

Asbestos trusts need more transparency



Kim Stone is president of the Civil Justice Association of California. You can reach her at (916) 443-4900 or kstone@cjac.org.

California and federal legislators will soon have the opportunity to vote on an issue of fundamental fairness to current and future victims of asbestos-related diseases and cancers - the question of trust transparency.

Asbestos litigation is the longest-running mass tort litigation in the United States. The litigation has spanned over 40 years and has resulted in hundreds of thousands of claims filed, billions of dollars in compensation paid, and millions of dollars in television advertisements. Early litigation involved companies that had made products containing asbestos. While over 90 companies have gone bankrupt, 60 companies have, through federal bankruptcy laws, created settlement trusts to compensate present and future claimants for their injuries.

The trusts are one way for injured claimants to receive compensation for their harm. But plaintiffs' lawyers are also suing solvent companies, many of whom are more peripheral defendants. This leads to two tracks: the trust system, which, per trust rules, is confidential, and then the lawsuit system, which is public. Since the trust system is confidential, plaintiffs' lawyers can tell one story to a trust ("my client's sickness was caused by exposure to your asbestos"), and another story in a lawsuit ("my client's sickness was caused by exposure to *your* asbestos"). This double dipping allows recovery from multiple defendants, who may or may not be responsible for the exposure.

A recent federal bankruptcy court decision, *In re Garlock Sealing Technologies LLC*, 504 B.R. 71 (2014), shined the light on this shady practice. In looking at 15 cases that had been brought against defendant Garlock, the court noted that each case contained deceptions that altered settlement values in a substantial way.

Some of these cases were in California. In one Los Angeles case, *Treggett v. Alfa Laval Inc.*, the plaintiff's attorney in a lawsuit sought to keep any other company from being held accountable to the jury by claiming that the plaintiff was only exposed to Garlock's asbestos. However, at the same time the same plaintiff's attorney had filed a trust claim saying that the plaintiff had been exposed to Pittsburg Corning's asbestos. Since the trust claims are confidential, we don't have other large scale examples of fraud, but it's certainly telling that all of the cases the bankruptcy judge in Garlock examined contained some deception.

There are two pending bills to address this problem: one in Congress, and one in the California Legislature. In Congress, the Furthering Asbestos Claim Transparency (FACT) Act would impose common sense reporting and disclosure requirements on the asbestos

settlement trusts. In California, Assembly Bill 597 would create some improved disclosure rules to try to make asbestos lawsuits fairer.

We need to improve fairness in asbestos lawsuits not only for asbestos defendants, but also for asbestos plaintiffs. The trust claims were funded with a fixed amount of money - intended to be sufficient for all current and future plaintiffs. But trust claims are increasing at a greater rate than anticipated. Once trust funds are depleted, that money is gone forever.

California judges, although they may not change statute to make all the fixes necessary, have issued case management orders that seem to recognize the problem. Los Angeles Presiding Judge Emilie H. Elias has created an order that recognizes trust claims are relevant to ongoing litigation. Alameda asbestos judge Brad Seligman has done the same. These judges cannot require the kind of transparency that a federal or state fix would provide, but their actions indicate there is a need.

We need federal and California legislation to provide simple, common-sense transparency in order to provide fairness to both asbestos defendants and asbestos plaintiffs. Openness and transparency will help fix a broken system, discourage fraud, and ensure that money remains for future legitimate victims.

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