

MEALEY'S® LITIGATION REPORT

Asbestos

Finding Alternative Exposures In Asbestos Cases: Knowing The Right Questions And Resources

by
Sarah Beth Jones
and
Mary Margaret Gay

Gay Jones & Kuhn PLLC
Jackson, MS

**A commentary
article reprinted
from the June 9,
2021 issue of
Mealey's Litigation
Report: Asbestos**



Commentary

Finding Alternative Exposures In Asbestos Cases: Knowing The Right Questions And Resources

By
Sarah Beth Jones
and
Mary Margaret Gay

[Editor's Note: Sarah Beth Jones and Mary Margaret Gay are founding members of Gay Jones & Kuhn PLLC. Gay Jones & Kuhn PLLC offers a broad spectrum of legal services for clients in Mississippi, Arkansas, and Alabama, including mass tort defense, asbestos bankruptcy trust transparency, and strategic counsel services. Gay Jones & Kuhn has been at the forefront of bankruptcy trust transparency and alternative exposure issues working with counsel and clients nationwide. Any commentary or opinions do not reflect the opinions of Gay Jones & Kuhn PLLC or LexisNexis®, Mealey Publications™. Copyright © 2021 by Sarah Beth Jones and Mary Margaret Gay. Responses are welcome.]

Alternative exposures continue to be key to the defense of an asbestos case. Lawyers spend hours researching and developing discovery to ensure exposures are thoroughly examined and revealed to value and defend a case. As we move into the fourth decade of asbestos litigation with more than 10,000 companies named as defendants and another 100 plus companies that have filed for bankruptcy protection, defense lawyers are looking beyond the standard case discovery and traditional sources for alternative exposure information to new sources of information to reveal a complete picture of a plaintiff's exposure.

The how-to guide for alternative exposure development is not simple and often may require access to alternative exposure resources and consultations with lawyers who have specialized expertise in bankrupt products. But when research turns up exposures previously withheld or unknown, the cost-savings can be extremely advantageous to the defense.

Standard research of alternative exposures begins with exploring alternative exposures related to your specific defense issue, digging into bankrupt products, and investigating possible take home exposures from spouses, parents, siblings, etc. But what can be done to take the alternative exposure development in a case to the next level?

- **Every Site Matters.** Creating a timeline of plaintiff's life including each and every residence and location the plaintiff trained, studied, and worked. Go beyond the allegations in the plaintiff's complaint.
- **Entire Life Exposures vs. Alleged Time Period.** Often, a plaintiff's allegations focus on exposures during a certain time period, but there may very well be other sources of exposure before and after that time period. Glossing over this and only focusing on the time period highlighted by the plaintiff could result in a failure to uncover alternative exposures that impact the case.
- **Ask for Help.** There is no single repository of asbestos product information. Law firms spend their time defending cases with experience and information often limited to a product type, jurisdiction, or specific issue. Utilize those who have expertise in bankruptcy trusts and alternative exposure mapping to assist you in finding the information.

Below are three plaintiff scenarios to illustrate alternative exposure mapping. These scenarios walk you

through the potential alternative exposure development and point you to information and resources available to uncover that information.

Meet The Accountant Plaintiff

The accountant plaintiff worked in offices his entire adult career. He alleges his asbestos exposure was caused by friction products he was around working as an auto mechanic after school in high school. He testified he is unaware of any other asbestos products to which he was exposed.

Plaintiffs who worked as professionals can be tricky. Where could they have been exposed to asbestos? There is no way the plaintiff was exposed to asbestos at his office locations . . . or is there? Plaintiff may not allege exposure during his professional accountant career, but the locations where he worked must nonetheless be explored. His office could be inside a historic building that is an approved site by bankruptcy trusts, meaning products were there that could have exposed him to asbestos. The building could be near other sites of potential exposure which may result in ongoing exposures.

Do not forget his schools. Check out his elementary, middle, and high schools. Schools are often overlooked, but many schools are approved exposure sites for bankruptcy trusts. You might think it is unlikely for the school in plaintiff's small town to be an approved trust site. However, that is not a wise assumption. *There are more than 4,500 schools on bankruptcy trust approved site lists, and many of those are schools in smaller towns.*

With professional plaintiffs, you have additional potential exposure sites at undergraduate colleges and graduate schools. *There are more than 3,500 college and university sites on bankruptcy trust approved site lists.* These sites can get specific too, beyond the name of the institution. During discovery, find out what buildings your plaintiff studied in on campus, the names of any dorms the plaintiff lived in, and any other names of buildings where plaintiff recalls spending time while studying at that college or university. These details could result in additional alternative exposures.

Meet The Dentist Plaintiff

The dentist plaintiff worked as a dentist in two buildings, both of which were built in the 1990s.

Cover the potential school exposures, but also do not omit work exposure as a student. Did plaintiff work part-time during high school or college or summers during college and dental school? His work history sheet only lists his jobs from after dental school forward. Most plaintiffs work during high school and college. Perhaps this plaintiff did too?

At plaintiff's deposition, explore his part-time and seasonal employment. For this plaintiff, counsel would have found out that during high school, the plaintiff worked at a bottling company. That bottling company appears on approved site lists for more than 10 bankruptcy trusts. Additionally, during the summers of college and dental school, the plaintiff worked at a distillery and a large factory in his hometown on the assembly line. Guess what? Those sites appear on approved site lists for more than 20 bankruptcy trusts. Plaintiff also now recalls overhead piping wrapped in insulation "all over the place" that was being repaired and replaced while he was working at these sites. Online access makes it easy to show the plaintiff photos of bankrupt insulation products. He is able to identify two labels he recalls seeing on the replacement pipe covering and insulation being installed in his vicinity. With a few additional questions, counsel has uncovered multiple alternative exposures for the plaintiff dentist who before deposition seemed to have had few possible asbestos exposures.

Meet The Homemaker Plaintiff

The plaintiff spent her adult life as a stay-at-home mother and homemaker. She did not work outside of the home until her children were grown when she became a part-time secretary for a small office downtown. The plaintiff has been diagnosed with mesothelioma. The allegations in the case are that she was exposed to asbestos dust her husband, who worked as a residential plumber, brought home with him on his work clothes that the plaintiff laundered. Plaintiff's husband can only recall a few manufacturers of products he thinks may have exposed him to asbestos during his plumbing work.

Explore the plaintiff's childhood and family during the deposition. By doing this, you might learn that her father was an auto enthusiast, and he and plaintiff's brother worked on family's and friends' automobiles in the garage at plaintiff's home when she was growing up. Plaintiff testifies that she did not perform any

automotive work, but she was often out in the garage with her father and brother and would hand them the tools they needed. She said the garage is where they spent most Saturdays during those years. She does not recall the names of auto parts they used off the top of her head, but her memory could likely be refreshed with photos of bankrupt products. She also recalls the make and model of several of the automobiles her father and brother repaired, many of which were Chevys and qualify her for a claim payment from the Motors Liquidation Company Asbestos Trust. Going back further into her childhood, she provides testimony that as a young child, her father was serving in the U.S. Army. She was born in a military hospital on a military base, and they moved to several different military bases during her childhood. The names of the bases are important, but the plaintiff should also be questioned about specific buildings her father

mentioned, as well as any buildings on bases she visited. *Hundreds of army sites, including base names as well as specific areas of the base like barracks, officer quarters, mess halls, hospitals, etc., are on bankruptcy trust approved site lists*, and they must be on the approved exposure site lists for a reason.

Conclusion

Developing and mapping alternative exposures can be extremely valuable to the defense of asbestos cases. It does take an investment of time and energy to do it properly, but remember resources and information are available to streamline the process. There are usually exposures beyond the allegations of the plaintiff, but counsel must be prepared to take a deeper dive into the broader world of exposures throughout a plaintiff's life. The results can be fascinating and impactful to the defense of a case. ■

MEALEY'S LITIGATION REPORT: ASBESTOS

edited by Bryan Redding

The Report is produced twice monthly by



11600 John F. Kennedy Blvd., Suite 1655, Philadelphia, PA 19103, USA

Telephone: (215)564-1788 1-800-MEALEYS (1-800-632-5397)

Email: mealeyinfo@lexisnexis.com

Web site: <http://www.lexisnexis.com/mealeys>

ISSN 0742-4647