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Houston Business Journal
Houston, TX
Circ 16377

NOV 14 2003

Asbestos litigation fans flames for judicial reform

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SPECIAL TO HOUSTON BUSINESS JOURNAL

Thousands of people are out of work. Entire companies have been shut down. The future of the American economy could well hang in the balance.

Not from terrorism or war, shady accounting or corporate malfeasance. But from lawsuits. Specifically, some 250,000 lawsuits filed to date because of ties to asbestos and some illnesses. And although asbestos-linked cancer deaths have been declining since 1992, we are experiencing a rise in the number of lawsuits filed.

A great many of the lawsuits today are filed against companies that never mined asbestos or made asbestos-related products.

More shocking is the fact that a great many of those lawsuits are being filed on behalf of people who are not even sick. To date, more than \$54 billion has been paid in damages.

On the trial lawyer circuit, asbestos means one thing — money. And lots of it. That's why it is estimated another 2.5 million lawsuits will be filed before the trial lawyers move on to their next target.

Awards for asbestos-related illnesses have been staggering. Just last year in Mississippi, six individuals were awarded \$25 million each — and none have any symptoms of asbestos-related illness.

It would be nice to think the problem is someone else's, but Texas has become a magnet for court-shopping lawyers looking for big payoffs. According to one study, Texas is one of five states where two-thirds of all filings occur.

But is asbestos a medical problem worthy of legal action? It is indeed true some individuals are suffering and dying from asbestos-caused illness. And those indi-

viduals should have access to the courts when appropriate, and for amounts that reflect their losses.

Unfortunately, the lawsuit lottery is crowding out the legitimate plaintiffs who deserve compensation for their suffering. The outrageous and nonsensical awards are making it difficult for those with actual cases to get justice.

In one case, some 4,000 plaintiffs were allocated a \$160 million settlement on the basis of how far they lived from the courtroom.

The Texas Legislature had the opportunity earlier this year to help those suffering from asbestos-related illnesses when Sen. Kyle Janek introduced SB 496.

Janek's legislation — which passed committee but was not taken up by the full Texas Senate — would have established an "inactive" docket for those wishing to make asbestos claims, but who did not yet have a medical cause.

Once the claimant could prove he or she was suffering from an asbestos-related illness, by clear and objective medical evidence subject to verification by an independent medical expert, the claimant's case would have been moved to the active docket and proceeded through the courts.

Such legislation would have gone a long way in reducing the carnival atmosphere surrounding asbestos litigation.

At both the national and state levels, sensible lawsuit reform should be quickly implemented to bring a sense of proportionality and decorum to the issue.

Those who are not sick should not be allowed to tie up the courts, and those who are not responsible should not be forced into bankruptcy.

At the federal level, legislation is pending in the Senate to create a national trust

fund — not one paid for by taxpayers, but by asbestos makers and their insurers. Funds would be distributed only after a claim has been proven medically valid.

This approach has great merit.

Likewise, action should be taken to reduce the outrageous "punitive" damages. Remember that asbestos was universally considered a safe, or at least manageable, product for many years.

In a 1991 report by a special ad hoc committee of the United States Judicial Conference to the Chief Justice of the United States Supreme Court, it was stated that punitive damage recoveries by earlier-filing claimants "threaten fair compensation to pending and future claimants and threaten the economic viability of defendants."

Stated another way: The outrageous awards driving companies out of business today all but ensures that future plaintiffs, with legitimate complaints, will not receive the compensation they are due.

Asbestos may have protected homes and businesses from fire, but today it is protecting the luxury car payments of trial lawyers looking to get rich quick.

Unless action is taken soon, asbestos litigation will continue to kill thousands of jobs and further weaken our economy. ■

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