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Asbestos Litigation Year in Review: 2024

A Comprehensive Overview of the Status of Claims, Trends & Recent Case Law Impacting Asbestos Litigation in California Over the Past Year

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TABLE OF CONTENTS

VOLUME OF CASES & OVERALL FILING TRENDS

Though the overall filings in asbestos matters in 2024 were down over 25% statewide, the percentage of complex cases increased, with filings dominated by plaintiffs alleging they were diagnosed with mesothelioma, particularly in Southern California. Even though total filings were down, the complexity of the disease diagnoses and exposure claims have increased markedly as plaintiffs step further away from the historical focus of asbestos exposure claims. Fewer total defendants are sued per case as more traditional defendants go bankrupt, and given the high nationwide verdicts in claims involving alleged contaminated talc exposure, plaintiffs are expecting higher settlement amounts from each defendant they sue. Plaintiffs are also filing more claims alleging asbestos exposure that started in the late 1980s or later, so defendants are finding it more and more difficult to establish alternative exposures. We provide below a peek into the filings.

San Francisco Superior Court

San Francisco saw the smallest drop of the major jurisdictions in 2024, with 83 new matters compared with 99 in 2023, or 17% fewer filings. In 2024, there were 16 mesothelioma cases filed, 17 lung cancer, 29 asbestosis, and 24 "other cancers." Brayton Purcell continued to dominate filings in San Francisco with 73 new matters. Trailing much further behind in quantity were Maune Raichle (8 cases filed), Gold Law (1), Pearce Lewis (1), and Robins Cloud (1).

Alameda County Superior Court

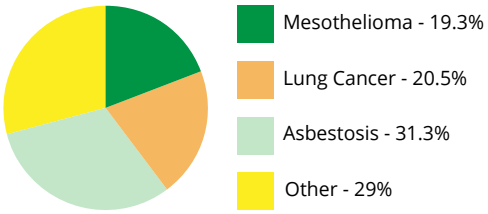
There was a steep drop-off in new filings in Alameda, down 28% from 2023: only 52 filings in 2024 compared with 72 in 2023. The percentage of mesothelioma cases remained relatively the same as before: 46 mesothelioma cases were filed compared with 2023's 63 matters. The percentage of mesothelioma cases remained relatively the same as before: 46 mesothelioma cases were filed compared with 2023's 63 matters. Alameda saw only five new lung cancer matters and one disputed asbestosis case filed in 2024. Kazan Law led new filings with 18, followed by Maune Raichle (13), Simmons Hanly Conroy (5), Weitz & Luxenberg (3), DeBlase Brown Eyerly (2), Keller Fishback & Jackson (2), Lanier Law (1), Brayton Purcell (1), Dean Omar Branham Shirley (1), Gori Law (1), Jones & Bendon (1), Karst & von Oiste (1), Meirowitz & Wasserberg (1), Paul Law (1), and Wisner Baum (1).

Southern California

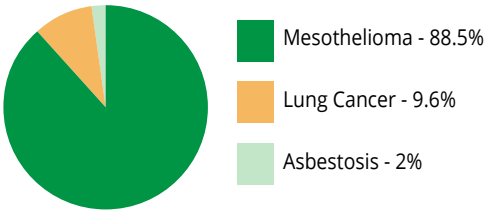
Southern California's drop in filings mirrored Alameda County's: 2024 saw a 28% drop-off in filings, down from 151 in 2023 to 130 in 2024. Mesothelioma filings accounted for a whopping 90% of 2024's new filings at 117, with only 10 lung cancer, one disputed asbestosis, and two renal cancer claims also being filed. Waters Kraus remained the firm with the highest number of filings at 25, with Maune Raichle close behind at 23. **(cont. on p. 2)**

MOST COMMON DIAGNOSES IN CASES FILED

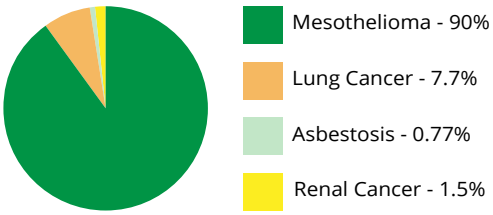
San Francisco Superior Court



Alameda County Superior Court



Southern California



VOLUME OF CASES & OVERALL FILING TRENDS

Southern California

(cont. from p. 1)

New filings were rounded out by Simmons Hanly Conroy (16), Weitz & Luxenberg (11), DeBlase Brown Eyerly (10), Frost Law (9), Simon Greenstone Panatier (9), Gold Law (6), Pearce Lewis (5), Paul Law (5), Gori Law (3), Keller Fishback & Jackson (2), Dean Omar Branham Shirley (2), and Brayton Purcell and Lanier Law with one apiece. Newcomers to California asbestos matters Thorton Law and Robinson Calcagnie each also filed one case.

TRENDS BY JURISDICTION

San Francisco

The San Francisco Superior Court was fairly quiet in 2024, and we expect that trend to continue into 2025. The court is expecting an increase in criminal trials in 2025 along with the retirement of a number of judges; the net effect of this will be few non-exigent civil cases proceeding to trial in the next six months.

Judge Rochelle East will become San Francisco's presiding judge, and Judge Ethan Schulman will be taking over as asbestos presiding judge, handling all complex and asbestos matters in his courtroom. Early rulings by Judge Schulman indicate that he appears to be a stickler for rules and procedure but liberal on discovery and admissibility of evidence. San Francisco is currently requiring in-person attendance by carrier representatives at Mandatory Settlement Conferences, and distance alone has not been a sufficient basis for the court to excuse in-person attendance.

While historically stays were automatically entered upon the death of a plaintiff, San Francisco is now requiring plaintiffs to apply formally for a case to be stayed and all dates to be vacated via an ex parte application accompanied by a death certificate. In the absence of a death certificate, a declaration is sufficient, but a death certificate must be filed immediately upon receipt. The court wants to see the status of these cases by six months at the latest and will issue an order to show cause if nothing is done. If plaintiffs request that a trial date remain on the calendar after the death of a plaintiff, then the court will hold a hearing to decide how to handle the matter, with the goal of keeping matters moving and avoiding further backlog.

Alameda

Judge Patrick McKinney continues to preside over Alameda County's asbestos bench; he also continues to be the primary trial judge for asbestos cases in Alameda and handles the majority of asbestos trials that go forward. His docket is extremely busy, with numerous matters pending before him, many of which are cases with preferential trial dates. While there have been some exceptions based on orders from the court, initial settlement conferences continue to remain remote and do not require in-person attendance from clients or carriers. Alameda County has been steadily working through the backlog of trials that developed during the pandemic. In addition to managing the steady flow of cases with preferential trial dates, the court is trying to navigate a number of older cases that must be sent out to trial pursuant to California's five-year statute.

(cont. on p. 3)

TRENDS BY JURISDICTION

Alameda

(cont. from p. 2)

During the fall of 2024, Judge McKinney indicated that he expected the court will have worked through this backlog and be back to "normal" in the spring of 2025.

There have been some concerns that, in the future, Judge McKinney may consolidate asbestos cases for trial. Beginning in December 2023 and continuing through February 2024, Alameda County Superior Court was at the center of the most recent attempt by the plaintiffs' bar to consolidate asbestos cases – a consolidation that Judge McKinney ended up allowing, although the cases resolved before the appellate court had a chance to weigh in.

In *Hoffmaister v. Johnson & Johnson* (No. 23CV033743) and *Yerkes v. Avon Products* (No. 23CV032102), Kazan Law sought to consolidate two asbestos cases brought against a number of talc-related defendants, including Avon and Safeway. Judge McKinney initially denied the motion to consolidate the two cases for all purposes – finding that the differences in the two cases "risk creating avoidable costs, confusion, delay and raise the potential for prejudice during trial" – but he did order a limited consolidation of the two cases for the purposes of conducting expert discovery given the extensive overlap in the experts used by both sides in both cases.

As the two cases proceeded through expert discovery and plaintiffs resolved against all defendants except for Avon and Safeway, however, plaintiffs renewed their request to consolidate the cases for trial through a motion for reconsideration of the court's order denying consolidation for trial. In an about-face, and in apparent contradiction of many of the factors weighing against consolidation in its initial ruling, the court granted the motion for reconsideration and consolidated the two cases for trial. In this new decision, Judge McKinney determined that the claims in both cases arose out of the same series of transactions under California law. While acknowledging that the two cases were not identical, the court ruled that they were "substantially similar such that there are common questions of law and fact."

Following the issuance of the consolidation order, defendants sought relief from the Court of Appeal via a writ of mandate. In response, the Court of Appeal entered an order staying the consolidation pending further consideration of the writ and appeal. However, during the stay and prior to any further briefing or hearing on the appeal, the remaining parties resolved the underlying cases and the petition for review was withdrawn. Therefore, it is yet to be seen how California's appellate court would view any further order consolidating asbestos cases for trial – an issue all parties will look out for in 2025 and beyond.

Los Angeles

In Los Angeles, the most impactful update came at the very end of the year when the parties received notice that Judge Timothy Dillon, who started in May as a temporary fill-in for Judge Laura Seigle, was formally assigned to the department. Given this newly formal assignment, we anticipate Judge Dillon will now attempt to address issues he sees with the standard asbestos Case Management Order (CMO) entered in 2022. **(cont. on p. 4)**

TRENDS BY JURISDICTION

Los Angeles

(cont. from p. 3)

Given comments he made in fall 2024 at the LA County Bar Association's Complex Courts Symposium, we know Judge Dillon is particularly dissatisfied with the current standing order regarding page and line designations; motions in limine, exhibits lists, and "meaningful and relevant" trial documents and a request for earlier participation of trial counsel have also been topics of particular interest for Judge Dillon and may be the subject of additional changes to the CMO. Judge Dillon's handling of the department has varied from Judge Seigle's in a few notable ways, including the lack of tentative orders, which the parties had become used to while Judge Seigle oversaw the department.

Judge Dillon also generally refuses to hear argument on ex parte motions – ruling on the papers only. As we have seen an uptick in the number of filings by foreign citizens, forum non conveniens (FNC) motions have increased. Judge Dillon has established in rulings that he will only grant an FNC motion if it is filed promptly and all defendants agree to the proposed alternative jurisdiction. Judge Dillon has granted some summary judgment motions and, more frequently, summary adjudications on certain causes of action or punitive damages during his time on the bench.

LA Superior Court also appointed 50 new trial judges in the fall, whose presence is expected to handle the unlawful detainer matters and free up other courtrooms for longer trials, including asbestos cases. With this development, we expect that trial-ready asbestos cases will be assigned out closer to their assigned trial dates, instead of waiting multiple days or weeks afterward as had been typical in past years.

Southern California has also seen a sizable upswing in new silicosis filings, arising out of alleged exposure caused by stone countertops and involving plaintiffs who are in their late 30s and early 40s. While originally the matters were primarily filed by the Metzger Law Group, along the way Brayton Purcell associated in to assist.

Since then, Brayton Purcell has hired numerous attorneys who focus almost exclusively on these silicosis matters, and many of their attorneys who used to practice primarily in asbestos have also turned their attention to these cases.

In 2024, a Los Angeles jury handed plaintiff Gustavo Reyes Gonzales, 34, a verdict of over $52 million, in a trial that was led by Raphael Metzger and Gil Purcell. The Reyes Gonzales trial is one of hundreds expected as the number of new silicosis filings continues to climb. There is ongoing discussion of potential consolidation of these silicosis matters given their volume; in the meantime, the fact that many of these matters have been granted preferential trial dates has put a strain on available trial courtrooms.

UPDATES & CHANGES TO LAWS IMPACTING CALIFORNIA CASES

Initial Disclosure Changes Have Little Impact in 2024

As reported in our 2023 year-end report, a September 2023 amendment to the California Code of Civil Procedure section 2016.090 allows a demand that all parties provide initial disclosures that identify witnesses and documents that support their claims and defenses and provide insurance information. Although this amendment opened the door to more expansive discovery – and allowed for potentially onerous additional disclosures to be demanded – it had little impact on California asbestos litigation in 2024. The majority of plaintiffs and defendants chose not to demand initial disclosures, and but for a handful of individual defendants who were forced to engage in discovery battles, the year passed with no substantial use of this new avenue for discovery.

Timing Changes for Dispositive Motions

Starting January 1, 2025, the notice required for dispositive motions filed in California has been extended by six days, and opposition and reply dates have also been moved. Although an extra six days is relatively minimal, it will certainly feel like a substantial change in preference cases where the time to conduct discovery before filing motions for summary judgment or adjudication is already quite tight. The new deadlines are as follows:

	New Deadlines (as of 1/1/25)	Deadlines No Longer Applicable (pre-2025)
Initial Moving Papers	81 calendar days	75 calendar days
Opposition Briefing	20 calendar days	14 calendar days
Reply Briefing	11 calendar days	5 calendar days

NOTEWORTHY RULINGS

Expansion of Strict Liability to Bystanders: *Williams v. J-M Manufacturing Company, Inc.*

California's law continues to develop in its determination of when a defendant may be found liable in take-home and bystander exposure cases. Recently, the California Court of Appeal in *Williams v. J-M Manufacturing Company, Inc.* (2024) 102 Cal.App.5th 250 added to the litany of issues a defendant must consider when evaluating its liability in these types of asbestos exposure claims. Specifically, California's First District Court of Appeal held that in an asbestos bystander exposure case, there is no limitation on bystander liability in the context of a strict liability claim.

Prior to this year, in the case of *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, the California Supreme Court ruled that employers and premises owners owed a "duty to members of an employee's household to prevent take-home asbestos exposure." (*Id.* at 1142.) The Court defined take-home exposure as what "occurs when a worker who is directly exposed to a toxin carries it home on his or her person or clothing, and a household member is in turn exposed through **(cont. on p. 6)**

NOTEWORTHY RULINGS

Expansion of Strict Liability to Bystanders: *Williams v. J-M Manufacturing Company, Inc.*

(cont. from p. 5)

physical proximity or contact with that worker or the worker's clothing." (*Id.* at 1140.) The Court stated:

We hold that the duty of employers and premises owners to exercise ordinary care in their use of asbestos includes preventing exposure to asbestos carried by the bodies and clothing of on-site workers. Where it is reasonably foreseeable that workers, their clothing, or personal effects will act as vectors carrying asbestos from the premises to household members, employers have a duty to take reasonable care to prevent this means of transmission. This duty also applies to premises owners who use asbestos on their property, subject to any exceptions and affirmative defenses generally applicable to premises owners, such as the rules of contractor liability. Importantly, we hold that this duty extends only to members of a worker's household. Because the duty is premised on the foreseeability of both the regularity and intensity of contact that occurs in a worker's home, it does not extend beyond this circumscribed category of potential plaintiffs.

Kesner did not create a new duty for employers or premises owners in take-home exposure; rather, it declined to create an exception for a general duty in exercising ordinary care. (See *id.* at 1143.) The Court "conclude[d] that the exposure of household members to take-home asbestos is generally foreseeable." (*Id.* at 1145.) More specifically, the Court "conclude[d] that it was foreseeable that people who work with or around asbestos may carry asbestos fibers home with them and expose members of their household." (*Id.*) The rule established in Kesner "extends only to members of a worker's household." (*Id.* at 1154.) The Court defined this as "persons who live with the worker and are thus foreseeably in close and sustained contact with the worker over a significant period of time." (*Id.* at 1155.) Additionally, the Court declined to limit the class of potential plaintiffs to "immediate family members," nothing that an individual's status as a household member "does not depend on a legal or biological relationship between the plaintiff and the worker." (*Id.* at 1155–1156.)

The Court's holding in *Kesner* was revisited this year in *Williams* when a plaintiff who was not a household member alleged bystander exposure to asbestos via the supplier defendant and other asbestos defendants. In reaching its most recent holding, the Court of Appeal affirmed the judgment against a supplier defendant, concluding that *Kesner*'s limitation on duty for negligence claims does not extend to strict liability claims against suppliers or sellers of asbestos products and that a defendant can be held strictly liable for a plaintiff's bystander exposure regardless of the plaintiff's relationship to the directly exposed person. The court reasoned that Kesner does not apply in the strict liability context because the plaintiff in a strict liability case is not required to prove any element of duty and the defendant's behavior is irrelevant.

The defendant found liable had also argued that even if *Kesner* did not address strict liability, it should still bar the plaintiff's claims because the same general elements are required in strict liability and negligence causes of action, and that expanding bystander liability beyond *Kesner* would unfairly burden product suppliers and open the floodgates for additional litigation.

(cont. on p. 7)

NOTEWORTHY RULINGS

Expansion of Strict Liability to Bystanders: *Williams v. J-M Manufacturing Company, Inc.*

(Cont. from p. 6)

The Court of Appeal disagreed, holding that there are adequate protections to prevent strict liability claims from becoming liability per se, such as a plaintiff's burden to prove the existence of a defect and potential affirmative defenses that can be raised, such as assumption of risk. The California Supreme Court declined a request to review the case in October.

The *Williams* decision significantly broadens the scope of potential liability for manufacturers and suppliers of products containing asbestos or other potentially toxic substances.

While *Kesner* will continue to bar bystander exposure claims based on negligence by non-household members, the Williams case significantly increases the pool of plaintiffs who can pursue bystander exposure claims based on strict liability. While *Kesner* will continue to bar bystander exposure claims based on negligence by non-household members, the Williams case significantly increases the pool of plaintiffs who can pursue bystander exposure claims based on strict liability.

The "Sophisticated User" Defense and the Admissibility of Evidence to Establish Allocation Under Proposition 51: *Watts v. Pneumo Abex, LLC*

With its ruling in *Watts v. Pneumo Abex, LLC*, No. A166781, A167476 (Cal. App. Oct. 29, 2024), the California Court of Appeal reaffirmed the applicability of the sophisticated user defense under California law while also detailing the nature and level of evidence admissible under Proposition 51 for allocation purposes.

In *Watts*, a three-justice panel of the First Appellate District, Division Two reversed a $10.6 million jury verdict against Pneumo Abex ("Abex") for the death of Steven Watts, who died after developing mesothelioma from alleged exposure to asbestos-containing building construction and automotive products. The Court of Appeal determined that Alameda County Superior Court trial judge Frank Roesch had erred in granting a directed verdict against Abex's affirmative defense that Mr. Watts was a "sophisticated user" who was already aware of the risks of asbestos.

The Court of Appeal also found errors in the trial court's rulings on the allocation of fault, including the exclusion of certain entities from the verdict form and the preclusion of Mr. Watts' interrogatory responses. During the trial, Abex presented evidence that Mr. Watts knew in the early 1980s that brakes were made of asbestos and he should have known to take precautions when working with asbestos-containing products. Abex argued that Mr. Watts, as the owner/operator of a licensed California auto repair shop subject to Cal-OSHA regulations concerning asbestos, was a trained auto technician subject to government workplace safety regulations. Further, Mr. Watts admitted that he had not looked at manufacturer manuals or warnings because he believed he knew enough about fixing and inspecting brakes. Abex also requested that the trial court instruct the jury that Mr. Watts – as an owner and employer – owed a higher duty of care to investigate workplace hazards to protect himself and others. In addition to presenting a sophisticated user defense, Abex also sought to introduce evidence relating to Mr. Watts' alleged exposures to other asbestos-containing products **(cont. on p. 8)**

NOTEWORTHY RULINGS

The "Sophisticated User" Defense and the Admissibility of Evidence to Establish Allocation Under Proposition 51: *Watts v. Pneumo Abex, LLC*

(Cont. from p. 7)

and argue that these other alleged exposures contributed to the development of Mr. Watts' mesothelioma. Specifically, Abex pointed to Mr. Watts' work as a teenager helping his father with the remodeling of his grandmother's house, which included working with drywall and the use of allegedly asbestos-containing joint compound.

Abex offered testimony from its own expert with respect to the potential exposures from asbestos-containing joint compound and also pointed to the testimony of plaintiffs' expert Barry Horn, who opined that joint compounds used during this period more likely than not contained asbestos and that remodeling work involving joint compound would have exposed Mr. Watts to asbestos, thus increasing his risk of developing mesothelioma. Abex also sought to introduce plaintiffs' sworn responses to interrogatories as admissions under Code of Civil Procedure section 2030.410 and additional evidence of Mr. Watts' exposures to asbestos-containing joint compound.

Plaintiffs' counsel moved for a directed verdict on Abex's sophisticated user defense and also objected to Abex's proposed jury instruction regarding an employer duty of care. The trial court sided with plaintiffs and neither instruction was sent to the jury. Further, the trial court sustained plaintiffs' objections to Abex's requests to put joint compound manufacturers on the verdict form and to admit into evidence plaintiffs' responses to interrogatories identifying other asbestos-containing products to which Mr. Watts claimed exposure. The trial court reasoned that there was insufficient evidence to support a fault allocation to joint compound manufacturers and that Mr. Watts was not competent to identify which other companies exposed him to asbestos. Ultimately, the jury found against Abex and assigned it 60% fault, while assigning only 25% fault to all other brake manufacturers and 15% to Mr. Watts.

The Court of Appeal reversed the trial court's judgment and remanded the case for a new trial, allowing Abex to present its sophisticated user defense and addressing the allocation of fault issues.

In overturning the trial court's rulings, the Court of Appeal found that Abex had presented triable issues of fact regarding whether Mr. Watts was a sophisticated user in light of his training and role as an operator of a licensed repair shop subject to Cal-OSHA regulations. Mr. Watts' testimony about knowing that the brakes contained asbestos and his admission that he "avoided using compressed air because he did not want to fill the air with dust, as dust could be dangerous" was enough that a jury could infer that Mr. Watts knew about the dangers of asbestos in brakes, especially due to his training and position as an owner of an auto repair shop. Furthermore, the Court of Appeal concluded that Mr. Watts' training and ownership of the automotive repair shop made him a member of a professional class and required him to know about and abide by government warnings regarding how to work with asbestos-containing brakes. Whether or not he had actual knowledge of asbestos hazards, the court found that Mr. Watts should have known of those hazards. **(cont. on p. 9)**

NOTEWORTHY RULINGS

The "Sophisticated User" Defense and the Admissibility of Evidence to Establish Allocation Under Proposition 51: *Watts v. Pneumo Abex, LLC*

(Cont. from p. 8)

Finally, Mr. Watts' own admission that "he felt he was sufficiently proficient and knew how to professionally and safely perform brake jobs that he didn't need to consult" manuals proved that he was in fact a sophisticated user.

The Court of Appeal also found that the trial court erred in excluding joint compound manufacturers from the verdict form in light of plaintiffs' own expert's testimony that joint compound used during this period "more likely than not" contained asbestos and that every exposure to an asbestos-containing product, including joint compound, contributed to causing Mr. Watts' disease.

The court also found that a plaintiff's own verified discovery admissions are admissible regardless of whether the plaintiff is "competent" to offer the testimony against himself.

While the sophisticated user defense has been a part of California law since at least 2008 with the decision in *Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, the decision in *Watts* bolsters the defense and provides some examples of ways in which defendants can develop the necessary evidence to support the defense. Specifically, in the context of injured parties who are also owners/operators of businesses, defendants can show how the businesses are regulated by the government, the applicability of asbestos regulations, the higher level of training and knowledge required by a business owner, and the employer's duty of care to employees and others.

OTHER UPDATES

EPA Issues Rules Banning Chrysotile and Deeming Legacy Asbestos an "Unreasonable Risk"

In 2024, the U.S. Environmental Protection Agency (EPA) released a two-part rule relating to asbestos. Part One of the rule, finalized in March, prohibits the importation and ongoing use of chrysotile asbestos. As many consumer products are already asbestos-free, this rule explicitly prohibits the manufacture, import, distribution, and use of chrysotile in sheet gaskets, brakes and brake linings, gaskets, and diaphragms used in the chlor-alkali industry. In so ruling, the EPA stated clearly that exposure to chrysotile asbestos causes mesothelioma, lung cancer, ovarian cancer, and laryngeal cancer, and has a disproportionate effect on children's health.

Although it makes no further bans, Part Two of the rule, finalized in December, expands the EPA's focus from chrysotile to the harms caused by other types of asbestos and talc. Part Two includes an analysis of "legacy uses" of asbestos – e.g., disturbance of asbestos-containing products manufactured historically, like floor and ceiling tiles, pipe wraps, and fireproofing – and disposal of those products, and concludes that disturbing and handling asbestos types and asbestos as a whole chemical "poses unreasonable risk to human health." **(cont. on p. 10)**

OTHER UPDATES

EPA Issues Rules Banning Chrysotile and Deeming Legacy Asbestos an "Unreasonable Risk"

(cont. from p. 9)

In drafting Part Two, the EPA analyzed a wide range of exposure types/scenarios (including home remodeling, personal use of talcum powder, and occupational uses) and potentially exposed populations. Unsurprisingly, the EPA found that the highest asbestos exposure potential exists for workers who cut, sand, or grind asbestos-containing materials on a regular basis – including from the demolition of older buildings.

However, Part Two also details the potential exposures faced by first responders, do-it-yourselfers, and family members of workers who are members of workers who are exposed when workers carry asbestos home on clothing, shoes, and other items. Notably, the exposure scenarios assessed by the EPA did *not* assume compliance with existing federal, state, or local regulations requiring proper management of asbestos-containing materials, and instead focused on the high-end risk estimates to represent situations where workers either were not subject to such regulations or failed to follow recommended work practices to reduce asbestos exposure.

Unlike Part One, which bans products that contain chrysotile, Part Two acts to establish a foundation for later regulations – Part Two identifies but takes no action regarding the "unreasonable risk" caused by legacy uses of asbestos. It is currently anticipated that in 2025 the EPA will begin a risk management process to address that unreasonable risk.

Major Bankruptcy Updates and Challenges to the Texas Two-Step

Several entities filed for bankruptcy protection in 2024, including Avon, Charles B. Chrystal, Presperse, and Ben Nye. Most impactful was the Avon bankruptcy, notice of which occurred on August 13, 2024, after several large plaintiff verdicts, including the Rita-Ann Chapman matter in 2022.

Johnson & Johnson ("J&J") spent another year attempting to wrap up its bankruptcy claims that arose out of ovarian cancer allegedly caused by asbestos-contaminated talcum powder products. J&J severed those claims into a specially created subsidiary, Red River Talc LLC, which then filed for a voluntary prepackaged Chapter 11 bankruptcy in September 2024, using what has been dubbed the "Texas Two-Step" – a strategy in which a company creates a corporate entity, transfers liability to it, and places it into bankruptcy, pausing litigation. The most recent plan includes a $9 billion payout over 25 years and is supposed to resolve all current and future ovarian cancer claims. The presiding judge is expected to approve or deny the settlement in early 2025. It is unclear whether the settlement will be approved as it is not without its foes – including the U.S. Department of Justice, which filed a motion to dismiss the bankruptcy on the grounds that the bankruptcy was pursued in bad faith and there is no legitimate need to remain in bankruptcy while J&J purses a confirmable reorganization plan.

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OTHER UPDATES

Major Bankruptcy Updates and Challenges to the Texas Two-Step

(Cont. from p. 10)

The most recent plan includes a $9 billion payout over 25 years and is supposed to resolve all current and future ovarian cancer claims. The presiding judge is expected to approve or deny the settlement in early 2025. It is unclear whether the settlement will be approved as it is not without its foes – including the U.S. Department of Justice, which filed a motion to dismiss the bankruptcy on the grounds that the bankruptcy was pursued in bad faith and there is no legitimate need to remain in bankruptcy while J&J purses a confirmable reorganization plan.

Claimant committees also took a stab at resurrecting challenges to Georgia-Pacific's bankruptcy, which successfully utilized the Texas Two-Step. However, the U.S. Supreme Court declined to hear whether Georgia-Pacific can obtain a litigation shield through the bankruptcy of Bestwall LLC, an affiliate it created to handle asbestos lawsuits – a key benefit of the Texas Two-Step.

It is unlikely that this will be the last we hear of challenges to the Texas Two-Step and companies that utilize its benefits, as multiple bankruptcy courts have asked higher courts to consider the legal questions raised by the strategy.

Indeed, the Fourth Circuit has agreed to hear challenges to the Bestwall LLC bankruptcy, which may also affect the bankruptcies of Aldrich Pump LLC, Murray Boiler LLC, and BMP (CertainTeed Corp.). The claimant committees argue that the court should follow the Third Circuit's move in throwing out the J&J bankruptcy and determine that commitments to fund asbestos liabilities by Georgia-Pacific mean the debtor (Bestwall) is not actually facing financial distress. The claimants are appealing a bankruptcy judge's decision to let Bestwall remain in Chapter 11. The appeal is in the midst of briefing, and we expect a ruling sometime in 2025.

In addition to challenges in the courts, the Texas Two-Step is being scrutinized by those in government. Last summer, a bipartisan group of senators and representatives introduced a bill meant to deter the maneuver. Dubbed the "Ending Corporate Bankruptcy Abuse Act of 2024," the legislation creates a presumption of bad faith for certain filings that bear the hallmarks of the Two-Step strategy, limiting the ability of companies to obtain stays of litigation against non-debtors. Introduced in both the House and Senate, the bill appears to have died at the Judiciary Committee level for both. It remains to be seen whether the new Senate and House will take up the issue in the coming year.

CALIFORNIA ASBESTOS VERDICTS

While California was dubbed by the American Tort Reform Foundation to be the fifth-worst "Judicial Hellhole" in the nation, relatively speaking there were few matters that went to verdict in 2024 – six in total. This is down slightly from 2022's eight verdicts and 2023's seven verdicts. There were four defense verdicts and two plaintiff verdicts – both of which resulted in eight-figure awards.

Lisa Castillo (Abraham Castillo), et al. v. John Crane Inc., et al. **– Defense**

In March, a San Francisco jury found in favor of John Crane Inc. in the retrial of the Lisa Castillo (decedent Abraham Castillo, 57) wrongful death mesothelioma matter. The trial, which was presided over by Judge Mary Wyss, lasted four weeks and involved exposure claims via decedent's service in the Navy through the 1980s and his subsequent career in private employment as a refrigeration mechanic from 1983 to 2013. Plaintiffs were represented at trial by Steve Patti and Ron Shingler of Brayton Purcell.

The case proceeded to trial on negligence and design defect claims against John Crane, which allegedly supplied asbestos-containing packing. When the matter initially went to trial in 2022, the trial ended in a deadlocked jury and a mistrial was declared. The retrial began in February 2024 and the jury was finally able to reach a verdict.

In *Castillo*, the jury concluded that John Crane established its affirmative defense, known as the government contractor defense, against plaintiffs' product defect claims based on the Navy's procurement of the mechanical packing pursuant to reasonably precise specifications.

While the jury concluded John Crane's packing lacked sufficient warnings, it also found that any lack of warnings on the product was on the product was not a substantial cause of decedent's mesothelioma.

Remo Guidi, et al. v. Allied Refrigeration Inc., et al. **– Defense**

On April 10, a Van Nuys jury found in favor of boiler manufacturer Foster Wheeler in a personal-injury mesothelioma matter involving 83-year-old Remo Guidi, a former refrigeration engineer and HVAC technician. The trial was overseen by Judge Graciela Freixes. Plaintiffs were represented at trial by Joshua Paul and Peter Beirne of the Paul Law Firm.

Plaintiffs contended exposure during Guidi's work for multiple employers between 1961 and 1993, including at locations in Africa and aboard multiple cruise ships. There was no evidence presented at trial that Guidi personally worked with Foster Wheeler boilers during the course of his career. In their closing argument plaintiffs asked for $82 million with 75% fault to be attributed to Foster Wheeler. In less than a day, the jury returned a defense verdict, with 10 of the 12 jurors finding that Guidi was not exposed to asbestos through work with boilers manufactured, sold, or supplied by Foster Wheeler.

CALIFORNIA ASBESTOS VERDICTS

***Virginia Hankes (Gene Hankes), et al. v. O'Reilly Auto Enterprises, LLC (fka CSK Auto Inc.)* – Defense**

An Alameda jury found in favor of auto parts supplier O'Reilly Auto Enterprises in May 2024 in a wrongful death mesothelioma matter filed on behalf of Virginia Hankes, stemming from the death of her husband, Gene Hankes Sr., 75. Joshua Paul of the Paul Law Firm and Brian Boucher of Boucher LLP represented plaintiffs at trial, which was presided over by Judge Patrick McKinney. Plaintiffs alleged that decedent's exposure to asbestos stemmed from his work as a boilermaker/welder at various locations from 1968 to 1970 and as a pipefitter/welder from 1972 to 1995 (plaintiffs later stipulated there was no exposure after December 31, 1991). Additionally, they claimed that decedent was exposed to asbestos through home remodel work in 1977, via shade tree auto repairs from the late 1950s until 2017, and through smoking asbestos-containing cigarettes in 1955.

O'Reilly was at issue for its alleged sale of asbestos-contaminated Bendix brakes and Borg-Warner manual clutches. The Alameda jury concluded that O'Reilly was not negligent in its sale of either product; however, it found that both products failed to perform as safely as an ordinary consumer would have expected when used in an intended and foreseeable way. Ultimately, the jury found that the failure to perform as safely as an ordinary consumer expected was not a substantial factor in causing decedent's mesothelioma.

***Jerry Kudenov, et al. v. Carborundum Grinding Wheel Company, et al.* – Plaintiff**

The first plaintiffs' verdict of 2024 came at the hands of a Downtown Los Angeles jury in September for plaintiffs Jerry Kudenov, 77, and Kathryn Kudenov, who alleged that Mr. Kudenov developed peritoneal mesothelioma as a result of his exposure to asbestos. Plaintiffs contended that he was exposed to asbestos via his career working with laboratory products and through construction products, automotive products, and talcum powder products. Judge Fredrick Shaller presided over the trial. Plaintiffs were represented by Weitz & Luxenberg's Venus Burns and Josiah Parker at trial.

The jury awarded noneconomic damages of $10,500 to Mr. Kudenov and another $5 million to Mrs. Kudenov. Prior to verdict, the parties had stipulated to $1.179 million in economic damages. An unopposed motion for nonsuit was granted as to the punitive damages claim.

Relevant to the jury's finding of 50% fault against Thomas Scientific (TSI), Mr. Kudenov claimed he was exposed to asbestos when using laboratory products as a student and professor at various academic institutions from 1964 through the mid-1980s. Plaintiffs claimed that Mr. Kudenov was exposed to asbestos fibers released by certain laboratory products including gloves, wire mesh, tong sleeves, boards, and pads. TSI contended that it was not a manufacturer of any products but simply a catalog supplier based on the East Coast of the United States.

CALIFORNIA ASBESTOS VERDICTS

***Leon Solis Jr. (Sylvia), et al. v. Brake Parts Inc. LLC* – Defense**

In a peritoneal mesothelioma wrongful death matter, yet another Downtown Los Angeles jury returned a defense verdict for Brake Parts Inc. LLC in October. The Solis plaintiffs were represented by Scott Frost of the Frost Law Firm and Joseph Trunk of Meirowitz & Wasserberg, and the trial was presided over by Judge Mary Ann Murphy. Plaintiffs contended that decedent Sylvia Solis, 57, was exposed to asbestos as a bystander to her husband's work with asbestos-containing friction parts between 1978 and the 1990s. **(cont. on p. 14)**

Specifically, she was alleged to have been exposed via her husband's work on trucks and trailers for his trucking business, Solis Transport. Plaintiffs contended that Brake Parts was a manufacturer of Raybestos asbestos-containing brakes that were allegedly used by decedent's husband. Brake Parts' counsel argued at trial that decedent's peritoneal mesothelioma was caused not by asbestos exposure but by a genetic mutation.

While the jury found that Brake Parts sold asbestos-containing brakes, it also concluded that the brakes did not "fail to perform as safely as an ordinary consumer would have expected when used or misused in a reasonably foreseeable way." The jury determined that the benefits of the brake design outweighed their potential risks. Finally, while the jury found that the brakes presented a substantial danger to persons using the product, the jury concluded that "ordinary consumers" would have recognized the potential risks of Brake Parts' asbestos-containing brakes.

***Jeffrey Ochoa v. Kaiser Gypsum Company, Inc.* – Plaintiff**

California's final verdict was rendered in late October 2024, when an Alameda jury found in favor of 75-year-old plaintiff Jeffrey Ochoa and against Kaiser Gypsum Company. Ochoa was represented by Joe Satterley and Denyse Clancy of Kazan Law. Judge Jenna Whitman presided over the trial.

Despite Ochoa's alleged exposure to asbestos during his service in the U.S. Army from 1966 to 1970, as a painter off and on from the 1960s to the 1980s, and from his extensive work as a mechanic from the 1960s through the 1980s, the jury deemed Kaiser 93% at fault for his mesothelioma. Although plaintiff initially sought both economic and noneconomic damages, immediately before closing argument he dismissed his claim for economic damages and pursued only noneconomic damages. This bet seems to have paid off since even though plaintiff's counsel had maintained that Ochoa would not live beyond January 4, 2025, the jury awarded $6 million for past noneconomic damages and $11 million for future noneconomic losses.

As of this report, Kaiser has moved for a new trial on the grounds of excessive damages as to both past and future noneconomic damages and Judge Whitman's purportedly incorrect rulings on jury instructions and damages issues. Kaiser also moved for a new trial based on the new *Watts* ruling discussed above, arguing that it should have been entitled to add other defendants to the Special Verdict form for allocation of fault.

ABOUT US

EXPERIENCE

Walsworth regularly litigates high-exposure, emotionally charged cases involving catastrophic injuries and/or wrongful death. We use sophisticated approaches to complex cases that, at trial, "lower the temperature in the room," and reduce the cases to simple stories that are easily understood by juries. Often, these cases involve multiple defendants and causation theories. Our strategies challenge the causation theories and/or shift liability to other parties, many times resulting in summary judgment or defense verdicts. Our in-depth knowledge and development of tested strategies in cases related to asbestos exposure truly set us apart. Over the course of many years, we have represented clients in excess of 30,000 asbestos cases.

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Our numerous long-term clients appreciate the personalized, team-based litigation management system we employ, which helps to distinguish Walsworth. Our clients include distributors, manufacturers, contractors, and premises owners in cases venued throughout the State of California and other jurisdictions. We also serve as regional and national counsel for a number of high-profile asbestos defendants. Representation of these varied clients requires our team to develop, implement, and manage national and local defense strategies that most effectively serve each client. The diversity of our clientele provides our team with a unique and broad perspective of the many key issues presented by asbestos litigation, including state-of-the-art knowledge, asbestos-related medicine, industrial hygiene, and specialized defenses available to each type of defendant we represent.

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We work with our clients to investigate and evaluate cases, and cost-effectively manage large dockets from inception through discovery, motions, and final resolution. We have dedicated lawyers who specialize in settlement negotiations and have longstanding working relationships with plaintiffs' counsel to allow meet and confer efforts throughout the life of the case.

As your legal resource, our main objective is to keep you out of trouble. We provide day-to-day counseling to employers on a variety of human resource matters by creating effective workplace policies and procedures and prevent future problems by offering training and on-going updates on the latest legal developments.

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