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, Rüschlikon
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
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

$18 Billion Trust Funds
Mesothelioma Asbestos Cancer

1-800-943-1391
Current Defense Efforts

- Defense Efforts
  - Account for Role of Bankrupt Defendants in Plaintiff Exposures
  - 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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