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ASBESTOS CLAIMS AND LITIGATION

***UPDATE AND REVIEW: 2006 NEW CASE FILING
SUMMARY AND ANALYSIS***

July 1, 2007



PURPOSE AND SUMMARY OF THIS REPORT

The Asbestos Trust Fund Services Group (ATFS Group) arose as a result of demand for informed, timely, and sophisticated advice by affected parties, principally defendants and their insurers, concerning proposed, and pending, federal legislation to channel asbestos claims, and pending litigation, into a federally-administered, and privately funded, trust fund for asbestos claims. The ATFS Group issued its first comprehensive Report, containing a review and analysis of American asbestos litigation from its inception, with an emphasis of the science, medicine, and government regulatory issues which underlay the litigation, and traced the development of the litigation, including significant developments, and defendant strategies, and company bankruptcies, ending with an analysis of the trend in the cases through calendar year 2005, on December 31, 2006.¹

Since that time, as the likelihood of the federal legislation has receded,² the ATFS Group has turned its attention to responding to requests for information, and providing consulting services to interested parties who seek guidance based upon the ATFS Group members' experience and knowledge about the workings of the asbestos litigation.

This report was timely, and well received, since it has become apparent that many parties with an interest in trends in the asbestos litigation had difficulty obtaining accurate data about recent case filings, and the rapidly-developing changes and trends in the cases. Partly, this lack of information may be explained by the emergence of bankrupt defendant trusts as a rapidly increasing source of compensation to claimants with asbestos-related disease,³ and parallel developments in the courts as filing patterns changed in response to recent judicial rulings, and a general tightening of judicial oversight to the cases.⁴

¹ **ASBESTOS CLAIMS AND LITIGATION: ISSUES AND STRATEGY; AN ANALYSIS OF THE CASES THROUGH 2005 AGAINST AN HISTORICAL CONTEXT**, © Asbestos Trust Fund Services Group, Dec. 1, 2006. The report may be accessed at www.asbestostrustfundservicesgroup.com.

² Fairness in Asbestos Injury Resolution Act, ("FAIR ACT"), S.F. 852, introduced April 19, 2005. For a history of the FAIR Act, and its amendments, see www.asbestostrustfundservicesgroup.com, News and Recent Developments page; See, Levin, Hervey P., *Quo Vadis?: Initial Congressional Actions, and More to Come*, TortSource, Tort Trial and Insurance Practice Section, American Bar Association, vol. 9, no. 3, p. 5, Spring, 2007.

³ See, Austern, David, Bhagavatula, Raji, *Not Over Yet*, Best's Review, pp. 74-8, April, 2007.

⁴ *Id.*, See also, Administrative Order No. 12, In Re: Asbestos Products Liability Litigation (No. VI), Multi-District Asbestos Litigation (MDL) 875, James, T. Giles, Judge, United States District Court, Eastern District of Pennsylvania, May 31, 2007 (more stringent case-specific submissions required to maintain actions); *Borg-Warner Corporation v. Flores*, No. 05-0189, Texas Supreme Court, June 8, 2007 (more stringent defendant-specific



Concurrent with these trends has been renewed scientific and medical research and analysis of the etiology, diagnosis, and progression of asbestos-related disease, along with a continued high level of reported asbestos-related disease.⁵

One result of the emergence of the asbestos bankruptcy trusts is an availability of public data concerning filings received by some of the trusts, in particular, the Manville Trust. For example, mesothelioma case filings with the Manville Trust have increased from 2.88% to 16.34% of total filings from 2000 to 2006, while the number of mesothelioma claim filings has ranged from 1,577 in 2000, to a high of 2,800 in 2003, to 1,497 in 2006.⁶ Much more difficult to obtain is an accurate reading of the cases filed in the courts throughout the United States, because of the fact that most cases are initiated in the state courts where there are no centralized, national, easily-available databases to review new case filings. As a consequence, most analysts attempting to review the most recent trends in the litigation, and make projections based upon that data, have come to rely upon the publically-available Trust data, or, in some instances, confidential data provided by certain defendants as to case filings against those defendants. Defendants naturally are wary about disclosing such data given the past propensity of an increased profile in the litigation to tend to attract more cases.

The ATFS Group has sought to fill this gap with a compilation of new case filing data in jurisdictions where its members are active in representing defendants in the litigation. Its 2006 Report provided a list of new cases filed in 2005 in those jurisdictions, and described the compilation as the first of annual reviews of new case filings in the court system.⁷ What follows is the annual update for 2006.

exposure evidence required in Texas); Spain, Hastings, Ward, Carey & Chambers, *Plaintiffs Must Show Product-Specific Dosage Amounts in Asbestosis Cases*, Environmental & Toxic Tort newsletter, Second Quarter, 2007 (new requirements in Texas).

⁵ See, e.g., Mark, Eugene J., Kradin, Richard L., Christiani, David C. eds., *Current Concepts in Asbestos Related Lung Disease*, MASSACHUSETTS GENERAL HOSPITAL, HARVARD MEDICAL SCHOOL AND DEPARTMENT OF ENVIRONMENTAL HEALTH, HARVARD SCHOOL OF PUBLIC HEALTH, Boston, MA April, 2007 (increasing incidence of mesothelioma in USA, UK, Australia, Japan, p.23, mesotheliomas expected to peak in Europe and Australia in 2010-20, p.24; striking increase in incidence of mesothelioma, p. 292); Middendorf, Paul, Zumwalde, Ralph, Castellan, Robert, on behalf of NIOSH Mineral Fibers Work Group, *Asbestos and Other Mineral Fibers: A Roadmap for Scientific Research*, Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, February, 2007 (draft report) (asbestosis deaths peaked in USA in 2000, continue at stable levels, p.5; mesothelioma deaths continue to increase in USA, p. 6); Nolan, R.P., Langer, A.M., Ross, M., Addison, J., Gee, J.B.L., *Non-occupational exposure to commercial amphibole asbestos and asbestos-related disease: is there a role for grunerite asbestos(amosite)?*, Proceedings of the Geologists Association, 118, 117027, March, 2006 (review of fiber type and disease).

⁶ See, fn. 3, supra, p. 76 (Manville Trust claim filings), p. 78 (other trusts' mesothelioma trust payments).

⁷ See, fn. 1, supra, **ASBESTOS CLAIMS AND LITIGATION**, at pp. 39-40.



NEW ASBESTOS CASES FILED IN SELECTED JURISDICTIONS - 2006

<u>State Courts</u>	<u>2006 - Mesothelioma</u>	<u>2006 - Other Diseases</u>
Alabama	17 (24 pending)	85, other diseases (149 pending)
California (San Francisco and Alameda Counties)	25 (156 pending)	170, other diseases (344 pending)
Connecticut	28	21, other diseases
Delaware	261	28, other diseases
Georgia	333 (pending)	3229, other diseases (pending)
Illinois (Cook County)		134, all diseases, incl. mesothelioma
Indiana		33, all diseases, incl. mesothelioma
Louisiana, (partial survey of Parishes)	2	95
Maine	6	2, other diseases
Maryland		771, all diseases, incl. mesothelioma
Massachusetts	50	89, other diseases
Michigan	36	783, other diseases
Minnesota	16	34, other diseases
Mississippi	3 (known)	819, all diseases, incl. mesothelioma
New York	107	556, other diseases
North Dakota	2 (known)	81, all diseases, incl. mesothelioma
Ohio	77 (known)	304, other diseases
Rhode Island	37	8, other diseases
Texas		1,102, all diseases, incl. mesothelioma
West Virginia		103 Complaints w/ multiple plaintiffs per Complaint, all diseases, incl. mesothelioma
<u>Federal Court</u>		<u>2006 - All Diseases</u>
U.S. District Court., E.D. Pa., MDL 875 (Multi-district Asbestos Litigation) Docket, (Sept. 30, 2005 - Sept. 30, 2006)		1,406, all diseases (35,033 pending, all diseases)



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CONCLUSION

In this Report, the ATFS Group has provided a review of new case filings during 2006 in the asbestos litigation in jurisdictions around the country to summarize how the litigation is progressing in the courts and to present data about the new cases based upon the actual experience of ATFS Group members in the asbestos litigation. This, the first of annual updates, supplements the data presented in the ATFS Group's comprehensive Report of December 1, 2006.

For further information concerning the matters expressed in this Report, please contact members of the ATFS Group. They may be contacted through; www.asbestostrustfundservicesgroup.com.