Supreme Court Voids Settlement in Asbestos Suit

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The U.S. Supreme Court rejected a $1.5-billion settlement of thousands of asbestos claims Wednesday, saying the deal between a major manufacturer, its insurance carriers and a group of plaintiffs' lawyers had unfairly compromised the rights of victims.

The 7-2 decision could have broad ramifications for a host of major cases because businesses faced with huge potential damages in lawsuits involving large numbers of plaintiffs increasingly have seen class-action settlements as attractive.

The specific type of settlement at issue here--a so-called mandatory class action--has been relatively uncommon, but lawyers on both sides of the case agreed that they would have increased rapidly had the high court approved this one.

The court's ruling did not directly affect a broad group of class actions, such as those often reached in securities and consumer lawsuits in which plaintiffs have the right to accept a settlement or pursue their claims individually.

In a mandatory class action, numerous claims are consolidated into a single lawsuit, and individuals have little--in some cases no--rights to pursue their claims separately if they are unsatisfied with the result.

The usual justification for a mandatory class action is that it is the only fair way to distribute a limited amount of money. But Justice David H. Souter, writing for the majority, stressed that the target of the suit, Fibreboard Corp., would have kept all but $500,000 of its $235-million net worth at the time the deal was negotiated.

"It hardly appears that such a regime is the best that can be provided for class members," Souter wrote in his decision in Ortiz vs. Fibreboard Corp. (97-1704). He strongly suggested that the attorneys who negotiated the settlement on behalf of the plaintiffs had potential conflicts of interest.

The argument over class actions involves two conflicting principles. On the one hand, courts have struggled to handle cases in which tens of thousands of people bring similar suits claiming injury from a product, such as asbestos.

Streamlined Handling of Court Cases

Class actions provide a streamlined way of handling what Souter referred to as "the elephantine mass" of cases clogging the courts.

In the asbestos litigation, for example, about 80,000 cases were filed in the last decade. Between 13 million and 21 million Americans have been exposed to asbestos, a fire retardant that was widely used until doctors discovered it can cause lung cancer and a host of other serious diseases--most of which do not show symptoms until years after the original exposure.

In many cases, litigation has dragged on so long that victims have died before their cases could be tried.

Supporters of class actions, including the plaintiffs' lawyers, who can collect very large fees by negotiating the deals, defend them as innovative responses to that vexing problem.

On the other hand, requiring all victims to be bound by one proceeding inevitably limits the rights of individuals to their own day in court. And because different groups of plaintiffs may have somewhat different interests, conflicts often arise.

In this case, Fibreboard battled for more than 10 years, both with people claiming asbestos injuries and with its insurance companies.

In 1993, Fibreboard and the insurers agreed to negotiate a "global settlement" of thousands of asbestos claims. The insurers had one absolute condition: that Fibreboard and plaintiffs' lawyers come up with a deal that would prevent individuals from opting out of whatever settlement was reached. That would allow the insurers to know what their future liability might be.

Fibreboard then approached a group of leading plaintiffs' lawyers to try to resolve thousands of cases as well as about 186,000 other claims the company anticipated would be filed in the future.

Ultimately, the company and the plaintiffs' lawyers agreed on a $1.5-billion deal, which they concluded about midnight in a coffee shop in Tyler, Texas.

The deal provided for the company to put up about $500,000 and the insurers to contribute the rest. But special provisions were made for about 45,000 cases that had been previously settled by the main plaintiffs' law firm, Ness, Motley, Loadholt, Richardson & Poole of

Charleston, S.C., Souter noted. The firm represents more people in asbestos cases in the U.S. than any other law firm.

The settlement was approved as a class action by U.S. District Judge Robert Parker in Beaumont, Texas, and upheld by the U.S. 5th Circuit Court of Appeals.

A group of plaintiffs who objected to the deal asked the high court to review it. The justices found the settlement defective in two primary ways.

First, Souter said, the lower court judges had not looked carefully enough at the amount of money that was available for the deal from both Fibreboard and the insurance carriers. The $1.5-billion sum materialized out of negotiations between those parties, without regard to other relevant factors, he noted. In fact, Fibreboard's stock value skyrocketed after the settlement was announced, and the company was subsequently purchased by Owens Corning of Toledo, Ohio.

"The company wanted to plead poverty and walk away with hundreds of millions," said Harvard Law School professor Laurence H. Tribe, who represented the plaintiffs who objected to the settlement.

William Hamilton, a spokesman for Owens Corning, said the company had anticipated that the settlement might be struck down by the high court and expects to use $1.9 billion in insurance funds to settle the cases it inherited from Fibreboard.

Souter Notes Lawyers' Interest

Souter also noted pointedly that the plaintiffs' lawyers had a definite interest in not challenging Fibreboard's figures because they want to reach a settlement that can generate huge fees not only in this settlement but in the earlier deal on the other 45,000 cases.

As his second major point, Souter wrote that, even if the "limited fund" had been adequate, it was impossible for all the claimants to be fairly represented by the same lawyers.

"This decision is an enormous victory for consumers and anyone concerned with class-action abuse," said Arthur Bryant, executive director of Trial Lawyers for Public Justice, a Washington public interest firm.

He said his organization is fighting similar settlements, including one involving health problems caused by arsenic and another involving cigarette maker Liggett Group.

But while firmly maintaining that the settlement was flawed, Souter acknowledged that he had no immediate solution to the overall problem of balancing the competing goals of fairness and judicial efficiency. Instead, he called on Congress to pass legislation to solve the problem.

The cases involving Fibreboard "show how this litigation defies customary judicial administration and calls for national legislation," he said.

Congress has made several attempts to forge a legislative solution to the asbestos problem, as it did with the "black lung" diseases that afflict coal miners. A new bill to create a national out-of-court compensation program for asbestos victims has been introduced and is set to have its first hearing in the House Judiciary Committee on July 1.

In his dissent, Justice Stephen G. Breyer, joined by Justice John Paul Stevens, said it was not enough to lament the fact that Congress had failed to act.

The high court should be more receptive to new types of solutions, he wrote.

"When calls for national legislation go unanswered, judges can and should search aggressively for ways, within the framework of existing law, to avoid delay and expense so great as to bring about a massive denial of justice," Breyer said.