The Cape Asbestos claims:
The implications for the South African mining industry

by R Spoor. Paper presented at the SAIMM, MVS Colliquium, February 2001, Mintek Randburg

Over the last three years I have had the opportunity to participate in the group action brought against Cape PLC in England on behalf of several thousand South Africans.[1]

It has been a most instructive experience. I have been most impressed by the English legal system. It is quick fair and surprisingly modern. Our system by contrast is positively archaic. It is overly formal, fussy and there is an inordinate emphasis on rules at the expense of justice. This is probably as much a legacy of our isolation over the last 30 years or so, as it is the product of the positivist tradition that dominates the South African jurisprudence.

The claim against Cape is based upon on the common law of delict or tort, as it is called in England. It is alleged on behalf of the plaintiffs that Cape's subsidiary companies which operated in South Africa, wrongfully and unlawfully and in breach of their duty of care exposed their employees and members of local communities to harmful levels of asbestos containing dust that caused them to contract asbestosis and in some cases mesothelioma.

The case has some interesting features. To date the issue that has been the main subject of dispute has been forum i.e. where should the case be heard? On behalf of the claimants it has been argued that the case should be heard in England. Cape however has argued that the case should be referred to the South African courts.

Late last year the House of Lords sitting as the highest court of appeal ruled that England was the more appropriate forum and that the case should be heard there. Considerations that were taken into account by the court included the following:

- Cape PLC is an English company with no presence in South Africa and is sued in England as of right. (Cape sold its South African assets in the late 1970s)
- Cape is sought to be held liable not for what it did in South Africa (its wholly owned subsidiaries are the ones who 'did' the exposing in South Africa) but for what it did not do in England, namely its failure to take steps to ensure that its subsidiary companies took reasonable steps to protect their employees and members of neighbouring communities from excessive exposure to asbestos dust. The act or more correctly the omission complained of therefore took place in England and not in South Africa.
- Although Cape argued persuasively that it would be more convenient, quicker and less costly for the matter to be heard in South Africa, as almost all the claimants, witnesses and medical, employment and dust records are to be found here, the Lords were of the view that these considerations were outweighed by the fact that the claimants (who have been granted legal aid in England) would not be able to obtain justice in South Africa. This because legal aid had been abolished in South Africa for personal injury claims and because there were no indications that there were any South African attorneys with the necessary expertise or capital to take on such a complex and costly case without the assurance of payment. This meant that to refer the case to the South African courts would amount to a denial of claimants the right to have their case adjudicated upon.

The Cape case enjoys the support of the South African government, which was granted leave to file papers in support of the claimants appeal to the Lords. It recognises, as do the two provincial governments involved, that success in the case would provide a very substantial cash injection into some of the country's poorest communities. The amounts in question are purely speculative but would certainly run into many tens of millions of rands. There are some significant legal obstacles yet to be overcome before the claimants can be compensated. Principally the court needs to be persuaded that the parent company Cape

PLC had a duty of care towards the employees of its subsidiary companies and also the members of communities situated near their mines and mills. The best illustration of the issues involved here may be found in the SA appellate division case of Ewels v Minister of Justice.[2] Ewels was beaten up in the charge office of a police station in full view of uniformed police officers who were on duty at the time but who failed to take any steps to protect him. The court ruled that the policemen had a duty of care towards Ewels and that their failure to take positive steps to protect him was actionable. This you will appreciate is a novel proposition as generally there is no duty on a person to take positive steps to protect another. You for example are under no duty to save your neighbour's house if it catches fire nor are you obliged to jump into the water to save a drowning man. The court ruled that a failure to act is unlawful in circumstances where the omission incites moral indignation and offends the legal convictions of the community. It remains to be seen whether the English courts will find Cape's conduct offensive. If the duty of care point is settled in the claimants favour they will have to show that Cape breached that duty and that this caused the workers and others to become ill. There should be no difficulty in proving that conditions in and around the mines were bad and posed a serious hazard to workers and nearby communities and also that Cape knew of these circumstances and failed to take the requisite steps to remedy the situation. The dangers of asbestos are well documented and have been known for many years. Cape can not argue that it was not aware of those dangers. Conditions in the Cape asbestos mines are also reasonably well documented and there is a wealth of testimony that can be aduced to this. It suffices to say that the evidence is to the effect that conditions in and around Cape mines were appalling and that the very high incidence of asbestosis and mesothelioma amongst workers and local residents is not at all surprising.

It has been a sobering experience for me to speak to ex-mineworkers and their families and to come to the appreciation that thousands of the people who worked in the Cape asbestos mines are dead and that they continue to die in large numbers. The scale of death, disease and poverty associated with the asbestos mining industry is quite terrible.

If there were persons, and this seems quite clear, who had a full appreciation of the harm that Cape's asbestos mining and milling operations was doing to workers and who were in a position to do something about it but did not, then those persons conduct, from a moral if not a legal perspective, falls little short of murder.

The hearings on the duty of care and other main issues will only begin later this year and the whole case will not be finalised for some years yet. Regardless of the outcome the case has important implications for the South African mining industry. The Cape case has led to a flurry of similar litigation. A second group action has been filed in London on behalf of workers who were employed at Turner and Newell's Havelock mine in Swaziland. Another case against the same company is pending in respect of workers who were employed at Ferodo in KwaZulu Natal. Yet another case has been brought on behalf of workers employed by Bells Asbestos in Cape Town.

Significantly all these cases will be tried in England. There are a number of good reasons for this;

- The plaintiffs are in the main poor they cannot obtain legal aid in South Africa and cannot otherwise afford an attorney. In England they have legal aid and are furthermore not liable for the defendants' costs even if the case is lost.
- The cases are complex and require a level of legal and technical expertise that is not readily available in South Africa.
- South African courts are very conservative when it comes to the award of general damages, that is damages for pain and suffering, loss of amenities of life, disability, emotional distress and the like. This head of damages is the principle head under which poor people can claim damages, as their actual financial losses (loss of earnings and medical expenses) are usually quite small or very difficult to prove. This means that litigating in South Africa on behalf of poor people is not cost effective.
- Until very recently SA attorneys were not allowed to take on a case on a risk (contingency) basis. Which meant that they had to take on poor people's cases for free or not at all.
- To date it has been the accepted wisdom amongst all persons that in South Africa the provisions of the Compensation for Occupational Injuries and Act (COIDA)[4], previously the Workman's Compensation Act (WCA)[5], precludes an employee from suing his employer for negligently causing him to sustain an occupational illness or injury.

This last consideration warrants some closer attention.

Section 35 of COIDA reads:

"No action shall lie by an employee or any dependent of an employee for the recovery of damages in respect of any occupational injury or disease resulting in the disablement or death of such employee against such employees employer, and no liability for compensation on the part of such employer shall arise save under this Act in respect of such disablement or death."

This section was most recently the subject of a legal challenge in the Constitutional Court in the

matter of Jooste v Score Supermarkets[3]. Jooste fell and injured her back at work and then sued her employer for medical costs and other damages. In its defence the employer raised the provisions of section 35 of COIDA but the provision was held to be unconstitutional by the Eastern Cape Division of the High Court. That decision was however reversed on appeal by the Constitutional Court, which ruled that Jooste had no right to sue her employer.

The court held that although COIDA took away certain of an employee's common law rights and in particular the right to recover his full damages from a wrongdoer, this was justifiable because COIDA conferred certain benefits upon workers in return for the loss of that right. The principle benefit conferred was the right to compensation regardless of fault; this right ensured that a worker or his family was compensated for injury or death even if this was occasioned by his own negligence. The court also said that the compensation scheme held several other advantages over the common law particularly in that it provided a speedy and cheap remedy for injured workmen and their dependents. In my modest opinion the Jooste case was poorly argued and the decision is deeply flawed. I believe that a future challenge on different grounds might well be successful. It does not appear from the judgement that the court was given any insight into the actual workings of the workmans compensation scheme and that it was therefore unaware of the massive inefficiency, incompetence and inequity that characterises its operations[5].

Even if a court might not be persuaded that section 35 is unconstitutional there are to my mind good reasons for parliament to intervene and to amend the act so as to remove the immunity that it confers on employers.

Other than the point about the ostensible benefits to workers of the no-fault compensation system, the main argument advanced in support of the employer's immunity against civil claims, relates to the negative economic consequences that might flow if employees are allowed to file potentially ruinous claims for damages against their employers. This it is argued could lead to bankruptcies, a loss of employment and a reduction in economic activity, which is obviously undesirable. Neither of these arguments has much merit and in any event the arguments that can be mustered against employers immunity are overwhelming.

Apropos the benefits of the no fault principle. The notion that industrial accidents and disease are caused primarily or even significantly by the negligence of workers cannot be sustained and is inconsistent with current thinking on occupational safety management. It is a notion predicated on the idea that if workers would just follow the rules set by management there would be no accidents and that it is the failure by workers to obey rules that is the primary cause of accidents and illness.[6]

The first British medical inspector of factories Sir Thomas Legge said in regard this;

"Unless and until the employer has done everything, and everything means a great deal, the workman can do next to nothing to protect himself, although he is naturally willing enough to do his share"[7]

Current health and safety management theory emphasises the creation of a safe work environment and stresses the need for effective management systems to eliminate or minimise workers' exposure to hazards in the workplace. Such systems emphasise, good process design, engineering, effective training, consultation and a process of ongoing risk evaluation to create as risk free an environment as is possible.

There are in my experience relatively few instances where workmen benefit from the no fault system but there are many instances where workers who are killed or disabled through the negligence of the employer are prejudiced by the hopelessly inadequate compensation provided for in COIDA. Because the premiums levied upon employers are so insensitive to the particular employers' claims history and risk, the scheme does not distinguish between good or bad employers. The net effect is that good employers end up subsidising the bad ones. The biggest criticism against the scheme is however that it provides absolutely no incentive to employers to improve health and safety standards in the workplace. In fact by subsidising the cost of killing and maiming workers it provides a positive inducement not to do anything about improving health and safety standards in the workplace.

What possible incentive can there be for a large employer to spend millions on improving safety standards if he can continue as before without consequence? Enforcement of health and safety legislation depends entirely upon a hopelessly understaffed and under resourced health and safety inspectorate and a criminal justice system that is completely out of its depth when it comes to trying violations of health and safety laws[8].

In these circumstances it should be apparent that the common law of delict is an essential instrument required to ensure that employers comply with their legal responsibilities. The restoration of workers common law rights is crucial if we are to ensure that employers are allowed to pass on the costs of poor health and safety standards and otherwise to evade their responsibilities.

The COIDA compensation scheme deserves to be thought of as a particularly inadequate, and inefficient state run insurer. The only positive thing to be said of it is that the premiums are low but this is only because it pays out only the most paltry benefits. COIDA ensures that the real cost

of occupational injury and disease is borne by the State the families of the dead and disabled and communities to which they belong.

If COIDA was scrapped, along with the immunity provisions, and replaced with a law that simply required employers to buy minimum prescribed death and disability insurance for their employees then;

- Insurance cover would be provided by private insurers at competitive rates.
- Employers would pay premiums that are directly proportional to the risk in their workplace and would therefore have an incentive to improve health and safety standards in order to reduce premiums further.
- Competition would ensure better standards of service.
- All prudent employers would take out employer liability insurance, as they do in every other industrialised country to insure against claims brought by employees who become sick or injured as a result of the employers' negligence or oversight. The cost of the premiums would be proportional to the risk and should not be excessive in a safe and well-managed workplace.
- Workmen would be compensated to some agreed minimum standard but if they wished to sue a negligent employer for the full extent of their loss they would be free to do so even if such election is made at the cost of losing their right to recover the minimum insured benefit. (This is the case in the U.K.)
- Safety standards would improve dramatically as the real cost of unsafe and unhealthy working conditions is brought home to employers.

These matters aside occupational health and personal injury lawyers have been inspired by the Cape case to look afresh at the scope that exists for litigating within the ambit of our existing law and what we have found should give the mining industry pause to reflect.

A strong argument can be made that the immunity provisions contained within COIDA do not prevent workers who do not enjoy any of the 'benefits' conferred by that act from suing their employers for damages sustained as a result of an occupational injury or disease if this was occasioned by the employer's negligence.

The most important category of workers who are excluded from the 'benefits' of the COIDA are mine workers (and those employed in works) who contract a compensatable disease that entitles them to a benefit in terms of the ODMWA[8].

Section 100 of the ODMWA expressly excludes such workers from obtaining any benefit that would otherwise be due in terms of the COIDA it reads;

"Notwithstanding anything in any other law contained, no person who has a claim to benefits under this act in respect of a compensatable disease as defined in this act, on the ground that such person is or was employed at a controlled mine or a controlled works, shall be entitled, to benefits under the Workmans Compensation Act, or any other law."

It is a canon of statutory construction that the reference to "any other law" is a reference to a statute and not the common law.

The ODMWA benefits are substantially inferior to those awarded in terms of the COIDA. Inter alia the ODMWA provides for a lump sum benefit (no pensions), there is no provision for the payment of medical costs and no provision for increased compensation in the event that the illness is caused by the employer's negligence. Because mine workers with a compensatable disease do not enjoy any of the benefits proffered by the COIDA there is no lawful basis upon which such a worker may be denied the right to sue his employer and, if he can prove his employer's negligence, to recover his full damages from him. The ODMWA was also in place long before the immunity employers enjoy by virtue of the provisions of the COIDA was extended to all categories of workers. This extension only took place in 1993 when the income ceiling that limited the 'benefits' of workmans compensation to low income workers was removed. It can therefore not be argued that the ODMWA benefit is a substitute for COIDA benefits because it always was available to mineworkers whether they fell under the scope of the workmans compensation legislation or not.

What are the implications for the mining industry if this reading of the law is correct? To answer this question we should first try to assess the number of mineworkers who are suffering from a compensatable disease, who qualify for ODMWA benefits and who are therefore not prevented from suing their employers.

The Medical Bureau for Occupational Diseases reported in its annual report that in the year 1999/2000 a total of 2623 mineworkers were certified for the first time as suffering from an occupational lung disease. The number certified in the 1998/9 year was 4038. It is widely accepted that there is a very significant underdiagnosis of compensatable lung disease and that only a small percentage of sick workers are ever compensated. So the numbers who are falling sick each year are probably significantly higher[9].

There have been two important studies done on the incidence of occupational lung disease in ex mineworkers that probably give us a fair idea of the true incidence of compensatable lung disease in ex mineworkers.[10]

A study done in Thamaga in Botswana[11] of a random sample of 234 former underground mineworkers found that 31% of them had pneu-

moconiosis but that only a "very few" had received any compensation. Progressive massive fibrosis, the most crippling form of silicosis that rapidly leads to complete respiratory failure and death, was present in 6.8% of the workers. The incidence of compensatable occupational lung disease was 3 10 per 1000.

A study of former mineworkers in Libode Transkei[12] showed that between 22 - 37% had pneumoconiosis and that of this number 65% had received no compensation at all. Of those who were compensated only 3% had received the full compensation to which they were entitled. The incidence of compensable occupational lung disease was 270 per 1000.

Provisional results of a study underway in Lesotho of a cohort of some 800 retrenched mineworkers suggest an incidence presently of 40%.

Extrapolating from the Thamaga and Libode studies Dr David Rees from the NCOH believes that there are approximately 480 000 ex mineworkers suffering from a compensatable occupational lung disease in the southern African region.

When this figure is compared to the numbers that have been diagnosed and compensated by MBOD it suggests that the total amount of unpaid compensation is in the region of 2.8 billion rands (as estimated by Dr Neil White of the University of Cape Town)[12]. It would then appear that the ODMWA compensation scheme remains solvent only because the bulk of workers who are eligible are never diagnosed and will never be compensated.

My conservative estimation of the average value of each sick Mineworkers common law claim that he might have against his employer which takes into account loss of earnings, pain and suffering and future medical expenses to be in the region of R100 000 with a range of R30 000 to R500 000. (I have had the value of a 50 year old white steelworkers loss of earnings and future medical expenses occassioned by a disabling complex of occupational lung diseases actuarially assessed at R800 000.) The value then of all claims and the potential liability of the industry is in the region of 50 billion rands.

This figure can be compared with the value of an award made in the United Kingdom in 1998 where 100 000 coal workers suffering from chronic bronchitis, asthma or emphysema were awarded damages likely to total some two billion pounds. It should be noted that that claim does not take into account the damages for pneumoconiosis which is a much more serious problem and which is our focus here.

The big question however, is whether the mining industry can be held responsible for causing the dust related lung diseases from which so many mineworkers suffer? In order to found liability it would be necessary to prove negligence. This requires the employee to establish on a balance of probabilities that:

1) The employer owed the employee a duty of care at common law or under statute.

2) The employer breached that duty of care.

3) That the employee suffered damage as a result of that breach of duty.

The first criterion presents little difficulty. Our common law obliges an employer to provide a safe working environment for its employees and for many years this duty has been elaborated upon by statute, which has sought to regulate conditions in the workplace for the benefit of employees. Specific provisions that are calculated to control and limit dust in mines and works have been in place for over 100 years. For much of that time the requirements have been very detailed and required that dust levels should not exceed prescribed levels. Much of the legislation was informed by research and recommendations made by the industry itself.

The risk of lung disease caused by excessive levels of dust has been apparent since the 16th and 17th centuries, although miners pthisis was already known to the ancient Greeks who noted difficulties with breathing and silicosis type symptoms amongst metal diggers. In South Africa the first government commission into miners pthisis was established in 1902. By the late 1930s silicosis had been identified as an occupational disease caused by the inhalation of silica dust. Ignorance of the risk of pneumoconiosis caused by heavy exposure to mining dust is not a feasible argument for defendants in this country. Nor can it be argued that employers were unaware of the fact that this disease can and frequently does result in disability and death.

A prudent South African employer could therefore be expected to have taken all reasonable steps to minimise the creation and dispersion of respirable dust by the introduction of and use of known and available dust suppression techniques in order to protect his employees against such harm.

Learned mining and metallurgical engineers, will know best the extent to which industry has carried out its duty.

The following was however found, by the Leon Commission of Enquiry into safety and health in the mining industry in 1993[13], to have been established.

- A study of shaft sinkers, developers, stopers and shift bosses shows that if they worked 8000 shifts the probability of contracting silicosis was over 30%.
- After 40 years of exposure 50 to 60% of coal miners would have coal miners pneumoconiosis.

- Urgent action was required to upgrade the standards of practice in respect of the measurement of workplace exposures, medical surveillance and the matching of those data sets to identify disease in workers and to take remedial action.
- No evidence was submitted to suggest that occupational diseases had been adequately controlled by the industry.
- There is no evidence of a downward trend in the incidence or prevalence of the diseases that are of concern to the industry.
- In 20 years 128 575 workers were certified as having contracted an occupational disease.
- The death rate of miners from all causes or disease had not dropped from 1940 to 1980.
- There had been no decline in dust levels over the past 50 years.

There is a maxim of law "res ipsa loquitur" which means "the facts speak for themselves". In terms of this doctrine a court may infer what appears to flow necessarily from the facts. I would submit that there is no clearer indication of the industry's failure to carry out its statutory and common law duties than the shocking and unacceptable incidence of occupational lung disease in this country.

It may be argued that mining is inherently risky. That the risk cannot reasonably be eliminated and there is therefore an acceptable minimum level of death and disease that we are obliged to tolerate. I have serious doubts as to the correctness of such a proposition or indeed whether such an argument would be sustained in a South African court, certainly no South African court has ever attempted to determine such a level.

In the United States however such a level has been determined for occupational diseases - it is expressed as the incidence of occupational disease per 1000 working lifetimes. A United States court has determined that one such disease per thousand working lifetimes represents an acceptable level of risk. In the South African mining industry we appear to be running at between 270 and 310 occupational diseases per 1000 working lifetimes.

The legal defence of "volenti non fit iniuria" or voluntary assumption of risk that might be raised has been found by our courts not to be applicable in the context of the employment relationship where the relative bargaining power of the contracting parties is unequal. This would be the case when a large mining company employs an individual whose alternative is to remain unemployed.

An examination by myself, of an admittedly small sample of DME records relating to a range of mines and works suggests that non compliance with statutory requirements is routine in the mining and iron and steel industries. Again you will be better placed than I to assess this.

The case against the industry is a strong one and a wave of litigation against the industry should be anticipated. Indeed as at the date of this colloquium a number of cases have been brought against a number of employers including gold and asbestos mining companies and against at least one large steelworks. The first court rulings are expected within the next few months.

Cape has changed the way we look at occupational disease in this country: it is no longer a matter that we will be prepared to tolerate, it is clear to us that someone is responsible and that someone will be made to pay. We will not be deterred even by a legal defeat on the immunity issue.

Inspired by Cape we find that new lines to secure redress keep presenting themselves. Litigating against the holding company, which is not covered by the immunity, is one such avenue. Considering the highly centralised and authoritarian character of the control exercised by many mining houses over their subsidiaries this looks like a good bet. Gold Fields of South Africa immediately comes to mind and without a loyal body of employees left to defend its conduct it must be very vulnerable.

Suing on behalf of mine workers who were employed as contractors is another possibility. The contractual waivers and indemnities now routinely insisted upon by parties who contract out their labour requirements are vulnerable and may not provide the level of security that some employers who have enthusiastically contracted out their labour requirements.

Cape has also brought out a serious contradiction in the way we deal with occupational disease. The state and the public are strongly supportive of the claimants. The media have succeeded in highlighting the victims' plight and Cape have been labeled as the callous and exploitative colonial oppressor. The misery, the poverty and the innocence of many who fell victim to these dreadful diseases when exposed as children, while washing their husbands dusty overalls or otherwise, has struck a chord. But we cannot cheer on the plaintiffs and demonise the English defendant company without coming face to face with the fact that asbestosis is only a small part of a much bigger problem. There is no difference between a worker with mesothelioma caused by asbestos exposure and a gold miner with progressive massive fibrosis. Both are innocent of wrongdoing and both face a painful and certain death. The government cannot urge us on against Cape when there are many South African companies with equally appalling records. The state cannot applaud our efforts to secure proper compensation in England and then defend the immunity that precludes us from getting

adequate compensation here.

Similarly if the British courts find that South African mining operations were conducted in a reckless and negligent manner and to the detriment of workers' health the South African judiciary will be hard pressed to arrive at a different conclusion.

Clearly there are economic implications that need to be brought into consideration. The industry should however be aware that its stock of credibility is about used up. At times gold mining has been super profitable at other times it has been very difficult but it has not made one jot of difference to health and safety standards or to levels of compensation. It should therefore consider very carefully what stance it adopts towards the pending storm of litigation. A frank acknowledgment of the industry's failings would probably be appropriate as would a public acknowledgment that compensation for occupational diseases and injuries has been woefully inadequate.

Industry should bear in mind that it is by no means clear that the mining industry is such an unqualified economic good. Commodity prices being as they are it is not at all clear that the profits and indeed other benefits generated would be adequate to pay the human, environmental and other social costs that the industry does not bring into its balance sheet. It is certainly not difficult to argue with conviction that for those communities who have traditionally supplied labour to the mines that the legacy of the generations of men who have worked and died in the mines is poverty, disease and chronic underdevelopment and that they have been net losers. Certainly and in respect of the problem of occupational lung disease, the state cannot put its financial / economic interests above its constitutional duty to protect and maintain the health of its citizens.

I believe that in the fullness of time the industry will come to an appreciation that an all inclusive settlement is in their and all the other parties best interest. A compensation fund will need to be established to be funded by the industry and possibly the state which must bear some responsibility for the poor state of occupational health in the industry. This fund would compensate former mineworkers who are suffering from an occupational disease and the families of those who have already died. The problems are huge and it will be years before any lasting solutions are found. In the interim however it is essential that the legal process take its course so that each party might come to a better appreciation of their strengths and weaknesses.

Please be under no illusion, worker advocates have limited funding, are short on skills and experience and are up against the very best lawyers in the country with unlimited budgets and resources, our legal system is slow stubborn and profoundly conservative. The mining companies are among the biggest and richest corporations on earth. They are ruthless and will stop at nothing to protect their interests. I quite expect them to start the systematic destruction of dust records and other evidence that might be used against them. As it is, they have now for many years blocked and frustrated research into the nature and extent of occupational lung disease and taken other measures to conceal the extent of the problem.

But for the fact that our cause is a just one and that we have history on our side, you may be forgiven for thinking that we cannot succeed.

References

1. Rachel Lubbe and Others v Cape PLC, House of Lords Decision 20 July 2000.
2. Ewels vs Minister of Justice 1975(3) SA590(AD).
3. Compensation for Occupational Injuries and Diseases Act No 130 of 1993.
4. Workmans Compensation Act No 27 of 1956 (Repealed)
5. Jooste vs Score Supermarkets 1999(2) SAI (CC). Shortcomings include the following:
   - It can take up to seven years for an application for a claim for additional compensation to come to a hearing.
   - Delays of a year or more between the days on which an appeal or objection is heard is common.
   - There is a backlog of over 100 0000 unopened mail items.
   - Staff are unskilled, overworked and demotivated.
   - Telephone calls and letters are routinely not answered or replied to.
   - Claims take years to be finalized.
   - Compensation is not related to lack of earning capacity resulting in ludicrously inadequate compensation awards particularly for manual workers.
   - Allegations of endemic corruption are being investigated.

   See also:
   - The Sunday Independent: "Compensation Chief Faces challenge to his official lethargy", 30 April 2000.
   - Business Day: "Workers Compensation System Ailing", 15 March 2000.
   - "Compensation for Accidents and Diseases at Work", Benjamin 1992 SALB Vol 16 No. 3.
7. Quoted in the Final Report of the Leon Commission of Enquiry into Safety and Health in the Mining Industry.
8. In 1997 the inspector employee ratio in South

Africa for all employees excluding mining was the worst of all the developing countries considered by Benjamin and Greef, namely 1:58 274 for SA compared to 1:12 503 for Brazil. Report of the Committee of Enquiry into a National Health and Safety Council in South Africa 1997 pages 132-136. Since then with the collapse of the Department of Labour safety inspectorate the ratio has got a great deal worse. There has also been a very severe deskilling in the inspectorate. There has not been one single criminal prosecution of an employer for excessive dust levels nor has there ever been a formal enquiry into any incident where a worker has contracted an occupational lung disease.

9. Occupational Diseases in Mines and Works Act No 78 of 1973.
10. Professor David Rees, Director of the National Centre for Occupational Health states: "many occupational health practitioners would accept the contention that South Africa is experiencing an epidemic of occupational lung disease. We would be hard-pressed however, to prove the case using the usual data sources of compensation statistics, national disease registers and surveillance programmes. This is because our routinely collected data are characterized by gross under-reporting and difficulties in extracting formatted information from its curators" Rees D 2000 PI O, The Burden of Occupational Lung Disease, Occupational Health SA Vol 6 No 4. Rees states that the available information "underestimates disease burdens markedly" (ibid, P10).
11. Steen TW, White NW, Gyi KM et al. "Prevalence of occupational lung disease among Botswana men formerly employed in the South African Mining Industry. Occupational and Environmental Medicine 1997 volume 54, pages 19 to 26.
12. American Journal of Industrial Medicine "Prevalance of Occupational Lung Diseases in a random sample of former Mineworkers, Libode District, Eastern Cape Province, South African". Trapido AS, Mgogi NP Williams BG White N W, Solomon A, Goode RH, Macheleke CM, Davies JCA and Panter C, 1998.

Chamber of Mines Certificates

Intermediate Certificate and Certificate in Mine Environmental Control

	Dates	
	June 2002 Session	**October 2002 Session**
Final Registration	06 May 2002	09 September
Intermediate:		
Paper 1	18 June 2002	15 October 2002
Paper 2	19 June 2002	16 October 2002
Certificate:		
Paper 1	18 June 2002	15 October 2002
Paper 2	19 June 2002	16 October 2002
Paper 3	21 June 2002	18 October 2002
Paper 4	24 June 2002	21 October 2002
Paper 5	26 June 2002	23 October 2002
Paper 6	28 June 2002	25 October 2002

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