



ASBESTOS CLAIMS AND LITIGATION

***UPDATE AND REVIEW: 2008 NEW CASE FILING
SUMMARY AND ANALYSIS***

June 20, 2009

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 annual updates of the asbestos litigation in 2006, and 2008.³

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.

With this, the fourth 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, 2006, and 2007 in selected jurisdictions. This is the annual update for 2008.

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, **ASBESTOS CLAIMS AND LITIGATION: UPDATE AND REVIEW: 2007 NEW CASE FILING SUMMARY AND ANALYSIS**, May 18, 2008 .

There continue to be a number of developments which show that asbestos liability in 2008 is evolving from 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. However, as 2008 has concluded, the best assessment of where the trends in case filings are headed continues to be in actual cases filed. As practicing asbestos defense counsel, the members of the ALRA Group have been able to compile those case data in key, representative jurisdictions, as compiled below.

As to these cases filed in 2008, a number of general observations can be made. First, the trend in disease mix from pulmonary cases, to malignancies, and, in particular, malignant mesotheliomas, continues. There seem to be a number of reasons for this, including the fact that there are simply less cases of asbestos-related pulmonary disease, particularly asbestosis. Such diseases result from historically high, prolonged, exposures to asbestos, something that has generally not occurred over the past few decades, especially since the passage of the OSHA asbestos standard and its continued reduction of its permissible exposure level to asbestos in the workplace. In addition, an important development has been the large scale abandonment of litigation over non-impaired claimants with asbestos-related pleural disease. This has resulted from the fact that Plaintiffs' firms are no longer employing extensive mass pulmonary screenings, from which most such cases resulted, the adoption by the courts of inactive or non-impaired dockets for such cases, and a general reluctance for Plaintiffs' counsel to take and pursue such cases.⁴

Moreover, the ability to package weaker pulmonary cases with more serious malignant cases continues to be more difficult for the Plaintiffs' counsel. Increasingly, cases are being examined, and must be pursued, on their own merits. For example, after a period of years in which there was generally little activity, the federal court Multi-District Litigation for asbestos, the MDL 875 in the Eastern District of Pennsylvania at Philadelphia, has been assigned to a new Judge, Eduardo C. Robreno. He began more vigorously pushing cases to resolution. In addition, he has attempted to solve one of the major bottlenecks of the litigation the sloppy application of Administrative Order No. 12 which requires the counsel for any Plaintiff who wants to move the case along to prepare, serve and file submissions containing specific product identification and medical evidence. On December 23, 2008, Judge Robreno entered Administrative Order No. 12A which required Defendants objecting to the sufficiency of such submissions to provide Plaintiff-specific objections. This Defendants have now begun to do. This is having the intended effect; isolating each claim for case specific examination, and examination which either results

⁴ See, Cloud, Ian P., *Future of Asbestos Litigation - Plaintiff Perspective, Current Concepts in Asbestos Related Lung Disease*, Fifth Annual Course, Harvard School of Public Health, April 10-11, 2009.

in a remand and movement of the case, or its dismissal.⁵

Another development is an increasing portability of mesothelioma cases. Traditionally, mesothelioma cases, like other asbestos cases, with some exceptions, have generally been commenced in the jurisdiction where the Plaintiff resided. This resulted from the fact that such cases typically were handled by Plaintiffs' counsel in those jurisdictions. While they often associated with national asbestos counsel, the cases were generally venued locally. More recently, national advertising on television, and through the internet,⁶ has resulted in mesothelioma cases being handled by referring counsel,⁷ who appear to shop such cases around to the most favorable jurisdiction. given that venue is often dependent upon where the Defendant did business, and most Defendants did business in many states, this has been a successful strategy. For example, Delaware has become a jurisdiction of choice since many Defendants are incorporated there.⁸

⁵ See, for example, filings by Crane Company titled, Crane Co's Motion For Rule To Show Cause as to Why Certain Claims Should Not be Dismissed Pursuant to Administrative Order No 12A., MDL 874, U.S. D.C., Eastern Dist., Pa.

⁶ "Mesothelioma Lawyer" is one of the expensive search terms on Google, and with other search engines on the internet. See, Cloud, *The Future of Asbestos Litigation -Plaintiff Perspective*, Note 4.

⁷ See, *The Law Firm That Operates Like an Ad Agency*, AdAge, March 23, 2009; Sokolove, J., *Sokolove Means Success*, Vol. 1, April, 2009.

⁸ See, Denise Leslie Kraft, *Commentary: Rhode Island Appears to Shut The Door to Out-of-State Asbestos Litigants While Delaware Continues to Leave Out The Welcome Mat*, Mealey's Litigation Report: Asbestos, vol. 23, no. 21, December 1, 2008.

NEW ASBESTOS CASES FILED IN SELECTED JURISDICTIONS - 2008

<i><u>State Courts</u></i>	<i><u>2008 - Mesothelioma</u></i>	<i><u>2008 - Other Diseases</u></i>
Alabama	9	11
California (San Francisco and Alameda Counties)	88 (San Francisco Co.) 60 (Alameda Co.)	257
California (Los Angeles County)		124 (approx.) (all diseases)
Connecticut	43	
Delaware	134	33
Illinois (Cook County)	53 (to 5/31/2008)	24 (to 5/31/2008)
Illinois (Madison County)		639 (all diseases)
Maine	3	
Maryland	45 (Baltimore City Circuit Court)	480 (Baltimore City Circuit Court)
Massachusetts	65	133 (incl. 3 unknown disease)
Michigan	28	574
Minnesota	32	63
New York	77 (New York County) 18 (other counties)	400 (approx.)
North Dakota	0	0
Ohio (Cuyahoga County)		177 (all diseases)
Oregon	2-3 (approx.)	10
Pennsylvania (Philadelphia)		158 (all diseases)
Rhode Island	55	5 (4 unknown disease)
Texas		309 (all diseases-malignancies)
Washington		60 (approx.)
West Virginia (Kanawha County)		992 (all diseases)
U.S. District. Court., E.D. Pa., MDL 875 (Multi-district Asbestos Litigation) Docket, (Dec. 31, 2008)		58,625 pending, all diseases

CONCLUSION

In this Report, the ALRA Group has provided a review of new case filings during 2008 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 third in a series of annual updates, supplements the data presented in the ATFS Group's 2006 and 2007 Update Reports.

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>.

ALRA Group
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[Robert D. Brownson](#)
Brownson & Ballou, PLLP
225 South Sixth Street
Suite 4800
Minneapolis, MN 55402
(612) 332-4020
(612) 332-4025 FAX
rbrownson@brownsonballou.com

[Clayton F. Farrell](#)
Collins, Einhorn, Farrell & Ulanoff, PC
4000 Town Center
Suite 909
Southfield, MI 48075-1473
(248) 351-5433
(248) 351-5454 FAX
Clay.Farrell@ceflawyers.com

[David M. Governo](#)
Governo Law Firm LLC
260 Franklin Street
15th Floor
Boston, MA 02110
(617) 737-9045
(617) 737-9046 FAX
dgoverno@GOVERNO.COM

[F. Grey Redditt, Jr.](#)
Vickers Riis Murray & Curran, LLC
11th Floor, Regions Bank Building
106 Saint Francis Street
P.O. Box 2568
Mobile, AL 36652
(251) 432-9722
(251) 432-9781 FAX
gredditt@vickersriis.com

[James N. Sinunu](#)
Sinunu Bruni LLP
333 Pine Street
Suite 400
San Francisco, CA 94104
(415) 362-9700
(415) 362-9707 FAX
JSinunu@sinunubruni.com

[Steven Wright](#)
Wright & Associates, PA
615 Congress Street
P.O. Box 4077
Portland, ME 04101
(207) 775-7722
(207) 775-7727 FAX
sfw@legalwrights.com