



Asbestos lawsuit reforms help victims

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After 40 years, 730,000 national asbestos claimants, more than \$50 billion in claims paid, the bankruptcy of 73 companies, and the loss of more than 100,000 jobs, we have learned quite a few lessons regarding mass tort dockets in Texas.

First, some people really have been damaged by asbestos and are suffering greatly. Exposure to asbestos can, in a small percentage of cases, cause mesothelioma, a deadly form of lung cancer. Once diagnosed, death is certain within two years. These plaintiffs deserve full compensation and a speedy trial.

Second, big money leads to many phony claimants. Because of the seriousness of mesothelioma, there was initially a real concern about "asbestosis." However, few asbestosis claimants have ever shown physical impairment.

When these facts about asbestosis became clear, the Legislature acted in 2005 to create a dormant docket. Those who cannot show physical impairment cannot go forward to trial, and thus cannot force nuisance value settlements.

Eighty-five thousand Texas "asbestosis" claimants' cases are on administrative hold pending a simple required medical report from a qualified physician stating that the plaintiff actually has some type of physical impairment. Third, the court system in Texas was not well equipped to equitably handle tens of thousands of pending cases. Pretrial evidentiary rulings varied by court and by county, meaning that neither plaintiffs nor defendants could rely on consistent rulings throughout the state. Evidence a judge might find admissible in one county would be held inadmissible in another. There was no predictability of fairness of rulings.

Accordingly, the Legislature in 2003 created a multi-district litigation procedure (MDL) which allows the Supreme Court to send all mass toxic tort cases to one judge. In this way, every plaintiff and every defendant gets the same rulings, which are then subject to scrutiny from appellate courts.

The asbestos MDL judge, Mark Davidson, is highly praised by both the plaintiff and defense bars for his fairness, thoughtfulness and speedy decision making, and is a very good example of why an MDL system in mass tort cases works so well in Texas.

Fourth, some defendants just shouldn't be defendants at all. Crown Cork & Seal is a bottling and canning manufacturer which has never in its corporate history manufactured, sold or put into the marketplace any product that contained a single fiber of asbestos.

But because in 1963 it purchased for \$7 million the stock in a company which had a division that once manufactured an asbestos containing product, it has been repeatedly sued. Crown Cork & Seal has retroactively been forced to pay out more than \$600 million in settlements. This blatant unfairness prompted the Legislature to adopt a 2003 rule limiting successor liability of a prior owned company to what was actually paid for the company.

Fifth, those who are really sick need to go to trial as soon as possible. Crowding the docket with tens of thousands of "me too" claimants creates a logjam and courts have a hard time distinguishing between valid and frivolous claims. Changes to the rules of evidence and procedure have given Texas courts the ability to ferret through frivolous claims and allow those with merit a clear path to trial.

Next spring, the Legislature will review how the asbestos MDL docket has performed. I think the Legislature will find that the laws it enacted have worked well and that the judge entrusted with the asbestos MDL has performed to the highest standard. This is one good example where promises made with the passage of legislation were fulfilled, and the legislation has worked to the benefit of all Texans.

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