



TRIAL LAWYERS INC. ASBESTOS

CENTER FOR LEGAL POLICY
CLP
AT THE MANHATTAN INSTITUTE

A REPORT ON THE
ASBESTOS LITIGATION
INDUSTRY 2008

A Message from the Director

When the Manhattan Institute's Center for Legal Policy released its first *Trial Lawyers, Inc.* report, in 2003, we called asbestos litigation the "longest-running mass tort in U.S. history and arguably the most unjust."¹ Even as the incidence of new cases of the serious lung cancers caused by asbestos remained constant—for mesothelioma, at 2,000 to 4,000 per year—new asbestos claims exploded, nearing 100,000 in 2001 (see graph below).²

This report describes Trial Lawyers, Inc.'s asbestos litigation business line in more detail. A flame retardant originally thought to be a "magic mineral," asbestos ended up causing the death of thousands of individuals; likewise, litigation that originally sought redress for the truly injured metastasized into a big business that in too many cases recruited sham victims to beef up the plaintiffs' bar's bottom line.

The business model underlying such abusive litigation uses sophisticated marketing to attract thousands of claimants, generates cases with flimsy medical diagnoses, and packages claims together to overwhelm defendants and courts. Ultimately, the attorneys bully besieged defendants into settlements that enrich Trial Lawyers, Inc., while leaving genuinely injured claimants high and dry.

The overall cost of asbestos litigation is staggering, totaling over \$70 billion in direct losses (see graph below) and bankrupting 80 companies.³ Of that \$70 billion, fully \$40 billion has gone to lawyers (see graph, next page).⁴ And as those bankruptcies have moved corporate defendants out of Trial Lawyers, Inc.'s crosshairs, asbestos lawyers have targeted companies with ever more tenuous ties to asbestos's manufacture. Ironically, then, much of modern asbestos litigation has involved the filing of lawsuits by individuals who aren't sick against companies that never made the product alleged to have caused their sickness. Asbestos litigation today is thus exceptionally costly, extremely inefficient, and unfair to defendants and legitimate plaintiffs alike.

In addition, asbestos litigation has threatened the very integrity of the legal system itself. As recently noted by Chief Judge Dennis Jacobs of the Second Circuit U.S. Court of Appeals, judges in asbestos

litigation have all too often processed massive caseloads "without regard to whether the claims themselves are based on fraud, corrupt experts, perjury, and other things that would be deplored and persecuted by the legal profession if done within other commercial fields."⁵

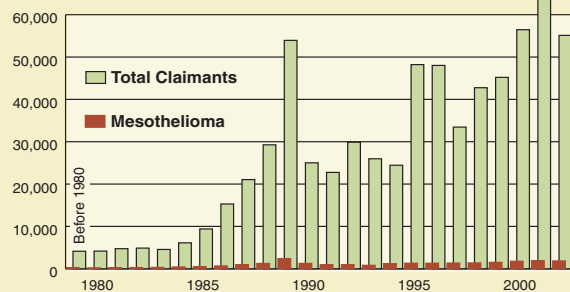
In 2005, as we documented in a *Trial Lawyers, Inc. Update*,⁶ U.S. District Court Judge Janis Graham Jack proved a striking exception to this historical trend. Judge Jack uncovered massive fraud in the asbestos litigation industry: thousands seeking recovery for alleged injuries purported to be caused by silica exposure, 60 percent of whom had already recovered from lung injuries supposedly caused by asbestos.⁷

As well as documenting asbestos-silica "double-dipping," Judge Jack highlighted how asbestos and silica lawyers were shuffling plaintiffs through bogus medical exams geared toward finding injuries. Recent cases have echoed her findings: in one case last year in West Virginia, defendants said they had discovered claims filed by fictitious plaintiffs and diagnoses conducted by fictitious doctors.⁸ Others paint a portrait of even broader corruption: a Miami asbestos lawyer stole millions from his own clients,⁹ and a Pennsylvania judge was convicted of soliciting bribes from attorneys with asbestos dockets before him.¹⁰

State-level tort reforms and Judge Jack's documentation of fraud have made trouble for Trial Lawyers, Inc.'s traditional asbestos litigation business model. With judges—and prosecutors—watching more closely, the number of new filings in which plaintiffs have not developed malignancies has plummeted over 96 percent.¹¹ Large asbestos law firms have had to trim hundreds from their payrolls.¹²

Still, it would be foolish to assume that Trial Lawyers, Inc. will give up its long-running revenue stream without a fight. Lawyers have been shifting cases into new states without tort reform laws. Hundreds of thousands of claims remain outstanding. Many billions of dollars in asbestos bankruptcy trusts are still to be paid out to future claimants. Lawyers have begun developing a new double-dipping strategy in which they try to recover money from both the trusts and in court, in different jurisdictions, without any disclosure or offset. And Trial

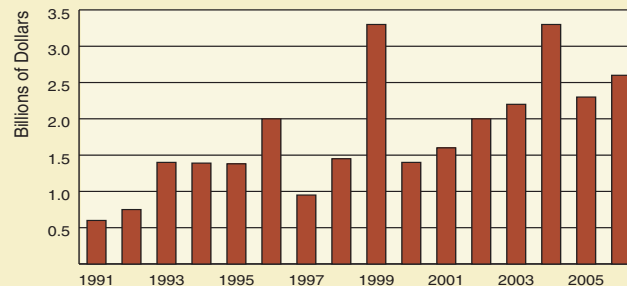
The Number of Mesothelioma Claimants Has Remained Stable While the Total Number of Claimants Has Soared



Source: RAND Asbestos Litigation 2005, number of claimants through 2002

Businesses and Insurers Have Already Paid over \$70 Billion in Asbestos Claims

Estimated Asbestos Losses Paid by U.S. Insurers by Year



Source: Insurance Information Institute

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Lawyers, Inc. has begun setting up new mass asbestos screenings to generate more plaintiffs.

How can we fix asbestos litigation? The solution must rely on all three branches of government. The striking evolution of the trial lawyers' business model after Judge Jack's decision shows the importance of strong and continual judicial supervision of the asbestos docket. Judges should not only look to ensure that claims are legitimate but also scrutinize settlements to ensure that they are fair. Prosecutions are needed as well to punish and deter wrongful conduct.

Legislatively, efforts to develop a comprehensive federal solution—after years of trying—have proved to be fruitless. Several states have, however, made progress, and a piecemeal state-by-state approach to the problem may be the only feasible way to ameliorate the asbestos litigation climate in the near future. Reforms might include: insisting on real medical standards of evidence; barring lawyers from shopping their cases to lowest-common-denominator jurisdictions; revising joint-and-several liability laws to protect tertiary defendants from shouldering costs caused principally by others; and adopting transparency rules to ensure that asbestos claimants are not double-dipping into the bankruptcy trusts and multiple jurisdictions.

This latest edition of *Trial Lawyers, Inc.* is not intended to cover comprehensively the intricacies of asbestos litigation and the various policy remedies being pushed. We do hope that it will help readers understand the business model underlying the asbestos lawsuit machine—unfortunately, a paradigm for the litigation industry as a whole.



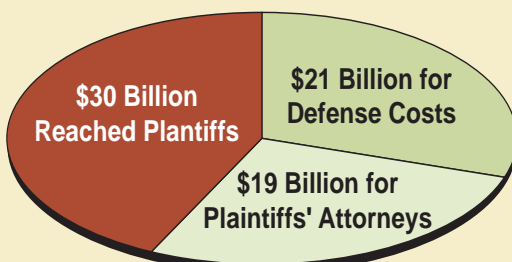
James R. Copland
James R. Copland

Director, Center for Legal Policy
Manhattan Institute for Policy Research

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Asbestos Litigation Has Been an Inefficient System for Providing Compensation

Distribution of Total Payments Through 2002



Source: American Academy of Actuaries and RAND

Visit TrialLawyersInc.com for online versions of this report, the four previous editions in the series, updates, and other resources.

MAGIC MINERAL MAYHEM

Once known as the indispensable insulator, asbestos has become Trial Lawyers, Inc.'s longest-running bonanza.

When American commercial mining of an obscure mineral known as asbestos began in 1874,¹³ nobody could have foreseen the magnitude of the industry that would grow up around it, the harm it would cause, its eventual exploitation by the \$20 billion-plus asbestos bar—an industry in its own right—or its role in launching the careers of the following advocates:

- Richard Glasser filed Virginia's first asbestos lawsuit in 1976; by 2001, he had filed over 10,000 cases and collected \$267 million for clients.¹⁴
- Ron Motley, whose firm now uses the grandiose slogan "Litigating Today for a Better Tomorrow," filed his first asbestos case in 1976 in federal court in Charleston, South Carolina, settling it within 18 months for over \$100,000.¹⁵ By January 1993, he was working on a deal to resolve between 250,000 and 2 million asbestos claims.¹⁶

- Mississippi tort king Richard "Dickie" Scruggs, who recently pled guilty to conspiring to bribe the presiding judge in a case involving a multimillion-dollar fee dispute, used his asbestos winnings to finance the tobacco litigation that made him a billionaire.¹⁷

- Texas lawyer Fred Baron is now a leading Democratic Party fund-raiser.¹⁸ The firm he founded, Baron & Budd, boasts of winning over \$140 million for clients claiming to have mesothelioma, an asbestos-caused cancer, but doesn't mention that its fees in that litigation were between \$69 million and \$92 million.¹⁹

Despite its current reputation, asbestos helped make America a world power and protected both warriors and civilians from the age-old scourge of death by fire. Nevertheless, asbestos's legacy has also been death—and, in response, an epidemic of lawsuits, many riddled with fraudulent allegations, has distorted our economy while endangering relief for those who need it most.

The "Indestructible" Mineral Comes of Age

Humans have used asbestos for centuries: its name comes from the Greek word for "indestructible,"²⁰ and the ancient world used asbestos for everything from fabrics²¹ to lamp wicks. In more modern times, asbestos ceiling and floor tiles have protected millions of schoolchildren from fire,²² and asbestos insulation fireproofed America's fleet. Indeed, at the 1939 World's Fair, in New York, asbestos was highlighted as the "magic mineral" (see photo).

The asbestos industry in the United States grew astronomically in the twentieth century: asbestos consumption went from only 956 metric tons in 1890 to a peak of 803,000 tons in 1973. At its height, asbestos-related industries may have employed as many as 2.5 million Americans.²³ In chronicling the asbestos industry that developed around the construction of naval vessels in World War II, *Virginian-Pilot* reporter Bill



"Asbestos Man," 1939 World's Fair

The firm founded by Fred Baron, a leading Democratic Party fund-raiser, has won over \$69 million in asbestos litigation fees.

Burke noted that workers “came by the tens of thousands, called to arms in the shipyards . . . to help build the armada that would keep the world safe.”²⁴

Health Risks Surface

Tragically, however, “working in an American shipyard during World War II would prove to be almost as deadly as fighting in the war,” with a proven death rate of at least 14 per thousand—only somewhat less than the rate for combat troops.²⁵ That asbestos might be harmful to one’s health is hardly a modern discovery: the ancient Roman naturalist Pliny the Elder allegedly reported a lung sickness among slaves who wove asbestos into cloth.²⁶ At the dawn of the twentieth century, asbestos was listed along with lead and quicksilver mining as “among the most injurious processes known to us now.”²⁷ Still, health concerns were not buttressed by strong scientific evidence, and in 1918, the U.S. Department of Labor said merely that there was an “urgent need for more qualified extensive investigation” into asbestos’s health effects.²⁸

Dr. W. E. Cooke reported the first modern asbestos-related death in the *British Medical Journal* in 1924 and named the disease asbestosis. The U.S. Public Health Service established a Threshold Limit Value for asbestos exposure in 1938 that lasted as a good-practice guideline for the next three decades. The standard was defined as “tentative . . . until better data are available.”²⁹ In 1964, Dr. Irving Selikoff, of Mount Sinai Hospital in New York, definitively established links between asbestos exposure and high cancer and asbestosis rates among insulation installers.³⁰

Asbestos Lawsuits Gain a Toehold

Lawsuits over asbestos-related injuries have a history almost as long as that of the asbestos industry itself. Between 1929 and 1933, attorney Samuel Greenstone filed 11 lawsuits against the Johns-Manville Corporation seeking \$50,000 apiece for workers he alleged had been totally disabled after being denied a safe working environment at the company’s Manville, New Jersey, plant. The company settled all 11 cases for \$30,000 and got Greenstone to agree not to be involved “directly or indirectly” in any further actions against the company.³¹

Another 20 cases filed two years later involving the company’s Waukegan, Illinois, plant were eventually tossed out of court. The Illinois legislature quickly expanded the workers’ compensation law to cover occupational disease.³²

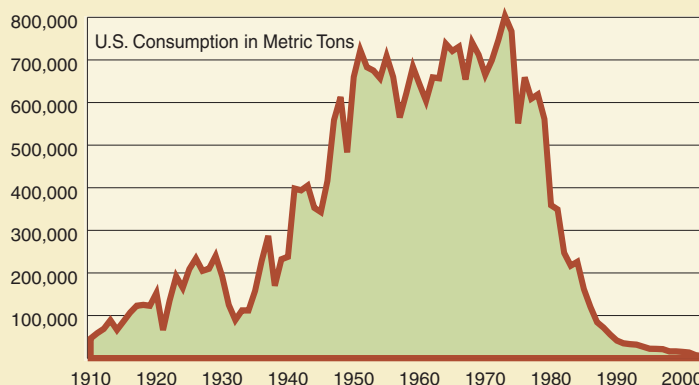
The first modern asbestos lawsuit involved a single lawyer meticulously building a case for a single client.³³ Ward Stephenson, a well-known trial lawyer in Orange, Texas, filed his case on behalf of asbestos insulator Claude Tomplait in December 1965, one year after Selikoff’s landmark study.³⁴ Four years later, seven defendants paid a combined \$75,000, of which \$7,500 went toward reimbursing the Texas workers’ compensation system and its insurers.³⁵ Tomplait wound up with \$37,500 after nine years; Stephenson with \$30,000, less his expenses and costs.³⁶



Fred Baron

MARK GRAHAM

Annual U.S. Asbestos Use Fell Rapidly After Health Consequences Became Known



Source: U.S. Geological Survey

TOO MUCH TRUST

H. W. Johns's 1890 patent for a process to create a superior insulating product by blending previously unusable short asbestos fibers with magnesia started an empire—and a nightmare.⁶⁴ Thomas F. Manville took control of the newly merged Johns-Manville Company in 1901.⁶⁵ Under him, the firm reached over \$40 million in annual sales before the Depression, and \$60 million by 1937.⁶⁶ Lewis H. Brown led the company out of the Depression; its unstoppable growth drew the notice of *Time* magazine, which placed Brown on its April 3, 1939, cover.⁶⁷

By 1982, Johns-Manville was ranked 181 on the Fortune 500, with \$2.2 billion in sales⁶⁸—but by that time, it had also racked up more than 16,500 asbestos-related lawsuits.⁶⁹ Facing more than 400 new cases a month and projections of up to 200,000 in all, the company filed for Chapter 11 bankruptcy reorganization in August 1982.⁷⁰

Emerging from bankruptcy was something called the Manville Personal Injury Settlement Trust, which was set up in 1988 to compensate current and future asbestos claimants.⁷¹ But plaintiffs' attorneys more or less dictated trust provisions that favored their interests and ease of processing over the rights of future claimants, and scanted verification of actual injury or significant contact with Manville products.⁷²

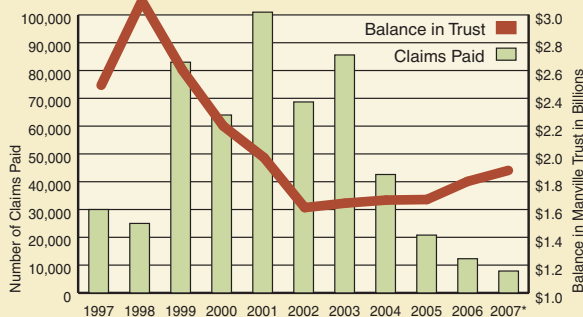
The fund settled more than 12,600 claims for about \$500 million during its first nine months of operation, but officials soon realized that it didn't have enough assets to handle all claims, which numbered 89,000 by the end of 1989.⁷³ The trust was redefined as a limited fund in 1990, which meant that it paid damages arising from only seven disease categories. In 1995, compensation per plaintiff was reduced to just 10 percent of the damages claimed; payouts were further reduced to 5 percent of damages in 2001 (see graph). As of June 30, 2006, the trust had received more than 773,000 claims and paid out about \$3.4 billion—just \$4,400 per claimant.⁷⁴

The trust was severely depleted by specious claims arising from mass screenings sponsored by plaintiffs' attorneys.⁷⁵ A 1996 audit found a 41 percent error rate in the medical data, resulting in a possible loss of \$190 million.⁷⁶ In 2005, the trust stopped accepting medical reports from certain doctors and screening facilities that were facing congressional and grand jury investigations for fraud.⁷⁷

With the Manville cash cow weakened, plaintiff's lawyers went looking for new deep pockets. In order to transfer liability to financially stronger defendants such as suppliers and other manufacturers, new cases had to minimize Manville's role, which a comparison of testimony before and after the Manville bankruptcy indicates occurred. Manville's share of asbestos-product exposure alleged in tort claims fell from 80 percent to as low as 10 percent, a change that an expert is convinced was "orchestrated by various plaintiff lawyers."⁷⁸

The U.S. Supreme Court's rejection of mandatory class action settlements and Congress's failure to adopt an administrative compensation scheme left bankruptcy as the only viable measure for many companies with major asbestos exposure, despite the apparent abuses committed against the Manville Trust.⁷⁹ Congress acknowledged the reality of the situation by adopting special Chapter 11 trust provisions for companies with asbestos liabilities.⁸⁰ Many trusts based on the Manville model have suffered the same abuses.

An Explosion in Claim Payments Sent the Value of the Manville Trust Plummeting



Claims quickly exceeded expectations. Payouts were reduced to 10 percent in 1995 and to 5 percent in 2001. In 2002, more stringent claim criteria were adopted, which took effect in 2004. The balance in the trust has leveled out since those reforms. The trust has paid out \$3.4 billion on 778,200 claims.

* First three quarters of 2007

Sources: Manville Trust Filings to the Court, American Academy of Actuaries

The *Tomplait* case itself was not particularly lucrative for Ward Stephenson, but in a subsequent case in 1973, representing mesothelioma victim Claude Borel, Stephenson obtained from the United States Fifth Circuit Court of Appeals a unanimous opinion effectively demolishing the moat and castle walls that had historically protected the asbestos industry. The court ruled that strict liability applied up and down the chain (i.e., that plaintiffs need not show defendant corporations were negligent), that the statute of limitations did not bar the claim (i.e., that defendants could be sued even for long-ago asbestos exposures), and that even though Borel bore some responsibility for his injuries, the defendants were not relieved of theirs.³⁷

Asbestos Litigation Goes Big-Time

After Stephenson, the trial lawyer who next advanced asbestos litigation was New Jersey plaintiffs' attorney Karl Asch. Asch noticed that asbestos manufacturer Raybestos-Manhattan's 1974 annual report stated: "As early as 1930, Raybestos-Manhattan commissioned Metropolitan Life Insurance Company to survey all its factories and to make recommendations for the elimination of conditions which might present health hazards."³⁸ The report also described supposedly similar joint industry efforts that began in the same decade.³⁹ Asch

In *Borel*, the U.S. Fifth Circuit Court of Appeals demolished the castle walls that had protected the asbestos industry.

observed that these assertions seemed to conflict with industry claims that the 1964 Selikoff study was the first hard evidence of the dangers posed by asbestos,⁴⁰ though, to be fair such industry claims were typically made only about cancer, not asbestosis, the risks of which had long been known.⁴¹

Asch followed up his suspicions, and what he discovered jump-started asbestos litigation as we know it: in response to a discovery request Asch made, he received access to a box of documents that had been meticulously maintained by Raybestos-Manhattan.⁴² Now known as the Sumner-Simpson papers, Asch's cache of documents described in great detail the efforts of Raybestos, Johns-Manville, and other manufacturers to find out about the hazards of asbestos, develop strategies to deal with them, and—most important—to keep that knowledge from the public and workers.⁴³ Although Asch was the first one to introduce the damning documents in court,⁴⁴ it was Ron Motley who used them to persuade a South Carolina judge to reverse a defense victory in a jury trial.⁴⁵ Many see that reversal as precipitating today's asbestos litigation avalanche.

Two court decisions in the early 1980s gave that avalanche additional momentum.

Defendant manufacturers had traditionally benefited from a “state of the art” defense, which insulated them from liability as long as their practices were the best available to the industry at the time that injuries occurred. In 1982, however, the New Jersey Supreme Court unanimously threw out this long-standing doctrine with regard to product liability, holding:

The burden of illness from dangerous products such as asbestos should be placed upon those who profit from its production and, more generally, upon society at large which reaps the benefits of the various products our economy manufactures. That burden should not be placed on the innocent victim. . . . At the same time, we believe this position will serve the salutary goals of increasing product safety research and simplifying tort trials.⁴⁶

Somehow, it didn't quite work out the way the opinion's author, Justice Morris Pashman, and his five colleagues anticipated.

Perhaps even more stunning was the federal D.C. Circuit's 1981 ruling that exposed insurers facing asbestos lawsuits to unprecedented liability. Instead of limiting recovery to the maximum payout that the policy's terms permitted in the year when symptoms were diagnosed, the court added together the maximums for every year between the date of exposure and diagnosis.⁴⁷ Since such a time interval is often longer than two decades, the court in effect created a honey pot for plaintiffs⁴⁸ worth tens of billions of dollars.⁴⁹ Circuit Judge Patricia Wald warned that the court's decision “require[d] a leap of logic from existing precedent, for it concerns diseases about which there is no medical certainty as to precisely how or when they occur.”⁵⁰

The Cost of the Litigation Onslaught

The decade after *Borel* saw 25,000 asbestos cases filed.⁵¹ By 1981, more than 200 companies and insurers had been sued; by 1982, defendants' costs had topped \$1 billion.⁵² Many companies, Johns-Manville among them, resorted to filing for bankruptcy or forming special trusts to pay claimants (see box, opposite page).

This was not the end of it, however. Although by 1992, 100,000 claims had been resolved, 100,000 new ones had been filed, and “for each claim resolved, [there were] two to three new claims.”⁵³ The situation triggered speculation that the judicial system was, in effect, creating a national health-insurance system for at least one disease.⁵⁴ By 2005, an estimated 322,000 claims were pending in state and federal courts.⁵⁵

Producing an accurate count of cases, claims, and plaintiffs is almost impossible because their numbers are not identical; they vary widely, preventing inferences about one another from being drawn. For example, RAND, a highly reliable source, estimates that 56,454 *people* filed asbestos injury claims in 2000,⁵⁶ while a study based on a review of the SEC filings of 12 major corporations showed almost ten times as many *claims* filed against just those 12 in the same year.⁵⁷

RAND estimates that by 2002, 8,400 defendants had been sued by at least 730,000 individual plaintiffs.⁵⁸ In the years before 1983, fewer than 5,000 plaintiffs filed suit annually, but the number grew to 15,000 in 1986 and 59,000 in 1989.⁵⁹ As of today, as many as 10 million claims may have been filed,⁶⁰ and the ultimate cost may hit \$265 billion,⁶¹ more than double the cost of the total Superfund cleanup program.⁶²

Because the length of the average latency period for asbestos-related lung cancer is 25 years and the interval for other asbestos-related cancers is even longer,⁶³ the ultimate defendants were typically uninvolved in the product's actual manufacture, just as many of the later-filing plaintiffs were unlikely to be symptomatic. We will explore that sad irony in the pages that follow.

LAWSUIT ASSEMBLY LINE

Asbestos plaintiffs are burned by the litigation industry's manufacturing model.

The lawsuit industry's asbestos business line has made millionaires out of Trial Lawyers, Inc.'s leading attorneys, but it also has enriched scores of allied marketers, doctors, and peripheral players. Take Heath Mason, a junior-college dropout with no legal or medical training⁸¹ who made \$25.5 million from asbestos litigation.⁸² Mason's role was attracting potential plaintiffs to "screening clinics" that interviewed and "tested" them, usually in trailers hauled to restaurant, shopping-center, or motel parking lots. Mason would lure passersby with attractive women he called his "lawyer girls,"⁸³ such as the two young lawyers he met at an unidentified convention in Fort Lauderdale, Florida, and later persuaded to stand on a Fort Worth street corner with signs directing potential plaintiffs to an X-ray screening van in a Staples parking lot.⁸⁴

Players like Mason have been essential to the Trial Lawyers, Inc.'s asbestos litigation assembly-line-style business model. It starts with marketing (recruiting plaintiffs), followed by production (eagerly screening prospective plaintiffs for purported lung impairment and usually finding it), packaging (bundling cases into a "mass" of tort claims), and sales (overwhelming courts and defendants to extract settlements) (see chart). The shame of the asbestos litigation business is that the settlements have been far more rewarding for the filing lawyers than for those victims who were truly injured.

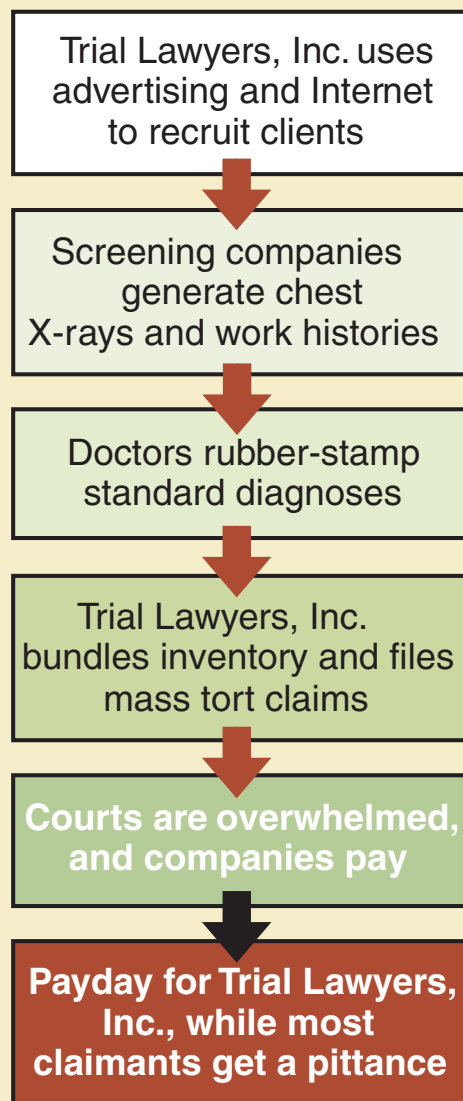
Marketing Makes the Product

To make its asbestos line really grow, Trial Lawyers, Inc. needed a marketing program more sophisticated than Heath Mason's lawyer girls. Its seeds were planted in 1977, only one year after pioneering lawyers such as Richard Glasser and Ron Motley launched asbestos litigation as we know it. In that year, in the case *Bates v. State Bar of Arizona*,⁸⁵ the United States Supreme Court ruled that attorney advertising was commercial speech protected by the First Amendment to the U.S. Constitution. In one fell swoop, age-old professional barriers against trial-lawyer solicitation were effectively eviscerated.

After *Bates*, trial lawyers could unabashedly troll for clients using slick marketing techniques borrowed directly from Madison Avenue's corporate advertising

In 1977, the Supreme Court ruled that attorney advertising was commercial speech protected by the First Amendment.

Asbestos Claims Assembly Line



Source: Manhattan Institute and Reader's Digest research



A typical "screening van," used to generate thousands of medical diagnoses of asbestos injury in shopping-center parking lots.

campaigns. To build its asbestos litigation business, Trial Lawyers, Inc. employed all the modern mass-media techniques, including saturation of television, radio, and direct mail.⁸⁶ In more recent times, the litigation industry has also resorted to more targeted Internet marketing: asbestos lawyers' ads constitute 20 of the 30 most expensive search terms on Google, the world's most used search engine, and the most expensive Google AdSearch term today is "mesothelioma treatment options."⁸⁷ Cardozo law professor Lester Brickman, a legal ethics expert and the nation's foremost authority on asbestos litigation, calls the setup "the most extensive recruitment process since World War II, when Uncle Sam wanted you."⁸⁸

The Great Screening Scheme

To convert its recruits into actual plaintiffs, Trial Lawyers, Inc.—at least in theory—had to establish that the recruits were actually ill, that their illnesses resulted from asbestos exposure, and that that exposure resulted from contact with the products or workplaces of the plaintiffs' lawyers' contemplated targets. To overcome these troublesome procedural niceties, the litigation industry developed a low-cost screening business intended to maximize the number of passable plaintiffs at minimum cost.

To facilitate this aspect of the business, law firms hired screening companies to seek out workers who might have been exposed to asbestos. Typically, these operations, like Heath Mason's, were run out of parking-lot trailers or vans; one screening outfit had its headquarters in a real-estate office located in a shopping center near a massage parlor.⁸⁹ Despite the humble character of these operations, the total take for such screening firms, Professor Brickman estimates, has exceeded \$100 million.⁹⁰

Inside the trailers, screeners took "occupational exposure histories" (which were necessary to link plaintiffs to asbestos defendants), conducted breathing tests, and took X-rays that were later analyzed by medical specialists known as "B readers."⁹¹ People with little or no medical training ran the screening clinics: high school students or clerical workers took patient histories, a crucial procedure in diagnosing lung disease. Glorified clerks composed the diagnoses and "signed" them with rubber stamps.



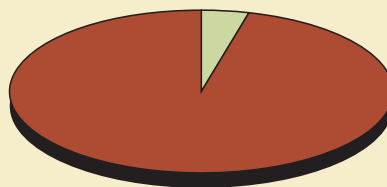
Tellingly, asbestos screening companies used only 4–6 percent of the nation’s limited number of B readers to handle hundreds of thousands of analyses,⁹² and all the screeners chosen seemed to find positive results with suspicious frequency.⁹³ Just how suspicious? In 2004, Johns Hopkins radiologists looked at a sample of screening-clinic X-rays; whereas the lawyers’ B readers had identified lung abnormalities in 95.9 percent of 492 cases, independent readers hired by the Hopkins researchers found abnormalities in only 4.5 percent of the same cases (see graph at top).⁹⁴ After the B readers checked off a diagnosis form, they forwarded it to the screening company, which prepared what appeared to be individualized diagnosis letters, signed with a rubber stamp, that its nominal authors hardly ever saw.

The volume of claims that some of the unscrupulous physicians processed is mind-boggling: beginning in the early 1990s, one doctor diagnosed more than 88,000 patients, performing as many as 150 readings a day.⁹⁵ When later required to testify about them under oath, many of the screening doctors disavowed them or invoked their Fifth Amendment right against self-incrimination.⁹⁶ The difference in economic value between the accurate clinical diagnoses and those from the most prolific screening doctors is striking—the lawyers’ inventoried claims are worth \$30–\$50 million more per 1,000 patients examined.⁹⁷

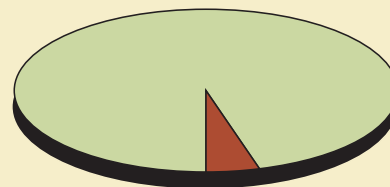
Settling for Less

That Trial Lawyers, Inc.’s dubious screening practices could generate valuable legal claims is a powerful indictment of some American courts’ handling of scientific evidence. Still, the lawyers may not have fared so well had they been forced to litigate each individual claim in the forum where each plaintiff lived or had worked. Key to the lawyers’ strategy was bundling thousands of claims—to the point of overwhelming courts’ ability to handle the volume of claims filed—and filing their mass of claims in favorable forums. By packaging their cases in plaintiff-friendly places such as Mississippi, West Virginia, Texas, and Madison County, Illinois, Trial Lawyers, Inc. was in a position to extract millions of dollars more per claim in any ultimate trial (see graph at bottom).

Are Mass Screening Diagnoses Valid? New Studies Question Those Diagnoses



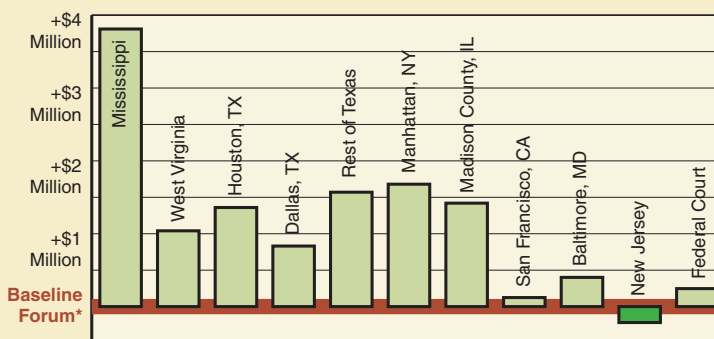
Plaintiff Physicians
Found Asbestos Disease
in 95.9% of Films



Independent Radiologists
Found Abnormalities
in 4.5% of Same Films

Source: American Academy of Actuaries quoting 2004 Johns Hopkins Medical Institutions study

Forum Shopping Yields Significantly Higher Total Damages for Plaintiffs in Some States



* Pennsylvania is the baseline jurisdiction for forum-shopping analysis.
Difference in plaintiff’s return from baseline jurisdiction is shown in 2003 dollars.
Source: Michelle J. White, Professor of Economics, University of California, San Diego

**Many of the asbestos screening doctors
have disavowed diagnoses under
oath or invoked their Fifth Amendment
right against self-incrimination.**

Even were such trials to occur in a fair jurisdiction, defendants often confronted long odds of success. Just as Trial Lawyers, Inc. constructed the screening process to virtually ensure diagnosis of injury, litigation industry attorneys often left little to chance in preparing for trials that would occur. Notoriously, the giant asbestos plaintiffs' firm Baron & Budd prepared a memorandum, ultimately discovered by defense attorneys, that coached plaintiffs on their testimony. Among other things, the memo urged plaintiffs "to maintain that you NEVER saw any labels on asbestos products that said WARNING or DANGER."⁹⁸ Little wonder defendants almost always settled asbestos cases (between 1993 and 2001, only 1,598 out of hundreds of thousands of asbestos claimants received jury verdicts).⁹⁹

Settlement, of course, was Trial Lawyers, Inc.'s ultimate goal. Without having to invest the time and money in going to trial, where they risked losing, lawyers could collect and move on to the next batch of plaintiffs. Facing thousands of cases in "hellhole" jurisdictions—with no reimbursement for legal fees, even on the off chance that they were victorious—defendants were forced to capitulate.

The losers were not only defendant companies and their employees and shareholders but also those Trial Lawyers, Inc. plaintiffs who had been genuinely hurt and harbored potentially legitimate claims. With bundles of clients and lax ethical oversight, lawyers pitched their own plaintiffs' futures like used cars, offering 40 percent off for immediate settlements—a \$600 million "savings"¹⁰⁰—or even a once-in-a-lifetime steal of up to \$1 billion off.¹⁰¹

A grotesque example of these tactics emerged in silicosis litigation, which, as we will see, is asbestos litigation's cousin. On April 16, 2004, lawyer Joseph Gibson sent a fax to 47 defendants: settle 9,000 silicosis cases now for \$900 million, or, in so many words, we'll saddle you with \$1.5 billion in pretrial costs, then mow you down before juries at a cost of tens to hundreds of millions of dollars per case.¹⁰² Plaintiffs without current symptoms would get \$30,000 but forfeit all future rights. Any who developed silicosis would face long, torturous deaths with no additional resources for end-of-life care. Defense attorney Dave Setter said that he had heard these kinds of bullying tactics before but never presented so brazenly. He commented, "It was so bold and arrogant that it was beyond me why they did it."¹⁰³

It appears "they did it" for the money, not for their clients, whom the lawyers seemed happy to ignore in favor of fast and lucrative settlements. Indeed, plaintiffs' contact with lawyers in asbestos litigation generally has been limited to signing one set of forms to hire the lawyers and certify information and a second set to approve a settlement.

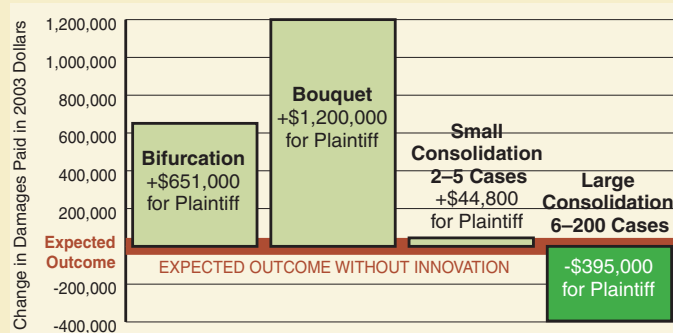
One such plaintiff, Leroy Trotter, went through the lawyers' assembly line in 1992 and received asbestos settlement payments. To maintain "inventory," the firm kept his name on file, and a decade later Trotter was diagnosed, by new doctors, with silicosis (but no evidence of asbestosis). When Trotter's suit was filed against more than a dozen companies in 2006, he had actually been dead for three and a half months. According to his own lawyer, "We had no idea that he was [dead]."¹⁰⁴ The tragicomic case of Leroy Trotter, however, was but one of many asbestos "retreads" that formed the core of the trial bar's burgeoning silicosis docket; and the unraveling of that sordid tale would begin to give public exposure to the inner workings of Trial Lawyers, Inc.'s asbestos litigation machine.

JUDICIAL INNOVATIONS MISS THE MARK

Trial Lawyers, Inc.'s asbestos business relies on overwhelming courts with so many asbestos claim filings that judges see no way to process the cases before them. Unable to rely on traditional case-management processes, judges have experimented with new techniques: large consolidated cases that inevitably pay out small awards to many undeserving claimants, or "bouquet" or "bifurcated" trials that are inherently unfair to defendants.

In bouquet trials, individual plaintiffs are selected as stand-ins for large groups of those similarly situated, resulting in a "bouquet" of cases that can be managed at trial and that serve as the basis for subsequent settlement.¹⁰⁵ Bifurcated trials have a liability phase and a damages phase; a defendant that has been found liable will probably settle in preference to risking an exorbitant judgment. In practice, bouquet and bifurcated trials have ended up with plaintiffs winning damage awards significantly higher than in traditional suits. Specifically, bouquet trials resulted in an additional \$1.2 million in damages for a plaintiff, while bifurcated trials yielded an extra \$651,000 in damages for the plaintiff.¹⁰⁶ Judges' efforts to streamline their dockets, then, have further increased defendants' pressure to settle.

Procedural Innovations Have Been Shown to Have an Effect on Damages Paid to Plaintiffs



Source: Michelle J. White, Professor of Economics, University of California, San Diego

ORDER IN THE COURT

A Texas judge blows the lid off Trial Lawyers, Inc.'s secret asbestos litigation scam.

Fortune magazine noted that by 1999, “the odor around asbestosis diagnosis had been so foul for so long” that it was being called “a massively fraudulent enterprise” in law journals.¹⁰⁷ But while professors such as Lester Brickman documented abuses, few acted on them—until February 2005, when U.S. District Court Judge Janis Graham Jack presided over an extraordinary three-day hearing in Corpus Christi, Texas, in a 10,000-claim multidistrict-litigation docket¹⁰⁸ involving silicosis “victims.”

How did silicosis plaintiffs unwittingly manage to unmask the asbestos scam? The Jackson, Mississippi, law firm Forman Perry Watkins Krutz & Tardy, after three decades of asbestos litigation defense work, was now facing a new flood of silicosis claims. Software developed by Forman Perry’s computer consultant discovered that thousands of the new silicosis claimants were asbestos “retreads”—i.e., they had previously been plaintiffs seeking compensation for asbestosis and were now “double-dipping” in hopes of recovery for silica-induced lung impairment. Since the likelihood that these individuals were seriously impaired by exposure to both asbestos and silica particles was very low,¹⁰⁹ Forman Perry began to investigate.

Judge Jack’s own growing concerns led her to allow discovery and comparative analysis of past medical records of asbestosis and current records of silicosis with the hope of determining the underlying reliability of screening-clinic X-rays, breathing tests, and diagnoses by physicians at the heart of each plaintiff’s claim. The process triggered testimony in open court and cross-examination of doctors and screeners—something almost unheard of in mass proceedings and yet so obviously called for.¹¹⁰ Indeed, the evidence adduced in Judge Jack’s hearings blew the lid off this Trial Lawyers, Inc. assembly-line scam.

EXPLORING AN EARTH SHAKING RULING

Professor Lester Brickman (center) invites questions from a nationwide audience after U.S. District Court Judge Janis Graham Jack gave an off-the-record briefing at the Benjamin N. Cardozo School of Law. Adam Liptak (left), national legal reporter for the *New York Times*, helped moderate the March 2007 session. Judge Jack’s handling of a consolidated silicosis case in Corpus Christi brought widespread scrutiny of litigation fraud in asbestos and silicosis cases.



COURTESY BENJAMIN N. CARDOZO SCHOOL OF LAW

Silicosis Lawsuits More than Suspicious

Mass silicosis lawsuits are much more recent than those seeking recovery for asbestosis. In 2003, a *New York Times* story exposed a flood of new advertising for silicosis plaintiffs by Texas and Mississippi law firms.¹¹¹ One insurance company cited a 1,200-percent increase in silicosis claims over the previous year, despite the reduction in silica health problems over the same period.¹¹²

Like asbestos, the mineral silica can be dangerous to the lungs: repeated inhalation of silica dust, usually by mining or metal foundry workers, can cause silicosis, which results in permanent scarring. The use of silica in the manufacture of glass, fiberglass, paints, and ceramics has exposed an even larger population, so that silica, like asbestos, is pervasive enough to be an alluring mass-tort target.

Forman Perry discovered almost by accident that many silica litigants had previously been asbestos litigants. It did so in the course of employing a computer consulting company to turn paper documents into digital documents. The Forman Perry employees using the system found that it refused to accept the names of a great many silicosis claimants. The reason was that a protocol to guard against data contamination prevented the same name from being entered twice. Those same names, it was soon discovered, had been entered five years earlier as asbestosis claimants.

Judge Janis Graham Jack's 2005 order exposed claims that "defy all medical knowledge and logic."

The scars that asbestos causes look like threads, while the scars that silica causes look like BBs. So, noted Forman Perry attorney Daniel J. Mulholland, "[I]f I find a plaintiff regarding whom a doctor said, 'I see threads,' but then he later says, 'I've now looked at a different X-ray and I see no threads, but I see BBs,' I know something is up."¹¹³

Mulholland said that he and others "started raising hell with Judge Jack about the fact that these people were asbestos retreads [who had] had an asbestos claim [and] now were trying to double-dip and come back in and assert a silica claim."¹¹⁴ Judge Jack ordered the plaintiffs' lawyers to turn over medical records to Forman Perry, who subjected them to further computer analysis.

Judicial Proceedings Unmask the Game

The litigation industry's scam further unraveled on October 29, 2004. Dr. George Martindale—whose reports formed the basis for 3,617 pending silicosis cases—admitted that the language he had used had come from a law firm and screening company.¹¹⁵ What appeared to be custom diagnoses were actually form letters typed dozens or hundreds of miles away. Asked under oath if he thought he was "rendering a diagnosis" with those documents, Dr. Martindale replied, "No, sir."¹¹⁶ Dr. Martindale explained, "I had no medical relationship with the patient, and N&M [Screening] owned the X-ray, owned the report."¹¹⁷

Judge Jack's reaction to the October deposition was withering. "I'm really disturbed about this Martindale business. That's such a fraudulent problem. You can't label it too many different ways," she said, while pondering her next step at a December status conference. "There's no use pussyfooting around this issue."¹¹⁸ Judge Jack tried to spare the plaintiffs further grief after Martindale's shocking admissions: "I said to them, 'Check with your doctors. Make sure they are square.' And it turned out you continued to depose, and three more said the same thing."¹¹⁹

So in February 2005, Judge Jack held full hearings to determine the credibility of the medical evidence being offered to support the silicosis claims, under the standards adopted by the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals*.¹²⁰ The proceedings took 24 hours, spread over three days, and filled 1,123 pages of transcript. Seven doctors and two screening-company owners testified, each damaging the alleged victims' cases more than the previous witness.¹²¹

Mulholland sought sanctions. He cited almost \$1 million in unneeded costs for the grueling February exercise: "Your honor, there is something very wrong here. This is a real courtroom. You are a real federal judge. But these lawsuits are simply not real."¹²²

Judge Jack Documents the Abuse

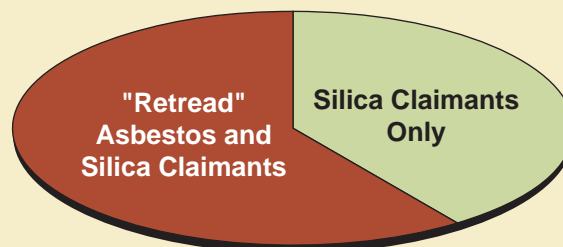
In June 2005, Judge Jack issued a 249-page order, exposing the cesspool in excruciating detail and noting that "[t]he claims in this [case] defy all medical knowledge and logic."¹²³

Judge Jack was unsparing in her assessment: "These diagnoses were about litigation rather than health care. And yet that statement, while true, overestimates the motives of the people who engineered them. . . . [T]ruth and justice had very little to do with these diagnoses. Instead, these diagnoses were driven by neither health nor justice; they were manufactured for money. The record is not clear who originally devised this scheme, but it is clear that the lawyers, doctors and screening companies were all willing participants."¹²⁴

Ultimately, Judge Jack sanctioned one law firm \$8,250 and sent about 10,000 silicosis cases to the trash bin.¹²⁵ Far more important, she shed light on Trial Lawyers, Inc.'s asbestos litigation business model and wiped away the credibility of those doctors and screeners who had maintained an inventory¹²⁶ of questionable victims for years.

Double-Dipping

60% of the silica claimants in one study had already filed asbestos claims. Doctors say that it would be extremely rare for someone to suffer from exposure to both.



Sources: Forman Perry Watkins Krutz & Tardy LLP, cited by Insurance Information Institute and Claims Resolution Management Corp.

GHOST PATIENT, PHANTOM DOCTOR

A railroad defendant alleges massive fraud in Trial Lawyers, Inc.'s asbestos business in West Virginia.

The chicanery that Judge Jack uncovered was just the tip of the iceberg. Emboldened by her efforts, others began to seriously challenge the asbestos business model.

Stephen King could make a great horror novel out of a case unfolding in West Virginia. It would feature allegations of employees who received healthy settlements before their employer, railroad CSX Transportation, realized that the employees' lawyers had paid union officials to recruit victims.¹²⁷ CSX claimed that cases against it were built with, among other things, a ghost patient,¹²⁸ a phantom doctor,¹²⁹ and a certifiably "immoral" and unlicensed X-ray screener.¹³⁰ Clients were given scripted testimony,¹³¹ it was alleged, plus canned medical diagnoses for their doctors to sign,¹³² based on X-ray analyses by a screener who *was* licensed. He later surrendered his Texas medical license and promised never to try to get it back.¹³³

King's imagination wouldn't be taxed in writing the tale—it's all laid out in smoking-gun documents.¹³⁴

Railroad Defendant Plays Hardball

For over two years, CSX Transportation has been hammering Pittsburgh's law powerhouse Peirce, Raimond & Coulter, in a court in West Virginia.¹³⁵ In a case before U.S. District Judge Frederick P. Stamp, Jr., CSX filed a 37-page complaint in July 2007¹³⁶ that proved to be a bombshell: with 676 pages of careful documentation, CSX alleged that the Peirce firm and an allied doctor, Ray Harron, had conspired to file fraudulent asbestosis claims against the company.¹³⁷ CSX's complaint was based on common-law claims of fraud and negligence as well as federal violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act.¹³⁸

The mail and wire fraud allegations that underlay the RICO charges grew out of nine specific cases¹³⁹ involving the claims of individuals whom Dr. Harron had found, on the basis of an initial set of X-rays, to be unimpaired, i.e., not suffering from asbestos injury. Each individual had then undergone a second round of X-rays, which Dr. Harron read as showing asbestosis "despite the objectively unchanged condition of the patient's lungs,"¹⁴⁰ in the words of the amended complaint.

Clients had been sent a letter advising them to say that "you never suspected you had asbestosis and/or silicosis" until results came back from the sponsored screenings, because otherwise "the statute of limitations will preclude you . . . [from] being compensated."¹⁴¹ According to the complaint, the letters coached clients and "evidence a deliberate scheme" to encourage testimony "without regard to the true state of the facts."¹⁴²

In other words, the lawsuit contended that all the elements of mail fraud¹⁴³ and wire fraud¹⁴⁴ were present, as well as a foundation for a federal racketeering charge.¹⁴⁵

Not Your Average Family Clinic

Dr. Harron, a longtime kingpin in the asbestosis diagnosis game, was an obvious candidate for Trial Lawyers, Inc.'s screenings: according to the complaint, the good doctor "identified asbestosis in approximately 97.5 percent of the X-rays he read for the Peirce firm since 2000."¹⁴⁶ Moreover, Dr. Harron may not be the most credible witness, for himself or for the lawyer defendants.¹⁴⁷ He gave up his Texas license under a Texas Medical Board order that devotes 11 paragraphs to his misconduct in asbestos and silicosis cases.¹⁴⁸

Radiologic technologist James Corbitt performed the lion's share of screenings for the Peirce law firm for about a decade, until 2004.

PULLING NO PUNCHES

In its complaint against the Peirce law firm and Dr. Ray Harron, asbestos defendant CSX made the following startling accusations:

"Beginning in the early 1990s, the lawyer defendants, collectively and in concert, embarked upon a calculated and deliberate strategy to participate in and to conduct the affairs of the Peirce firm through a pattern and practice of unlawful conduct including bribery, fraud, conspiracy and racketeering. . . .

"The lawyer defendants actively solicited the clients' attendance at the screenings, deliberately hired unreliable technicians and doctors to produce the diagnoses on which the claims were based, coached testimony, provided the clients with pre-printed, boiler plate forms to be signed by their personal physicians confirming their diagnoses and, lastly, handled the prosecution of the claims with virtually no guidance or direction from the clients, all the while intending to profit from their illegal conduct to the detriment of [CSX]. In short, the filing and prosecution of these nine claims constituted a deliberate effort by the lawyer defendants to defraud [CSX]."¹⁶²

One of Peirce's clients actually sued CSX and won a settlement using another patient's X-ray.

According to CSX's complaint, "Corbitt's reckless and unlawful conduct resulted in chronically underexposed X-rays . . . [that] gave partial cover to Dr. Harron and aided in the process of producing false positive asbestosis diagnoses."¹⁴⁹

Corbitt is also unlikely to impress a jury. A convicted felon, Corbitt served 18 months in federal prison on charges of theft of government property, fraud, and making false statements, and paid almost \$193,000 in restitution.¹⁵⁰ Twice he was denied a license in Ohio, not because of his 1993 felony conviction but because his failure to disclose it showed a lack of "good moral character."¹⁵¹

When Corbitt was fined \$10,000 by Texas regulators in 2001 under an emergency order, defendant attorney Robert Peirce, Jr., paid half that fine. Peirce explained in a deposition that he did so "to keep the relationship and so we could use him for the screenings."¹⁵² Corbitt took the Fifth Amendment when asked under oath whether he knew about and/or complied with various licensing requirements.¹⁵³

Harron and Corbitt aren't the only medical professionals in this sordid tale. CSX alleges that the doctor who signed the diagnosis form for the plaintiff in a West Virginia state case had an invented name and simply *did not exist*.¹⁵⁴ Neither did the address, in an area of fraternity and sorority houses zoned residential, that was given for his office.¹⁵⁵ Most damning of all, the small part of the diagnosis form that wasn't legal boilerplate had been filled out in the victim's own handwriting.¹⁵⁶

Ghost Patient Brings Scheme to Light

Perhaps even more incredible, one of Peirce's clients actually sued CSX and won a settlement using another patient's X-ray.

Ricky May, Daniel Jayne, and Robert Gilkison had been railroad buddies for years, working at CSX in the same areas and as members of the same union local.¹⁵⁷ Sometime before June 2000, which was when the Peirce law firm had scheduled an asbestosis screening, May tested negative for asbestosis and Jayne tested positive. So, according to May, Gilkison, who had left the railroad and was working part-time for the Peirce law firm, helping it arrange screenings, suggested a simple plan: Jayne would show up at the screening, pass himself off as May, and produce a positive X-ray.¹⁵⁸ It worked. Both May and Jayne sued the railroad and both walked away with settlements—\$7,000 in the Jayne case and \$8,000 in the May case.¹⁵⁹ How much might have gone to the Peirce firm and whether Gilkison received any of the settlement money is not reported.

When CSX discovered the ruse, it sued May and Jayne, then reached settlements requiring both men to repay the money they had received from the company.¹⁶⁰ CSX did not make a deal with Gilkison.¹⁶¹

CODE OF SILENCE

Drs. Ray Harron (left), Andrew Harron (center), and James Ballard were sworn in on March 8, 2006, by a House panel investigating mass screening abuses in asbestos and silica litigation. All three asserted their Fifth Amendment rights against self-incrimination rather than answer a single question from congressmen.¹⁶³



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CSX said the ghost claim had been effectively hidden from it because the Peirce firm had inundated it with “thousands of asbestos claims including Mr. May’s group of more than 900 claimants and Mr. Jayne’s group of over 2,000 plaintiffs. . . . [I]t would have been impossible for plaintiff CSX to investigate each claim on an individual basis.”¹⁶⁴

But Mr. May isn’t the only ghost CSX has resurrected. The lawsuit dug up a bribery scandal that the asbestos bar would love to forget. Peirce and his then-partner Louis Raimond admitted in answers to interrogatories that they made a combined total of \$20,000 in cash payments to Charles Little, then president of the United Transportation Union.¹⁶⁵ Little and three other UTU leaders pled guilty to federal racketeering charges in a case involving attorneys paying bribes in return for being named the “union designated attorneys” of workers claiming injury due to asbestos exposure.¹⁶⁶ The judge in that case had denied a request to disclose the names of the 40 or more attorneys allegedly involved, thereby protecting them from professional disciplinary action,¹⁶⁷ although Peirce—who had decades ago served as Allegheny County commissioner and clerk of courts—was identified as one of the 40 in a 2003 newspaper story.¹⁶⁸ The issue, dead for almost four years, arose for a whole new audience.

Off the Hook—Or Not?

Notwithstanding his reported connection to the Little bribery scandal, Peirce has escaped criminal prosecution for the affair.¹⁶⁹ It now appears that the Peirce firm and Harron may also escape major civil liability for the fraudulent schemes alleged by CSX, many of which seem to fall outside statutes of limitation.

Statutes of limitation are typical time bars on civil claims that require a plaintiff to seek legal redress during a specific time window after an injury is or should have been discovered. Such limitations are important: without statutes of limitation, individuals and corporations become excessively risk-averse because of a lack of certainty about their possible legal exposure. In addition, fairly resolving claims about long-ago injuries can be exceedingly difficult, as asbestos litigation has made all too clear.

Civil claims brought under the federal RICO Act have a four-year statute of limitations.¹⁷⁰ On March 28, 2008, Judge Stamp ruled that all but one of the claims cited by CSX in its federal racketeering and conspiracy claim occurred on or before May 2003, over four years before CSX had submitted its relevant complaint.¹⁷¹ Because a RICO claim requires showing a “pattern of racketeering”¹⁷² and CSX’s lone fraud claim filed within the statute of limitations was insufficient to establish a “pattern,” the judge dismissed the RICO causes of action against the Peirce firm.¹⁷³ He followed suit and dismissed the RICO claim against Harron on April 2.¹⁷⁴

Significantly, Judge Stamp did not dismiss the state common-law case for the lone fraud claim that fell within the statute of limitations.¹⁷⁵

CORRUPT JUDGE SOLICITS PLAINTIFFS’ LAWYERS

When Judge Joseph Jaffe inherited the 2,200-case asbestos docket in Pittsburgh, in 2002, he saw in it a quick way to maintain a lifestyle beyond his \$121,225 salary: extract payments from the two attorneys who between them were handling the vast majority of the pending cases and then throw the cases in their favor.¹⁸¹ Prosecutors say the only reason he isn’t still doing it in Allegheny County’s Court of Common Pleas is that one of the lawyers agreed to cooperate with the FBI and get both the payment and the terms of the solicitation on tape.¹⁸²

Jaffe apparently hatched the scheme while on vacation in Hilton Head, South Carolina.¹⁸³ It was simplicity itself—he drew up a list of almost \$13,000 in personal bills and provided a copy to each of the lawyers. The list included the \$4,200 vacation, \$1,323 to cover bounced checks, \$950 in country-club fees, and a \$500 birthday party for his teenage daughter.¹⁸⁴ The money, he assured them, would buy influence in his courtroom.¹⁸⁵ Both paid: a total of \$25,500.¹⁸⁶

When the story broke, there was public outrage in Pittsburgh but little coverage anywhere else. The judge was in tears when he pled guilty to extortion under the Hobbs Act, which is sometimes used to prosecute public corruption, and again when he was ordered to pay \$5,100 in fines and costs and sentenced to 27 months’ incarceration plus three years of supervised probation.¹⁸⁷

“Your actions have left a stain on the fabric of the judicial system which will require years to cleanse,” the sentencing judge said.¹⁸⁸ Jaffe told the court, “I broke the law and violated the trust of my public office. I made a very serious mistake and take full responsibility for my actions. I will never let myself be in this position again and I am filled with remorse.”¹⁸⁹

Thirteen months later, he changed his tune and filed the first of eight challenges to the length of his sentence, leading prosecutors to assert that he had “failed to recognize the severity of his crime.”¹⁹⁰ In his most recent court filing, in which he sought early release from supervised probation, he described himself as being “on a path of rehabilitation and redemption.”¹⁹¹



Joseph Jaffe

SONEY DAVIS/STRIKING REIMAY

Peirce admitted to making cash payments to union president Charles Little, who was later indicted for taking bribes from asbestos attorneys.

ADVISOR RIPPED OFF MILLIONS

Unsurprisingly, some lawyers' advisors have also tried to milk dollars from the asbestos cash cow. One such case surfaced in August 2007. It involved a financial consultant who had overbilled millions of dollars for work he did in asbestos bankruptcy proceedings.¹⁹²

Loreto Tersigni was the sole owner of financial advisor L. Tersigni Consulting, P.C., known primarily in tort reform circles for offering data used in a Public Citizen report in May 2005. That report blasted Senator Arlen Specter's asbestos legislation (S.B. 852)(see pages 20–21).¹⁹³

Tersigni, a certified public accountant and (ironically) a certified fraud examiner, worked almost exclusively for two law firms: Washington, D.C., tax specialists Caplin & Drysdale; and the Texas firm Stutzman, Bromberg, Esserman & Plifka. Those firms hired Tersigni Consulting to represent creditors' committees in 24 asbestos-related Chapter 11 bankruptcy cases.¹⁹⁴ Tersigni billed by the hour plus expenses and submitted to the law firms his bills for the creditors' committees; the bankruptcy estates of the 24 companies actually paid the bills.

It turns out that Tersigni, starting in 2002, had padded his bills by inflating the number of hours his firm worked.¹⁹⁵ A whistleblower notified the U.S. Attorney's office of the abuse in April 2006. But the federal prosecutor handling the case ordered the whistleblower and the U.S. Trustee not to tell the court, the committees, or the companies ultimately paying the bills as long as an FBI investigation remained in progress. Inflated billing was thus allowed to continue for another 13 months.¹⁹⁶

Tersigni's death, in May 2007, ended the criminal investigation of the firm, because he had apparently acted without the knowledge of its professional staff. With his death, the gag order expired as well, and with it the inflated billing.

"[W]e've been paying fees for a year . . . [not] knowing they were padded," said bankruptcy judge Judith K. Fitzgerald in exasperation.¹⁹⁷ In demanding that it never happen again, she added, "No one, not the U.S. Trustee, not the U.S. Attorney, not a prosecutor, no one is to prohibit that contact and that information being transmitted to this Court forthwith and immediately. It has potentially cost [the asbestos companies' bankruptcy] estate millions of dollars, and I don't have any idea how the government intends to reimburse the estate for it."¹⁹⁸

The Tersigni firm itself filed for bankruptcy a few months after the judge spoke, and an examiner was appointed to sort out the mess. His first report said that Tersigni's firm had collected \$45 million in fees, of which Tersigni took \$29 million in salary, distributions, and 401(k) contributions. An examination of a sampling of bills suggests that fees may have been inflated by as much as 23 percent, or \$10 million.¹⁹⁹

In order to ensure that the available assets are fairly distributed to those harmed but that something remains for Tersigni's widow, the court ordered mediation of the respective claims.²⁰⁰ Except for dispositions requiring court approval, the mediation process and any documents it produces will be kept secret.

One thing that can't be hidden is the cost to the estates of the bankrupt asbestos companies in the form of capital they could have used to rebuild their businesses. The scam also deprived injured workers of money they could have used to rebuild their lives.

Whether that claim will proceed, or whether the judge will delay action until after the underlying and still-pending asbestos case is resolved on the merits, as requested by Peirce, remains unclear.¹⁷⁶

Despite the statute-of-limitations dismissal, Judge Stamp made no ruling on the factual veracity of CSX's allegations. The judge also explicitly rejected Peirce's motion under Federal Rule of Civil Procedure 12(f) that he strike CSX's primary allegations from the record because they contain allegedly "immaterial, impertinent, or scandalous matter."¹⁷⁷

Also, even though the civil RICO claim is barred by the statute of limitations, a *criminal* RICO claim would not be: criminal RICO claims have a five-year statute of limitations, and "RICO's criminal statute of limitations runs from the last, *i.e.*, the most recent, predicate act."¹⁷⁸ Thus, if CSX's allegations are true, the defendants could be subject to federal criminal charges filed up until 2011.¹⁷⁹

In any event, Peirce, used to calling the shots with little interference, has been feeling the heat. "[CSX] and other railroads are now refusing to deal with the Peirce law firm in the processing of any claims," said Peirce's outside legal counsel, complaining that CSX is intent on "driving the firm out of business."¹⁸⁰ One can only hope.

ROBLES ROBBERY

A crooked lawyer lives
the high life while
his clients die destitute.

When asbestos lawyers get greedy, an overwhelmed judiciary is often unable to prevent misdeeds that can include inflated bills, payments to dummy companies, bribery, conspiracy, the kind of fraud highlighted in Judge Janis Jack's stunning order,²⁰¹ and even outright theft. The ultimate victims are the truly sick left destitute, even though the supposed villain—big business—has paid large settlements.

One Miami case in particular should shock the conscience. Attorney Louis Robles was convicted of pocketing \$13.5 million in payments made by asbestos defendants to benefit his sick clients. The total losses, however, could be some multiple of that, because the deceit continued for years before investigations of complaints to authorities bore fruit.²⁰²



Louis Robles

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A Vast System of Deceit

Robles collected \$164 million between January 1, 1989, and September 30, 2002,²⁰³ but how much of that actually reached his more than 7,000 clients²⁰⁴ may never be known. Besides grossly inflating his legal bills,²⁰⁵ Robles admitted taking from trust funds over \$13.5 million that would have gone to almost 4,400 claimants nationwide.²⁰⁶

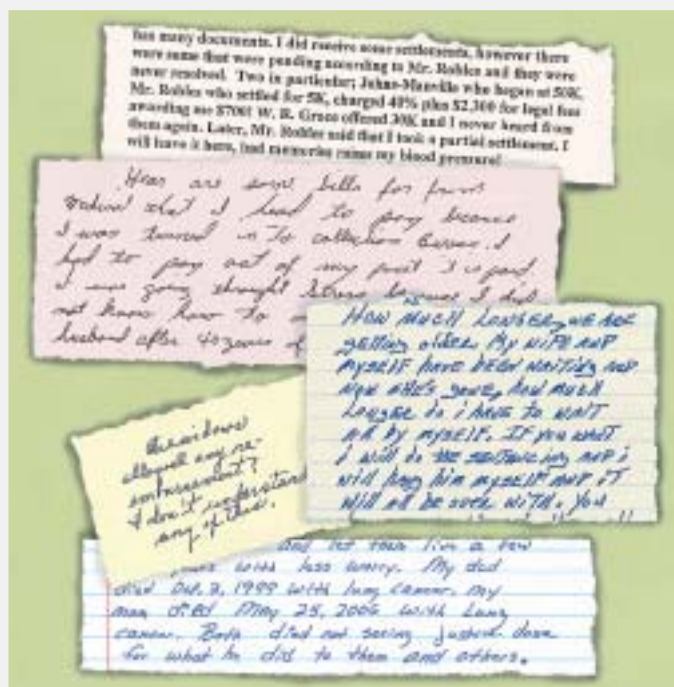
Before looting his clients' trust accounts outright, Robles charged fees²⁰⁷ and expenses²⁰⁸ that totaled as much as 63 percent of the settlements.²⁰⁹ Those sums included \$10 million paid to a dummy "outside" computer firm he owned, \$6.9 million in "file storage fees," \$2.1 million as a "set-up/investigation fee," and \$1.2 million for travel.²¹⁰ Robles also secretly extracted millions of dollars in so-called accrued-interest charges—a percentage of already inflated expenses that was added to bills while cases awaited settlement.²¹¹ According to the U.S. Attorney's statement accompanying Robles's guilty plea, the lawyer would misappropriate settlement proceeds from one group of clients, and then to quiet their complaints about the resulting delay in payment, he would finally pay them, in pyramid-like fashion, with the settlement proceeds owed other clients. His delays in making payments naturally produced delays in his clients' payment of expenses, on which Robles shamelessly imposed interest charges.

The Florida bar had serious complaints about Robles in hand by 1999, yet it did not file a formal disciplinary complaint until May 16, 2001, and Robles was not suspended until February 19, 2003.²¹² He was finally disbarred on May 15, 2003, and it would be another three years before he was indicted. After a judge rejected a deal under which Robles would serve a ten-year prison term, he was given, on

**Robles admitted pocketing
over \$13.5 million that
would have gone to almost 4,400
claimants nationwide.**

VICTIMS SPEAK OUT

These are a sampling of the over 100 pages of comments filed to the court by Robles's victims and relatives prior to his sentencing.



December 4, 2007, a 15-year sentence,²¹³ after pleading guilty to three counts of mail fraud.²¹⁴

Lifestyle of the Rich and Infamous

At his plea allocution, Robles declared, “I am truly sorry.” But prosecutors did not fail to point out that “Robles sought out clients who were dying and cheated them out of millions of dollars, so that he could finance his own extravagant lifestyle.”²¹⁵

Just how extravagant? From 1999 to September 30, 2002, the amounts Robles looted from client trust funds ballooned from about \$6 million to over \$13 million.²¹⁶ That princely sum covered Robles’s \$2 million in annual living expenses, including almost \$600,000 in mortgage payments on a 9,000-square-foot Key Biscayne waterfront mansion, plus the cost of limousines, private jets, and apartments in New York and Los Angeles.

He blew millions more producing bizarre movies and records.²¹⁷ In 1999, Louis and his wife were the executive producers of the bomb *Love God*, a tale of “a nearsighted, epileptic schizophrenic with a history of suicide attempts and public masturbation,” who, after getting out of the loony bin, goes to live in a hotel where giant worms crawl out of the toilet and “rip off stray jewelry with extensor suction tongues.”²¹⁸ It should be no surprise that it received neither an MPAA rating nor a U.S. video-store release.²¹⁹

Insider Deals Make It Worse

Before Robles’s disbarment and indictment, his firms borrowed over \$3 million from Core Funding Group LLC.²²⁰ In the bankruptcy of Robles personally as well as the two firms with which he was affiliated, the Robles entities, now consolidated, were ordered to pay Core \$3.75 million, representing the loan’s unpaid principal plus unpaid accrued interest.²²¹

Attorneys and consultants in the Robles bankruptcy racked up over \$1 million in bills,²²² money unavailable to compensate victims. Lawyers for the trustee are still billing up to \$420 an hour; paralegals, up to \$135.²²³ There’s even a \$4,958 bill for legal work involving the setting of fees.²²⁴

If that wasn’t bad enough, the court has authorized the trustee in the case, who complained of the costs of storage, to start destroying Robles’s files.²²⁵ In perhaps the ultimate insult, the high-flying Robles, now bankrupt, was represented by federal public defenders,²²⁶ though he had earlier been able to post a \$1 million bond.

What Do the Victims Get?

Before Robles’s sentencing, victims and their relatives were offered a chance to file comments with the court. The more than 100 pages they submitted included an offer to serve as judge and executioner; many accounts of victims dying destitute; and perhaps most poignant, a simple question: “Are widows allowed any reimbursement? I don’t understand any of this.” Another widow simply returned a letter that was addressed to her late husband, noting the date he had died (see box).²²⁷

The tales of Robles’s real victims are in these court files—heartbreaking tales of people who really suffered, whose claims were paid by companies that did the right thing but who never received proper medical treatment or money that would have provided a decent life for their spouses and children.

Ronnie and Dorothy Thomas of Caddo Mills, a small town northeast of Dallas, started building their retirement home, expecting that money resulting from settlement negotiations Robles claimed to have started would help pay for it. With only the garage finished, Ronnie became too ill from asbestosis to continue working. The settlement money they were counting on never arrived.

“It breaks my heart thinking of [Ronnie] having to spend his final years living in this garage, but that is how things turned out,” Mrs. Thomas wrote. “It is where I still live today, with no hope of ever being able to finish the house. While Mr. Robles has led a life of wealth and excess, many of his victims have suffered and died in poverty, my late husband among them,” she told the judge who decided Robles’s sentence.²²⁸

EVEN IF IT'S FAIR, IT FAILS

Judicial and legislative attempts to reform asbestos litigation have led nowhere.

The problems with asbestos litigation have been well known for over 20 years, but Trial Lawyers, Inc. has successfully blocked repeated efforts at reform. As early as 1986, Manhattan Institute Senior Fellow Peter Huber wrote: “The problem is lawyers—lawyers for the plaintiffs and the defendants, lawyers for the insurance companies and the government, lawyers for the bench, the back bench and the bankruptcy masters. One trial in California involved so many lawyers it had to be held in a large auditorium.”²²⁹

Of course, with so many lawyers profiting from the asbestos litigation business, it should come as no surprise that they have marshaled their resources to maintain their profit center. So even though the Judicial Conference Ad Hoc Committee on Asbestos Litigation called the situation “critical and getting worse”²³⁰ as early as 1991, little headway has been made since then toward a comprehensive fix.

Judicial Consolidation Proves Slow and Ineffective

In 1991, a group of federal judges transferred 26,000 asbestos cases from federal courts nationwide to U.S. District Court Judge Charles Weiner in Philadelphia under the federal multidistrict litigation (MDL) laws. Seventeen years later, MDL 875 is moving forward—slowly. It now has a new judge, James T. Giles, two special masters, and a docket sheet that in late March 2008 filled 407 pages with 5,127 filings. Court records comprise hundreds of thousands of pages.²³¹ As of 2006, more than 30,000 cases involving more than 90,000 individual plaintiffs were pending.

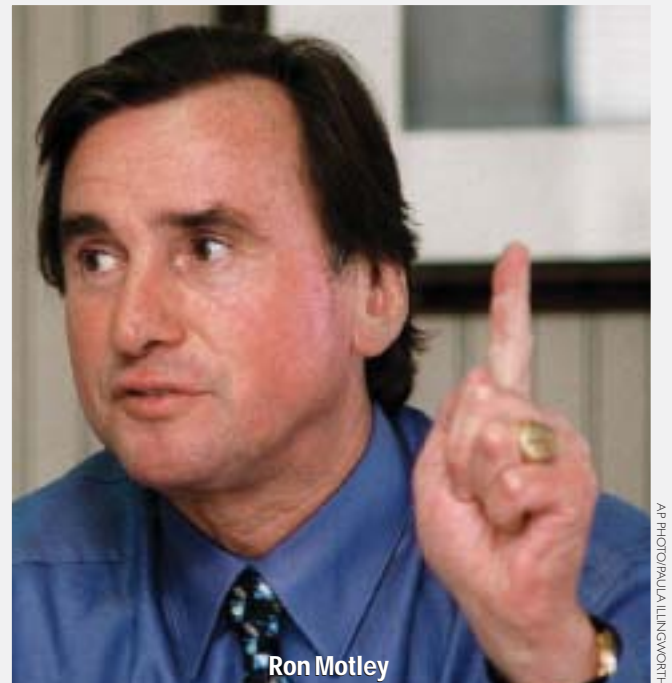
The MDL was supposed to streamline discovery. Progress, however, proved to be excruciatingly slow—that is, until 2007, when defense attorneys contended that the sole medical basis for many cases was a possibly false diagnosis.²³² On May 30, 2007, Judge Giles issued an order requiring plaintiffs’ attorneys to disclose key information on each individual plaintiff. The data range from date of birth to key medical records to information indicating whether individuals have prosecuted or are prosecuting claims not included in the MDL.²³³

Although he has granted repeated extensions, Judge Giles has also dismissed thousands of cases with prejudice for failure to turn over material referred to in his May 30 order.²³⁴ The defendants’ liaison counsel committee has urged Judge Giles to set and enforce “a final deadline” for production of the data sought. But even under the defendants’ timetable, it would be as late as September 3 of this year before cases that had not offered a valid reason for failing to comply could be dismissed.²³⁵ The docket continues to evolve and is being closely watched.

Settlement Efforts Strike Out

Also back in 1991, a group of defendant companies calling themselves the Center for Claims Resolution (CCR) decided that they could dispose of all present and future claims by striking a deal with the devil—in this instance, two long-standing leaders of Trial Lawyers, Inc.’s asbestos business,

In 1997, the U.S. Supreme Court rejected a global asbestos settlement engineered by Ron Motley and Gene Locks.



Ron Motley

AP PHOTO/PAUL LUNGWORTH

AN UN-FAIR FINISH

Republican Arlen Specter (left) and Democrat Patrick Leahy, the ranking members on the Senate Judiciary Committee, failed in their efforts to pass federal asbestos reform.



AP PHOTO/SEAN WASH

Ron Motley and Gene Locks, who represented 14,000 asbestos claimants. The CCR would settle with Motley's and Locks's clients for a generous \$215 million, of which \$70 million would go to these attorneys and their co-counsel.²³⁶ Motley and Locks would then file a mandatory class action that would dispose of all future claims against the CCR's members. To provide notice to members of the potential class, who had a limited period in which to opt out of it, there were even commercials that ran during football telecasts. By the January 24, 1994, deadline, more than 236,000 people had rejected membership.²³⁷

Reacting against the \$70 million in legal fees, and the meager payouts the remaining members of the class would subsequently receive, a rival faction of the plaintiffs' bar, led by Fred Baron, attacked the Motley-Locks plan as an unethical alliance with the defendants.²³⁸

Ultimately, the U.S. Supreme Court, in 1997, ruled that the settlement agreement did not meet the requirements of "common issue predominance and adequacy of representation."²³⁹ These vital class action rules entitled every asbestos claim to a separate, fact-intensive inquiry into injury and causation.

Writing for the majority, Justice Ruth Bader Ginsburg noted: "The argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair and efficient means of compensating victims of asbestos exposure." But such a regime, the Court found, required action by Congress.²⁴⁰

Congress Unable to Reach a Solution

In the years following the Supreme Court's decision, bills were introduced in Congress to establish medical criteria for evaluating asbestos claims and to provide a range of alternatives for resolving those claims.²⁴¹ But a legislative body that couldn't enact a ban on asbestos products²⁴² had no chance of solving the far more complex challenge of devising a universally acceptable compensation plan.

Asbestos reform legislation was reported out of the House Judiciary Committee in March 2000, but with mid-term elections looming, and predatory lawyers launching a public-relations campaign depicting it as an asbestos industry bailout, the legislation quietly disappeared.²⁴³ An effort to legislate a global settlement mechanism also failed.²⁴⁴ In the eyes of some legislators, notwithstanding the overwhelming evidence that asbestos litigation had become unworkable, the "time was not yet right. The situation had not gotten bad enough."²⁴⁵

By 2003, Senator Orrin Hatch, the Utah Republican who then chaired the Judiciary Committee, was promoting a legislative solution centered on an asbestos trust fund financed by government and industry.²⁴⁶ His efforts failed, and the legislation was handed off to Senator Arlen Specter (R-Pa.). Specter brought in Third Circuit Judge Edward R. Becker to help mediate among various stakeholders. Specter also wanted to create a \$140 billion fund over 30 years.²⁴⁷

When a reconstituted Senate convened in 2005, Specter reintroduced the Fairness in Asbestos Injury Resolution (FAIR) Act,²⁴⁸ which again followed the trust fund and medical criteria model. FAIR spent a year in committees and hearings, and floor debate began on February 6, 2006.²⁴⁹ By then, it was the subject of furious public-relations campaigns waged by all sides.

Specter's bill died in a procedural vote on Valentine's Day 2006, the victim of attacks by trial lawyers, labor unions, and some key corporate defendants unhappy with the legislation's structure.²⁵⁰ Judge Becker died on May 19,²⁵¹ shortly after the deadline for reconsideration had passed.²⁵² Ten days later, Senator Specter introduced a new bill, S. 3274, but it never got out of committee. The Democrats' current control of the Senate is likely to doom any substantive action during the 110th Congress.

NEW TRENDS; UNCERTAIN FUTURE

Facing increased scrutiny and successful state tort reforms, Trial Lawyers, Inc. has reformed its asbestos model.

Notwithstanding the inability of Congress to craft a comprehensive solution to the asbestos litigation problem, there is recent evidence of some positive trends. The large volume of asbestos filings not claiming malignancy has plummeted, signifying, at least temporarily, a major shift in the tort bar's business model.

But Trial Lawyers, Inc. is nothing if not innovative, and it has continued to find new ways to make money off its old asbestos cash cow. First, litigators have picked up shop and moved from states that passed tort reforms to other, more favorable, jurisdictions. Second, lawyers have been able to extract higher settlements by capitalizing on dramatically rising jury awards. Trial Lawyers, Inc. continues to add to the list of companies to sue; because the original asbestos manufacturers have gone through bankruptcy, these defendants are ever more tenuously linked to alleged injuries. The litigation industry has found a new way to double-dip by filing on behalf of single plaintiffs multiple claims against different defendants and trusts around the country, and premising these various claims on wholly distinct theories of causation. Finally, new mass screenings have been popping up around the country—an ominous sign that the old Trial Lawyers, Inc. business model may not be dead but merely dormant.

The End of an Era?

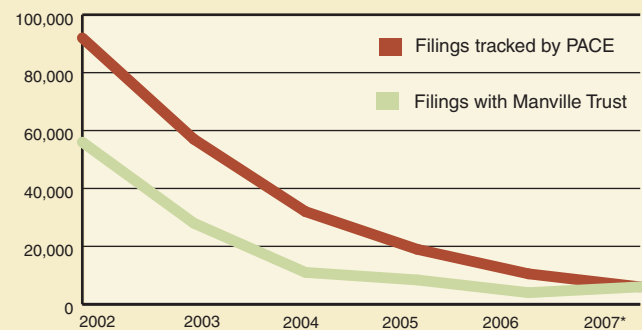
Recent trends suggest that Trial Lawyers, Inc. has, for the moment, significantly dropped its long-standing asbestos business model—overwhelming defendants by filing tens of thousands of dubious claims—in favor of new approaches. The numbers speak volumes: from a peak, in 2002, of 70,412 nonmalignant and 6,435 malignant claims, the filing volume fell, in 2007, to 2,462 malignant and 2,596 nonmalignant claims (see graph at top).²⁵³ Data from PACE, a unit of Navigant Consulting, show the fastest recent declines in the tort reform states Texas, Ohio, and Mississippi.²⁵⁴ Indeed, Ohio and Mississippi have now fallen out of the top five states for number of filings.²⁵⁵

What accounts for the drop? To begin with, exposure: after Judge Jack's groundbreaking revelations of massive double-dipping—and, more recently, the scandals alleged by CSX in West Virginia—the tort bar has had to tread more carefully. Also contributing to the drop in filings is the spate of tort reforms passed in states that had been magnets for asbestos litigation. Finally, many of the asbestos bankruptcy trusts, such as Manville, have introduced more stringent claim criteria.

For some of the old-school asbestos litigation firms, these developments have been painful. Asbestos powerhouse Baron & Budd of Dallas laid off 240 employees in the first nine months of 2007, citing changes in Texas law as decimating its asbestos cases in the state. “We had to kind of do a right-sizing of the law firm,” said managing shareholder Russell Budd.²⁵⁶

Asbestos Claims Fall Sharply

The Manville Trust adopted more stringent claim criteria in 2002, which took effect in 2004. That and other reforms have led to reduced filings of claims.

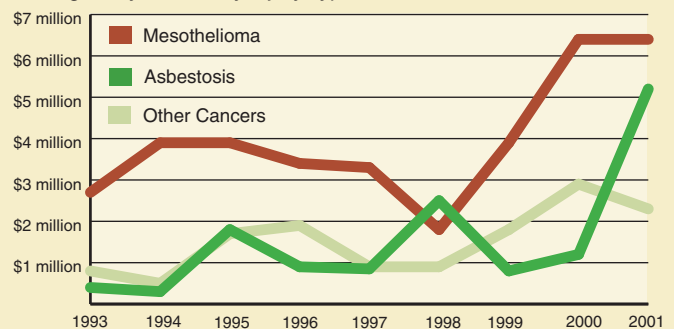


Source: PACE, a unit of Navigant Consulting

* Annualized

Jury Awards Have Soared in Recent Years, Especially for Mesothelioma

Average Jury Awards by Injury Type



Source: RAND Asbestos Litigation 2005

**Like pesky moles,
asbestos lawyers blocked
in one state simply dig
their way to new venues.**

New States, New Defendants, More Dollars

But like pesky moles, asbestos lawyers blocked in one state simply dig their way to new venues (see chart at right). Baron & Budd has been moving its cases to California since 2004, when Texas passed its comprehensive tort reform.²⁵⁷ Lamented San Francisco Superior Court Judge Tomar Mason, “[A]sbestos cases are the dominating form of work to which our civil judges attend.”²⁵⁸

Similarly, Illinois powerhouse asbestos firm Simmons Cooper has been moving cases to Delaware since the state’s preeminent “judicial hellhole,” Madison County, began to clean up its act.²⁵⁹ In Delaware, new cases involving exposure in other states now exceed in-state exposure cases in number.²⁶⁰

Trial Lawyers, Inc. is also expanding its pool of target defendants to include even “mom and pop” hardware stores and suppliers that can barely afford a local attorney.²⁶¹ The litigation industry has had to seek new targets out of necessity, as its traditional defendants have gone bankrupt: one plaintiff’s lawyer recently called asbestos litigation “the endless search for a solvent bystander.”²⁶² Before it is over, the number of defendants that have faced asbestos lawsuits is expected to swell from the 8,400 identified by RAND²⁶³ to 12,000.²⁶⁴

Hungry asbestos litigators aren’t waiting for clients to come to them; sophisticated new computer technology now joins high-powered media advertising campaigns to “assure a steady stream of new clients”²⁶⁵ and help the lawyers “get found, get contacts, get verdicts.”²⁶⁶

More defendants are balking at settlements and going to trial, but trials are a two-edged sword. The size of jury awards is increasing, sometimes dramatically (see graph, opposite page at bottom). Notes defense lawyer Edward McCambridge, “The vast majority of times, plaintiffs are going to win in these very emotional trials.”²⁶⁷ In addition, most jurors today never knew asbestos as a vital tool of the American economy; they know it mostly as a scary monster.

A New Form of Double-Dipping

Even as Judge Jack was discovering and exposing asbestos plaintiffs’ double-dipping into the silicosis pool, the litigation industry was developing a new scam involving asbestos bankruptcy trusts—the remnants of the 80 asbestos-related companies that were put out of business by Trial Lawyers, Inc.²⁶⁸ These trusts have some \$17 billion in assets, with billions more on the way.²⁶⁹ And the dirty little secret behind them is that they are overseen by the biggest plaintiffs’ law firms in the business. For example, Baron & Budd is involved with nine bankruptcy trusts, and New York firm Weitz & Luxenberg oversees seven.²⁷⁰ With the foxes guarding the henhouse, it’s little wonder that Trial Lawyers, Inc. has found some new golden eggs to feast on.

The bankruptcy-trust double-dipping problem gained needed attention in January 2007, when Ohio Court of Common Pleas Judge Harry Hanna barred the asbestos law firm Brayton Purcell from practicing in his courtroom.²⁷¹ The firm, noted *Forbes*, had taken “an assembly-line approach to litigation: Lawyers there once filed 5,000 claims in a single day.”²⁷² In Hanna’s courtroom, Brayton Purcell had been seeking damages from Lorillard Tobacco Company on behalf of the estate of Harry Kananian, who died from mesothelioma in 2007.²⁷³ The firm claimed that Kananian was exposed to asbestos as a smoker of Lorillard’s Kent cigarettes during the brief period, in the 1950s, when asbestos was used in that brand’s filters.²⁷⁴

Most Active Asbestos Litigation States



1970–1992



1993–2000



2003–2007

Source: RAND, Navigant Consulting



This trailer was the site of asbestos screenings in Oklahoma in early April 2008.

CHRIS EDENSOLOUGH/LEADER 12

The problem for Brayton Purcell arose when it became clear that it and other law firms had filed claims on behalf of Kananian with a number of asbestos trusts, under a variety of theories of causation: that he had been exposed on his World War II naval vessel, or in shipyards, or in a factory as a teenager.²⁷⁵ And from these bankruptcy trusts, Kananian's lawyers had collected as much as \$700,000.²⁷⁶

To halt this sort of bankruptcy-trust abuse, reformers have called for greater transparency. The American Legislative Exchange Council (ALEC) is urging states to adopt its model Asbestos Claims Transparency Act, which would require full and timely disclosure of all actual and potential asbestos claims. The model legislation's drafters hope that it would "facilitate communication between the asbestos trusts and the tort system in an effort to keep claimants from collecting damages from both sources."²⁷⁷

Mass Screenings Reappear

Although Trial Lawyers, Inc. had temporarily modified its business model in reaction to tort reforms and increased scrutiny, such a change has proved to be short-lived. As Professor Brickman wrote in a scathing December 2007 opinion column in the *Wall Street Journal*,²⁷⁸ Justice Department inaction involving past abusive practices by the trial bar in essence gave new mass screenings a green light. Brickman's warning proved prescient: as he more recently noted, "The lawyers are again doing screenings to gin up bogus cases."²⁷⁹

Mass screenings are indeed back, with two held in Oklahoma in a four-month period and a third scheduled.²⁸⁰ The Texas law firm Nix Patterson & Roach is doing these screenings using old-school marketing tactics: newspaper, broadcast, and direct mail advertising are used to attract workers, and screenings are held in attractive venues such as lodge halls, where they share space with bars, bingo halls, and card games.²⁸¹

At least on the surface, Nix Patterson has somewhat improved the quality of screenings in comparison with past practice: the firm's medical contractor, SafeWorks Illinois, has three doctors and a physician's assistant (PA) in top management.²⁸² According to a Nix Patterson spokesperson, a physician or PA individually evaluates each worker at screenings, and if the evaluation does not reveal a medical basis for an X-ray, "the worker is sent home. This is a decision made without any input from an attorney."²⁸³

Mass screenings are back, with two held in Oklahoma in a four-month period and a third scheduled.

Nevertheless, legal-representation agreements handed out at screenings make clear that virtually all control of litigation will rest with attorneys, not allegedly injured claimants, once the latter sign up. According to these contracts, clients must let their lawyers settle their claims “in whatever manner, and using whatever negotiation strategy” the lawyers want, and the clients must allow aggregate settlements.²⁸⁴ Attorneys can dump clients they consider uncooperative or if “attorneys decide that they cannot continue to be involved in the Claim.”²⁸⁵ Under the representation agreement, the client is liable for all expenses already incurred even if the attorneys decide against representing him, and the same goes for clients who decide not to go forward with a lawsuit “for any reason whatsoever.”²⁸⁶ The attorney’s 40 percent contingency fee comes off the top of any judgment or settlement, with all expenses and court costs deducted from the client’s remaining share.²⁸⁷

Nix Patterson & Roach retained local counsel and used their names in newspaper ads. For the March 31 through April 4 screening conducted in Pryor, Oklahoma, local counsel was State Representative Ben Sherrer.²⁸⁸ Nix Patterson handled all the details, and Sherrer said he never read the legal representation agreement, knew little about asbestos litigation or controversies involving screenings, and never visited the screening site.²⁸⁹ Sherrer said he was comfortable being involved in the case because Nix Patterson has a “good reputation.”²⁹⁰



Workers fill out forms at the Oklahoma screening.

Conclusion: A Reform Blueprint

While a federal solution to the asbestos litigation problem seems unlikely in the near future, state legislatures can act to prevent the worst of Trial Lawyers, Inc.’s documented abuses. First, medical criteria laws that specify strict standards for establishing injury can prevent many mass-screening abuses. A good example of such a law was passed by Texas in 2005; the Texas legislation outlaws mass screenings, requires a certified medical report, and places mesothelioma and other malignant cases at the front of court dockets.²⁹¹

Second, states can prevent trial lawyers from shopping for the most pro-plaintiff forum, at least within their own borders. For example, Mississippi in 2004 reformed its venue rules so that a plaintiff could file a claim only in the county in which he resided, where the defendant corporation was headquartered, or where the injury actually occurred.²⁹² In addition, Mississippi’s reform required that the rule apply to every plaintiff so that lawyers could not bundle claims together and ship them to a permissive county where only one of the plaintiffs resides.²⁹³

Third, states can adopt joint-and-several liability reforms to remedy the “solvent defendant” problem, in which plaintiffs’ lawyers sue companies essentially unconnected to asbestos manufacture. Companies like Raybestos-Manhattan and Johns-Manville with early knowledge of asbestos dangers are long gone, and companies that used but did not make asbestos were unaware of its most serious risks before the seminal 1964 Selikoff study.²⁹⁴ While not shielding such companies entirely, reforms that protect them from being found “severally liable”—i.e., responsible for as much as 100 percent of damages, regardless of their degree of culpability—comports with basic procedural fairness.²⁹⁵

Fourth, states should head off Trial Lawyers, Inc.’s new double-dipping fraud by passing some version of ALEC’s transparency act to ensure that bankruptcy trusts and corporate defendants are not scammed. Efforts in California, Louisiana, and West Virginia, as well as Ohio, the home of the Kananian case, are under way to adopt such rules.²⁹⁶

Finally, it is important to emphasize that judges, prosecutors, and even corporate defendants must be involved in defeating the asbestos litigation morass. Judges need to take claims and settlements seriously, in the mold of Judge Jack, instead of merely trying to clear their dockets. Prosecutors must punish frauds so that unscrupulous attorneys have a reason to stop perpetrating them.²⁹⁷ And corporate defendants should fight back, as CSX has done in West Virginia or as W. R. Grace has done, more recently, in bankruptcy court.²⁹⁸

Originally forming the basis of a vital American industry, asbestos now forms the foundation of Trial Lawyers, Inc.’s most lucrative business. The product once dubbed the “magic mineral” has killed tens of thousands, and those individuals genuinely injured deserve compensation. The problem with handling such compensation through the courts, without reforms, is Trial Lawyers, Inc.’s avaricious and unscrupulous business model, which too often transfers money to the lawyers’ own bottom line by taking from real victims and innocent defendants alike. Eventually, the number of individuals injured by asbestos will dwindle to nothing. Unfortunately, Trial Lawyers, Inc.’s business model will be used in other litigation and is thus likely here to stay.

John Wylie, the primary writer, conducted some of the initial research for this report while preparing an article, “The \$40 Billion Scam,” for the January 2007 edition of the *Reader’s Digest* (pp. 74-83). Some graphics concepts also were born during that process. Material which first appeared in that article is Copyright 2007, Reader’s Digest Association and is used with permission.

1. Manhattan Institute Center for Legal Policy, *Trial Lawyers, Inc.: A Report on the Lawsuit Industry in America*, 2003 10, available at <http://www.triallawyersinc.com/html/part05.html>. All descriptions of “Trial Lawyers, Inc.” in this report, as in others in this series, refer to the business model used by some plaintiffs’ lawyers. For each and every mention of Trial Lawyers, Inc. or the litigation industry, the Manhattan Institute and this report’s authors do not intend to convey that all plaintiffs’ lawyers, or any specific plaintiffs’ lawyer or firm, fit under this description or participate in the questionable practices described in this report.
2. See Stephen J. Carroll et al., *Asbestos Litigation* 71 & tab. 4.1 (Rand Inst. for Civ. Just., 2005), available at http://www.rand.org/pubs/monographs/2005/RAND_MG162.pdf.
3. See *id.* at 106; American Academy of Actuaries’ Mass Torts Subcommittee, *Overview of Asbestos Claims Issues and Trends* 32 (Aug. 2007) [hereinafter “Overview”], available at http://www.actuary.org/pdf/casualty/asbestos_aug07.pdf.
4. See Carroll, *supra* note 2, at 103-04.
5. Hon. Dennis Jacobs, *The Secret Life of Judges*, 75 *FORDHAM L. REV.* 2855, 2858 (2007).
6. See James R. Copland, *Trial Lawyers, Inc. Update No. 1: Silicosis* (Aug. 2005), available at http://www.triallawyersinc.com/updates/tli_update_0805.html.
7. See Jonathan D. Glater, *Many Silica-Damage Plaintiffs Also Filed Claims Over Asbestos*, *N.Y. TIMES*, Feb. 5, 2005, at C1 (citing Claims Resolution Management Corporation) (“[O]f 8,629 [silicosis] plaintiffs . . . 5,174 had already filed asbestos claims.”).
8. See *CSX Transportation v. Gilkison*, No. 05-cv-202, (N.D. W. Va. July 5, 2007) (Am. Compl. ¶¶ 110-52); CSXT appended the documentation of the fictitious doctor to a response filed Dec. 13, 2006 (Document 146-8).
9. See *USA v. Robles*, No. 06-20286 (S.D. Fla. Sept. 15, 2007) (Doc. 129, Factual Basis in Support of Entry of Guilty Plea ¶ 19).
10. See Chris Osher, *Tearful Jaffe Sentenced to Federal Prison, Fined \$5,000*, *TRIB.-REV.* (Pittsburgh, Pa.), June 6, 2003.
11. See James Tanella, Managing Director, PACE, a unit of Navigant Consulting, Inc., presentation at Mealey’s Asbestos Super Conference, Sept. 26, 2007, p. 12 of hard copy and Oct. 11, 2007 e-mail correspondence.
12. See *Baron & Budd Announces More Job Cuts*, *DALLAS BUS. J.*, Sept. 10, 2007.
13. JOHN UDD, *A CHRONOLOGY OF MINERALS DEVELOPMENT IN CANADA* (National Resources Canada, 1998), available at http://www.nrcan.gc.ca/ms/stude-etudi/chro_e.htm. Many sources list the date as 1879, apparently based on what appears to be a typographical error in a 2001 newspaper series published by the *Virginian-Pilot* newspaper. See Bill Burke, *Shipyards, a Crucible for Tragedy*, *VIRGINIAN-PILOT* (Norfolk, Va.), May 6, 2001.
14. Bill Burke, *Lawyers Go to Court for Asbestos Victims*, *VIRGINIAN-PILOT* (Norfolk, Va.), May 10, 2001.
15. See <http://www.motleyrice.com> (last visited Aug. 18, 2007); PAUL BRODEUR, *OUTRAGEOUS MISCONDUCT: THE ASBESTOS INDUSTRY ON TRIAL* 136 (1985).
16. See <http://www.motleyrice.com> (last visited Aug. 18, 2007). The Asbestos Litigation History page provides a stunning summary of how asbestos claims ballooned from a handful of cases to a major national industry.
17. See Chris Joyner et al., *Scruggs, Partner Enter Guilty Pleas*, *CLARION-LEDGER* (Jackson, Miss.), March 14, 2008; see also Joseph B. Treaster, *A Lawyer Like a Hurricane*, *N.Y. TIMES*, March 16, 2007; John Mintz and Cecil Connolly, *Wounding the Giant: Small-Town Blow Exposed Cigarette Industry’s Soft Side*, *WASH. POST*, March 30, 1998.
18. See Jason Embry, *Lawyer Plants Seeds of Future Democrat Wins*, *AMER.-STATESMAN* (Austin, Tex.), at A1.
19. The firm’s website lists 70 cases with verdicts or settlements exceeding \$1 million net to clients. The total value is \$139,054,643. At 33 percent, a standard contingency fee, the firm would have collected an additional \$69.5 million in fees (i.e., 50 percent of net to clients). Some cases went to trial, where fees of 40 percent or more often apply; at that rate the fees would be \$92.7 million. See <http://www.baronandbudd.com> (last visited Aug. 19, 2007).
20. Asbestos, <http://www.heritagereasearch.com/asbestos.htm> (last visited Aug. 20, 2007).
21. Asbestos: History and Uses, <http://dnr.wi.gov/air/compenf/asbestos/asbes3.htm> (last visited Aug. 20, 2007).
22. The ABCs of ASBESTOS IN SCHOOLS (EPA 2003) (noting that most asbestos in schools is best handled by being left alone as long as it is not damaged in such a way that fibers become airborne).
23. Jock McCulloch, *Beyond the Factory Gates: Asbestos and Health in Twentieth Century America*, 32 *J. HEALTH POL. POL’Y & L.* 543, 543 (2007).
24. Bill Burke, *Horrible Toll Could Have Been Avoided*, *VIRGINIAN-PILOT* (Norfolk, Va.), May 6, 2001.
25. Bill Burke, *How the War Created a Monster*, *VIRGINIAN-PILOT* (Norfolk, Va.), May 6, 2001.
26. Earliest Known Facts About Asbestos, http://www.umt.edu/libbyhealth/introduction/background/asbestos_timeline.htm.
27. BARRY L. CASTLEMAN, *ASBESTOS: MEDICAL AND LEGAL ASPECTS* 1 (5th ed. 2005).
28. Earliest Known Facts About Asbestos, *supra* note 26.
29. See *id.*; CASTLEMAN *supra* note 27, at 226. Castleman, however, ridicules the standard with a quote from Dr. James P. Keogh introducing the chapter on Thresholds and Standards: “If you poison your boss a little bit each day it’s called murder; if your boss poisons you a little each day it’s called a Threshold Limit Value.” *Id.*
30. See Peter Huber, *The Risk Race*, *THE NEW REPUBLIC*, February 3, 1986, at 40.
31. CASTLEMAN, *supra* note 27, at 144 (noting that the settlement was possible in part because of “questionable practices Mr. Greenstone used in soliciting these cases”).
32. See *id.* at 145.
33. See BRODEUR, *supra* note 15, at 8-10.
34. See *id.* at 6.
35. *Templait v. Combustion Engineering, Settlement Agreement*, Mar. 8, 1969.
36. See BRODEUR, *supra* note 15, at 34.
37. See *Borel v. Fibreboard Paper Products Corp.*, 493 F.2d 1076, 1083.
38. BRODEUR, *supra* note 15, at 107.
39. See *id.*
40. See *id.* at 103-04.
41. See Huber, *supra* note 30, at 40 (“In his account of who knew what when—the core of his cover-up theory—Brodeur systematically obscures the difference between asbestos-related cancer and asbestosis, usually a much less serious disease, and understood and discussed in the Manville boardrooms much earlier.”).
42. See BRODEUR, *supra* note 15, at 110-11; CASTLEMAN, *supra* note 27, at 492.
43. See BRODEUR, *supra* note 15, at 103-04.
44. CASTLEMAN, *supra* note 27, at 493-98.
45. See *id.* at 493. Citing *Billetz v. Johns-Manville*, Civ. No. 80-2976, Castleman notes that the documents led New Jersey federal Judge Harold Ackerman to allow a jury trial on negligence, fraud and conspiracy claims against Metropolitan Life.
46. *Beshada v. Johns-Manville Products Corp.*, 442 A.2d 539 (N.J. 1982).
47. See *Keene Corp. v. Insurance Co. of North America*, 667 F.2d 1034 (D.C. Cir. 1981).
48. See *id.*
49. Lester Brickman, *On the Theory Class’s Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality*, 31 *PEPPERDINE L. REV.* 33, 55 (2004).
50. 667 F.2d at 1057.
51. Michelle J. White, *Asbestos Litigation: The Problem of Forum Shopping and Procedural Innovations and Potential Solutions*, Transcript, Manhattan Institute Lecture, Sept. 14, 2005, at 3.
52. CASTLEMAN, *supra* note 27, at 739.
53. Lester Brickman, *The Asbestos Litigation Crisis: Is There a Need for an Administrative Alternative?*, 13 *CARDOZO L. REV.* 1819, 1819 (1992).
54. See *id.* at 1823.
55. Overview, *supra* note 3, at 5 & n.55.
56. Carroll, *supra* note 2, at 71 & tab. 4.1.
57. Michelle J. White, *Asbestos Litigation: Procedural Innovations and Forum Shopping*, 35 *J. LEGAL STUD.* 365, 366 (2006).
58. Carroll, *supra* note 2, at 70-71.
59. See *id.* at 71 tab. 4.1.
60. See White, *supra* note 57, at 365.
61. Overview, *supra* note 3, at Executive Summary.

62. See White, *supra* note 57, at 366 & n.2.
63. See CASTLEMAN, *supra* note 27, at 102.
64. See David Kotelchick, *Asbestos: "The Funeral Dress of Kings"—and Others*, in DYING FOR WORK 192, 193 (Gerald Markowitz ed., 1989).
65. See *id.* at 194.
66. See *id.*
67. See *id.* at 198.
68. See Roger Parloff, *The \$200 Billion Miscarriage of Justice*, FORTUNE, May 4, 2002.
69. See Mariana S. Smith, *Resolving Asbestos Claims: The Manville Personal Injury Settlement Trust*, 53 L. & CONTEMP. PROBS. 27, 29 (1990).
70. See *id.* at 29.
71. See *id.* at 27-28.
72. See Brickman, *supra* note 49, at 75 n.120.
73. See Insurance Information Institute, *Issue Update: Asbestos Liability* (June 2007).
74. See *id.*
75. See Brickman, *supra* note 49, at 129-30.
76. See *id.* at 132-33.
77. See Memorandum from David Austern, President, CRMC (Sept. 12, 2005), available at <http://www.claimsres.com/documents/9%2005%20Suspension%20Memo.pdf>.
78. Brickman, *supra* note 49, at 138.
79. See Michelle J. White, *Why the Asbestos Genie Won't Stay in the Bankruptcy Bottle*, 70 U. CIN. L. REV. 1319, 1321 (2002).
80. See *id.*
81. See In Re: Silica Products Liability Litigation, MDL No. 1553, (S.D. Tex. Feb. 17, 2005) (Transcript of Direct Testimony of Heath Mason, Daubert Hearing, at 274-75) (PACER accession number 2:03-md-1553).
82. See N&M Inc. Sales by Customer Detail, at 27. When the company shut down, the records were seized by Forman Perry Watkins Krutz & Tardy. A copy of the company's basic Quick Books financial history was provided to the author from the law firm's files.
83. Transcript, *supra* note 81, at 274.
84. See Texas Department of Health, Complaint No. 1685 (June 24, 2002). The description of the initial complaint comes from the Complaint/Technical Assistance Request form found at page 6; the remainder from the investigator's narrative report at pages 2-5.
85. 433 U.S. 350.
86. Cf. Lester Brickman, *Ethical Issues in Asbestos Litigation*, 33 HOFSTRA L. REV. 833, 833-34 (2005); Lester Brickman, *On the Applicability of the Silica MDL Proceeding to Asbestos Litigation*, 12 CONN. INS. L.J. 10 (2006) [hereinafter "Applicability"]; Patrick M. Hanlon & Anne Smetak, *Asbestos Changes*, 62 N.Y.U. ANN. SURV. AM. LAW 525, 593 (2007).
87. See <http://www.cwire.org/highest-paying-search-terms/> (last visited January 28, 2008); see also http://www.overlawyered.com/2006/03/search_engine_index.html.
88. Recorded telephone interview with Lester Brickman, Oct. 10, 2006.
89. MDL No. 1553 (June 30, 2005) (Order No. 29, at 108). The author visited the site in Ocean Springs, Mississippi and photographed the office and massage parlor, although the screening clinic has closed.
90. E-mail to the author Oct. 15, 2006.
91. See Lester Brickman, *Disparities between Asbestosis and Silicosis Claims Generated by Litigation Screenings and Clinical Studies*, 29 CARDOZO L. REV. 513, 519-21 (2007). The physicians, mostly radiologists and pulmonologists, are certified by the National Institute for Occupational Safety and Health for their special expertise in reading and classifying chest X-rays using the International Labour Organization scale.
92. The total universe of certified B readers is extremely small. See *id.* at 520 n.16 (citing NIOSH data showing that in the last decade the total peaked at 627 in 1998, falling to just 387 in 2005).
93. See Applicability, *supra* note 86, at 9-13.
94. See Joseph N. Gitlin et al., *Comparison of "B" Readers' Interpretations of Chest Radiographs for Asbestos Related Changes*, 11 ACAD. RADIOLOG. 243 (2004).
95. See Jonathan D. Glater, *Reading X-Rays In Asbestos Suits Enriched Doctor*, N.Y. TIMES, Nov. 29, 2005, at A1.
96. MDL 1553 (Order 29); news releases dated March 9, 2006, and June 7, 2006, from the Oversight and Investigations Subcommittee of the House Committee on Energy and Commerce. The committee conducted extensive hearings and research.
97. See Brickman, *supra* note 91, at Abstract, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=970993 ("I have been able to determine that for every 1,000 occupationally exposed workers screened, litigation screenings generated approximately 500-600 diagnoses of asbestosis. In a clinical setting, however, the number diagnosed with asbestosis would be 40-50."). In a telephone conversation with the author, Brickman noted that during the period of the screenings the value of each asbestosis claim would be about \$100,000, which produces the figure of \$30 million to \$50 million in excess claim value per 1,000 occupationally exposed workers.
98. See Walter Olson, *Creative Deposition*, 34 CIV. JUST. MEMO. (Manhattan Inst. Center for Legal Pol'y, May 1998), available at http://www.manhattan-institute.org/html/cjm_34.htm; Walter Olson, *Thanks for the Memories*, REASONONLINE, June 1998, <http://reason.com/9806/col.olson.shtml>; Parloff, *supra* note 68, at 154. The firm has vigorously contested claims, with some success, that the memo was illegal or improper.
99. Stephen J. Carroll et al., *Asbestos Litigation Costs and Compensation: An Interim Report*, at 56 (Rand Inst. for Civ. Just., 2002), available at <http://www.rand.org/publications/DB/DB397/DB397.pdf>.
100. MDL 1553 (April 16, 2004) (Letter to defense attorneys from Joseph Gibson of Quinn, Laminack & Pirtle) (on file with author).
101. Gibson letter, *supra* note 100, at 2 (of the three page document, page one consists entirely of recipients and their fax numbers and the numbered page 1 is actually the second sheet while page 2 is the third sheet).
102. See *id.*
103. Second telephone interview, Dave Setter, Oct. 2, 2006.
104. The story is recounted in more detail in John M. Wylie II, *The \$40 Billion Scam*, READER'S DIGEST 80 (Jan. 2007). The case is *Trotter v. Pulsoman*, No. 06-cv-619 (S.D. Miss.). Trotter's widow was allowed as a substitute plaintiff on behalf of his estate. The case was closed December 12, 2007, after months in which the cases against all the defendants were dismissed. The dismissals of the cases as to the two primary defendants were with prejudice. All the dismissals required the parties to pay their own legal fees. The case generated 222 filings, some of which are dozens of pages long.
105. See White, *supra* note 57, at 366-67.
106. See *id.* at 393 tab. 7.
107. Roger Parloff, *Diagnosing for Dollars*, FORTUNE, June 18, 2005, at 98.
108. In Re: Silica Products Liability Litigation, MDL No. 1553 (S.D. Tex.).
109. See Dr. David Weill, Senate Judiciary Committee Testimony, Fed. Doc't Clearinghouse at 4 (Feb. 3, 2005) ("Although asbestosis and silicosis are different diseases that look different on x-ray films, it is theoretically possible for one person to have both diseases. A person could be exposed to both silica and asbestos in sufficient quantities to cause either disease, but it would be extremely unusual for one person in a working lifetime to have sufficient exposure to both types of dust to cause both diseases. In my clinical experience in the United States, I have never seen a case like this and colleagues who saw patients in periods where exposure levels were much higher have difficulty recalling an individual worker who had both asbestosis and silicosis. Even in China, where I saw workers with jobs involving high exposure to asbestos and silica (such as sandblasting off asbestos insulation), I did not see anyone or review chest radiographs of anyone who had both silicosis and asbestosis.").
110. See Brickman, *supra* note 91, at 516-17 n.4.
111. Jonathan D. Glater, *Suits on Silica Being Compared to Asbestos Cases*, N.Y. TIMES, Sept. 6, 2003, at C1.
112. See *id.* ("One large insurer now faces 30,000 silica cases, up from about 2,500 a year ago, said a spokesman for the coalition of insurance companies. . . . 'I just don't think that we're seeing an epidemic of silicosis,' Mr. Glenn said, noting that according to the National Institute for Occupational Safety and Health—the government agency where Mr. Glenn used to work—fatalities are declining.").
113. Recorded interview with Daniel J. Mulholland, Attorney, Forman, Perry, Watkins, Krutz & Tardy, Jackson, Miss., at the office of the firm, Monday, Sept. 25, 2006.
114. *Id.*

115. MDL 1553 (Oct. 29, 2004) (Dr. George H. Martindale Dep. at 64-66).
116. *Id.* at 64.
117. *Id.* at 73.
118. MDL 1553 (Dec. 17, 2004) (Tr. Status Conf. at 17).
119. MDL 1553 (March 14, 2005) (Mot. Hr'g at 15).
120. *Black's Law Dictionary* defines the *Daubert* test as: "A method that federal district courts use to determine whether expert testimony is admissible under Federal Rule of Evidence 702, which generally requires that expert testimony consist of scientific, technical or other specialized knowledge that will assist the fact-finder in understanding the evidence or determining a fact in issue. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S. Ct. 2786 (1993). Similar scrutiny must be applied to nonscientific expert testimony. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 119 S. Ct. 1167 (1999). Variations of the *Daubert* test are applied in the trial courts of most states."
121. See the *Daubert* hearing transcripts, all three days, based on times recorded by court reporter, index of witnesses, and page counts.
122. MDL 1553 (March 14, 2005) (Mot. Hr'g at 9).
123. MDL 1553 (June 30, 2005) (Order No. 29 at 116).
124. MDL 1553 (Order No. 29 at 150).
125. *Id.* at 244-47.
126. Those making money from asbestosis cases and transforming them into silicosis regularly use the word "inventory," as though plaintiffs were commodities. See, e.g., MDL 1553 (Feb. 17, 2005) (Testimony of Heath Mason, Day 2 of *Daubert* Hearings, at 286, 368).
127. CSX Transportation v. Gilkison, No. 05-cv-202 (N.D. W. Va. July 5, 2007) (Pacer Accession Doc. No. 208 plus exhibits A-HH, Am. Compl. ¶¶ 22-29).
128. No. 05-cv-202 (Dec. 22, 2005) (Compl. ¶ 26).
129. In Re: FELA Asbestosis cases, No. 02-C-9500 (Cir. Ct. W. Va.) (Mot. to Dismiss Plaintiff Rodney Chambers ¶¶ 15-18).
130. No. 05-cv-202 (Am. Compl. ¶¶ 41-45, 52).
131. *Id.* at ¶¶ 65-67.
132. *Id.* at ¶ 68.
133. In the Matter of the License of Raymond Anthony Harron, M.D., Texas Medical Board, No. C-9439 (April 13, 2007) (Agreed Order); 05-cv-202 (Am. Compl. ¶ 58).
134. The case is not yet to the summary judgment motion stage despite more than two years in court, and the defendants have only recently submitted formal answers. The defendants have generally denied the allegations, said they were isolated incidents, or challenged the legitimacy of the case on procedural, statute of limitation, and other grounds. Although the pleadings are filled with references to alleged criminal activity as predicate acts for the now-dismissed civil RICO action, no criminal charges have been filed. The case and any remedies that a court might award are strictly civil.
135. No. 05-cv-202; No. 02-C-9500.
136. No. 05-cv-202 (Doc. 208).
137. No. 05-cv-202 (Am. Compl. ¶ 3).
138. See *id.*
139. See *id.* at ¶¶ 59-60.
140. *Id.* at ¶ 70.
141. *Id.* at ¶ 65.
142. *Id.* at ¶ 66.
143. See *id.* at ¶ 83 (citing 18 U.S.C. § 1341).
144. See *id.* (citing 18 U.S.C. § 1343).
145. See *id.* (citing 18 U.S.C. § 1961(1)).
146. *Id.* at ¶ 36.
147. Dr. Harron is himself a defendant in the *Gilkison* suit, as are current and former members of the Peirce law firm. Harron denies any wrongdoing in the Peirce cases he worked on, and strongly objects to references to his exercise of his Fifth Amendment rights in unrelated proceedings. No. 05-cv-202 (Jan. 30, 2008) (Doc. 263, Reply Mem.).
148. In the Matter of the License of Raymond Anthony Harron, M.D., Texas Medical Board, No. C-9439 (April 13, 2007) (Agreed Order). Under the deal which produced an agreed to order, Dr. Harron was allowed to neither admit nor deny the allegations against him and to deny that he violated the state's medical practice act. His history and the action against him, however, remain on the medical board's website in both the formal sections and the news release archives.
149. No. 05-cv-202 (Am. Compl. ¶ 53).
150. See *id.* at exh. G. (U.S. v. Corbitt, No. 93CR133A (N.D. Ohio) (Plea Agmt.)).
151. See *id.* at exh. K (journal entry dated Feb. 1, 2002, Ohio Department of Health, James Corbitt license application for a radiographer).
152. See *id.* at exh. J (Robert N. Peirce, Jr. Dep., May 8, 2007, at 147).
153. See *id.* at exh. F (James Corbitt Dep., Nov. 17, 2006, at 117-119).
154. See No. 02-C-9500 (Mot. to Dismiss Plaintiff Rodney Chambers ¶¶ 15-18). The obscure West Virginia case would not be widely available except for a Motion to Limit Discovery filed by the Peirce defendants. CSX appended the documentation of the ghost doctor to a response filed Dec. 13, 2006 (Document 146-8).
155. See *id.*
156. See *id.*
157. See No. 05-cv-202 (Document 146-2, Ricky May Dep., at 6-11).
158. See *id.*
159. See No. 05-cv-202, (Dec. 22, 2005) (Compl. ¶¶ 21, 42).
160. See No. 05-cv-202 (June 14, 2006) (Br. Mot. Part. J. 7) (citing CSX Transportation v. May, No. 5:04-cv-83 (N.D. W. Va.) and CSX Transportation v. Jayne, No. 04-C-168-K (Cir. Ct. W. Va.)).
161. Court papers show that subsequent to the May-Jayne incident, Gilkison suffered a major stroke and his participation in the case has been limited.
162. No. 05-cv-202 (Am. Compl. ¶¶ 20, 74-75).
163. The Silicosis Story: Mass Tort Screening and the Public Health, Hearings before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives, Serial No. 109-124.
164. No. 05-cv-202 (Am. Compl. ¶¶ 169-70).
165. See *id.* at exh. C (Supplemental Ans. of Defendant Peirce, Raimond & Coulter, P.C. to Plaintiff CSX Transportation Inc.'s First Set of Interrogatories (Doc. 208-4)).
166. USA v. Byron Alfred Boyd, H-03-362 (S.D. Tex.); renumbered for electronic accession as 4:03-cr-00362.
167. See *id.* (Doc. 306, Mem. Op. and Order, U.S. District Judge Sim Lake (Sept. 13, 2005)).
168. See Chris Osher, *Testimony Implicates Ex-official*, TRIB.-REV. (Pittsburgh, Pa.), Dec. 13, 2003.
169. There is no evidence that Peirce or other attorneys who may have been involved with Little committed any criminal act. Due to the sealed records, see *supra* note 167, independent inquiry into the underlying facts is not possible. Defendant Peirce and defendant Raimond admit giving \$15,000 and \$5,000, respectively, to Little's union election and/or re-election campaigns. See No. 05-cv-202 (Apr. 11, 2008) (Def.'s Ans. ¶ 26); see *id.* at exh. C (Supplemental Ans. of Defendant Peirce, Raimond & Coulter, P.C. to Plaintiff CSX Transportation Inc.'s First Set of Interrogatories ¶ 2 (Doc. 208-4)).
170. See *Agency Holding Corp. v. Malley-Duff & Assoc.*, 483 U.S. 143, 156 (1987).
171. No. 05-cv-202 (Mem. Op. and Order, at 6).
172. *Id.* at 9 (citing 18 U.S.C. § 1961(5)).
173. See *id.* at 10, 14.
174. No. 05-cv-202 (Mem. Op. and Order, at 9).
175. See *id.*; No. 05-cv-202 (Mar. 28, 2008) (Mem. Op. and Order, at 14).
176. Cf. No. 05-cv-202 (Apr. 11, 2008) (Def.'s Ans., Aff. Def. ¶ 6).
177. No. 05-cv-202 (Mar. 28, 2008) (Mem. Op. and Order, at 13-14).
178. *Agency Holding Corp.*, 483 U.S. at 155.
179. The only claim not time barred by Judge Stamp's order involved a lawsuit filed by the Peirce firm on behalf of Earl Baylor on February 21, 2006.
180. Letter dated Feb. 22, 2006 from Robert L. Potter to Marc E. Williams and J. David Bolen of Huddleston Bolen, filed Dec. 13, 2006. No. 05-cv-202 (Doc. 146-12). Huddleston Bolen, of Huntington, WV, is outside counsel for CSX.
181. See generally *USA v. Jaffe*, No. 02-cr-188 (W.D. Pa.) (PACER accession no. 2:02-cr-188).
182. See *id.* (Aug. 21, 2007) (Doc. 56A, at 3-4).
183. See *id.* at 3.
184. Osher, *supra* note 10.

185. Marylynn Pitz, *Teary Judge Jaffe Admits Guilt to Extortion*, POST-GAZETTE (Pittsburg, Pa.), Feb. 11, 2003.
186. Osher, *supra* note 184.
187. *See* 02-cr-188 (June 6, 2003).
188. Osher, *supra* note 184.
189. *Id.*
190. USA v. Jaffe (Doc. 56, at 2 & n.1).
191. USA v. Jaffe (Doc. 55, at 3).
192. In re: L. Tersigni Consulting, CPA, P.C., a/k/a/ L. Tersigni Consulting, P.C., debtor, No. 07-50702 (Bankr. D.C., March 26, 2008) (Doc. 245, First Report of Hugh M. Ray, court-appointed examiner).
193. Chris Schmitt and Frank Clemente, *Federal Asbestos Legislation: The Winners Are...*, PUBLIC CITIZEN'S CONGRESS WATCH, Washington, D.C., May 2005, at 3, 6 fig. 1. To date, the Tersigni investigations have focused on billing, not the validity of the firm's data or results. Public Citizen did not respond to a request for comment on whether it stands by its report, whether it paid Tersigni directly or verified his data from other sources, and whether it, too, believes itself to have been overbilled.
194. No. 07-50702 (Doc. 245). The complete list is in Exhibit 1: Armstrong, Combustion Engineering, Federal Mogul, Kaiser Aluminum, Owens Corning, U.S. Gypsum, U.S. Mineral, W. R. Grace, A C & S Inc., and Flintkote in Delaware; Artra Group in the Northern District of Illinois, Eastern Division; Babcock & Wilcox in the Eastern District of Louisiana; G-I Holdings, Burns & Roe and Congoleum in New Jersey; GIT, NARCO and Pittsburgh Corning Corp. in the Western District of Pennsylvania; J.T. Thorpe and Lac D'Amiante Du Quebec Lee in the Southern District of Texas; Porter Hayden Co. in Maryland; A.P.I. Inc. in Minnesota; Thurston & Sons, Inc., in the Eastern District of Virginia; and Quigley Co. in the Southern District of New York.
195. *Id.* (Doc. 245, at 1, 6, 11).
196. The trustee—an employee of the U.S. Department of Justice—told U.S. Bankruptcy Judge Judith K. Fitzgerald that department policy required the trustee's office to defer to criminal prosecutors and that the whistleblower—who now heads the new financial advisory firm in the W.R. Grace bankruptcy—was innocent of any wrongdoing and could not have told anyone while the criminal probe was in progress.
197. No. 01-01139 (Hr'g Tr., at 14-15). The *Grace* case was among the first where information on the Tersigni overbilling surfaced.
198. *Id.* at 22. The examiner notes that the FBI has been uncooperative in providing access to information that may be crucial to determining what claims the Tersigni firm's bankruptcy estate may be successful in pursuing against the Mr. Tersigni's personal probate estate. That continues the trend that triggered Judge Fitzgerald's strong words.
199. No. 07-50702 (Apr. 8, 2008) (Doc. 257, Order Directing Mediation).
200. No. 07-50702 (First Report of Hugh Ray, at 7-8).
201. *See* Order in the Court, *supra* pp. 12-13.
202. *See infra* notes 203-28 and accompanying text.
203. USA v. Robles, No. 06-20286 (S.D. Fla. May 11, 2006) (Doc. 3, Indictment ¶ 10).
204. No. 06-20286 (Doc. 129, Factual Basis in Support of Entry of Guilty Plea ¶ 4).
205. Robles billed clients on behalf of an "outside company" that was supposedly handling the "extraordinary computer and data processing needs" demanded by the "sheer complexity" of the litigation. The firm was actually part of the Robles business and legal network, but clients were never told. Florida Bar v. Robles, No. SC-01-051 (Fla. 2003). Other bills found to be illegal or questionable by the state bar association included seven different charges for X-ray screenings that were supposed to be free, even \$1 allocated for electricity. Bar v. Robles (initial complaint). Alicia Vale, special counsel to the U.S. Attorney in Miami, confirmed in a telephone interview on Sept. 24, 2007, that the \$13.5 million figure covered only money "directly diverted from client accounts," not inflated billing or other practices. She said prosecutors have not made a comprehensive estimate of the total loss to victims.
206. No. 06-20286 (Doc. 129, Factual Basis in Support of Entry of Guilty Plea ¶ 19).
207. Such fees were limited by law or contract to 33 to 40 percent. *See* note 205. *See* No. SC-01-051.
208. *See id.* Such fees were limited by contract to 10 percent. *See* note 205.
209. *See id.* (initial complaint ¶ 72).
210. Such fees were imposed 1.6 million times by Robles's law firms. In re: Appointment of Inventory Attorney for Louis Steven Robles, No. 03-11-CA 60 (Cir. Ct. Fla.) (exh. A).
211. *See* note 205.
212. No. SC-01-051 (Order of the Supreme Court of Florida) (granting motion for emergency suspension).
213. No. 06-20286 (Doc. 143).
214. *Id.* (Doc. 3).
215. Associated Press, *Former Attorney Gets 15 Years for Stealing Asbestos Settlements*, NAPLES NEWS, Dec. 4, 2007; John Pacenti, *Fla. Attorney Sentenced to 15 Years in Prison for Bilk Elderly Clients Out of \$13M*, DAILY BUS. REV., Dec. 7, 2007.
216. No. 06-20286 (Doc. 129, Factual Basis in Support of Entry of Guilty Plea ¶ 14).
217. *Id.* at ¶ 15.
218. Vanessa Blum, *S. Fla. Attorney Pleads Guilty in \$13.5 Million Theft*, SOUTH FLORIDA SUN SENTINEL, Sept. 19, 2007; Movie Synopsis, HOLLYWOOD.COM, accessed at http://www.hollywood.com/moviedetail/Love_God/168698 (last accessed Sept. 23, 2007).
219. Adam Groves, *The Cutting Edge*, FRIGHT SIGHT, www.fright.com/edge/lovegod.html (last accessed on Sept. 23, 2007).
220. In re: The Robles Law Center, P.A., and Louis B. Robles, P.A., Nos. 04-16685, 16686 (Bankr. S.D. Fla.). Both the history of the case and the loan from Core Funding Group are detailed in a settlement agreement filed July 23, 2007.
221. *See id.* (Doc. 348). The deal sets up a complex payment schedule giving Core a fixed share of the estate's income; if that doesn't pay off the debt in full by the time there are funds to pay unsecured creditors, Core gets to file an unsecured claim for a share of that money.
222. An analysis by the author of bills submitted by attorneys for the trustee, their financial and other advisors, and consultants, and for their expenses in the bankruptcy cases of the two law firms with which Robles was affiliated (No. 04-16685 (Bankr. S.D. Fla.) (six consolidated for administration)) shows that attorneys billed the estate \$1.025 million. The bills included \$640,220.26 in attorney fees and expenses, of which \$505,900 was approved; and \$385,257.43 in fees and expenses for accountants, data management consultants, and financial consultants, of which \$81,832.29 had been approved as of Sept. 18, 2007. A 20 percent holdback was imposed on the fees but can be sought when the proceedings conclude, and hearings on some fees and expenses had not yet been scheduled as of that date.
223. No. 04-16685 (Summary of Third Interim Application for Allowance and Payment of Compensation, at 17).
224. *Id.* (Fee Summary Attachment, at 11).
225. *Id.* (Docs. 318, 332). Certain parties had the right to protect certain documents from shredding; others had 30 days to seek exemptions for documents that the trustee would otherwise be allowed to shred. After that period the trustee was free to shred whichever documents had not been exempted.
226. No. 06-20286 (May 25, 2006) (Docket item No. 9) (Order).
227. *Id.* (Doc. 78).
228. *Id.* (Doc. 78, at 91).
229. Huber, *supra* note 30, at 41.
230. REPORT OF THE JUDICIAL CONFERENCE AD HOC COMMITTEE ON ASBESTOS LITIGATION 2 (1991).
231. In re: Asbestos Product Liability Litigation, MDL 875 (E.D. Pa.) (Pacer accession no. 2:01-md-00875-jg).
232. *See* MDL 875 (Jan. 31, 2007) (Hr'g Tr.).
233. *See* MDL 875 (Admin. Order No. 12).
234. *See* Telephone conversation with Marcy Croft, partner, Forman Perry Watkins Krutz & Tardy, March 20, 2008.
235. *See* MDL 875 (March 7, 2008) (Submission of the Defendants' Liaison Counsel Committee by Walter G. Watkins, Jr., partner, Forman Perry).
236. *See* CASTLEMAN, *supra* note 27, at 748.
237. *See id.* at 749.
238. *See id.*
239. Amchem Products, Inc. v. Windsor, 521 U.S. 591, 613-29.

240. *Id.* at 628-29.
241. See Hanlon & Smetak, *supra* note 86, at 558.
242. As outlined in the legislative findings of S. 742, the Ban Asbestos in America Act of 2007, EPA has given asbestos its highest cancer classification. Congress passed the Toxic Substances Control Act (15 U.S.C. § 2601) in 1976 based in large part on testimony about asbestos dangers, and 13 years later EPA promulgated final regulations under Title II of the act to phase out asbestos products in 1997. But in 1991 the U.S. 5th Circuit Court of Appeals overturned the regulation in *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201, and no appeal was filed. Senator Patty Murray (D-Wa.) worked six years to get an asbestos ban to the Senate floor, and succeeded when S. 742 cleared the Energy and Public Works Committee on a 19-0 vote on July 31, 2007. The measure cleared the full Senate overwhelmingly, and a companion bill, H.R. 3285, was introduced in the House. Besides banning asbestos, the measures call for investment in research and treatment and the launching of a public education campaign. But they do nothing to address the critical issue of how to compensate individuals harmed by asbestos. Sen. Specter was quoted in the *Seattle Post-Intelligencer* of August 1 as suggesting the bill should be held up until it addresses that issue, but Murray is adamant about keeping the issues separate.
243. See Hanlon & Smetak, *supra* note 86, at 558.
244. See *id.* at 559.
245. *Id.* at 547.
246. See *id.* at 564.
247. See *id.* at 581.
248. See The Fairness in Asbestos Injury Resolution Act of 2006, S. 3274, 109th Cong. (2005).
249. See Hanlon & Smetak, *supra* note 86, at 582.
250. See Stephen Labaton, *Asbestos Bill Is Sideline by the Senate*, N.Y. TIMES, Feb. 15, 2006.
251. Tim Weiner, *Edward R. Becker, 73, Judge on Federal Court of Appeals*, N.Y. TIMES, May 20, 2006.
252. See Hanlon & Smetak, *supra* note 86, at 583.
253. Tanella, *supra* note 11, at 12, and Oct. 11, 2007 e-mail correspondence.
254. See *id.* at 11 and email.
255. See *id.* at 4-8, 11 and email.
256. *Baron & Budd Announces More Job Cuts*, DALLAS BUS. J., Sept. 10, 2007.
257. Telephone Interview, In-House Counsel of Defendant Industry (Mar. 31, 2008) (notes on file with author).
258. Harris Martin, *Judicial Roundtable*, COLUMNS: ASBESTOS, July 2004, at 3.
259. Steve Korris, *Asbestos Shift to Delaware Is Sign of Distinction for Madison County*, MADISON-ST. CLAIR RECORD, July 7, 2005; AMERICAN TORT REFORM FOUNDATION, JUDICIAL HELLHOLES 2007 19 (“After ranking as the #1 Judicial Hellhole in 2002, 2003 and 2004, Madison County dropped to #4 in 2005 and then inched its way into “Purgatory” at #6 in 2006. Thanks to the comprehensive reform efforts of Chief Judge Ann Callis, Judge Daniel Stack’s continued diligence in dismissing out-of-state asbestos claims and other positive trends, the county avoided designation as a Hellhole this year.”). Unfortunately, there are signs that Madison County may be once more attracting out-of-state asbestos claims. See Editorial, *Stop the Asbestos Surge*, MADISON-ST. CLAIR RECORD, Mar. 16, 2008.
260. See Recorded Statement of Superior Court Judge Joseph Slight III, New Castle County, Del., Mealey’s Conference on Asbestos Litigation (Sept. 27, 2007).
261. *Id.*; see also Recorded Statement of Supreme Court Justice Richard Aulisi, 4th Judicial District of N.Y., Mealey’s Conference on Asbestos Litigation (Sept. 27, 2007).
262. Recorded Statement of Lisa Oberg, Defense Attorney and Partner, McKenna Long & Aldridge, quoting Plaintiffs’ Attorney Richard Scruggs, Mealey’s Conference on Asbestos Litigation (Sept. 26, 2007).
263. Carroll, *supra* note 2, at xxv.
264. Recorded Statement of Edward J. McCambridge, Segal, McCambridge, Singer & Mahoney Ltd., Mealey’s Conference on Asbestos Litigation (Sept. 27, 2007).
265. eJUSTICE, THE LAWYER’S GUIDE TO MAKING THE INTERNET PAY (2006). The report, a sales tool handed out at lawyers’ conferences, exhorts readers, “To the victor go the spoils, so read on and arm yourself with the knowledge to profit.”
266. Einstein Law flyer distributed at Mealey’s conference (Sept. 27, 2007). It offers a “mesothelioma exclusive statewide strategy” that includes videos and web advertising and management. By the opening of the conference, the company said, it already had sold packages to six firms practicing in 13 states and the District of Columbia.
267. McCambridge, *supra* note 264.
268. Cf. Overview, *supra* note 3, at 32.
269. See Daniel Fisher, *Double-Dippers*, FORBES, Sept. 4, 2006.
270. See *id.* Neither Baron & Budd nor Weitz & Luxenberg have themselves been accused of double-dipping among asbestos bankruptcy trusts; however, having leading plaintiffs’ law firms responsible for the oversight of such trusts is presumptively unhelpful in ensuring that said trusts embrace transparency and other policies likely to most effectively discourage the practice.
271. Editorial, *Cuyahoga Comeuppance*, WALL ST. J., Jan. 22, 2007.
272. Fisher, *supra* note 269.
273. See *id.*
274. See *id.*
275. See *id.*
276. See *id.*
277. See, e.g., S. 220, 2008 Sess. (W. Va. 2008); H.R. 484, Reg. Sess. (La. 2008).
278. Lester Brickman, *DOJ’s Free Pass for Tort Fraud*, WALL ST. J., Dec. 26, 2007, at A11.
279. Email to the author, April 7, 2008.
280. The screenings were held December 3-7, 2007 in Bartlesville, Okla. and March 31-April 4 in Pryor, Okla. A third was scheduled April 28-May 2 in Durant, Okla. All were sponsored by Nix Patterson & Roach of Daingerfield, Texas.
281. Personal observations of and documents collected by City Editor Chris Edens of the *Oologah (Okla.) Lake Leader* newspaper during a visit to the Pryor, Okla., screening on April 4, 2008.
282. See <http://www.safeworksillinois.com/safeworks-team.php> (last visited April 11, 2008).
283. Email and telephone interviews April 12, 2007 with Eric Wetzel of Shipley & Associates Inc., an Austin, Texas strategic consulting, communications, and research firm which handles some public relations work for Nix Patterson & Roach.
284. Contract and power of attorney document distributed at the Pryor, Okla., screening on April 4, 2008. The fee is set in Section II, the other cited provisions are in Sections III and VI. The agreement is for NP&R and local counsel, Law Office of Ben Sherrer, P.C.
285. *Id.*
286. *Id.*
287. *Id.*
288. *Id.*
289. Email and telephone interview with State Rep. Ben Sherrer, D-Chouteau, April 11, 2008.
290. *Id.*
291. See American Tort Reform Association, State Reforms: Texas, available at <http://www.atra.org/states/TX>.
292. See American Tort Reform Association, State Reforms: Mississippi, available at <http://www.atra.org/states/MS>.
293. See *id.*
294. See Huber, *supra* note 30, at 40.
295. Rather than eliminating several liability altogether, many states limit several liability to apply only if the jury determines that a defendant is 50 percent responsible for the plaintiff’s injuries. See, e.g., Miss. Code Ann. § 85-5-7(2).
296. Discussion with Linda Kelly, Vice President, Institute for Legal Reform (Apr. 17, 2008). See, e.g., S. 220, 2008 Sess. (W. Va. 2008); H.R. 484, Reg. Sess. (La. 2008).
297. Cf. Brickman, *supra* note 278, at A11.
298. Steven Church & Jack Kaskey, *W.R. Grace to Settle Asbestos Claims for \$1.8 Billion* (Update6), BLOOMBERG.COM, Apr. 7, 2008, available at <http://www.bloomberg.com>; Ted Frank, *BREAKING: W.R. Grace Settles*, POINTOFLAW.COM, Apr. 7, 2008, available at <http://www.pointoflaw.com/archives/2008/04/breaking-wr-grace-settles.php>.

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