of the above because the government responsibility was expletive and reduced again depending the relation between time period for which the government responsibility was admitted and that each victim had exposed to asbestos dust.

## 3. Manufacturers’ responsibility

The ruling considered former manufacturers of asbestos containing construction materials should have given warning on dangerousness of exposure to asbestos dust causing asbestos related diseases and on necessity of wearing dust protective mask during working with such materials as a part of materials security duties since April 1, 1975 and admitted manufacturers' responsibility.

Then the ruling admitted manufacturers' responsibility to pay proportionate compensation for mesothelioma cases by adopting later part of article 719(1) of Civil Code and for asbestosis, lung cancer and diffuse pleural thickening cases by adopting article based on their market share, number of construction work sites each victim had worked at, testimonial evidence etc.

#### 4. Meanings of the ruling and our demands

This ruling was first one at high court level for "construction asbestos litigations" examined at six high courts and its impact to the public opinion and politics will be substantial. Needless to say the ruling has big influence upon other five cases, in which rulings will be issued before next summer to 3 cases, and even if the government and manufacturers appeal to the Supreme Court this will still lead the process and judges at the Supreme Court.

Thus the government who have had 7 consecutive loses and manufacturers whose responsibility have been admitted for 3 times should take the ruling seriously and move to immediate and full solution of "construction asbestos litigations".

Firstly the government should decide to create compensation fund for construction workers and basic agreement for the future including preventive measures.

Manufacturers should agree with creation of compensation fund for construction workers at the state level and to facilitate the government moving to do so.

With chagrined feeling so far among 75 victims who were alive at the starting point of litigation in this litigation 56 have already died. We give more than a passing thought to this fact and come down to fully fight for realizing full resolution as early as possible.