Costs of Asbestos Litigation

James S. Kakalik, Patricia A. Ebener, William L. F. Felstiner, Michael G. Shanley
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Foreword

The resolution of disputes regarding asbestos-related diseases has become one of the critical problems facing the American civil justice system. Indeed, given the suffering and death involved and the fact that such diseases may be the harbinger of an emerging class of substance-related diseases, the problem becomes one of major importance to our entire society.

Knowledge of causation, methods of prevention and treatment, and the awarding of compensation are the key issues surrounding this class of diseases. The issues of how much (if any) and how efficiently compensation is awarded are the crucial test of our society's ability to resolve the aftermath of this kind of disease. And the resolution of disputes regarding compensation for asbestos-related diseases is now testing the machinery of our civil justice system in these dimensions.

Accepting that causal links have been established between asbestos and certain diseases, and that the resulting victims have been identified, does our system compensate these victims or their survivors adequately and efficiently?

The debate over this question rages about us, but it is a debate as uninformed as it is rancorous. Even the most rudimentary facts regarding the costs of awarding compensation, the amounts of compensation awarded, and the compensation that plaintiffs retain net of their legal costs are either in dispute or altogether missing. This study, aimed at informing the debate, presents facts and estimates regarding levels of compensation and the litigation costs associated with them.

I believe that no one who is involved in or concerned with the resolution of asbestos-related injury claims—whether from the point of view of plaintiff, defendant, or insurer—can be indifferent to the findings of this study. For the first time, an independent, objective and comprehensive assessment of the costs of resolution of such claims has been conducted and the results made available to all parties. Basing their analysis of the aggregate costs of asbestos-related litigation and
compensation levels on data received from defendants, insurers, and members of the plaintiffs' bar, the authors examine the questions of the levels of compensation and of litigation costs, who pays them, and why. The conclusions they present are essential to the policy debate and should form a core of knowledge about which all participants in it can agree.

This aggregated knowledge base will soon be augmented by the results of a second study in this series, showing trends over time and disaggregated by factors such as type of disease. Such information should also prove invaluable to all parties in resolving basic questions of fact and enabling constructive discussions of the adequacy of compensation and the degree of efficiency achieved by our civil justice system. Looking beyond the current situation, it seems to me that information of the kind the Institute is developing in these studies will be crucial also to future debates over how disputes regarding emerging classes of disease can best be resolved, and thereby to achieving consensus on the values appropriate to associate with fair compensation, efficiently awarded.

Gustave H. Shubert
Director, The Institute for Civil Justice
Executive Summary

COSTS OF ASBESTOS LITIGATION

Exposure to asbestos and consequent litigation involve potentially enormous personal and economic stakes: Approximately 24,000 people had filed product liability lawsuits claiming asbestos-related injury as of March 1983. Many times that number have been exposed to asbestos, and the potential liability of the defendant firms may run into the billions of dollars. Three major corporations already have filed Chapter 11 bankruptcy petitions identifying the costs of asbestos litigation as one of the reasons for filing. These costs (both compensation payments and litigation expenses) are a major concern to the claimants, the defendants, their insurers, and the public.

This report examines the money spent to resolve asbestos-related injury lawsuits: who pays it, who receives it, and for what purposes. Extensive and usually aggregated data were obtained on a confidential basis from 17 of 22 major defendants we approached, and from 12 of 18 major insurers we approached. Information was also provided by 27 of the 104 plaintiffs' lawyers we approached. The copious information gathered from these as well as from published sources enabled this report's estimates of the compensation paid and litigation expenses incurred by all defendants, insurers, and plaintiffs. A subsequent report will present the results of a survey we are conducting on a nationally representative sample of individual lawsuits.

About $1 billion in compensation and litigation expenses was spent on asbestos product liability litigation from the early 1970s, when the first claims were closed, through the end of 1982; of that total, about one-third has been provided by defendants and two-thirds by insurers. Of total compensation paid by defendants and insurers, 41 percent was used by plaintiffs for their legal fees and other litigation expenses.
As shown in Table S.1, that $1 billion total includes $345 million on claims that are still open, and $661 million for claims that were closed by the defendants or insurers making the expenditures. Of the latter amount, $361 million was spent for 3,800 claims that were tried, settled with respect to all or nearly all defendants, or dismissed and not refiled prior to August 26, 1982, when the Manville Corporation's Chapter 11 bankruptcy filing prevented complete closure of any substantial additional number of claims. The remaining $300 million of the $661 million was for closure of claims by some defendants that are still open with respect to a significant number of other defendants.

Table S.1

ESTIMATED TOTAL EXPENSES AND COMPENSATION PAID FOR ASBESTOS LITIGATION
(In $ million)

<table>
<thead>
<tr>
<th>Item</th>
<th>Claims Closed by Defendant</th>
<th>Claims Open with Respect to Defendant</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total compensation paid by defendants and insurers</td>
<td>$400</td>
<td>$0</td>
<td>$400</td>
</tr>
<tr>
<td>Allocated defense expenses (e.g., legal fees and related expenses)</td>
<td>190</td>
<td>230</td>
<td>420</td>
</tr>
<tr>
<td>Unallocated defense expenses (e.g., claims processing and managerial expenses)</td>
<td>65</td>
<td>80</td>
<td>145</td>
</tr>
<tr>
<td>Organization v. organization litigation expenses (e.g., regarding insurance coverage)</td>
<td>6</td>
<td>35</td>
<td>41</td>
</tr>
<tr>
<td>Total expenses and compensation paid by defendants and their insurers</td>
<td>$661</td>
<td>$345</td>
<td>$1006</td>
</tr>
<tr>
<td>Plaintiff's legal fees and other litigation expenses</td>
<td>$164</td>
<td>0</td>
<td>$164</td>
</tr>
<tr>
<td>Plaintiff net compensation received after deduction of litigation expenses</td>
<td>$236</td>
<td>0</td>
<td>$236</td>
</tr>
</tbody>
</table>
Of the $400 million paid in total compensation by defendants and insurers, plaintiffs received an estimated $236 million after deduction of an estimated $164 million in legal fees and other litigation expenses. Of that $400 million, $228 million was for claims that were closed with respect to all or nearly all defendants, and the remainder was for closure of claims by some defendants that are still open with respect to a significant number of other defendants.

Table S.2 summarizes the average compensation and defense and plaintiff litigation expenses per claim closed prior to August 26, 1982. More recent and future expenses and compensation may differ from these figures. A subsequent report will analyze how various factors (such as type of injury, type of worker, type and location of court, and year the case was closed) affect the size of compensation and expenses. Also, these average numbers reflect the experiences of all plaintiffs and defendants combined; as discussed in the main body of the text,

<table>
<thead>
<tr>
<th>Item</th>
<th>As Percent of Total Compensation Paid by Defendants and Insurers</th>
<th>As Percent of Net Compensation Received by Plaintiff</th>
<th>As Percent of Total Expenses Plus Compensation Paid by Defendants and Insurers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total compensation paid by defendants and insurers</td>
<td>$60,000</td>
<td>100%</td>
<td>171%</td>
</tr>
<tr>
<td>Total defense litigation expense</td>
<td>$35,000</td>
<td>58%</td>
<td>100%</td>
</tr>
<tr>
<td>Total expenses and compensation paid by defendants and their insurers</td>
<td>$95,000</td>
<td>158%</td>
<td>271%</td>
</tr>
<tr>
<td>Plaintiff's legal fees and other litigation expenses</td>
<td>$25,000</td>
<td>41%</td>
<td>71%</td>
</tr>
<tr>
<td>Net compensation plaintiff received after deduction of litigation expenses</td>
<td>$35,000</td>
<td>59%</td>
<td>100%</td>
</tr>
</tbody>
</table>
the experiences of individual plaintiffs and defendant organizations will differ.

The average total compensation per claim paid by all defendants and their insurers was approximately $60,000 and total defense litigation expenses were $35,000 (58 percent of total compensation). Thus, the total costs to defendants and their insurers averaged about $95,000 per closed claim. After deduction of plaintiff's legal fees and other litigation expenses of about $25,000 (41 percent of total compensation), the plaintiff received an average of $35,000. Data for tried and settled cases are reported separately in the text.

These figures may be better understood by considering the total amount that defendants, insurers, and plaintiffs pay for every one dollar in net compensation to the plaintiff. For every $2.71 expended by defendants and insurers, defense litigation expenses are an estimated $1.00, plaintiff's litigation expenses are an estimated $0.71, and the plaintiff receives $1.00. The plaintiff, then, receives an estimated 37 percent of the total expended.
Acknowledgments

This research would not have been possible without the cooperation of the 27 plaintiffs' attorneys, 17 major defendant organizations, and 12 major insurers who provided data on a confidential basis. For all of their efforts, we are extremely grateful.

We also appreciate the assistance of our colleagues Mitchell Tuller, who provided computer programming support, and Mark Peterson and Margaret Thomas, who served as technical reviewers and offered helpful suggestions for improving the report. Stephen Carroll and Gustave Shubert were supportive throughout, and helpful in gaining the cooperation of various organizations. Thanks also to Will Harriss for skillful editing and to Ethel Sniderman for her excellent secretarial services.
Contents

FOREWORD .................................................. iii
EXECUTIVE SUMMARY ................................. v
ACKNOWLEDGMENTS ................................. ix
TABLES ................................................... xiii

Section

I. INTRODUCTION ........................................ 1
   Overview of the Asbestos Litigation Problem ..... 2
   Study Objective and Research Questions ........ 6
   Research Approach .................................. 7
   Overview of Previous Studies ...................... 8

II. CHARACTERISTICS OF ASBESTOS LITIGATION .... 12
   Number of Lawsuits and Claims ................. 12
   Number of Defendants per Claim ............... 12
   Number of Insurance Companies ............... 13
   States and Courts Where Cases Are Filed .... 13
   Time from Filing to Disposition ............... 14
   Disposition of the Caseload .................... 14
   Claimant Demographic Characteristics ....... 15
   Worker Classification ............................ 15
   Injury Categories .................................. 16

III. COMPENSATION PAID ............................... 17
    Total Compensation ............................... 17
    Total Compensation per Defendant ............. 18
    Total Compensation per Closed Claim ......... 18
    Total Compensation per Tried Claim .......... 19
    Total Compensation per Settled or Dismissed Claim ........ 20

IV. DEFENSE LITIGATION EXPENSES ................. 22
    Defense Allocated Expenses for Closed Claims .. 23
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defense Allocated Expenses for Open Claims</td>
<td>27</td>
</tr>
<tr>
<td>Defense Unallocated Expenses for Closed Claims</td>
<td>29</td>
</tr>
<tr>
<td>Defense Unallocated Expenses for Open Claims</td>
<td>30</td>
</tr>
<tr>
<td>Organization-versus-Organization Litigation Expenses</td>
<td>30</td>
</tr>
<tr>
<td>Total Defense Expenses per Closed Claim</td>
<td>34</td>
</tr>
<tr>
<td>V. PLAINTIFF LITIGATION EXPENSES</td>
<td>36</td>
</tr>
<tr>
<td>VI. TOTAL EXPENSES AND COMPENSATION</td>
<td>38</td>
</tr>
</tbody>
</table>
Tables

S.1. Estimated Total Expenses and Compensation Paid for Asbestos Litigation ........................................ vi
S.2. Average Expenses and Compensation Paid per Claim Closed Prior to August 26, 1982 .................. vii
3.1. Average Total Compensation Paid per Claim Closed Prior to August 26, 1982 ............................. 19
4.1. Average Defense Allocated Expense Paid per Claim Closed Prior to August 26, 1982 ...................... 24
4.2. Ratio of Allocated Defense Expenses to Compensation Paid in Selected Tort Areas ...................... 27
4.3. Ratio of Defense Allocated Expenses to Total Compensation Paid in Settlements, by Amount of Compensation Payment ......................................................... 28
4.4. Average Defense Unallocated Expense Paid per Claim Closed Prior to August 26, 1982 .................. 30
4.5. Average Defense Organization-Versus-Organization Litigation Expense Paid per Claim Closed Prior to August 26, 1982 ......................................................... 33
4.6. Average Defense Litigation Expenses per Claim Closed ............................................................... 34
5.1. Average Plaintiff Litigation Expenses per Claim Closed ............................................................... 36
6.1. Estimated Total Expenses and Compensation Paid for Asbestos Litigation ....................................... 39
6.2. Average Expenses and Compensation Paid per Claim Closed Prior to August 26, 1982 ................... 40
I. INTRODUCTION

This report examines the money spent to resolve asbestos-related injury lawsuits: who pays it, who receives it, and for what purposes. But money is only a medium. When paid to resolve injury claims, it is the vehicle through which rights are vindicated, obligations are discharged, and social values are preserved. To be meaningful, financial data must be reviewed with a sense of the context in which the transactions take place.

This section sketches the tangled context in which spending occurs for asbestos product liability litigation. No issue or subissue is analyzed in detail. The purpose here is simply to identify the major elements of the conflict, briefly describe their nature and significance, and relate them to the central questions to which this financial research is addressed. Subsequent sections will analyze the actual costs incurred by plaintiffs, defendants, and insurers in the course of processing asbestos suits to resolution. After laying the groundwork in this section and describing the characteristics of the litigation, this analysis will focus on net compensation (money received by injured persons after deducting litigation expenses), and on defense and plaintiff litigation expenses (money paid to operate the legal and insurance systems through which society decides who should receive how much compensation and arranges for actual payment). Finally, we total the expenditures and examine the ratio between litigation expense payments and net compensation (the "overhead" costs incurred in generating one dollar in payment to an injured person).

It might be supposed that these costs have long since been systematically documented. Not so. Although much rhetoric has been devoted to the billions of dollars that are expected to change hands over the next three decades during which the asbestos tragedy is expected to unfold, very few hard data are in the public domain that document the volume or the purpose of the expenditures in the typical case. This report, like the second one to appear later, provides such data. Of course, financial shorthand can never express—and must never be permitted to obscure—the depth of human suffering from which the numbers arise; but professional, impartial cost analysis can help trace the practical effects of the manner in which American society is dealing with a major challenge to its civil justice institutions and procedures.
The asbestos calamity may be unique in scale and intensity, but then again it may be the forerunner of a wave of environmentally based injury claims of unprecedented dimensions. In either case, it is vitally important that the policymakers know how much is being spent to deal with it, and for what. This study contributes to that understanding.

OVERVIEW OF THE ASBESTOS LITIGATION PROBLEM

Asbestos product liability litigation is a large and complex problem because asbestos injuries are complicated, because large numbers of people allegedly have been injured, and because the law that controls their compensation is complex. This section outlines those complications so that the cost data that are the main contribution of this report may be understood in context.

The asbestos litigation problem has at least ten salient dimensions, each of which we will review briefly:

- Widespread and diverse uses of asbestos products.
- Large numbers of allegedly seriously injured people and lawsuits.
- Long periods of time between exposure and manifestation of injury.
- Large numbers of suppliers and processors of asbestos and asbestos-containing products.
- Uncertainty about the causes of injuries and financial responsibility for those causes.
- High, if uncertain, stakes and expenses.
- Effects, known and unknown, of Chapter 11 bankruptcy reorganizations.

For readers who are not familiar with product liability litigation, the following is a brief and greatly simplified sketch of its legal aspects. Personal injury suits brought by workers and others exposed to asbestos are almost always based on the legal theory of strict liability. These plaintiffs must demonstrate that they were exposed to asbestos or a product containing asbestos that was manufactured or provided by the defendant, and that they have suffered from a disease caused by such exposure. In most jurisdictions, they must be prepared to show that the defendant knew or should have known that the exposure to asbestos subjected them to a health risk. They must show that the defendant either failed to warn them of the risk or that the warnings were inadequate, and that the failure to provide an adequate warning was responsible for their injuries. Plaintiffs who can demonstrate each of these elements may not prevail if they are barred by a statute of limitations, or may find their cases postponed with respect to certain defendants by a bankruptcy court stay issued with respect to a defendant seeking Chapter 11 reorganization.
• Concentration of many cases in few courts.
• Possible impact on other toxic substance torts.
• Variety of proposed responses to the problems.

Properties and Uses of Asbestos. Asbestos is a fibrous mineral that is mined. It is strong, flexible, and resistant to fire, heat, and corrosion. It is an excellent insulator and is also commonly used in asbestos-cement products (e.g., pipe), brake linings, a number of roofing products, and flooring products. It has been used in millions of buildings in the U.S. and in hundreds of millions of automobiles.

Large Numbers of Allegedly Injured People and Lawsuits. Unfortunately, asbestos also causes disease. Asbestos fibers when inhaled may lead to asbestosis (a clogging and scarring of the lungs that can produce disabling reduced breathing capacity), or mesothelioma (a rapidly fatal cancer of the lining of the chest and abdomen for which one of the known causes is asbestos). Inhalation of asbestos fibers also has been associated with an increased incidence of lung cancer. Approximately 24,000 claimants had initiated lawsuits as of March 1983 alleging injury from exposure to asbestos. Very few had filed ordinary liability insurance claims without filing a lawsuit.

Several estimates of the number of deaths allegedly due to asbestos over the next 30 years have recently been made. All are large—from 74,000 to 265,000.²

Long Latency Periods. Generally, 15 to 40 years elapse between asbestos exposure and disease manifestation. Thus, for example, some shipyard workers’ are only now filing claims alleging injury from World War II exposure to asbestos.

Large Number of Defendants. Asbestos plaintiffs typically do not sue their employers (who are usually protected from tort responsibility by workers’ compensation laws), but rather bring suits against the asbestos miners, manufacturers, suppliers, and processors who supplied the asbestos or asbestos products that were used or were present at the claimant’s work site or other exposure location. Thus, the potential defendants in any one case may consist of numerous organizations; the average is about 20. The cost implication is correspondingly major: Usually, 20 different defense teams prepare for and participate in litigation.

Uncertain Causes and Responsibility. Asbestos cases allege injuries that are often hard to identify with certainty, undetectable for decades after exposure, unpredictable from the simple fact of exposure, and arguably caused by a variety of other factors (such as smoking) that may produce the same pathology. It is not currently possible

²For details, see “Overview of Previous Studies,” below.
to establish precisely how much exposure to asbestos is either necessary or sufficient to cause any of the diseases allegedly associated with it, either with respect to any particular claimant or with regard to the universe of those exposed.

As a matter of strategy, many plaintiffs’ lawyers seek to involve as a defendant any party who might have provided asbestos or asbestos products to a client’s workplace or other exposure location. Settlement efforts and trials must then face the difficult task of deciding whose products the plaintiff was exposed to and for how much of the time. But exposure is not the only issue. There may be disputes over which defendants had reason to know that asbestos exposure was a health risk and failed to warn of that risk, and disputes over the role of smoking or other plaintiff behavior in causing the alleged injuries.3

Determining the responsibility of insurance companies is every bit as difficult as that for defendants. Complex webs of insurance arrangements have been made, amended, unmade, and then remade by defendants over the decades during which most plaintiffs claim exposure to asbestos. For each defendant in each year, there is normally a separate set of layers of primary coverage, excess coverage, and reinsurance coverage. Also, there are often periods of self-insurance by the defendant, and occasionally insurance by a captive (defendant-owned) insurance company. Each layer of insurance in each year normally involves at least one carrier, and that carrier may or may not have been involved in that or another role during other years. Several major insurance carriers have many insured defendants, some of whom may have different interests, vis-a-vis each other, in any particular case.

The policies that provided coverage contain language that has given rise to protracted litigation concerning the responsibility of the insurance carriers to respond to particular claims. In a nontrivial number of instances, it is even a serious issue whether any policy was in force; neither insureds nor carriers are able to produce papers that they had assumed long ago to be of no further relevance. But even where there is agreement that coverage did exist, there is nothing like accord between many defendants and their insurers, or among the insurers themselves, as to what is covered, when, and by whom. The basic uncertainty over insurance coverage has severely complicated relations between defendants and insurers, and has itself spawned a large number of lawsuits.

3Some research has found that susceptibility to lung cancer may increase by four to five times with exposure to asbestos, but by 50 times if the exposed subject also smokes. For a summary of this research, see Irving J. Selikoff, M.D., Disability Compensation for Asbestos-Associated Disease in the United States, Environmental Sciences Laboratory, Mount Sinai School of Medicine of the City University of New York, June 1981, Table 3.8.
Besides that conflict, the role of the federal government is controversial. The government was, first of all, heavily involved with shipyards in various capacities; but it is also alleged by some to be responsible for worker injuries as a seller of asbestos, as a specifier of workplace safety standards for asbestos, and as a mandator of asbestos use in the military products it contracted for and purchased during and since World War II.

**High Compensation Stakes and Expenses.** Aggregate compensation to plaintiffs in asbestos cases will involve very substantial sums. This report provides data to increase the reliability of projections. Existing estimates vary from $4 billion to $38 billion over the next 30 years.\(^4\) The expenses incurred in this litigation are also substantial. They have been alleged by others to equal, or perhaps exceed by four-fold,\(^5\) the net compensation received by injured claimants.

**The Chapter 11 Reorganizations.** A new set of conditions and problems has been produced by the Manville Corporation, UNR Industries, and Amatex Corporation bankruptcy proceedings. A central issue is whether the bankruptcy court can estimate and provide for future claims as part of a plan of reorganization. But the disruption caused by these bankruptcies has affected many different activities. Existing cases have been stayed with respect to defendants who have filed for Chapter 11 reorganization, the bargaining positions of both plaintiffs and defendants have been affected (but in ways not yet fully clear), and attorneys on both sides have been forced to spend substantial time concerned with the interests of existing and future claimants in bankruptcy instead of tort proceedings. The situation is dynamic and the ultimate impact on costs is as yet unclear.

**The Concentration of Cases.** Slightly over half of the pending cases are in the federal courts. Most of the state actions are pending in a dozen or fewer urban courts. The main factors determining where cases are filed seem to be (a) the degree to which the state law is perceived to be relatively favorable to asbestos plaintiffs, and (b) proximity to major users of asbestos, particularly World War II shipyards, which by themselves account for about half of all outstanding cases. Some major jurisdictions have very few asbestos suits; for instance, in New York the statute of limitations has been construed to run from the point of last exposure, so that the deadline for filing usually falls during the latency period before any disease can be detected. But the courts where the suits are concentrated have them in very large numbers, as in Los Angeles and Philadelphia, for example.

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\(^4\)For details, see "Overview of Previous Studies," below.

Impact on Other Toxic Substance Torts. The shape that responses to the problems posed by asbestos claims ultimately take is critically important to tens of thousands of injured workers and their families, to the businesses involved in asbestos mining, distribution, and use, to their insurers, perhaps to the government, and to the civil litigation system. The asbestos problem may be unique and hence warrant its own unique solution; on the other hand, it may be important as a precedent for other toxic substances, especially if they are determined to have major consequences for public health.

Proposed Responses. Because the asbestos problem is immense and because it may influence public reactions to a set of major health and legal problems, many different responses have been and are being proposed. At least three generic lines of reform have been suggested by various people and organizations: Increased coordination and efficiencies within the existing tort system are being explored broadly and in depth; mediation, arbitration, and other forms of dispute resolution systems are being considered as alternatives to formal litigation; and various new, government-mandated compensation systems have been proposed. However, cooperation between agents of plaintiffs and defendants/insurers has been limited to date, as has the progress of federal legislation dealing with asbestos.

Fundamentally, the seriousness of the asbestos litigation problem rests on the facts that much human suffering is involved and that the financial consequences are so large and uncertain as to threaten the very viability of some of the corporate participants. This latter fact has been driven home by the bankruptcy filings that have already occurred. Some firms perceive the cost figures as large enough to move the problem out of the "difficult but manageable" class into the class of "this one could break us."

STUDY OBJECTIVE AND RESEARCH QUESTIONS

The objective of this study is to provide estimates of the costs to all parties in asbestos product liability litigation based on extensive interviews and surveys of defendants, insurers, and plaintiffs' lawyers. The study seeks to answer four major research questions:

- How much compensation are plaintiffs receiving?
- What are defense litigation expenses?
- What are plaintiff litigation expenses?
- How do various factors affect the size of settlements, trial verdicts, and expenses?
The focus of this study is asbestos-related product liability litigation; the study does not include costs incurred by the government, costs of claims filed for workers' compensation, and costs incurred in reorganization under Chapter 11 of the Federal Bankruptcy Act.

This study does not project from current data to "future" costs or recoveries, and does not address such matters as the "appropriateness" of expenses and compensation levels or "changes" in the tort litigation system. We believe, however, that current cost data are crucial in considering the performance of the current system in handling asbestos and similar types of claims.

RESEARCH APPROACH

We employed two research approaches in this study.

In the first, the results of which appear in this report, we sought aggregate data on all closed cases from all major defendants and their insurers, and requested information from most of the major plaintiffs' lawyers. We received excellent cooperation from most of the major defendants and insurers, and useful cooperation from some plaintiffs' lawyers.

Of the 22 major defendants we approached for data, 17 agreed to participate. We interviewed all of them, and each provided aggregated data on settlements, trial awards, and various types of expenses for all of their asbestos litigation cases. These 17 participating defendants represent an excellent cross-section of the defendant population. For nonparticipants, we made estimates using a combination of published data and confidential data from comparable participants. Of the 16 defendants who are named on at least half of all suits filed, 11 participated in this study. Of the approximately 15 defendants named on one-quarter to one-half of all suits filed, 6 participated. We also have some information on about 20 defendants who are named on less than one-quarter of the suits. Thus, we have information sufficient to allow us to make estimates about payments made by all defendants and their insurers. For nonparticipants, we made three different estimates ("low," "high," and "best") by looking

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6Early in the study, we compiled a list of defendants and their insurers that were thought to be the major participants in asbestos litigation. After our data collection was complete, we identified one additional defendant that was named on at least half of all claims filed, and eight additional defendants that were named on between one-quarter and one-half of all claims filed. Data were not sought from these additional defendants.

7By "comparable" organizations, we mean ones that we believe are likely to pay similar average compensation per claim and have similar defense litigation expenses per claim.
at different comparable organizations. This allowed us to establish a high confidence range for our estimates, which are presented in later sections of this report.

Of the 18 major insurers we approached, 12 agreed to cooperate. We interviewed them, and they all provided aggregated data for their asbestos litigation.

Of the 104 plaintiffs' attorneys whom we approached, 27 provided information. We interviewed five of the 27 regarding plaintiff expenses in general, and surveyed the rest by mail regarding a random sample of the cases they had filed.

Because of the sensitivity of litigation compensation and expense data, nearly all participants requested that we treat the information they provided as confidential, that we not identify them in our report, and that we not present data separately for individual participants. So as to obtain complete data from a large number of the major participants, we agreed to these conditions. For most participants, the choice was between good data under confidentiality terms or no data at all.

This approach, however, mainly involves aggregate data for many cases combined. It does not provide detailed information for individual cases that are needed to understand how various factors (such as type of injury, type of worker, type and location of court, and year closed) affect the size of compensation and expenses. Consequently, our second approach involved selecting a nationally representative sample of individual claimants and seeking information on settlements, trial awards, and expenses for each of those individual cases from the plaintiff's lawyer, and from major defendants on the case and their insurers. The results will be reported in our second study later in 1983.

For interested readers, the rest of this section briefly reviews previous studies that shed some light on asbestos litigation costs.

OVERVIEW OF PREVIOUS STUDIES

A 1976 survey of approximately 3,000 product liability lawsuits by the Insurance Services Office included only 51 asbestos-associated claims; of these, 29 received total compensation averaging $48,000 paid between July 1976 and March 1977. Expenses were not reported


The $169,000 average per-claim figure that is often quoted from this ISO report was obtained by assuming the payment made in 1976 had actually been paid at the
separately for asbestos cases. Since the great majority of closed asbestos-related lawsuits were closed in the 1980s, these few 1976 cases are mainly of historical interest.

A major study completed in 1981 by Irving Selikoff and his associates for the Department of Labor described and analyzed compensation experiences resulting from asbestos-associated occupational diseases. They estimate that more than 21 million U.S. workers are still alive who were significantly exposed to asbestos over the last 40 years, and project 200,000 excess deaths (above the number normally expected in the population) by the end of the century from asbestos-associated disease. As a part of the Selikoff study, Peter Barth conducted a study of compensation paid for asbestos-associated disease in 2,271 asbestos insulation workers who died between 1967 and 1976. He obtained data on 105 deaths that resulted in product liability lawsuits. The average court award for the eight tried cases was $57,750, and the average litigation expense paid by the plaintiff was $16,600. For 59 cases that resulted in settlements, the average compensation was $72,000, and the average litigation expense paid by the plaintiff was $28,500. (For cases where both legal fees and settlement were known, litigation expenses averaged 37 percent of the settlement amount, but ranged from 8 to 73 percent.) The incidence of lawsuits averaged 16 percent but rose with time from 3 percent for 1967-1968 deaths to 32 percent for 1975-1976 deaths. The average compensation by cause of death for this small sample of cases was $46,000 for asbestosis, $61,000 for lung cancer, and $100,000 for mesothelioma.

A 1982 study headed by Paul MacAvoy forecast the number of excess asbestos-related deaths and disabilities over the next 30 years, and estimated the resulting compensation payments generated by product liability lawsuits. The study reviewed various epidemiologic study projections and estimated excess mortality due to asbestos through the year 2015 at between 154,000 and 450,000, with the most likely estimate being 265,000. Since not all asbestos-related deaths will result in lawsuits, MacAvoy used information from Barth to extrapolate the number of new lawsuits that would be filed. MacAvoy

time of the "occurrence" of the bodily injury, and then inflating by 25 percent per year. The actual amount paid, however, averaged $48,000, not $189,000.

10Selikoff, op. cit.
11Peter S. Barth, Compensation for Asbestos-Associated Disease: A Survey of Asbestos Insulation Workers in the U.S. and Canada, Environmental Sciences Laboratory, Mount Sinai School of Medicine of the City University of New York, January 1981.
13Barth, op. cit.
estimated that approximately 200,000 deaths will result in lawsuits.\textsuperscript{14} The study further estimated that future compensation payments would be between $8 billion and $87 billion, with the "most likely estimate" of the present value\textsuperscript{15} of the awards being $38 billion. The wide range indicates the high degree of uncertainty in the estimates. The low estimate is based on $100,000 per claim (obtained by inflating data on the amounts paid to survivors of only 105 asbestos insulators over the period 1967-1976).\textsuperscript{16} What MacAvoy calls the "most likely estimate" is based on $233,000 per claim (obtained by inflating 1976 adjusted data from the previously mentioned ISO survey of product liability claims,\textsuperscript{17} which included only 51 asbestos-related claims).\textsuperscript{18} MacAvoy's "high estimate" is based on $350,000 per claim (obtained by averaging amounts reported in the Asbestos Litigation Reporter between August 1979 and September 1981; these predominately were awards from trials that averaged substantially higher than the much more prevalent settlements). MacAvoy estimates defence legal and other expenses of this litigation to be 34 percent of awards and settlements, using data on all product liability cases closed in 1976 (only a few of which involved asbestos).\textsuperscript{19}

The investment firm of Conning & Company has estimated that the insurance industry's ultimate liability for asbestos claims will be in the $4 to $10 billion range. The firm estimates the total number of claims filed by the year 2010 will be in the range of 83,000 to 178,000, which means at least 59,000 new claims above the 24,000 filed as of March 1983. The firm estimates that the average settlement was $35,000 per claim in 1980-1981, but did not present data on expenses, which it assumes equaled the settlement amount.\textsuperscript{20}

The Manville Corporation, in support of its Chapter 11 bankruptcy filing, has estimated that at least 32,000 new asbestos-related claims will be filed through the year 2001\textsuperscript{21} that could require it to spend approximately $2 billion. These estimates assume no increased

\textsuperscript{14} Calculated by The Institute for Civil Justice from data presented in MacAvoy, op. cit. MacAvoy assumes that 32 percent of excess deaths resulted in litigation in 1975, that the percentage grew 4 percent per year, and that after 1992 all excess deaths will result in litigation.

\textsuperscript{15} Future dollars discounted to 1980 present value dollars at 2 percent per annum.

\textsuperscript{16} Barth, op. cit.

\textsuperscript{17} Insurance Services Office, op. cit.

\textsuperscript{18} Ibid. The actual unadjusted compensation per claim closed in that year averaged $48,000.

\textsuperscript{19} Ibid.


propensity to sue over time, and a $40,600 disposition cost per case for the Manville Corporation and its insurers. By the year 2009, a study commissioned by the Manville Corporation foresees 5,963 new mesothelioma suits, 2,660 new lung cancer suits, and 27,150 new asbestosis suits.\(^{22}\) The $40,600 figure was estimated by the Manville Corporation by taking an average expenditure per claim weighted by the number of claims of each type; specifically, they averaged their "current costs" of $75,000 in compensation per mesothelioma case, $45,000 per lung cancer case, and $25,000 per asbestosis case, plus average defense costs of approximately $7,500 for each case.\(^{23}\) The $7,500 figure amounts to 23 percent of the compensation paid to the claimant.


II. CHARACTERISTICS OF ASBESTOS LITIGATION

Some key characteristics of asbestos product liability litigation presented in this section include the number of lawsuits and claimants, the number of defendants per claim, and the number of insurance companies involved. We also present information on caseload characteristics—for example, information on the state and type of court where the lawsuits have been filed, filing and disposition dates, type of worker, and type of injury. Characteristics of the open and closed case are compared using limited available data.

In compiling this summary information, we worked with claim data from 12 major insurers and 17 major defendants, as described previously. Most of the data on closed claims are from a national database containing over 3,000 claims closed with all or nearly all defendants between January 1980 and August 1982. We have less information about open cases; but we present some information from a database on almost 17,000 claims pending in the fall of 1982.

NUMBER OF LAWSUITS AND CLAIMS

As of August 1982, approximately 16,500 product liability lawsuits had been filed alleging asbestos-related injury. Nearly all asbestos claims were filed as lawsuits. Most were filed by individual claimants, but some involved large groups. The number of claimants was approximately 21,000 in August 1982 and had risen to about 24,000 by March 1983.

NUMBER OF DEFENDANTS PER CLAIM

Over 300 different defendants have been named on asbestos product liability suits to date. A total of 16 corporations are named as defendants on at least half of all the suits. Another 15 or so corporations are involved in one-fourth to one-half of the suits; hence, most defendants are involved in fewer than one-fourth of the cases.

Plaintiffs sue an average of approximately 20 defendants, frequently because their employers (such as shipyards or insulation companies) were supplied with asbestos products by many corporations over the years of employment. The plaintiff whose claim has been either
tried, settled with all or nearly all defendants, or dismissed, has filed suit against an average of 16 defendants. One-fourth filed against 9 or fewer defendants; one-fourth filed against 22 or more. This multiplicity of defendants contributes to the time and cost of resolving these claims.

NUMBER OF INSURANCE COMPANIES

Asbestos defendants typically have had several primary and excess insurance carriers over the past 40 years when injured claimants' exposure to asbestos may have occurred. Generally, only one or two of the primary insurers for each defendant have paid on claims to date, although more may do so in the future. Most defendants have not exhausted primary insurance, although a small number are currently collecting on excess layers of insurance.

About a dozen major insurers are deeply involved; another 15 to 20 have made significant payments to date; and about 50 insurers have some involvement. Primary insurance companies each have paid significant compensation for from one to nine of the major defendants.

STATES AND COURTS WHERE CASES ARE FILED

Asbestos-related lawsuits have been filed in at least 48 states, but 69 percent of them were filed in only five states (California, Massachusetts, New Jersey, Pennsylvania, and Texas). By far the highest number, 29 percent of the total, were filed in California. Of the claims closed through August 1982, fully 71 percent were in the same five states, with by far the most closed in California and New Jersey. In some states where few cases have been filed, none have yet been fully closed. In most states, fewer than 20 percent of the cases have reached disposition.

Nationwide, just over half of the closed claims were filed in federal rather than state courts, but in New Jersey and Texas the number is over 90 percent. However, three major exceptions are California, Pennsylvania, and South Carolina, where over two-thirds of the closed claims were filed in state courts. All together, federal courts have tried about 10 percent more suits than state courts.
TIME FROM FILING TO DISPOSITION

Our detailed data apply only to cases closed between January 1980 and August 1982. Some were filed as early as 1975 and 35 percent were filed before 1979; 26 percent were filed in 1979, 20 percent in 1980, and 18 percent in 1981-1982.

Most defendants and insurers reported an average of two to three years from case filing to disposition. For the 90 percent of claims that were disposed of in less than five years, the average time to disposition was 22 months. Among the states where 100 or more claims have been closed, New Jersey had the largest percentage of closed claims that took five or more years (51 percent). Even in California, where there were relatively few dismissals and the urban courts are heavily backlogged, almost a third of the closed claims took less than two years from filing to disposition.

Not surprisingly, the majority of cases pending at the end of 1982—63 percent—were filed during 1981 and 1982. Only 5 percent of the pending caseload had been filed before 1979.

DISPOSITION OF THE CASELOAD

Approximately 18 percent of the closed claims were dismissed or withdrawn,\(^1\) and 78 percent resulted in settlement before trial began. Only 4 percent reached trial, including those that subsequently settled.

Approximately 3,800 claims had been closed or substantially closed (i.e., either been tried, settled with all or nearly all defendants, or dismissed and not refiled) by the end of August 1982, when the Manville Corporation filed under Chapter 11 of the Federal Bankruptcy Act. This included about 170 claims that either settled during trial or went to verdict by that date. Most of these claims were tried, settled, or dismissed after January 1, 1980; only about 600 claims (16 percent of the total) were closed in the 1970s. Typically, each one of the major defendant corporations has tried, settled, or secured the dismissal of between 2,000 and 6,000 claims. Most of the filed claims have been partially but not completely settled; we know of at least 16,000 claims that have been closed with respect to one or more defendants.

The vast majority of claims, approximately 20,000 of the 24,000 filed, were still open or partially open as of March 1983. Since the Manville Corporation is a major defendant in nearly all of these

\(^1\)Some of these were or will be refiled.
claims, its Chapter 11 bankruptcy filing has prevented complete closure of any substantial additional number of claims since August 1982. Other defendants, however, have been settling and trying cases since then.

CLAIMANT DEMOGRAPHIC CHARACTERISTICS

The vast majority of claimants have been male former workers whose jobs brought them into contact with asbestos. We estimate that only about 5 percent of claimants are women filing for their own injuries. About 20 percent of the closed claims, however, were filed by spouses, dependents, and estates of deceased workers.

Because of long disease latency periods among asbestos claimants, most claimants (or claimants’ decedents) were over 50 years old at the time of filing suit. Among the approximately 1,500 claims closed between January 1980 and August 1982 for which we have date-of-birth information, the average age of claimants filing on their own behalf was 56 years at the time of filing. For all closed claims, the age distribution among self-claimants living at the time of filing was as follows: 17 percent under 40 years old, 13 percent in the 40s, 34 percent in the 50s, 29 percent in the 60s, and 6 percent age 70 or older.

Our data base on closed claims contains no information about ethnicity or income levels of claimants, nor does it show occupational status.²

WORKER CLASSIFICATION

Although workers in many industries are exposed to asbestos, three major worker types account for the vast majority of asbestos-related suits filed through 1982: 39 percent of closed claims were filed by shipyard workers, 33 percent by asbestos products factory workers, and 20 percent by insulation workers. Only 8 percent had "other" or "unknown" types of work.

An even greater percentage of the 16,000 pending claims were brought by shipyard workers (51 percent), while smaller percentages were brought by asbestos product factory workers (12 percent) and insulation workers (14 percent). The "other" and "unknown" groups comprised 13 percent and 10 percent, respectively.

²Barth, op. cit., Sec. 8, provides more detail about claimant characteristics but covers a much smaller number of claims.
INJURY CATEGORIES

A number of diseases are allegedly caused, at least in part, by inhalation of asbestos fibers. However, most research on disease incidence and lawsuits has focused on the three main diseases of asbestosis, lung cancer, and mesothelioma. Our limited data on closed claim injury are currently being supplemented with injury data for a national sample of 563 claims; those data will be presented in the forthcoming companion-piece to this report.

Among all closed claims, we estimate that approximately 14 percent of injured workers were deceased by the time the claim was closed, but we have no reliable data on the disease that allegedly caused death or on diseases alleged by surviving claimants. Insulation workers had the highest percentage of deaths (at 21 percent).

According to Congressional testimony provided by the Manville Corporation, 92 percent of the lawsuits filed against Manville in 1981 were asbestosis cases, 4 percent were lung cancer, and 4 percent mesothelioma.\(^3\) Manville projects that future lawsuits through the year 2001 will consist of 76 percent asbestosis, 17 percent mesothelioma, and 7 percent lung cancer cases.\(^4\)

\(^3\)Testimony of Richard B. Von Wald, op. cit., p. 111.
\(^4\)Ibid., p. 64.
III. COMPENSATION PAID

TOTAL COMPENSATION

In compiling the summary information presented in this section, we worked with published information and with data collected during interviews with 12 major insurers and 17 major defendants. For other defendants and insurers who did not participate, we made estimates using publicly available information plus information provided by comparable participating organizations. This allowed us to make estimates about payments made by all defendants and their insurers (see "Research Approach" in Sec. I).

From the early 1970s through the end of 1982, approximately $400 million has been paid by defendants and their insurers in total compensation for asbestos-related injury.\(^1\) This amount includes compensation for fully closed product liability lawsuits, as well as partial compensation for cases that are still open with respect to some defendants. It includes total compensation paid in settlements and total trial awards, including punitive damage awards, but excludes all defense legal expenses and related costs.\(^2\) The difference between total compensation paid by defendants and their insurers and net compensation received by claimants is plaintiffs’ legal expenses and related costs.

Of the $400 million total, defendants paid approximately $125 million (31 percent), and their insurers paid the balance. Depending on their insurance coverage, individual defendant companies have paid as low as 1 percent and as high as 88 percent of the total paid in their behalf. After resolution of insurance coverage lawsuits and exhaustion of insurance coverage for some defendants, the proportion paid by the insurers may change.

The 16 corporations (and their insurers) that are named as defendants on at least half of all the suits have paid nearly $300 million or three-fourths of the total, while all of the other approximately 270 defendants and their insurers have paid about $100 million.

\(^1\)Since 84 percent of the compensation has been paid after January 1980, we have not adjusted for inflation.

\(^2\)This also excludes amounts paid by the government and by "workers' compensation" programs.
TOTAL COMPENSATION PER DEFENDANT

The average amount paid by one defendant to one plaintiff is approximately $3,000. Included in this average are all amounts paid by all defendants on closed cases, and amounts paid by some defendants who have settled as of about the end of 1982 on cases that are still open with respect to other defendants. The average payment by the "smaller" defendants is less than $2,000 per claim, while a few defendants average considerably more than that amount per claim.4

TOTAL COMPENSATION PER CLOSED CLAIM

The total compensation per claimant ranged to $1,400,000 for a settled claim, and to at least $2,300,000 for a tried claim.

To estimate the average total compensation from all defendants per claim that has been either tried, settled with all defendants, or dismissed and not refiled, we used the average compensation paid by each individual defendant (actual data for cooperating defendants and insurers, and estimates for others) plus information on the distribution of defendants across claims. We estimated the total for the approximately 3,800 claims that were closed or substantially closed prior to August 26, 1982,4 by adding up the average compensation paid by each named defendant on the claims. Some of the 3,800 claims may still be open with respect to a small number of defendants. To avoid the problem of reporting a partial total, we estimated the total by assuming that every named defendant had closed the case by paying that defendant's average compensation per claim.

The estimated average total compensation for these closed claims was approximately $60,000.5 As shown in Table 3.1, we recalculated using low but reasonable estimates for nonparticipating defendants and found a low estimate to be $55,000 per claim. Similarly, we found a high reasonable estimate to be approximately $65,000 per claim.7

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3We collected data from these organizations over a period of four months in late 1982 and early 1983, and the actual figures from any one company were the most recent cumulative data available at the time of data collection.

4By "larger" or "smaller," we refer to the frequency with which a defendant has been sued in asbestos cases, not to the size of companies.

5The date of the Manville Corporation's filing under Chapter 11 of the Bankruptcy Act.

6Recall that the number of defendants on all filed claims is larger than on closed claims. If we combine the average compensation paid by each defendant and data on defendants named on all claims filed, the resulting estimate is $79,000 per claim.

7Other studies have estimated that the average compensation is as low as $35,000 and as high as $350,000 per claim. Those studies are based on substantially fewer, and usually much older, data than we had available to us (see Sec. 1, "Overview of Previous Studies").
Table 3.1

AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED
PRIOR TO AUGUST 26, 1982

<table>
<thead>
<tr>
<th>Type of Estimate</th>
<th>All Closed Claims Combined&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Tried Claims</th>
<th>Settled or Dismissed Claims&lt;sup&gt;b&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All Claims</td>
<td>Claims with Compensation</td>
<td>All Claims</td>
</tr>
<tr>
<td>BEST estimate of average</td>
<td>$60,000</td>
<td>$73,000</td>
<td>$220,000</td>
</tr>
<tr>
<td>Low estimate of average</td>
<td>55,000</td>
<td>--</td>
<td>210,000</td>
</tr>
<tr>
<td>High estimate of average</td>
<td>65,000</td>
<td>--</td>
<td>230,000</td>
</tr>
</tbody>
</table>

<sup>a</sup>Includes tried cases on appeal.

<sup>b</sup>Dismissed and not refiled.

The reasonably narrow range of our estimate of the average compensation paid is possible only because of the cooperation we have received from so many of the major defendants and insurers. Defendants pay compensation on most but not all claims. On average, 75 percent of the time that a claim has been closed with respect to a particular defendant, that defendant has paid some compensation to the claimant.<sup>c</sup> This percentage varies among major defendants from a low of 38 to a high of 97. In closed claims, over 80 percent of claimants received some compensation. Considering only those claims for which at least one defendant paid compensation, the average total compensation was approximately $73,000 per claim.

TOTAL COMPENSATION PER TRIED CLAIM

Approximately 170 claims were tried (i.e., either settled during trial or went to verdict) prior to August 26, 1982.<sup>d</sup> If we separate tried

<sup>c</sup>Note that this does not mean that 25 percent of the claimants get nothing from all defendants combined, since on any particular claim some defendants may pay while others may not.

<sup>d</sup>A trial with more than one claimant was counted according to the number of claimants.
claims from all others, the average claim in cases in which a trial began produced approximately $220,000 in total compensation, of which approximately $30,000 was for punitive damages.10 These compensation figures include pretrial settlements from defendants who settled before other defendants began trial on the claim.

Of the claims tried prior to August 26, 1982, about 30 percent resulted in no award to the plaintiff. However, because of partial settlement with some defendants prior to trial, only about 20 percent of the plaintiffs in tried cases received no compensation whatsoever. Considering only those tried claims for which some compensation was paid, the average was approximately $275,000 per claim. Given the overall average of $73,000 per claim closed, with compensation, claims that are settled receive substantially less in compensation than claims that are tried. However, the characteristics of tried and settled claims may differ.

TOTAL COMPENSATION PER SETTLED OR DISMISSED CLAIM

Claims that were either settled before trial or were dismissed and not refiled averaged approximately $53,000 in total compensation per claim (our low and high estimates are $48,000 and $57,000).

Influencing this average were the several hundred claims that have been settled in groups for compensation that averaged less than $25,000 per claim. The data available to us suggest that the average compensation paid to plaintiffs in some group settlements is lower than the average when negotiations involve one or only a few plaintiffs. For instance, one consolidated group of approximately 700 settled claims involved an average of less than $25,000 each. Not all group settlements are that low, but if this group alone were excluded from our calculations, the average compensation per closed claim would rise from $60,000 to $69,000. We do not know why this and some other group settlements had lower recoveries than average; perhaps they involved a higher proportion of weak cases than prevails in the universe of cases.

It is also important to note that some unknown proportion of all closed cases reflects questionable claims in which asbestos exposure is more apparent than injury. To estimate the average compensation paid for cases of merit, the questionable claims would have to be deleted. We have not been able to identify these cases, but it is almost

10Most trials do not result in punitive damages; the $30,000 figure is the sum of all punitive damages averaged over all trials.
certain that the average compensation received by meritorious cases is higher than the average that we report.

The group-settlement and weak-case problems are only part of the difficulty in using these compensation averages to establish trends and predict future compensation. Other difficulties with making predictions are possible changes in the nature and distribution of injuries on closed cases, changes in the average number and type of defendants involved, changes resulting from the Chapter 11 bankruptcy filings of some of the defendants, and various possible changes in the efficiency and manner of processing of these claims. We emphasize that the estimates in this section are based on data on all closed or substantially closed cases as of August 26, 1982. More recent and future claims compensation may differ from these figures.
IV. DEFENSE LITIGATION EXPENSES

The defendants and their insurers have incurred three major categories of litigation expenses. The first, which we call allocated expenses, are legal fees and other expenses paid to defense lawyers who are not direct employees of the defendants or their insurers. The other allocated expenses are typically for court fees, medical examinations, travel and stenographic expenses of depositions and trials, and expert witness fees. These expenses are generally allocated to individual plaintiffs’ claims (or groups of plaintiffs’ claims).

The second, which we call unallocated expenses, are usually not allocated to individual plaintiffs’ claims by either the defendants or their insurers. However, we have included them because they are part of the cost of defending asbestos claims. They typically include claims processing expenses and defendant and insurer asbestos litigation supervisors, administrators, and managers (e.g., claims clerks, claims adjusters, data processors, lawyers who are employees of defendants or insurers who supervise outside counsel, and executives to the extent that they spend their time on asbestos litigation). In this category, we sought data on all asbestos litigation expenses that are neither allocated to individual claims, nor for an “organization-versus-organization” lawsuit, nor incurred in connection with Chapter 11 reorganization.

The third category, which we call organization-versus-organization litigation expenses, are predominantly incurred in insurance coverage litigation. The question here does not concern the outcome of individual plaintiffs’ claims, but rather organizations suing other organizations to determine who should pay those claims.

In compiling the summary information presented in this section, as usual we began with published information and with data from the participating insurers and defendants. For those defendants and insurers who did not participate, we made estimates using information provided by participating organizations that were as comparable as possible. To repeat, these estimates are not based on a small sample of claims; they are based on aggregate data from participating companies on all closed or substantially closed claims as of August 1982 and all open claims as of approximately the end of 1982 (depending on when we actually collected data from a particular organization).
DEFENSE ALLOCATED EXPENSES FOR CLOSED CLAIMS

From the early 1970s through 1982, defendants and their insurers spent approximately $190 million for allocated legal and other expenses for asbestos closed claims. This total includes allocated expenses by each defendant that has closed a case with a claimant. For example, if a claim is closed with respect to 6 of 16 named defendants, then the expenses of only those 6 defendants are included; the expenses to date for the remaining 10 defendants are included in the total of open claim expenses.

Of the $190 million, about one-third has been paid by defendants and two-thirds by their insurers. Depending on their insurance coverage, individual defendant companies' allocated expenses have ranged from zero to as high as 96 percent of the total allocated expenses. The percentage paid by the defendants may change after resolution of the various insurance coverage lawsuits.

The principal defendants and their insurers, i.e., the 16 corporations that are named as defendants on at least half of all suits, have paid about $110 million of the total, while the other approximately 270 defendants and their insurers have paid about $80 million.

The average allocated defense expense by one defendant to close a claim with one plaintiff is approximately $1,400. Included in this average are all amounts by all defendants on closed cases, and amounts paid by the defendants who have settled as of about the end of 1982 on cases that are still open with respect to other defendants. The average allocated expense by the smaller defendants and their insurers ranges from $500 up to $1,400 per claim. The principal defendants who are named on at least half the claims filed typically spend $1,500 to $2,000 per closed claim, although some spend outside that range.

To estimate the average total allocated expense per claim that has been either tried, settled with all or nearly all defendants, or dismissed and not refiled, we used the average expenses paid by each defendant and its insurers (actual data for cooperating defendants and insurers and estimates for others) plus information on the particular defendants named on each claim. We estimated the total for the approximately 3,800 claims that were closed or substantially closed prior to August 26, 1982, by adding the average expenses paid by each defendant and its insurers. Some of these 3,800 claims may still be open with respect to a small number of defendants. To avoid the problem of reporting a partial total, we estimated the total allocated expenses by assuming that every named defendant had closed the case at that defendant's average allocated expense per claim.
The estimated average total allocated defense expense for these closed claims was approximately $25,000, or 42 percent of the $60,000 average compensation.\textsuperscript{1} As shown in Table 4.1, we redid the calculations using low but reasonable estimates for nonparticipating defendants and found a low estimate to be $21,000 per claim. Similarly, a high reasonable estimate was $29,000 per claim.

Table 4.1

\textbf{Average Defense Allocated Expense Paid per Claim Closed Prior to August 26, 1982}

<table>
<thead>
<tr>
<th>Type of Estimate</th>
<th>All Closed Claims Combined</th>
<th>Tried Claims\textsuperscript{2}</th>
<th>Settled or Dismissed Claims\textsuperscript{b}</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEST estimate of average</td>
<td>$25,000</td>
<td>$116,000</td>
<td>$21,000</td>
</tr>
<tr>
<td>Low estimate of average</td>
<td>21,000</td>
<td>89,000</td>
<td>18,000</td>
</tr>
<tr>
<td>High estimate of average</td>
<td>29,000</td>
<td>143,000</td>
<td>24,000</td>
</tr>
</tbody>
</table>

\textsuperscript{a}Includes tried cases on appeal.
\textsuperscript{b}Dismissed and not refiled.

The average allocated defense expenses for the 170 claims that either settled during trial or went to verdict prior to August 26, 1982,\textsuperscript{2} were approximately $116,000, or 53 percent of the $220,000 average total compensation. This includes the expenses of both the defendants that settled before trial and of those that went to trial. The wide range between the high and low trial-expense estimates is due to the fact that some cooperating defendants and their insurers gave us precise data on total expenses for all closed cases combined, but did not have separate data on expenses for tried cases.

The average settled or dismissed claim resulted in approximately $21,000 in allocated defense expenses per claim, or 40 percent of the average $53,000 compensation paid by defendants and their insurers. This $21,000 was less than one-fifth of the expense of a trial.

\textsuperscript{1}Recall that the number of defendants on all filed claims is larger than on closed or nearly closed claims. If we combine the average allocated expense paid by each defendant and the defendants named on all claims filed, the resulting estimate is $34,000 per claim.

\textsuperscript{2}A trial with more than one claimant was counted according to the number of claimants.
Our findings indicate that allocated defense expenses averaged 42 percent of total compensation paid by defendants for claims closed prior to August 26, 1982. More recent and future claim expenses may differ from that figure. Defendants on a large number of claims with higher average compensation paid per claim typically have lower expense ratios than the average, and defendants with fewer claims and lower average compensation per claim typically have higher expense ratios than the average (sometimes higher than 100 percent). One major reason for variation in the ratio of allocated expense to compensation among defendants is that each case requires certain threshold litigation expenses; although those expenses rise with increased compensation, they do not rise in proportion to increased compensation. Hence, in general, the higher the average compensation paid by a defendant, the higher the expense will be, but the lower the ratio of allocated expense to compensation.

During interviews with defendants and insurers, we explored reasons why that ratio might differ among companies. The most frequently mentioned reasons appear below. The first two reasons appear consistent with our data. The others cannot be tested using available information, but they clearly have credibility in the defense community. Defendants and insurers told us that the ratio of allocated expense to compensation depends on the following factors:

- **Average compensation:** As compensation per claim increases, expenses rise at a slower rate (see discussion above).
- **Defense strategy:** Companies that seek to settle have lower ratios than they would have if they fully contested most claims.
- **Cooperation among defendants:** Companies that cooperate on discovery or other aspects of the defense keep expenses lower than those that do not.
- **Defense counsel caseload:** Defense lawyers with larger caseloads charge less per case because of economies of scale.
- **Incentives:** If a defendant pays a large portion of defense expenses (and its insurer pays a small portion), then its insurer allegedly has less incentive to economize on the amount spent in resolving the claim.

---

3Other studies have estimated the average allocated defense expense to be as low as 34 percent, and as high as 100 percent, of total compensation paid by defendants. None of these studies is based on extensive data for asbestos cases. A word of caution regarding interpretation of some published data for individual corporations also is in order: Data on allocated expenses are usually the total expenses for both open and closed claims combined. The useful comparison, however, is between closed claim expenses and closed claim compensation paid.
Comparison with Defense Allocated Expenses for Nonasbestos Claims

To evaluate allocated expenses for asbestos litigation defense, one needs a benchmark for comparison. Unfortunately, information on the costs of various types of tort litigation is rare. Further, those who study the defense side of tort litigation usually limit themselves to costs allocated to specific claims; unallocated costs, such as those involved in claims processing, are typically noted only as another, unmeasured component.

Nevertheless, we present the best comparisons available for the size of defense allocated expenses relative to compensation. Closed claim surveys provide the best source of information on allocated expenses, and we chose three national surveys to examine. One, the most appropriate for studying asbestos, is the Insurance Services Office’s (ISO’s) 1976-77 closed claim survey of product liability claims. In addition, we used two malpractice surveys: one prepared by ISO for 1974 claims, and another prepared by the National Association of Insurance Commissioners (NAIC) for 1975-76 claims. Finally, we also used a 1971 U.S. Department of Transportation (DOT) study of automobile accidents which, while not a closed claim survey, was based on national data compiled by the Federal Judicial Center.

Table 4.2 compares ratios of allocated loss adjustment expense to compensation paid in three tort areas (product liability, malpractice, and auto accidents) with those in the asbestos area. The ratio for asbestos is higher than all the others. The auto case is lowest, probably because it has such a high volume of claims, and so many claims are closed without a lawsuit being filed (nearly all asbestos claims are filed as lawsuits). Malpractice claims have higher ratios than auto claims, but only about two-thirds as large as the asbestos ratio. The product liability study, most comparable in subject matter to asbestos claims, shows an overall ratio of 0.35, which is not much lower than the asbestos ratio of 0.42.

The large number of defendants in the average asbestos claim may explain much of the higher asbestos ratio when compared with other tort areas. In the average asbestos case, a $60,000 compensation payment is divided among 16 defendants, most of whom pay an average of less than $5,000 each. Companies paying larger compensation amounts gain economies of scale, since expenses do not increase as fast as compensation payments. Those same economies of scale exist in other tort areas. Table 4.3 shows that for product liability and malpractice settlements, the ratio of allocated expenses to compensation decreases rapidly with compensation payment size, especially in the low payment ranges. A more precise comparison of the asbestos ratio
Table 4.2
RATIO OF ALLOCATED DEFENSE EXPENSES TO COMPENSATION PAID IN SELECTED TORT AREAS

<table>
<thead>
<tr>
<th>Tort Area</th>
<th>Years Claims Were Closed</th>
<th>Settled$^a$</th>
<th>Tried$^a$</th>
<th>Other Method</th>
<th>All Methods Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asbestos$^b$</td>
<td>1980-82</td>
<td>0.40</td>
<td>0.53</td>
<td>N.A.</td>
<td>0.42</td>
</tr>
<tr>
<td>Product liability$^c$</td>
<td>1976-77</td>
<td>0.34</td>
<td>0.59</td>
<td>0.03</td>
<td>0.35</td>
</tr>
<tr>
<td>Malpractice$^d$</td>
<td>1975-76</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
<td>0.28</td>
</tr>
<tr>
<td>Malpractice$^e$</td>
<td>1974</td>
<td>0.26</td>
<td>0.64</td>
<td>0.05</td>
<td>0.27</td>
</tr>
<tr>
<td>Auto accident$^f$</td>
<td>1968</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
<td>0.05</td>
</tr>
</tbody>
</table>

NOTES: This table refers only to defense expense that can be allocated to specific claims and to the total settlement or award. It does not deduct plaintiff expenses from the compensation nor add unallocated costs to expenses. N.A. = not available.

$^a$Settlements during trial are included as trials for the asbestos and product liability study, but as settlements in the malpractice study.

$^b$Data developed in Sec. IV of this report. About 84 percent of the cases were closed in 1980-82; the remainder were closed in the 1970s.


with ratios in other tort areas would require an asbestos column in Table 4.3. Such a comparison will appear in our forthcoming companion report; however, it appears that the higher asbestos ratio can be explained at least in part by the relatively small average compensation payment per defendant in asbestos lawsuits.

DEFENSE ALLOCATED EXPENSES FOR OPEN CLAIMS

In addition to the $190 million in defense litigation expenses for claims that were closed from the early 1970s through the end of 1982,
Table 4.3

RATIO OF DEFENSE ALLOCATED EXPENSES TO TOTAL COMPENSATION PAID IN SETTLEMENTS, BY AMOUNT OF COMPENSATION PAYMENT

<table>
<thead>
<tr>
<th>Compensation Payment Range ($)</th>
<th>Product Liability(^a)</th>
<th>Malpractice(^b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1-5,000</td>
<td>1.29</td>
<td>.78</td>
</tr>
<tr>
<td>5,001-10,000</td>
<td>.85</td>
<td>.35</td>
</tr>
<tr>
<td>10,001-15,000</td>
<td>.30</td>
<td>.27</td>
</tr>
<tr>
<td>15,001-20,000</td>
<td>.27</td>
<td>.22</td>
</tr>
<tr>
<td>20,001-25,000</td>
<td>.22</td>
<td>.19</td>
</tr>
<tr>
<td>25,001 &amp; over</td>
<td>.13</td>
<td>.11</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>.34</strong></td>
<td><strong>.26</strong></td>
</tr>
</tbody>
</table>

Average compensation per defendant: $11,735 $10,156


approximately $230 million was spent by defendants and their insurers for allocated legal and other expenses for asbestos claims that were still *open* with respect to the defendant or insurer reporting the expenses. As with closed claim expenses, about one-third has been paid by defendants and two-thirds by their insurers.

The average allocated defense expense prior to the end of 1982 by *one* defendant with respect to *one* open claim was approximately $700, about half of the $1,400 comparable figure per defendant per closed claim. Nearly every defendant had spent less than $1,000 per open claim.
DEFENSE UNALLOCATED EXPENSES FOR CLOSED CLAIMS

From the early 1970s through the end of 1982, defendants and their insurers spent approximately $65 million in unallocated expenses for closed claims. These typically are claims-processing expenses and administrative or managerial personnel expenses for asbestos litigation that are not allocated to individual claims by defendants and their insurers. For each of the cooperating organizations, we first estimated the total unallocated asbestos litigation expenses for the entire corporation. We usually did so by counting the number of full-time-equivalent (FTE)\(^a\) personnel of different types working on asbestos claims litigation, and then multiplying these FTEs by salaries plus fringe benefits and overhead. We then divided the total corporate unallocated asbestos expenses between open and closed asbestos cases for each defendant in proportion to the division of allocated expenses for that corporation. Our assumption was that claims-processing and managerial effort was divided between open and closed claims (and between defendants insured by the same company) in the same proportion as total allocated expenses were divided. Finally, to estimate unallocated expense per closed asbestos claim, we divided the total unallocated closed claim expense for each insurer and defendant by the number of their closed claims.

Of the estimated $65 million, about 70 percent was spent by insurers and not reimbursed to them by defendants. A few defendants handle their own claims processing (rather than having the insurer handle them completely). The percent of the total unallocated expense paid by the insurer ranged from 19 percent to 89 percent for different defendant-insurer pairs.

The total unallocated expense for a defendant and its insurers combined was fairly constant across defendants and ranged from approximately $350 to $600 per closed claim; the average was approximately $500.

Considering all defendants and their insurers combined, the estimated total unallocated expense per closed claim was about $8,000, as shown in Table 4.4.

\(^a\)For example, a person spending 90 percent of his or her time on asbestos claim litigation matters over a three-year period was counted as 2.7 FTE (3 times 0.30).
Table 4.4

<table>
<thead>
<tr>
<th>Type of Estimate</th>
<th>All Closed Claims Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEST estimate of average</td>
<td>$8,000</td>
</tr>
<tr>
<td>Low estimate of average</td>
<td>$6,000</td>
</tr>
<tr>
<td>High estimate of average</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

*a* Includes tried cases on appeal. We did not have information on tried claims separate from settled or dismissed claims.

DEFENSE UNALLOCATED EXPENSES FOR OPEN CLAIMS

From the early 1970s through the end of 1982, approximately $80 million was spent by defendants and their insurers for unallocated expenses on claims that were still open with respect to the defendant and insurer reporting the expenses. As with closed claim unallocated expenses, about 70 percent of the total was paid by insurers.

The average unallocated defense expenses prior to the end of 1982 by one defendant and its insurers with respect to one open claim were approximately $250, about half of the $500 comparable figure per defendant per closed claim.

ORGANIZATION-VERSUS-ORGANIZATION LITIGATION EXPENSES

Uncertainty still prevails about who is responsible for compensating claimants for asbestos-related injury. The division of payment responsibility between defendants and their insurers is being litigated; the division of responsibility among defendants is unclear; and the involvement of the U.S. Government is the subject of ongoing litigation. This litigation between organizations differs from the suits by injured individuals in that the question is not how much the allegedly injured party should receive, but instead how the responsibility for payment is to be divided among the defendants, their insurers, and other organizations. Nearly all major defendants and insurers are involved in one or more lawsuits of this type—usually more.
During the long latency period of asbestos-related disease, each defendant typically has had several different insurers and may have been self-insured for some years. Because of questions that have been raised about the interpretation of the insurance contract language that appeared in most policies, it is not easy to judge whether insurance coverage applies to a particular claimant alleging injury from asbestos. In simplified terms, different generic interpretations of policy language that have been asserted include: (1) "exposure" (an insurer pays some amount if the defendant had coverage when the claimant was exposed to asbestos); (2) "manifestation" (an insurer pays some amount if the defendant had coverage when the claimant's injury from asbestos first was diagnosed or diagnosable); and (3) "triple trigger" (an insurer pays some amount if the defendant had coverage during the time of asbestos exposure or the time of injury manifestation or the time of so-called "exposure in residence" when the claimant had no new exposure to asbestos, but asbestos already in his or her body from prior exposures was still causing injury). Involvement of more than one insurer for a defendant may require prorating amounts to be paid among insurers. A related question of insurance coverage concerns the insurance carriers' duty to pay for defense expenses on these claims after limits of coverage are reached. Because of the high legal costs of defense, this question has major significance.

We know of at least 34 cases that were pending in December 1982 among defendants and insurers seeking declaratory judgments on the insurance coverage question. In addition, at least four such cases had been dismissed; one judgment adopted exposure, exposure in residence, and manifestation as "triple triggers" of coverage; four judgments adopted an exposure theory of insurance coverage; and one judgment pointed to manifestation as the occasion of insurance coverage.

In at least five cases, defendants have sued other parties for indemnification against losses: Some firms that processed and used asbestos are seeking compensation from their asbestos suppliers; and some firms are seeking compensation from the U.S. Government, primarily because of the various roles it played in the use of asbestos in shipyards.

5Keene v. INA, USDC-D.C. No. 78-1011.
In addition, at least two cases involve conflicts between U.S. and Canadian law regarding discovery and enforcement of judgments.

Most of this organization-versus-organization litigation is still ongoing, and the few court rulings have not been consistent in their interpretation of insurance contracts. The U.S. Supreme Court has so far refused to hear any coverage cases. Many corporations have interim agreements concerning the shares that the defendant and the insurer will pay; the expectation is that the amount each pays on closed claims may be revised as a result of further litigation or negotiation.

Defendants and insurers participating in this study gave us data on the total amount they had paid outside counsel for these lawsuits, and they sometimes provided an estimate of the value of time spent by internal corporation personnel. For nonparticipating corporations we estimated the amount they had spent, using an average amount spent by comparable participating corporations. The following figures are estimates of the total expenditures by defendants and insurers, both internally and for outside counsel, through the end of 1982.

We estimate that approximately $41 million was spent on organization-versus-organization litigation related to alleged injury from asbestos prior to the end of 1982. We do not include large discovery expenses incurred in early 1983 on certain of these cases pending in California. Company officials we interviewed indicated that this litigation between organizations will probably take three to five years to resolve completely. Consequently, the ultimate total litigation expense in these lawsuits is certain to be much larger than the expenditures reported above.

Of the $41 million spent to date, approximately $21 million was spent by insurance companies and $20 million by defendants. Of the total for insurance companies, 89 percent was for outside legal counsel and 11 percent was expended internally. Of the total for defendants, 87 percent was for outside counsel, and 13 percent was expended internally. Since there are approximately 44 cases of this type, the expenditures through 1982 have been just under $1 million per lawsuit.

Nearly all the defendants are suing each of their several insurers. Individual insurance companies are each involved with up to 19 of these lawsuits thus far and have spent an average of anywhere from $12,000 to $334,000 per lawsuit. Defendants are each involved with up to six of these lawsuits, with expenditures to date ranging from an average of $12,000 to over $1 million per lawsuit.

The costs of this litigation among organizations are relevant to all claims by individual injured parties, including cases that have been closed, cases that have been filed but are still open, and future cases
that have not yet been filed. These costs would not exist in the absence of the personal injury litigation, and hence are an important related expense item.

Since these lawsuits were indirect results of the litigation brought by individual injured parties, the $41 million ought to be prorated over individual claims. If divided by the approximately 24,000 individual claims that have been filed so far, the $41 million amounts to approximately $1,700 per claim (see Table 4.5).

Table 4.5

<table>
<thead>
<tr>
<th>Type of Estimate</th>
<th>All Closed Claims Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEST estimate of average</td>
<td>$1,500</td>
</tr>
<tr>
<td>Low estimate of average</td>
<td>400</td>
</tr>
<tr>
<td>High estimate of average</td>
<td>1,700</td>
</tr>
</tbody>
</table>

We do not know what the eventual total litigation expenses will be for these organization-versus-organization lawsuits, and we do not know how many individual claims will be filed in the future. If we assume (based on discussions with the involved corporations) that the total expenditures will double before these lawsuits are resolved, and if we take a low estimate of the number of future claims, such as the 32,000 cited by the Manville Corporation in its Chapter 11 bankruptcy filing, then the prorated cost of this litigation would be reduced to approximately $1,500 per past, present, and future individual claim. If we were to use a higher estimate of the number of future filings, such as the approximately 200,000 cited as "most likely" by Paul MacAvoy, then the expense per individual claim might be as low as $400. This litigation is expensive, then, but when considered in relation to all other expenses, it is a relatively small amount per claim.

The major consequence of these lawsuits may be the uncertainty and delay caused by lack of resolution of issues such as insurance coverage. Irresolution leads to increased delay and to increased defense legal expenditure in settling individual claims.
TOTAL DEFENSE EXPENSES PER CLOSED CLAIM

Combining all three types of defense litigation expenses, we estimate a total of $35,000 per closed claim. Recall that in Sec. III we estimated the average total compensation per closed claim to be $60,000. Hence, total defense expenses were equivalent to 58 percent of total compensation paid. Of the total defense expenses, allocated expenses were 72 percent, unallocated expenses were 23 percent, and organization-versus-organization litigation expenses were 4 percent.

As shown in Table 4.6, if we take our low estimate for each type of defense expense instead of our best estimate, the total defense expense as a percentage of total compensation drops from 58 to 46 percent. Similarly, taking the high estimate for each type of expense

Table 4.6

<table>
<thead>
<tr>
<th>Type of Estimate</th>
<th>All Closed Claims Combined</th>
<th>Percent of Total Compensation</th>
<th>Dollars per Closed Claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEST estimate of average</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocated</td>
<td>42</td>
<td>25,000</td>
<td></td>
</tr>
<tr>
<td>Unallocated</td>
<td>13</td>
<td>8,000</td>
<td></td>
</tr>
<tr>
<td>Organization v. organization</td>
<td>3</td>
<td>1,500</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>58%</td>
<td>$35,000^2</td>
<td></td>
</tr>
<tr>
<td>Low estimate of average</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocated</td>
<td>35</td>
<td>21,000</td>
<td></td>
</tr>
<tr>
<td>Unallocated</td>
<td>10</td>
<td>6,000</td>
<td></td>
</tr>
<tr>
<td>Organization v. organization</td>
<td>1</td>
<td>400</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>46%</td>
<td>$27,000^2</td>
<td></td>
</tr>
<tr>
<td>High estimate of average</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocated</td>
<td>48</td>
<td>29,000</td>
<td></td>
</tr>
<tr>
<td>Unallocated</td>
<td>17</td>
<td>10,000</td>
<td></td>
</tr>
<tr>
<td>Organization v. organization</td>
<td>3</td>
<td>1,700</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>68%</td>
<td>$41,000^2</td>
<td></td>
</tr>
</tbody>
</table>

^2To nearest thousand dollars.
raises the total defense expense to 68 percent of total compensation paid.

Defense expenses by a defendant and its insurers combined varied widely among defendants from a low of about 29 percent⁶ of the total compensation they paid to a high of 209 percent⁷. The average was 58 percent, toward the low end of the range, because the principal defendants with larger numbers of lawsuits and higher average compensation paid tended to have lower ratios of expense to compensation than defendants who were involved in fewer suits and paid less in compensation per claim. Those defendants named on fewer than half the suits, for example, usually had average expenses that were at least 90 percent of their average total compensation per case. Those 16 principal defendants named on more than half the suits, with three exceptions, had average total expenses that were less than 90 percent of their average total compensation per case.

⁶The average for the three defendants with the lowest percentages for which we had data.
⁷The average for the three defendants with the highest percentages for which we had data.
V. PLAINTIFF LITIGATION EXPENSES

This section presents information secured from plaintiffs' attorneys about the ratios of plaintiffs' legal fees and other litigation expenses to the total compensation paid by defendants and their insurers. The data behind the estimates shown in Table 5.1 were provided by 27 plaintiffs' lawyers practicing in 10 states. (See "Research Approach," Sec. I.) Expenses other than fees generally consist of travel and stenographic expenses for depositions and trials, medical examinations, and expert witness fees. They presumably vary with the difficulty of product identification, the type of plaintiff's injuries, and on whether the case was prepared for trial and tried.

Table 5.1

AVERAGE PLAINTIFF LITIGATION EXPENSES PER CLAIM CLOSED
In Percentage of Total Compensation Paid by Defendants and Their Insurers

<table>
<thead>
<tr>
<th>Type of Estimate</th>
<th>All Closed Claims Combined</th>
<th>Tried Claimsa</th>
<th>Settled Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Legal Fees</td>
<td>Other Expenses</td>
<td>Legal Fees</td>
</tr>
<tr>
<td>BEST estimate of average</td>
<td>36%</td>
<td>5%</td>
<td>40%</td>
</tr>
<tr>
<td>Low estimate of average</td>
<td>34</td>
<td>4</td>
<td>35</td>
</tr>
<tr>
<td>High estimate of average</td>
<td>39</td>
<td>6</td>
<td>40</td>
</tr>
</tbody>
</table>

aIncludes tried cases on appeal.

From information provided by these lawyers, we have concluded that legal fees in tried cases typically amount to 33 to 45 percent of the total compensation; the most common fee for tried cases is about 40 percent of the total. In tried cases, other expenses range from 1 to
12 percent of total compensation, but are generally from 6 to 9 percent. The ratios of both legal fees and related expenses to total compensation paid by defendants and their insurers are somewhat lower for cases that are settled. Legal fees for settled cases typically run from 28 to 40 percent, with an average of 36 to 37 percent. Expenses usually are 5 to 6 percent of total compensation, but on occasion can be much higher or lower.¹

These cases are almost always handled on a contingency fee basis by the plaintiff's lawyer. Hence, for cases that have zero compensation from defendants and their insurers, the plaintiff usually pays no legal fees.

¹Barth's estimate of the ratio of plaintiffs' legal expenses to total compensation paid by defendants and insurers for settled cases is 37 percent (as presented in Selikoff, op. cit., p. 446).
VI. TOTAL EXPENSES AND COMPENSATION

About $1 billion in compensation and litigation expenses was spent on asbestos product liability litigation as of the end of 1982, of which about one-third was paid by defendants and two-thirds by insurers. Of total compensation paid by defendants and insurers, 41 percent was used by plaintiffs for litigation expenses.

As shown in Table 6.1, the $1 billion total includes $345 million expended on claims that are still open, and $661 million on claims that were closed by the defendant or insurer making the expenditure.

Of the $661 million figure, $361 million was spent on 3,800 claims that were tried, settled with respect to all or nearly all defendants, or dismissed and not refiled prior to August 26, 1982, when the Manville Corporation's Chapter 11 bankruptcy filing prevented complete closure of any substantial additional number of claims. The remaining $300 million of the $661 million was for closure of claims by some defendants that are still open with respect to a significant number of other defendants.

Of the $400 million paid in total compensation by defendants and insurers, plaintiffs received an estimated $236 million after deducting an estimated $164 million in legal fees and other litigation expenses. Of that $400 million, $228 million was for claims that were closed with respect to all or nearly all defendants; the remainder was for closure of claims by some defendants that are still open with respect to a significant number of other defendants.

Table 6.2 summarizes the average compensation and defense and plaintiff litigation expenses per claim closed prior to August 26, 1982. More recent and future expenses and compensation may differ from these figures. Our forthcoming report will analyze how various factors (such as type of injury, type of worker, type and location of court, and year the case was closed) affect the size of compensation and expenses.

The average total compensation paid per claim by all defendants and their insurers was approximately $60,000 and required total defense litigation expenses of $35,000 (58 percent of total compensation). Thus, the total costs to defendants and their insurers averaged about $95,000 per closed claim. After deduction of plaintiff's litigation expenses of about $25,000 (41 percent of total compensation), the plaintiff received an average of $35,000.

These figures may be better understood by considering the total amount that defendants, insurers, and plaintiffs pay for every one
<table>
<thead>
<tr>
<th>Item</th>
<th>Claims Closed by Defendant</th>
<th>Claims Open with Respect to Defendant</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total compensation paid by defendants and insurers</td>
<td>$400</td>
<td>$0</td>
<td>$400</td>
</tr>
<tr>
<td>Allocated defense expenses (e.g., legal fees and related expenses)</td>
<td>190</td>
<td>230</td>
<td>420</td>
</tr>
<tr>
<td>Unallocated defense expenses (e.g., claims processing and managerial expenses)</td>
<td>65</td>
<td>80</td>
<td>145</td>
</tr>
<tr>
<td>Organization-v.-organization litigation expenses (e.g., regarding insurance coverage)</td>
<td>6</td>
<td>35</td>
<td>41</td>
</tr>
<tr>
<td>Total expenses and compensation paid by defendants and their insurers</td>
<td>$661</td>
<td>$345</td>
<td>$1,006</td>
</tr>
<tr>
<td>Plaintiff's legal fees and other litigation expenses</td>
<td>$164</td>
<td>0</td>
<td>$164</td>
</tr>
<tr>
<td>Plaintiff net compensation received after deducting litigation expenses</td>
<td>$236</td>
<td>0</td>
<td>$236</td>
</tr>
</tbody>
</table>
Table 6.2
AVERAGE EXPENSES AND COMPENSATION PAID PER CLAIM
CLOSED PRIOR TO AUGUST 26, 1982

<table>
<thead>
<tr>
<th>Item</th>
<th>As Percent of Total Compensation Paid by Defendants and Insurers</th>
<th>As Percent of Net Compensation Received by Plaintiff</th>
<th>As Percent of Total Expenses Plus Compensation Paid by Defendants and Insurers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total compensation paid by defendants and insurers</td>
<td>$60,000</td>
<td>100%</td>
<td>63%</td>
</tr>
<tr>
<td>Total defense litigation expense</td>
<td>$35,000</td>
<td>58%</td>
<td>37%</td>
</tr>
<tr>
<td>Total expenses and compensation paid by defendants and their insurers</td>
<td>$95,000</td>
<td>158%</td>
<td>100%</td>
</tr>
<tr>
<td>Plaintiff litigation expense</td>
<td>$25,000</td>
<td>41%</td>
<td>26%</td>
</tr>
<tr>
<td>Net compensation plaintiff received after deduction of litigation expenses</td>
<td>$35,000</td>
<td>59%</td>
<td>37%</td>
</tr>
</tbody>
</table>

dollar in net compensation that goes to the plaintiff. For every $2.71 paid by defendants and insurers, defense litigation expenses are an estimated $1.00, plaintiff’s litigation expenses are an estimated $0.71, and the plaintiff receives $1.00. The plaintiff receives an estimated 37 percent of the total expended.¹

¹To establish a high confidence range for the percentage that the plaintiff receives after expenses, we redid the calculations using our low and high estimates rather than our best estimates. Using our low estimates of expenses with our high estimate of average compensation, the plaintiff receives 43 percent. Using our high estimates of expenses with our low estimate of compensation, the plaintiff receives 31 percent. This 31 to 43 percent range represents the extremes; we believe the correct number is close to our 37 percent "best estimate."

The average numbers cited above reflect the experiences of all plaintiffs and defendants combined; the experiences of individual plaintiffs and defendant organizations may differ from these averages, as previously discussed in the text. For example, plaintiffs received an estimated 46 percent of the total expended by the three defendants (for which we had data) with the lowest defense expenses as a percentage of total compensation. On the other hand, plaintiffs received only an estimated 19 percent of the total expended by the three defendants (for which we had data) with the highest defense expenses as a percentage of total compensation.
Other ICJ Publications

R-2716-ICJ
The Law and Economics of Workers' Compensation
Policy Issues and Research Needs
L. Darling-Hammond and T. J. Kriesner
1980

R-2717-ICJ
Models of Legal Decisionmaking
Research Designs and Methods
D. A. Waterman and M. A. Peterson
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R-2732-ICJ
Court Efforts to Reduce Pretrial Delay
A National Inventory
P. Eberner, with the assistance of J. Adler, M. Selvin, and M. Yesley
1981

R-2733-ICJ
Judicial Arbitration in California
The First Year
D. Hensler, A. Lipson, and E. Rolph
1981

R-2792-ICJ
The Resolution of Medical Malpractice Claims
Modeling the Bargaining Process
P. M. Danson and L. A. Lillard
1982

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The Resolution of Medical Malpractice Claims
Research Results and Policy Implications
P. M. Danson and L. A. Lillard
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The Frequency and Severity of Medical Malpractice Claims
P. Munch Danson
1982

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The Civil Jury
Trends in Trials and Verdicts, Cook County, Illinois, 1960-1979
M. A. Peterson and G. L. Priest
1982

R-2882-ICJ
The Potential Use of Cost-Benefit Analysis in Developing Voluntary Safety Standards for Consumer Products
L. L. Johnson
1982

R-2888-ICJ
Cost of the Civil Justice Systems
Court Expenditures for Processing Tort Cases
J. Kakalik and A. Robyn
1982
A special bibliography (SB 1064) provides a list of other Rand publications in the civil justice area. To request the bibliography or to obtain more information about The Institute for Civil Justice, please write or telephone: The Institute for Civil Justice, The Rand Corporation, 1700 Main Street, Santa Monica, California 90406, (213) 393-0411.