



symposium

**asbestos
anatomy of a mass tort**

november 3-4, 2005

sponsored by

**University of Connecticut School of Law
Insurance Law Center**

asbestos anatomy of a mass tort

Asbestos liability is the essence, the very tableau of the limits of the tort system. The “miracle fiber” inflicted casualties for half a century before the machinery of deterrence swung into action.

Overwhelmed by hundreds of thousands of claims, the liability system manages to consume half of each dollar devoted to their resolution. A law built for horse and buggy collisions has proven unable to deliver efficient compensation where millions of actual and potential claimants are arrayed against thousands of companies and their insurers.

As a matter of law, asbestos is the exception that proves that rules have exceptions. One learned judge, trying to rationalize the purported distinctions between asbestos cases and non-asbestos cases, dryly remarked (in a published opinion) that the distinction was based on the fact that one set of cases involved asbestos, while the other did not. Asbestos liability has rewritten the rules of torts, procedure, bankruptcy and insurance coverage. Indeed, the one law it has left firmly in place is that of unintended consequences.

This two-day event brings leading scholars from across the law school curriculum together with their counterparts in science, insurance and the practice of law. Together, we will examine the theory and practice of asbestos litigation as it has evolved from one stage to the next, frustrating all efforts to confine it within the traditional conceptions of the tort system.

What are the mechanics of asbestos litigation thirty years after Judge John Minor Wisdom ushered in a “new species of trouble”? How successful has bankruptcy law been at containing liabilities while assuring fair compensation? Can the tort and liability insurance systems withstand the redefinition of harm posed by enhanced-risk cases? How are other nations coming to grips with the realization that asbestos is not solely an American phenomenon?

Finally – crucially – asbestos liability has left its mark on our grasp of what a private system for injury compensation can and cannot do. As it has moved Congress, however haltingly, to the brink of refashioning asbestos liability, the asbestos experience invites us to consider its implications for the next transgenerational tort. The Symposium thus concludes with a glimpse at the future of mass tort litigation.

Thursday, November 3

8:45-9:25

Coffee and Donuts

9:30

Welcome and Introduction

Adam Scales

9:45-10:15

A Brief History of Asbestos

Deborah Hensler

10:20-12:00

The Mechanics of Asbestos Litigation and Bankruptcy

James Early

James Stengel

Mark Plevin

Elihu Inselbuch

Lunch

1:15-2:45

A New Species of Trouble

Lester Brickman

Benjamin Zipursky

Ellen Pryor

Short Break

3:00-4:45

Asbestos and the Insurance Industry

Tom Baker

Glenn Brace

Jeff Stempel

V.J. Dowling

Friday, November 4

9:30- 9:55

Coffee and Donuts

10:00-11:45

Legislation

Craig Berrington

John Bowman

Patrick Hanlon

Lunch

1:00-2:45

International Response to Asbestos

Laurie Kazan-Allen

Christian Lahnstein

Richard Murray

Short Break

3:00-5:00

Asbestos and The Future of Mass Tort Litigation

Linda Mullenix

Michael Green

Tony Sebok

Peter Schuck

Commentary:

The Honorable Alex Kozinski

Moderator:

Deborah Hensler

5:00

Closing Remarks

Adam Scales

Panelist Biographies

Tom Baker is the Connecticut Mutual Professor of Law and Director of the University of Connecticut Insurance Law Center. Professor Baker teaches torts, contracts and insurance law, and serves as the faculty advisor to the Connecticut Insurance Law Journal. His most recent book, *The Medical Malpractice Myth* (Chicago 2005), attacks the misperceptions behind the tort reform movement and proposes an evidence-based approach to medical liability reform.

Craig A. Berrington is Senior Vice President and General Counsel of the American Insurance Association, where he advises policy-makers on issues affecting the insurance industry. These include asbestos and environmental concerns, terrorism legislation, workers' compensation, medical and occupational disease issues, liability insurance, the workings of the civil justice system, and the regulation of insurance companies.

John R. Bowman currently serves as Associate Director, Public Affairs for the Association of Trial Lawyers of America. Prior to joining ATLA, he served as Legislative Director for the National Association of Consumer Advocates.

Glenn Brace is the Claims Director of Equitas. He joined Equitas in 1998, as the Head of Asbestos, Pollution and Health Hazard Claims. Prior to joining Equitas, he was a partner at Day, Berry and Howard, specializing in the analysis and litigation of complex insurance disputes, reinsurance claims and other insurance-related matters. He is Chairman of the Board of Directors of London Market Claims Services (LMCS).

Lester Brickman is a Professor at the Cardozo Law School, where he teaches contracts, professional responsibility, and land use, among other courses. His areas of expertise include administrative alternatives to mass tort litigation and contingency fee reform. Widely cited for his work, Professor Brickman has testified at Congressional hearings on these and other subjects.

Vincent J. (VJ) Dowling, Jr. is a Co-founder and Managing Partner of Dowling & Partners Securities, LLC in Hartford, Connecticut. Dowling & Partners is an institutional stock brokerage firm specializing in property/casualty insurance stocks. The firm's fundamental analysis pays particular attention to loss reserves, balance sheets, and areas of sustained competitive advantage.

James F. Early is co-founder and president of Early, Ludwick, Sweeney & Strauss, LLC in New Haven, Connecticut, and Early & Strauss, LLC in New York City. In the 1980s he successfully undertook to represent thousands of workers who contracted diseases from occupational exposure to asbestos. In addition, his firm represented the first plaintiff to file a lead paint poisoning case against manufacturers of lead paint.

Michael D. Green holds the Bess and Walter Williams Distinguished Chair in Law at Wake Forest University. He teaches and writes about torts, products liability, complex litigation and toxic torts. He is the co-author of several casebooks on Products Liability and Torts and wrote *Bendectin and Birth Defects: The Challenges of Mass Toxic Substances Litigation* (1996). He currently serves as a Co-Reporter for the Restatement (Third) of Torts: Liability for Physical Harm, and was previously a Co-Reporter for the Restatement (Third) of Torts: Apportionment of Liability.

Patrick Hanlon is a partner at Goodwin Procter, where he has extensive experience in complex litigation and class actions. His work reflects special emphasis on toxic tort, environmental, and product liability litigation and governmental affairs.

Deborah Hensler is the John W. Ford Professor of Dispute Resolution and Director of the Stanford Center on Conflict & Negotiation at Stanford Law School. Previously, she had a long association with the RAND Corporation. Her empirical research on complex litigation, torts and asbestos liability has won national recognition, and she has testified before state and federal legislatures on numerous topics.

Linda S. Mullenix holds the Rita and Morris Atlas Chair in Advocacy at the University of Texas School of Law. She is the author of nine books and hundreds of articles relating to complex litigation, federal courts, and civil justice reform. Professor Mullenix is an elected member of the International Association of Procedural Law and the American Law Institute, where she serves as Associate Reporter for the *Restatement of the Law Governing Lawyers*.

Richard H. Murray is Managing Director and Chief Claims Strategist of Swiss Re, in New York and Zürich. He has had numerous professional engagements throughout his career in the worlds of law and accounting. Mr. Murray is currently on the Supervisory Board of the Centre for the Study of Financial Innovation, the Advisory Board of Oxford Analytica and the Northeast Business Law Center. He is a Member of both the Institute for Law Reform and the Global Forum Shopping Task Force of the U.S. Chambers of Commerce.

Mark D. Plevin is a partner at Crowell & Moring LLP in Washington, D.C., where he handles litigation, bankruptcy, and insurance coverage issues. He regularly represents insurers in asbestos bankruptcy cases. He has also represented insurers in mass tort bankruptcies involving silica claims and other toxic substances.

Ellen S. Pryor is the Homer R. Mitchell Professor at Southern Methodist University Dedman School of Law, where she teaches torts, advanced torts, professional responsibility, and insurance law. She has published widely on the intersection of torts and insurance law, and is co-author of a casebook, *The Law of Torts*. She is a member of the American Law Institute, and since 2000 has served as an Advisor for the drafting of the Restatement (Third) of Torts: General Principles. In 2005, she was named an Advisor for the drafting of the Restatement (Third) of Torts: Economic Loss.

Adam F. Scales is an Associate Professor of Law at Washington and Lee University, and a Visiting Professor at the University of Connecticut School of Law. He teaches and writes about insurance history and the intersection of torts and insurance law. He is Chair of the AALS Section on Insurance Law, and the organizer of this Symposium.

Peter H. Schuck is the Simeon E. Baldwin Professor of Law at Yale Law School. He teaches courses relating to torts, constitutional and administrative law, and many other subjects. Among his several and varied books, he is the author of *Agent Orange on Trial: Mass Toxic Disasters in the Courts*.

Tony Sebok is Centennial Professor of Law at Brooklyn Law School and a current Fellow at the Program of Law and Public Affairs at Princeton. He specializes in tort law and legal philosophy. His current scholarship focuses on punitive damages and the role the liability system plays in resolving political disputes. A co-author of a leading Torts casebook, he has also authored articles about mass restitution litigation, causation, intentional torts and punitive damages.

Jeffrey W. Stempel is the Doris S. & Theodore B. Lee Professor of Law at the William S. Boyd School of Law, University of Nevada Las Vegas where he teaches Insurance Law, Civil Procedure, Contracts, Professional Responsibility, and Evidence. He was formerly the Fonvielle & Hinkle Professor of Litigation at Florida State University College of Law and Professor of Law at Brooklyn Law School. Professor Stempel is the author several books and many articles on issues of insurance, civil procedure, federal statutes, arbitration, and the adversary system. He is a member of the American Law Institute.

Jim Stengel is a New York litigation partner at Orrick, Herrington & Sutcliffe LLP, where he primarily represents clients in complex litigation, including liability for chemicals, tobacco, and medical devices. He has written and lectured on complex litigation and mass tort subjects at a variety of law schools and seminars.

Benjamin Zipursky is a Professor of Law at Fordham Law School. He has authored numerous articles on torts, products liability and legal philosophy. Along with co-panelist Tony Sebok (and John Goldberg), he is a co-author of a leading Torts casebook.

Directions

I84 East or West to Exit 46. Off ramp, turn right on Sisson Avenue. At second light, turn right onto Farmington Avenue and immediate left onto Sherman Street. The Law School is directly ahead. Parking is available in the Sherman Street lot. Starr Hall is the gray stone building immediately adjacent to the Sherman Street parking lot.

Registration

To register. please send the information requested, along with \$150 fee (includes conference and lunch for each day) to:

Pat Carbray
Insurance Law Center
65 Elizabeth Street
Hartford, CT 06105

fax: 860-570-5366
email: pcarbray@law.uconn.edu

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Please note:

Reservation fee is not refundable.

For disability accommodations, please contact
Jane Thierfeld Brown at 860-570-5130.



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