

U.S. Asbestos Litigation An Update

Mark Behrens, Shook, Hardy & Bacon L.L.P

11th Annual Liability Regimes Conference

Keeping the Floodgates Shut? Mastering Accumulation
and Bodily Injury Exposures in a Rapidly Changing Environment

4–5 November 2015, Rüschtikon

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U.S. Asbestos Litigation – An Update

Mark Behrens | Shook, Hardy & Bacon L.L.P.

November 2015

Big Business for Plaintiff Lawyers

Attention
Mesothelioma
Victims diagnosed within
the last 4 years

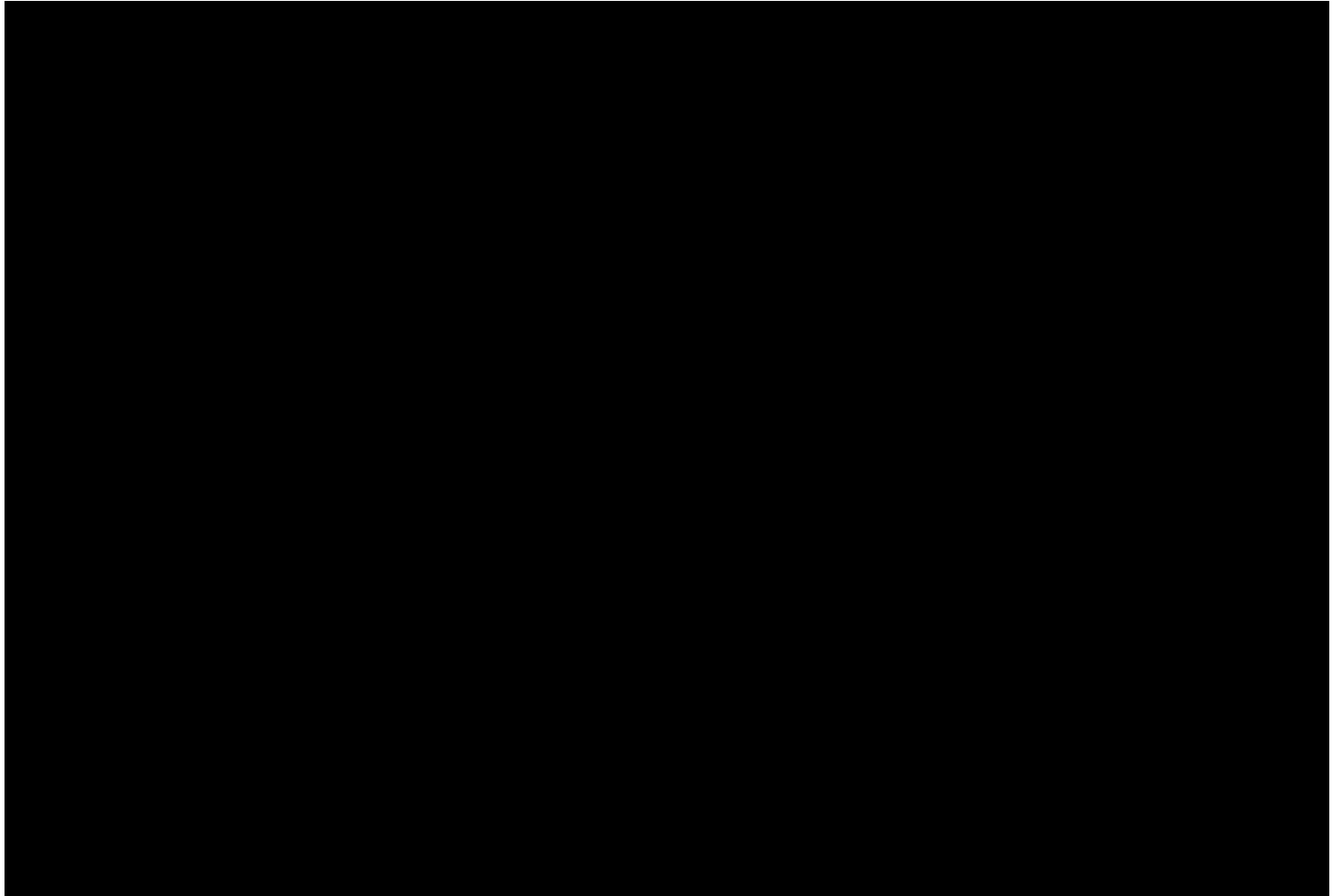
Big Business for Plaintiff Lawyers



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Big Business for Plaintiff Lawyers



History: The Early Years

- Federal Occupational Safety & Health Administration (OSHA)
- 1972 – Adoption of Workplace Asbestos Exposure Regulations
- *Borel v. Fibreboard Paper Products Corp.* (5th Cir. 1973)
- Modern Era of Mass Asbestos Litigation Begins
- Asbestos Product Manufacturers Can Be Strictly Liable For Failure to Warn of Risks
- Plaintiffs - “Dusty Trades” Workers
(E.G., Shipyard Workers and Insulators)
- Amphibole Asbestos Thermal Insulation Defendants
- Disease Mix
- Mesothelioma, Lung Cancer, Severe Asbestosis

History: 2000-2005

- Late 1990s and Early 2000s
 - Disease Mix Changes - Mass Filings By Non-Sick
- Bankruptcy Wave: 2000-2002
 - Many Primary Historical Defendants Exit the Tort System
 - 29 Companies – Almost As Many As Prior 2 Decades Combined (E.G., Pittsburgh Corning, Owens Corning/Fibreboard, USG, Armstrong World Indus., G-I Holdings (GAF), W.R. Grace, Federal Mogul, Kaiser Aluminum, ACandS)
- Corrections Occurring in Courts and Legislatures to Address Non-Sick
 - Disease Mix Changes Back to Sick Plaintiffs, Especially Mesothelioma
- Spread of Litigation to Former “Peripheral” Defendants
 - Encapsulated Chrysotile Products (E.G. Brake Pads and Gaskets)

History: The Last Decade

- Two Tiered Compensation System Emerges
- Asbestos Bankruptcy Trusts
 - Over 100 Bankruptcies Related to Asbestos Liabilities
 - Now Over 60 Trusts Together Holding Tens of *Billions* of Dollars in Assets
- Civil Tort System
- A typical mesothelioma plaintiff's total recovery was recently estimated to be \$1-1.5 million, "including an average of \$560,000 in tort recoveries and about \$600,000 from 22 trusts."
(In re Garlock Sealing Technologies)

Big Business for Plaintiff Lawyers

iSpot.tv

\$18 Billion Trust Funds
Mesothelioma Asbestos Cancer

M

1-800-943-1391

This is a screenshot of a television advertisement. The background is a light, textured surface. The text is centered and uses a mix of red and blue colors. At the top right, there is a small 'iSpot.tv' logo. The main text is in a serif font, with the dollar amount and 'Trust Funds' in red, and the disease name in blue and underlined. A large, bold blue phone number is at the bottom. A single letter 'M' is centered below the underlined text.

Current Defense Efforts

- Defense Efforts
 - Account for Role of Bankrupt Defendants in Plaintiff Exposures
 - *In re Garlock Sealing Technologies* (Bankr. W.D.N.C. 2014)
 - Asbestos Bankruptcy Trust Claim Transparency Laws
 - Texas, West Virginia, Arizona, Ohio, Wisconsin and Oklahoma
 - Federal: FACT Act
 - Attacking “Junk Science” Causation Testimony by Plaintiff Experts

Current Plaintiff Efforts

- Plaintiff Lawyer Efforts
 - Take-Home Exposure Cases
 - Duty to Warn of Products Made by *Other* Companies
 - Lung Cancer Case Filings In Some Jurisdictions

The Future

- The Litigation Marches On....No Signs of Abating
 - “Filings have shown no decline in the last seven years, a finding that is perhaps inconsistent with predictions of epidemiological models.” (NERA Economic Consulting June 4, 2015).
 - Mesothelioma claim filings have “remained near peak levels since 2000.” (Towers Watson 2013).
 - “Typical projections based on epidemiology studies assume that mesothelioma claims arising from occupational exposure to asbestos will continue for the next 35 to 50 years.” (Towers Watson 2013).

Questions?

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