University of Dayton Law Review

Volume 8 | Number 2 Article 6

1982

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Robert P. Glass
University of Dayton

THE ASBESTOS TRAGEDY: LEGAL ISSUES AND THE NEED FOR REFORM

I. INTRODUCTION

On December 27, 1982, ABC News presented a program on nationwide television entitled "Asbestos: The Way to Dusty Death."[1] The program's appearance in prime time shows the increasing concern the American public has demonstrated in an array of asbestos-related problems.[2] The concerns cut across the medical aspects of "the worst industrial killer of all time"[3] and involve serious legal issues.[4]

The asbestos problem is complex. Touching individual families and giant corporations alike, its ramifications have been far reaching. At the center of the controversy is the threat that high exposure to asbestos apparently leads to illness and death.[5] On the periphery are the questions of who is responsible for this medical tragedy and who should pay for it.[6] The problems involving asbestos are of such magnitude that there has been talk of federal legislation to deal with some of the issues.[7] It appears there is a need for some type of action. Whatever the future may bring, the problems related to asbestos are currently being litigated in the nation's courts. The legal issues remain in a state of uncertainty and commentators anxiously await new cases which seek to resolve the tragic controversy.

II. THE MEDICAL PROBLEM

Asbestos is "a fibrous, incombustible, magnesium and calcium silicate . . ."[8] which has been primarily used for insulation. Although once thought relatively safe, it is now considered to be dangerous.[9] For

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1. Transcript of ABC News Closeup, Asbestos: The Way to Dusty Death, (Dec. 27, 1982) [hereinafter cited as ABC News] (on file at University of Dayton Law Review).

2. *See* Hertzberg, Asbestos Lawsuits Spur War Among Insurers, with Billions at Stake, Wall St. J., June 14, 1982, at 1, col. 6 [hereinafter cited as Hertzberg].

3. ABC News, *supra* note 1.

4. The legal questions involved are generally founded in the controversy of who is responsible for the health hazard and to what extent the responsible party must compensate for the damage caused.

5. Comment, *Asbestos Litigation: The Dust Has Yet To Settle,* 7 FORDHAM URB. L.J. 55 (1978) [hereinafter cited as Comment, *Asbestos Litigation*].

6. Certainly the asbestos industry and the insurance companies which insure them have been the target of many lawsuits.

7. *See* Mehaffy, *Asbestos-Related Lung Disease,* 16 FORUM 341 (1980) [hereinafter cited as Mehaffy].

8. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 152 (25th ed. 1974) [hereinafter cited as DORLAND'S].

9. Mehaffy, *supra* note 7, at 341.

the thousands of shipyard employees, construction workers, and brake mechanics who have been exposed to asbestos dust, the medical threat is real and immediate.[10] Among the diseases caused by asbestos are asbestosis,[11] mesothelioma,[12] bronchogenic carcinoma,[13] and possibly other "asbestos-related" medical complications.[14] The diseases caused by asbestos have not been limited to asbestos workers. Often their families, exposed to the dust through the worker's clothing, have been affected with the same diseases.[15] One significant aspect of the medical problem "is that it takes 20 years or more for some asbestos-related diseases to appear."[16]

III. THE LEGAL PROBLEMS

This comment will examine five issues connected with the asbestos problem. The issues involve the statute of limitations, manufacturer liability, insurer liability, use of bankruptcy laws as a defense to claims of liability, and the possible need for federal legislation to deal with the asbestos problem.

A. Statute of Limitations

Complying with statutes of limitation often poses special problems for a plaintiff seeking compensation for asbestos-related disease. "[B]ecause the disease is 'latent,' or slowly progressive, the plaintiff's health has remained unaffected until long after the exposure, and he has become aware of the injury only recently."[17]

The courts, upon examination of this unique problem, have employed three distinct rules to determine when the statutes begin to run. These rules are necessary because courts "have been troubled by the difficulty of identifying the time of accrual in personal injury cases."[18]

Under the traditional view, the statute of limitations begins run-

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10. Comment, *Asbestos Litigation, supra* note 5, at 74-77.

11. DORLAND'S, *supra* note 8, at 152 defines "asbestosis" as "a form of lung disease (pneumoconiosis) caused by inhaling fibers of asbestos; called also *amianthosis*."

12. *Id.* at 942 defines "mesothelioma" as "a tumor developed from mesothelial tissue."

13. *Id.* at 261 defines "bronchogenic carcinoma" as "carcinoma of the lung. . . ." The term "carcinoma" is defined as "a malignant new growth made up of epithelial cells tending to infiltrate the surrounding tissues and give rise to metastases." *Id.*

14. Mehaffy, *supra* note 7, at 345. "There are other diseases which some would classify as 'asbestos-related.' These include cancer of the gastrointestinal tract and other diseases. However, as I have mentioned, the medical research in these areas has not progressed to the point where any meaningful conclusions can be drawn." *Id.*

15. *Id.* at 350-51.

16. Hertzberg, *supra* note 2, at 1, col. 6.

17. Note, *Preserving Causes of Action in Latent Disease Cases: The Locke v. Johns-Manville Corp. Date-of-the-Injury Accrual Rule,* 68 VA. L. REV. 615 (1982) [hereinafter cited as Note, *Preserving Causes of Action*].

18. *Id.* at 619-20.

ning at the time the plaintiff is exposed to the harmful substance.[19] The problem with this approach, when applied to cases involving a "latent" disease or injury, is that it often leads to harsh results. Because it may take years for asbestos-related diseases to manifest themselves, the statute of limitations may have already run before the potential plaintiff even realizes he has been injured. As a result, the injured party may not be afforded an opportunity to seek redress from the manufacturer or other parties responsible for his medical condition. It becomes hard to reconcile this result when contemplating the public policy behind the statute of limitations for tort actions.[20]

Some courts, realizing the harsh results brought on by the traditional approach, have adopted the "discovery rule."[21] Under the "discovery rule," the plaintiff is allowed relief even when the injury has taken a long period of time to develop. Once the injured party discovers his injury, or through reasonable care should have discovered it, the statute of limitations begins to run.[22]

Some courts which might otherwise have adopted the "discovery rule" have been dissuaded from doing so because of their belief that they must defer to the state legislature. In other words, any change from a traditional approach to a "discovery" type view must be the product of legislative action rather than judicial action.[23]

When the Supreme Court of Virginia faced such a situation in *Locke v. Johns-Manville Corp.*,[24] it did not apply either the traditional

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19. Steinhardt v. Johns-Manville Corp., 54 N.Y.2d 1008, 430 N.E.2d 1297, 446 N.Y.S.2d 244 (1981).

20. *See* Note, *Preserving Causes of Action, supra* note 17, at 618-19.

> Courts and commentators have identified several policies behind statutes of limitations. First, these statutes provide repose for potential defendants by relieving them from the risk of liability for acts that occurred in the distant past. It is thought to be unfair to compel a person to defend himself against a claim he reasonably had assumed was forgotten. Repose also allows a potential defendant to plan for the future without fear that his activities will be disrupted by a lawsuit. Second, statutes of limitations eliminate many of the evidentiary problems that can interfere with the just resolution of stale claims, such as the unavailability of witnesses or evidence and the deterioration of memories over time. Finally, the statutes require those genuinely wishing to protect their legal rights to bring their actions quickly, thus limiting the potential for misuse of the legal system by plaintiffs asserting fraudulent claims or bringing actions merely to harass defendants.

Id. at 619 (footnote omitted).

21. Urie v. Thompson, 337 U.S. 163 (1949) (silicosis); Wilson v. Johns-Manville Sales Corp., 684 F.2d 111 (D.C. Cir. 1982) (asbestosis); Karjala v. Johns-Manville Prods. Corp., 523 F.2d 155 (8th Cir. 1975) (asbestosis); Borel v. Fibreboard Paper Prods. Corp., 493 F.2d 1076 (5th Cir. 1973) (asbestosis and mesothelioma), *cert. denied*, 419 U.S. 869 (1974); Louisville Trust Co. v. Johns-Manville Prods. Corp., 580 S.W.2d 497 (Ky. 1979) (mesothelioma); Haig v. Johns-Manville Prods. Corp., 284 Md. 70, 394 A.2d 299 (1978) (mesothelioma).

22. *See* Wilson v. Johns-Manville Sales Corp., 684 F.2d 111 (D.C. Cir. 1982).

23. Note, *Preserving Causes of Action, supra* note 17, at 626.

24. 221 Va. 951, 275 S.E.2d 900 (1981).

approach or the "discovery rule." Instead, under a statute of limitations which began running when a plaintiff was injured, the court decided that medical evidence will determine when the injury occurs. This could be anytime from the exposure to asbestos through the time the asbestos-related disease is discovered.[25] In other words, it will be a medical determination which pinpoints the date of the injury. This means medical evidence will also determine when the statute of limitations begins to run. "This approach differs significantly from both the traditional rule that injury occurs upon the initial harmful contact and the more modern rule that discovery of the injury starts the statutory period."[26]

Although the Virginia "date-of-injury" approach appears to be a valid alternative to the two prevailing views, it has been attacked as "inequitable, expensive, confusing, and of little help to plaintiffs."[27] The criticism apparently stems from the view that not as many plaintiffs will be helped by the approach as under the "discovery rule," and that it would be unfair to treat two plaintiffs differently if one developed "a sudden injury and the other's injury was latent for a long period."[28] Further, because of the broad interpretation of the word "injury" in the *Locke* decision, the statute would probably begin to run at an early point in time in many latent disease type cases anyway, thus denying relief to many potential plaintiffs.[29]

In view of the dangerous propensity of asbestos, and the fact that most workers only became aware of the hazard long after they were exposed,[30] the adoption of the "discovery rule" seems to make the most legal sense.[31] The statute of limitations serves a valid public purpose.[32]

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25. Note, *Preserving Causes of Action, supra* note 17, at 615.
26. *Id.* at 626.
27. *Id.* at 629.
28. *Id.*
29. *Id.* at 630.
30. Comment, *Asbestos Litigation, supra* note 5, at 56.

> Not only did industry ignore available medical literature concerning the harmful effects of asbestos exposure on their employees, but they completely neglected to consider the effect asbestos products would have on workers and members of the general public: lung disease and cancer. Yet labels on asbestos products never gave warning of the most significant dangers (asbestosis and cancer) even after the industry learned of the medical hazards associated with asbestos exposure. As a result, the general public as well as asbestos workers and their families have been unnecessarily exposed to asbestos dust.

Id. at 55-56 (footnotes omitted).

31. The "discovery rule" has been applied in other "latent" type cases. For example, oral contraceptive ingestion can produce injuries, which like asbestos, may take a long period of time to manifest themselves. *See* McKenna v. Ortho Pharmaceutical Corp., 622 F.2d 657 (3d Cir.), *cert. denied*, 449 U.S. 976 (1980).

Other jurisdictions which have applied some form of the "discovery rule" in varying contexts are Mayer v. Good Samaritan Hosp., 14 Ariz. App. 248, 482 P.2d 497 (1971); Enfield v. Hunt, 91

It prevents the potential plaintiff from "sleeping on his rights" and asserting "stale" and perhaps fraudulent claims against a defendant who has, along with any witnesses, long since forgotten about the particulars involved. The "discovery rule" properly serves the policies underlying the statutes. Once the plaintiff "discovers" his injury or disease the statutory period begins to run. If he lets the period lapse, he will be barred from bringing suit. The rule, however, prevents the potential unfairness which is inherent in every latent disease type situation because it recognizes the common sense notion that if one does not realize that he is injured, he is not going to bring a tort action for his injury. Therefore, the "discovery rule" protects the interests of both parties. Courts and legislatures alike should recognize the uniqueness of the asbestos tragedy and fashion law to provide for the injured, not deny them relief where there is no overriding public purpose to be served.

B. Manufacturer Liability

Provided the injured workers get by the particular statute of limitations requirement in their jurisdiction, they may still face the problem of determining which asbestos manufacturer is responsible for their injury. Many workers during the course of their careers came into contact with asbestos products produced by several manufacturers. In many cases it becomes impossible to determine one company's liability over another.[33]

In *Borel v. Fibreboard Paper Products Corp.*,[34] the court foresaw the difficulty in determining which manufacturer was actually responsible for the plaintiff's injury. The plaintiff complained that he had developed mesothelioma and asbestosis during a long period of exposure to asbestos. Arguing that asbestos was "unreasonably dangerous,"[35] the plaintiff sued general manufacturers of asbestos who he claimed were responsible for his medical condition. He claimed that he was not aware of any dangers involved with asbestos exposure and that he was not warned of any dangers by the manufacturers who had a duty to do so. The jury verdict in favor of the plaintiff on the theory of strict lia-

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Cal. App. 3d 417, 154 Cal. Rptr. 146 (1979); Nolen v. Sarasohn, 379 So. 2d 161 (Fla. Dist. Ct. App. 1980); Yoshizaki v. Hilo Hosp., 50 Hawaii 150, 433 P.2d 220 (1967); Teller v. Schepens, _ Mass. _, 411 N.E.2d 464 (1980); Carson v. Maurer, 120 N.H. 925, 424 A.2d 825 (1980); Silverman v. Lathrop, 168 N.J. Super. 333, 403 A.2d 18 (N.J. Super. Ct. App. Div. 1979); Wilkinson v. Harrington, 104 R.I. 224, 243 A.2d 745 (1968); Ruth v. Dight, 75 Wash. 2d 660, 453 P.2d 631 (1969); and Harrison v. Seltzer, 268 S.E.2d 312 (W. Va. 1980).

32. *See supra* note 20.

33. *See, e.g.*, Borel v. Fibreboard Paper Prods. Corp., 493 F.2d 1076 (5th Cir. 1973).

34. *Id.*

35. *See* RESTATEMENT (SECOND) OF TORTS § 402A (1965).

bility was affirmed by the reviewing court.[36] The *Borel* court decided that all involved manufacturers should be "jointly and severally liable."[37]

The *Borel* decision appears to be the correct result in cases where no one manufacturer can be singled out for liability. It allows the injured plaintiff to recover in an otherwise difficult proof situation.

In *Borel* it was decided that the manufacturers knew or should have known of the dangers asbestos posed to workers.[38] As a result, some commentators have urged that the doctrine of collateral estoppel "be used to preclude the defendants from relitigating the issue of medical knowledge, because the defendants in the majority of asbestos cases have litigated their knowledge and lost."[39] For courts already overburdened with asbestos-related cases, proper use of collateral estoppel to prevent relitigation of issues previously decided makes good judicial sense. In the majority of cases, time and money would certainly be saved.

C. *Insurer Liability*

Once it has been determined that a manufacturer is liable for asbestos-related injuries, the next step is to analyze its insurance coverage. The legal issue concerning insurer liability is "whether an insurer's liability starts when workers were first exposed to asbestos or begins only when the disease manifests itself years later."[40] Complicating this issue is the fact that many asbestos manufacturers were insured by several insurance companies over the liability period. Because of the vast numbers of asbestos-related lawsuits and the countless dollars at stake, it is a very important question for insurance companies.

Whether one or many insurers are involved, the "standard policy language" must be construed.[41] "The significance of this standard policy language is that it sets forth both the trigger of coverage, i.e., the event that requires an insurance policy to provide coverage for a claim, and the extent of an insurance company's obligations under a triggered policy."[42]

Regarding the "triggering" of an insurance policy, the courts have accepted three theories: (a) exposure, (b) manifestation, and (c) a the-

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36. *Borel*, 493 F.2d at 1081.
37. *Id.* at 1096.
38. *Id.* at 1089.
39. Comment, *Asbestos Litigation*, *supra* note 5, at 86-87.
40. Hertzberg, *supra* note 2, at 1, col. 6.
41. Oshinsky, *Comprehensive General Liability Insurance: Trigger and Scope of Coverage In Long-Term Exposure Cases*, 17 FORUM 1035, 1037 (1982).
42. *Id.* at 1037.

ory which encompasses both exposure and manifestation and everything in between.[43]

Courts which have adopted the "exposure theory"[44] state that an insurer's liability is triggered when the worker first becomes exposed to the asbestos fibers. Some theorists have suggested that the "exposure theory" can be broken down into "inhalation exposure" and "exposure in residence."[45] Variations aside, the "exposure theory" deems that the triggering "injury" under the policy occurs when the worker is exposed to the asbestos dust.[46] "The 'exposure' theory hooks all insurers that covered the company over the years."[47] It has been suggested that the "companies generally favor the exposure theory because it provides a larger pool of insurers to reduce the companies' own settlement outlays beyond their coverage limits."[48]

Courts advancing the "manifestation theory" argue that no "injury" under the policy has occurred until "it becomes reasonably capable of medical diagnosis."[49] Manifestation theorists argue that mere exposure to asbestos dust does not constitute the requisite "injury" necessary to trigger coverage.[50] It is only after the "manifestation of either asbestosis, mesothelioma or lung cancer" that a policy is triggered.[51] As a result, insurers who covered the asbestos manufacturer before any manifestation would not be held liable even though the exposure to the asbestos had occurred while they were the insurer.[52]

There are problems with both the "exposure" and "manifestation" theories. The case of *Keene Corp. v. Insurance Co. of North America*[53] outlined the problems and proposed a solution of its own. The *Keene* court felt that the "reasonable expectations" of the insured[54] needed to be considered. It determined that if exposure alone was used as a trigger for liability, the resulting disease "would be characterized best as a

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43. *Id.*

44. Insurance Co. of N. Am. v. Forty-Eight Insulations, Inc., 633 F.2d 1212 (6th Cir. 1980), *aff'd on rehearing*, 657 F.2d 814 (6th Cir.), *cert. denied*, 454 U.S. 1109 (1981).

45. Keene Corp. v. Insurance Co. of N. Am., 667 F.2d 1034 (D.C. Cir.), *cert. denied*, 102 S. Ct. 1644 (1982). "Inhalation exposure" is determined to be at the time the worker is first exposed to the asbestos dust while "exposure in residence" means the further amplification of the disease within the body. *Id.* at 1042.

46. *Id.*

47. Hertzberg, *supra* note 2, at 1, col. 6.

48. *Id.*

49. Eagle-Picher Indus., Inc. v. Liberty Mut. Ins. Co., 682 F.2d 12, 25 (1st Cir. 1982).

50. *Keene Corp.*, 667 F.2d at 1043.

51. *Id.*

52. Hertzberg, *supra* note 2, at 1, col. 6.

53. *Keene Corp.*, 667 F.2d 1034.

54. *Id.* at 1044.

consequence of the injury."[55] Thus, any further development of the disease would not be considered a new injury and, as a result, there would not be any further liability triggered.[56] Barring indications to the contrary, this would not establish "a purchase of certainty with respect to liability for asbestos-related diseases."[57] For if the exposure had occurred before the manufacturer had obtained coverage, the manufacturer would be held liable instead of the insurance company when the later manifestation took place. This prompted the *Keene* court to find manifestation as "one trigger of coverage" because "any other result would violate very reasonable expectations" of the manufacturer.[58] But the court went on to hold that manifestation was not the sole trigger of coverage,[59] stating,

> [i]f that interpretation were adopted . . . [the manufacturer] would not be covered for diseases manifesting themselves after 1976. By that time, it was widely known that prolonged inhalation of asbestos has a high probability of causing disease. From about then on, insurance companies ceased issuing policies that adequately cover asbestos-related disease. Yet we can still expect thousands of cases of those diseases to manifest themselves throughout the rest of the century. If we were to hold that only the manifestation of disease can trigger coverage, the insurance companies would have to bear only a fraction of [the manufacturer's] total liability for asbestos-related disease.[60]

The court went on to conclude:

> In sum, the allocation of rights and obligations established by the insurance policies, would be undermined if either the exposure to asbestos or the manifestation of asbestos-related disease were the *sole* trigger of coverage. We conclude, therefore, that inhalation exposure, exposure in residence, and manifestation all trigger coverage under the policies. We interpret "bodily injury" to mean any part of the single injurious process that asbestos-related diseases entail.[61]

The *Keene* court next "consider[ed] the extent to which an insurer is liable to its policyholder once coverage under its policy is triggered."[62] The result was that "each insurance company whose policy is triggered is liable in full for the policyholder's legal liability, except that each such insurance company may seek contribution from the

55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.* at 1045.
60. *Id.* at 1045-46 (citations omitted).
61. *Id.* at 1047.
62. *Id.*

other insurance companies whose policies also have been triggered."[63]

It has been suggested that "factual differences among" the insurance company liability cases explain the diverse stances taken by the jurisdictions.[64] It appears more likely, however, that the various theories adopted by the courts are merely their way of dealing with an important and complex issue that has arisen too quickly on the legal scene.

D. Use of Bankruptcy Laws

In the summer of 1982, as thousands of damage suits relating to asbestos began to clog the nation's courts,[65] Johns-Manville Corporation, a company which mines and manufactures asbestos materials, filed for bankruptcy under Chapter 11 of the Bankruptcy Code.[66] Johns-Manville had become financially burdened under the weight of many of the asbestos-related lawsuits.

Critics have questioned the ethics and legality of the company's bankruptcy petition. It has been reported that the company was not insolvent when it filed its petition. Although the company claimed the legal move was necessary to insure payment to its creditors, others have felt that the company was trying to "squeeze through a legal loophole" to avoid facing the many pending and potential lawsuits against it.[67] Although the health of the injured asbestos workers must remain the top priority and concern in any discussion of asbestos-related problems, one must also consider the "health" of American industry. It is a sad commentary on our times when a major industry must file for bankruptcy to protect itself from legal attack. The issue, as of now undecided, bears close scrutiny.

E. Need For Reform

As this comment has attempted to show, asbestos has brought suffering and hardship to this nation's people and institutions. Asbestos workers and members of their families have taken ill and died. Claims against manufacturers have brought possible financial crisis to the asbestos industry and to the insurance industry involved with it.[68] Throughout the country, thousands of lawsuits have tied up the courts with complex questions of law. Because so many people in this country were exposed to dangerous amounts of asbestos, and because the inju-

63. Oshinsky, *supra* note 41, at 1036.
64. *Id.* at 1045.
65. Hertzberg, *supra* note 2, at 1, col. 6.
66. ABC News, *supra* note 1.
67. *Id.*
68. Hertzberg, *supra* note 2, at 16, col. 1.

ries that evolve are latent in nature, the massive problems will continue for many years to come.

It is this realization that the asbestos problems will increase that suggests the need for some type of reform. It has been written that there need be "some sort of federal compensation law covering asbestos-related diseases" along the lines of "the Black Lung legislation."[69] The asbestos problem is unique and dangerous. It is a burden on people and institutions that needs to be dealt with swiftly. Federal legislation is certainly a viable way to deal with the health and financial concerns asbestos poses, but in an age of federal budget cutbacks it seems highly unlikely that such legislation will be passed.

One commentator has concluded:

> The question is simply who shall pay for the loss and how this can best be determined. Under the present system, we put the burden upon a few insurance companies who happened to insure insulation manufacturers years ago, at a time when the catastrophic results of the use of the product insured were clearly beyond the contemplation of the underwriters, even though the courts have charged the insureds with constructive knowledge of the hazard. Further, we determine the liability through the application of rules of law never designed for such a situation, and, because of the magnitude of the litigation, we compromise the body of our law by judicial legislation motivated not by any sense of fairness or justice, but by desire to 'clean up the docket.' All we have succeeded in doing, thus far, is to continue with our inefficient and frequently inequitable system, and in the process clog our courts to the point where judges are writing bad law simply in order to reduce the case load.[70]

IV. CONCLUSION

"At least 8,500 workers-and perhaps as many as 10,000-will die

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69. Mehaffy, *supra* note 7, at 351. *See* The Black Lung Benefits Act of 1972, Pub. L. No. 92-303, 86 Stat. 150 (codified as amended at 30 U.S.C. §§ 901-02, 921-24, 931-34, 936-40, 951 (1976)). The Black Lung Benefits Reform Act of 1977, Pub. L. No. 95-239, 92 Stat. 95 (codified as amended at 30 U.S.C. §§ 901-04, 921-24a, 931-33, 937, 940-45 (Supp. IV 1980)). These statutes have been subjects of much legal commentary. *See, e.g.*, Lapp, *A Lawyer's Medical Guide to Black Lung Litigation*, 83 W. VA. L. REV. 721 (1981). The need for reform has not been overlooked by some members of the Houses of Congress in Washington, D.C. *See* Wilson v. Johns-Manville Sales Corp., 684 F.2d 111, 112 n.1 (D.C. Cir. 1982).

Responding, *inter alia*, to the estimate that 1.6 million workers will die from an asbestos-related disease, *see* 127 Cong. Rec. S10033 (daily ed. Sept. 18, 1981) (statement of Sen. Hart), members of both Houses of Congress have introduced bills which would provide a comprehensive, nationwide compensation scheme covering workers who die or are disabled or injured as a result of asbestos exposure. H.R. 5735, 97th Cong., 2d Sess. (1982); S. 1643, 97th Cong., 1st Sess. (1981). Both bills currently await committee action.

Id.

70. Mehaffy, *supra* note 7, at 352.

each year until the end of the century from asbestos-related cancers."[71] The asbestos tragedy is a problem with grave consequences. As the public becomes more aware of the seriousness of the situation, it will become less tolerant with the way "relief" is dispensed in the various jurisdictions. Theories regarding statutes of limitations and insurer liability are proper if they bring on efficiency and fairness. As the cases indicate, this has not always been true.

The time has come for national action. Legislation is needed to insure that those unfortunate people who have been exposed to asbestos, and are now dying as a result, will not be prevented from seeking the relief they deserve simply because the statute of limitations has run or because they are unable to prove which manufacturer produced the asbestos which injured them. It should also be the goal of such legislation to protect the corporations and insurance companies involved from financial ruin. Without such legislation, more corporations might be forced to turn to measures such as bankruptcy to solve their legal problems.

The asbestos problem is serious enough to justify a solution other than piecemeal stop-gap measures. Perhaps an enlightened public will demand federal action when they determine that "[t]here ought to be a better way."[72]

Robert P. Glass

71. Hertzberg, *supra* note 2, at 1, col. 6.

72. Mehaffy, *supra* note 7, at 352.