

# Commentary

## In Memoriam: Senior United States District Judge Charles R. Weiner

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The November 9, 2005, death of Senior United States District Judge Charles R. Weiner of the Eastern District of Pennsylvania marked the passing of one of the central figures in the nation's civil justice system over the past several decades. As the long-time manager of the federal asbestos docket, Judge Weiner helped shape the law in one of the most expansive tort litigation issues of our time. He will be a tough act to follow.

President Lyndon B. Johnson appointed Judge Weiner to the federal bench in 1967. In 1991, he was chosen by the Judicial Panel on Multidistrict Litigation to head the federal asbestos docket. The Panel noted that Judge Weiner "has extensive experience in complex litigation in general and asbestos litigation in particular," and "graciously expressed [his] willingness to assume the responsibility for this massive undertaking."<sup>1</sup> In this capacity, Judge Weiner was a legal pioneer, developing creative solutions to important asbestos litigation issues.

Judge Weiner may be best known for facilitating settlements, and in the asbestos arena, he tried to forge a comprehensive national settlement of present and future asbestos claims.<sup>2</sup> While the United States Supreme Court rejected his plan in 1997, then-Chief Justice William Rehnquist said that Judge Weiner's "record of achievement demonstrates . . . high standards as a public servant — a record matched by few."<sup>3</sup>

Perhaps Judge Weiner's most lasting impact on asbestos litigation, however, came from his orders to prioritize malignancy, death and total disability cases involving asbestos-related disease or injury.<sup>4</sup> In one such order, Judge Weiner said that it was "improper and a waste of the Court's time" for plaintiffs' lawyers to file so many unsupported cases.<sup>5</sup> He also noted that "[o]ther victims suffer while the Court is clogged with such filings."<sup>6</sup> Judge Weiner's rulings helped ensure that defendants' scarce resources were focused on the truly sick, rather than having those limited resources diverted to people who may have been exposed to asbestos but were not impaired.<sup>7</sup>

Judge Weiner's orders have served as support for state court orders and a basis for state legislation to prioritize the treatment of asbestos claims and direct money to sick claimants.<sup>8</sup> Currently, a dozen state courts have acted to prioritize asbestos claims for the truly sick — either through inactive dockets or similar case management orders.<sup>9</sup> In addition, four states with concentrations of unimpaired claims have adopted medical criteria laws based on these same core principles (Ohio, Georgia, Texas, and Florida).<sup>10</sup>

In addition, Judge Weiner frowned on the recruitment of new claimants through mass screening practices. In 2002, he ruled that “[a]ll non-malignant, asbestos-related, personal injury cases assigned to the [federal asbestos docket] which were initiated through a mass screening shall be subject to dismissal without prejudice. . . .”<sup>11</sup> Cases are eligible for reinstatement only when the claimant shows evidence of asbestos exposure and an asbestos-related disease. Judge Weiner explained the basis for his ruling:

The basis of each filing, according to the evidence of the moving parties, is a report to the attorney from the screening company which states that the potential plaintiff has an x-ray reading “consistent with” an asbestos related disease. . . . *Ofentimes these suits are brought on behalf of individuals who are asymptomatic as to an asbestos-related illness and may not suffer any symptoms in the future.* Filing fees are paid, service costs incurred, and defense files are opened and processed. *Substantial transaction costs are expended and therefore unavailable for compensation to truly ascertained asbestos victims.*

*The Court has the responsibility to administratively manage these cases so as to protect the rights of all of the parties, yet preserve and maintain any funds available for compensation to victims.*

*[T]he filing of mass screening cases is tantamount to a race to the courthouse and has the effect of depleting funds, some already stretched to the limit, which would otherwise be available for compensation to deserving plaintiffs.*<sup>12</sup>

Mass screenings and their reliability have since come under fire by legal scholars<sup>13</sup> and United States District Court Judge Janis Graham Jack of the Southern District of Texas, the manager of the federal silica docket.<sup>14</sup>

Finally, Judge Weiner sought to preserve resources for future claimants by severing punitive damage claims from federal asbestos cases before remanding

compensatory damage claims for trial.<sup>15</sup> In approving his decision, the Third Circuit Court of Appeals concluded: “It is responsible public policy to give priority to compensatory claims over exemplary punitive damage windfalls. . . .”<sup>16</sup> The Third Circuit urged state courts to adopt similar standards to protect a dwindling pool of funds for claimants that may develop asbestos-related disease in the future.<sup>17</sup>

Throughout his career, Judge Weiner displayed great leadership and a strong commitment to public service. During World War II, he interrupted his studies at the University of Pennsylvania to enlist in the Navy, earning a Purple Heart and a Bronze Star. After the war, he returned to the University of Pennsylvania and earned his bachelor’s degree. He received his law degree from Temple University after attending night school and working during the day. He became a Philadelphia prosecutor in 1951 and in 1952 was elected to the Pennsylvania Senate, where he served throughout much of the 1950’s and 1960’s and rose to rank of Majority Leader. After his appointment to the federal bench in 1967, Judge Weiner oversaw the implementation of the Regional Rail Reorganization Act of 1973, which led to the creation of the Consolidated Rail Corporation (CONRAIL) from the former freight railroads.

Judge Weiner also had a great love of education. While on the federal bench, he returned to the University of Pennsylvania to earn a doctorate degree in political science. After being named a senior judge in 1988, he continued to take classes and taught at the University of Pennsylvania and Temple University.<sup>18</sup>

Judge Weiner was a highly intelligent man and effective jurist. He had a strong grasp of sound public policy. The country was fortunate to have his services. He will be missed.

## Endnotes

1. *In re Asbestos Prod. Liab. Litig.* (No. VI), MDL 875, 771 F. Supp. 415 (J.P.M.L. 1991).
2. *See Georgine v. Amchem Prods., Inc.*, No. Civ. A. 93-0215, 1994 WL 440826 (E.D. Pa. Aug. 16, 1994), *vacated*, 83 F.3d 610 (3rd Cir. 1996), *aff’d sub nom.* *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997).

3. Gayle Ronan Sims, *Charles R. Weiner*, 83, *Federal Judge*, PHILA. INQUIRER, Nov. 12, 2005, at B6, available at 2005 WLNR 18281363; Assoc. Press, *Charles Weiner, Died Nov. 9, 2005, Federal Judge Who Devised Settlement Plan for Asbestos Lawsuits*, PITT. POST-GAZETTE, Nov. 13, 2005, at B6, available at 2005 WLNR 18381696.
4. See *In re Asbestos Prod. Liab. Litig.* (No. VI), MDL 875, Admin. Order No. 3 (E.D. Pa. Sept. 8, 1992); *In re Asbestos Prod. Liab. Litig.* (No. VI), MDL 875, Civ. Action No. 2 (Maritime Actions), 1996 WL 239863 (E.D. Pa. May 2, 1996).
5. See *In re Asbestos Prod. Liab. Litig.* (No. VI), MDL 875, Civ. Action No. 2 (Maritime Actions), Order, 1996 WL 239863, \*5 (E.D. Pa. May 2, 1996).
6. *Id.*
7. See Mark A. Behrens, *Some Proposals for Courts Interested in Helping Sick Claimants and Solving Serious Problems in Asbestos Litigation*, 54 BAYLOR L. REV. 331, 346 (2002); Mark A. Behrens & Monica G. Parham, *Stewardship for the Sick: Preserving Assets for Asbestos Victims Through Unimpaired Docket Programs*, 33 TEXAS TECH L. REV. 1 (2001); Paul F. Rothstein, *What Courts Can Do in the Face of the Never-Ending Asbestos Crisis*, 71 MISS. L.J. 1 (2001).
8. See Mark A. Behrens & Phil Goldberg, *Asbestos Litigation: Momentum Builds for State-Based Medical Criteria Solutions to Address Filings by the Non-Sick*, 20:6 MEALEY'S LITIG. REP.: ASBESTOS 33 (Apr. 13, 2005).
9. See *id.*
10. See Mark A. Behrens, *State Asbestos and Silica Reform: Past Successes — Future Opportunities?*, 20:19 MEALEY'S LITIG. REP.: ASBESTOS 29 (Nov. 2, 2005).
11. *In re Asbestos Prod. Liab. Litig.* (No. VI), MDL 875, Admin. Order No. 8, 2002 WL 32151574, \*1 (E.D. Pa. Jan. 16, 2002).
12. *Id.* (emphasis added).
13. See, e.g., Hon. Griffin B. Bell, *Asbestos & The Sleeping Constitution*, 31 PEPP. L. REV. 1 (2003); Lester Brickman, *On the Theory Class's Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality?*, 31 PEPP. L. REV. 33 (2003); Lester Brickman, *Ethical Issues in Asbestos Litigation*, 33 HOFSTRA L. REV. 833 (2005); Judyth Pendell, *Regulating Attorney-Funded Mass Medical Screenings: A Public Health Imperative?* (AEI-Brookings Joint Center for Regulatory Studies Sept. 2005), available at <http://www.aei-brookings.org/publications/abstract.php?pid=993>.
14. *In re Silica Prods. Liab. Litig.*, MDL 1553, — F. Supp. 2d —, 2005 WL 1593936 (S.D. Tex. June 30, 2005).
15. See Mark A. Behrens & Barry M. Parsons, *Responsible Public Policy Demands an End to the Hemorrhaging Effect of Punitive Damages in Asbestos Cases*, 6 TEX. REV. L. & POL. 137 (2001).
16. *In re Collins*, 233 F.3d 809, 812 (3d Cir. 2000), cert. denied sub nom. *Collins v. Mac-Millan Bloedel, Inc.*, 532 U.S. 1066 (2001).
17. *Collins*, 233 F.2d at 812 (“It is discouraging that while the Panel and transferee court follow this enlightened practice, some state courts allow punitive damages in asbestos cases. The continued hemorrhaging of available funds deprives current and future victims of rightful compensation.”).
18. See Gayle Ronan Sims, *Charles R. Weiner*, 83, *Federal Judge*, PHILA. INQUIRER, Nov. 12, 2005, at B6, available at 2005 WLNR 18281363. ■