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Busting the Trust Fraud

Ohio cleans up the tort bar's asbestos bankruptcy scam.

Tort reform hasn't been on the national radar of late. Yet the reform drive remains alive in the states, including Ohio, which is poised to become the first in the nation to clamp down on the abuse of asbestos bankruptcy trusts.

In the decades since asbestos was found to cause cancer and was banned, the mining companies and manufacturers have mostly gone bankrupt and many set up bankruptcy trusts to compensate victims. More than 60 such trusts now collectively manage \$36 billion and in 2010 alone they paid more than \$3 billion to more than 460,000 claimants.

Yet the trusts have not stemmed the flood of asbestos suits. That's because the plaintiffs attorneys have taken to "double dipping"—first gaining payouts from multiple bankruptcy trusts, then filing lawsuits against solvent companies that had only a peripheral involvement in the asbestos business. This scam continues because of a lack of transparency in the trust system, and a failure of communication between courts and the trusts.

The rampant fraud was exposed in Ohio in 2006 in *Kananian v. Lorillard Tobacco*. The California law firm of Brayton Purcell claimed Lorillard's cigarettes had caused the late Harry Kananian's mesothelioma. A curious judge instead discovered that Brayton Purcell and other firms had previously filed claims to other asbestos trusts, claiming Kananian had got his cancer for different reasons. Brayton Purcell was barred from practicing in Ohio.

The Ohio legislature is trying to end this racket by requiring asbestos plaintiffs to file any trust claims before proceeding to trial. They must then identify to the courts any claims to trusts they have made, including the basis of their alleged injury. The Ohio House passed the reform bill earlier this year, and the Senate approved a version last week. The final bill is headed to Governor John Kasich, who says he'll sign it.

The tort bar is responding as usual by claiming that victims will lose their day in court. But any plaintiff can still file a claim with any trust and take part in any lawsuit. The only change is greater transparency about the claim and injury. To the extent that this reform reduces the number of fraudulent claims that deplete trust funds, it will preserve

trust assets for legitimate victims. And it will save jobs at companies that will be spared a frivolous, double-dip lawsuit.

Manufacturing-heavy Ohio has long been a magnet for asbestos suits, and the trust bill is the state's latest attempt to stem fraud. In 2004 it was the first to pass medical criteria legislation requiring plaintiffs to provide credible evidence of harm.

The Ohio judiciary has also made a priority of the truly sick, putting the claims of the unimpaired on inactive dockets, which discourages lawyers from filing frivolous suits. According to the Ohio Supreme Court, asbestos cases in infamous Cuyahoga County (Cleveland) stood at 6,506 at the end of 2011, down from 46,384 in 2004.

That's a huge improvement, and it shows how many suits really were a scam. Other states can heed the lesson. The asbestos blob is still too big, but state reformers are melting it at the edges.

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