



NEWS

Contact:
John Pastuovic
312-925-9092
john@jpcpr.com

**New Data Reveals That A Staggering Number of Companies Are
Wrongfully Named in Asbestos Lawsuits in Illinois**
Wasteful “over-naming” in asbestos lawsuits leaves innocent businesses bearing high costs

For Immediate Release

Elmhurst, IL –April 29, 2021 – A review of public records compiled for a new article by national asbestos litigation experts Mark Behrens and Mary Margaret Gay reveals that a staggering number of businesses are wrongfully named as defendants in asbestos lawsuits in Illinois, forcing companies to incur costs to be dismissed from cases in which they never should have been sued. The article, published today in *Mealey’s Litigation Report: Asbestos*, reviewed 122 representative cases filed in Illinois by 12 law firms between 2014 and 2020.

According to the article, the average asbestos lawsuit named 70 defendants, though some cases involved over 175 unique defendants. The number of named defendants has been steadily increasing. In 2020, an average of 80 defendants were named in Illinois asbestos cases. The defendant companies are varied and include many Illinois-based businesses. The aggressive pursuit of solvent defendants nets many innocent companies in the process, as reflected in the high dismissal rates. The inclusion of these erroneously sued defendants is known as over-naming.

“We were shocked to discover that asbestos lawsuits are being filed indiscriminately in Illinois—without any connection between the plaintiffs and most of the companies that are sued,” said John Pastuovic, president of the Illinois Civil Justice League (ICJL). “One company was sued 400 times and dismissed in 99% of the cases. One-in-five companies in the sample were dismissed 100% of the time they were sued,” Pastuovic added. “On average, 60% of the defendants in the 122 cases studied were dismissed with no payment or finding of liability.”

Over-naming in Illinois asbestos cases forces innocent companies to bear high legal costs they cannot recoup in the court system. “Money is being wasted that could be spent creating jobs and growing

our economy. Businesses cannot afford to waste precious resources, especially in the wake of COVID-19,” said the ICJL’s Pastuovic.

The albatross of over-naming is especially problematic in Illinois because the state leads the nation in asbestos filings. According to Pastuovic, “Illinois continues to be the preferred jurisdiction for people filing asbestos cases from all over the country.”

The new article by Behrens and Gay also highlights the need for Illinois to address the disconnect that presently exists between the civil court system and a separate compensation system that pays claimants through trusts set up by bankrupt former asbestos producers. Currently, asbestos plaintiffs in Illinois have no obligation to file asbestos trust claims in a timely manner. In fact, plaintiffs typically delay these claims until after their personal injury case is resolved. This can allow plaintiffs to suppress evidence that a plaintiff was exposed to asbestos from bankrupt companies and may result in “double dipping” (recovery of an award in a tort case followed by additional recoveries from various trusts for the same injury).

In 2017, ICJL released a report documenting how plaintiffs manipulate the timing of their trust claims. The report reviewed a sample of 100 asbestos cases filed in Illinois and showed that the average plaintiff could have submitted claims with 16 different trusts (each standing in the shoes of a former asbestos producer). Over one-third of plaintiffs in the sample could have submitted 20 or more trust claims. But only 8 plaintiffs in the sample disclosed that they had filed trust claims. The report documented that trust claim filings are being delayed—intentionally—to disadvantage Illinois asbestos defendants.

In Illinois, combined over-naming reform and trust transparency legislation has been introduced this year (*see* S.B. 40, H.B. 3926). The bills would require asbestos plaintiffs to provide sworn information with the initial complaint detailing the plaintiff’s exposures to asbestos and the connection to each named defendant. This reform would cut down on unnecessary litigation costs, reduce waste, and focus judicial resources on claims with evidentiary support. Further, plaintiffs would have to file and disclose all asbestos trust claims at the outset of an asbestos lawsuit. This will prevent gamesmanship and address instances where plaintiffs have made statements in court cases that are inconsistent with information found in subsequent trust claim submissions. ICJL encourages lawmakers to hold hearings on these proposed reforms.

The Illinois Civil Justice League is a coalition of Illinois citizens, small and large businesses, associations, professional societies, not-for-profit organizations and local governments that have joined together to work for fairness in the Illinois civil justice system.

Mark A. Behrens co-chairs Shook, Hardy & Bacon L.L.P.’s Washington, D.C.-based Public Policy Group. Mary Margaret Gay is a founding partner in Gay Jones & Kuhn PLLC in Jackson, Mississippi. Behrens and Gay frequently write about asbestos litigation trends and issues. Their law firms represent defendants in complex civil cases.