

Asbestos Attys 'Over-Naming' Companies To Sue, Study Says

By [Sue Reisinger](#)

Law360 (January 21, 2021, 1:50 PM EST) -- A new study of asbestos litigation in West Virginia that will be of interest to general counsel reports that plaintiffs' lawyers often "sue first and discover facts later," leading to 35% of company defendants being dismissed with no liability.

"There is a culture of constant over-naming of companies," and it occurs nationally, not just in West Virginia, author Mary Margaret Gay told Law360. "This litigation tactic is unnecessarily driving up litigation costs, bankrupting companies, creating further West Virginia court backlogs and leaving unsuspecting victims with delayed recoveries."

Gay, a founding member of the Jackson, Mississippi, law firm Gay Jones and Kuhn, has worked with general counsel on national asbestos defense teams and analyzed this type of litigation for over 20 years. She is not directly involved in the West Virginia cases.

Asbestos scholar Lester Brickman told Law360 on Wednesday that it's common for plaintiffs' counsel in asbestos suits to name large numbers of defendants irrespective of whether they have any connection to a plaintiff's injury. Brickman is an emeritus professor of law and former acting dean at the Benjamin N. Cardozo School of Law in New York City.

He said it can cost a company as much as \$10,000 to gain dismissal of a claim that has no relationship to its asbestos products.

"The over-naming generates hundreds of thousands of dollars in settlements because it is cheaper [for a company] to pay a couple thousand dollars than to litigate the issue" of whether it had a relationship with the plaintiff, he said.

The study said that over the past three decades more than 100 companies have filed for asbestos-related bankruptcy protection due to huge verdicts, leaving plaintiffs' attorneys scrambling to find and name new viable companies in lawsuits.

"This search for the ever-solvent defendant has led to the habitual over-naming of asbestos defendants that do not belong in the case and end up being dismissed after costly litigation with no liability," it said.

Gay told Law360 she has helped many companies escape from over-naming cases. She said these lawsuits usually involve either companies that have been in litigation over the years whose names keep popping up, or a new group of defendants who want to avoid being on a national list.

"Most will tell you they are exhausted, spending time and money on cases where there is no ultimate exposure or liability," Gay said.

She said more states should follow Iowa's lead. Last June, Iowa passed legislation to significantly reduce or eliminate the over-naming of defendants in asbestos and silica complaints.

The law requires asbestos plaintiffs to file a sworn information form specifying detailed evidence providing the basis for each claim against every defendant. If a plaintiff fails to provide a prima facie case with such information, the court will dismiss the defendant with prejudice.

This means a defendant who has no liability no longer has to participate in expensive discovery before being dismissed.

Gay's study looked at the 38 cases set on the July 2020 trial dockets in West Virginia, where up to 436 companies were named as defendants. Where once asbestos trials included 10-12 corporate defendants, the average West Virginia complaint named 120 defendant companies.

Not everyone agrees that over-naming is a problem. Paul Kelley, a plaintiffs' attorney at [Satterley & Kelley PLLC](#) in Louisville, Kentucky, told Law360 that over-naming has not been his experience in his state.

"We sue parties we believe are culpable and responsible for clients' injuries," Kelley said. "If there are other law firms that over-sue, it's not a problem that's been identified to me."

Kelley said the problem in asbestos cases is that a vast range of parties could be responsible for the harm, and it's often difficult or even impossible to determine who "until you file a lawsuit and get into the discovery process."

Still, he said he "can't imagine over-naming happening 35% of the time. A court system, I believe, would take care of lawyers who abuse the process like that."