



Study predicts most new cases of mesothelioma will not be related to occupational exposure after 2040 (/stories/511408411-study-predicts-most-new-cases-of-mesothelioma-will-not-be-related-to-occupational-exposure-after-2040)

by John Breslin (/author/john-breslin) | May 7, 2018, 9:54am



A new study has found that all new cases of mesothelimia will largely be so-called background, that is not linked to the hazards of directly working around asbestos, after 2040.

The study, commissioned by business advisory firm, KCIC, also reported that a majority of cases diagnosed currently are background.

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It found that from 2012 to 2016 an estimated 55 percent of all mesothelioma medical cases diagnosed in the U.S. were background cases.

According to the study's author, Maine-based risk assessment analyst Bertram Price, a mathematician, an estimated 37 percent of male mesothelioma diagnoses were background cases.

Further, approximately 99 percent of all female mesothelioma cases. Price believes all cases will be background by 2040.

The findings raises questions over the defensive strategies of defendants named in asbestos-related litigation, which has been ongoing now for two decades.

Madison County has the highest number of asbestos-related cases ongoing in the country. KCIC notes that when Missouri signed into legislation the *Daubert* standard for expert testimony and opinion in March 2017, asbestos-related filings decreased in St. Louis by 40.3 percent and increased across the river in St. Clair, Illinois by 200 percent.

Peter Kelso, a principal with the Virginia-based business strategy firm, Roux, which tracks litigation trends, said he expects defendants to change their legal strategy.

"(The) claimant population is changing with time elapsed from direct exposure" in the workplace, Kelso told the *Record*.

Kelso was part of a team at the economic consulting firm, Bates White, that studied mesothelioma trends as part of the Garlock Sealing Technologies bankruptcy case.

The team was "trying to identify how many claims that trusts would have to pay," Kelso said. Its findings do closely align with the KCIC study, he said.

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Much of the debate over the numbers of mesothelioma cases diagnosed going forward: the subsets of the population expected to suffer from this particular type of cancer, and how many were directly exposed through their work is founded on "Occupational Exposure to Asbestos: Population at Risk and Projected Mortality 1980-2030," a landmark 1982 study.

It predicted cases peaking in 2002 before dropping off. This does not appear to be happening, largely, it seems, because it did not take into account increased life expectancy or the potential for extensive background exposure.

The chances of getting cancer of any type is increasing because more people are living longer, said Kelso, the business strategist. He expects the "general causation" defense to be invoked more often.

Paul Napoli, a lawyer with Napoli Shkolnik, a firm that has been involved in much asbestos-related litigation, believes the more important point to make is not so much the strategy defense attorneys might take, but where cases are filed going forward.

"Because of recent decisions with regard to jurisdiction, cases are now being filed in multiple ones, across the country," Napoli told the *Record*.

And that, he added, is not going to help the defendants that want to manage their dockets.

Napoli cited the *Bristol Myers Squibb* Supreme Court decision as an example of the old adage "be careful what you wish for."

The BMS decision ruled that California courts lacked jurisdiction over a defendant in cases filed by plaintiffs who are not residents of the state and did not suffer the injury in California.

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"That case threw out what defendants have strived so long to get, that is...consolidation," said Napoli.

Overall, there has been a slow down of cases of filed.

"I think as years go on it is more difficult to make that connection with exposure to occupational exposure," said Napoli, "But the product is still everywhere."

Asbestos defense expert Mark Behrens of Washington-based Shook, Hardy and Bacon believes defendants are becoming more aggressive in looking for non-asbestos causation.

"But they may be selective when trying to do this," he said.

"Those cases that are strongest would be where alleged exposure is very remote, maybe non existent, not a career installer, or working on ships where there was substantial exposure."

Elizabeth Hanke, of KCIC, which commissioned the study, said evidence that mesothelioma is not solely caused by asbestos exposure is very important for all defendants in this type of litigation.

"It is especially important for defendants whose products contained very low-levels of asbestos and defendants who have not had an asbestos-containing product on the market for over 40 years," Hanke said.

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