

# Class action could suck the breath out of the mining industry

 By [Nicci Botha](#)

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Although any sort of judgement or outcome is still years off, the high court ruling that a class action by miners affected by silicosis and tuberculosis can go ahead against their former employers will no doubt have mining houses panicked.



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The judgment, reached by a full bench, found in favour of the 69 mineworker applicants, and the estimated 200,000 of their colleagues they represent.

## What the class action covers

- The fact that TB is included in the class is significant as there is a higher incidence of TB than silicosis among mineworkers, but the causal effect as being directly related to their jobs would be harder to prove.
- Given many of those who contracted occupation-related lung diseases (OLD) may have already died, the court's ruling that descendants may take part in the class action is another major victory to the applicants.
- Mineworkers from neighbouring countries, such as Lesotho and Swaziland, are also eligible to join the class action.

## What the court said

"The only way justice can prevail in the cases of individual mineworkers or their descendants is if they are afforded an opportunity to pursue their claims by at least having significant parts of it determined through a class action," read the judgment.

“Accordingly, we reject the submissions of the mining companies that the class action is untenable and unmanageable and hold to the contrary.” The judgment said it was “unfortunate” that mining companies have chosen to ignore claims they have tried to obstruct the course of justice.

The list of defendants in the case include Harmony Gold, Gold Fields, AngloGold Ashanti, Sibanye Gold, African Rainbow Minerals (ARM) and Anglo American, all of which formed the OLD working group in 2014.

“The miners said that, while they did not believe they were liable in respect of the claims brought, and were defending these, they did believe they should work together to seek a solution to this South African mining industry legacy issue,” [Mining Weekly](#) reported at the time.

Despite this abdication of responsibility, a number of the gold producers have made financial reparation to miners not involved in the class action for OLD-related claims.

The [latest settlement](#) of R464m was placed in an independent trust by AngloGold Ashanti and Anglo American for 4,400 stand-alone silicosis claims.

## OLD working group’s response

The OLD working group is studying the judgment and each company will decide whether to lodge an appeal against the silicosis finding.

"The companies remain of the view that there are issues related to compensation and medical care for occupational lung disease that need to be addressed through engagement between stakeholders, with a view to designing and implementing a comprehensive solution that is both fair to past, present and future gold mining employees, and also sustainable for the sector," a statement issued on their behalf said.

If the class action were to go ahead and went the way of the applicants, the cost would literally bring the gold mining industry to its knees. A more likely scenario is, whether or not they decide to appeal, the mining companies will look to negotiate a settlement.

## ABOUT NICCI BOTHA

Nicci Botha has been wordsmithing for more than 20 years, covering just about every subject under the sun and then some. She's strung together words on sustainable development, maritime matters, mining, marketing, medical, lifestyle... and that elixir of life - chocolate. Nicci has worked for local and international media houses including Primedia, Caxton, Lloyd's and Reuters. Her new passion is digital media.

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