Variation in Asbestos Litigation Compensation and Expenses

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Foreword

As I wrote in the Foreword to the preceding volume of the Institute's study of asbestos litigation, 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, incentives to prevention, methods of treatment, and the awarding of compensation are key issues surrounding this class of diseases. The issues of how much (if any) and how efficiently compensation is awarded are a crucial test of our society's ability to resolve the aftermath of this kind of disease. But they are not the only test. We also must understand the extent to which the existing compensation scheme deters behavior that jeopardizes the public health.

The resolution of disputes regarding compensation for asbestos-related diseases is now testing the ability of our civil justice system in both these dimensions. In those cases in which causal links have been established between asbestos and disease, and victims of that disease have been properly identified, does our system compensate the victims or their survivors *adequately* and *efficiently*? Does the system establish a context in which a similar catastrophe is *less likely* to occur?

The rancorous debate over the compensation question rages about us. However, until the first of the Institute's asbestos studies was published late in 1983, even the most rudimentary facts regarding the amounts of compensation awarded, the costs of awarding compensation, and the compensation that plaintiffs retain net of their legal costs were anecdotal and fragmentary or altogether unknown. Our studies in this series, aimed at informing the debate, present facts and estimates regarding this critical aspect of the problem: levels of compensation and litigation costs to plaintiffs and defendants.

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 these studies. 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.

In the first report on this study, the authors based their analysis of the aggregate expenses of asbestos-related litigation and compensation levels on data received from defendants and insurers, and on a survey of members of the plaintiffs' bar; the authors examined the questions of the levels of compensation and of litigation expenses, who paid them, and why. The conclusions they presented are essential to the policy debate.

That aggregate knowledge base is augmented in this report by the results of a survey of expenses and compensation paid on individual claims that were tried, settled, or dismissed between January 1980 and August 1982; the claims in the survey include all tried claims and a random sample of claims closed without trial during that time period. This report investigates factors that were associated with variation in the expenses and compensation paid per claim during that time period, 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, the equity or fairness of the amounts paid to claimants with different characteristics, and the degree of efficiency achieved by our civil justice system.

Looking beyond the current situation, I remain convinced that information of the kind the Institute is developing in these studies also will be crucial 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

Asbestos-related disease and consequent litigation involve enormous personal and economic stakes: About $1 billion in compensation and litigation expenses had been spent by the end of 1982 on more than 20,000 open and closed asbestos product liability claims. Many times that number of people have been exposed to asbestos, and the potential liability of the defendant firms runs into the billions of dollars. Three major corporations have already 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 is the second of two that examine the money spent to resolve asbestos-related injury lawsuits. Our first report analyzed total litigation expenses and compensation paid for all open claims combined and for all closed claims combined.[1] However, aggregate data did not allow us to analyze differences in expenses and compensation among claims to see how these varied as a function of type of injury and other factors. Consequently, we conducted a detailed survey of plaintiffs' attorneys, defendants, and insurers, to collect information on a sample of claims that were closed between January 1980 and August 1982. This second report analyzes characteristics of individual claims that explain variation in compensation and expenses.

The 513 closed claims in the survey included all 132 tried claims, and a nationally representative, random sample of 381 claims closed before trial by all or nearly all defendants during that time period. The claim sampling procedures were designed and conducted entirely by Rand Corporation staff. Confidentiality agreements with all participants in the study preclude disclosure of specific sources, but we first inspected the contents of several independent defendant and insurer

[1]*Costs of Asbestos Litigation*, Institute for Civil Justice, The Rand Corporation, R-3042-ICJ, 1983.

claims databases. We conducted checks among these databases and are convinced that the list of approximately 21,000 different claims in August 1982 (including about 4000 closed claims) from which we drew the random sample did not exclude any significant set of claims.

This study focuses on asbestos-related product liability litigation; the study does not include costs incurred by the government, expenses and compensation in workers' compensation claims, and costs incurred in reorganization under Chapter 11 of the Federal Bankruptcy Act.

Because much has happened in asbestos litigation since 1982, this study does not attempt to project from 1982 to 1984 or to the future. The system is in transition: Future costs and compensation will depend heavily on the outcomes of the Chapter 11 bankruptcy reorganizations, and on the details of any of the proposed changes in the system of processing these claims that may be implemented. Nor does this study address such matters as the "appropriateness" or "reasonableness" of expenses, the "adequacy" of compensation levels, or "changes" in the tort litigation system. Answering these extremely important questions will require other difficult, time-consuming, and expensive research studies and extensive new information. We believe, however, that the compensation and expense data developed by this study are essential in considering the performance of the current system and any proposed alternatives.

The asbestos calamity may be unique in scale and intensity, or it may be the forerunner of a wave of environmentally based injury claims of unprecedented dimensions. In either case, it is important that policymakers know how much is being spent to deal with it, and for what, and how these costs vary with claim characteristics.

In this executive summary, we first summarize the average characteristics of asbestos claims closed in 1980–1982. Then we discuss the factors that explained the level of compensation received, the likelihood of receiving no compensation, the likelihood of a trial, and the likelihood of receiving punitive damages. Next, we present factors that influenced the level of defense and plaintiff's litigation expenses. Finally, we total the expenditures and examine the ratio between litigation expense payments and compensation (the "overhead" costs incurred in generating one dollar in payment to an injured person).

CHARACTERISTICS OF CLOSED CLAIMS

For the sample claims closed by all or nearly all defendants in the 32 months we studied, the average claimant was 57 years old, 95 percent of claimants were married, 95 percent were male, and nearly all

were smokers or had been smokers at some time in their lives. Three worker classifications accounted for the vast majority of asbestos-related litigation: shipyard workers (37 percent of all closed claims); asbestos-related factory workers (35 percent); and insulation workers (21 percent). Fully 71 percent of the closed claims were filed in five states (California, Massachusetts, New Jersey, Pennsylvania, and Texas); and nationwide, just over half were filed in federal rather than state courts.

Asbestosis accounted for 76 percent of the closed claims,[2] lung cancer for 12 percent, mesothelioma for 5 percent, and all other types of injury for only 3 percent. In addition, no asbestos-related injury was manifest for 4 percent of our sample. Fifteen percent of the claims involved deceased workers.

At least 91 percent of all claims filed that were based on asbestosis, lung cancer, or mesothelioma received compensation, while only about half of the claims for other types of injuries did so. The average total compensation awarded or paid per closed claim nationwide was $54,000 for asbestosis, $83,000 for lung cancer, and $265,000 for mesothelioma. Only a small percentage of the claimants with no manifest asbestos-related injury received compensation; those few that did usually received only a few hundred dollars.

A substantial minority (42 percent) of the closed claims were parts of lawsuits filed by multiple plaintiffs instead of by or on behalf of one plaintiff.

The average time from claim filing to closure was 2 years and 8 months. About a third of the claims were closed in 1 year or less from filing, but 11 percent took 6 years (the longest amount of time reported for our sample of cases).

Although over 300 different defendants have been named on asbestos product liability suits, claims were concentrated on a few defendants. Sixteen corporations are named as defendants on at least half of all the suits. Another 15 or so are involved in one-quarter to one-half of the suits; hence, most defendants are involved in fewer than one-quarter of the cases. Plaintiffs on closed claims sued an average of 15 defendants.

Claims dismissed and later refiled were deleted from the sample, as were claims known to be still substantially open. To be retained in the

[2]The injury data that we obtained from four defendants and insurers included in the asbestosis category a range of disorders, such as pleural plaques and lung fibrosis, with a wide range of degree of severity. Claims were classified as "no injury" if *none* of the four classified the claimant as having an injury.

sample, a claim had to have been closed for all or nearly all defendants. In the final sample of 513 claims, 81 percent were fully closed by all defendants. The remaining 19 percent were closed by nearly all defendants, but were known to be open with respect to an average of 1.6 defendants. Only 13 claims were open for more than two defendants, and no claim was open for more than four defendants. To avoid understating the level of compensation on this 19 percent of the claims, the amount those 1.6 defendants would have paid was estimated and included.

The settled claims that were closed with respect to nearly all defendants had slightly higher compensation than the fully closed settled claims, so including them raised the average compensation somewhat. The average compensation for the fully closed settled claims was $53,000, whereas the average for the entire sample of settled claims was $55,000. The settled claims that were closed for nearly all defendants had essentially the same distribution of types of injuries as the fully closed settled claims. However, the claims closed for nearly all defendants were more likely to be for shipyard workers and less likely to be part of a multiple-plaintiff lawsuit.

We decided to include that 19 percent in the analysis because they were known to be open for an average of only 1.6 defendants (whose compensation we estimated) and because they provided a substantial amount of actual compensation data that enriched the database.

FACTORS THAT EXPLAINED THE LEVEL OF COMPENSATION

To identify factors that helped explain the level of compensation in 1980–1982, we began by considering total compensation (exclusive of punitive damages) as a function of all factors for which we had data. We used multivariate regression techniques to analyze all claim characteristics simultaneously, so as to see how influential each characteristic was when all other characteristics were held constant.

Our findings should be used cautiously. For one thing, we had no direct data on certain factors that we would expect to influence the level of compensation on individual claims: the severity of asbestosis, the claimant's earning power, the strength of asbestos exposure evidence, and the characteristics of the lawyers on both sides.[3] Nor do we

[3]The claim characteristics that were included in the equation for estimating compensation accounted for 34 percent of the variance among individual claims. While the inclusion of some factors that were not statistically significant would have raised this figure a few percentage points, the fact remains that a substantial amount of the variability

have data on compensation paid from sources other than product liability litigation, such as workers' compensation. Compensation paid from other sources probably differs for claims with different characteristics (such as different types of workers) and may influence the amount of product liability compensation paid.

Our average compensation data should also be used cautiously in estimating compensation levels, which may change in the future in light of changes in the nature and distribution of injuries on closed cases, changes in the average number and type of defendants involved, changes in the structure of settlement negotiations, and changes resulting from the Chapter 11 bankruptcy filings by some defendants. Our estimates are based on data from a sample of cases closed before August 26, 1982. More recent and future claims compensation may differ.

As expected, the type of injury was a major influence on the amount of compensation paid. Claimants with lung cancer or mesothelioma received substantially more than those with asbestosis. For asbestosis, the average compensation differed sharply among worker types. We hypothesize that at least part of that variation was due to variation in severity of asbestosis injury which resulted from unequal exposure to asbestos among worker classifications. As a consequence, we explored the interaction of the injury and type-of-worker variables. Our discussions with defendants suggested that the asbestosis they were seeing in claims by factory workers was less severe than that of both insulation and shipyard workers. We found that, holding all other factors equal, the average compensation paid for asbestosis was highest, intermediate, and lowest for insulation workers, shipyard workers, and factory workers, respectively.[4]

Consider a claimant of average age (57 years), who had named the average number of defendants (15) in a single-plaintiff lawsuit that was settled before trial in 1982. As shown in Table S.1, if such a claimant was an asbestos-related factory worker with asbestosis, he or she received an estimated average of $55,000 in compensation; if an insulation worker with asbestosis, or any type of worker with lung cancer, over $100,000; if a worker of any type with mesothelioma, $319,000.

The averages in Table S.1 must be adjusted if the claim characteristics differ from those specified. First, whether or not trial began for a

in the compensation levels among individual claims cannot be fully explained by the claim characteristics that were available for this study. However, by social science research standards, explaining 34 percent of the variance is quite respectable.

[4]Note that worker classification influences compensation for a number of reasons; it should not be used in claim negotiations in lieu of medical evidence about the severity of injury.

Table S.1

AVERAGE COMPENSATION PAID FOR CLAIMS RECEIVING COMPENSATION, BY TYPE OF INJURY AND WORKER CLASSIFICATION IN 1982, FOR LIVING CLAIMANTS AGE 57, WHO NAMED 15 DEFENDANTS IN A SINGLE-PLAINTIFF LAWSUIT THAT WAS SETTLED BEFORE TRIAL

Type of Injury and Worker Classification	Average Compensation Per Claim Settled Before Trial
Asbestosis	
Asbestos-related factory worker	$ 55,000
Other type of worker	58,000
Shipyard worker	75,000
Insulation worker	106,000
Lung cancer	119,000
Mesothelioma	319,000
Other type of injury	95,000

given claim was highly significant in explaining the level of compensation: All other factors being equal, a claim that began trial received 2.28 times the compensation of a similar claim that was settled before trial. (This is exclusive of any punitive damages awarded at trial.) Second, all other things being equal, claims involving death received only 88 percent of what they would have received had they not involved death. Third, the average compensation per claim rose at the rate of 5 percent per year from 1980 through 1982. Fourth, the peak compensation went to people 54 years old. All other factors being equal, older (over 75) and younger (under 40) claimants are estimated to have received only about three-quarters or less of what the average 57-year-old claimant received. Fifth, compensation per claim tended to increase with the number of defendants on the claim: All other factors being equal, claims with more defendants than average resulted in a maximum increase in compensation of about 15 percent. And sixth, compensation per claim tended to decrease as the number of plaintiffs in a single lawsuit increased. All other factors being equal, the largest multiple-plaintiff lawsuits resulted in an estimated average compensation per claim that was about 70 percent of the compensation for a single-plaintiff lawsuit.

Two notable variables were not statistically significant in explaining the level of compensation: type of court (federal or state) and region of

the country. We did not explore differences within states. Three variables that might affect compensation—smoking, marital status, and gender—were excluded from the analysis because of the small number of closed claims in our sample that involved females, nonsmokers, and unmarried people.

FACTORS THAT EXPLAINED ZERO COMPENSATION

Only 9 percent of the claims closed in 1980–1982 received zero compensation. Three factors were influential; the single most important one was a person's being classified as having "no injury."[5] A second important factor was the injury's being something other than asbestosis, lung cancer, and mesothelioma, the three most often associated with asbestos. For *some* of these other types of injuries, usually some other cancer or other lung disease, it may be more difficult to establish a link with exposure to asbestos. Only about half the claimants with these other types of injuries received compensation.

The asbestos-related experience of the plaintiff's lawyer was also important in helping explain whether compensation was paid. The proportion of claims that received no compensation was 23 percent for lawyers who had closed only one claim in our sample, 8 percent for lawyers who had closed two to five claims, and a mere 1 percent for lawyers who had closed more than 20.

FACTORS THAT EXPLAINED THE LIKELIHOOD OF TRIAL

Relatively few claims went to trial. Several claim characteristics were related to the likelihood of trial. Those that were statistically significant were the type of injury, the state in which the claim was filed, and the presence of a large number of plaintiffs in one lawsuit. Variables that were not significant were age, marital status, sex, life status, smoking, type of court (federal or state), number of defendants per claim, and worker classification.

Claims in our sample with no manifest asbestos-related injury *never* went to trial. When all other factors are held equal (using a logistic

[5]Injury classification data were obtained from four large defendants and insurers. Claims were classified as "no injury" if *none* of the four classified the claimant as having an injury.

regression technique), mesothelioma claims were at least twice as likely to go to trial (14 percent) as claims with any other type of injury (7 percent or less).

The percentage of closed claims that were tried varied markedly from state to state. In California and New Jersey, it was 1 percent or less. The rates were much higher (8 percent and 16 percent, respectively) in two of the high-claim-volume states, Texas and Pennsylvania. Fewer claims had been closed in Missouri, but about a third of them went to trial. In the other states combined, about 6 percent began trial. Finally, claims sampled from among large lawsuits with at least 50 other plaintiffs *never* went to trial.

FACTORS THAT EXPLAINED PUNITIVE AWARDS

Punitive damage awards appeared to be more frequent in asbestos cases than in product liability cases generally, but they were still rare. Punitive damages totaling $4,934,000 were awarded to 19 plaintiffs, involving less than 1 percent of all claims closed between January 1, 1980, and August 26, 1982. The awards ranged from $4,000 to $1,000,000, and averaged $260,000 per plaintiff who received one. Even though punitive damages were awarded in 18 percent of the asbestos trials that went to verdict, the $255,000 average total compensation for all tried claims included an average of only $37,000 in punitive damages.

The 19 plaintiffs receiving a punitive award were insufficient for us to perform a multivariate analysis, but we carefully reviewed their claims to see what characteristics might be related to the receipt of punitive damages. The only salient observation was that two-thirds of the claims that received punitive awards were in Pennsylvania; the rest were in six other states. In Pennsylvania, 34 percent of the claims that started trial between January 1, 1980, and August 26, 1982, resulted in punitive awards.

FACTORS THAT EXPLAINED DEFENSE LITIGATION EXPENSES

The total defense expense was $37,000 for the average closed claim,[6] of which allocated expenses (legal fees and related expenses) were 78 percent, unallocated expenses (claims processing and management

[6]The 95-percent confidence interval for the estimated average defense expenses using the sample data ranges from $35,500 to $38,500.

expenses) were 19 percent, and organization-versus-organization litigation expenses (usually concerning insurance coverage) were 4 percent.

Since the average closed claim involved 15 defendants and $37,000 in defense litigation expenses, the average total defense expense by *one* defendant to close a claim with one plaintiff was approximately $2,500. A smaller defendant and its insurers typically spent an average of at least $1,000 per closed claim in total expenses. Some of the larger defendants (those named on a larger percentage of the claims, who generally paid higher compensation) usually spent more than the average. 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 expense to compensation.

The ratio of allocated expense to compensation paid on asbestos claims was higher than for three other tort areas: product liability generally, malpractice, and auto accidents. The auto accident area was lowest, probably because it had such a high volume of claims, most of which were closed without a lawsuit being filed. Malpractice claims had ratios higher than auto claims, but only about two-thirds as large as the asbestos ratio. Product liability claims, most comparable in subject matter to asbestos claims, had an overall ratio of 0.35—lower than the asbestos ratio of 0.45. The numerous defendants in the average asbestos claim, each with its own legal expenses, may explain much of the higher asbestos ratio when compared with that for medical malpractice and product liability generally. In the average asbestos case, responsibility for a $64,000 compensation payment was divided among 15 defendants, most of whom paid an average of less than $5,000 each. In other tort areas, the average defendant paid larger compensation, and expenses were a lower percentage of compensation, because expenses do not increase as fast as compensation payments.

We analyzed defense expenses as a function of all factors for which we had data. We used multivariate regression techniques to analyze all characteristics simultaneously, to shed light on the influence of each claim characteristic when all other characteristics were held constant.[7] Again, since our data were derived from 1980–1982, we caution readers that defense expenses for more recent and future claims may differ from these figures, especially if changes occur in the efficiency and manner of processing asbestos claims.

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[7]The claim characteristics that were included in the equation for estimating defense expenses accounted for 77 percent of the variance among individual claims. This percentage of explained variation is very high for research on legal behavior.

As expected, the type of injury and worker category influenced the amount of defense expenses. Consider an average claimant who had named the average number of defendants (15) in a single-plaintiff lawsuit that was settled for compensation before trial in 1982. As shown in Table S.2, such claimants with mesothelioma generated the highest average defense expenses, $57,000, while such claimants with no manifest asbestos-related injury generated the lowest, an estimated $18,000 per claim.

The dollar amounts in Table S.2 must be adjusted when claim characteristics differ from those specified. First, all other things being equal, defense expenses were 13 percent greater for cases involving dead claimants than for cases with living claimants. Second, whether or not trial began for a given claim was highly significant in explaining defense expenses. All other factors being equal, a claim that began trial had 3.13 times the defense expenses of a claim that was settled before trial. Third, the average defense expenses per claim rose at the rate of 1 percent per year from 1980 through 1982. This is lower than the rate of inflation and lower than the 5 percent per year growth in levels of compensation. Perhaps defendants were becoming more efficient at processing these claims as time went on. Fourth, defense expenses per claim increased substantially with the number of defendants on the claim, because each defendant usually had its own defense

Table S.2

DEFENSE EXPENSES BY TYPE OF INJURY AND WORKER CLASSIFICATION IN 1982, FOR LIVING CLAIMANTS WHO NAMED 15 DEFENDANTS IN A SINGLE-PLAINTIFF LAWSUIT THAT WAS SETTLED BEFORE TRIAL

Type of Injury and Worker Classification	Average Defense Expenses Per Claim
Asbestosis	
Asbestos-related factory worker	$35,000
Other type of worker	34,000
Shipyard worker	40,000
Insulation worker	49,000
Lung cancer	40,000
Mesothelioma	57,000
Other type of injury	33,000
No manifest asbestos-related injury	18,000

lawyer and other litigation expenses. All other factors being equal, lawsuits with larger numbers of defendants than average resulted in a maximum estimated increase in defense litigation expenses of about 60 percent. Doubling the number of defendants added almost 50 percent to the total defense litigation expenses. The reason these additional defendants did not double the expenses was that the same 16 large defendants were named on at least half of all claims. Additional defendants were usually smaller defendants, who made lower average compensation payments and incurred lower defense litigation expenses. Fifth, defense expenses per plaintiff tended to decrease as the number of plaintiffs on a single lawsuit increased. All other factors being equal, the largest multiple-plaintiff lawsuits resulted in estimated defense expenses per claim that were less than two-thirds of the defense expenses for a single-plaintiff lawsuit.

Certain variables were not statistically significant: the claimant's age, sex, marital status, smoker status, whether the claim was filed in federal or state court, and region of the country.

FACTORS THAT EXPLAINED PLAINTIFF LITIGATION EXPENSES

Asbestos cases are almost always handled on a contingency fee basis by plaintiffs' lawyers (i.e., attorney fees are a percentage of total compensation). The percentage is usually increased if the claim goes to trial. The plaintiff's litigation expenses other than attorney fees generally consist of travel and stenographic expenses for depositions and trials, medical examinations, and expert witness fees.

During 1980–1982, legal fees in tried cases were typically 33 to 45 percent of total compensation; the average fee was about 39 percent. In tried cases, other expenses ranged from 1 to 12 percent of recovery, but were generally about 6 percent. Plaintiff's legal fees as a percentage of compensation were lower for settled cases; they typically ran from 28 to 40 percent, averaging 34 percent. Other expenses on settled claims averaged approximately 5 percent of recovery, though on occasion they were much higher or lower.

Thus, the estimated average plaintiff litigation expenses (including both legal fees and other expenses) amounted to 39 percent of total compensation for all 1980–1982 closed claims combined.

AVERAGES FOR TRIED CLAIMS

The average total compensation paid for the claims that began trial between January 1, 1980, and August 26, 1982, was $255,000; the median was $123,000; and the maximum was $2,300,000. These figures include compensatory damage awards, punitive damage awards, if any, and pretrial settlements paid by any defendants on the claim who elected to settle before other defendants went to trial; they do not include any changes in compensation that may result from appeals of some of the awards.[8] Considering all tried claims, 95 percent of the claimants received at least some compensation in pretrial settlement or trial award or both. The average total compensation for those who received at least some money was $269,000.

The average total compensation for the 53 percent with plaintiff's verdicts was $388,000. The 18 percent that were settled by all defendants after trial began received about half as much, an average of $189,000. Claims with defense verdicts accounted for 29 percent of the trials during this time span. In 82 percent of trials that led to defense verdicts, some defendants had settled before the trial began (paying a combined average of $62,000 per claim).

AVERAGES FOR CLAIMS CLOSED BEFORE TRIAL

Claims closed for all defendants before trial began accounted for 95 percent of all claims closed between January 1, 1980, and August 26, 1982. Of these claims, 91 percent received compensation that ranged up to $1,400,000, had a median of $33,000, and averaged $60,000. Total compensation for claims closed before trial began, including those with and without compensation, had a median of $27,000 and averaged $55,000.

AVERAGES FOR ALL CLOSED CLAIMS COMBINED

When we combine claims tried and claims closed before trial,[9] the average compensation paid between January 1, 1980, and August 26, 1982, was $64,000.[10]

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[8]Because trial verdicts may be reduced after appeal or settled for less than the verdict, our estimate of compensation for claims that began trial overstates, to an unknown extent, the compensation actually received in this class of claims. The awards for 24 percent of the claims for which trial began are being appealed.

[9]Data were analyzed for tried claims separately from claims closed before trial. The separate results were then combined, weighted by the number of each of these two types of claims in the total universe of all closed claims (including those in and not in the sample).

[10]The 95-percent confidence interval for the estimated average compensation using the sample data ranged from $58,000 to $70,000.

Plaintiff's legal fees and expenses for all tried claims averaged $114,000 (for tried claims that received some compensation, the average was $120,000, or 45 percent of average total compensation). For all claims that closed before trial began, the average was $21,000 (for settled claims that received some compensation, the average was $23,000, or 38 percent of total compensation).

Defendants' legal fees and expenses for all tried claims averaged $125,000, 49 percent of what they paid in total compensation. For all claims that closed before trial began, the average was $33,000 or 60 percent of what they paid in total compensation.

For all claims closed by any method, the average legal fees and expenses were $25,000 on the plaintiff's side (39 percent of total compensation) and $37,000 on the defendant's side (58 percent of what they paid in total compensation). Plaintiff expenses rose steadily with the level of compensation because of the usual contingency fee arrangement; so did defense expenses, but not as fast. Defense expenses as a percentage of compensation declined from over 100 percent of low compensation claims to less than 20 percent of high ones.

For claims settled for about $150,000 or less compensation, and for tried claims that were awarded about $400,000 or less, the expenses for all defendants combined exceeded expenses for the plaintiff. For claims with larger amounts of compensation, the plaintiff averaged higher litigation expenses than those of all defendants combined.

As shown in Fig. S.1, all defendants and insurers combined paid a total of $101,000 for the average closed claim, including both total compensation paid and defense legal fees and expenses. After deducting legal fees and expenses incurred by both sides, the plaintiff received an average net compensation of $39,000 or 39 percent of the $101,000 total. The plaintiff received considerably more if the claim was tried ($141,000 after payment of all legal fees and expenses for tried claims, versus $34,000 for claims closed before trial).

These figures may be better understood by considering the total amount that defendants, insurers, and plaintiffs paid for every *one dollar* in net compensation that went to the plaintiff. For every $2.59 paid by defendants and insurers, defense litigation expenses were an estimated $0.95, plaintiff's litigation expenses were an estimated $0.64, and the plaintiff received $1.00—39 percent of the $2.59 total. That percentage increased with the level of total compensation, from less than 20 percent of the total defense payout for claims with low total compensation, up to 49 percent for those with average compensation over $500,000.

The extent to which the sample is representative of claims closed in the sample time period is shown when we compare the results from the

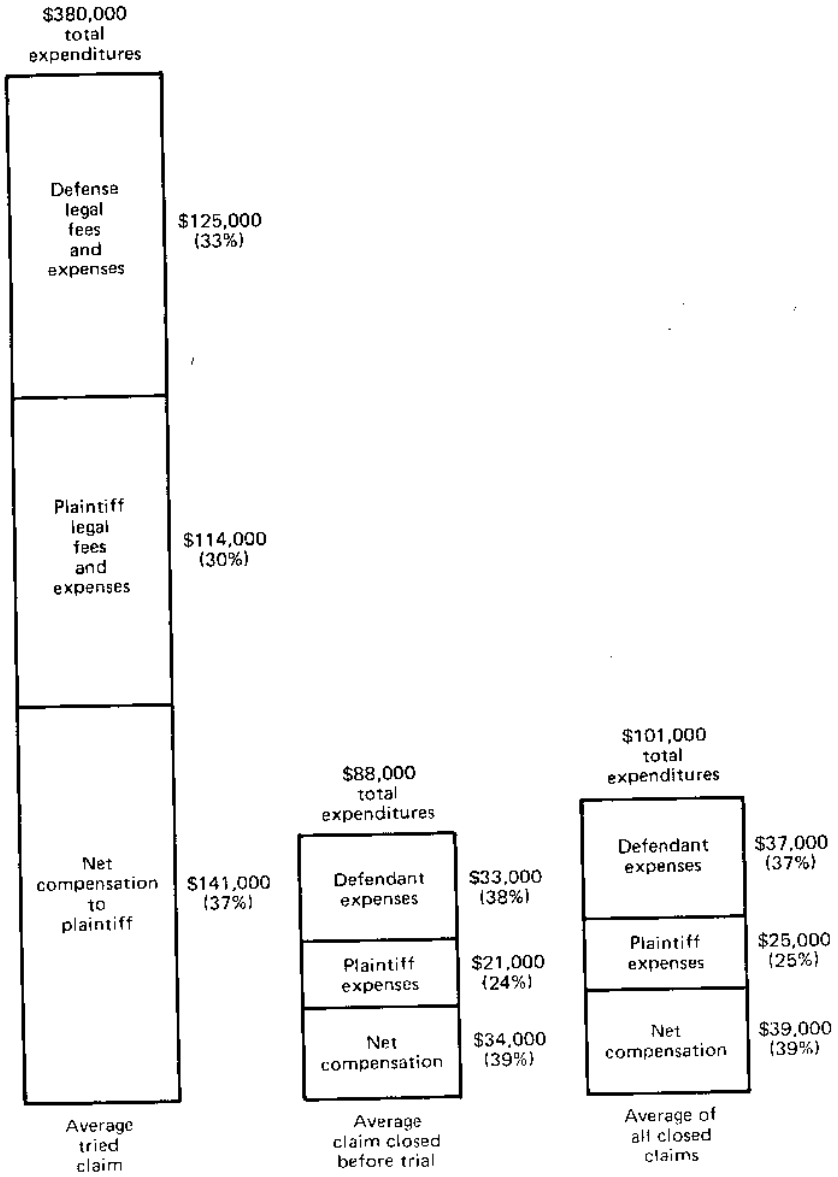

Fig. S.1—Average total expenditures per claim for asbestos product liability claims closed between January 1, 1980, and August 26, 1982

sample data for 1980–1982 and the aggregate data for *all* closed claims described in our previous report. *The results using these two different research approaches are essentially the same.*[11] The average total compensation using aggregate data was $60,000; for sample closed-claim data it was $64,000. After deducting the plaintiff's expenses, the average percent of total compensation plus defense expenses that the plaintiff received was 37 percent using aggregate data and 39 percent using sample closed-claim data. In addition, the distribution of other claim characteristics for the sample is very similar to the distribution of claim characteristics for the universe of all claims closed in 1980–1982.

IMPLICATIONS

In summary, the heart of the asbestos litigation problem is its huge scale. Much human suffering is involved. Tens of thousands of current and future injury claims are worth billions of dollars. The sheer numbers stretch the ability of some courts to handle the claims, threaten the economic survival of some defendants, and ultimately threaten the ability of the injured parties to receive fair compensation.

Because the asbestos problem is immense and because it may influence public reactions to other major health and legal problems, many different responses have been proposed. Several generic lines of reform have been suggested by various people: increased coordination and efficiencies within the existing tort system; establishment of a joint claims facility for settlement negotiation without filing a lawsuit; arbitration; and government-mandated compensation systems.

We believe that any rational course of action must be based on facts such as those developed by this study.

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[11]The first method sought aggregate data on total compensation and defense expenses through August 26, 1982, on all closed claims combined from all major defendants and insurers. A number of plaintiffs' attorneys were interviewed regarding average contingency fees and other litigation expenses. The second method sought individual claim data on compensation, defense allocated expenses, and plaintiff's expenses from all major defendants, insurers, and the plaintiffs' lawyers for a random sample of claims closed between January 1, 1980, and August 26, 1982. The two methods used different data, with the exception of defense unallocated expenses (such as for claims processing), insurance coverage litigation expenses, and plaintiff's litigation expenses.

Acknowledgments

This research would not have been possible without the cooperation of the 34 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 would also like to thank our Rand colleagues for their assistance with this study. Laural Hill and Ellyn Bloomfield skillfully supervised data collection tasks. Mitchell Tuller provided computer programming support, and Deborah Hensler and Mark Peterson 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.

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I. INTRODUCTION

This report is the second of two that examine the money spent to resolve asbestos-related injury lawsuits: who pays it, who receives it, and for what purposes.[1] In our first report, we analyzed the total litigation expenses and compensation paid based on data for all open claims combined and all closed claims combined, using aggregate data from defendants and insurers, and information secured from 27 plaintiff's lawyers. However, aggregate data did not allow us to explore and analyze variation in expenses and compensation as a function of such factors as the type of injury. Consequently, we conducted a detailed survey of claim characteristics, expenses, and compensation paid on a sample of individual claims that were tried, settled, or dismissed and not refiled between January 1980 and August 1982. The claims in the survey included all tried claims, and a random sample of claims closed before trial during that time period. This second report describes characteristics of individual claims that lead to variation in compensation and expenses.

It might be supposed that these costs have long since been systematically documented. Not so. There is no shortage of rhetoric concerning the billions of dollars that are expected to change hands over the next three decades during which the asbestos tragedy is expected to unfold, but very few hard data are in the public domain that document the volume or nature of these expenditures. This report, like the first one that appeared in 1983, 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, or it may be the forerunner of a wave of environmentally based injury claims of unprecedented dimensions. In either case, it is important that policymakers know how much is being spent to deal with it, and for what, and how these costs vary with claim characteristics. This study contributes to that understanding.[2]

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[1]The first was *Costs of Asbestos Litigation*, Institute for Civil Justice (ICJ), The Rand Corporation, R-3042-ICJ, 1983.

[2]Other previous studies of asbestos litigation were reviewed in Sec. I of our first report.

GUIDE TO THIS REPORT

This section describes our research approach and 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. Section II presents data on the characteristics of closed claims and on the actual compensation paid and expenses incurred by plaintiffs, defendants, and insurers in 1980–1982. After laying this groundwork, our analysis will focus on explaining the variation in total compensation in Sec. III. Sections IV, V, and VI, respectively, analyze claim characteristics that help explain why certain claims receive no compensation, identify which claims proceed to trial instead of being closed before trial, and identify which claims result in punitive awards. Sections VII and VIII analyze the variations in defense and plaintiff litigation expenses. Finally, Sec. IX totals the expenditures and examines the *ratio* between litigation expense payments and net compensation (the "overhead" costs incurred in generating one dollar in payment to an injured person).

OVERVIEW OF THE ASBESTOS LITIGATION PROBLEM

Asbestos product liability litigation is a large and complex problem because asbestos exposure usually occurred over a long time period beginning many years ago, because the injuries and causation are complex, because large numbers of people have been injured, and because the law that controls their compensation is complex and evolving.[3] This section outlines those complications so that the cost data that are the main contribution of this report may be understood in context.

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[3]For readers who are unfamiliar with product liability litigation, the following is a 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 warning was inadequate, and that the failure to provide an adequate warning was responsible for their injuries. Plaintiffs who can demonstrate each of these elements nevertheless 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.

The asbestos litigation problem is largely one of scale. There is little difficulty in processing single lawsuits and paying their associated expenses and compensation, but the nation is now looking at tens of thousands of current and future injury claims worth billions of dollars. The sheer numbers strain the capacity of some courts to handle the claims, and threaten some defendants' economic survival. Even the viability of some insurers may be threatened, if the insurance coverage litigation now before the courts turns out badly for them. Ultimately, these factors also threaten the ability of plaintiffs to receive just compensation.

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

- The high volume of asbestos exposure, injuries, and claims
- The complexity of the claims
- The billions of dollars in compensation and expenses at stake

Large Number of Exposures and Claims

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 used in asbestos-cement products (e.g., pipe), brake linings, roofing products, and flooring products. It has been used in millions of buildings in the United States and in hundreds of millions of automobiles.

Large Numbers of 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.

A major study completed in 1981 by Irving Selikoff and his associates for the Department of Labor[4] estimated that 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. Other estimates of the number of deaths allegedly due to asbestos over the next 30 years have recently been

[4]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.

made. All are large—from 74,000[5] to 265,000.[6] Far more numerous than cancer deaths are the injuries from asbestosis: Over three-quarters of the closed claims have been based on injury from asbestosis instead of lung cancer or mesothelioma.

We found that 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. Estimates of the number of asbestos lawsuits that will be filed in the next 30 years range from 32,000 to 200,000. By the year 2009, according to a study commissioned by The Manville Corporation, 5963 additional mesothelioma suits, 2660 new lung cancer suits, and 27,150 more asbestosis suits will have been filed.[7] The investment firm of Conning & Company estimates that claims filed by the year 2010 will total between 83,000 and 178,000, which means at least 59,000 new claims above the 24,000 filed as of March 1983.[8] Our extrapolation of the analysis by Paul MacAvoy et al.[9] indicated that 200,000 new lawsuits would be filed.[10]

Large Backlog of Unresolved Claims. Our data show that of the 24,000 claims filed as of March 1983, only about 3800 have been fully closed by all defendants on the claim. Only about 170 claims had been tried as of August 1982. Since that date, settlements and trials have proceeded for most defendants, but almost no claims have been fully closed by all defendants, because of bankruptcy court stays issued with respect to The Manville Corporation (a large defendant named on almost all asbestos claims) and two other defendants who have filed for Chapter 11 reorganizations.

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[5]A. W. Walker, *Projections of Asbestos-Related Disease 1980-2009, Final Report*, Epidemiology Resources, Inc., Chestnut Hill, Massachusetts, August 2, 1982, estimates 18,700 excess mesothelioma deaths and 55,120 excess lung cancer deaths through the year 2009.

[6]Paul W. MacAvoy et al. ("The Economic Consequences of Asbestos-Related Disease," Yale University School of Organization and Management, New Haven, Connecticut, Working Paper No. 27, January 1982) 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.

[7]Walker, *Projections*.

[8]Conning & Company, *The Potential Impact of Asbestos on the Insurance Industry*, Hartford, Connecticut, September 1982.

[9]MacAvoy et al., "The Economic Consequences," used data from Peter 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.

[10]Calculated by The Institute for Civil Justice from data presented in MacAvoy et al. 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.

Complexity of the Claims

A second aspect of the problem is the complexity of the claims. Uncertainty may exist about whether an asbestos-related injury has occurred, and uncertainty usually exists about who or what caused the injury and who should pay how much.

Long Latency Periods. Generally, 15 to 40 years elapse between asbestos exposure and disease manifestation. For example, some shipyard workers are only now filing claims alleging injury from World War II exposure to asbestos. This long latency period often makes it difficult to find or reconstruct needed evidence.

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. Consequently, a case may involve numerous defendants; the average is about 20 for all open and closed claims combined, but it is often uncertain how much each defendant contributed to the exposure (if any). The cost implication is correspondingly major: Usually, 20 defendants means 20 legal defense teams.

Over 300 different defendants have been named on claims, but the litigation is concentrated on only 16 defendants that have been named on half or more of the claims.

Uncertain Causes and Financial Responsibility. Asbestos cases involve 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 other factors (such as smoking) that may produce the same pathology. It is not currently possible 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 course, many plaintiffs' lawyers file claims against any party who might have provided asbestos or asbestos products to a plaintiff's workplace or other exposure location. Resolving these claims therefore requires 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.[11]

Determining the responsibility of insurance companies is every bit as difficult as determining that of 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.

Besides that conflict, the federal government's role is controversial. The government was, first of all, heavily involved with shipyards, but some people also allege it 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 after World War II.

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.

[11]Some 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 Selikoff, Table 3.8.

Existing claims have been stayed with respect to defendants who have filed for Chapter 11 reorganization. Claim-disposition efforts have been proceeding for the other defendants, but the bargaining positions of both plaintiffs and defendants have been affected 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 in Few Courts. Our data indicate that 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.

Billions of Dollars at Stake

The amount of future settlements and trial awards is uncertain, but the financial stakes clearly are high. Estimates by others of total compensation over the next 30 years range from $4 billion to $87 billion. The investment firm of Conning & Company estimates that the insurance industry's ultimate liability for asbestos claims will be in the $4 to $10 billion range. MacAvoy estimates that future compensation payments will run between $8 billion and $87 billion, with the "most likely estimate" of the present value of the awards being $38 billion.[12] The wide range reflects the great uncertainty in the estimates. The Manville Corporation, in support of its Chapter 11 bankruptcy filing, has estimated that at least 32,000 additional asbestos-related claims will be filed through the year 2001[13] that could require it to spend about $2 billion (not counting expenditures by any of the other defendants).

[12]See pp. 9–10 of our previous report, *The Costs of Asbestos Litigation*, for details.

[13]The Manville Corporation, "Summary of Asbestos-Related Litigation Projection," delivered to the organizational meeting of creditors of The Manville Corporation, New York, September 9, 1982.

High total litigation expenses compound the financial problem. Prior to our study, no one seriously argued that litigation expenses were less than the plaintiff's net compensation, but some argued that combined defense and plaintiff litigation expenses were 2, 3, or even 4 times the amount the plaintiff received after expenses were deducted.[14] We now know that the correct multiple is about 1½ under the current product liability litigation system.

The financial strain of these asbestos-related injuries and litigation has already resulted in three Chapter 11 bankruptcy filings—with perhaps more to come in the future.

In summary, the heart of the asbestos litigation problem is its huge scale. Much human suffering is involved. Tens of thousands of current and future injury claims are worth billions of dollars. The sheer numbers stretch the ability of some courts to handle the claims and threaten the economic survival of some defendants; and ultimately, these factors threaten the ability of injured parties to receive fair compensation.

POLICY-RELATED ISSUES

How Big and Expensive Is the Asbestos Litigation Problem?

Various policy-related issues arise from the asbestos litigation problem. The first concerns the magnitude of the problem. Before this study, there was abundant rhetoric but little hard information on the amount of compensation paid, how compensation varied with claim and injury characteristics, or how much it cost to resolve these claims. It was clear that the costs were high—but it was not at all clear *how high.* This study sheds light on the issue by documenting what compensation and expenses have been and how they varied with claim characteristics for the period 1980–1982.

Should Any of the Various Proposed Solutions Be Adopted?

Because the asbestos problem is immense and because it may influence public reactions to other major health and legal problems, many responses have been and are being proposed. Several generic lines of reform have been suggested by various people: increased coordination and efficiencies within the existing tort system; establishment of a joint claims facility for settlement negotiation without filing a lawsuit; arbitration; and government-mandated compensation systems.

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[14]David Lanter, "Footing the Bill for Toxic Torts," *National Law Journal,* January 31, 1983.

What Will Be the Effect on Other Emerging Product Liability Problems?

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, and perhaps to the government. The asbestos problem may be unique and hence warrant a 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. Examples of such substances that may or may not pose a major problem in the future include benzene, cadmium, dioxin, formaldehyde, vinyl chloride, and various fungicides and pesticides.

STUDY OBJECTIVE AND RESEARCH QUESTIONS

The objective of this study is to estimate the costs to all parties of resolving asbestos product liability litigation through the court system. Using data from interviews and surveys of defendants, insurers, and plaintiffs' lawyers, the study seeks to answer four major questions:

- How much compensation did plaintiffs receive?
- What were defense litigation expenses?
- What were plaintiff litigation expenses?
- How did various factors affect the size of settlements, trial verdicts, and expenses?

The focus of this study is on 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 1982 data to 1984 or to future costs or compensation. The system is in a transition: Future costs and compensation will depend heavily on the outcomes of the Chapter 11 bankruptcy reorganizations, and on the details of any of the proposed changes in the system of processing these claims that may be implemented. Nor does this study address such matters as the "appropriateness" or "reasonableness" of expenses, the "adequacy" of compensation given the injuries and their effects, or "changes" in the tort litigation system. We believe, however, that cost data are essential in considering the performance of the current system and any proposed alternatives for processing claims.

Two other ICJ studies are addressing the asbestos litigation problem. One describes the alternative methods different courts are using to process these claims. The other is modeling how plaintiffs and defendants make decisions on the value of individual asbestos claims.

RESEARCH APPROACH

We employed two research approaches in this study.

In the first, the results of which appeared in our first report, we sought aggregate data on total compensation and defense expenses through August 26, 1982, on all closed claims combined from all major defendants and insurers. Several plaintiffs' attorneys were interviewed regarding average contingency fees and other litigation expenses. Our first approach, however, did not provide the detailed information about individual claims that was needed to understand how various factors (such as type of injury, type of worker, type of court, and year closed) affected the size of compensation and expenses.

Consequently, in our second research approach, the results of which appear in this report, we sought individual claim data on compensation, plaintiffs' expenses, and defense allocated expenses such as legal fees and related expenses, from all major defendants, insurers, and plaintiffs' lawyers for a nationally representative random sample of claims closed by all or nearly all defendants between January 1, 1980, and August 26, 1982.

The two reports use different data, with the exception of defense unallocated expenses (such as for claims processing and management), insurance coverage litigation expenses, and plaintiffs' litigation expenses.

In collecting data for both research approaches, we received excellent cooperation from most of the major defendants and insurers, and helpful cooperation from some plaintiffs' lawyers. Refer to the "Data Collection and Analysis Methods" subsection below for details of the cooperation received.

CHOOSING THE SAMPLE OF CLAIMS

The sampling procedures were designed and conducted entirely by Rand Corporation staff. The sample includes 513 claims that were tried, were settled, or were dismissed and not refiled. We randomly selected these claims to represent the entire national caseload of asbestos product liability litigation terminated by all or nearly all defendants

between January 1, 1980, and August 26, 1982. We chose this time period because we were concerned that claims closed pre-1980 might differ substantially from more recently closed claims, and because the August 1982 Chapter 11 bankruptcy filing by The Manville Corporation (the largest defendant) seemed to terminate one phase and open a new phase of asbestos litigation. The three Chapter 11 bankruptcy filings have prevented the complete closure of claims against those defendants since 1982.

Before selecting the sample in the fall of 1982, we inspected and cross-checked the contents of several independent defendants' and insurers' claims databases. The results convinced us that the list of approximately 21,000 different claimants, which constituted the population from which we drew the sample, did not systematically exclude any significant set of claims. Confidentiality agreements with all participants in the study preclude disclosure of specific sources.

We eliminated from this list approximately 900 claims that were closed prior to January 1980, and all claims still substantially open in August 1982, leaving about 3200 claims for potential inclusion in the sample. We wanted a sample large enough to be statistically representative but not so large as to be burdensome for the plaintiff, defendant, and insurer respondents from whom we sought data. We concluded that the maximum number of cases for which data collection was practical was approximately 500.

Relatively few claims have been tried. Hence, to ensure that there would be an adequate number of tried claims for separate statistical analysis, we included all of the 132 trials in our database in the sample. (A tried claim is defined as one in which a trial was commenced for at least some defendants, even though other defendants may have settled prior to trial for that claim.) To check the completeness of our trial list, we compared it with the list of 124 claims tried after January 1, 1980, that was published in the *Asbestos Litigation Reporter* (ALR) periodical (October 8, 1982, issue). Our sample contains 22 tried claims not listed in the ALR and includes all but 14 ALR claims: In 13 of the 14, we did not have sufficient information about the specific claim to include it in the survey;[15] in the other case, default judgments were granted against all defendants, none of whom had appeared at trial.

To select the sample of settled and dismissed claims for analysis, we used a standard, computerized random probability sampling procedure. This procedure yielded a sample of 431 nontrial claims from our

[15]Of those 13 cases, the ALR indicated that 10 had settled during trial, one had had a defense verdict, and two had had a plaintiff's verdict.

original list of 3000+ such claims (exclusive of tried claims), with each claim having a 1 in 7 chance of being selected. Claims that were dismissed and subsequently refiled were excluded.

The resulting sample of claims is representative of the population of cases tried or otherwise terminated between January 1, 1980, and August 26, 1982, and has been carefully checked.

After completion of data collection on the 563 sample claims, we observed that 50 nontrial claims were still open for several defendants, rather than being closed for all or nearly all defendants as we thought when we drew the sample. We therefore deleted those claims from the sample, leaving a total of 513 claims for analysis that were closed with respect to all or nearly all defendants.

In the final sample of 513 claims, 81 percent were fully closed by *all* defendants.[16] The remaining 19 percent were closed by nearly all defendants, but were known to be open with respect to an average of 1.6 defendants. Only 13 claims were open for more than two defendants, and no claim was open for more than four defendants. To avoid underestimating the level of compensation on this 19 percent of the claims, the amount those 1.6 defendants would have paid was estimated and included (as described below in this section).

The settled claims that were closed with respect to nearly all defendants had slightly higher compensation than the fully closed settled claims, so including them raised the average compensation somewhat. The average compensation for the fully closed settled claims was $53,000, whereas the average for the entire sample of settled claims was $55,000. The settled claims that were closed for nearly all defendants had essentially the same distribution of types of injuries as the fully closed settled claims. However, the claims closed for nearly all defendants were more likely to be for shipyard workers and less likely to be part of a multiple-plaintiff lawsuit.

We decided to include this 19 percent in the analysis because they were known to be open for an average of only 1.6 defendants (whose compensation we estimated) and because they represented a substantial amount of actual compensation data that enriched the database.

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[16]Claims involving structured payments over time were counted as closed, and the present values of the structured payments were included in total compensation.

DATA COLLECTION AND ANALYSIS METHODS

Of the 22 major defendants we approached for data,[17] 17 agreed to participate. We interviewed all of them, and each provided aggregate data on settlements, trial awards, and various types of expenses for *all* of their asbestos litigation cases. Each also provided data on compensation paid and defense allocated expenses for our sample of claims. These 17 participating defendants represent an excellent cross-section of the defendant population. Of the 16 defendants who are named on at least half of all suits filed, 11 participated in this study. We also have detailed information on three of the five other defendants who are named on at least half of all suits filed. Of the approximately 15 defendants named on one-quarter to one-half of all suits filed, six participated. We also have detailed information on 21 defendants who are named on less than one-quarter of the suits. For defendants for whom we lacked data, we made estimates using a combination of published data and confidential data from *comparable*[18] participants. In all, we collected enough information to estimate payments made by all defendants and their insurers.

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

Of the 104 plaintiffs' attorneys whom we approached, 34 provided information.[19] We interviewed five of them regarding plaintiff expenses in general, and surveyed the rest by mail (with telephone follow-up) regarding our random sample of the cases they had filed. We have no indication that the attorneys' legal fees and expenses were biased.[20]

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[17]Early 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 directly from these additional defendants.

[18]By "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. This judgment was based on such factors as the nature of the company's business, the frequency with which it was sued, and other publicly available information.

[19]On 21,000 claims filed for which we had information, 680 different plaintiffs' attorneys were named. Only about two dozen plaintiff's attorneys' firms have large caseloads.

[20]We received information from 11 plaintiffs' attorneys about why they or some of their colleagues refused to cooperate in this research. The variety of reasons given were: They felt that the partial financial support that The Rand Corporation receives from some insurance companies to support The Institute for Civil Justice tainted the study; they felt that Rand may have selected the sample of claims in a biased manner to show minimum plaintiff compensation and maximum plaintiff costs; they feared the study will show that transaction costs are higher than plaintiffs' net compensation and the blame for this situation will be placed on plaintiffs' lawyers, as it has been in the past; since the

Lawyers who provided information included some of those with the largest caseloads and some with small caseloads. These cases are almost always handled on a contingency fee basis. The percentage fees charged by these lawyers were reasonably consistent, and we are confident that our estimates of plaintiffs' legal fees and related expenses are reasonable.

A few individual plaintiff's lawyers have indicated that their sampled claims do not appear to be typical of their caseloads. There are several possible reasons for this apparent difference. First, in a random sample of claims involving over 100 plaintiffs' lawyers, any single lawyer is likely to have a small number of claims in the sample. Thus, while the sample is representative of claims nationwide, it may not be representative of a single lawyer's caseload. For some lawyers, this small number of claims may have lower total compensation than each of those lawyers' average. For others, the sampled claims could reflect larger total compensation than the average for each lawyer. Although the sampled claims may not be average for an individual lawyer, the size of the sample, the checks that were conducted to assure that the population from which it was drawn was substantially complete, and the random selection technique we employed assure that the sample is representative for the nation as a whole. Second, the median compensation[21] paid was substantially less than the average for asbestos claims; thus, the majority of the claims were closed for a below-average level of compensation.[22] And third, settlements achieved by some plaintiffs' lawyers since August 1982 may have varied in amount from those in 1980–1982—for example, they may have been substantially larger or smaller. Thus, although the sample as a whole is unbiased as regards the period 1980–1982, an individual lawyer comparing his claims in the

study will present only cost figures, it will fail to call to public attention the social benefit produced by plaintiffs' lawyers in developing the field of occupational disease; unusual ratios of legal fees to compensation would identify cases in which plaintiffs' lawyers have made substantial mistakes; the parties to some settlements have agreed to keep the amounts secret; the study's inevitable policy consequence will be a recommendation to sidestep the courts as an avenue of compensation; costs divert attention away from the avoidable mass suffering caused by the asbestos industry; the major purpose of the tort system for products cases is not to bestow compensation, to which costs might be relevant, but is rather to require payment to prevent future corporate negligence, an objective to which costs are irrelevant; fee and cost data are misleading unless accompanied by information about lawyer overhead, and that information is private; and finally, compensation fee and cost information are confidential and may not be disclosed without client permission.

[21]Half the claims have compensation below the median. The average is calculated by adding all compensation and dividing by the number of claims.

[22]This also is true of litigation in general. See M. G. Shanley and M. A. Peterson, *Comparative Justice: Civil Jury Verdicts in San Francisco and Cook Counties, 1959–1980,* The Rand Corporation, R-3006-ICJ, 1983.

sample with a working figure he has in mind based on his more recent experience may conclude that the sampled claims differ from his average total compensation.

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.

After we had received the closed-claim survey data, we calculated total compensation for each claim in the sample. We used total compensation on the claim as reported by the plaintiff's attorney or the ALR, if available. For the remainder of the sample, we first added the compensation paid on the claim by participating defendants and insurers, using the survey data. If we did not have total compensation for the claim from the plaintiff's attorney or the ALR, then we estimated the compensation paid by any defendant on the claim for whom we did not have survey data. These estimates were made using compensation data from comparable defendants who participated in this study. The estimates for defendants for whom we did not have survey data took into account: (1) the level of compensation paid by other defendants reporting compensation data for this claim, and (2) the percentage of total compensation paid in the average claim by the defendant whose data were missing, in relation to the percentage of compensation paid in the average claim by other defendants in this specific claim for whom we had compensation data.

Only about 24 percent of total compensation had to be estimated for tried claims, and about 28 percent for settled claims.[23] The main reason for having to estimate such a low percentage of total compensation per claim is that we had closed-claim survey responses for 14 of the top 16 defendants—and those 16 were named on at *least* half of all claims filed and paid 75 percent of all compensation. We also had detailed claim data regarding 27 more defendants, each of whom was named on less than half the claims filed.

We calculated total defense expenses for each claim in the sample by adding the amount spent on legal fees and other legal expenses by each defendant and by the insurers for each defendant on the claim. We used survey data on expenses provided by the defendants and their

[23]We investigated the sensitivity of the average total compensation paid per claim to these estimates. Using a low (or high) reasonable estimate instead of our best estimate resulted in an 8 percent reduction (or increase) in average total compensation.

insurers, if available; otherwise we made estimates. We then added the average amount spent per claim by each defendant and insurer for "unallocated expenses" such as claims processing and management, plus an average amount ($1500) per claim for the prorated expense of the insurance coverage lawsuits.[24]

We estimated defense expenses for defendants who did not participate in our survey. We did so after estimates of compensation were completed for each claim for each defendant, as described above. If a particular defendant was named on the claim, but we did not know the defense expenses incurred, we estimated them by multiplying the actual or estimated compensation paid by the defendant on the claim by the ratio of defense expenses to compensation for that defendant, adjusted for the level of compensation. We obtained that ratio by looking at aggregate compensation and expense data for all claims closed by that defendant. If we could not compute the ratio directly for the defendant, we made an estimate using a combination of published data and confidential data from *comparable* participants in this study. In analyzing the data, we noted that defense expenses rose as compensation rose, but not as fast. We therefore adjusted the overall aggregate ratio of estimated expenses to compensation for a defendant to reflect the way the ratio varies with compensation for all defendants for whom we had actual expenses. If the defendant paid zero in compensation and expenses had to be estimated, we used the expenses paid for that defendant or comparable defendants assuming they paid their usual percentage of the total compensation paid on this specific claim. We reemphasize that we used actual expense data (without any adjustments) for each defendant for each claim when we had the data.

Some defense lawyers sent consolidated bills for each lawsuit, rather than showing legal fees and other expenses separately for each claimant on each lawsuit. We looked at every multiple-claimant lawsuit for every defendant separately, and if this consolidated billing for several claimants occurred and had been assigned to only one claimant (usually the first one listed on the lawsuit), then we prorated the defense expenses among all claimants on the lawsuit.

We calculated total plaintiff's expenses for each claim in the sample as follows. The sum of the individual claimant's legal fees and other legal expenses reported to us by 31 cooperating plaintiffs' lawyers was used for 93 claims in the sample. If the plaintiff's lawyer did not respond to our survey, we made an estimate for the claim based on

[24]See our earlier report on the costs of asbestos litigation for a discussion and analysis of these numbers.

average contingency fees charged and average other expenses incurred on asbestos claims, using data from our survey of other claims and interviews with plaintiffs' lawyers. The estimates used when the plaintiff's lawyer did not respond were 45 percent of total compensation for tried claims (39 percent fees plus 6 percent expenses) and 39 percent for settled claims (34 percent fees plus 5 percent expenses). (See Sec. VIII for details.)

COMPARISON OF RESULTS FROM SAMPLE AND FROM ALL ASBESTOS CLOSED CLAIMS

The extent to which the sample is representative of claims closed in the sample time period is attested to when we compare results from analysis of the sample closed-claim data for 1980 to 1982 with the results from analysis of aggregate data on *all* closed claims described in our previous report. *These two different research approaches yielded essentially the same results.* The average total compensation using aggregate data was $60,000 while the average using the sample closed-claim data was $64,000. After deduction of the plaintiff's expenses, the average percent of total compensation plus defense expenses that the plaintiff received was 37 percent using aggregate data and 39 percent using sample closed-claim data. In addition, as will be seen in Sec. II, the distribution of other claim characteristics for the sample is very similar to the distribution of claim characteristics for the universe of all claims closed in 1980–1982.

II. TABULATIONS OF LITIGATION EXPENSES AND COMPENSATION AS A FUNCTION OF SINGLE VARIABLES

This section presents simple tabulations and statistics for tried claims, settled and dismissed claims, and all claims combined.[1] The data are presented one variable at a time. However, both compensation and expenses are influenced by many variables simultaneously. For example, a single tabulation of trial awards appears to show a rapid increase from 1980 to 1982; however, after considering changes from year to year in the characteristics of claims that are tried, the growth in trial awards is actually more modest. Readers are cautioned against prematurely reaching conclusions about the magnitude of the impact of any single variable on either compensation or expenses. Subsequent sections examine the impact of each single variable, holding all other variables constant.

The pages that follow contain repeated references to "our sample period"; unless otherwise noted, that period is January 1, 1980, to August 26, 1982.

METHOD OF CLAIM DISPOSITION

As shown in Fig. 2.1, about 95 percent of the claims were closed before trial began, with only 8.3 percent receiving no compensation. Of the 4.7 percent that began trial, 18 percent were subsequently settled, the plaintiff won an award 53 percent of the time, and 29 percent resulted in defense verdicts (no compensation awarded as a result of the trial). But most claims with defense verdicts at trial still resulted in compensation, because most of the claims received pretrial settlements from some defendants before the remaining defendants went to trial.

[1]Data were analyzed for tried claims separately from claims closed before trial. The separate results were then combined, weighted by the number of each of these two types of claims in the total universe of all closed claims (including those in and not in the sample).

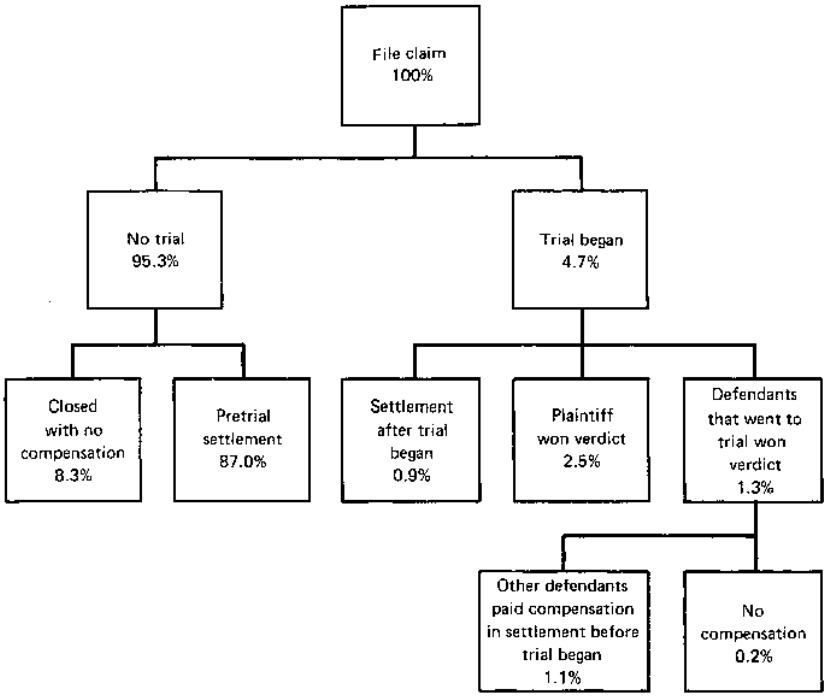

Fig. 2.1—Percent of asbestos product liability claims closed at various stages between January 1, 1980, and August 26, 1982

Tried Claims

The average total compensation paid for the claims that began trial in our sample period was $255,000; the median was $123,000; and the maximum was $2,300,000. These figures include compensatory damage awards, punitive damage awards, if any, and pretrial settlements paid by any defendants who elected to settle before other defendants went to trial; they do not include any changes in compensation that may result from appeals of some of the awards.[2] Considering all tried claims, 95 percent of the claimants received at least some

[2]Because trial verdicts may be reduced after appeal or settled for less than the verdict, our estimate of compensation for claims that began trial overstates, to an unknown extent, the compensation actually received in this class of claims. The awards for 24 percent of the claims for which trial began are being appealed.

compensation in pretrial settlement or trial award or both. The median and average total compensations for those who received at least some money were $132,000 and $269,000, respectively.[3]

The average total compensation for the 53 percent with plaintiffs' verdicts was $388,000. The 18 percent that were settled by all defendants after trial began received about half as much, an average of $189,000.[4] Claims with defense verdicts accounted for 29 percent of the trials during this time span. In 82 percent of trials that led to defense verdicts, some defendants had settled before the trial began (paying an average of $62,000 per claim).

Claims Closed Before Trial

Claims closed before trial began accounted for 95 percent of all claims closed in our sample period. Of these claims, 91 percent received compensation that ranged up to $1,400,000, had a median of $33,000, and averaged $60,000, while only 9 percent received no compensation from any defendant.[5] Total compensation for claims closed before trial began, including both those with and without compensation, had a median of $27,000 and averaged $55,000.[6]

All Closed Claims Combined

Averaging claims tried and claims closed before trial together, the grand total average compensation paid was $64,000 in our sample period.[7] See Tables 2.1 and 2.2 for details.

Plaintiff's legal fees and expenses for all tried claims averaged $114,000 (for tried claims that received some compensation, the

[3]These figures are similar to, but not identical to, those estimated in our earlier report (*Costs of Asbestos Litigation*, R-3042-ICJ) because the amounts paid on tried claims by those defendants that settled before trial began were not known to us on a case-by-case basis when that report was written.

[4]The average compensation and litigation expenses for claims settled after trial began were more like claims tried to verdict than they were like claims settled before trial. Consequently, for subsequent analyses, we grouped together all claims for which trial began.

[5]Our earlier report stated that 18 percent of the closed claims were dismissed or withdrawn. That 18 percent included some claims that were later refiled (these were excluded here) and included dismissed or withdrawn claims for which one or more defendants had already paid some compensation in settlement.

[6]This figure is close to the $53,000 in our earlier report that applied to all claims closed without trial prior to August 26, 1982.

[7]Other 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. I, "Overview of Previous Studies," in our earlier report, R-3042-ICJ).

Table 2.1

METHOD OF DISPOSITION AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

Method of Disposition	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
	$	% of Claims	$	% of Claims	$	% of Claims
Tried, defense verdict	51,000	1.3	51,000	29	—	0
Tried, plaintiff verdict	388,000	2.5	388,000	53	—	0
Settlement after trial began	189,000	0.9	189,000	18	—	0
All claims closed after trial began	255,000	4.7	255,000	100	—	0
Settled before trial, with compensation	60,000	87.0	—	0	60,000	91
Closed before trial, no compensation	0	8.3	—	0	0	9
All claims closed before trial	55,000	95.3	—	0	55,000	100
All claims closed by any method	64,000	100	—	—	—	—

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.

Table 2.2

PERCENTILE DISTRIBUTION OF COMPENSATION PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

Percent of Claims Closed With Compensation Less Than or Equal to Amount Shown at Right	Claims Closed Before Trial	Tried Claims[a]
5%	$ 0	$ 0
10	1,000	10,000
20	12,000	27,000
30	14,000	49,000
40	20,000	79,000
50	27,000	123,000
60	37,000	150,000
70	55,000	225,000
80	80,000	305,000
90	136,000	507,000
95	203,000	1,100,000

[a]Includes all claims for which a trial began, and tried claims on appeal.

average was $120,000 or 45 percent of total compensation). For all claims that closed before trial began, the average was $21,000 (for settled claims that received some compensation, the average was $23,000 or 38 percent of average total compensation).

Defendants' legal fees and expenses for all tried claims averaged $125,000, or 49 percent of what they paid in total compensation. For claims that closed before trial began, the average was $33,000 or 60 percent of what they paid in total compensation.

For all claims closed by any method in our sample period, the average legal fees and expenses were $25,000 on the plaintiff's side (39 percent of total compensation) and $37,000 on the defendant's side (58 percent above what they paid in total compensation). See Tables 2.3 and 2.4 for details.

As shown in Fig. 2.2, the total amount expended by all defendants and insurers combined was $101,000 for the average claim closed in our sample period, including both total compensation paid and defense legal fees and expenses. After deducting legal fees and expenses incurred by both sides, the plaintiff received an average net compensation of $39,000 or 39 percent of the $101,000 expended by defendants and insurers. The plaintiff received considerably more if the claim was tried ($141,000 after payment of all legal fees and expenses for tried claims, versus $34,000 for claims closed before trial).

AGE

As of the date of claim filing or their death, persons injured by exposure to asbestos usually were middle-aged or older. Of 61 percent of the plaintiffs for whom we have age data, only 5 percent were less than 40 years old and only 33 percent were between 40 and 55 years old. Forty-four percent were between 56 and 65, and 18 percent were age 66 or more.[8] The high average age of 57 years for both tried and nontried cases is attributable to the long latency period, often 15 to 40 years, between first exposure to asbestos and manifestation of disease.

The maximum average compensation ($87,000) was received by claimants aged 50 to 59 years. It declined to an average of $41,000 for those over 70 years old. Interestingly, it also was less for younger people—averaging $67,000 for those less than 50 years old. This effect may be due to less severe injuries in younger claimants; it is discussed

[8]The comparable figures for all closed claims combined, including data from those not in our sample, were 8, 33, 43, and 16 percent, respectively. A clerical error caused an incorrect distribution of claimants' ages for all closed cases shown in our previous report, R-3042-ICJ, p. 15.

Table 2.3

METHOD OF DISPOSITION AND AVERAGE LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]			
	Defense Expenses		Plaintiff Expenses	
Method of Disposition	$	% of Total Compensation	$	% of Total Compensation
Tried, defense verdict	103,000	202	22,000	43
Tried, plaintiff verdict	144,000	37	173,000	45
Settlement after trial began	106,000	56	85,000	45
All claims closed after trial began	125,000	49	114,000	45
Settlement before trial, with compensation	36,000	60	23,000	38
Closed before trial, no compensation	10,000	na	0	na
All claims closed before trial began	33,000	60	21,000	38
All claims closed by any method	37,000	58	25,000	39

NOTE: na = not applicable.
[a]Includes tried cases on appeal.

Table 2.4

PERCENTILE DISTRIBUTION OF LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

Percent of Claims Closed With Litigation Expense Less than or Equal to Amount Shown at Right	Claims Closed Before Trial		Tried Claims[a]	
	Defense Expenses	Plaintiff Expenses	Defense Expenses	Plaintiff Expenses
5	6,000	0	36,000	0
10	9,000	< 1,000	42,000	5,000
20	12,000	4,000	56,000	12,000
30	13,000	6,000	66,000	22,000
40	21,000	7,000	77,000	36,000
50	28,000	9,000	90,000	54,000
60	34,000	13,000	119,000	67,000
70	40,000	20,000	151,000	97,000
80	48,000	30,000	172,000	140,000
90	68,000	53,000	222,000	228,000
95	86,000	80,000	270,000	495,000

[a]Includes all claims for which a trial began, and tried claims on appeal.

further in Sec. III. See Tables 2.5 and 2.6 for average compensation and expenses as a function of age, respectively.

MARITAL STATUS

Data on marital status were available for only about two-thirds of the sample. For those claims with data, nearly all claimants were married; only 5 percent were known to be single, divorced, separated, or widowed.[9] Married plaintiffs received an average total compensation of $73,000; the unmarried received $54,000. (See Table 2.7.)

SEX

Almost all claimants were male. Only 1 percent of tried claims and 5 percent of settled or dismissed claims were for females.[10] The number

[9]In cases where survivors filed claims based on the death of a person from asbestos-related disease, we used the marital status of the deceased person prior to death. The comparable figure for all closed claims combined, including data from those not in our sample, also was 5 percent.

[10]In cases where survivors filed claims based on the death of a person from asbestos-related disease, we used the sex of the deceased person. The comparable figure for all closed claims, including those not in the sample, also was 5 percent female.

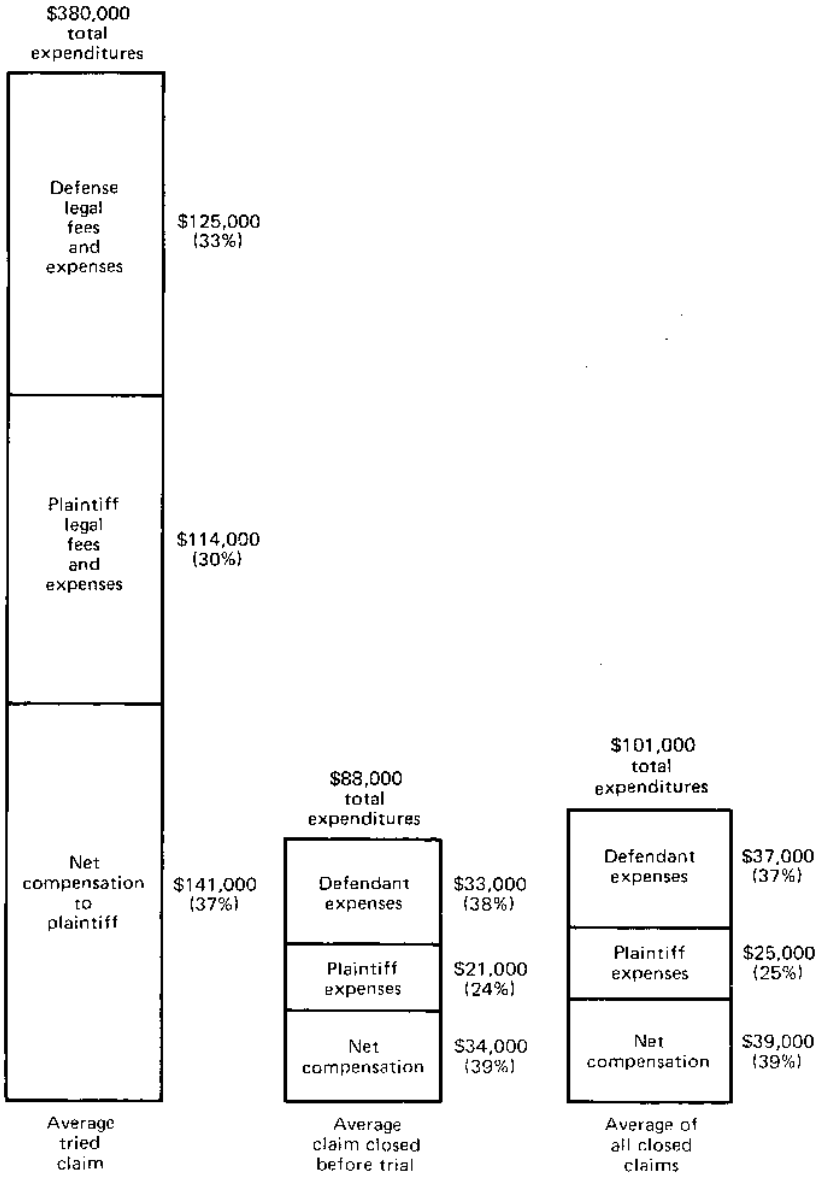

Fig. 2.2—Total expenditures per claim for asbestos product liability claims closed between January 1, 1980, and August 26, 1982

Table 2.5

AGE AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
Age	$	% of Claims	$	% of Claims	$	% of Claims
1–39	77,000	4	(c)	2	75,000	4
40–49	62,000	8	298,000	13	43,000	8
50–59	87,000	24	298,000	27	75,000	24
60–69	63,000	21	250,000	25	52,000	21
70 and up	41,000	4	(c)	5	36,000	4
Missing data	53,000	39	227,000	28	47,000	39

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than ten claims in the sample in this category.

of females whose claims were closed was too small, and concentrated in too few lawsuits, to make a valid comparison of average total compensation for males and females.

WORKER CLASSIFICATION

Although workers in many industries are exposed to asbestos, three major worker classifications account for the vast majority of asbestos-related litigation: 37 percent of all closed claims in our sample were filed by shipyard workers, 35 percent by asbestos product factory workers, and 21 percent by insulation workers. Only 7 percent were in other or unknown industries.[11]

An even greater percentage of the *pending* claims (as of August 1982) 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 of pending claims.

Insulation workers received the highest average compensation, $105,000 per closed claim, while shipyard workers received $74,000. Asbestos-related factory workers received substantially less compensation, an average of only $28,000. Average compensation and expenses

[11]The corresponding figures for all closed claims combined, including data from those not in our sample, were 39, 33, 20, and 8 percent.

Table 2.6

AGE AND AVERAGE LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]				Tried Claims				Settled or Dismissed Claims[b]			
	Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses	
Age	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
1–39	33,000	43	30,000	39	(c)	(c)	(c)	(c)	29,000	39	29,000	39
40–49	43,000	69	26,000	42	149,000	50	131,000	44	34,000	79	18,000	42
50–59	40,000	46	35,000	40	118,000	40	132,000	44	36,000	48	30,000	40
60–69	39,000	62	25,000	40	142,000	57	113,000	45	33,000	63	20,000	38
70 and up	42,000	102	15,000	37	(c)	(c)	(c)	(c)	36,000	100	13,000	36
Missing data	34,000	64	21,000	40	100,000	44	102,000	45	32,000	68	18,000	38

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than ten claims in the sample in this category.

Table 2.7

MARITAL STATUS AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
Marital Status	$	% of Claims	$	% of Claims	$	% of Claims
Married	73,000	60	275,000	63	62,000	60
Unmarried[c]	54,000	3	(d)	6	(d)	2
Missing data	52,000	37	246,000	31	44,000	38

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Single, divorced, separated, widowed.
[d]Fewer than 10 claims in the sample in this category.

for both tried and settled or dismissed cases are shown in Tables 2.8 and 2.9, respectively.

TYPE OF INJURY

A number of diseases are allegedly caused, at least in part, by inhalation of asbestos fibers. However, most research studies on disease incidence and lawsuits have focused on the three main diseases of asbestosis, lung cancer, and mesothelioma. Asbestosis accounted for 76

Table 2.8

WORKER CLASSIFICATION AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980 AND AUGUST 26, 1982

	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
Worker Classification	$	% of Claims	$	% of Claims	$	% of Claims
Factory worker (Asbestos-related)	28,000	35	148,000	26	24,000	36
Insulation worker	105,000	21	246,000	39	92,000	20
Shipyard worker	74,000	37	399,000	28	62,000	37
Other type worker	71,000	7	(c)	7	69,000	7

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

Table 2.9

WORKER CLASSIFICATION AND AVERAGE LITIGATION EXPENSES PER CLAIM
CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]				Tried Claims				Settled or Dismissed Claims[b]			
	Defense Expense		Plaintiff Expense		Defense Expense		Plaintiff Expense		Defense Expense		Plaintiff Expense	
Worker Classification	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
Factory worker (asbestos-related)	16,000	57	12,000	43	64,000	43	67,000	45	14,000	58	10,000	42
Insulation worker	59,000	56	43,000	41	129,000	52	110,000	45	52,000	57	36,000	39
Shipyard worker	45,000	61	28,000	38	187,000	47	176,000	44	40,000	65	23,000	37
Other type worker	44,000	62	28,000	39	(c)	(c)	(c)	(c)	42,000	61	27,000	39

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

percent, lung cancer for 12 percent, mesothelioma for 5 percent, and all other types of injury for only 3 percent for claims closed in our sample period.[12] No asbestos-related injury was manifest for 4 percent of our sample. The injury data were obtained and compared from four defendant and insurance company sources after the claims were closed, and are believed to be reliable. Several disorders ranging widely in severity, such as pleural plaques and lung fibrosis, were included in the asbestosis category.

As shown in Table 2.10, about the same percentage of tried and settled claims involved lung cancer (15 percent versus 12 percent), but tried claims more frequently involved mesothelioma than did settled cases (14 percent versus 4 percent). The Manville Corporation has projected that future lawsuits through the year 2001 will consist of 76 percent asbestosis, 7 percent lung cancer, and 17 percent mesothelioma cases.[13]

The average total compensation paid per closed claim was $54,000 for asbestosis, $83,000 for lung cancer, and $265,000 for mesothelioma

Table 2.10

TYPE OF INJURY AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
Type of Injury	$	% of Claims	$	% of Claims	$	% of Claims
Asbestosis	54,000	76	205,000	69	47,000	77
Lung cancer	83,000	12	311,000	15	69,000	12
Mesothelioma	265,000	5	469,000	14	232,000	4
Other type injury	29,000	3	(c)	2	26,000	3
No manifest asbestos-related injury	< 1,000	4	—	0	< 1,000	4

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

[12]These injuries were usually some lung disease other than lung cancer and asbestosis, or some cancer other than lung cancer or mesothelioma.

[13]Testimony of Richard B. Von Wald, Vice President and Corporate Counsel, The Manville Corporation, at the *Oversight Hearings on the Effect of the Manville and UNR Bankruptcies on Compensation of Asbestos Victims*, Subcommittee on Labor Standards, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C., September 9, 1982, p. 64.

cases. Tried claims received 2 to 4 times as much as settled claims in every injury category. We have no data on severity of injury within the asbestosis category, so we cannot say whether asbestosis was more severe in tried cases, for example, than in settled cases. Compensation for mesothelioma, however, a disease that is usually rapidly fatal, was much higher for tried ($469,000) than for settled claims ($232,000). Plaintiff and defendant average expenses per claim closed are shown in Table 2.11.

At least 91 percent of all claims filed based on asbestosis, lung cancer, or mesothelioma received compensation, while only about half of the claims for other types of injuries did so. Only a small percent of the claimants with no manifest asbestos-related injury received compensation; those few who did usually received only a few hundred dollars. Table 2.12 contains data on the percent receiving compensation by type of injury, and the average total compensation for those claims that received some compensation.

We examined the interaction between type of work and type of injury. Table 2.13 shows that claims by insulation workers were more likely to involve lung cancer and mesothelioma (28 percent) than those by shipyard workers (15 percent) and factory workers (8 percent). For mesothelioma, there were too few claims to make reliable comparisons by type of worker. For lung cancer, the average compensation paid in settlement was similar across categories of workers, ranging from $61,000 to $77,000. For asbestosis, however, the average compensation paid in settlement differed sharply among types of workers, ranging from $23,000 for factory workers up to $92,000 for insulation workers (see Table 2.14). We hypothesize that at least part of that variation was due to variations in severity of the asbestosis injury which resulted from unequal exposure to asbestos among worker classifications. Our discussions with defendants and plaintiffs' attorneys tended to confirm the hypothesis that the asbestosis they were seeing in claims by factory workers was less severe than that of both insulation and shipyard workers. This topic is discussed further in Sec. III.

LIFE STATUS

Most plaintiffs were alive at the time of case closure, but 15 percent of the settled or dismissed claims and 27 percent of the tried claims involved deceased workers.[14] Spouses, dependents, and estates of

[14]The comparable figures for all closed claims, including those not in the sample, were 14 and 27 percent, respectively.

Table 2.11

TYPE OF INJURY AND AVERAGE LITIGATION EXPENSES PER CLAIM
CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]				Tried Claims				Settled or Dismissed Claims[b]			
	Defense Expense		Plaintiff Expense		Defense Expense		Plaintiff Expense		Defense Expense		Plaintiff Expense	
Type of Injury	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
Asbestosis	37,000	69	21,000	39	119,000	58	91,000	44	33,000	70	18,000	38
Lung cancer	44,000	53	33,000	40	121,000	39	138,000	44	39,000	57	26,000	38
Mesothelioma	74,000	28	109,000	41	160,000	34	212,000	45	60,000	26	93,000	40
Other type of injury	30,000	103	12,000	41	(c)	(c)	(c)	(c)	26,000	100	10,000	39
No manifest asbestos-related injury	8,000	> 800	< 1,000	39	—	—	—	—	8,000	> 800	< 1,000	39

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

Table 2.12

TYPE OF INJURY, PERCENT RECEIVING COMPENSATION, AND AVERAGE TOTAL COMPENSATION PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]			Tried Claims			Settled or Dismissed Claims[b]		
Type of Injury	Average Comp. for All Claims	% Receiving Comp.	Average Comp. for Claims with Comp. Only	Average Comp. for All Claims	% Receiving Comp.	Average Comp. for Claims with Comp. Only	Average Comp. for All Claims	% Receiving Comp.	Average Comp. for Claims with Comp. Only
Asbestosis	$ 54,000	96	$ 56,000	$205,000	96	$214,000	$ 47,000	96	$ 49,000
Lung cancer	83,000	91	91,000	311,000	95	327,000	69,000	91	76,000
Mesothelioma	265,000	94	282,000	469,000	94	497,000	232,000	94	248,000
Other type injury	29,000	51	57,000	(c)	67	(c)	26,000	50	52,000
No manifest asbestos-related injury	< 1,000	19	2,000	—	—	—	< 1,000	19	2,000
All types	64,000	91	70,000	255,000	95	269,000	55,000	91	60,000

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

Table 2.13

PERCENT OF CLAIMS BY TYPE OF INJURY AND WORKER CLASSIFICATION FOR CLAIMS CLOSED BETWEEN JANUARY 1, 1980 AND AUGUST 26, 1982

Type of Injury	Asbestos-Related Factory Worker	Insulation Worker	Shipyard Worker
Asbestosis	81	70	80
Lung cancer	8	20	10
Mesothelioma	< 1	8	5

NOTES: All other types of injuries (including no manifest asbestos-related injury) account for 7 percent of the claims, and are not shown here. See Table 2.10. All other types of workers account for 7 percent of the claims, and likewise are not shown here. See Table 2.8.

deceased workers received average total compensation of $94,000, as compared with $59,000 for living plaintiffs. Tables 2.15 and 2.16 show total compensation and expenses as a function of life status. It is important to stress that the impact of any single variable can be obscured by the impacts of other variables. For instance, claims for lung cancer and mesothelioma received higher compensation and were much more likely to involve death. Thus, when all other factors are held equal, living plaintiffs receive more instead of less compensation than the representatives of deceased workers.

SMOKER STATUS

Of the 63 percent of the plaintiffs whose smoking behavior was noted in the claim data, nearly all were tobacco smokers or had been smokers for some period during their lifetime. Only 3 percent were nonsmokers, and they received higher average compensation ($116,000, versus $81,000 for smokers as shown in Table 2.17).

STATE

As of August 1982, about 21,000 asbestos-related lawsuits had been filed in at least 48 states, but according to our data, 69 percent 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 in our sample period, 71 percent were filed in the same five states, with by far the

Table 2.14

AVERAGE TOTAL COMPENSATION PAID PER CLAIM BY TYPE OF INJURY AND WORKER CLASSIFICATION FOR CLAIMS CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	Factory Worker (Asbestos-Related)			Insulation Worker			Shipyard Worker		
Type of Injury	All Closed Claims	Tried Claims	Settled or Dismissed Claims	All Closed Claims	Tried Claims	Settled or Dismissed Claims	All Closed Claims	Tried Claims	Settled or Dismissed Claims
Asbestosis	$27,000	$151,000	$23,000	$ 97,000	$157,000	$92,000	$ 60,000	$335,000	$51,000
Lung cancer	79,000	(a)	76,000	112,000	(a)	77,000	64,000	(a)	61,000
Mesothelioma	(a)	(a)	(a)	(a)	(a)	(a)	378,000	(a)	(a)
All types combined	28,000	148,000	24,000	105,000	246,000	92,000	74,000	399,000	62,000

NOTES: All other types of injury (including no manifest asbestos-related injury) account for 7 percent of the claims, and are not shown here. See Table 2.10. All other types of workers account for 7 percent of the claims, and likewise are not shown here. See Table 2.8.

[a]Fewer than 10 claims in the sample in this category.

Table 2.15

LIFE STATUS AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
Life Status	$	% of Claims	$	% of Claims	$	% of Claims
Living	59,000	85	244,000	73	51,000	85
Deceased	94,000	15	285,000	27	77,000	15

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.

most closed in California and New Jersey.[15] In some states where few cases had ever been filed, none had been closed. Among the 23 states where more than 100 claims had been filed, only Hawaii had closed more than half of the total. In most states, fewer than 20 percent of the cases had reached disposition as of August 1982.

Among claims still open in August 1982, the same five states accounted for 69 percent of the pending caseload, with 30 percent of the total pending in California. Because The Manville Corporation was a defendant on nearly all cases filed prior to August 1982, its Chapter 11 bankruptcy filing in that month has prevented complete closure of any significant number of claims since then.

The average compensation and expenses per closed claim are shown in Tables 2.18 and 2.19 for the eight states that had closed the largest number of claims (all other states combined had closed only 14 percent of the total). The average compensation per claim closed varied from less than $25,000 in New Jersey to $145,000 in Hawaii and Pennsylvania. (These state averages do not necessarily mean that the same claim would receive greatly different compensation in different states, because claims in different states have different characteristics and trial rates, as shown in Sec. III.)

TYPE OF COURT

Nationwide, just over half of the closed claims were filed in federal instead of state courts, but in New Jersey and Texas the number was over 90 percent in 1980–1982. In California, Pennsylvania, and South Carolina, over two-thirds of the closed claims were filed in state courts.

[15]One large group settlement in New Jersey involved over 600 claimants.

Table 2.16

LIFE STATUS AND AVERAGE LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]				Tried Claims				Settled or Dismissed Claims[b]			
	Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses	
Life Status	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
Living	35,000	59	24,000	41	127,000	52	108,000	44	31,000	61	20,000	39
Deceased	52,000	55	38,000	40	121,000	42	128,000	45	46,000	60	30,000	39

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.

Table 2.17

SMOKER STATUS AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
Smoker Status	$	% of Claims	$	% of Claims	$	% of Claims
Smoker at some time during life	81,000	61	244,000	91	69,000	59
Nonsmoker	116,000	2	(c)	6	(c)	2

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

Table 2.18

STATE AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
State	$	% of Claims	$	% of Claims	$	% of Claims
California	49,000	27	141,000	8	48,000	28
Hawaii	145,000	3	(c)	1	140,000	3
Massachusetts	(c)	3	(c)	0	(c)	3
New Jersey	24,000	26	(c)	1	23,000	27
Pennsylvania	145,000	9	206,000	29	133,000	8
South Carolina	40,000	3	(c)	2	41,000	3
Tennessee	59,000	5	330,000	8	38,000	5
Texas	106,000	10	281,000	18	90,000	10
Other	87,000	14	287,000	33	63,000	13

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Ten or fewer claims in the sample in this category.

Table 2.19

STATE AND AVERAGE LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

State	All Closed Claims Combined[a]				Tried Claims				Settled or Dismissed Claims[b]			
	Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses	
	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
California	42,000	86	18,000	37	229,000	162	63,000	45	39,000	81	17,000	35
Hawaii	67,000	46	58,000	40	(c)	(c)	(c)	(c)	65,000	46	55,000	39
Massachusetts	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)
New Jersey	14,000	58	9,000	38	(c)	(c)	(c)	(c)	14,000	61	9,000	39
Pennsylvania	54,000	37	59,000	41	99,000	48	93,000	45	45,000	34	53,000	40
South Carolina	33,000	83	16,000	40	(c)	(c)	(c)	(c)	31,000	76	16,000	39
Tennessee	41,000	69	25,000	42	114,000	35	148,000	45	35,000	92	15,000	39
Texas	41,000	39	43,000	41	100,000	36	127,000	45	36,000	40	35,000	39
Other	57,000	66	37,000	43	127,000	44	125,000	44	48,000	76	26,000	41

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Ten or fewer claims in the sample in this category.

The average compensation per claim filed was much the same in federal ($63,000) and state courts ($66,000). Claims that were tried but not appealed resulted in average compensation of $167,000, while those known to be under appeal averaged much higher—$632,000 and $495,000 in state and federal appeals courts, respectively. Average compensation and expenses are shown by type of court in Tables 2.20 and 2.21. Data from appealed claims must be interpreted cautiously, since the compensation awarded may be reduced as the appeals progress, and the defense legal fees and expenses will increase.

Table 2.20

TYPE OF COURT AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
Type of Court	$	% of Claims	$	% of Claims	$	% of Claims
State, excluding appeals	62,000	41	168,000	32	58,000	41
State appeals, as of August 1982[c]	632,000	< 1	632,000	6	—	0
Federal, excluding appeals	57,000	58	166,000	44	53,000	59
Federal appeals, as of August 1982[c]	495,000	< 1	495,000	18	—	0
All state	66,000	41	242,000	38	58,000	41
All federal	63,000	59	262,000	62	53,000	59

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Tried claims known to be under appeal in August 1982. These average awards may be revised as a result of the appeals.

NUMBER OF DEFENDANTS PER CLAIM

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

In all open and closed claims combined, plaintiffs sue an average of approximately 20 defendants, frequently because their employers (such

Table 2.21

TYPE OF COURT AND AVERAGE LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980 AND AUGUST 26, 1982

	All Closed Claims Combined[a]				Tried Claims				Settled or Dismissed Claims[b]			
	Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses	
Type of Court	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
State, excluding appeals	43,000	69	24,000	39	118,000	70	75,000	45	40,000	69	22,000	38
State appeals, as of August 1982[c]	252,000	40	285,000	45	252,000	40	285,000	45	—	—	—	—
Federal, excluding appeals	32,000	56	22,000	39	117,000	70	72,000	43	29,000	55	20,000	38
Federal appeals, as of August 1982[c]	116,000	23	223,000	45	116,000	23	223,000	45	—	—	—	—
All state	44,000	67	26,000	39	139,000	57	109,000	45	40,000	69	22,000	38
All federal	33,000	52	25,000	40	117,000	45	116,000	44	29,000	55	20,000	38

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Tried claims known to be under appeal in August 1982. The defense legal fees and expenses will rise as the appeals progress. The plaintiff legal expenses will rise, and the average plaintiff legal fees may be revised as a result of the appeals, in accordance with contingency fee agreements between plaintiffs and their lawyers.

as shipyards) were supplied with asbestos products by many corporations over their years of employment. Plaintiffs on closed claims had filed suit against an average of 15 defendants.[16] One-tenth filed against six or fewer defendants; one-tenth filed against 30 or more. Tried claims had an average of 14, while other closed claims had an average of 15 defendants. This multiplicity of defendants contributes to the time and cost of resolving these claims.

The average compensation per claim was lowest for those with one to 10 defendants ($37,000) and highest for those with 21 to 30 defendants ($104,000). Total compensation and expenses per claim are shown in Tables 2.22 and 2.23.

Table 2.22

NUMBER OF DEFENDANTS AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

Number of Defendants on Claim	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
	$	% of Claims	$	% of Claims	$	% of Claims
1 to 10	37,000	41	201,000	25	32,000	42
11 to 20	86,000	38	222,000	60	75,000	36
21 to 30	104,000	11	(c)	8	83,000	12
31 and up	52,000	10	(c)	7	48,000	10

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Ten or fewer claims in the sample in this category.

MULTIPLE PLAINTIFF LAWSUITS

A substantial minority of these claims were in lawsuits filed by multiple plaintiffs. Of all claims closed in our sample period, 21 percent of claims tried and 43 percent of claims closed before trial involved more than one plaintiff. (By a multiple-plaintiff case, we mean a case involving more than one person allegedly having an asbestos-related disease; we do not mean, for example, a case filed by several members of the same family following injury or death of one member of that family.) Multiple-plaintiff lawsuits had a substantially lower average total compensation per claim ($34,000) than individual plaintiff

[16]The comparable figure for all closed claims combined, including data from those not in our sample, was 16 defendants per claim.

Table 2.23

NUMBER OF DEFENDANTS AND AVERAGE LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]				Tried Claims				Settled or Dismissed Claims[b]			
	Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses	
Number of Defendants on Claim	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
1 to 10	17,000	46	15,000	41	81,000	40	90,000	45	15,000	47	13,000	41
11 to 20	50,000	58	34,000	40	116,000	52	98,000	44	45,000	60	29,000	39
21 to 30	58,000	56	42,000	40	(c)	(c)	(c)	(c)	53,000	64	32,000	39
31 and up	52,000	100	18,000	35	(c)	(c)	(c)	(c)	45,000	94	16,000	33

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

lawsuits ($88,000). These "group claims" received about half or less of the average compensation per claim paid on "individual claims" in both claims tried and in those claims closed before trial. Much of this apparent difference is actually due to other factors, such as type of injury, as will be shown when all claim characteristics are considered simultaneously in Sec. III. (See Tables 2.24 and 2.25 for information on compensation and expenses for these cases.)

Table 2.24

NUMBER OF PLAINTIFFS ON LAWSUIT AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

Number of Plaintiffs on Lawsuit	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
	$	% of Claims	$	% of Claims	$	% of Claims
1	$88,000	58	$284,000	79	$74,000	57
2–10	63,000	4	152,000	9	53,000	4
11–25	52,000	12	145,000	12	47,000	12
26 and up	21,000	26	(c)	0	21,000	27

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

YEAR OF CLAIM FILING

Some closed claims in our sample were filed as early as 1975 and 38 percent were filed before 1979; 23 percent were filed in 1979, 22 percent in 1980, and 17 percent in 1981–1982.[17] Claims filed in 1975 and 1976 received the lowest average total compensation, $27,000 and $36,000 respectively, due in part to some large group settlements for relatively low compensation per claim. Claims filed in later years received average total compensation that ranged from $48,000 to $111,000, depending on the year of filing. (See Tables 2.26, 2.27 and 2.28 for details of compensation and expenses by year of claim filing.)

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.

[17]The comparable figures for all claims closed in our sample period, including data from those not in our sample, were 35, 26, 20 and 18 percent, respectively.

Table 2.25

NUMBER OF PLAINTIFFS ON LAWSUIT AND AVERAGE LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]				Tried Claims				Settled or Dismissed Claims[b]			
	Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses	
Number of Plaintiffs On Lawsuit	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
1	$50,000	57	$34,000	39	$137,000	48	$126,000	44	$44,000	60	$28,000	38
2–10	37,000	59	26,000	41	86,000	57	68,000	45	32,000	60	21,000	40
11–25	34,000	65	19,000	37	76,000	52	65,000	45	32,000	68	17,000	36
26 and up	12,000	57	8,000	38	(c)	(c)	(c)	(c)	12,000	57	8,000	38

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

Table 2.26

YEAR OF CLAIM FILING AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

Year Claim Was Filed	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
	$	% of Claims	$	% of Claims	$	% of Claims
1975	27,000	12	—	0	27,000	12
1976	36,000	9	(c)	1	35,000	9
1977	73,000	6	(c)	4	66,000	7
1978	111,000	11	248,000	30	92,000	10
1979	87,000	23	242,000	29	77,000	23
1980	48,000	22	203,000	21	41,000	22
1981	62,000	16	339,000	15	48,000	16
1982	(c)	1	—	0	(c)	1

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

YEARS FROM FILING TO CLOSURE

The average time from claim filing to closure was 2 years and 8 months.[18]

Tables 2.28 and 2.29 show average compensation and expenses per claim closed as a function of the number of years from filing to closure. The average compensation rises as that time increases from 1 to 4 years, but falls off markedly. This apparent decline was due mainly to some large group settlements that were closed for relatively low compensation per claim after 5 or 6 years.

YEAR OF CLAIM CLOSURE

Approximately 3,800 claims had been closed (i.e., had either been tried, settled by 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

[18]The comparable figure for all claims closed, including data from those not in our sample, was 2 years and 9 months. About a third were closed in 1 year or less from filing, but 11 percent took 6 years (the longest amount of time reported for our sample of cases).

Table 2.27

YEAR OF CLAIM FILING AND AVERAGE LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

Year Claim Was Filed	All Closed Claims Combined[a]				Tried Claims				Settled or Dismissed Claims[b]			
	Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses	
	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
1975	15,000	56	11,000	41	—	na	—	na	15,000	56	11,000	41
1976	19,000	53	15,000	42	(c)	(c)	(c)	(c)	18,000	51	14,000	40
1977	46,000	63	29,000	40	(c)	(c)	(c)	(c)	44,000	67	26,000	39
1978	58,000	52	46,000	41	141,000	57	109,000	44	47,000	51	37,000	40
1979	47,000	54	34,000	39	131,000	54	108,000	45	42,000	55	29,000	38
1980	34,000	71	18,000	38	95,000	47	91,000	45	31,000	76	15,000	37
1981	39,000	63	24,000	39	113,000	33	153,000	45	35,000	73	18,000	38
1982	(c)	(c)	(c)	(c)	—	na	—	na	(c)	(c)	(c)	(c)

NOTE: na = not applicable.
[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

Table 2.28

TIME FROM FILING TO CLOSURE AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

Number of Years from Filing to Closure	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
	$	% of Claims	$	% of Claims	$	% of Claims
1	60,000	33	278,000	25	52,000	33
2	70,000	26	217,000	35	60,000	26
3	87,000	15	196,000	29	76,000	14
4	126,000	6	527,000	10	95,000	6
5	27,000	9	(c)	1	27,000	10
6	28,000	11	(c)	0	28,000	11

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

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 900 claims were closed in the 1970s. Typically, each one of the major defendant corporations had 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 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.

Our sample includes only claims closed between January 1, 1980, and August 26, 1982.[19] Of those, 15 percent were closed in 1980, 57 percent in 1981, and 28 percent in 1982. The average total compensation per tried claim more than doubled, from $148,000 in 1980 to $358,000 in 1982; the average for claims closed prior to trial was more constant, varying from a low of $47,000 in 1981 to $74,000 in 1980. Again, some

[19]The year of claim closure is defined as the year trial began for a tried claim, the year the most defendants closed a claim that had no compensation, and the year the most compensation was paid for a settled claim. (For the great majority of the claims, the year the most defendants closed the claim was the same as the year the most compensation was paid in settlement.)

Table 2.29

TIME FROM FILING TO CLOSURE AND AVERAGE LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

Number of Years from Filing to Closure	All Closed Claims Combined[a]				Tried Claims				Settled or Dismissed Claims[b]			
	Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses	
	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
1	37,000	62	24,000	40	108,000	39	124,000	45	34,000	65	20,000	39
2	43,000	61	27,000	39	105,000	48	98,000	45	39,000	65	22,000	37
3	49,000	56	35,000	40	134,000	68	87,000	44	40,000	53	30,000	40
4	62,000	49	53,000	42	203,000	39	229,000	44	51,000	54	39,000	41
5	17,000	63	10,000	37	(c)	(c)	(c)	(c)	16,000	60	10,000	37
6	15,000	54	11,000	39	(c)	(c)	(c)	(c)	15,000	54	11,000	39

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]Fewer than 10 claims in the sample in this category.

large group settlements with relatively low compensation tended to obscure the rising time trend, which we uncover in our multivariate analysis in Sec. III. (See Tables 2.30 and 2.31 for compensation and expenses by the year of claim closure.)

Table 2.30

YEAR OF CLAIM CLOSURE AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

Year of Claim Closure	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
	$	% of Claims	$	% of Claims	$	% of Claims
80	76,000	15	148,000	9	74,000	15
81	53,000	57	190,000	50	47,000	58
82	82,000	28	358,000	41	62,000	27

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.

PUNITIVE DAMAGES

Punitive damages totaling $4,934,000 were awarded to 19 plaintiffs in our sample period.[20] They ranged from $4,000 to $1,000,000 and averaged $260,000 per plaintiff receiving a punitive damage award. About half the awards were less than $100,000.

Even though punitive damages were awarded in 14 percent of the claims for which trial began, the $255,000 average total compensation for all tried cases included an average of only $37,000 in punitive damages.

Considering only those trials with plaintiffs' verdicts, 27 percent received punitive damages, which constituted $70,000 of their $388,000 average total compensation.

Tried claims with punitive damage awards also had much higher total compensation exclusive of the punitive award ($368,000)[21] than did tried claims that received no punitive award ($192,000).

(See Tables 2.32 and 2.33 for compensation and expenses for claims with and without punitive damages.)

[20]This includes all punitive damage awards in our sample period, with the exception of $35 million for one case in which default judgments were granted against all defendants, none of whom had appeared at trial. (*Stewart et al. v. North American Asbestos Corporation et al.*, McLean County, Illinois Circuit Court, 78-L201).

[21]$628,000 average total compensation less $260,000 average punitive damage award.

Table 2.31

YEAR OF CLAIM CLOSURE AND AVERAGE LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]				Tried Claims				Settled or Dismissed Claims[b]			
	Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses	
Year of Claim Closure	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
80	42,000	55	30,000	40	93,000	63	66,000	45	40,000	54	29,000	39
81	33,000	62	21,000	40	118,000	62	85,000	45	29,000	62	18,000	38
82	46,000	56	33,000	40	140,000	39	159,000	44	39,000	63	24,000	39

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.

Table 2.32

PUNITIVE DAMAGES AND AVERAGE TOTAL COMPENSATION PAID PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
Punitive Damage Outcome	$	% of Claims	$	% of Claims	$	% of Claims
Punitive damages were awarded	628,000	0.7	628,000	14	na	0
Punitive damages were NOT awarded	61,000	99.3	192,000	86	55,000	100

NOTE: na = not applicable.
[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.

Table 2.33

PUNITIVE DAMAGES AND AVERAGE LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980, AND AUGUST 26, 1982

	All Closed Claims Combined[a]				Tried Claims				Settled or Dismissed Claims[b]			
	Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses		Defense Expenses		Plaintiff Expenses	
Punitive Damage Outcome	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
Punitive damages were awarded	138,000	22	278,000	44	138,000	22	278,000	44	na	na	na	na
Punitive damages were NOT awarded	37,000	61	24,000	39	123,000	64	86,000	45	33,000	60	21,000	38

NOTE: na = not applicable.
[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.

III. ANALYSIS OF COMPENSATION PAID

For all claims closed between January 1, 1980, and August 26, 1982, the average total compensation paid was $64,000. (The 95-percent confidence interval for the estimated average compensation using the sample data ranged from $58,000 to $70,000.) The analyses in this section are intended to illuminate how various claim characteristics were related to the amount of compensation paid. Rather than consider one characteristic at a time as in Sec. II, we analyze all characteristics about which we have data simultaneously so as to estimate the independent influence of each characteristic on compensation when all other characteristics are held constant.

The expected compensation at the time a claim is filed is the product of the probability of receiving any compensation times the expected compensation if any is paid. (This section concerns the amount of compensation, if any; Sec. IV concerns the likelihood of receiving any compensation, and discusses claim characteristics that are important in estimating that likelihood.)

To identify the factors that influenced the level of compensation, we began by considering total compensation (exclusive of punitive damages) as a function of all factors for which we had data. These factors included:

- Age
- Marital status
- Sex
- Worker classification
- Type of injury
- Alive or deceased
- Smoker status
- Region
- Type of court
- Number of defendants per claim
- Number of plaintiffs in lawsuit
- Method of claim disposition (pretrial settlement or trial)
- Year of claim closure

To examine how compensation levels varied as a function of claim characteristics, we explored several models using multivariate linear regression techniques. The model with the best statistical fit to the

data is presented here.[1] Standard variable selection procedures based on t and F statistics were used to eliminate some of the potentially explanatory variables when they were not statistically significant, but some nonsignificant variables were kept because of their special interest.

Table 3.1 shows the estimated regression coefficients for the independent variables in the final equation, as well as numerous statistics for assessing the precision of the estimates and the goodness of fit of the equation.[2] Much of the remainder of this section will be devoted to interpreting these results.

Factors that we would expect to influence the level of compensation on individual claims, but about which we had no direct data, are the severity of asbestosis, the earning power of the claimant, the strength of the asbestos exposure evidence, and the characteristics of the lawyers on both sides. Without these, we cannot completely explore variation in the amount of compensation.[3]

The relationship between claim characteristics and the amount of compensation reported here applied during the period 1980–1982. Possible changes over time in the nature and distribution of injuries or types of workers on closed cases, changes over time in the average number and type of defendants involved, and changes resulting from the Chapter 11 bankruptcy filings of some of the defendants may have resulted in changes in compensation levels since then. Thus, recent and future claims compensation may differ from these figures.[4]

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[1]It uses the natural logarithm of compensation as the dependent variable and subsets of the above factors (and their transforms) as independent variables.

[2]Based on the usual tests of goodness of fit, the logarithms of the compensation levels appear to satisfy the linear model assumptions very well. The residual distribution is approximately normal, and there is little evidence of heterogeneity of variance either across different levels of the dependent variable or across types of injury. As a consequence, the t and F statistics reported in Table 3.1 should provide valid tests of hypotheses about the regression coefficients. Approximate 95-percent confidence intervals for the regression coefficients can be calculated by taking the estimated coefficients plus or minus two estimated standard deviations. The constant term in the regression equation has been corrected for the retransformation bias associated with loglinear regression models, i.e., the average of the actual compensation levels in our sample is the same as the average of the compensation values predicted by the model.

[3]The claim characteristics that were included in the equation for estimating compensation accounted for 34 percent of the variance among individual claims. While the inclusion of some factors that were not statistically significant would have raised this figure a few percentage points, the fact remains that a substantial amount of the variability in the compensation levels among individual claims cannot be explained by the claim characteristics that were available for this study. However, by social science research standards, explaining 34 percent of the variance is quite respectable.

[4]For example, open claims have different proportions of each type of worker from those in closed claims (see Sec. II). If the average compensation for each type of worker is used, with the proportions of each type of worker on open instead of closed claims, then the overall average compensation rises from $64,000 to $72,000.

Table 3.1

REGRESSION RESULTS FOR THE LOGARITHM OF COMPENSATION PAID TO PLAINTIFFS IN ASBESTOS-RELATED LITIGATION IN 1980–1982

Characteristic	Coefficient	Estimated Standard Deviation	t
Constant	10.91	.21	52.0
Claimant characteristics			
Asbestosis			
Factory worker	.00[a]		
Insulation worker	.65	.22	3.0
Shipyard worker	.30	.20	1.5
Other	.05	.33	.2
Lung cancer	.77	.21	3.7
Mesothelioma	1.76	.26	6.6
Other injury	.55	.43	1.3
Claimant deceased	−.13	.15	− .8
Age — 57	−.0091	.0058	−1.6
(Age — 57)^2	−.0014	.0004	−3.5
Lawsuit characteristics			
Ln(number of defendants/15)	.16	.09	1.7
Ln(number of plaintiffs)	−.06	.04	−1.7
Claim disposition			
Pretrial settlement	.00[a]		
Tried	.82	.12	6.8
Year closed (0 = 1982)	.05	.06	.9
R^2	.34		
S	1.07		
F	18.2		
N	469		

[a]Indicator variables for settled claims and for asbestosis claims involving factory workers were not included in the regression equation, so that the compensation levels for these categories would serve as a benchmark for measuring increments associated with other categories.

COMPENSATION BY TYPE OF INJURY AND WORKER CLASSIFICATION

As expected, the type of injury proved to be a major influence on the amount of compensation. Claimants with lung cancer or mesothelioma received substantially more than those with asbestosis.

The type of work done by the claimant also was expected to influence average compensation. Recall that the great majority of claimants were shipyard workers, insulation workers, and asbestos-related factory workers. The magnitude of exposure to asbestos (the "cleanliness" of the work environment and the average length of employment) should depend on type of work, and type of work would thus affect the severity of asbestosis. Since we did not have data on severity of the asbestosis for our sample of claims, we have used type of work as a partial surrogate. We did not have information about the earnings of individual claimants; type of work also may serve as a partial indicator of lost earning capacity. The average amount of workers' compensation paid, and the degree to which it offsets tort litigation compensation, may also vary by type of worker. However, we hypothesize that severity of injury has a stronger impact on compensation.

Since we suspected that the severity of asbestosis was related to type of work, we explored the interaction of these variables. Our discussions with defendants' and plaintiffs' attorneys suggested that the asbestosis they were seeing in claims by factory workers was less severe than that of both insulation and shipyard workers. In fact, holding all other factors equal, the average compensation paid to insulation workers with asbestosis was higher than that paid to shipyard workers, which in turn was higher than that paid to factory workers.

Although the severity of asbestosis and the compensation appear to vary by type of worker, compensation for lung cancer and mesothelioma was not expected to do so. In fact, all other factors being equal, we found no significant differences in lung cancer compensation across types of workers. Given the finding for lung cancer, the relatively rare incidence of mesothelioma (only 5 percent of the closed claims), and the severity of that disease no matter what type of worker, we incorporated a single factor for mesothelioma in the analysis.

Consider a claimant who was of average age (57 years), and who had named the average number of defendants (15) in a single-plaintiff lawsuit that was settled before trial in 1982. As shown in Table 3.2, if this claimant was an asbestos-related factory worker with asbestosis, he or she received an average of $55,000 in compensation; a claimant with mesothelioma received an estimated average of $319,000, over 5 times as much. The estimates for other injuries and for other types of workers are less than $100,000, but this value has a relatively high

Table 3.2

AVERAGE COMPENSATION PAID FOR CLAIMS RECEIVING COMPENSATION, BY TYPE OF INJURY AND WORKER CLASSIFICATION IN 1982, FOR LIVING CLAIMANTS AGE 57, WHO NAMED 15 DEFENDANTS IN A SINGLE-PLAINTIFF LAWSUIT THAT WAS SETTLED BEFORE TRIAL

Type of Injury and Worker Classification	Average Compensation Per Claim Settled Before Trial
Asbestosis	
Asbestos-related factory worker	$ 55,000
Other type of worker	58,000
Shipyard worker	75,000
Insulation worker	106,000
Lung cancer	119,000
Mesothelioma	319,000
Other type of injury	95,000

estimated standard deviation because of the small number of such other injury and other worker claims in our sample.

ADJUSTMENT OF COMPENSATION FOR TRIAL

Whether or not trial began for a given claim was highly significant in explaining the amount of compensation received.[5] All other factors being equal, a claim that began trial received 2.28 times the compensation of a claim that was settled before trial. This is exclusive of any punitive damages awarded at trial, which are discussed in Sec. VI.

We investigated whether going to trial made more of a difference for certain types of injuries, since the simple tabulation in Table 2.10 seemed to indicate that it did. However, when all other factors were held equal, the increase in compensation associated with going to trial was virtually the same for asbestosis, lung cancer, and mesothelioma. A formal test of the hypothesis that the increase was the same for all three types of injury showed no significant differences.

[5]Going to trial and receiving higher compensation are interrelated variables that influence each other. One does not wholly cause the other. Instead, it is possible that claims that merit higher compensation are more likely to go to trial, *and* it is likely that claims that go to trial receive higher compensation if all other factors are equal.

We do not fully understand the reasons for the substantial difference in compensation between tried and settled cases, especially since the majority of the tried cases were not on appeal and the figures used in our analysis for these cases were money paid rather than verdicts rendered. Average settlements in litigation generally are some fraction of average trial verdicts because they eliminate the risk of defense verdicts, reduce delay in obtaining compensation, and avoid the expenses of trial. It seems unlikely that these general factors explain so large a difference as we found in asbestos litigation. It may be that the tried cases in our sample were different from the settled cases for characteristics we were not able to measure; some of these characteristics may be the severity of asbestosis, the expertise of the plaintiffs' lawyers, the quality of plaintiffs' witnesses, and the nature of the defendants' behavior. One would expect compensation to be higher in tried cases if injuries were more severe, plaintiffs' lawyers were more skilled, plaintiffs and their families were more likely to be viewed sympathetically by a jury, and defendants appeared more culpable in tried than in settled cases.

ADJUSTMENT OF COMPENSATION FOR DEATH

For personal injury claims in general, claims involving death often receive lower compensation than claims involving severe injury. The difference is presumably due to the injured claimant's cost of future medical care, the cost of future personal care, the bar in some states from receiving compensation for pain and suffering in wrongful death cases, and the like. All other things being equal, we found that claims involving death received 88 percent of what they would have received otherwise; however, the estimated standard deviation of this estimate is relatively high.

ADJUSTMENT OF COMPENSATION FOR TIME TRENDS

Our analyses included year of closure in order to capture any time trend that exists; dollar values were not adjusted for inflation prior to analysis. We estimate that, all other factors being equal, the average compensation per claim rose 5 percent per year from 1980 through 1982. In results presented earlier in this section, we have standardized the data to 1982 compensation levels. To adjust the compensation level to 1981 or 1980, the reader should multiply the 1982 compensation level by 0.95 for 1981 and 0.90 for 1980. We cannot say whether

this 5-percent growth rate will continue. Also, the estimated standard deviation of this estimate is relatively high.

The increase in compensation with time from 1980 through 1982 was essentially the same for both tried and settled claims.

ADJUSTMENT OF COMPENSATION FOR AGE

Compensation varied with claimant age in an interesting manner. We expected that average compensation would decline as age increased, because of such factors as a lower loss of future earnings and a lower remaining lifespan for older people. The decline did occur for people in their sixties and older; the interesting finding was that the peak compensation went to people 54 years old, and those in their forties and younger received less on average. At least three factors may account for this phenomenon. First, asbestosis is the most prevalent injury and it is plausible that young claimants have less severe asbestosis because of having worked fewer years and having worked in "cleaner" work environments. With the passage of time, increasing awareness of the asbestos hazard (and other factors) have led to improved work environments. Second, asbestosis takes time to develop in severity, which may mean that young claimants have less severe asbestosis at the time they receive compensation. We did not have data on the severity of asbestosis injuries, so we cannot confirm these propositions. Finally, average earnings tend to increase with age, and compensation may be less for younger claimants whose ultimate earning potential is less well known.

Table 3.3 displays how compensation (exclusive of punitive damages) varies with age.[6] We have standardized the data so that a claimant with the average age of 57 years has a multiplier of 1.00. To adjust compensation levels shown previously in this section for other ages, the reader should multiply the compensation for the average 57-year-old claimant by the "age multiplier" in Table 3.3. All other factors being equal, 75-year-old claimants are estimated to receive only about half of what 57-year-old claimants receive.

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[6]We explored various ways of incorporating the age factor to help explain variation in compensation, and found that the best statistical fit was obtained by using a quadratic function of age to estimate the logarithm of compensation. This form captures the curvilinear relationship between age and compensation described above.

Table 3.3

VARIATION IN COMPENSATION (EXCLUDING PUNITIVE DAMAGES) BY AGE, WITH ALL OTHER FACTORS BEING EQUAL

Age	Age Multiplier[a]
40	0.79
45	0.92
50	1.00
54	1.01
55	1.01
57	1.00
60	0.96
65	0.85
70	0.71
75	0.54

[a]Equals 1.00 for plaintiff of average age 57.

ADJUSTMENT OF COMPENSATION FOR NUMBER OF DEFENDANTS

Compensation per claim tends to increase with the number of defendants,[7] as shown in Table 3.4. We have standardized the data so that a claim with the average number of 15 defendants has a multiplier of 1.00. To estimate compensation for some other number, multiply the compensation for 15 defendants by the "number of defendants multiplier" shown in Table 3.4. All other factors being equal, lawsuits with fewer or more defendants than the average resulted in a maximum estimated difference in compensation of about 15 percent.

ADJUSTMENT OF COMPENSATION FOR NUMBER OF PLAINTIFFS IN SINGLE LAWSUIT

Compensation per claim tended to decrease as the number of plaintiffs in a single lawsuit increased. The number of plaintiffs per lawsuit in the sample ranged from 1 to over 200.[8]

[7]We explored various ways of incorporating this factor, including using linear, inverse, quadratic, and logarithmic terms. The best statistical fit to the data was obtained by using the logarithm of the number of defendants to estimate the logarithm of compensation.

[8]We explored various ways of incorporating this factor, including using linear, inverse, quadratic, and logarithmic terms and using indicators of various categories of

Table 3.4

VARIATION IN COMPENSATION (EXCLUDING PUNITIVE DAMAGES) BY NUMBER OF DEFENDANTS ON CLAIM WITH ALL OTHER FACTORS BEING EQUAL

Number of Defendants on Claim	Number of Defendants Multiplier
5	0.84
10	0.94
15	1.00
20	1.05
25	1.09
30	1.12
35	1.14

Table 3.5 illustrates that variation. A single-plaintiff lawsuit had a multiplier of 1.00. To estimate compensation for a multiple-plaintiff lawsuit, multiply the compensation for a single-plaintiff lawsuit by the "number of plaintiffs multiplier" in Table 3.5. All other factors being equal, the largest multiple-plaintiff lawsuits resulted in an estimated average compensation per claim that was about 70 percent of the compensation for a single-plaintiff lawsuit.

Although plaintiffs in multiple-plaintiff cases received less compensation than did those in single-plaintiff cases, the magnitude of the effect is less than the simple tabulated data in Sec. II appear to indicate. The apparent difference decreases when other variables are considered. To gain a better understanding of this result, consider the following. Because asbestosis is usually less severe than lung cancer or mesothelioma, its average compensation is less. Asbestosis claims are much more likely to be filed as part of multiple-plaintiff cases than are the two types of cancer claims. This fact explains much, but not all, of the lower average compensation per claim for multiple-plaintiff cases. Even if all other variables are the same on two claims, the fact that one is a single-plaintiff lawsuit and the other is part of a large, multiple-plaintiff lawsuit affects the level of compensation. We do not know the reason for this result; perhaps the asbestosis is less severe in multiple-plaintiff than in single-plaintiff cases.

numbers of plaintiffs per lawsuit. The best statistical fit to the data was obtained by using the logarithm of the number of plaintiffs in the lawsuit to estimate the logarithm of compensation.

Table 3.5

VARIATION IN COMPENSATION (EXCLUDING PUNITIVE DAMAGES) BY NUMBER OF PLAINTIFFS ON LAWSUIT

Number of Plaintiffs	Number of Plaintiffs Multiplier
1	1.00
5	0.90
10	0.86
15	0.84
25	0.81
50	0.78
100	0.74
200	0.71

CLAIM CHARACTERISTICS THAT WERE NOT SIGNIFICANT IN EXPLAINING THE LEVEL OF COMPENSATION

Two notable variables were not statistically significant: type of court (federal or state) and region of the country.[9] We did not explore differences within states.

Three variables that might affect compensation—smoking, marital status, and gender—were excluded from the analysis because of the small number of closed claims in our sample that involved females, nonsmokers, and unmarried people. Only 16 of the 513 closed claims in the sample were for people known to have been nonsmokers all their lives. And for smokers, we did not have reliable data on the number of years the plaintiff had smoked, or on the quantity of tobacco used. Nonsmokers may receive somewhat higher compensation, all other things being equal, because smoking has been linked to various lung diseases including cancer. However, nonsmoking was not statistically significant in our analysis and we had insufficient data to confirm the existence of such higher compensation.

[9]Type of worker and region were correlated: Asbestos-related factory workers were most often from the Northeast, insulation workers who had closed claims were most often from the South, and shipworkers with closed claims were most often from the West. The analysis indicates that an apparent regional effect is much more likely to be a type of worker effect.

Only 17 of the 513 closed claims in the sample were for people known to be single, divorced, separated, or widowed. Married claimants may receive somewhat higher compensation, all other things being equal, perhaps because of loss of consortium, greater emotional pain and suffering to the immediate family, or greater financial need. Only 20 of the 513 closed claims in our sample were for females, and these were concentrated in much fewer than 20 lawsuits. Our data appear to show higher compensation to married claimants and lower payments to female claimants, but we have insufficient data to confirm the existence of, or to confidently estimate the magnitude of, any such differences.

IV. ANALYSIS OF CLAIMS RECEIVING NO COMPENSATION

In Sec. III we examined claim characteristics that influenced the amount of compensation received in 1980–1982 for claims on which at least some defendants paid compensation. In this section we consider the extent to which characteristics of the claim influenced whether or not any compensation was paid.

In general, claim characteristics that determine compensation levels may differ from characteristics that influence whether compensation will be paid at all. At the very least, even if a given characteristic influences decisions on both factors, there may be a difference in the magnitude of the influence on these two decisions.

Only 9 percent of the claims closed in 1980–1982 received zero compensation. Three factors influenced that result. The most important was the claimant's being classified as having "no injury."[1] One might expect "no injury" always to mean "no compensation"; in practice that was almost but not quite true. Claims with no manifest asbestos-related injury received *no* compensation from *any* defendant 81 percent of the time. The remaining small percentage of these "no injury" claims received very small amounts of compensation (an average of $2,000 per claim) in settlements paid by one or a few defendants.

The second factor was the claimant's having an injury other than asbestosis, lung cancer, and mesothelioma. For *some* of these other types of injuries, usually some other cancer or other lung disease, it may be more difficult to establish a link between exposure to asbestos and the disease. As shown in Table 4.1, only about half the claimants with these other types of injuries won compensation.

Of the 40 claims in our sample that received no compensation, 12 had no manifest asbestos-related injury and 6 had some "other injury." This leaves only 22 asbestosis, lung cancer, and mesothelioma claims with no compensation, an insufficient number for us to perform a multivariate analysis similar to that done for claims with compensation in Sec. III. Claimants with the latter diseases who received no compensation may have found it difficult to prove exposure to asbestos or to a product containing asbestos that was manufactured or provided by any of the defendants, or there may have been statute of limitations

[1]The injury classification data were obtained from four large defendants and insurers. Claims were classified as "no injury" if *none* of the four classified the claim as having an injury.

Table 4.1

PERCENT OF CLOSED CLAIMS RECEIVING NO COMPENSATION, BY TYPE OF INJURY, FOR CLAIMS CLOSED BETWEEN JANUARY 1, 1980 AND AUGUST 26, 1982

Type of Injury	All Closed Claims Combined	Tried Claims[a]	Settled or Dismissed Claims
Asbestosis	4	4	4
Lung cancer	9	5	9
Mesothelioma	6	6	6
Other type of injury	49	33	50
No manifest asbestos-related injury	81	—	81
All types combined	9	5	9

[a]A claim was counted as receiving no compensation if the trial resulted in a defense verdict (no compensation) and, in addition, no defendant had paid any compensation in settlement before the trial began. As noted in Sec. III, 29 percent of trials resulted in defense verdicts.

problems. (We do not have exposure and statute of limitations data.)[2]

The third factor was the asbestos-related experience of the plaintiff's lawyer. The proportion of claims that received no compensation was 23 percent for lawyers who had closed only one claim in our sample, 8 percent for lawyers who had closed two to five claims, and a mere 1 percent for lawyers who had closed more than 20. Several explanations are possible. Plaintiff's lawyers with more asbestos experience may be more adept at screening out nonmeritorious claims before they are filed, and may be better able to negotiate about those claims that are filed. Also, plaintiff's lawyers handling large group (multiple-plaintiff) settlements may be able to assure that each plaintiff in the group settlement receives at least some compensation.

[2]Since strong warning labels were not used on asbestos products until the mid-1960s, and since most closed claims involved at least some exposure before that time, a defense based on adequate warnings is more relevant to future claims (involving exposure only after the mid-1960s) than to past closed claims.

V. ANALYSIS OF LIKELIHOOD OF TRIAL

Discriminant analysis was used to determine which claim characteristics were statistically significant in explaining whether or not a claim went to trial. Those that were significant included the state in which the claim was filed, a large number of plaintiffs in one lawsuit, and the type of injury. Variables that were not significant were age, marital status, sex, life status, smoking, type of court (federal or state), number of defendants per claim, and worker classification.

Since the state of filing was so significant, we included in the analysis the four states that had the majority of all closed claims (California, New Jersey, Pennsylvania, and Texas) and the only two other states that had over 10 trials (Missouri and Tennessee). The other 44 states together accounted for only about one-quarter of all trials, and they were combined for the analysis.

Approximately one-quarter of all claims closed between January 1980 and August 1982 originated in large, multiple-plaintiff lawsuits with over 50 plaintiffs each. None of these claims in the sample went to trial. For claims with fewer than 50 plaintiffs per lawsuit, we explored whether an increased number of plaintiffs decreased the likelihood of going to trial. It did not. Thus, only the suits with at least 50 plaintiffs were significant in explaining a reduced likelihood of a claim going to trial.

We then examined the proportion of claims that began trial as a function of the statistically significant claim characteristics, using logistic regression (logit analysis). This is a standard, widely used, multivariate regression technique especially tailored for analyzing proportions.[1] This technique attempts to ascertain and separate the effects of one variable (such as state of filing) from other variables (such as type of injury). The results of this analysis are shown in Table 5.1. Claims in our sample with no manifest asbestos-related injury *never* went to trial. When all other factors are held equal, mesothelioma claims were at least twice as likely to go to trial (14 percent) as claims with any other type of injury (7 percent or less).

The percentage of closed claims that were tried varied markedly from state to state. In California and New Jersey, it was 1 percent or less. The rates were much higher (8 percent and 16 percent of all

[1]Let p denote the probability of going to trial. In logistic regression, the fitted equation is of the form $p = 1/[1 + e^{-(\alpha+\beta x)}]$, where x is a vector consisting of claim characteristics. Maximum likelihood techniques were used for the analysis reported in this section.

Table 5.1

LOGISTIC REGRESSION RESULTS FOR THE PROBABILITY OF TRIAL IN ASBESTOS-RELATED CASES IN 1980–1982

Characteristic	Cofficient	Estimated Standard Deviation	t
Constant	−2.80		
Type of injury			
Asbestosis	.00[a]		
Lung cancer	.10	.33	.3
Mesothelioma	.50	.40	1.3
Other	−.16	.71	− .2
State			
California	−1.51	.39	−3.9
Missouri	2.13	.68	3.1
New Jersey	−1.86	1.04	−1.8
Pennsylvania	1.05	.33	3.2
Tennessee	.21	.43	.5
Texas	.85	.36	2.4
Other states combined	.00[a]		
Chi square	81.9		
N	405		

[a]Indicator variables for settled claims and for asbestosis claims involving factory workers were not included in the regression equation, so that the compensation levels for these categories would serve as a benchmark for measuring increments associated with other categories.

closed claims, respectively) in the two high-claim-volume states of Texas and Pennsylvania. Fewer claims had been closed in Missouri, but about a third of them went to trial. In the other states combined, about 6 percent began trial. We used these results to calculate the estimated likelihood of trial for closed claims with various characteristics, as shown in Table 5.2.

We do not fully understand why claims do or do not go to trial. The variation from state to state is probably due to judicial attitudes and lawyer practices generally. Interviews with judges in California and Texas, for instance, reveal that federal judges in the Eastern District of Texas rarely participate extensively in settlement negotiations, while in the Superior Court in Los Angeles, an elaborate technique for judicial participation in settlement discussions has been implemented. The reasons why specific cases within jurisdictions go to trial probably

Table 5.2

ESTIMATED LIKELIHOOD OF TRIAL IN 1980-1982

State	Percent of Trials in Sample	Percent of Closed Claims That Began Trial[a]				
		Asbestosis	Lung Cancer	Mesothelioma	Other Type of Injury	All Closed Claims
California	8	1	2	2	1	1
Missouri	8	34	36	46	30	34
New Jersey	1	< 1	1	2	< 1	< 1
Pennsylvania	29	15	16	22	13	16
Tennessee	8	7	8	11	6	7
Texas	18	13	14	19	10	8
All other states combined	28	6	6	9	5	6
All states combined	100	6	7	14	5	4.7

[a]Claims in the sample involving no manifest asbestos-related injury and claims on lawsuits involving more than 50 plaintiffs never went to trial, and are reported separately.

depend upon factors on which we have no data. Several that may be important are the characteristics and trial histories of the lawyers on both sides of the case, and the personalities and objectives of specific plaintiffs. Factors affecting the likelihood of trial may also shift over time, as attorneys shift strategies for resolving claims and as courts evolve new rules and practices with regard to these claims.

VI. ANALYSIS OF PUNITIVE DAMAGE AWARDS

Punitive damage awards appeared to be more frequent in asbestos than in product liability cases generally, but they were still rare. Punitive damages totaling $4,934,000 were awarded to 19 plaintiffs, representing less than 1 percent of all claims closed between January 1, 1980, and August 26, 1982.[1] The awards ranged from $4,000 to $1,000,000 and averaged $260,000 per plaintiff. As shown in Table 6.1, about half the awards were less than $100,000.

Even though punitive damages were awarded in 18 percent of the asbestos trials that went to verdict (14 percent of the claims for which

Table 6.1

PERCENTILE DISTRIBUTION OF PUNITIVE DAMAGE AWARDS PER CLAIM CLOSED BETWEEN JANUARY 1, 1980 AND AUGUST 26, 1982

Percent of Punitive Awards That Were Less Than or Equal To Amount Shown at Right[a]	Amount of Punitive Award[b]
10	$ 10,000
20	25,000
30	42,000
40	53,000
50	90,000
60	220,000
70	300,000
80	500,000
90	1,000,000

[a]Including only claims with a punitive award.

[b]These numbers may change as the result of appeals that are under way for many of these claims.

[1]This includes all punitive damage awards in that period, with the exception of $35 million for one case in which default judgments were granted against all defendants, none of whom had appeared at trial. (*Stewart et al. v. North American Asbestos Corporation et al.*, McLean County, Illinois, Circuit Court, 78-L201).

trial began),[2] the $255,000 average total compensation for all tried claims included an average of only $37,000 in punitive damages.

Considering only those trials with plaintiffs' verdicts, 27 percent received punitive damages, and $70,000 of their $388,000 average total compensation was for punitive damages.

Tried claims with punitive damage awards also had much higher total compensation ($368,000)[3] exclusive of the punitive award than did tried claims that received no punitive award ($192,000).

The 19 plaintiffs in our sample who received punitive awards were insufficient for us to perform a multivariate analysis. However, we did review these 19 claims carefully to see what characteristics might be related to the receipt of punitive damages. The only salient observation was that two-thirds of the claims with punitive awards were in Pennsylvania; the other third were in six other states. In Pennsylvania, 34 percent of the claims that started trial between January 1, 1980, and August 26, 1982, resulted in punitive awards.

Differences and changes in state substantive law can greatly influence the award of punitive damages. For example, Pennsylvania, like most states, allows punitive damages in strict liability cases, but New Jersey did not until a state appeals court recently ruled otherwise. And evidentiary decisions may make it more difficult in some jurisdictions to introduce evidence critical to obtaining an award of punitive damages.

Two trials of mesothelioma claims had an average punitive award of about $500,000, whereas three trials of lung cancer claims and 14 trials of asbestosis claims averaged about $200,000 each. The percentages of all tried claims with punitive awards for these three injury categories were nearly the same, ranging from 11 to 15 percent. Punitive damages were never awarded for other types of injuries during this time period.

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[2]A separate study by The Institute for Civil Justice of all civil jury verdicts in two jurisdictions has found that 0.9 percent of all civil jury trials in Cook County, Illinois, between 1975 and 1979 resulted in a punitive damage award and that the comparable figure for San Francisco, California, was 3.2 percent. The frequency of punitive damages in all product liability trials in those two jurisdictions was even less.

[3]$628,000 average total compensation less $260,000 average punitive damage award.

VII. ANALYSIS OF DEFENSE LITIGATION EXPENSES

TOTAL DEFENSE EXPENSES

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

Expenses in the second category, 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 expenses for 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 allocated neither to individual claims nor to an "organization-versus-organization" lawsuit, nor are they incurred in connection with Chapter 11 reorganization.

The third category, which we call *organization-versus-organization litigation expenses*, is 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. Most of this litigation is still ongoing and involves nearly all major defendants and their insurers. The past and future 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 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. These lawsuits were discussed in some detail in

our earlier report,[1] where we estimated that the prorated cost was $1500 per claim. This litigation is expensive, but when considered in relation to all other expenses, it is a relatively small amount per claim.

The average total defense expense, broken down into these categories, is shown in Table 7.1. The total was $37,000 for the average closed claim in 1980–1982.[2] Hence, total defense expenses were 58 percent of the average total compensation.[3] They were substantially higher for tried claims ($125,000) than for settled or dismissed claims ($33,000). Of the total defense expenses, allocated expenses were 78 percent, unallocated expenses were 19 percent, and organization-versus-organization litigation expenses were 4 percent.

Since the average closed claim involved 15 defendants and $37,000 in defense litigation expenses, the average total defense expense by *one* defendant to close a claim with one plaintiff was approximately $2,500. A smaller defendant and its insurers typically spent an average of at least $1,000 per closed claim in total expenses. Some of the larger defendants (those named on a larger percentage of the claims, who generally paid higher compensation) usually spent more than the average.

Defense expenses by a defendant and its insurers combined varied widely among defendants from a low of about 29 percent[4] of the total compensation they paid to a high of 209 percent.[5] 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. A major reason for the disparity is that every case incurs certain threshold litigation expenses; although those expenses rise as compensation increases, *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 expense to compensation.

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[1]See *Costs of Asbestos Litigation*, Sec. IV.

[2]The 95-percent confidence interval for the estimated average defense expenses using the sample data ranges from $35,500 to $38,500.

[3]Other 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 expenses are usually the total allocated expenses for both open and closed claims combined. The useful comparison, however, is between *closed* claim expenses and *closed* compensation paid.

[4]The average for the three defendants with the lowest percentages for which we had data.

[5]The average for the three defendants with the highest percentages for which we had data.

Table 7.1

AVERAGE DEFENSE LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980 AND AUGUST 26, 1982

	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
Type of Expense	$	Percent of Compensation	$	Percent of Compensation	$	Percent of Compensation
Allocated	$29,000[c]	45	$117,000[c]	46	$25,000[c]	45
Unallocated	7,000[c]	11	7,000[c]	3	7,000[c]	13
Organization versus organization	1,500	2	1,500	<1	1,500	3
Total	$37,000[c]	58	$125,000[c]	49	$33,000[c]	60

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.
[c]To nearest thousand dollars.

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.

We present here the best comparisons available for the size of defense *allocated* expenses relative to compensation. Closed-claim surveys are the best source of information on allocated expenses, and we chose three national surveys to examine. The most appropriate one for studying asbestos is a 1976–1977 closed-claim survey of product liability claims prepared by the Insurance Services Office (ISO). We also used two malpractice surveys: one prepared by ISO for 1974 claims, and another prepared by the National Association of Insurance Commissioners for 1975–1976 claims. Finally, we also used a 1971 U.S. Department of Transportation study of automobile accidents; although not a closed-claim survey, it was based on national data compiled by the Federal Judicial Center.

Table 7.2 compares ratios of allocated defense 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 accident area 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 are 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 compared to the asbestos ratio of 0.45.

The numerous defendants in the average asbestos claim, each with its own legal expenses, may explain much of the high asbestos ratio. In the average asbestos case, responsibility for a $64,000 compensation payment was divided among 15 defendants, most of whom paid an average of less than $5,000 each. In the other tort areas, the average defendant paid larger compensation and expenses were a lower percentage of compensation because expenses do not increase as fast as compensation payments.

Table 7.2

RATIO OF ALLOCATED DEFENSE EXPENSES TO COMPENSATION PAID IN SELECTED TORT AREAS

Tort Area	Years Claims Were Closed	Method of Disposition: Lawsuit: Settled[a]	Method of Disposition: Lawsuit: Tried[a]	Method of Disposition: Other Method	Method of Disposition: All Methods Combined
Asbestos[b]	1980–82	0.45	0.46	N.A.	0.45
Product liability[c]	1976–77	0.34	0.59	0.03	0.35
Malpractice[d]	1975–76	N.A.	N.A.	N.A.	0.28
Malpractice[e]	1974	0.26	0.64	0.05	0.27
Auto accident[f]	1968	N.A.	N.A.	N.A.	0.05

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. VII of this report.

[c]Insurance Services Office, *Product Liability Closed Claim Survey: A Technical Analysis of Survey Results*, New York, 1977, pp. 451–456.

[d]National Association of Insurance Commissioners, *Malpractice Claims*, Milwaukee, Vol. 1, No. 4, May 1977, p. 97.

[e]Insurance Services Office, *Special Malpractice Review: 1974 Closed Claim Survey: Technical Analysis of Survey Results*, New York, 1976, Table 11-2a, p. 59.

[f]U.S. Department of Transportation, *Automobile Insurance and Compensation Study: Motor Vehicle Crash Losses and Their Compensation in the U.S.*, March 1971, Tables 20 and 21, pp. 48–49.

VARIATION IN ASBESTOS DEFENSE EXPENSES

The analyses in this section are intended to clarify how various claim characteristics were related to defense litigation expenses. Rather than consider one characteristic at a time as in Sec. II, here we analyze all characteristics simultaneously so as to estimate the influence of each one when all other characteristics are held constant.

We emphasize that the estimates in this section are based on data from a sample of cases closed as of August 26, 1982. Defense expenses for more recent and future claims may differ from these figures,

especially if changes occur in the efficiency and manner of processing these claims.

To examine how defense expenses varied as a function of claim characteristics, we explored several models using multivariate linear regression techniques. The one with the best statistical fit to the data is presented here.[6] Table 7.3 presents coefficients for the independent variables in the final equation, as well as numerous statistics for assessing the precision of the estimates and the goodness of fit of the equation. The remainder of this section will be devoted to interpreting these results.[7]

The claim characteristics that were included in the equation for estimating defense expenses accounted for 77 percent of the variance among individual claims—a very high percentage for research on legal behavior.

DEFENSE EXPENSES BY TYPE OF INJURY AND WORKER CLASSIFICATION

As expected, the type of injury and worker category influenced the amount of defense expenses. Consider an average claimant who named the average number of defendants (15) in a single-plaintiff lawsuit that was settled for compensation before trial in 1982. As shown in Table 7.4, if such a claimant was an asbestos-related factory worker with asbestosis, the average defense expenses were $35,000. Claimants with mesothelioma generated the highest defense expenses, $57,000.

RELATIONSHIP BETWEEN DEFENSE EXPENSES AND TRIAL

Whether or not trial began for a given claim was highly significant in explaining the amount of defense expenses. All other factors being equal, a claim that began trial incurred 3.13 times the defense expenses of a claim that was settled before trial.

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[6]It uses the natural logarithm of defense expenses as the dependent variable and various claim characteristics as independent variables.

[7]Based on the usual tests of goodness of fit, the logarithms of the defense expense levels appear to satisfy the linear model assumptions very well. The constant term in the regression equation has been corrected for the retransformation bias associated with loglinear regression models, so that the average of the defense expenses values predicted by the model is the same as the average of the actual defense expenses in our sample.

Table 7.3

REGRESSION RESULTS FOR THE LOGARITHM OF DEFENSE EXPENDITURES IN ASBESTOS-RELATED LITIGATION IN 1980–1982

Characteristic	Cofficient	Estimated Standard Deviation	t
Constant	10.46	.09	122.2
Claimant Characteristics			
Asbestosis			
Factory worker	.00[a]		
Insulation worker	.33	.09	3.6
Shipyard worker	.12	.09	1.4
Other	−.03	.14	−.2
Lung cancer	.13	.09	1.4
Mesothelioma	.48	.12	4.1
Other injury	−.06	.15	−.4
No manifest asbestos-related injury	−.68	.13	−5.2
Claimant deceased	.12	.07	1.9
Lawsuit Characteristics			
Ln(number of defendants/15)	.56	.04	15.5
Ln(number of plaintiffs)	−.10	.02	−5.8
Claim Disposition			
Pretrial settlement	.00[a]		
Tried	1.14	.05	21.4
Year closed (0 = 1982)	.01	.02	.4
R^2	.77		
S	.48		
F	136.2		
N	513		

[a]Indicator variables for settled claims and for asbestosis claims involving factory workers were not included in the regression equation, so that the defense expense levels for these categories would serve as a benchmark for measuring increments associated with the other categories.

Table 7.4

DEFENSE EXPENSES BY TYPE OF INJURY AND WORKER CLASSIFICATION IN 1982, FOR LIVING CLAIMANTS WHO NAMED 15 DEFENDANTS IN A SINGLE-PLAINTIFF LAWSUIT THAT WAS SETTLED BEFORE TRIAL

Type of Injury and Worker Classification	Average Defense Expenses Per Claim
Asbestosis	
Asbestos-related factory worker	$35,000
Other type of worker	34,000
Shipyard worker	40,000
Insulation worker	49,000
Lung cancer	40,000
Mesothelioma	57,000
Other type of injury	33,000
No manifest asbestos-related injury	18,000

RELATIONSHIP BETWEEN DEFENSE EXPENSES AND DEATH

All other things being equal, defense expenses were 13 percent greater for cases involving dead claimants.

ADJUSTMENT OF DEFENSE EXPENSES FOR TIME TRENDS

To capture time trends, our analyses always included year of closure. We estimate that, all other factors being equal, the average defense expenses per claim rose at the rate of 1 percent per year from 1980 through 1982. This is lower than the inflation rate and lower than the 5 percent per year growth in levels of compensation, perhaps because defendants were becoming more efficient at processing claims as time went on. In results presented earlier in this section, we standardized the data to 1982 expense levels. We cannot say whether this 1 percent growth per year has continued or will continue. Also, it should be noted that the estimated standard deviation of this estimate is relatively high.

RELATIONSHIP BETWEEN DEFENSE EXPENSES AND NUMBER OF DEFENDANTS

Defense expenses per claim increased substantially with the number of defendants, because each defendant usually had its own defense lawyer and other litigation expenses.

Table 7.5 displays how defense expenses varied with the number of defendants, all other factors being equal. We have standardized the data so that a claim with the average number of 15 defendants has a multiplier of 1.00. To estimate defense expenses for other numbers of defendants, multiply the values in Table 7.4 by the multiplier in Table 7.5. All other factors being equal, lawsuits with larger than average numbers of defendants resulted in a maximum estimated increase in defense litigation expenses of about 60 percent.

Note that doubling the number of defendants adds just under 50 percent to the total defense litigation expenses; it does not double the expenses, because the same 16 large defendants are named on at least half of all claims. Additional defendants were usually smaller ones who made lower average compensation payments and incurred lower defense expenses.

Table 7.5

VARIATION IN DEFENSE EXPENSES BY NUMBER OF DEFENDANTS ON CLAIM, ALL OTHER FACTORS BEING EQUAL

Number of Defendants On Claim	Number of Defendants Multiplier
5	0.54
10	0.80
15	1.00
20	1.17
25	1.33
30	1.47
35	1.60

RELATIONSHIP BETWEEN DEFENSE EXPENSES AND NUMBER OF PLAINTIFFS IN A SINGLE LAWSUIT

Defense expenses per claimant tended to decrease as the number of plaintiffs in a single lawsuit increased. In the sample, that number ranged from 1 to over 200. Table 7.6 displays the relationship. A single-plaintiff lawsuit has a multiplier of 1.00. To estimate defense expenses for a multiple-plaintiff lawsuit, one can multiply the defense expenses for a single-plaintiff lawsuit by the "number of plaintiffs multiplier" in Table 7.6. All other factors being equal, the largest multiple-plaintiff lawsuits resulted in estimated defense expenses per claim that were less than two-thirds of the defense expenses for a single-plaintiff lawsuit.

CLAIM CHARACTERISTICS THAT WERE NOT SIGNIFICANT IN EXPLAINING THE LEVEL OF DEFENSE EXPENSES

The following variables were not statistically significant in explaining the level of defense expenses: the claimant's age, sex, marital status, and smoker status; region of the country; and whether the claim was filed in federal or state court.

Table 7.6

VARIATION IN DEFENSE EXPENSES BY NUMBER OF PLAINTIFFS ON LAWSUIT

Number of Plaintiffs	Number of Plaintiffs Multiplier
1	1.00
5	0.86
10	0.80
15	0.77
25	0.74
50	0.69
100	0.64
200	0.60

VIII. ANALYSIS OF PLAINTIFF LITIGATION EXPENSES

Plaintiffs' lawyers almost always handle asbestos cases on a contingency fee basis (i.e., attorney fees are a percentage of total compensation). Hence, for cases that get zero compensation from defendants and their insurers, the plaintiff usually pays no legal fees. Litigation expenses other than attorney fees are generally expenses for travel, stenographic fees 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 whether the case was prepared for trial and tried.

We asked the plaintiff's lawyer on each claim in the sample to provide information about total compensation, attorney's fees and other legal costs, and case status.[1] (See "Research Approach," Sec. I.) A total of 104 lawyers were involved in the 563-claim sample. We received completed questionnaires from 32 lawyers (31 percent) from 12 states. (Section I discusses the sample selection process and the reasons for noncooperation.) After we deleted claims that were not fully closed from the sample, we had 31 participating lawyers who provided information on 93 closed claims. Cooperating lawyers included some of those with the highest-volume caseloads, as well as several with small caseloads. The percentage contingency fees charged by the cooperating lawyers were reasonably consistent.

We also interviewed five plaintiffs' lawyers who had extensive asbestos case exposure about the experience of asbestos lawyers generally concerning fees and other litigation expenses. The interview results were consistent with the survey information, as shown in Table 8.1.

We have concluded that legal fees in tried cases were typically 33 to 45 percent of total compensation, and averaged about 39 percent. Other expenses in tried cases ranged from 1 to 12 percent of recovery, but were generally about 6 percent.

Plaintiff's legal fees as a percentage of compensation were lower for settled cases; they typically ran from 28 to 40 percent with an average of 34 percent. Other expenses on settled claims averaged approxi-

[1]The survey questionnaire is shown in Fig. 8.1.

Rand
1700 MAIN STREET
SANTA MONICA, CA 90406

ASBESTOS PLAINTIFFS SURVEY

Plaintiff Identification
Name:
State:
Court:
Court Case Number:
Date Filed:

6-15/

Plaintiff Tort Recovery and Cost Information in This Case

1. Total settlement or damages (before subtracting fees and costs) paid or agreed to be paid by or on behalf of all defendants. If a case is on appeal, report award.

(a) Settlement..... $ _____ . _____ 16-26/

(b) Compensatory damages..... $ _____ . _____ 27-37/

(c) Punitive damages..... $ _____ . _____ 38-48/

2. Total attorneys' fees received or to be received on amounts recorded in Question 1.

$ _____ . _____ 49-59/

3. Total other costs incurred on behalf of this plaintiff (e.g., medical exams, stenographic expenses, court costs, expert fees, travel, etc.).

$ _____ . _____ 60-70/

4. Is this case completely closed? (MARK ONE BOX AND FOLLOW ARROWS)

☐ Yes ☐ No 71/

4a. Current Status: (MARK ALL THAT APPLY)

☐ Tried, on appeal 72/

☐ Not closed with one or more defendants 73/

☐ Other, specify: _____ 74/

5. Were any settlements in this case negotiated at or after a judicial pre-trial settlement conference? (MARK ONE ANSWER BOX)

☐ Yes ☐ No ☐ Don't Know 75/

Fig. 8.1—Asbestos plaintiffs survey

Table 8.1

AVERAGE PLAINTIFF LITIGATION EXPENSES AS A PERCENTAGE OF TOTAL COMPENSATION PAID BY DEFENDANTS AND THEIR INSURERS

	All Closed Claims Combined		Tried Claims[a]		Settled or Dismissed Claims[b]	
Source of Data from Plaintiff's Lawyers	Legal Fees	Other Legal Expenses	Legal Fees	Other Legal Expenses	Legal Fees	Other Legal Expenses
Closed claim survey (average percentages)	34	5	39	6	34	5
Interviews ("typical" percentages)	28–45	2–8	33–45	NA	28–40	2–8
Best estimate of average percentages	34	5	39	6	34	5

NOTE: NA = not available.
[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.

mately 5 percent of recovery, though on occasion they were much higher or lower.[2]

In summary, the average plaintiff litigation expenses (including both legal fees and other expenses) were 39 percent of total compensation for all 1980–1982 closed claims combined.[3]

Table 8.2 displays estimated average plaintiff's litigation expenses per claim closed at various stages. They ranged from zero for claims closed before trial without compensation, to $23,000 per claim settled before trial, up to an average of $173,000 for trials that resulted in verdicts for the plaintiff. Note that trials that resulted in defense verdicts usually had pretrial settlements with some defendants before the remaining defendants went to trial; thus, for tried claims with defense verdicts, the contingency fee and other legal expenses paid by the plaintiff averaged $22,000.

For all closed claims combined, plaintiff's litigation expenses averaged $25,000.[4]

[2]Barth'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).

[3]This is slightly lower than our previous report's "best estimate" of 41 percent, but above that report's "low estimate" of 38 percent. The difference is due to the fact that we had more survey data for use in preparing this second report.

[4]Defense allocated expenses are functionally comparable to plaintiff litigation expenses and are, on average, about the same amount: $29,000 and $25,000, respectively.

Table 8.2

METHOD OF DISPOSITION AND ESTIMATED AVERAGE PLAINTIFF LITIGATION EXPENSES PER CLAIM CLOSED BETWEEN JANUARY 1, 1980 AND AUGUST 26, 1982

Method of Disposition	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
	$	% of Total Comp.	$	% of Total Comp.	$	% of Total Comp.
Claims Closed After Trial Began						
Tried, defense verdict	22,000[c]	43	22,000	43	—	—
Tried, plaintiff verdict	173,000	45	173,000	45	—	—
Settlement after trial began	85,000	45	85,000	45	—	—
All claims closed after trial began	114,000	45	114,000	45	—	—
Claims Closed Before Trial Began						
Settlement before trial, with compensation	23,000	38	—	—	23,000	38
Closed before trial, no compensation	0	na	—	—	0	na
All claims closed before trial began	21,000	38[d]	—	—	21,000	38[d]
All claims closed by any method	25,000	39	—	—	—	—

NOTE: na = not applicable.

[a]Includes tried cases on appeal.

[b]Dismissed and not refiled.

[c]Compensation consists of pretrial settlements with some defendants, before other defendants won a defense verdict at trial.

[d]All percentages were calculated after rounding compensation and plaintiffs expenses to the nearest thousand dollars.

IX. TOTAL EXPENSES AND COMPENSATION

About $1 billion in compensation and litigation expenses was spent as of the end of 1982 on the more than 20,000 open and closed asbestos product liability claims.

Of the total expenditures by all defendants and insurers combined on the average claim closed in 1980–1982, about one-third was paid by defendants and two-thirds by their insurers (see Table 9.1). The percentage paid by the defendants may change after resolution of the various insurance coverage lawsuits and after exhaustion of insurance coverage for some defendants.

Tables 9.2 and 9.3 provide details on defense and plaintiff expenses for claims with various levels of compensation. Some of these data are displayed graphically in Figs. 9.1 and 9.2, where it can be seen that trial expenses substantially exceed settlement expenses for all levels of compensation. For claims that received no compensation from any of the defendants, defense expenses averaged $59,000 per tried claim and $10,000 per claim closed before trial. Plaintiff expenses rose steadily with the level of compensation because of the usual contingency fee arrangement; so did defense expenses, but not as fast. Defense expenses as a percentage of compensation declined from over 100 percent of low-compensation claims to less than 20 percent of high-compensation ones.

For claims settled for about $150,000 or less compensation, and for tried claims that were awarded about $400,000 or less, the expenses for all defendants combined exceeded the plaintiff's expenses. For claims with higher compensation, the reverse was true.

Figure 2.2 above summarized the average compensation and defense and plaintiff litigation expenses per claim closed between January 1980 and August 1982. (More recent and future expenses and compensation may differ from these figures.) The average total compensation paid per claim by all defendants and their insurers was approximately $64,000 and required total defense litigation expenses of $37,000 (58 percent of total compensation). Thus, the total costs to defendants and their insurers averaged about $101,000 per closed claim. After deduction of plaintiff's litigation expenses of about $25,000 (39 percent of total compensation), the plaintiff received an average of $39,000.

These figures may be better understood by considering the total amount that defendants, insurers, and plaintiffs paid for every *one dollar* in net compensation that went to the plaintiff for claims in the

Table 9.1

PERCENTAGE CONTRIBUTION OF DEFENDANTS AND INSURERS TO TOTAL COMPENSATION PLUS DEFENSE EXPENSES FOR CLAIMS CLOSED BETWEEN JANUARY 1, 1980 AND AUGUST 26, 1982

	All Closed Claims Combined[a]		Tried Claims		Settled or Dismissed Claims[b]	
Paying Organization	$	% of Total Compensation	$	% of Total Compensation	$	% of Total Compensation
All defendants combined	$ 34,000	34	$167,000	44	$ 28,000	32
All insurers combined	67,000	66	213,000	56	60,000	68
Total	$101,000	100	$380,000	100	$ 88,000	100

[a]Includes tried cases on appeal.
[b]Dismissed and not refiled.

Table 9.2

AVERAGE LITIGATION EXPENSES FOR VARIOUS LEVELS OF TOTAL COMPENSATION FOR CLAIMS CLOSED BETWEEN JANUARY 1, 1980 AND AUGUST 26, 1982

Total Compensation	% of Closed Claims in This Range	Average Total Comp. Per Claim	Defense Expense		Plaintiff Expense	
			$	% of Total Comp.	$	% of Total Comp.
Tried Claims						
0	9	0	59,000	na	0	na
1– 10,000	10	5,400	99,000	1830	2,400	44
10,001– 25,000	28	17,000	83,000	490	8,000	46
25,001– 50,000	20	36,000	91,000	250	16,000	44
50,001–100,000	17	75,000	103,000	137	34,000	45
100,001–250,000	13	165,000	105,000	64	73,000	44
250,001–500,000	3	367,000	184,000	50	165,000	45
500,001 and up	1	1,245,000	$231,000	19	$552,000	44
Total	100	$255,000	$125,000	49	$114,000	45
Settled or Dismissed Claims						
0	9	0	10,000	na	0	na
1– 10,000	10	4,200	15,000	360	1,600	38
10,001– 25,000	28	18,000	21,000	117	7,000	39
25,001– 50,000	20	36,000	33,000	92	13,000	36
50,001–100,000	17	74,000	48,000	65	28,000	38
100,001–250,000	13	158,000	68,000	43	62,000	39
250,001–500,000	3	337,000	69,000	20	133,000	39
500,001 and up	1	850,000	116,000	14	332,000	39
Total	100	$55,000	$33,000	60	$21,000	38

NOTE: na = not applicable.

Table 9.3

AMOUNT PLAINTIFF RECEIVED AFTER DEDUCTION OF LITIGATION EXPENSES, FOR VARIOUS LEVELS OF TOTAL COMPENSATION: FOR ALL CLAIMS CLOSED BETWEEN JANUARY 1, 1980 AND AUGUST 26, 1982

Total Compensation	Average Total Comp. Per Claim	Defense Expenses		Plaintiff Litigation Expenses		Total Expenses and Compensation Paid by Defendants and Insurers	Net Amount Plaintiff Received After Deduction of Litigation Expenses	Percent Plaintiff Received of Total Paid After Deduction of Litigation Expenses
		$	% of Total Comp.	$	% of Total Comp.			
0	0	11,000	na	0	na	11,000	0	0
1– 10,000	4,200	16,000	381	1,600	38	20,000	2,600	13
10,001– 25,000	18,000	22,000	122	7,000	39	40,000	11,000	28
25,001– 50,000	36,000	35,000	97	13,000	36	71,000	23,000	32
50,001–100,000	74,000	50,000	68	28,000	38	124,000	46,000	37
100,001–250,000	159,000	71,000	45	63,000	40	230,000	96,000	42
250,001–500,000	345,000	99,000	29	141,000	41	444,000	204,000	46
500,001 and up	1,113,000	192,000	17	478,000	43	1,305,000	635,000	49
TOTAL	$64,000	$37,000	58	$25,000	39	$101,000	$39,000	39

NOTE: na = not applicable.

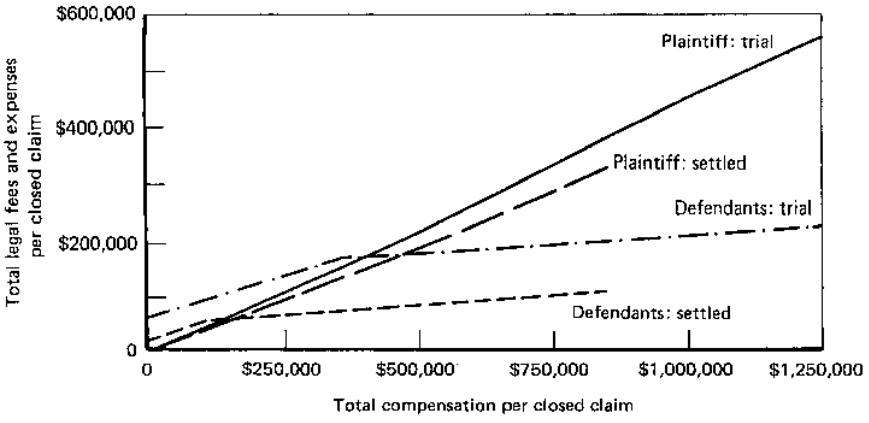

Fig. 9.1—Total legal fees and expenses as a function of total compensation per closed claim

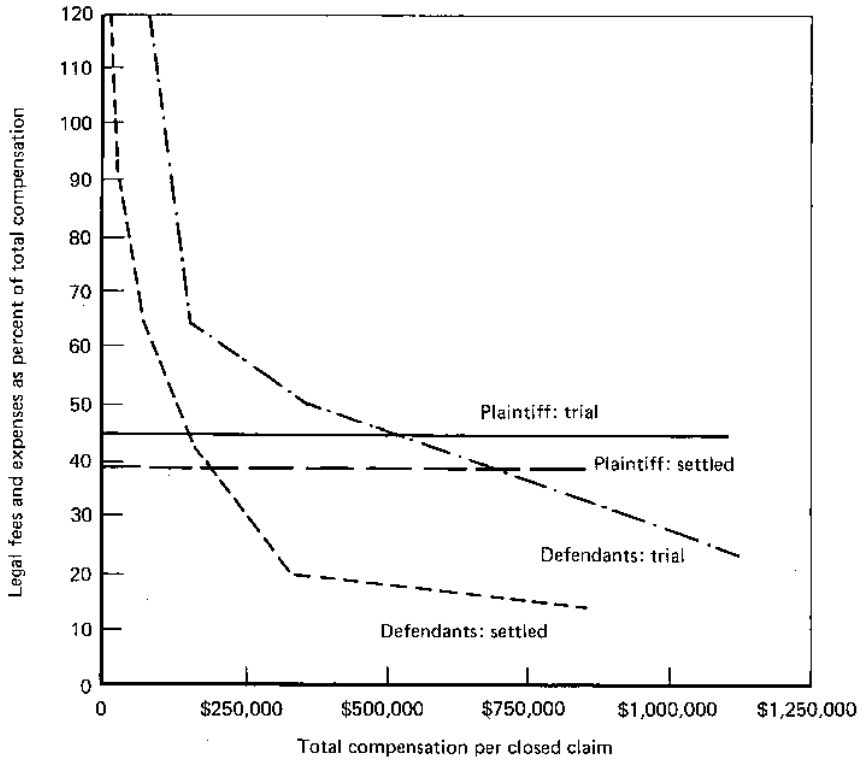

Fig. 9.2—Total legal fees and expenses as a percentage of total compensation per closed claim

sample. For every $2.59 paid by defendants and insurers, defense litigation expenses were an estimated $0.95, plaintiff's litigation expenses were an estimated $0.64, and the plaintiff received $1.00—39 percent of the $2.59 total. That percentage increased with the level of total compensation, as shown in Fig. 9.3, from less than 20 percent of the total defense payout for claims with low total compensation, up to 49 percent for those with average compensation over $500,000.

In summary, the heart of the asbestos litigation problem is its huge scale. Much human suffering is involved. Tens of thousands of current and future injury claims are worth billions of dollars. The sheer numbers stretch the ability of some courts to handle the claims, threaten the economic survival of some defendants, and ultimately threaten the ability of the injured parties to receive fair compensation.

Because the asbestos problem is immense and because it may influence public reactions to other major health and legal problems, many different responses have been and are being proposed. Several generic lines of reform have been suggested by various people: increased coordination and efficiencies within the existing tort system; establishment of a joint claims facility for settlement negotiation without filing a lawsuit; arbitration; and government-mandated compensation systems.

We believe that any rational course of action must be based on facts such as those developed by this study.

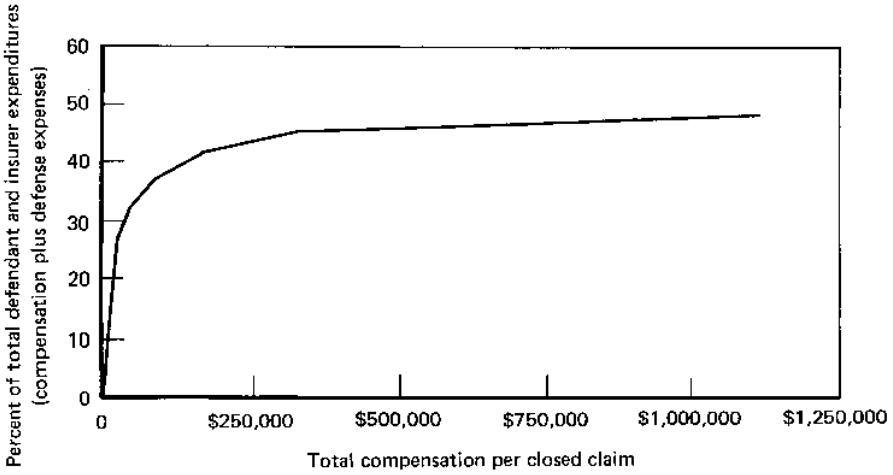

Fig. 9.3—Percent of total defendant and insurer expenditures received by plaintiff after deduction of all litigation expenses

Other ICJ Publications

R-2716-ICJ
The Law and Economics of Workers' Compensation
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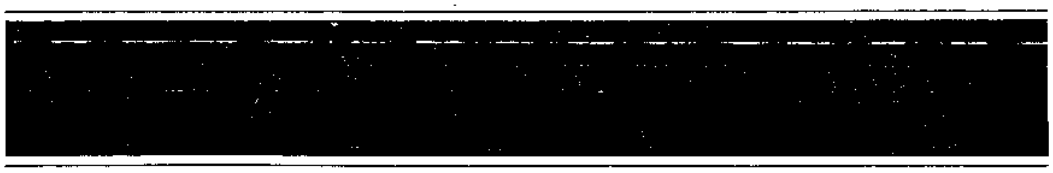
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