



# VIEWPOINT

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## Ohio Takes the Lead on Asbestos Reform

By David J. Owsiany

The American civil justice system is premised on the ability of injured plaintiffs to recover from the parties whose actions caused their injuries. In the context of asbestos liability, this enduring concept is being undermined. Today, courts are clogged with asbestos-related suits, companies are paying for non-existent injuries, and truly sick plaintiffs may be left with nothing to recover in the future. In

responding to this crisis, Ohio has become a national leader in reforming the asbestos liability system. And more needs to be done.

The asbestos litigation numbers are startling. Nationally, more than 730,000 plaintiffs have filed lawsuits against more than 8,400 defendant companies over the last 40 years. Ohio has become a haven for such lawsuits. At one point earlier this year, nearly 40,000 asbestos-related cases were pending in Ohio. Most of the recent cases were filed on behalf of plaintiffs that had been exposed to asbestos but do not have any actual physical impairment as a result of that exposure. The plaintiffs' attorneys file the cases hoping to force the defendant companies into mass settlements.

Former Carter administration Attorney General Griffin Bell notes that the most significant casualty of the asbestos liability crisis is fairness itself as non-sick plaintiffs force innocent companies into bankruptcy and deplete reserves, threatening future recoveries by truly sick plaintiffs. Asbestos liability has also resulted in more than 60,000 jobs lost nationally.

In 2004, Ohio was the first state to address the crisis by requiring plaintiffs to establish certain medical criteria involving actually physical impairment in order to proceed with litigation. Last month, the Ohio Supreme Court upheld this asbestos reform law, including its applicability to claims that were already pending in court. As a result, the Cuyahoga County Common Pleas Court, which has experienced a severe backlog due to recent claims by non-sick plaintiffs, dismissed about 30,000 cases. The court noted that the claims could be re-filed if the plaintiffs begin to show physical impairment from asbestos exposure.

This reform is significant because it frees up the court system to deal with cases that involve

real injuries and helps ensure resources are available for truly injured plaintiffs in the future. Unfortunately, the existing law may not go far enough.

As asbestos claims burgeoned, eighty-five companies, which manufactured or sold asbestos-related products decades ago, including at least five in Ohio, filed for bankruptcy protection. Many of these companies provided huge sums of money to asbestos bankruptcy trusts and then emerged largely clear of asbestos liability concerns. This approach made sense for both the companies and the plaintiffs because it reduced costs by avoiding expensive civil trials. It also permitted the companies to put their asbestos-related liability behind them and expedited recovery by the injured parties. These bankruptcy trusts have transferred tens of billions of dollars from companies and their insurers to plaintiffs and their lawyers.

These trusts have become a target for abuse by certain plaintiffs' attorneys. For example in a recent Cleveland-area case, a plaintiff's estate sued a cigarette company alleging the plaintiff was injured from smoking the company's cigarettes, whose filters contained asbestos in the 1950s. The plaintiff's lawyer had previously filed claims with the bankruptcy trusts related to the various companies where the plaintiff worked during his life. Each claim alleged the plaintiff's asbestos exposure occurred from materials he worked with at each respective work site. Normally, bankruptcy trust claims and settlements are confidential so such inconsistent claims are never revealed. The judge in the Cleveland case, however, took the unusual step of encouraging disclosure of such prior, inconsistent claims filed with the trusts.

Bell lauded the court's action, hoping it would "prompt courts to allow discovery and admissibility of claim forms filed with asbestos bankruptcy trusts so that defendants can explore whether plaintiffs are attempting to tell one story to bankruptcy trusts and another story in civil litigation."

To effectuate such change, Sen. Bill Seitz (R-Cincinnati) introduced legislation in the Ohio Senate that mandates any plaintiff bringing an asbestos tort action must disclose any previous claims he or she has filed with asbestos trusts. Passage of this legislation would help restore fairness, transparency and accountability to the asbestos liability system, which has been subject to fraud and abuse for too long.