

EXHIBIT C

Asbestos Litigation

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Trying thousands of cases together raises due process questions for plaintiffs and defendants alike. If, as is common, the liability phase is tried first with representative plaintiffs, and the jury decides in favor of the defendant, all of the plaintiffs lose. Defendants, however, believe that large-scale consolidation tilts the playing field against them. Many judges have also expressed doubts about the appropriateness of mass consolidations. We were able to determine at least some trial outcomes for 13 of the 14 large-scale consolidation trials we identified. Six resulted in a mix of plaintiff and defense verdicts, six resulted in plaintiffs' verdicts in all cases against some or all defendants, and one resulted in defense verdicts.

Bankruptcy Litigation

Since the early 1980s, asbestos litigation in federal and state courts has played out against a background of parallel litigation in the bankruptcy courts, which has influenced the primary litigation against non-bankrupt defendants and, in turn, has been shaped by that litigation. When the Manville Corporation filed for bankruptcy in 1982, it temporarily disrupted asbestos litigation patterns, as plaintiffs and non-bankrupt defendants alike sought to prevent the stay of litigation against Manville, which had until then been the lead defendant in the litigation. The difficulties attendant in estimating Manville's liability exposure highlighted for non-bankrupt defendants the difficulties of estimating their own future liabilities. The Manville bankruptcy reorganization at first provided cautionary lessons on the use of bankruptcy to resolve asbestos claims. But after Congress amended the bankruptcy statute to facilitate the creation of post-bankruptcy trusts to resolve claims, many looked to the Manville Trust as a model for aggregating claims and capping corporate liability exposure due to asbestos even for those corporations that were not at the time facing bankruptcy themselves.

When increasing asbestos claims rates encouraged scores of defendants to file Chapter 11 petitions in the late 1990s, the resulting stays in litigation against those defendants drove plaintiff attorneys to press peripheral non-bankrupt defendants to shoulder a larger share of the value of asbestos claims and to widen their search for other corporations that might be held liable for the costs of asbestos exposure and disease. In turn, the surge of filings for reorganization under Chapter 11 of the bankruptcy code may have provided an additional incentive for some asbestos plaintiff law firms to file large numbers of claims: Under Section 524(g) of the bankruptcy code, a proposed reorganization plan must obtain support from 75 percent of current asbestos claimants to win court approval, meaning that law firms that represent large numbers of claimants will wield the most power over the reorganization negotiations.

As bankruptcy proceedings have expanded to include most of the original lead defendants in asbestos litigation and scores of other companies besides, bankruptcy litigation has come increasingly to mirror the primary litigation in federal and state courts. Borrowing from case management practices in trial courts, district courts have

defendants. Each of 49 industries includes fewer than 1 percent of the firms named as defendants.

Costs and Compensation

We estimated the amount of money spent on asbestos litigation from its inception in the 1960s through the end of 2002, including the total amount spent on personal injury claims and the proportion of those costs that ended up in claimants' pockets. The components of those costs are as follows (see Figure S.1).

- **Total Spending.** Total spending on asbestos litigation through 2002 was about \$70 billion. This sum is the amount defendants spent after being reimbursed from insurers plus the amount insurers spent after being reimbursed by reinsurers.
- **Defense Transaction Costs.** Total spending is broken down into defense transaction costs and the gross compensation paid to claimants. Defense transaction costs include the costs defendants and insurers incurred in all asbestos-related litigation, including litigation with other defendants and insurers. These costs amounted to more than \$21 billion by the end of 2002, or about 31 percent of total spending.
- **Gross Compensation.** Gross compensation equaled about \$49 billion, or about 69 percent of total spending. Average compensation for mesothelioma claims has increased sharply since the early 1990s.
- **Claimants' Transaction Costs.** Claimants' transaction costs added up to about \$19 billion, or 27 percent of total spending through 2002.
- **Claimants' Net Compensation.** We estimate that claimants' net compensation through 2002 equaled about \$30 billion, which is about 42 percent of total spending.

Estimates of the number of people who will file claims in the future—and the costs of those claims—vary widely. However, all accounts agree that, at most, only about three-quarters of the final number of claimants have come forward.