

Asbestos Cases In the Courts: No Logjam

**Proponents of a Federal Asbestos Trust Fund
Claim Asbestos Cases Are Clogging the Courts,
But The Evidence Says They're Wrong**



**Congress Watch
February 2006**

Acknowledgments

This report was written by Public Citizen Congress Watch staff, Chris Schmitt, civil justice research director, and Jillian Aldebron, civil justice legislative counsel, with editorial advice from Frank Clemente, director.

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Executive Summary

*“The Senate will finally resolve the asbestos litigation crisis **clogging** the nation's courtrooms.”*

– SENATE MAJORITY LEADER BILL FRIST¹

*“The system is **clogged** with questionable asbestos lawsuits.”*

– U.S. CHAMBER INSTITUTE
FOR LEGAL REFORM²

*“It is nothing short of a national scandal that unscrupulous lawyers have **clogged** the courts.”*

– NATIONAL LEGAL
AND POLICY CENTER³

*“Because the court system is **overwhelmed** by asbestos lawsuits, some victims are dying of their asbestos-related health problems before they are compensated.”*

– COUNCIL FOR CITIZENS
AGAINST GOVERNMENT WASTE⁴

* * * *

So ingrained has the notion become, of lawsuits filed by asbestos exposure victims bringing American courts to a standstill, that the claim is now roundly asserted as plain fact. In news reports, debates in Congress, advertisements and other settings, it has simply become a matter of course, part of the undisputed background that frames the tragic issue of asbestos exposure and the nation's response to one of its most debilitating public health crises.

This would be well and good if the courts actually were buckling under the load. But they're not. There is no logjam of asbestos cases in the courts.

The problem with the assertion, as with so much conventional wisdom, is that there is scarcely any evidence to support it. There have indeed been many asbestos lawsuits filed. But plenty of cases – asbestos or otherwise – are filed all the time. Millions every year, in fact. But what ultimately matters is not the *number* of cases filed, but rather courts' ability to *handle* them. And by this measure, Public Citizen finds, courts are indeed adequately handling asbestos exposure filings.

The starting point for any credible examination of the nation's asbestos caseload is an acknowledgement that comprehensive information on asbestos filings and dispositions is not to be had. Federal courts collect some information on asbestos-related cases, and state courts – where most asbestos cases reside – collect less. That said, a picture can nevertheless be gleaned from available sources.

The best obtainable statistics, coupled with accounts from judges and both plaintiff and defense attorneys active in many thousands of asbestos cases, do not support the oft-repeated contention that an avalanche of asbestos lawsuits is paralyzing state and federal courts, choking off access not only to deserving victims but also to many others with business before the judiciary. If asbestos cases were crippling the courts, there would be some indication of that in the available evidence.

Instead, there is none. Major players in the system do not complain of hopeless or impossible circumstances – to the contrary, they say the caseload is manageable – and available statistics all point in the same direction, away from an asbestos caseload crisis.

Thus, as Congress considers legislation to create a \$140 billion federal trust fund to compensate victims of asbestos exposure, one of the major arguments in support of the bill – hopelessly gridlocked courts – turns out to be a canard.

To be sure, significant numbers of cases still remain in the system, and will continue to be filed, representing many thousands of people who face a painful death from cancer, or a lifetime struggle to draw their next breath. The plight of these victims, and the many who have already died, is not to be minimized.

But on the question of the legal system's ability to handle cases, the peak appears to have passed. Courts are keeping up, and that they are undercuts a key rationale for the proposed federal trust fund. The ways in which courts are handling asbestos cases can well be controversial, but the essential fact is that the judicial system, or legislators across the country, are indeed finding ways to shoulder the load.

Policymakers would do well to consider this, as they weigh the trust fund and the far-reaching effects the legislation would have on the nation's traditional way of compensating victims and administering civil justice. Open courts, and the ability to file suit in order to redress a wrong, are

If the Asbestos Caseload Is Manageable, Doesn't That Mean the Proposed Federal Trust Fund Is Adequately Funded?

No, because fewer filings in the courts does not necessarily equal fewer filings in an administrative-style system like the proposed federal trust fund.

According to several studies, the proposed trust fund is unlikely to have enough money because the number of claims will exceed official projections.

Several factors might account for the shortfall. Claims for compensation that may not qualify under prevailing court rules or state laws could nevertheless be filed with the federal fund, because the rules would be different. Claims that may not be financially viable for attorneys to pursue in the courts may also qualify for filing with the trust fund. And individuals reluctant to file lawsuits may not have the same reticence about making an administrative claim.

So even though courts are keeping up with the caseload now, adequacy of the trust fund is another matter.

a key defense that citizens have against unscrupulous corporations and others who would harm their interests or even endanger their lives. Victims need a fair means of recourse, not a system created to serve the interests of the original offenders, as the federal trust fund is designed to do.

Highlights of this report include:

- In federal courts, which account for about 20 percent of asbestos cases, new federal filings for asbestos liability have been on the decline, both in recent years and compared to much higher levels at the start of the 1990s. Most recently, new federal filings have declined from 9,111 in 1998 to 1,471 in 2004, a drop of 84 percent, according to the Administrative Office of the U.S. Courts. Asbestos suits as a fraction of all product liability suits have fallen considerably, from two-thirds of all cases in 1990 to just 4.2 percent in 2004.
- The number of asbestos product liability trials in federal courts is down sharply in recent years, from 271 in 1991 to zero in several recent years, according to the U.S. Department of Justice's Bureau of Justice Statistics. Asbestos product liability trials account for a tiny fraction of all federal tort trial terminations – one out of 1,000 (0.1 percent) in 2002-03, down from four out of 1,000 (0.4 percent) in 1996-97.
- In state courts, among tort cases disposed of by trial for 2001 in the nation's 75 largest counties (which together account for about 23 percent of the population), there were 31 asbestos trials – only 0.4 percent of an estimated total of 7,948 cases, according to the Bureau of Justice Statistics.
- Among major categories of state cases, asbestos product liability cases going to trial had the shortest median period for disposition in 2001, the latest period for which information is available, according to the Bureau of Justice Statistics. While disposition time for other case categories was little changed from 1996, the disposition time for asbestos trials fell by 80 percent, from 50 months to 10 months.
- The Manville Personal Injury Settlement Trust, a fund formed in 1988 to settle asbestos claims involving Johns-Manville Corp., and which is seen as a bellwether for claim activity, has seen filings fall sharply. From a peak of 101,200 new claims in 2003, filings fell by about 85 percent in 2004, before rebounding slightly in 2005 to 21,000.
- In New York County (Manhattan), New York – a center of asbestos claims, and one of the few places where local asbestos caseload statistics are available – the number of new claims has fallen 73 percent in recent years, from 816 filings in 1997 to 221 in 2005.
- In Georgia, one judge who has heard a major portion of the state's asbestos cases for about the last six years says his caseload of 1,200 has now dwindled to about a dozen, following enactment of a law severely restricting the ability to file cases.

- In Florida, the number of cases now pending is estimated at between 6,000 and 10,000, having declined from a 2002 high of 15,000, according to a prominent asbestos defense attorney. Cases are reported to have dropped off precipitously since July 2005, when Florida passed a law requiring claimants to prove impairment before going to court.
- In California, filings are reported to be steadily decreasing. In the San Francisco Bay Area, which has been most active in asbestos litigation, what used to be 65 to 95 new filings a month are down to perhaps 25 to 35, according to a prominent asbestos defense attorney.
- In Texas, where new legislation is channeling tens of thousands of new and pending cases to a single court, the judge handling the complaints says he's confident he can move them through the system expeditiously. Speeding the flow: Victims must demonstrate some impairment before proceeding, there's a fast-track system for the most seriously ill victims, and other rules have spurred a drop in filings.
- Overall, the rate of growth for new asbestos claims has markedly slowed, according to a Public Citizen analysis of data from the RAND Institute for Civil Justice. In the mid-1980s, the number of claimants for mesothelioma, other cancers and nonmalignant cases each was growing by at least 25 percent annually, as measured by an average of annual growth over five-year periods. But for the 1998-2002 period, the rate of growth was down by 76 percent for mesothelioma; down by 96 percent for other cancers; and down by nearly half for nonmalignant claims.
- The growth rate for asbestosis deaths has slowed considerably, based on death certificate information as reported by the National Institute for Occupational Safety and Health. Fewer deaths suggests fewer claims, and as a result, courts will feel less pressure from any asbestos caseload.
- Even the largest number of asbestos claimants in a single year – 94,840 in 2002, as reported by RAND – amounts to only a little more than one-half of 1 percent of new annual state and federal civil case filings.
- Already, courts have at their disposal a variety of ways to handle asbestos claims. These include:
 1. “Inactive dockets,” in which victims file claims but have action delayed until they show signs of asbestos-related disease.
 2. “Medical criteria,” which prevent an action from being brought unless threshold symptoms of illness are met.
 3. Litigation protocols known as “case management orders,” which are designed to facilitate fair, quick resolution of claims, while minimizing transaction costs for the parties.
 4. Court efficiency measures, such as electronic filing of documents, that speed resolution of cases.

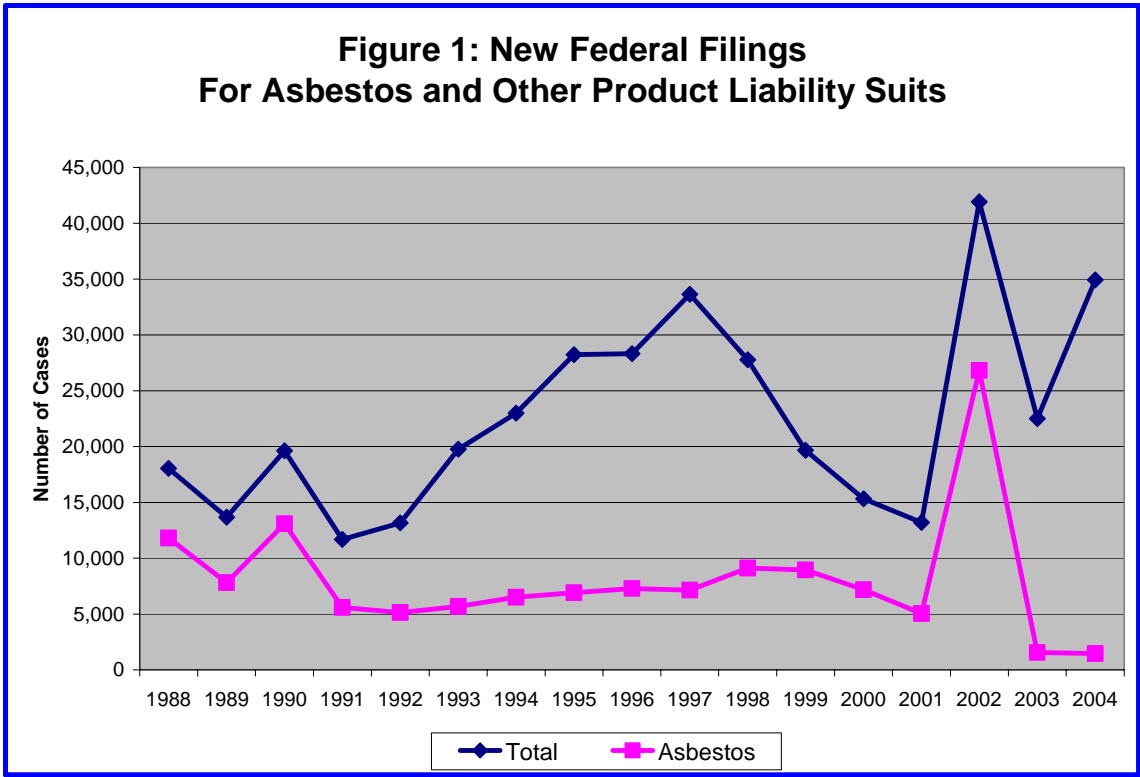
- *CASE STUDY:* Maryland has been a pioneer for inactive dockets, creating one of the earliest systems nearly 15 years ago, and recently retooling it in the face of continuing pressure from the caseload. In the process, the courts have also taken advantage of new technology for managing litigation.

Asbestos Cases in the Federal Courts

Federal courts handle an estimated 20 percent of all asbestos cases.⁵ Information on asbestos cases is limited, particularly in the areas with the most activity – settlements and dismissals. But these areas, while the most active, consume relatively fewer judicial resources. Comprehensive information is available, however, on asbestos case filings and asbestos case dispositions by trial.

The Beginning of the Pipeline – New Cases Filed

Except for a one-year spike in 2002, filings for asbestos injury in U.S. District Courts have been on the decline, in recent years and also compared to much higher levels at the start of the 1990s. (Figure 1) Most recently, new federal filings have declined from 9,111 in 1998 to 1,471 in 2004, a drop of 84 percent, according to the Administrative Office of the U.S. Courts.⁶ (The spike arose from a jurisdictional issue, according to the Administrative Office, in which thousands of cases claiming exposure to asbestos in automotive brake pads were removed from state court to federal court. Most of these cases, chiefly involving automakers Ford, General Motors, and Daimler/Chrysler, plus Honeywell International Inc., have been returned to state courts for final settlement, the Administrative Office says.⁷)

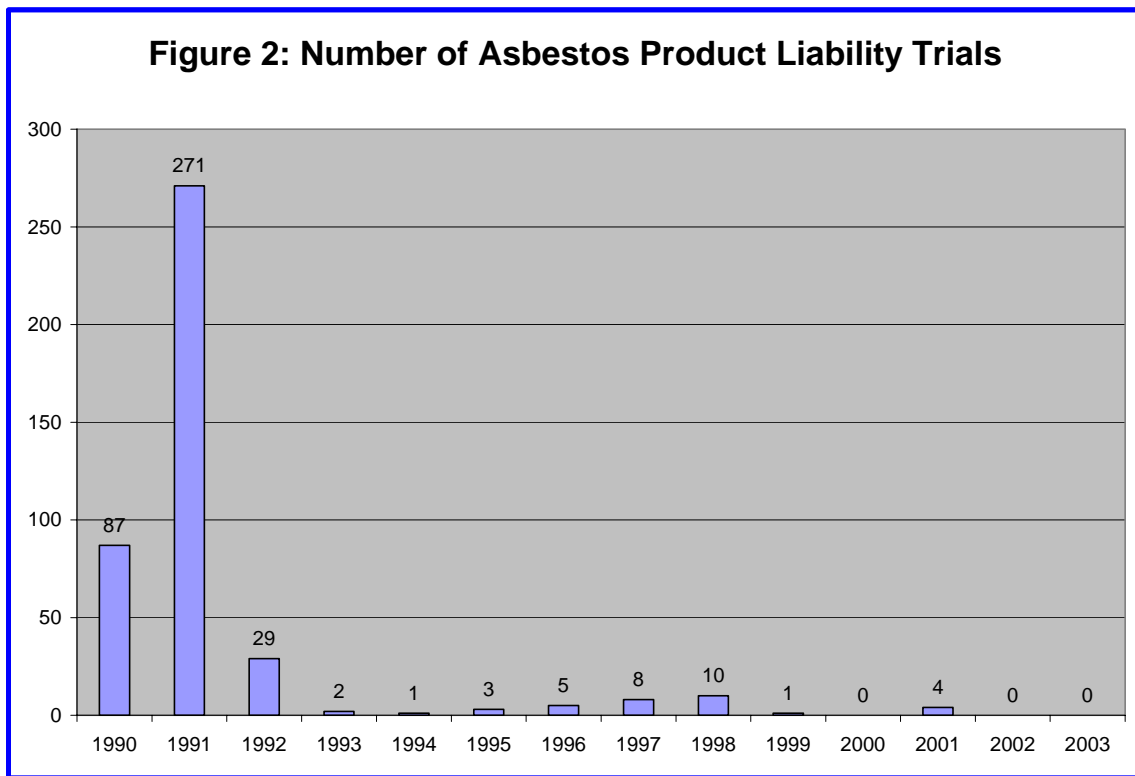


Source: *Judicial Business of the United States Courts*, Administrative Office of the U.S. Courts. Years shown are those available.

Excluding the spike, asbestos suits as a fraction of all product liability suits have fallen considerably, from two-thirds of all cases in 1990 to just 4.2 percent in 2004.

The End of the Pipeline – Cases Tried

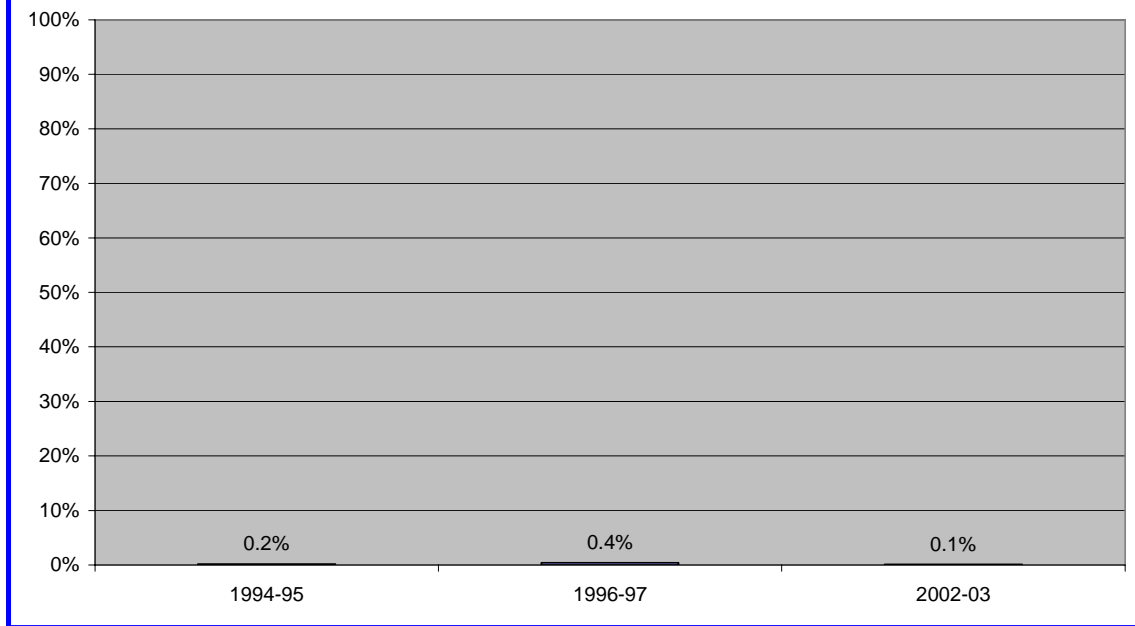
Trials are the most resource-intensive part of the judicial process. While most cases, involving asbestos or otherwise, are settled or dismissed before reaching trial, a trial can consume the time of a judge and court staff for weeks or longer. Looking at this end point of the process, there is no evidence asbestos cases are swamping the courts. The number of asbestos product liability trials is down sharply in recent years, from 271 in 1991 to zero in several recent years. (Figure 2)



Source: *Federal Tort Trials and Verdicts, 2002-03*, U.S. Department of Justice, Bureau of Justice Statistics. Years shown are those available.

Moreover, asbestos product liability trials account for a tiny fraction of all tort trial terminations – one out of 1,000 (0.10 percent) in 2002-03, down from four out of 1,000 in 1996-97 (Figure 3).

**Figure 3: Asbestos Tort Trial Terminations
As a Percentage of All Tort Terminations**



Source: *Federal Tort Trials and Verdicts, 2002-03*; *Federal Tort Trials and Verdicts, 1996-97*; *Federal Tort Trials and Verdicts, 1994-95*, U.S. Department of Justice, Bureau of Justice Statistics.

Far from decrying a crisis, the Administrative Office of the U.S. Courts boasts of federal courts' success in handling asbestos litigation.⁸ In an article on its website, it touts the work of Judge Charles Weiner, who, until his recent death, had handled tens of thousands of asbestos cases through the federal courts' Judicial Panel on Multidistrict Litigation. The complete article appears in the Appendix.

The State Court Asbestos Caseload

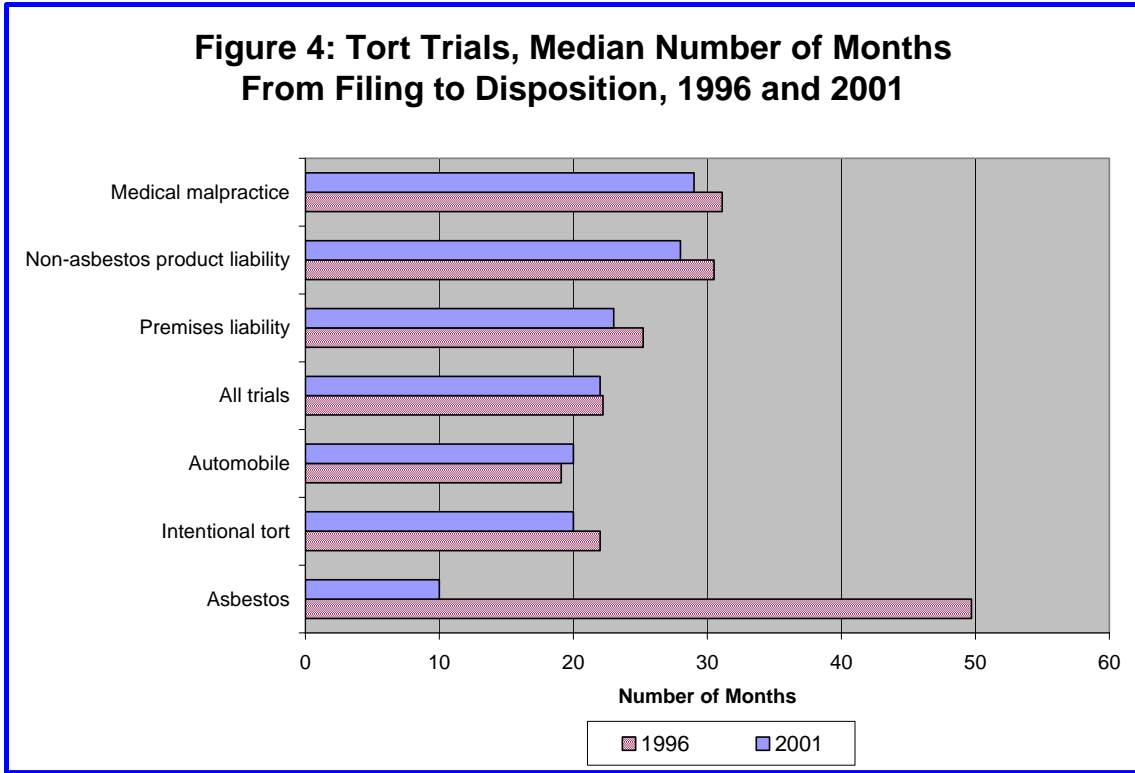
*“Despite the media attention and public interest civil trials command, (asbestos) cases remain largely **uninvestigated and empirically enigmatic.**”*⁹

– NATIONAL CENTER FOR STATE COURTS

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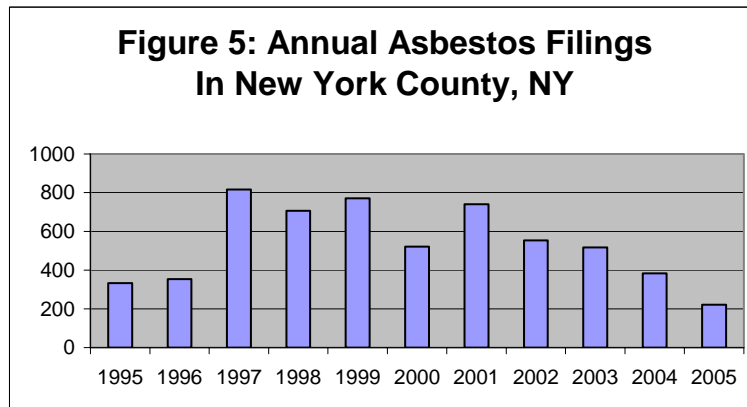
Even less comprehensive information is available on asbestos cases in state courts than is available in the federal system, because there is little comprehensive tracking of overall state court activity. Still, best available information indicates the state activity matches the federal experience that asbestos cases are not imposing a great burden on the court system.

- Among tort cases disposed of by trial in state courts for 2001 in the nation’s 75 largest counties (which together account for about 23 percent of the population), there were only 31 asbestos trials – just 0.4 percent of an estimated total of 7,948 cases. This is according to the U.S. Department of Justice Bureau of Justice Statistics, with 2001 the most recent year for which information is reported.¹⁰
- Among major categories of cases, asbestos product liability cases going to trial had the shortest median period for disposition in 2001, according to the Bureau of Justice Statistics.¹¹ While disposition time for other case categories was little changed from 1996, the disposition time for asbestos trials fell by 80 percent, from 50 months to 10 months. (Figure 4)
- In state courts, asbestos trials are often fast-tracked, due to the gravity of the injuries alleged and defendant stipulations as to causation, according to the National Center for State Courts.¹²



Source: *Tort Trials and Verdicts in Large Counties, 2001*; *Tort Trials and Verdicts in Large Counties, 1996*, U.S. Department of Justice, Bureau of Justice Statistics.

New York County (Manhattan), New York is unusual in that it is a large local jurisdiction for which some asbestos caseload statistics are available. The county has been a center of asbestos litigation. But the statistics show the number of new asbestos claims has fallen by 73 percent in recent years, from 816 in 1997 to 221 in 2005. The number of filings is now below the level of a decade ago. (Figure 5).



Source: New York State Unified Court System, Office of Court Research. Figure for 2005 is through 12/27/05.

Reports From the Field: Judges, Attorneys Agree The Courts Are Handling the Load

State courts have taken a variety of approaches to managing their asbestos caseloads. These are addressed in detail in a subsequent section, “How the Courts are Handling the Load.” Meanwhile, accounts from judges who preside over asbestos cases, and from both plaintiff and defense attorneys who represent parties on either side of the claims, indicate that courts are keeping up with their asbestos caseloads, or that the burden has ceased to grow or is even shrinking. There are several explanations for this. Sometimes, this is a natural consequence, as cases play out or new filings decline. A significant reason is that after decades of asbestos litigation, many issues have been resolved, which means they need not be relitigated in subsequent cases. In other instances, it is because states or local jurisdictions – often among those with the biggest number of filings – have acted to curtail the ability to file new actions.

But whatever the reasons, taken together, they indicate a sharply lessened burden on the courts. A look at states among those that historically have had the greatest number of asbestos filings:

- **TEXAS:** A 2003 law created a system in which all newly filed asbestos cases in the state flow to Harris County (Houston) District Court Judge Mark Davidson. His verdict: There is no problem with caseload.¹³

Davidson hears all pre-trial motions. If a case goes to trial, it gets sent back to the court where it originated. Davidson got 6,800 asbestos cases through Dec. 1, 2005, when a second law was enacted that channels all pending asbestos cases to him as well. That could produce an estimated 30,000 additional cases. But Davidson told Public Citizen in an interview he is confident he can handle them all expeditiously.

Texas law also specifies medical criteria that must be met before an asbestos case proceeds, and provides for an “unimpaired” docket, which is like an inactive docket. Davidson expects some percentage of the 30,000 cases will be knocked out of initial consideration as unimpaired.

Filings can be made electronically, which speeds handling of cases, as do standard form complaints and responses. A fast-track system provides that terminally ill plaintiffs can get a trial within 120 days after discovery is finished; normally, that can take a year.

Since 2003, there has been a large drop in new filings, which Davidson surmises is due to enactment of the “responsible third party rule.” The rule provides that a defendant can name other entities it believes are responsible for asbestos exposure, whether or not the other party has ever been named in a suit or been subject to liability. For example, if a Navy sailor claims asbestos exposure, a shipbuilder can bring in the U.S. government. This potential to bring in other parties may make it procedurally impossible to pursue the claim in Texas, or reduce any award, thus encouraging plaintiffs to file elsewhere.

- **CALIFORNIA:** The court system is working fine, says attorney John Wallace, who has represented more than 250 defendants of many sizes and types since 1982. Plaintiffs have access to courts, trials are assigned promptly, and there is “a healthy system that does not benefit one side more than another,” he says. “You can’t find another court that can process these cases better than those in California.”¹⁴

California has a fast-track approach that was revised and refined several years ago, he told Public Citizen in an interview. A terminally ill plaintiff is scheduled for trial within 120 days. Judges participate actively in cases, in an effort to determine what both sides need to reach a settlement, or instead whether a trial is warranted. The so-called San Francisco model is widely followed in the state, and provides a nine-month hiatus from the time of filing, during which the parties are expected to exchange records. After that, depositions are taken and a status conference is held that sets a trial date for four months hence. From filing to trial take two years for non-exigent cases – but only about 5 percent of cases go to trial.

Filings have been steadily decreasing, although there was a blip upward when a previous version of the currently proposed federal trust fund was under consideration. Today, most cases are in the San Francisco Bay Area, and where there once used to be 65 to 95 new filings a month, there now are only 25 to 35, Wallace says. Only in the Los Angeles area are filings up, but this seems to be due to the addition of new judges. Some 20 to 30 complaints are filed in Los Angeles monthly, with perhaps three or four trials going at a given time.

Echoing others, Wallace says the judge is the key player in the process. A presiding judge in control of the docket, who is willing to force the parties to be reasonable and constructively engage, can get cases resolved both fairly and expeditiously, either through trial or settlement. States that have problems are those with judges unwilling to roll up their sleeves and get actively involved, he says.

- **GEORGIA:** For the moment, at least, handling new cases isn’t a problem, because a new law creates such strict filing requirements that it bars many victims from bringing asbestos actions. But even before this recent development, things ran smoothly, says Judge Henry Newkirk of State Court of Fulton County, who has heard a major portion of the state’s cases for about the last six years.¹⁵

Because of the April 2005 law, Newkirk said in an interview with Public Citizen, his 1,200 cases have now dwindled to about a dozen, as scores have been dismissed. Plaintiffs can re-file if they meet the requirements of the new law, but it presents a stiff threshold indeed.

Among other requirements, say those involved, is that even before filing, claimants must make a showing of physical harm greater than even the showing they would need to make at trial. Only Georgia residents can file in the state, and only certain doctors are authorized to certify that a plaintiff suffers from asbestos disease.

Some provisions of the law, such as its retroactivity, have been ruled unconstitutional by a lower court judge, and the matter is now before the Georgia Supreme Court. But even prior to the legislation, Newkirk says, he handled all his cases without a problem. Ten months out of the year, he set asbestos trials at a rate of 12 per month. Use of an electronic docket speeded filings, while the vast majority of cases settled because both plaintiff and defense lawyers had become quite skilled in handling the cases over the years. Overall, Newkirk impaneled a jury in only six cases during his six years, and only once did a case go to trial.

Plaintiffs attorney Rett Guerry says it's clear the new law is having a significant impact. It "absolutely remove(s) any outcry about the courts being overloaded with asbestos cases, because even the best cases will have a difficult time getting to a court house," he told Public Citizen in an interview. And he echoes Newkirk that, in any case, there wasn't a problem handling the load prior to the legislation being enacted. "The courts have so many tools to manage (the cases)," he says. "There are many other avenues of case and docket management that address the legitimate concerns of the courts, plaintiffs and defendants."

- **FLORIDA:** The number of cases now pending is between 6,000 and 10,000, with the total having declined from a 2002 high of 15,000, says Susan Cole, an asbestos defense attorney since 1979. Cases have dropped off precipitously since July 2005, when Florida passed a medical criteria statute; now, only 40-60 new cases come in each month, down from about 500 previously.¹⁶

As elsewhere, the vast majority of cases settle. In more than 20 years defending asbestos claims, Cole told Public Citizen in an interview, she's had only about seven that have gone to verdict. Florida uses a case management order – termed an "omnibus order" – to speed disposition. It allows plaintiffs to file on a standard four-page form, and defendants to adopt a standard response, including standard motions to dismiss. Rulings are made on the standard motions; then, if the medical criteria are met, the case goes to discovery. The most serious cases are expedited.

The system is now at work in five counties (Miami-Dade, Broward, Hillsboro, Jackson, Pensacola). It previously was used in Palm Beach County as well, but it was dropped – because there were so few cases.

- **MISSISSIPPI:** A hotbed of tort litigation, the state has recently enacted tort law changes – a long overdue reform, to some, while to others, an unfair attack on victims' ability to seek redress. But whatever the position, the changes are already stemming asbestos legislation.¹⁷

Under new rules, cases with multiple plaintiffs are being severed for individual consideration, plaintiffs attorney Jeffrey Varas told Public Citizen in an interview. In turn, that is leading to many of them being dismissed, for reasons such as jurisdiction and venue. While the process of severing the cases means more work for courts, at least in the short run, the dismissals ultimately stand to lighten the load, Varas says.

Meanwhile, fewer new cases are being brought. Mass screenings of would-be victims have tailed off, he says, and strict medical criteria employed to determine compensation to asbestos victims in bankruptcy proceedings have bled over into the tort system. “When cases come in now, I have to look at them really hard,” he says. “I have to make sure the medical (condition) is really well-documented. I want to be sure about these things, because they've tightened the standards.”

Defense attorney Richard Crump concurs, saying the number of pending cases has probably been cut in half. Reflecting that, the legislature has not taken up the issue, Crump told Public Citizen in an interview, because the courts have been able to manage the situation themselves. The number of new asbestos filings for 2005 was only in the hundreds, as opposed to the thousands in previous years.

While the number of cases actually proceeding through the judicial process to trial is expected to remain stable, the new rules have dissolved the “big mess of cases just sitting on the docket without moving through the system.” This benefits both defendants, who seek resolution of liability, and victims, who are able to get their claims heard expeditiously, Crump says.

- **WEST VIRGINIA:** West Virginia (tied with Delaware) has the highest asbestos mortality rate among the states, based on causes of death reported on death certificates.¹⁸ But despite that, West Virginia courts have worked through the great bulk of some 33,000 asbestos cases, estimates plaintiff's attorney James F. Humphreys, who says he has handled a good portion of the load.¹⁹ Currently, an estimated 1,150 asbestos cases are now pending, about 250 of which are cancer cases.²⁰ The key to managing the cases has been trying cases in large blocks, Humphreys says. Liability has been determined for the block, he told Public Citizen in an interview, while damages are considered individually for each victim. That system has greatly speeded dispositions. “No judge who is willing to do any work has been overwhelmed,” he says of claims that asbestos cases are overloading the courts.

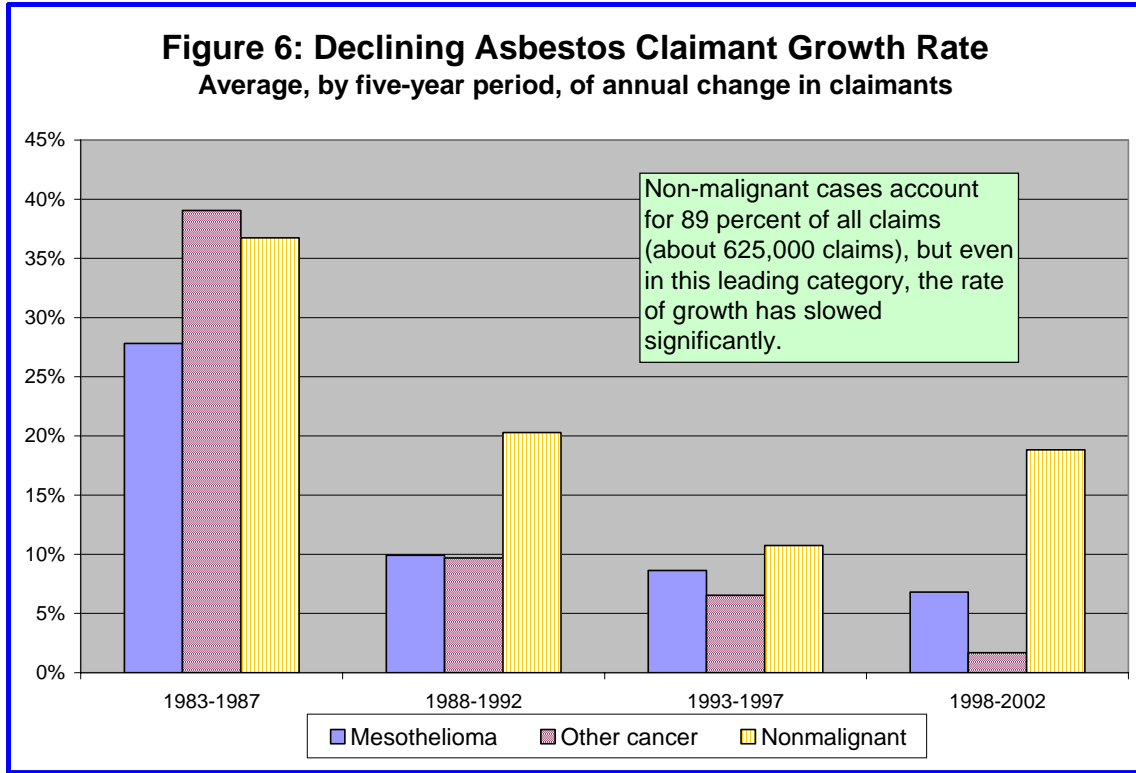
The Broad View: Other Measures Show The Asbestos Caseload Is Manageable

With there being no national clearinghouse of information on asbestos cases, the most comprehensive information on the nation's total asbestos caseload ostensibly is research done by the RAND Institute for Civil Justice.²¹ The institute's research is broad and accepted by many as authoritative. But it is problematic, because it is opaque: It is based on RAND's proprietary contacts with parties involved in asbestos litigation, and RAND does not disclose the data underlying its analyses and conclusions.

This is a significant limitation. RAND researchers say they have taken pains to confirm the accuracy of information supplied to them. But even so, failure to disclose the raw data prevents critical examination of information provided by parties with obvious interests in the outcome. Still, even taking RAND's research at face value, it shows caseload pressure substantially easing.

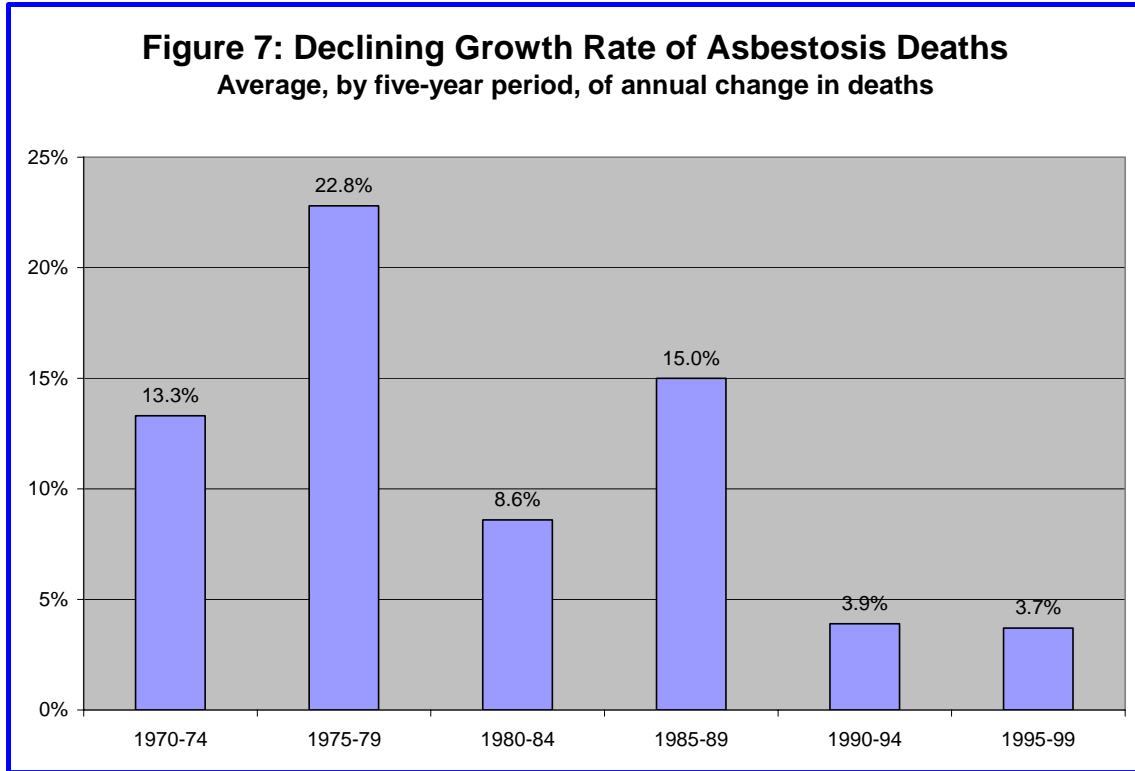
According to RAND, approximately 730,000 people had filed asbestos claims through 2002. The number of claimants each year is up significantly, rising from 4,165 in 1980 to a peak of 94,840 in 2001. But RAND's reported number of annual claimants also shows a marked slowing in the rate of growth. This is most true for the deadliest categories of mesothelioma and cancer. But it is also true for nonmalignant cases, the largest category of cases. This slowdown has obvious implications for courts' asbestos caseloads.

Analyzing RAND claimant data, Public Citizen calculates that in the mid-1980s, mesothelioma, other cancers and nonmalignant claims were all growing by at least 25 percent annually, as measured by an average of annual growth over five-year periods.²² But by 1998-2002, the rate of growth was down by 76 percent for mesothelioma; down by 96 percent for other cancers; and down by half for nonmalignant claims. (Figure 6)



Source: Public Citizen analysis of number of asbestos claimants, as reported in *Asbestos Litigation*, Rand Institute for Civil Justice, 2005.

Claims, of course, are the product of illness and death. As Figure 7 shows, the growth rate for asbestosis deaths has slowed considerably, based on death certificate information as reported by the National Institute for Occupational Safety and Health. Fewer deaths suggests fewer claims, and as a result, courts will feel less pressure from any asbestos caseload.



Source: Public Citizen analysis of asbestosis deaths as reported by the National Institute for Occupational Safety and Health in "Worker Health Chartbook, 2004."

Note: Data is number of deaths of U.S. residents aged 15 or older with asbestosis recorded as an underlying or contributing cause on death certificates.

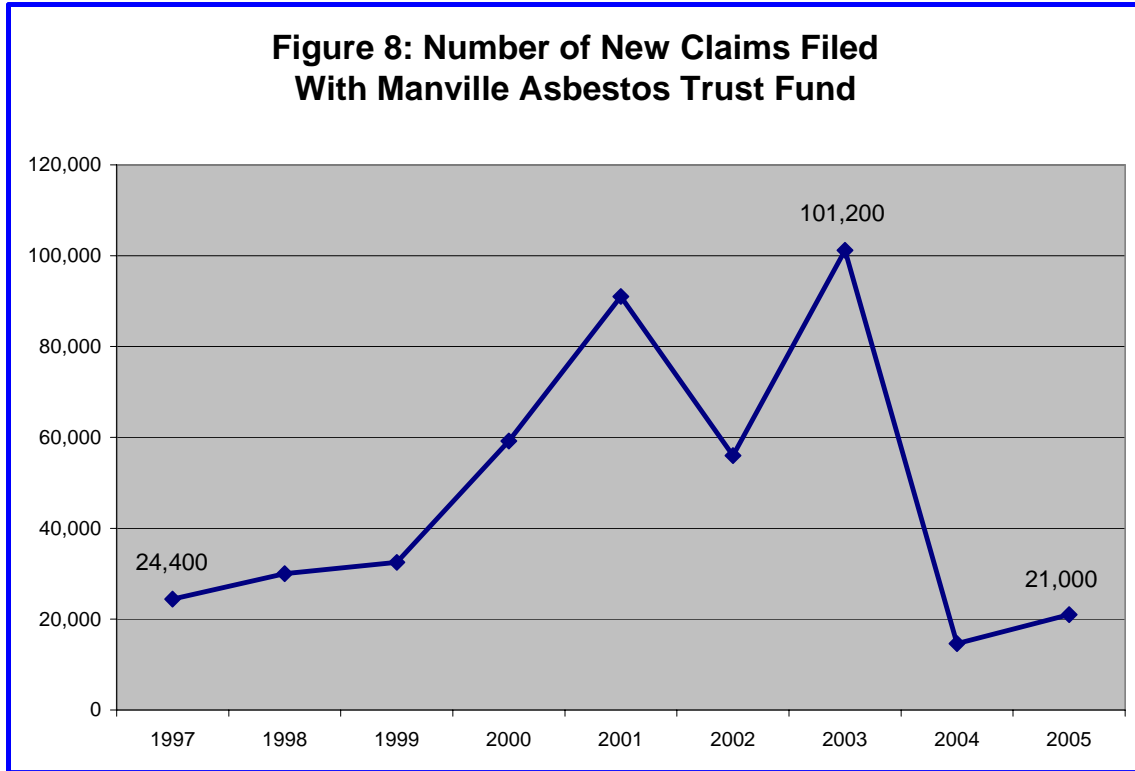
The Experience of the Manville Trust

The Manville Personal Injury Settlement Trust is a fund formed in 1988 to settle asbestos personal injury claims resulting from exposure to asbestos-related products mined or manufactured by the Johns-Manville Corp. and its affiliates. So the trust is not like a state or federal court. But to plaintiffs attorney Jim Ferraro and others, the Manville trust is a key barometer of overall asbestos litigation activity.

"The filings are down dramatically, everywhere," says Ferraro – and indeed, that's what the Manville trust shows.

From a peak of 101,200 new claims in 2003, filings fell by about 85 percent in 2004, before rebounding slightly last year to 21,000. "It's reached its natural peak," Ferraro says. "Most of the exposure ended in the 1970s. You're going to see a natural decline in cases." Another reason was tightening of eligibility requirements and reduction in benefits paid.

Figure 8 shows new claim activity for the Manville trust. If, indeed, trust activity mirrors the courts, the Manville experience is another indicator that the civil courts are equipped to handle the asbestos caseload.



Source: Manville Personal Injury Settlement Trust.

Whatever the Numbers, Asbestos Cases Are a Tiny Part of the Whole

The number of asbestos claimants has been considerable – an estimated 730,000 through 2002, according to RAND. But as shown in Table 1, these claimants represent a tiny portion of civil courts’ overall caseload. Even the largest number of asbestos claimants in a single year – 94,840 in 2001, according to RAND – amount to only a little more than one-half of 1 percent of new state and federal civil case filings in a year.

(Strictly speaking, “claimants” and number of new case “filings” are not necessarily comparable. RAND data tracks the number of people who have filed asbestos claims, while a single state or federal court case could be filed on behalf of more than one person. Nevertheless, the information is best available. To the extent court cases include more than one plaintiff, the effect here is to overstate the comparison; that is, if the number of civil cases were adjusted to reflect total number of plaintiffs, the 0.57 percent figure reported in Table 1 would become even smaller.)

**Table 1: Asbestos Claimants Compared
To the Civil Court Caseload**

State trial courts, incoming civil cases for 2003	16,466,170
Federal district courts, civil case filings for 2003	252,952
TOTAL ESTIMATED NEW CIVIL CASES, 2003:	16,719,122
<u>Largest</u> number of asbestos claimants in a single year (94,840 in 2001) as a portion of <u>one year's</u> total civil caseload (2003 is most recently available)	0.57%

Source: For asbestos claimants, RAND Institute for Civil Justice; for caseload statistics, National Center for State Courts, Administrative Office of the U.S. Courts.

Notes: Some cases missing from NCSC statistics; thus, figures overstate prevalence of asbestos cases. For details, see *State Court Caseload Statistics, 2004*, Table 9, available at http://www.ncsconline.org/D_Research/csp/2004_Files/2004_SCCS.html.

How the Courts Are Handling the Load

As the asbestos caseload has grown, victims' claims have been handled a number of different ways. Sometimes, the impetus is from the courts themselves; in other instances, legislators step in. These methods can be controversial, and they raise concerns about victim interests suffering for the sake of administrative or judicial efficiency. Nevertheless, they represent ways to relieve the pressure of asbestos litigation on the courts.

- **INACTIVE DOCKETS:** Details vary by jurisdiction, but in general, cases that have been filed, but in which victims are not yet showing symptoms of asbestos-related disease, are placed on a so-called “inactive” or “deferred” docket. Such a docket may also be known as a “pleural registry.” Cases placed on the inactive docket remain there indefinitely, with action suspended, until victims demonstrate impairment greater than a threshold established by the court. At that time, cases are returned to active processing through the system. While on the inactive docket, the discovery process in a case is stayed, and the statute of limitations is tolled. Thus, victims can file actions and protect their legal rights before expiration of the statute of limitations would otherwise preclude filing, while courts can set aside large numbers of cases in which damages are not yet apparent and give priority to those showing the most serious injuries.
- **MEDICAL CRITERIA:** Under medical criteria statutes, victims cannot bring an action unless they meet established medical criteria for illness. These rules are similar to adoption of inactive dockets, in that cases do not proceed unless evidence of illness is shown. The difference, however, is that in an inactive docket jurisdiction, a case is filed and set aside for consideration at a later date; in a medical criteria system, impairment must be shown before a claim can initially be brought. Medical criteria probably are the most controversial of the litigation-containment measures.
- **CASE MANAGEMENT ORDERS:** Many courts have established litigation protocols known as “case management orders” (sometimes known as “rocket dockets”) for asbestos cases, which are designed to facilitate fair, quick resolution of claims, while minimizing transaction costs for the parties. The content and scope of these orders (CMOs) varies widely from state to state and jurisdiction to jurisdiction. Some have been mandated by the state’s highest court for application across the entire state, while others have been developed and adopted on a local level. Florida and Texas, for example, have CMOs that govern asbestos litigation statewide, and cover everything from procedure to evidentiary requirements for showing harm. One New York county has had a CMO in place since 1996 that guarantees “first in, first out” handling of asbestos cases; it also provides for expedited trials of terminally ill plaintiffs, setting aside one month in every six exclusively for this purpose. Pennsylvania has adopted rules of procedure that allow greater flexibility by permitting parties to propose their own CMO for approval by the court, and sets out a default order in the event that

none is offered. San Francisco's CMO sets out the ground rules for every step of pre-trial litigation in asbestos and tobacco cases, including designation of a coordinating defense counsel that serves as the point of contact for all asbestos defendants.

The American Bar Association, the nation's leading organization of legal professionals, last year approved a model CMO to give courts a blueprint on how to handle asbestos litigation. That followed a two-year study by a task force with members from major constituencies in the asbestos debate: businesses and manufacturers, who face exposure liability; insurers, who often foot the bill for that liability; organized labor, which represents many victims; and the plaintiff and defense attorneys who contest the cases.

- **E-FILING:** Some courts have switched from traditional paper filing of the many documents associated with asbestos cases, to so-called electronic dockets, in which parties may submit, and the court can manage, the raft of documents in electronic format. Use of electronic filing is an administrative, rather than substantive, case management technique. But those involved say it can speed case handling dramatically, which is important from the standpoint of backlog and processing time for cases.

Inactive dockets, medical criteria and case management orders have been widely adopted, and can result in significant portions of total caseloads being removed from consideration. As even two prominent critics of the current system noted in a recent commentary: "After thirty years of a downward spiral, recent actions by state courts and legislatures in key jurisdictions that have experienced large numbers of asbestos filings provide hope that a major fuel behind the recent explosion in the litigation – mass filings by the non-sick – may be waning."²³

Table 2 lists adoptions and features of the mechanisms described above, showing that courts and legislatures have collectively made a substantial investment in efforts to handle the asbestos caseload.

Table 3 illustrates the practical effect of one of these mechanisms – inactive dockets. Companies that have been the target of victim lawsuits have seen substantial numbers of claims moved to inactive dockets, thus lessening the load on the courts.

Table 2: Easing the Asbestos Caseload in the Courts

Inactive / Deferred	Medical Criteria	Case Management Order
<p>State courts Atlanta, GA Cuyahoga County (Cleveland) Illinois: Cook County (Chicago) St. Clair County Madison County King County (Seattle), WA Los Angeles, CA Maryland Massachusetts Milwaukee, WI Minnesota New York Syracuse New York City Portsmouth, VA —</p> <p>Federal district courts In July 1991, the Judicial Panel on Multidistrict Litigation ordered federal asbestos personal injury and wrongful death actions centralized before a federal judge in the Eastern District of Pennsylvania. Elsewhere, inactive dockets have existed in about a dozen federal districts, including:</p> <ul style="list-style-type: none"> • California northern district • Colorado • Connecticut • Hawaii • Illinois northern district • Maine • Maryland • Massachusetts • Mississippi, northern and southern districts • New Hampshire • New York western district • Oklahoma northern district • Ohio northern district 	<p>Florida Georgia Ohio South Carolina Texas</p>	<p>Typical features: CMOs are widely used in state and county jurisdictions across the nation. Some CMOs focus on substantive issues, such as causation, while others deal strictly with logistics of moving a case along. Provisions often found in CMOs include:</p> <ul style="list-style-type: none"> • Standardized pleading and discovery forms. • Rules for medical examinations. • Time limits for depositions. <p>ABA model order: In August 2005, the American Bar Association, recognizing the benefits of CMOs for efficient handling of large caseloads, adopted a comprehensive model CMO for “jurisdictions in which there are no CMOs, competing CMOs within a jurisdiction, outdated CMOs, or simply CMOs that for one reason or another no longer function as originally intended.” The model foresees an “inactive docket.”</p>

Sources: *Mealey's Litigation Report: Asbestos*, 11/2/05, 4/15/05, 3/16/05, 2/18/04, 3/21/03; “Memorandum of the Coalition for Litigation Justice, Inc.,” filed as part of *In re: Petition For An Administrative Order*, Supreme Court of Michigan, August 19, 2003; American Bar Association.

**Table 3: Substantial Numbers of Asbestos Claims
Can Be Diverted to Inactive Dockets**

Company	Experience With Inactive Cases / Dockets
<p>Viacom/CBS (as successor to Westinghouse Corp.)</p> <p>Source: S-4 filing with Securities and Exchange Commission, 11/23/05.</p>	<p>New claims running approximately even with case closures and diversions to inactive dockets. During 2004, received about 16,060 new claims, and closed or moved to inactive dockets approximately 16,200 claims.</p>
<p>Foster Wheeler Ltd.</p> <p>Source: 10-Q filing with Securities and Exchange Commission, 11/9/05</p>	<p>Of 165,910 claims pending as of 9/30/05, 22,500 on inactive dockets.</p>
<p>Harsco Corp.</p> <p>Source: 10-Q filing with Securities and Exchange Commission, 11/03/05</p>	<p>Of 4,772 cases pending in Mississippi as of 9/30/05, 2,877 being moved to inactive federal docket.</p>
<p>Honeywell/Bendix</p> <p>Source: 10-Q filing with Securities and Exchange Commission, 10/28/05</p>	<p>Of 79,265 claims pending as of 9/30/05, about 24,000 on inactive dockets.</p>
<p>Crane Co.</p> <p>Source: 8-K filing with Securities and Exchange Commission, 10/25/05</p>	<p>Of 125,077 actions pending as of 9/30/05:</p> <ul style="list-style-type: none"> • 36,152 claims placed on inactive federal docket. • Of remaining 88,925 claims, about 70 percent pending in New York, Mississippi and Ohio, each of which has adopted inactive docket. (Figures not provided on number of cases on each state's inactive docket.)
<p>Texas Genco Inc.</p> <p>Source: S-1/A filing with Securities and Exchange Commission, 9/01/05</p>	<p>Expects 75 percent of unspecified number of cases to be placed on inactive docket, under new Texas law applying medical criteria to existing cases.</p>
<p>General Cable Corp.</p> <p>Source: 10-K filing with Securities and Exchange Commission, 3/30/05</p>	<p>Of 49,500 actions pending as of 12/31/04, about 38,200 in federal court, where vast majority are inactive.</p>
<p>Millennium Chemicals Inc.</p> <p>Source: 10-K filing with Securities and Exchange Commission, 2/14/05</p>	<p>Of 80 cases filed in late 2003 in Maryland, about half on inactive docket.</p>
<p>Cleveland Cliffs Inc.</p> <p>Source: 10-Q filing with Securities and Exchange Commission, 10/27/05</p>	<p>Of about 485 cases, all on inactive docket.</p>

Asbestos, Corporate Bankruptcies And the Courts

Many victim claims have been handled through the bankruptcy process, as a number of asbestos companies have filed for bankruptcy protection in the face of asbestos injury claims. Bankruptcy courts are distinct from the state and federal trial court systems in which personal injury claims are filed. But because many asbestos claims have been handled through bankruptcy, this has drawn cases out of the civil court system.

In 1994, in reaction to asbestos liability claims, Congress created the ability for companies facing asbestos claims to file for protection from creditors and claimants. A number of companies have filed for bankruptcy, and the firms can use the time under court protection to reorganize their finances, which can include creation of a trust fund to pay victim claims.

For instance, USG Corp., the big building products company, has been one of the largest of the bankruptcies. The company recently reached agreement with claimants and others that could create, depending on the outcome of federal legislation, a \$3.95 billion trust fund for those injured by exposure to its products.²⁴ If the federal trust fund is approved, USG says its liability will only be \$900 million.

Supporters of the federal trust fund cite bankruptcies like that of USG as an urgent demonstration of why the fund is needed. The bankruptcies, they claim, are robbing the economy of billions of dollars and causing tens of thousands of job losses. But USG also spotlights the flaws in that alarmist rhetoric. Operating under court protection, USG has produced results that would be the envy of any business. In USG's case, a Public Citizen examination shows:

- Sales have hit record levels, growing 56 percent since 2001 when the company filed for bankruptcy, to reach \$5.14 billion in 2005.
- Profits have soared by nearly 3,100 percent, from \$16 million in 2001 to \$510 million last year (excluding asbestos charges). That's a growth rate 45 times higher than overall U.S. corporate profits during the same period, according to federal data.
- The company's stock price has risen more than 2,400 percent, from \$3.88 before the filing to \$97.82 on Jan. 30, the day the company announced its plan. In three days, the value of the company in the stock market jumped by \$800 million.

Halliburton, the energy services company once run by Vice President Dick Cheney, is another example. Last year, Halliburton subsidiaries exited asbestos-spurred bankruptcy protection, and the company recently pronounced 2005 as the best year in its history. In emerging from bankruptcy, Halliburton won approval of a trust fund for victims of asbestos and silica exposure (mostly asbestos) worth approximately \$4.75 billion, and its stock has been on a steady climb ever since then. Halliburton described bankruptcy, often called Chapter 11, this way: "Halliburton...will continue in business.... The Chapter 11 petitions have been filed for the sole purpose of facilitating a settlement of Halliburton's personal injury claims.... In other words, outside of the asbestos and silica settlement, it will be business as usual."²⁵

But handling asbestos claims through bankruptcy isn't without problems for asbestos disease victims. One is time, as bankruptcy cases can take years to complete, leaving victims with no compensation. And today, there is a new question mark of whether a federal asbestos trust fund will be created, which could swallow individual companies' trusts and potentially kill previous compensation agreements. However, to the extent claims are handled through trust funds stemming from bankruptcy proceedings, the burden on civil courts is eased.

Bankruptcy can mean creditors don't get paid all they're owed. Nevertheless, bankruptcy can offer advantages for compensating asbestos victims, says attorney Elihu Inselbuch, who has been active in bankruptcy cases and represented both plaintiffs and defendants in tort cases. First, when a bankrupt company's assets are insufficient to pay all claims – asbestos claims and others – the bankruptcy process can help ensure asbestos claimants get a proportional share of whatever assets are available. Additionally, transaction costs are lower, on the order of only several percentage points, vs. double-digit expenses typically incurred in the civil court system. Thus, more of the assets that are available can go to all creditors, including asbestos victims. “The best thing you can do is take all money available, and pay it out as efficiently as possible, so victims get the most possible,” Inselbuch says.

On the Ground: In Trail-Blazing Maryland, How an Inactive Docket Works in Practice

Maryland has been a national leader for inactive dockets, creating one of the earliest systems nearly 15 years ago, and then retooling it recently in the face of continuing pressure from the caseload to take advantage of new technology for managing litigation.²⁶

The Baltimore area, with its legacy of heavy industry and maritime trades, has generated a significant number of asbestos exposure cases. Under pressure from the caseload, the Baltimore City Circuit Court in 1992 established one of the first inactive dockets in the nation, as part of jurisdiction it received to handle all Maryland asbestos injury cases. The system wasn't perfect; in particular, few asbestos cases went to trial, owing to the press of business from other cases and unavailability of judges.

So, by the end of the decade, court officials were looking to revamp their system. In doing so, they turned to "e-filing" – an electronic system for handling filings and litigation documents. The caseload also got its own judge, when a retired judge took on the assignment of handling the asbestos cases. "There was no way for us to manage (the caseload) otherwise," says Marilyn Bentley, a case management coordinator for the court. "It is making progress, where we weren't making progress before."

Under the new system, initial complaints are filed on paper, as they traditionally have been, but thereafter, documents are filed with the court electronically. Attorneys can access the system from their offices; members of the public can tap into it free of charge at the court house, or pay to subscribe to the system.

The inactive docket resides in the city circuit court because it is the busiest trial court in the state. When the new system was implemented in 2001, it started with about 23,000 cases on the inactive docket. As elsewhere, many of those cases have been filed by persons not yet showing signs of illness but seeking to preserve their legal rights by filing claims before expiration of the statute of limitations.

About every three to four weeks, according to Bentley, a "cluster" of 150 cases is advanced from the inactive to the active docket. Thus, up to about 2,000 cases come off the inactive docket annually. With about 1,000 new cases being filed annually, the pace of moving cases off the inactive docket is allowing the court to make progress on the backlog. A case moves from the inactive to the active docket under court order, and that typically happens after plaintiff and defense attorneys confer and advise the court a case is ready for trial grouping because a claimant has shown actual illness.

Once a cluster of cases moves to the active docket, it usually takes about 12 to 18 months for all of them to reach disposition. As is true for other civil litigation, about 95 percent of cases are settled, with only about 5 percent going to trial. Trials, when they happen, are lengthy, compared to other types of cases – about three to four weeks. "That's a lot of judge time," says Bentley, but

the burden is offset by relatively few trials. Cases reaching trial and a verdict usually are appealed by one side or the other, but that is not unlike experience in other types of cases, she says.

On the plus side, she says, the system as it's now run offers a full, efficient caseload for attorneys and the court. The court, in fact, manages the many thousands of cases with only two clerks and the single judge. "That is amazing," Bentley says. It also provides for regular discussion among plaintiff and defense attorneys, which lubricates the process and provides opportunities to consider refinements. On the down side, the wait to come off the inactive docket can be frustrating.

Today, the system faces a new challenge – retirement, or at least cutting back, of the retired judge who took on the asbestos caseload. So, while the inactive docket was built around a single judge, it will now be managed by a group of active judges. "All of this is a work in progress," Bentley says. But the key point is the court is keeping up, and then some.

Appendix

Judge Charles Weiner: A “Record Matched by Few” By the Administrative Office of the United States Courts²⁷

The statistics are beyond impressive. Simply put, they are eye-popping.

Since 1991, Judge Charles Weiner has presided over 105,000 asbestos-related lawsuits. He has closed out 78,000 of them. Because one lawsuit can represent many plaintiffs' claims against an even larger number of defendants, the lawsuits represent more than 10 million individual claims.

About 60 percent of those claims – six million – have been resolved.

“I knew this litigation was going to run a long while,” Weiner says of the assignment he accepted from the Judicial Panel on Multidistrict Litigation a dozen years ago. That was two years after he took senior status as a member of the U.S. District Court for the Eastern District of Pennsylvania. “It has been both interesting and challenging,” he says.

Robert Cahn, executive attorney for the Judicial Panel, says Weiner is “universally acclaimed” by the panel’s judges for his work in the asbestos cases. “He has saved the entire Judiciary an enormous amount of work, and has greatly reduced the costs of the federal litigation,” Cahn says.

Asbestos, a fire-retardant mineral, routinely was used in the construction of buildings, ships, automobiles and in many other products before the 1970s. Asbestos since has been identified as a cause of certain cancers.

To date, more than 600,000 persons nationwide have filed claims in state and federal courts against companies allegedly linked in any way to their exposure to asbestos. Litigation costs so far top \$54 billion in what the RAND Institute for Civil Justice calls the longest-running mass tort litigation in U.S. history. About 80 percent of all pending asbestos cases today are in state courts.

“Judge Weiner is truly an unsung hero of the federal Judiciary,” says Leonidas Ralph Mecham, director of the Administrative Office of the United States Courts. “His work on asbestos litigation is an incredible accomplishment.”

Judge Edward Becker of the U.S. Court of Appeals for the Third Circuit says, “Given the absolutely fantastic number of settlements that Judge Weiner has produced every year for

decades, I think he is the single most effective federal trial judge in the whole system.”

Chief Justice William Rehnquist also has praised Weiner, saying his “record of achievement over the years ... demonstrates both unwavering dedication to the administration of justice and high standards as a public servant – a record matched by few.”

Weiner, a soft-spoken man whose humor is largely self-deprecating, seems embarrassed by such praise. “I knew what this job was about when I took it in 1967,” he says. “People don’t come into court unless they have a problem. While seeking common ground, I should have sympathy for the person who brings the suit and understanding for the person on the other side who is resisting it for some reason.”

Senior status can mean semi-retirement for a federal judge, but while handling the overwhelming majority of federal asbestos lawsuits Weiner has maintained a full caseload. He carries an average of 350 non-asbestos cases as well. One of his two permanent law clerks assists him in handling asbestos cases only; the other assists him in the rest of his caseload. His secretary also is a longtime employee. “The three of them know all my idiosyncracies (sic),” he explains with a chuckle.

Now 80, the judge sees no reason to slow down. After all, he earned his Ph.D. in political science while in his 50s and already a federal judge. “Politics was always a fascination, the conjunction of politics and the law,” he says. For years, he taught the subject as an adjunct instructor for the University of Pennsylvania and Temple University.

“Charlie Weiner exemplifies public service and everything it should be,” says an Eastern District of Pennsylvania colleague, Judge Franklin S. Van Antwerpen.

“A man with his legal knowledge and people skills could have become very wealthy in the practice of law, but he chose the path of public service. We in this court, and in this nation, are forever in his debt for quietly and efficiently doing so.”

Early on in the asbestos litigation, Weiner gave priority to the very sick and to victims with malignancies. The practice has its critics, but Van Antwerpen praises Weiner for “making certain that

those who are sick and dying were the beneficiaries, rather than exhausting the funds available to them by paying them to persons who are asymptomatic.”

Weiner says he does the best he can each day. After driving from the apartment he shares with his

wife of 55 years, he most days walks the stairs to his sixth-floor office in the federal courthouse. “I enjoy the exercise,” he says, adding that he tries to play tennis two or three times a week.

ENDNOTES

¹ “Frist Says Asbestos Bill Will Be First Order Of Business Next Year,” *CongressDaily*, Nov. 16, 2005.

² “Issue: Asbestos,” U.S. Chamber Institute for Legal Reform, available at <http://www.legalreformnow.com/index.php?src=gendocs&link=Asbestos&category=Issues>.

³ “Ethics Group Accuses Trial Lawyer of Airing ‘Fake’ TV Ads Aimed at Conservatives; Liberal Front Group is Behind Attacks on Senators for Asbestos Vote,” news release from National Legal and Policy Center, distributed by PRNewswire, June 15, 2005.

⁴ “Asbestos Reform Critical in Halting Fraudulent Lawsuits,” news release from Council for Citizens Against Government Waste, distributed by PR Newswire, January 19, 2006. J. Peter Grace, who was head of W.R. Grace & Co., co-founded Citizens Against Government Waste; Grace & Co. is currently facing federal criminal charges stemming from asbestos exposure.

⁵ “Judge Charles Weiner: A ‘Record Matched by Few,’ ” Administrative Office of the U.S. Courts, undated, available at <http://www.uscourts.gov/newsroom/weiner.htm>.

⁶ Some attribute the decline in federal court activity to consolidation of cases in what they describe as a plaintiff-unfriendly jurisdiction (the U.S. District Court for the Eastern District of Pennsylvania), which in turn has discouraged new filings.

⁷ Judicial Business of the United States Courts 2002, Administrative Office of the U.S. Courts, pages 17-19.

⁸ “Judge Charles Weiner: A ‘Record Matched by Few,’ ” Administrative Office of the U.S. Courts, undated, available at <http://www.uscourts.gov/newsroom/weiner.htm>.

⁹ “An Empirical Overview of Civil Trial Litigation,” *Caseload Highlights*, National Center for State Courts, February 2005.

¹⁰ See “Tort Trials and Verdicts in Large Counties, 2001,” *Bulletin*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, November 2004.

¹¹ See “Tort Trials and Verdicts in Large Counties, 2001,” *Bulletin*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, November 2004.

¹² See “An Empirical Overview of Civil Trial Litigation,” *Caseload Highlights*, National Center for State Courts, February 2005.

¹³ Source for this section is an interview with the authors.

¹⁴ Source for this section is an interview with the authors.

¹⁵ Sources for this section are interviews with the authors.

¹⁶ Source for this section is an interview with the authors.

¹⁷ Sources for this section are interviews with the authors.

¹⁸ “Worker Health Chartbook, 2004,” National Institute for Occupational Safety and Health.

¹⁹ Source for this section is an interview with the authors.

²⁰ Interview with West Virginia attorney Pat Maroney.

²¹ See “Asbestos Litigation,” RAND Institute for Civil Justice, 2005.

²² Public Citizen used five-year bands of annual growth rates in order to smooth out the effect of abrupt year-to-year changes.

²³ Mark A. Behrens and Phil Goldberg, “State-Based Medical Criteria For Asbestos Suits Gains Momentum,” *Andrews Asbestos Litigation Reporter*, July 29, 2005.

²⁴ “USG Corporation Reaches Agreement To Resolve Asbestos Personal Injury Claims in Chapter 11,” USG Corp. news release, Jan. 31, 2006.

²⁵ See Halliburton Co. background information on its bankruptcy filings, available at: http://www.halliburton.com/ir/chapter11_primer.jsp.

²⁶ Source for this section is an interview with the authors.

²⁷ Article is undated at the source.