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Illinois should adopt 'over-naming' and 'double-dipping' reform to asbestos litigation, ICJL report says

LAWSUITS

By **Steve Korris** | Apr 29, 2021



Behrens and Gay

SPRINGFIELD – Illinois should copy states that reformed asbestos litigation, according to a report the Illinois Civil Justice League released on April 29.

Author Mark Behrens of Washington proposed to eliminate excessive naming of defendants and to prevent double recovery on claims through trusts and courts.

Four states already have passed laws against excessive naming and 16 states have passed laws against double recovery.

Unsurprisingly, the report found that 47 percent of American asbestos plaintiffs filed suit in Illinois last year and almost a third sued in Madison County – the epicenter for asbestos litigation for nearly two decades.

The report Behrens co-authored with Mary Margaret Gay of Jackson, Miss. also found that the number of defendant companies totals more than 11,000, and more than 900 have been named in Illinois.

Other findings:

In 122 cases filed in Illinois by 12 law firms since 2014, the average complaint named 70 defendants.

St. Clair County averaged 113 defendants last year, the fourth highest number in the country.

“Plaintiff lawyers cast a wide net to capture solvent defendants, ensnaring many innocent companies in the process,” the report states.

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In the 122 Illinois cases, 60 percent of defendants were dismissed without payment or finding of fault.

“An astounding 20 percent of the defendants were dismissed in 100 percent of the cases in which they were named,” it states.

Defendants spend thousands of dollars and lose productivity, “to be released from individual cases in which there was never proof of exposure.”

Examples include **Avocet Enterprises**, which incurred costs of about \$720,000 in defending 400 claims filed in Madison County from 2008 to 2018. The company made four settlement payments.

Another Madison County suit from 2014 named 181 defendants, and it appeared 178 were dismissed with no pay and no finding of liability.

ON Marine, which filed bankruptcy over asbestos liabilities, stated that 95 percent of 182,000 claims against it were dismissed without payment.

ICJL president John Pastuovic said "over-naming" 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,” he said. “Businesses cannot afford to waste precious resources, especially in the wake of COVID-19.”

Over-naming reform

Last year, Iowa passed a law requiring asbestos plaintiffs to provide sworn information providing details as to their connection to each defendant.

“So far in 2021, West Virginia, North Dakota, and Tennessee have enacted legislation that is substantially similar to Iowa’s 2020 law,” the report states.

“Illinois should likewise ensure that there is an evidentiary basis for each claim against each defendant in an asbestos action.”

According to the report, the same four states and 12 others passed laws giving defendants access to exposure histories in the files of asbestos bankruptcy trusts.

To date, approximately 130 companies have been forced into bankruptcy due at least in part to asbestos liabilities.

The major producers of asbestos have created more than 60 trusts in operation today, holding some \$30 billion to pay claims. They are immune from lawsuits.

“Plaintiffs typically file claims with asbestos trusts to recover for exposures related to the major asbestos producers and bring personal injury lawsuits against still solvent but increasingly remote defendants,” the report states.

“Many of today’s defendants used to be peripheral or are newer defendants, including small businesses.

“Plaintiffs that delay asbestos trust claim filings until a personal injury case is resolved have been able to suppress evidence of their exposure to bankrupt companies’ asbestos containing products.

“By suppressing such evidence, plaintiffs can thwart attempts by solvent defendants to attach fault to a bankrupt entity at trial.”

The delay, it states, could deny a defendant the right to obtain a setoff for payments a plaintiff already received.

“Plaintiffs are thus able to obtain a full recovery in the tort case and then obtain additional payments for the same injury from asbestos trusts,” the report states.

For Crane Company, 80 percent of trust claims or related exposures were not disclosed in tort proceedings it defended.

Last year, an Oregon appellate court ordered a second trial after a defendant learned that plaintiff’s counsel suppressed trust information.

“By requiring plaintiffs to file and disclose all asbestos claims at the commencement of an asbestos tort action, Illinois would promote honesty in trust claiming and civil litigation by policing the potential for plaintiffs to give inconsistent exposure histories in court and in trust claims,” it states.

“Juries would have more complete information about a plaintiff’s exposure to asbestos so they may hold culpable parties responsible.”

The ICJL is a coalition of citizens, businesses, associations, professional societies, not for profit organizations and local governments.

Behrens is co-chair of Shook, Hardy and Bacon's public policy group.

Gay is a founding partner in Gay Jones & Kuhn.

A look at Madison County asbestos

Madison County generates a high number of suits and is trending toward a lower average of defendants.

The most recent 100 suits as of April 23 named 4,005 defendants, or 40 per suit.

The Gori firm filed 24 suits with 1,523 defendants, an average of 63.5.

John Simmons's firm filed 28 suits with 744 defendants, an average of 26.6.

The Maune Raichle firm filed 14 suits with 227 defendants, an average of 16.2.

Allyson Romani of Shrader and Associates filed six suits with 456 defendants, an average of 76.

Timothy Hulla of Napoli Shkolnik in Edwardsville brought the group average down by naming 34 defendants in seven suits, an average of 4.9. Hulla sues Metropolitan Life by itself or adds a few defendants.

Averages for the Gori firm and Romani fell from the same time last year, when the Gori firm's suits averaged 75.5 defendants and Romani averaged 86.7.



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