



Zero mine deaths unrealistic, but silicosis is dipping – lawyer

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Willem le Roux, the director of Brink Cohen Le Roux Attorneys, says the fatality rate in mining is lower than in fishing or public transport. Photo: Leon Nicholas

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While the number of people diagnosed with silicosis has dropped over the years, the target of zero fatalities in the mining sector is unrealistic, according to mine law expert Willem Le Roux, the director of Brink Cohen Le Roux Attorneys.

Le Roux told the LexisNexis mine health and safety seminar in Johannesburg yesterday: "We are not in heaven, people die, people make mistakes and become complacent. What the Department (of Mineral Resources) should do is look at the acceptability rate of the risk."

He said it was important to compare the mining sector's acceptability of risk with other industries. According to an actuarial assessment conducted by Le Roux, the fatality rate in mining was 0.34 people per 1 000 employees in 2009, whereas the fatality rate in the fishing industry was 0.53 per 1 000 in the same period. The rate was at 0.5 in the public transport sector and 0.15 in construction, but he suspected significant under reporting by small builders.

"Unfortunately it is difficult to compare safety statistics in mining with the situation outside mining, as the Department of Labour last published statistics in 1999."

Frans Baleni, the general secretary of the National Union of Mineworkers, argued that the fatalities in the mining sector were higher than in other industries, except for the public transport sector. "Leave out the assessment of risk, let them give you the actual statistics of fatalities, and you will see they are high in mining."

The Department of Mineral Resources said the number of mining deaths had dropped to 128 last year



from 168 in 2009.

The number of new cases of silicosis totaled 1,694 in 2009, compared with 1 778 in 2008, but the number had increased from 572 in 2004, Le Roux said.

Silicosis is a respiratory disease caused by breathing silica dust, silica is a natural occurring crystal that is found in rock beds and forms dust during mining. It often leads to tuberculosis and death.

The South African government has committed to significantly reducing the prevalence of silicosis by 2015 and to eliminating it by 2030, in line with the Global Program for the Elimination of Silicosis of the International Labour Organization and the World Health Organization.

The Constitutional Court in March ruled that Thembekile Mankayi, an employee at mines owned by AngloGold Ashanti between 1979 and 1995 who contracted tuberculosis, could sue the company for damages if the employer failed to provide a safe and healthy environment.

The ruling stated that Mankayi was not barred from making claims as his occupation was covered by the Occupational Diseases in Mines and Works Act. Mankayi, who died the day before the ruling, initially sued AngloGold for R2.6 million.

Le Roux said as a result of the court ruling, a large number of employees could sue mining companies for contracting silicosis and other diseases.

"It is impossible to quantify the total number of employees who will take recourse, the total amount of damages."

Although Le Roux criticized the Constitutional Court's decision, he emphasized the need for investigations into the statutory compensation system. He said the benefits that were being paid to employees who suffered from lung diseases were inferior to the compensation payable by the Compensation for Occupational Injuries and Diseases Act.

He explained that compensation for lung diseases in the mining industry was regulated by the Occupational Diseases in Mines and Works Act, which had its own compensation prescription. Payouts for diseases were less than the compensation payable to mining employees who sustained injuries that might be fatal.

Eighteen former Anglo American miners are suing the company for failing to provide them with sufficient masks or other protective gear. page 16