



Toxic Tort

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A Look Back at Toxic Tort Litigation in 2019

As we begin 2020, the Toxic Tort Law Committee looks back at 2019 for guidance on what we might expect to see in the new year. Specifically, we examine filing rate statistics, important court opinions, significant toxic tort trials, and key legislative developments that occurred in 2019 related to asbestos litigation. Given the overlap of issues seen in toxic tort litigation, these developments are clues for where the litigation is heading in 2020.

As to filing rates, the most recent data indicates an overall increase in asbestos litigation filings compared to 2018. Karen A. Cullinane, *Mid-2019 Asbestos Litigation Trends*, Asbestos Case Tracker (Sept. 10, 2019), <https://asbestoscasetracker.com/mid-2019-asbestos-litigation-trends/>. In the first half of 2019, 2,000 asbestos litigation complaints were filed, compared with 1,941 filed in the first half of 2018. *Id.* Additionally, filings for mesothelioma and lung cancer increased, while non-malignant and “other” cancer filings continued to decrease. *Id.*

The top 10 plaintiffs’ firms filing asbestos lawsuits remained consistent, although the Gori Law Firm, Simmons Hanly Conroy, SWMW Law, and Karst & von Oiste LLP significantly increased their filing rates. *Id.* As to venues, Madison County continued to dominate, with 582 asbestos litigation filings through June 2019. *Id.* St. Clair County saw a significant increase in filings, with 202 filings through mid-2019, compared to 155 filings at the same point in 2018. *Id.* The Circuit Court of St. Louis City and Cook County were also in the top 10 asbestos litigation venues during the first half of 2019.

Regarding court opinions, 2019 was a relatively uneventful year compared to 2018. In 2018, there were several important appellate court opinions related to asbestos litigation, including *Brown v. BNSF Ry. Co.*, 2018 IL App (1st) 173184-U; *Campbell v. Acme Insulations, Inc.*, 2018 IL App (1st) 173051; *Jeffs v. Ford Motor Co.*, 2018 IL App (5th) 150529-U; *Johnson v. Pneumo Abex LLC*, 2018 IL App (3d) 160406-U; *Jones v. Pneumo Abex LLC*, 2018 IL App (5th) 160239; *McKinney v. Hobart Bros. Co.*, 2018 IL App (4th) 170333; and *Ross v. R.J. Reynolds Tobacco Co.*, 2018 IL App (4th) 160925-U.

In 2019, in a relatively rare occurrence, the United States Supreme Court issued an opinion related to asbestos litigation. In *Air & Liquid Systems Corp. v. DeVries*, 139 S. Ct. 986 (2019), the Supreme Court examined whether the “bare-metal” defense applied in the context of federal maritime law. *Air & Liquid Sys. Corp.*, 139 S. Ct. at 992. In that case, the estates of two deceased Navy veterans filed suit after the decedents passed away from mesothelioma. *Id.* at 991. The defendants’ products at issue were shipped to the Navy without asbestos, in a bare-metal condition. *Id.* However, asbestos had to be added to the products by the Navy to function as intended. *Id.* n.1.

The defendants argued that they owed no duty to warn the decedents about asbestos because the Navy, rather than the defendants, incorporated asbestos into the products. *Id.* at 991. The Supreme Court determined that under maritime law, the defendants owed a duty to warn the decedents because their products required the incorporation of a part—specifically, asbestos—that the defendants knew or had reason to know likely made the integrated products dangerous for their intended uses. *Id.*

In *Alley v. BNSF Railroad Co.*, 2019 IL App (1st) 182509-U, the Illinois Appellate Court First District determined that an asbestos case should not have been transferred under the doctrine of *forum non conveniens*. *Alley*, 2019 IL App (1st) 182509-U, ¶ 79. In that case, the court began by noting that for purposes of *forum non conveniens*, it is assumed that the plaintiff's chosen forum is a proper venue. *Id.* ¶ 48. Thus, the defendant bears the burden of demonstrating that the relevant private and public interest factors weigh in favor of transfer. *Id.* ¶ 34. Ultimately, the court determined that the relevant factors did not weigh in favor of transfer because the potential witnesses were scattered throughout several counties, including in Cook County, the plaintiff's chosen forum; there was no evidence worth considering located in Knox County, the defendant's proposed forum; unlike in Cook County, there was no major travel hub located in Knox County; Cook County residents had an interest in ensuring safe conduct by the defendant within Cook County, where the defendant regularly conducted business; and Cook County typically resolved cases by jury verdict quicker than in Knox County. *Id.* ¶ 1.

Regarding asbestos litigation trials, 2019 saw verdicts for both plaintiffs and defendants. For example, a Cook County jury returned a \$6,022,814 plaintiff's verdict for the family of a deceased pipefitter. Jen Dlugosz, *Cook County Jury Awards \$6M in Plaintiff's Verdict*, TECH., MFG. & TRANSP. INDUSTRY INSIDER (Nov. 12, 2018), <https://www.tmtindustryinsider.com/11-12-2018-cook-county-jury-awards-6m-in-plaintiffs-verdict/>. The plaintiff alleged that the decedent was exposed to asbestos and developed mesothelioma as a result. At trial, John Crane, Inc. was the only remaining defendant. It argued that the plaintiff failed to prove that its products at issue—gaskets—contained asbestos or the number of times the decedent allegedly worked with the gaskets. The plaintiff argued that the decedent's cumulative exposure to asbestos, including through his work with John Crane products, contributed to the development of his mesothelioma.

By contrast, at the end of 2018, a Cook County jury returned a defense verdict in favor of Welco in the case *Startley v. 3M, et al.*, No. 2014-L-002716 (Ill. Cir. Ct., Cook Cty.). *Cook County Jury Returns a Defense Verdict in Mesothelioma Trial*, JD SUPRA (Dec. 19, 2018), <https://www.jdsupra.com/legalnews/cook-county-jury-returns-a-defense-82221/>. In that case, the plaintiff alleged that the decedent, a career drywaller, was exposed to asbestos through his use of the defendant's joint compound for one month in 1965. The plaintiff requested at least \$25.8 million in damages in that case.

In Madison County, no asbestos trials went to verdict in 2019. In March 2019, trial began in an asbestos case, but ultimately settled after jury selection. Heather Isringhausen Gvillo, *Madison County Asbestos Trial Settles After Jury Selection*, MADISON-ST. CLAIR REC. (Mar. 22, 2019), <https://madisonrecord.com/stories/512308263-madison-county-asbestos-trial-settles-after-jury-selection>. The case involved a Louisiana plaintiff representing the estate of his deceased wife. He alleged that his wife was exposed to asbestos through her own employment and through the plaintiff's work clothes. After an asbestos lawsuit settled during trial in 2018, no asbestos lawsuits went to trial in St. Clair County in 2019.

As for St. Louis City, in one trial, a jury returned a defense verdict for defendant Ford Motor Company. Greg Edwards, *St. Louis Auto Mechanic Wins \$8M Verdict for Asbestos Exposure*, ST. LOUIS BUS. J. (Aug. 30, 2019), <https://www.bizjournals.com/stlouis/news/2019/08/30/st-louis-auto-mechanic-wins-8m-verdict-for.html>. In that case, the plaintiff alleged that her deceased brother developed mesothelioma after being exposed to asbestos purportedly contained in Ford brakes. The defendant presented evidence calling into question whether the decedent actually worked with Ford brakes as alleged and argued that the type of asbestos in Ford brakes—chrysotile asbestos—cannot cause mesothelioma.



In another asbestos lawsuit trial involving Ford, a St. Louis City jury returned a plaintiff's verdict in the amount of \$8,433,000 in August 2019. Greg Edwards, *St. Louis Auto Mechanic Wins \$8M Verdict for Asbestos Exposure*, ST. LOUIS BUS. J. (Aug. 30, 2019), <https://www.bizjournals.com/stlouis/news/2019/08/30/st-louis-auto-mechanic-wins-8m-verdict-for.html>. That case involved an 80-year-old, living plaintiff, who had developed mesothelioma. The plaintiff testified that he was exposed to asbestos through regular work with Ford products. Ford again argued that chrysotile asbestos could not have caused the plaintiff to develop mesothelioma.

While there were few significant appellate court opinions pertaining to asbestos litigation in 2019, an important legislative development occurred in Illinois in 2019 that likely will impact numerous defendants in asbestos litigation. Specifically, the Illinois General Assembly amended the Workers' Compensation Act and Workers' Occupational Disease Act to permit civil tort actions by employees against their employers for injuries that manifest more than 25 years after an occupational exposure. 820 ILCS 305/1.2; 820 ILCS 310/1.1.

Before this amendment, under Illinois law, these statutes provided the exclusive remedy for employees who contracted mesothelioma, or another latent injury or disease, regardless of when the alleged exposure occurred. *Folta v. Ferro Eng'g*, 2015 IL 118070, ¶ 52. In other words, employees could not sue their employers in Illinois for claims arising from occupational asbestos exposure. While concerns over the constitutionality of the amendments remain, employers should be aware that they could face civil liability for occupational asbestos-related claims due to the amendments, at least for the time being.

Overall, 2019 saw an increase in asbestos litigation filings, and the amendments to the Workers' Compensation and Occupational Disease Acts may lead to a further increase in 2020. As always, the IDC's Toxic Tort Law Committee will continue to vigilantly monitor developments in this litigation during 2020.

About the Author

Gregory W. Odom of *Baker Sterchi Cowden & Rice LLC* in Belleville is an experienced trial attorney whose practice is focused on complex business litigation matters in the areas of toxic torts, personal injury, product liability, premises liability, environmental law, and commercial litigation. He represents individuals, local businesses, and Fortune 500 companies in state and federal courts across Illinois and Missouri. He has successfully tried multiple cases to verdict and has successfully argued before the Illinois Court of Appeals. Mr. Odom received his B.A. from Southern Illinois University in Carbondale in 2005 and his J.D. from Southern Illinois University in 2008. He is Chair of the IDC Toxic Tort Law Committee for the IDC and a member of the IDC Board of Directors. In addition to his membership in the IDC, Mr. Odom is a member of the Madison County and St. Clair County Bar Associations. He also serves as an arbitrator for the Third Judicial Circuit Court-Annexed Mandatory Arbitration Program.

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