ILR Briefly

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The Asbestos Over-Naming and Trust Transparency Problem: A Philadelphia Case Study

U.S. Chamber of Commerce
Institute for Legal Reform

[Without] reasonable legislative or judicial solutions, an increasing number of defendants will unnecessarily be brought into [asbestos] litigation, forced to pay the several liability shares of the bankrupt defendants, and perpetuate the cycle of asbestos bankruptcy filings as plaintiff law firms continue the endless search for a solvent bystander company to sue.

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Asbestos trust summary statistics, research, and descriptions prepared by Peter Kelso and Marc Scarcella, Roux Associates Economic and Complex Analytics Practice.

Executive Summary

The unique features of asbestos litigation have resulted in a system that both names too many of the wrong defendants and too few of the right ones. A 2012 commentary entitled "The Philadelphia Story: Asbestos Litigation, Bankruptcy Trusts and Changes in Exposure Allegations from 1991-2010" (2012 Philadelphia Study) sought to better understand the incongruity of named defendants and exposure allegations by examining, in part, a sample of lawsuits filed between 2006 and 2010 in the Philadelphia Court of Common Pleas following the bankruptcy filings of multiple primary asbestos defendants.[1] This study updates that prior analysis by assessing Philadelphia claims filed between 2017 and 2021.

We find that, although each case filed in the Philadelphia Court of Common Pleas names an average of 38 defendant companies, only half of those on average are identified in discovery as a source of the plaintiff's alleged asbestos exposure. The rest are likely dismissed, but only after the defendant has had to respond to the complaint and participate in discovery.

Compounding this over-naming problem is the fact that the companies most responsible for sales of asbestos-containing products are not named at all. Over the course of more than 40 years of asbestos litigation, over 100 companies have reorganized through bankruptcy due to asbestos claims and more than 60 have established asbestos personal injury compensation trusts. This process channeled claims against the debtor companies out of the tort system and into the trusts, effectively ending the companies' time as defendants in asbestos tort litigation. These former defendants made the majority of asbestos-containing products by market share, including those containing the most carcinogenic and friable fibers, such as thermal insulation and refractory products. Subsequent to these companies filing for bankruptcy, a group of peripheral defendants—typically manufacturers of encapsulated products with lower toxic potential—has replaced them as target defendants in asbestos lawsuits.

The 2012 Philadelphia Study found that product exposure allegations against these thermal insulation and refractory products manufacturers dropped from

35 percent of all products identified in exposure allegations in cases filed between 1991 and 2000 to only 12.5 percent in cases filed between 2006 and 2010. Our analysis of cases filed between 2017 and 2021 shows that exposure allegations against these absent primary defendants declined further to only 6.2 percent, even as the total number of defendants remained the same and the exposure demographics of the claimant population did not dramatically change. Relatedly, the number of these primary defendants identified in each claim dropped to less than four primary defendants per case in 2006-2010, a decline of over 50 percent compared to the pre-2000 filings. We found that the identification of primary defendants has continued to decline for the more recent case population we examined, averaging only 2.8 primary defendants identified per case. We also found that while plaintiffs in our study allege exposure to the products or operations of fewer than four now-bankrupt entities, they qualify for payment from more than 12 currently operating asbestos bankruptcy trusts.

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The result is an overburdened court system grappling with unmanageable numbers of defendants in each suit. Further, the active defendants, who made none of the most toxic and dusty products, must expend considerable resources defending against lawsuits from which they will either be dismissed or in which many of the plaintiffs' exposures will never be revealed. Legislative and judicial reforms offer potential solutions, including requiring plaintiffs to file sworn declarations shortly after filing their suit with details of all alleged asbestos exposures. Requiring plaintiffs to also disclose current and future trust claims at the outset of a lawsuit could further illuminate the actual exposures at issue in the case. Without these reforms, Philadelphia's asbestos litigation will continue to be mired in inefficiency, unfairness, and lack of transparency.

Introduction

Asbestos mass tort litigation has produced more than one million individual personal injury claims[2] across U.S. state and federal courts in its more than four decades as America's largest mass tort. These suits continue to cost defendant companies billions of dollars in verdicts, settlements, and legal defense fees each year.

The ubiquitous historical use of asbestos in numerous industrial, commercial, and residential products and applications has given plaintiffs what other mass and class torts lack: a seemingly boundless pool of potential defendants. As a result, an individual asbestos lawsuit will typically name dozens of defendant companies. In fact, it is likely that more than ten thousand individual companies have been named as defendants in asbestos lawsuits to date.[3]

Studies have shown that a majority of the defendants named in each asbestos lawsuit are ultimately dismissed without settlement. Each lawsuit therefore forces numerous companies to incur litigation defense costs even when there are no legitimate exposure claims against them, nor even a reasonable justification for being named as a defendant in the first place.[4]

The problem is exacerbated by another unique aspect of asbestos litigation: the absence in the tort system of the most responsible defendant companies. These companies, which collectively made up the lion's share of asbestos-containing products and operational market share, have long since exited the tort system by way of bankruptcy. Rather than reducing the pool of defendants, for each primary asbestos defendant that has filed for bankruptcy, plaintiffs' attorneys have increased the number of secondary or peripheral defendants in subsequent lawsuits to replace the vacated shares in order to maintain the potential monies available to them and effectuate the liability transfer from traditional now-bankrupt asbestos defendants to the remaining peripheral asbestos tort defendants.[5]

The reorganization process for these bankrupt asbestos defendants typically results in the establishment of an administrative settlement trust fund to indemnify current and future claims against the predecessor company. Between 2004 and 2020, these bankruptcy trusts amassed nearly $60 billion from debtor funding commitments, insurance contributions, and investment gains, while distributing nearly $34

billion in claim payments.[6] However, because more than 60 active bankruptcy trusts currently operate outside of the tort system, many of the plaintiffs' trust recoveries along with their alleged related and presumptive exposures are not properly integrated and disclosed in those same plaintiffs' tort lawsuits. This disconnect between the asbestos tort and trust compensation systems inflates the perceived tort liability share of the solvent, peripheral defendants named in the lawsuit while the exposure contributions of the most responsible, primary defendants go unaccounted.

The 2012 Philadelphia Study examined the issue of defendant naming and shifting exposure allegations through asbestos lawsuits filed over time in one of asbestos litigation's most prominent jurisdictions: the Philadelphia Court of Common Pleas. The research studied the impact that co-defendant bankruptcies can have on peripheral defendant naming rates, as well as the shifting of exposure allegations away from the now-bankrupt former co-defendants to a new set of peripheral defendants. The commentary found that plaintiffs' law firms named 2.5 additional peripheral defendants for each of the companies that entered bankruptcy[7] and that exposure allegations against the now-bankrupt defendants decreased precipitously, even though the claiming population maintained a similar occupational fact pattern.[8]

As a result of these practices, federal and state reform efforts in recent decades have focused on increasing the level of asbestos bankruptcy trust transparency through legislative solutions that require more timely disclosure of trust claims during the pendency of the tort lawsuit. Additionally, some states have recently taken steps to curb such "over-naming" practices by plaintiffs' law firms through tort reform initiatives aimed at reducing the amount of frivolous defendant naming.[9]

As Pennsylvania is not among the states enacting such reforms, this study examines the perpetuation of these prior trends in the over-naming of peripheral defendants and the related liability transfer away from the most responsible, primary defendants. To do so, we have looked at a random sampling of mesothelioma lawsuits filed in the Philadelphia Court of Common Pleas over a more recent five-year period from 2017 through 2021.[10] The findings highlight the continued need for advancing over-naming and trust transparency reform, not only in Philadelphia but in jurisdictions nationwide.

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Over-Naming

A typical asbestos lawsuit will name dozens of defendant companies that at one time may have been involved in the manufacturing, distribution, or installation of asbestos-containing products or materials. However, studies have shown that many of the defendant companies named in a given lawsuit are never identified by plaintiffs as a source of their alleged asbestos exposure.[11]

For example, in 2021, an analysis of West Virginia asbestos lawsuits on exigent trial dockets found that on average nearly 40 percent of named defendants were eventually dismissed without payment, and cited instances where the dismissal rate was as high as 70 percent.[12] Likewise, an analysis from 2013 found that, among the study sample, an average of 55 defendants were named in each case but an average of only nine defendants per case resolved the matter through settlement.[13] As one study estimated, a company could spend at least $20,000 per case to defend itself through the summary judgment phase alone.[14] Considering that there are thousands of asbestos lawsuits filed nationwide each year, including hundreds filed in the Philadelphia Court of Common Pleas, the cost to companies and their insurers to achieve dismissals in cases to which they are frivolously named can be substantial.

For this commentary, we analyzed the over-naming issue through a sample of lawsuits filed in Philadelphia by comparing the frequency at which defendant companies are named in asbestos lawsuits versus the frequency at which they are identified in plaintiff exposure allegations. Figure 1 summarizes the average number of companies named and identified across the sample cases for the five-year period from 2017 through 2021. On average, each case named[15] approximately 38 defendant companies, with a median of 34 defendant companies.[16] However, on average, approximately 19 defendant companies (50 percent) were not subsequently identified in plaintiff exposure allegations, with a median of 18 defendant companies. In fact, of the 378 unique defendant companies that were named across the sample, 196 (52 percent) were never identified in plaintiff exposure allegations. Of the 378 unique defendant companies named, 13 were positively identified as sources of asbestos exposure in plaintiff testimony in at least one-third of the cases in the

sample. However, even these 13 frequently identified companies were collectively identified in exposure allegations in less than 75 percent of the cases to which they were named as defendants.

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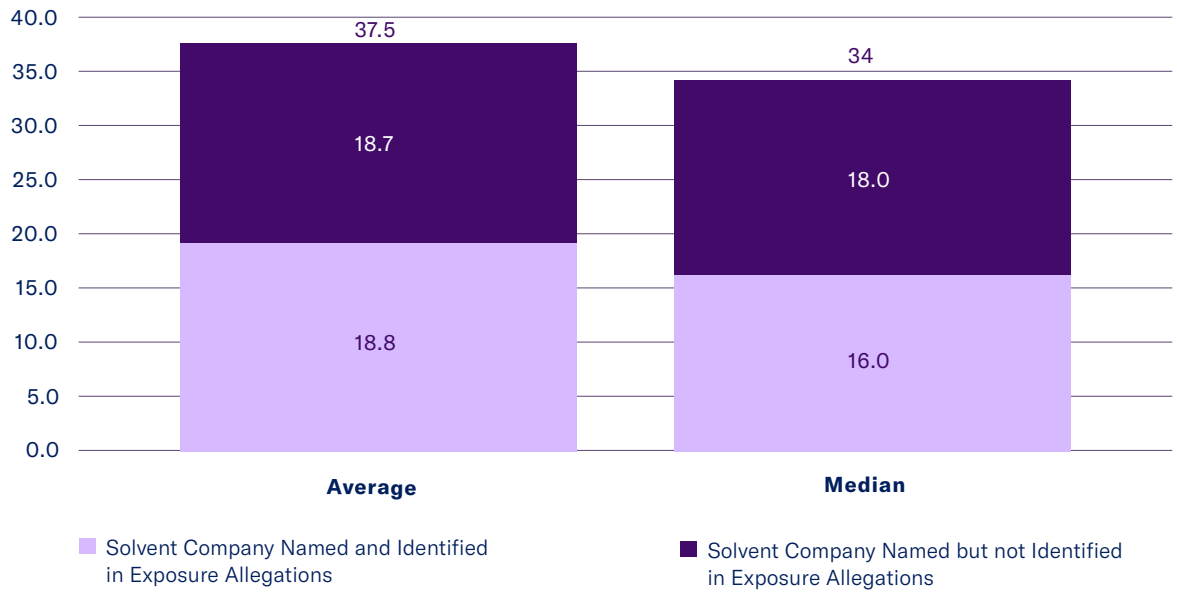
These data suggest that at least half of the defendants named in each lawsuit are forced to incur defense costs, likely through the discovery or summary judgment phase of the case, only to find that there is no basis for the claim against them. As previously noted, these over-naming practices not only generate unnecessary costs to defendants, but they also create judicial inefficiencies. For example, in 2020, Judge Ronald Wilson from West Virginia commented on the negative impact over-naming practices had on the court's ability to efficiently resolve cases and went as far as to cancel a scheduled mediation based on the "excessive number of defendants" involved.[17]

Responding to the impacts of over-naming, in recent years West Virginia and other states have enacted over-naming reform legislation that requires plaintiffs in asbestos cases to file a sworn declaration disclosing the evidentiary basis for each claim, including supporting documentation.[18]

Figure 1: Average Number of Companies Named and Identified From Sample



Shifting Exposure Allegations

As the 2012 Philadelphia Study described, between 2000 and 2004, dozens of primary asbestos defendants filed for bankruptcy reorganization in what has been termed the "asbestos bankruptcy wave."[19] These defendants were not only significant in terms of product market share, but many of them were engaged in the manufacturing or distribution of asbestos-containing thermal insulation and refractory products that were designed for high-temperature environments such as industrial operations and U.S. naval vessels.

Many of these products were friable and contained a more potent type of amphibole asbestos fiber, which presented a greater level of exposure and disease risk to workers as compared to products containing less potent types of asbestos in an encapsulated form.[20] As such, the primary defendants associated with thermal insulation and refractory products were often the focus of asbestos lawsuits in the 1980s and 1990s.[21] For example, according to the 2012 Philadelphia Study, thermal insulation and refractory products accounted for nearly 35 percent of all products identified in exposure allegations between 1991 and 2000,[22] and more than 50 percent of the total companies identified were primary defendants that ultimately filed for bankruptcy reorganization prior to 2005.[23]

However, once these companies filed for bankruptcy protection, their tort claims were stayed and plaintiffs were channeled to the bankruptcy as creditors. Effectively, this meant that the primary defendants could no longer be pursued in the tort system. With no potential recovery through verdict or settlement, this eliminated all financial incentives for tort lawsuits to focus on alleged exposures associated with these bankrupt companies, even though their products and operations were still a primary share of historical exposure risk. For example, the 2012 Philadelphia Study found that the identification of thermal insulation and refractory products dropped from 35 percent to just 12.5 percent across cases filed between 2006 and 2010,[24] even though the occupational exposure characteristics of the claiming population had not materially changed

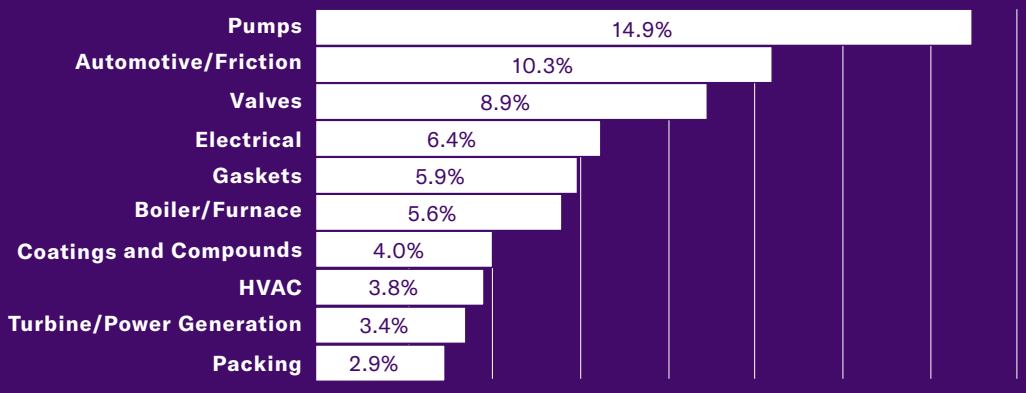
"... [T]he data from the current case sample suggests that the number of companies identified in exposure allegations has increased slightly from the 2012 Philadelphia Study, even though the identification of primary defendants continues to decline."

compared to the pre-2000 period.[25] Likewise, the study found that the number of alleged product exposures associated with primary defendants that ultimately filed for bankruptcy prior to 2005 dropped by more than half, yielding an average of less than four primary defendants identified per claim across cases filed between 2006 and 2010.[26]

Comparatively, the claims in our current sample of cases from 2017 through 2021 show that the identification of thermal insulation and refractory products has continued to decline and now accounts for only 6.2 percent of the product types identified in exposure allegations. Likewise, the claims in our current sample identified an average of only 2.8 companies that filed for bankruptcy prior to 2005, which also suggests a declining rate of exposure identification for these primary companies relative to the findings of the 2012 Philadelphia Study.

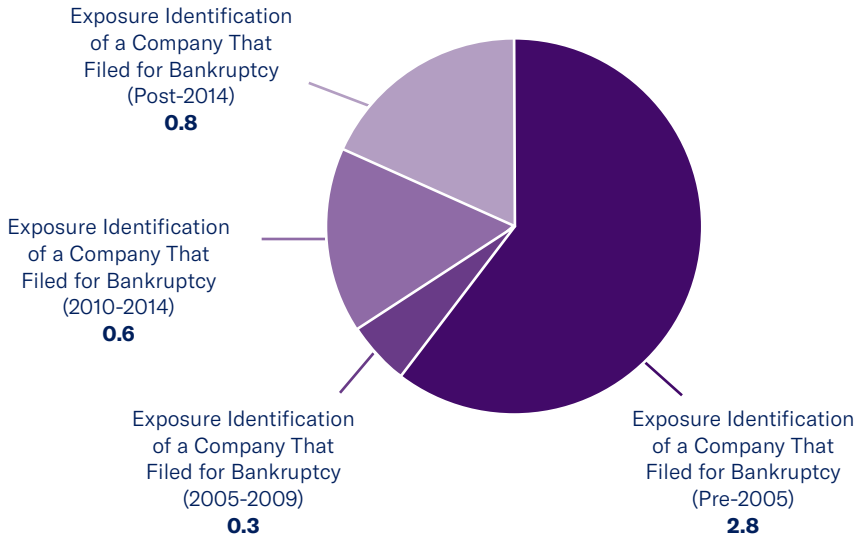
Despite the decreasing rate at which primary defendants and their products were identified in exposure allegations following the bankruptcy wave, the 2012 Philadelphia Study showed that the overall number of defendants and products identified in each case increased by approximately 60 percent by the 2006 through 2010 time period.[27] Comparatively, the data from the current case sample suggests that the number of companies identified in exposure allegations has increased slightly from the 2012 Philadelphia Study, even though the identification of primary defendants continues to decline.[28] As Figure 2 summarizes, the claims in the current sample identify pumps, valves, gaskets, and packing nearly 33 percent of the time, with friction products accounting for approximately 10 percent of overall product identification.

Figure 2: Percentage of Current Product Identification



This observable shift away from primary defendants and their products led to a material increase in filing rates, exposure identification, and settlement demands against peripheral defendants, many of whom have since declared bankruptcy themselves as a result. Most notably, Garlock Sealing Technologies, a gasket and valve defendant, and Specialty Products Holding Corporation (i.e., Bondex), a joint compound defendant, both filed for bankruptcy protection in 2010, and in their respective first-day bankruptcy filings each company cited the bankruptcies of primary asbestos manufacturing companies as the driving force behind their dramatic increase in claim filings and litigation expenditures post-2000.[29] More recently, Bestwall (i.e., Georgia Pacific), Paddock Industries (i.e., Owens-Illinois), Aldrich Pump/Murray Boiler (i.e., Ingersoll Rand, Trane, Murray), Kaiser Gypsum, and DBMP (i.e., CertainTeed) all filed for bankruptcy reorganization since 2016, and in each instance cited a dramatic increase in claim filings and settlement demands that were artificially inflated following the bankruptcy wave of primary defendants.[30] Figure 3 summarizes the identification of bankrupt defendants in exposure allegations across the current sample of claims. Note, the companies have been categorized based on the period from which they filed for bankruptcy. In total, approximately 4.6 bankrupt companies per case on average are identified in product exposure allegations, though only 2.8 are from the group of primary defendants that filed for bankruptcy prior to 2005.[31] This is another indicator that claimants are ranging further and further afield in the search for companies to identify in exposure allegations. As the first wave of asbestos bankruptcies has receded further in time—and as fewer claimants are able to allege an exposure link to those primary defendants—many peripheral defendants have become targets of asbestos litigation, have been forced to declare bankruptcy, and are now in turn being used to connect the dots for ever more tenuous exposure allegations.

Figure 3: Number of Bankrupt Companies Identified Per Case, by Bankruptcy Period



Trust Transparency: Proof of Concept

As previously noted, bankruptcy trust funds operate independently of the tort system and provide billions of dollars in claim payments each year based on qualifying exposures that are often missing from tort disclosures. The issue of bankruptcy trust transparency and related legislative solutions are intended to supply the necessary link between the tort and trust claiming systems.

As a way to quantify the impact that trust transparency can have on determining the number of compensable defendant shares in the tort system, we analyzed the number of bankruptcy trust payments to which each claimant in our case sample would be entitled. We determined this based on both 1) the product identification alleged in tort disclosures and 2) the presumptive trust qualifications based on claimants working or otherwise having a

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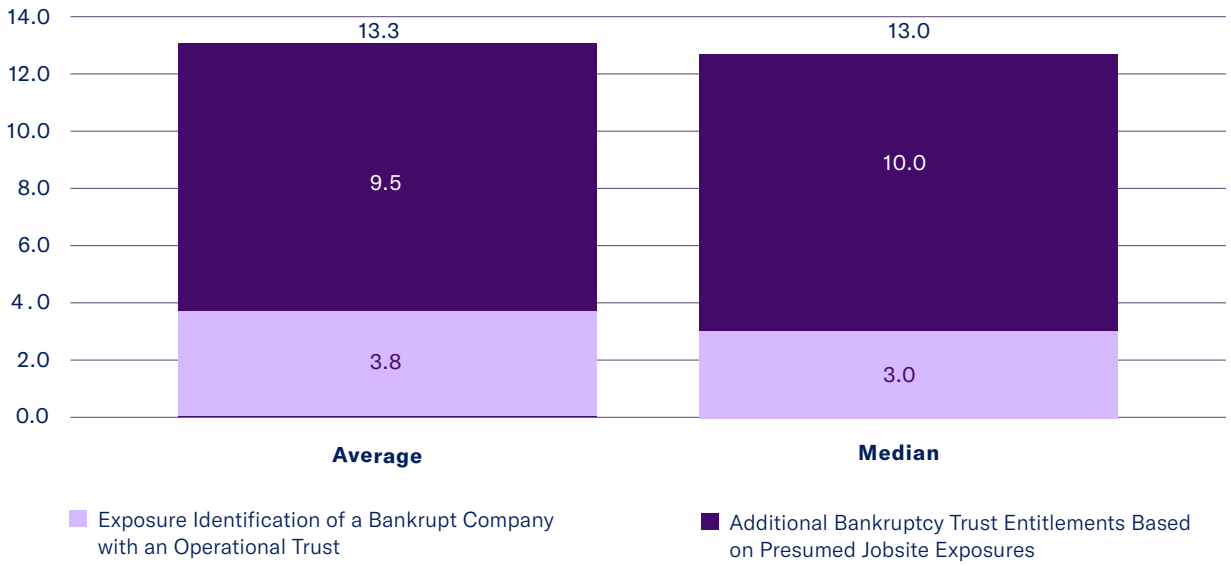
nexus to an approved jobsite where it has been established that the trust predecessor company had products or operations present for certain periods of time (Approved Sites). These Approved Sites are compiled through corporate records and past plaintiff testimony against the trust predecessor company when it was still in the tort system. In effect, these Approved Sites act as a proxy for exposure evidence when a claimant can prove that they worked or otherwise had a nexus of exposures to the Approved Site.

As Figure 4 illustrates, claimant exposure allegations in tort disclosures across our sample can establish an average of 3.8 qualifying trust claims through product identification, with a median of 3.0. However, the average number of additional qualifying trust claims based on Approved Site matches is 9.5, with a median of 10. Therefore, only about one-quarter of the qualifying bankrupt company exposure and compensation shares are being disclosed by claimants in deposition testimony. Moreover, the fact that claimants can qualify for compensation from approximately 13 bankruptcy trust funds, on average, suggests that these bankrupt companies and their products still represent meaningful exposure shares and sources of compensation even though they are not being affirmatively identified in tort disclosures. As such, these findings highlight the importance of increasing transparency and integration between the asbestos tort and trust systems through legislative or judicial reform.

Figure 4: Active Trust Claim Comparison



Over-Naming and Transparency Reforms

The Philadelphia Court of Common Pleas has continued to operate as one of the most prominent asbestos dockets in the U.S. but, like many jurisdictions, it has failed to effectively limit the over-naming of defendants. As such, at least half of the defendants named in each lawsuit are forced to allocate resources to fight lawsuits only to find that there is no meaningful basis for the claim against them.

Several states have taken steps to address this problem by passing legislation that would require plaintiffs to identify specific claims against each defendant during the discovery phase of the tort action. West Virginia, Iowa, North Dakota, and Tennessee were the first states to enact laws to limit over-naming practices.[32] Arizona and Utah recently passed similar legislation that went into effect in 2023.[33] Other over-naming bills have been introduced in Ohio and Florida and are currently going through the legislative process.[34]

Generally, these over-naming laws require a plaintiff to file a sworn declaration shortly after the filing of a lawsuit, usually within 21 to 60 days, affirming the products, dates, locations, frequency, and proximity that support the asbestos exposure allegations. The laws are designed to provide more transparency in the naming process and limit defendants with no nexus to the case from incurring unnecessary legal fees and defense costs. The legislation promotes judicial efficiency by streamlining the docket, limiting the

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number of appearances by defense counsel, and focusing the proceedings on specific plaintiff allegations against a set of potentially responsible parties.

In addition to highlighting the need for legislative or judicial reforms to address the problem of over-naming, the results of the current sample analysis from Philadelphia cases continue to illustrate the need for more timely disclosures of trust claims and compensation entitlements during the pendency of tort claims. Pennsylvania should take note of tort reform efforts across the country, as 16 states have already passed legislation that requires plaintiff law firms to timely disclose trust exposure allegations and claims shortly after filing the tort complaint.[35] Absent these reasonable legislative or judicial solutions, an increasing number of defendants will unnecessarily be brought into litigation, forced to pay the several liability shares of the bankrupt defendants, and perpetuate the cycle of asbestos bankruptcy filings as plaintiff law firms continue the endless search for a solvent bystander company to sue.[36]

Endnotes

1 Scarcella, Marc C., Peter R. Kelso, and Joseph Cagnoli, Jr., "The Philadelphia Story: Asbestos Litigation, Bankruptcy Trusts and Changes in Exposure Allegations from 1991-2010," Mealey's Litigation Report: Asbestos, vol. 27, no. 17 (2012).

2 Financial Statements and Report of Manville Personal Injury Settlement Trust for the Period Ending December 31, 2022 Pursuant to Sections 3.02(D)(i) And (iii) of the Trust Agreement, https://mantrust.claimsres.com/wp-content/uploads/2023/02/4th-Quarter-2022.pdf. According to the Manville Personal Injury Settlement Trust, more than 1.1 million asbestos claims had been filed with the trust as of year-end 2022. We have assumed that each of these claims against the trust were also filed against solvent co-defendants in the tort system.

3 Carroll, Stephen J., Deborah R. Hensler, Jennifer Gross, Elizabeth M. Sloss, Matthias Schonlau, Allan Abrahamse, and J. Scott Ashwood, "Asbestos Litigation," RAND Corporation, MG-162-ICJ, 2005, https://www.rand.org/pubs/monographs/MG162.html. According to the RAND Corporation, as of 2002, asbestos claims had been brought against 8,400 companies. Based on observed trends showing an increase in the pool of defendant companies over the past 20 years, it can be estimated that more than 10,000 companies have been implicated as of 2022.

4 Behrens, Mark A. and Christopher E. Appel, "Over-Naming of Asbestos Defendants: A Pervasive Problem in Need of Reform," Mealey's Litigation Report: Asbestos, vol. 26, no. 4 (2021); *In re Garlock Sealing Technologies, Inc.*, No. 10-31607 (Bankr. W.D. N.C.), GST-0996, Exhibit 28, para 148.

5 Scarcella, Kelso, and Cagnoli Jr., *supra* n. 1, Exhibit 1.

6 Malik, C. Anne, "Unlocking the Code: The Value of Bankruptcy to Resolve Mass Torts," U.S. Chamber of Commerce Institute for Legal Reform, December 2022, https://instituteforlegalreform.com/research/unlocking-the-code-the-value-of-bankruptcy-to-resolve-mass-torts/.

7 *Supra* n. 1.

8 *Supra* n. 1, Exhibit 5.

9 For example, in April 2021, West Virginia enacted legislation (House Bill 2495) that requires plaintiffs in asbestos cases to file a sworn information form that specifies evidentiary basis for each claim and provides supporting documentation.

10 For purposes of this study, we limited our scope to a sample of cases that alleged some level of industrial or commercial manufacturing exposure history. To distill this sample, we first drew a random sample of 200 cases from more than 400 identified mesothelioma lawsuits set on active trial dockets in the Philadelphia Court of Common Pleas during the five-year period from 2017 through 2021. Of the 200 randomly drawn cases, we were able to collect case documentation on 119 cases. Of the 119 cases, we found that 43 had deposition and/or trial testimony. Of the 43 cases, we found that 34 provided product exposure identification for at least five named/served defendant companies. By eliminating cases with fewer than five defendant companies identified in product exposure allegations, we effectively removed any cases from our sample analysis that only had deposition testimony from individuals lacking extensive knowledge of the diagnosed party's product exposure history. Finally, we narrowed the sample down to the 30 cases that alleged some level of industrial or commercial manufacturing exposure history, to more accurately analyze the number of primary industrial product defendants identified.

11 *Supra* n. 4.

12 Gay, Mary Margaret, "The Name Game: Over-Naming in West Virginia Asbestos Litigation," West Virginia Record, March 15, 2021, https://wvrecord.com/stories/578828061-the-name-game-over-naming-in-west-virginia-asbestos-litigation.

13 *In re Garlock Sealing Technologies, Inc.*, No. 10-31607 (Bankr. W.D. N.C.), GST-0996, Exhibit 28, para 148.

14 *Supra* n. 4, at 2.

15 Named or served.

16 These statistics exclude Metropolitan Life as a named defendant since claims against Metropolitan Life are based on the alleged conspiracy theory that Metropolitan Life suppressed scientific evidence that asbestos causes disease and not on product exposure.

17 *Supra* n. 4.

18 West Virginia - HB 2495 Text - 2021 Regular Session, https://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=HB2495%20INTR.htm&yr=2021&sesstype=RS&i=2495; North Dakota - HB 1207 - 2021 Regular Session (67th LA) - LC# 21.0434.05000, https://ndlegis.gov/assembly/67-2021/documents/21-0434-05000.pdf; Iowa - SF2337 Text, 112th General Assembly, https://www.legis.iowa.gov/docs/publications/LGE/88/SF2337.pdf; Tennessee - SB0873 Text - 2021-2022 - 112th General Assembly, https://legiscan.com/TN/bill/SB0873/2021.

19 The companies that filed for Chapter 11 protection during the Bankruptcy Wave included AC&S, Armstrong World Industries, USG, Owens Corning/Fibreboard, Federal-Mogul, G-I Holdings, Combustion Engineering, etc. For a detailed list of all the Bankruptcy Wave debtors, *see* Mark D. Plevin et al., "Where Are They Now, Part Four: A Continuing History of the Companies That Have Sought Bankruptcy Protection Due to Asbestos Claims," 6:4

Mealey's Asbestos Bankr. Rep. (Feb. 2007).

[20] U.S. Environmental Protection Agency, http://www.epa.gov/iris/subst/0371.htm.

[21] American Academy of Actuaries, "Overview of Asbestos Issues and Trends." December 2001, (actuary.org); Behrens, Mark, "Asbestos Trust Transparency," *Fordham Law Review,* vol. 87, p. 1-2.

[22] *Supra* n. 1, Exhibit 6.

[23] *Supra* n. 1.

[24] *Supra* n. 1.

[25] *Supra* n. 1, Exhibit 4.

[26] *Supra* n. 16; Even though bankrupt companies cannot be named as defendants on complaints in tort lawsuits due to the Chapter 11 bankruptcy automatic stay of claims and subsequent channeling injunction to a post-bankruptcy settlement trust, a tort plaintiff's full alleged exposure history to asbestos can include exposures to the products or operations of now-bankrupt companies.

[27] *Supra* n. 1.

[28] On average, 27.5 companies were identified in exposure allegations across the current sample, which includes 18.8 named defendants *(see* Figure 1), 4.6 bankrupt defendants (*see* Figure 3), and an additional 4.1 companies that were identified but not named.

[29] *In re Garlock Sealing Technologies, Inc.*, No. 10-31607 (Bankr. W.D. N.C.); *In re Specialty Prods. Holding Corp.*, Bankruptcy No. 10-11780-JKF (Bankr. D. Del. May. 20, 2013).

[30] DPMB stated in its first-day bankruptcy filings that during the 1990s it had paid less than $10 million to resolve the roughly 200 mesothelioma cases that were filed against it. Due to the bankruptcy wave, however, that number of mesothelioma cases rose to 1,700 by 2002 and averaged 1,400 cases annually (50 percent were dismissed) until the company filed for bankruptcy in 2020. *See In re: DBMP LLC*, No. 20-30080, W.D. N.C. Bkcy., Informational Brief of DBMP LLC, Jan. 23, 2020. Bestwall stated that it faced less than 500 mesothelioma suits in the 1990s before the filings against it exploded and it averaged being named in between 1,500 and 2,000 mesothelioma cases per year from 2003 until the company's bankruptcy filing in 2017. *See In re: Bestwall LLC*, No. 17-31795, W.D. N.C. Bkcy., Declaration of Tyler L. Woolson in Support of First Day Pleadings, Nov. 2, 2017. Aldrich Pump and Murray Boiler similarly reported that they had collectively paid a limited set of mesothelioma plaintiffs $4 million in indemnity payments from the mid-1980s to 2000. However, following the bankruptcy wave, the company faced defending over 2,000 annual mesothelioma cases, achieving dismissal in two-thirds of all the cases yet paying over $100 million annually by the time the company filed for bankruptcy in 2020. *See In re: Aldrich Pump LLC, et al.*, No. 20-30608, W.D. N.C. Bkcy., Informational Brief of Aldrich Pump LLC and Murray Boiler LLC, June 18, 2020.

[31] We note that due to the length of time—on average approximately four years—between the filing of a bankruptcy petition and confirmation of a plan of reorganization and trust fund, 3.8 of the 4.6 bankrupt companies identified in product exposure allegations across the current case sample, on average, have operational trusts that were actively compensating claimants at the time of the sample.

[32] *Supra* n. 4.

[33] Arizona - SB1157 Text - 2022 - Fifty-fifth Legislature 2nd Regular Session, https://legiscan.com/AZ/text/SB1157/id/2504960; Utah - HB0328 Text - 2023 General Session, https://le.utah.gov/~2023/bills/static/HB0328.html.

[34] Florida - CS/SB 720 Text - 2024 Session, https://www.flsenate.gov/Session/Bill/2024/720#:~:text=Asbestos%20and%20Silica%20Claims%3B%20Revising,to%20dismiss%20certain%20claims%20upon; Ohio - SB 252 Text - 134th General Assembly, https://www.legislature.ohio.gov/legislation/134/sb252.

[35] Alabama, Arizona, Iowa, Kansas, Michigan, Mississippi, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin have enacted asbestos trust transparency legislation. *See* Davis, Evelyn Fletcher, "A 2021 Look at Bankruptcy Trust and Transparency Issues in Asbestos Litigation," Mealey's Litigation Report: Asbestos, vol. 36, no. 6 (2021).

[36] Scruggs, Richard and Victor Schwartz, "Medical Monitoring and Asbestos Litigation - A Discussion with Richard Scruggs and Victor Schwartz," 17 Mealey's Litigation Report: Asbestos, vol. 17, no. 3 (Mar. 1, 2002), p. 4: "I think that, as one California Supreme Court Justice has said, asbestos litigation has become the endless search for a solvent bystander. Most of the companies that were responsible in promoting the sale of asbestos-containing products have been held accountable and most of them have gone bankrupt."

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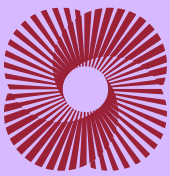

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