



Staying on top

Bradley Drew advises insured on how to keep track of the masses of claimant data involved.

IN THE US, ASBESTOS LAWSUITS CAN BE different to other product liability suits because of the tendency of plaintiff's lawyers to include multiple people in the same lawsuit. These multi-plaintiff actions allow the lawyers to serve a company with one complaint but in effect establish hundreds, or even thousands, of claimants with an allegation of injury against the insured.

For companies and those who insure them this spells trouble in the form of elevated legal fees, the possibility of paying claims more than once, and spending huge sums of time and money attempting to manage these lawsuits. Particularly for the insurance company, it can be hard to understand the scope of an insured's liabilities, and mistakes can easily be made. It is therefore important that insurance companies monitor how

suits are tracked and managed.

It is critical that claimants are scrutinised to determine whether they have already filed suit and if so, whether or not the prior suit has been resolved or is pending in a completely different jurisdiction. Furthermore, these multi-plaintiff actions are rarely resolved at the same time for every one of those claimants. Resolutions will occur at different points in time, thus complicating the process of tracking the accurate number of claims still pending against an insured. In fact, for companies not tracking individual claimants, it is easy to under-report the number of claims that are pending against a company at any point in time.

Asbestos lawsuits are further complicated in that individuals and estates (related parties representing the injured person) are also named as plaintiffs in the

Above: Workers wearing Hazmat suits clean up the site of a steam pipe explosion in New York, 19 July 2007. Workers cleaned asbestos-tainted debris from an explosion from a steam pipe that rocked Manhattan, as some New Yorkers questioned official reassurances that the air was safe to breathe.
©REUTERS

lawsuit, making liability overstatements a potential consequence of inaccurate data. Insureds often overstate the number of claimants filing suit because they have not distinguished the injured party from the spouse, child or executor of the estate.

Underestimating the number of claimants, on the other hand, may cause an insured to create incorrect or unrealistic liability estimates.

COMPANY HEADACHES

Another common problem in the US occurs when claimants file suit in more than one jurisdiction. The strategy of “forum shopping”, or seeking the most claimant-favourable jurisdiction, makes it difficult for a company to ensure it does not expend more resources than necessary defending the same claim. An even more serious issue is making a payment and settling with the same claimant more than once.

What about claimants who file asbestos bodily-injury complaints with more than one lawyer? It does happen and should be addressed in the same manner as the claimants filing in multiple jurisdictions.

For years this practice has made asbestos litigation even more complex and difficult to manage.

Documents go completely unnoticed and critical information, which could have a decisive impact on a case, often goes unused. Many insureds, or their law firms, may not focus on this important source of information merely because they are tracking asbestos suits at the lawsuit/complaint level rather than the claimant/injured party level.

These pitfalls are common and are examples of the complications that arise when managing asbestos case workloads. Given these complexities, it is surprising that many insureds address asbestos lawsuits at the lawsuit/complaint level. Ultimately, it raises the question of how an insured with asbestos claims is keeping track of those claims. If the answer is “not very well” the result is economic loss for them and those who insure them.

MANAGING AND REPORTING

The inherent complexity of asbestos bodily-injury suits has created a need for sophisticated methods to extract accurate information on the proper number of injured parties and to ensure duplicate filings don't exist. While some insureds have systems and processes in place, anecdotal accounts suggest that many do not. Instead, they rely on outdated modes of managing claimant data and costly claims-tracking systems. A well-planned process must be put in place where key information is acquired and properly organised for all parties to access.

The process begins with treating each claimant as its own data point and compiling the information on that claimant when it is received. It is important to capture accurate information, keep track of it, and cross-reference it continuously. Starting this process early, when the number of claims is small, will protect an insured from the wide range of potential problems further down the road. It will also temper the cost of gaining control of the information.

With the financial pressures faced by many in-house legal departments, it is extremely difficult for most lawyers to manage the data, even for large, well-staffed law firms. In-house counsel might use spreadsheets or simple databases for the tracking of their asbestos caseload. However, those methods are very hard to manage due to claimant data coming in from multiple sources throughout the country.

This data management can be difficult work for law firms, many of which have attempted to expand their practices to include data management centres. The insureds should ask themselves whether they want their lawyers expending their resources in this area because the management of a data centre may not be a law firms' forte.

Some of the larger defence law firms (with ten or more large asbestos clients) do have systems that take in claims, record multiple lawsuits and identify duplicate records. But regardless of the level of competency, this “customised” tracking for several clients is never going to be a cost-effective option for the defendant company. The economies of scale simply don't exist.

TOWARD SHARED SERVICES

Most involved in this data management system are coming to realise that it makes sense to use a shared services route. Today, some law firms are using shared data services to bring greater accuracy and economic value to their clients. It actually makes their jobs easier by allowing them to concentrate on litigation rather than building and managing teams who track it.

Specialised asbestos claims management outsourcing provides a sophisticated, managed process where controls are in-built with specialised, comprehensive data capture and a consolidated database. In addition to accuracy, there are significant time and money savings to be made. An insured's numerous local law firms could spend several hundred hours per month collecting and organising basic claims data. However a national law firm might spend only 20-50 hours organising that data from the multiple firms at month's end to see where things stand using pooled resources. The information is immediate, complete, accurate and ready to be reported confidently to management and then on to other interested parties.

Even though mesothelioma claims appear to be peaking and non-malignant asbestos claims have been reduced, the need for accurate asbestos claims tracking has not diminished. Billions of dollars are still at stake and given the complexity of asbestos litigation in the US, accurate tracking will remain essential for all interested parties.

Bradley Drew is a managing director at PACE, a unit of Navigant Consulting.

SEARCH FOR THE FOLLOWING STORIES AT >> GLOBALREINSURANCE.COM

- > Travelers in landmark asbestos case
- > S&P: Worst of asbestos difficulties behind us
- > ABI comments on government's asbestos decision

“Billions of dollars are still at stake and given the complexity of asbestos litigation in the US, accurate tracking will remain essential”