Asbestos Is Gold For Trial Lawyers

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Asbestos litigation has spun so far out of control that the U.S. Supreme Court has agreed to hear an appeal directly from an intermediate state court. Multi-million dollar verdicts are being awarded to healthy plaintiffs based on speculation about possible future harm from past exposure to asbestos.
A West Virginia state court awarded millions of dollars to a few workers without evidence of physical or independently corroborated emotional harm from exposure to asbestos, and without apportioning damages based on relative culpability. The case, based on the Federal Employers' Liability Act (which pertains to railroad workers), is Norfolk & Western Railway Co. v. Ayers, Freeman et al.

The Supreme Court has repeatedly implored Congress to save the courts from having to handle asbestos lawsuits. But the usual victims of this litigation are engineering companies that lack political muscle and are no match for the political clout of the trial lawyers.

America's top asbestos producer, Johns Manville, was forced into bankruptcy in 1982. By 1992, Lloyds of London was averaging nearing $3 billion a year in losses, due mostly to asbestos claims.

Asbestos litigation has pushed at least 54 companies into bankruptcy, and judgments are often imposed with little regard for proof of wrongdoing or causation. Encouraged by porous legal standards, asbestos attorneys have filed claims for more than 1.4 million persons, against more than 1,400 companies.

In 2000, the four major companies sent into bankruptcy by asbestos were Armstrong World Industries (construction products), Babcock & Wilcox (boilers), Burns and Roe (engineering and construction), and Pittsburgh Corning (glass insulation). In 2001, asbestos litigation casualties included the chemical and materials giant W.R. Grace, the prominent construction materials company G.A.F., the gypsum wallboard maker USG, and the auto-parts maker Federal-Mogul.

Just in the past six months, Fortune 500 victims of the asbestos litigation monster have seen sudden drops in their stock prices. Hit with a Texas-sized verdict last December, Halliburton stock abruptly dropped 43 percent.

In February, a Manhattan jury awarded $53 million to the estate of a deceased auto mechanic who allegedly died from exposure to asbestos in brake linings. That decision jeopardizes the entire auto industry; full-page ads for auto mechanics with lung cancer now run in New York newspapers.

In March, a West Virginia jury ordered DuPont to pay $6.4 million to a bank officer who died of mesothelioma. The banker was allegedly injured by fibers that might have attached to the clothing of his father who worked with asbestos at DuPont.

Some of the cases involve heavy, lifelong smokers who claim they have asbestosis, an asbestos-related disease. Plaintiffs and defendants bring in medical experts who testify to contrary diagnoses, and the jury is left to decide, often against the corporate defendants.

In February, 2,645 plaintiffs sued asbestos attorneys, claiming that "this case arises from corruption within the asbestos personal injury bar." Reports are that the majority of asbestos settlements enrich the attorneys, rather than going to the allegedly harmed individuals.

The demonizing of asbestos is an odd fate for a substance that exists widely in nature, including the rocks supporting highly populated cities such as San Francisco. No material can approach its versatility and effectiveness and, for decades, asbestos saved countless lives because of its remarkable strength, durability, and resistance to fire.

In 1998, the prestigious New England Journal of Medicine reported no increased risk of death from cancer because of prolonged exposure to asbestos. Based on a thorough study of mines and mills that have the world's greatest concentration of asbestos, the researchers concluded: "The [Environmental Protection Agency] model overestimated the risk of asbestos-induced lung cancer by at least a factor of 10."

Until now, the U.S. Supreme Court has been unwilling to curtail the legal circus and its calamitous consequences. The Court has manifested unusual restraint as verdicts were rendered, sometimes without any proof of wrongdoing or causation by the defendants who have been forced to pay astronomical damages.

As more claims were decided for workers involved in the manufacture of asbestos, the trial attorneys began casting their nets wider. Any firm that had any contact with asbestos is at risk for unjustified litigation, so asbestos is hastily excluded and removed at great expense.

Meanwhile, observers have noted that the replacement of asbestos with less effective material may have played a role in (1) the explosion of the Challenger, (2) the great New Orleans Rail Yard Fire of 1987, and (3) the premature collapse of the World Trade Towers on 9/11. The government is now contradicting itself by claiming that, while asbestos lining within the towers would have been unsafe, asbestos emitted by the collapse of the towers is safe.

The unusual consideration by the Supreme Court of the Norfolk & Western Railway case may signal that the Court is no longer waiting for congressional action. But will Court action be too little and too late?