

October 9, 2006

Viewpoint

Lawsuit Scandal Reform

Asbestos and Silica Medical Criteria Legislation Needed



MARK BEHRENS

By Mark Behrens & Phil Goldberg

In recent years, tens of thousands of people who are not sick have filed asbestos and silica sand personal injury lawsuits. These cases are filed because lawyers know that under our legal system it is often cheaper for a defendant to settle than to fight, even if the claim has no real merit. Mass filings by the non-sick have pushed scores of employers into bankruptcy and threaten the ability of cancer victims to receive timely and adequate compensation for asbestos-related diseases. Missouri should join the growing number of states that have acted to make sure that the real beneficiaries of the legal system are cancer victims, not the uninjured and their lawyers.



PHIL GOLDBERG

According to the most widely-accepted reports, up to 90 percent of recent asbestos-related lawsuits have been filed by people with no medical impairment. These plaintiffs have no objective changes in their appearance or well-being from asbestos exposure. They are recruited to file lawsuits by for-profit litigation screening firms that are in the business of finding uninjured workers who are willing to let a personal injury lawyer file a lawsuit with the hope of a settlement. These litigation generating firms often attract potential clients through ads like, "Find out if YOU have MILLION DOLLAR LUNGS!" Typically, a lawsuit is filed on behalf of anyone who presents X-ray evidence of asbestos exposure, even though few such persons are actually sick. In one of these screenings outside of St. Louis, one worker reportedly acknowledged, "I was tested positive and I haven't felt bad. I don't have a breathing problem. Four or five of my [co-workers] tested positive and they say they feel fine."

Recently, the practice of mass screenings to generate lawsuits has come under judicial and law enforcement scrutiny. One federal judge observed that X-ray readers hired by personal injury lawyers in asbestos cases are "so biased that their readings [are] simply unreliable." Another federal judge recently recommended that almost 10,000 silica lawsuits should be dismissed because the diagnoses were fraudulently prepared. "[T]hese diagnoses were driven by neither health nor justice," the judge said in her opinion, "they were manufactured for money." Criminal and congressional investigations have been launched into the litigation fraud that has resulted from these screenings.

Mass filings and settlement payments to the uninjured are particularly unfair to people who actually have serious asbestos-related diseases, such as mesothelioma, a deadly form of cancer. Cancer victims and their families have a well-founded fear that they may not receive adequate or timely compensation because the non-sick are grabbing up the money—every dollar paid to a person who is not sick is a dollar that is no longer available to compensate a cancer victim.

This problem is illustrated by the experience of the Manville Trust, which administers claims for asbestos-related injuries allegedly attributed to former producer Johns-Manville. The Trust has reported that a "disproportionate amount" of its money has been paid out to claimants "with no discernible asbestos-related physical impairment whatsoever." As a result, the Trust is paying just *five cents on the dollar* to claimants. Other trusts set up to settle asbestos claims also have had to cut payments to cancer victims because the trusts paid out too much money in the past to people who are not sick and may never develop an asbestos-related disease.

Employees of defendant companies and affected communities also suffer under the current system. An American bar Association publication recently estimated that asbestos litigation has pushed an estimated eighty-five job-creators into bankruptcy. Missouri businesses have not escaped this problem or the personal injury lawyers'

dragnet search for new defendants to sue.

Recently, several states have enacted laws to stop asbestos and silica litigation abuse by requiring claimants to objectively demonstrate that they have an asbestos or silica-related impairment before they file an asbestos or silica lawsuit. In just the past three years, fair medical criteria laws for asbestos and silica cases have been enacted in Kansas, Ohio, Texas, Florida, Georgia, and South Carolina. These states have restored the injury requirement in personal injury litigation so that more money is available for the truly sick. To be fair to those with no present injury, laws that would otherwise put a time limit on the filing of a claim are suspended. This means that someone who is not sick today would be able to bring a claim many years from now if the person were to develop an impairing condition from asbestos or silica exposure.

Missouri should join the list of pioneering states that have enacted laws to filter out and preserve the claims of the non-sick, ensure more timely and adequate recoveries for cancer victims, and protect employers from litigation fraud and abuse in asbestos and silica cases.

Mark Behrens and Phil Goldberg are attorneys in the law firm of Shook, Hardy & Bacon LLP. They practice in the firm's public policy group.

Lawyers Weekly, Inc., 41 West Street, Boston, Massachusetts, 02111, (800) 444-5297

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