



ASBESTOS CLAIMS AND LITIGATION

***UPDATE AND REVIEW: 2007 NEW CASE FILING
SUMMARY AND ANALYSIS***

May 1, 2008

PURPOSE AND SUMMARY OF THIS REPORT

The Asbestos Liability Risk Assessment Group (ALRA Group) provides informed, timely, and sophisticated advice to affected parties, including defendants, potential defendants, the insurance and reinsurance industry, financial institutions, financial analysts, and policymakers, with respect to asbestos liability risk assessment issues. The ALRA Group arose as an outgrowth of a prior group, composed of the same principals, the Asbestos Trust Fund Services Group (ATFS),¹ which was formed to offer advice and counsel 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,² 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. Following that Report, a demand for annual update Reports was created. This Group responded with its update of the asbestos litigation in 2006.³

These reports were timely, and well received, as parties with an interest in trends in the asbestos litigation have had a continuing need in obtaining accurate data about recent case filings, and the rapidly-developing changes and trends in the cases. It remains difficult to obtain 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 asbestos Bankruptcy trust data⁴, or, in

¹ The ATFS changed its name, and formally became the ALRA Group on August 1, 2007.

² **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 in the Archive on this site under “News and Updates.

³ **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2006 NEW CASE FILING SUMMARY AND ANALYSIS**, July 1, 2007.

⁴ See, e.g., Manville Personal Injury Settlement Trust, www.mantrust.org (Johns-Manville Corporation); NGBodily Injury Trust, www.ngcbitrust.org (National Gypsum Company); Western Asbestos Settlement Trust, www.wastrust.com (Western Asbestos Company, MacArthur Company, Western MacArthur Company); Bankruptcy Services, LLC, www.bsillc.com (United States Mineral Products Company); The Trumbull Group, LLC, www.asbestos-ppc.com (Pittsburgh Corning Company); Logan & Company, Inc., www.loganandco.com (United

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.

With this, the third in a series of annual Reports, the ALRA Group has successfully filled this gap with a compilation of new case filing data in jurisdictions where its members are active in representing defendants in the litigation. Its prior Reports provided a list of new cases filed in 2005 and 2006 in those jurisdictions. What follows is the annual update for 2007.

There have been a number of developments which show that asbestos liability in 2007 does not conform to historical trends. New trends are emerging, and many commentators have found themselves behind the curve, relying upon older, historical data. Efforts to scientifically, or statistically, predict asbestos litigation trends have been inconsistent, and often contradictory. For example, on an issue as basic as the trends in incidence in the asbestos-related disease, some evidence describes an increasing incidence⁵, while some describe a decreasing incidence. There have been a number of legal developments whereby the courts have taken a critical look at the evidence supporting plaintiffs' asbestos-related claims.⁶ However, recently we have seen

States Gypsum Company, USG Corporation, *et. al.*); M.H. Detrick Co. Asbestos Trust, www.resasb.org(M.H. Detrick Company); UNR Trust, www.cpf-inc.com (UNARCO, f/k/a Union Asbestos & Rubber Company, UNR Industries, Inc.); Connecticut Valley Claim Service Company, www.cvcsc.com (H.K. Porter Company).

⁵ For example, much informed commentary has described malignant mesothelioma incidence to be decreasing. E.g., Price and Wilson, *Trends in Incidence of Mesothelioma and Evaluation of Exposure to Asbestos*, published in Proceedings of The Health Effects of Chrysotile Asbestos: Contribution of Science to Risk - Management Decisions, The Canadian Mineralogist, Special Publication 5, pp. 55-61, Mineralogical Assoc. of Canada, Ottawa, Ontario, Canada, 2001. Conversely, researchers at the Harvard Medical School have described an increasing incidence of malignant mesothelioma. Mark, Eugene J., M.D., *Current Concepts in Asbestos Lung Disease, Fourth Annual Course*, Harvard Medical School, Department of Continuing Education, Boston, MA, 2008. State data supports a potential increasing incidence. See, e.g., Perkins, C., Bushhouse, S., *Cancer in Minnesota, 2004: Preliminary Report*, Minnesota Cancer Surveillance System, St. Paul, MN, March, 2006. Other asbestos-related disease shows similar patterns. For example, it is generally accepted that asbestosis has been decreasing since the late 1970's. Yet, in testimony to Congress, on behalf of the National Institutes of Occupational Safety and Health (NIOSH), data was presented showing an increased incidence of U.S. asbestosis deaths. Weissman, David N., M.D., NIOSH, testimony to Committee on Environment and Public Works, United States Senate, June 12, 2007. An authoritative study by the NIH Institute of Medicine, Board of Population Health and Public Health Practices dispels links between asbestos and pharyngeal, stomach, colorectal, and esophageal cancer, but confirms causation as to laryngeal cancer. LaBoon, J., Horne, N., *Recent NIH Study on "Non-Traditional" Cancers*, DRI Asbestos Medicine Seminar, November 8-9, 2007, San Diego, CA.

⁶ See, e. g., *Borg-Warner v. Flores*, 232 s.W.3d 765 (Texas 2007, *Rehearing denied*. (Texas Supreme Court adopted a strict "substantial factor" analysis in determining causation in asbestos cases); *Georgia-Pacific Corp. v. Fred Stephens and Betty Stephens*, No. 01-05-00132-CV (Texas App. Houston, 2007), WL 234882 (Texas appellate Court applied the new *Borg-Warner* standard and required specific evidence of dose of exposure); Opinion

evidence of increased asbestos liability risk. For example, a federal Judge in Illinois remanded cases to state court in Madison County, Illinois, one of the traditionally plaintiff-friendly asbestos litigation jurisdictions, rejecting a challenge to state court jurisdiction under the doctrine of Federal Officer removal jurisdiction.⁷ Likewise, juries continue to return a number of significant verdicts in asbestos cases.⁸

Finally, what would a recent year be without congressional action over asbestos? Like every Congress since 2001, the 110th Congress in 2007 considered asbestos - related legislation, this time a nationwide asbestos - containing products ban titled the "Ban Asbestos in America Act 2007", introduced in the Senate by Senator Boxer, and in the House by Representative Cohen.⁹

Following Frye Hearing, *In Re Toxic Substance Cases, Incorporated by Reference, A. John Vogelsberger and Freda M. Vogelsberger v. Owens-Illinois, Inc., et. al.*, Allegheny County, Pennsylvania, Court of Common Pleas, Civil Division-Asbestos, No. A.D. 03-319, August 17, 2007 (precluding plaintiffs' experts testimony attributing plaintiffs' asbestos-related disease to any individual defendants' friction products because of deficient methodology); Ruling on Motion in Limine Under *Frye v. United States, Free v. Amatek, et. al.*, King County, Washington, Superior Court, Cause No. 07-2-04091 SEA, February 29, 2008 (precluding testimony of pathologist Dr. Samuel Hammer that every exposure to asbestos should be considered a substantial contributing factor to mesothelioma).

⁷ Memorandum and Order, *James Weese v. Union Carbide Corporation, et. al.*, U.S. District Court, Southern Dist., Ill., G. Patrick Murphy, Judge, October 3, 2007.

⁸ See, e.g., *Thomas Hastings v. ACandS, Inc., et. al.*, Baltimore City, Maryland, Circuit Court, February 21, 2008 (\$15,335,274); *Buttitta, et. al., v. Asbestos Corp., Ltd., et. al.*, Bergen County, New Jersey, Superior Court, February 26, 2008 (\$30,300,000); see also, White, Michelle J., *Asbestos Litigation: Procedural Innovations and Forum Shopping*, Journal of Legal Studies, pp. 365-398, University of Chicago, 2006 (statistical analysis of asbestos jury verdicts across various jurisdictions); See generally, Lenckus, Dave, *Asbestos Still No 1 Mass Tort Risks*, Business Insurance, November 5, 2007; Schiavoni, Tancred C., III, Marden, David, *Asbestos Claims: No Final Answer*, Best's Review, May, 2008; Copland, James R., *Trial Lawyers Inc. Asbestos; A Report on the asbestos Litigation Industry, 2008*, Manhattan Institute for Public Policy, available at, www.manhattan-institute.org.

⁹ S. 742, A Bill to amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products, and for other purposes, March 1, 2007; H.R. 3285, (companion Bill), August 1, 2007.

NEW ASBESTOS CASES FILED IN SELECTED JURISDICTIONS - 2007

<u>State Courts</u>	<u>2007 - Mesothelioma</u>	<u>2007 - Other Diseases</u>
Alabama	1	41, other diseases
California (San Francisco and Alameda Counties)	116	390, other diseases
Connecticut	19	16, other diseases
Delaware		238, all diseases
Florida	18	12, other diseases
Georgia	10	11, other diseases
Illinois (Cook County)	43 (known)	68, other diseases
Maine	4	3, other diseases
Maryland		661, all diseases, incl. mesothelioma
Massachusetts	49	85, other diseases
Michigan	22	560, other diseases
Minnesota		95, all diseases, incl. mesothelioma
Mississippi	14 (known)	
New York	105 (approx.)	300, other diseases
North Carolina	2 (known)	298, other diseases
North Dakota	4 (known)	64, all diseases, incl. mesothelioma
Ohio	68 (known)	218, other diseases
Pennsylvania (Philadelphia)		198, all diseases, incl. mesothelioma
Rhode Island	41	13, other diseases
South Carolina	12	193, other diseases
Texas		376, all diseases
West Virginia		60, all diseases, incl. mesothelioma
U.S. District Court., E.D. Pa., MDL 875 (Multi-district Asbestos Litigation) Docket, (Sept. 30, 2006 - Sept. 30, 2007)	0	35,881 pending, all diseases

CONCLUSION

In this Report, the ALRA Group has provided a review of new case filings during 2007 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 ALRA Group members in the asbestos litigation. This, the second of a series of annual updates, supplements the data presented in the ATFS Group's 2006 Update Report.

For further information concerning the matters expressed in this Report, please contact members of the ALRA Group. They may be contacted through <http://www.ALRAGroup.com>.

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