

Stop New York Asbestos Lawyers From Gaming The System

By **Phil Goldberg** (February 26, 2020, 5:06 PM EST)

New York judges and juries are counted on to get things right, but they cannot do their jobs when blindfolded from the facts.

A recent study, conducted by asbestos litigation defense lawyers at Gay Jones & Kuhn PLLC for the New York Civil Justice Institute, revealed a disturbing trend in New York of plaintiffs lawyers hiding critical facts when suing over asbestos injuries. These tactics are inflating liability, hurting local businesses and depriving future asbestos victims of their access to justice.



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The unfortunate truth is that construction, shipyard and other industrial workers exposed to asbestos years ago are still developing asbestos-related diseases. Some diseases, including a cancer known as mesothelioma, can take decades to develop. These workers are rightfully seeking compensation, often from many companies because they were exposed to numerous asbestos products in their lifetimes.

What the study found is that lawyers for the workers have a way to game New York's legal system. They withhold evidence their clients were exposed to many different companies' asbestos products to make it look like only one or two businesses in the lawsuit are solely responsible.

This inflates the litigation award. Only after the case is over do the lawyers seek compensation from the others. This is not how litigation is supposed to work.

Plaintiffs are supposed to name everyone they blame for their injuries in the same proceeding so courts can properly apportion liability. Enterprising tort lawyers, though, found a loophole in asbestos cases. Most old asbestos companies are bankrupt and cannot be sued, so there are actually two, independent paths for seeking asbestos compensation.

First, workers can file claims with the bankruptcy trusts that the old asbestos companies set up for paying workers' claims. There is about \$30 billion in 60 trusts to pay current and future asbestos claims. Workers can file claims with multiple trusts if more than one company caused their injuries.

The second track is litigation. Because most traditional asbestos companies cannot be sued, asbestos lawsuits have to target other companies, such as local plumbing suppliers, that often had little to do with the injuries.

Plaintiffs lawyers want to keep these systems entirely separate. They want the courts to think that the companies in the lawsuit are solely at fault. They don't want the courts to know they are also alleging the bankrupt companies caused their injuries. Their goal is to get fully paid in the lawsuit and later get trust money on top of that.

The study looked at hundreds of New York asbestos cases. On average, each plaintiff could get \$440,000 collectively from nearly two dozen trusts. This is early money that could make a difference for them and their families, given the costs of treating their diseases.

However, the lawyers for these plaintiffs delayed filing most trust claims until after the lawsuits were over, to avoid disclosing the trust claims in the litigation. In 46% of the cases, the lawyers did not identify any trust claims during the litigation, even though plaintiffs in every case could file such claims.

In other cases, they identified only some claims. The study highlights a case where the lawyers sought only \$8,800 in trust claims before the lawsuit was heard, even though the plaintiff was eligible for \$613,556 in claims.

Sadly, many workers die before their lawsuits end. So their lawyers prioritized tricking courts into thinking local defendants were solely responsible for the injuries to maximize their own contingency fees over getting their clients early trust payments.

Withholding evidence is fraud and comes at a heavy cost. It takes a toll on plaintiffs and their families, leaves less money for people who will get asbestos-related diseases down the road, and hurts businesses that cannot afford the fraudulent liability costs.

There is a simple solution: transparency. Courts should learn about a plaintiff's entire exposure history so they can take into consideration the trust claims when apportioning liability in the lawsuits. Other states have enacted these reforms.

New York plaintiffs lawyers used to rely on former Assembly Speaker Sheldon Silver to protect their interests in Albany. Now that he is gone, progressives who want to make sure asbestos victims and defendants have access to justice should support these disclosure reforms in New York.

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