

CHAMBERS OF
WILLIAM L. HUNGATE
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
U. S. COURT HOUSE & CUSTOM HOUSE
ST. LOUIS, MISSOURI 63101

COPY FOR YOUR
INFORMATION

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August 29, 1990

The Honorable John F. Nangle
U.S. District Judge
St. Louis, MO

Dear Jack:

Thanks for the report of the Senate Judiciary on S.2648.
Now I know how Custer felt at the Little Big Horn.

They say economists know more about money than people who really have it. It appears that people who have never run a court know more about it than people who operate the institution.

I doubt if we can win, but have a few comments:

On page 7, the insurance industry (Aetna Life & Casualty, etc.) is concerned about its legal transaction costs. I also hear them regularly on the media about the cost to all of us of fraudulent claims. It had already occurred to me that maybe what they want is to be subject to the antitrust laws like all other major industries in the United States. This would undoubtedly have a salutary effect.

Some of the authority cited for the benefits of their proposed "enhanced case management" comes from an article of the Federal Judicial Center in 1977 and an article by Judge Rubin in 1979. My criticisms of some of these proposals rest on a document adopted in 1788.

It is stimulating to realize that the experts who first stated magistrates could not preside over discovery case management conferences in S.2027, now concede this was an error, but remain wise as to all other aspects of this legislation.

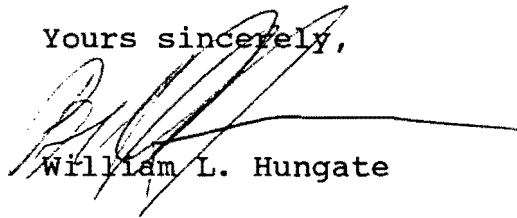
Corporate counsel and the insurance industry seem quite supportive of these case management and discovery control proposals. Anyone who thinks the discovery avalanche is caused by solo practitioners or two- and three-member law firms should visit a federal courthouse and look at the docket.

The Hon. John F. Nangle
August 29, 1990
Page 2

The problems a district judge faces in instituting effective case management are well illustrated by the dilemma posed to Judge Lambros when, without any motions by a lawyer, he ordered thousands of asbestos cases from across the United States consolidated in his court, but the appellate court told him to limit himself to five. There are many judges (myself included) who know exactly how to run this country, if other people would only listen.

At page 32, Senator Biden states he knows "of no other part of the Federal Government where regional agencies call national headquarters, ask for a multi-million dollar commitment of resources, and then are given by the Congress exactly what they want, no questions asked." I know of no other regional agency whose existence and powers are provided by the United States Constitution, Article III.

Yours sincerely,



William L. Hungate

WLH:db

cc: Judge Barefoot Sanders
Judge Diana E. Murphy
Mr. L. Ralph Mecham

Asbestos

Plan Limited

Fed

CINCINNATI, Aug. 19 (AP) — A Federal appeals court on Thursday directed a Federal judge in Cleveland to limit his effort to consolidate thousands of asbestos cases from elsewhere in the nation.

A three-judge panel of the United States Circuit Court of Appeals for the Sixth District heard Federal District Judge Thomas D. Lambros argue for the right to consolidate the liability cases before his court.

Judge Lambros and nine other district judges from around the country issued a blueprint on Aug. 10 for a national class action intended to resolve more quickly thousands of asbestos cases. The plan ordered consolidation of cases in Federal districts in northern Ohio and East Texas.

But Thomas Hermann, lawyer for Allied-Signal Inc. of Morristown, N.J., asked the appeals court to prevent Judge Lambros from proceeding. Mr. Hermann argued that the judge lacked authority to consolidate cases from outside his district and that the 10 judges lacked authority to create a mandatory national class action.

Allied-Signal faces asbestos liability claims because the company produced brake linings and brake disk pads containing asbestos.

The appeals court did not immediately rule on whether to grant Allied-Signal's request.

But Appellate Judge Boyce Martin Jr. directed Judge Lambros to limit future orders to five plaintiffs.

Business and the Law

Stephen Labaton

Judicial Struggle In Asbestos Cases

ASBESTOS litigation has turned into a kind of three-dimensional judicial chess game, with plaintiffs, defendants and judges all struggling among themselves.

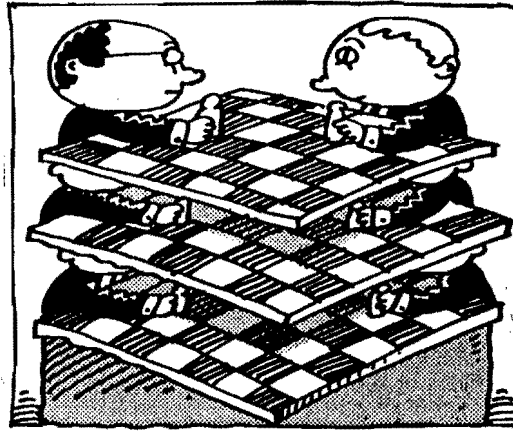
The central issue for all three groups is whether tens of thousands of asbestos personal-injury lawsuits should be consolidated into one or a few jurisdictions. And if the cases should be consolidated, which judges should supervise them?

Right now, the cases are scattered throughout every Federal court and most state courts around the nation. In some areas, they are badly clogging the dockets. Asbestos personal-injury cases form the basis for the largest number of civil disputes around the nation, and some lawyers and scientists predict that they will increase drastically in the coming years as injuries from decades of exposure become apparent.

The issues surrounding the consolidation of cases are expected to come in sharp focus this week, when judges begin to take steps to resolve what has turned into a clash of class actions. On Friday an unusual meeting will be held in Washington by six Federal judges with heavy asbestos dockets.

One of those judges, Jack B. Weinstein of Brooklyn, traveled to Texas and Cleveland on Friday to discuss plans for coordination with two other judges. Judge Weinstein set off a mad scramble by lawyers and other judges last month when he indicated his intention to approve a nationwide class action. The judge's move caused several parties to begin shopping for the best forum for their lawsuits and brought a reaction from other judges who did not want to see their cases transferred.

Within a week of Judge Weinstein's opinion, Federal District Judge Thomas D. Lambros of Cleveland approved a class action without any motion



Stuart Goldenberg

being made by a lawyer. Four Federal judges in Louisiana who are supervising more than 1,000 cases then fired off an order telling lawyers there basically to ignore Judge Lambros because he had acted improperly in approving the class action.

At about the same time, plaintiffs' lawyers asked Judge Robert M. Parker of Tyler, Tex., to approve a class action. The motion is still pending, along with one filed by an asbestos defendant, Eagle-Picher Industries, asking Judge Weinstein to approve a class action.

"Every hour brings me an order or fax from a court staking out turf in the class-action fight," said a lawyer who represents a maker of asbestos.

Among the plaintiff and defense camps, there is no consensus that a consolidation of cases would be better than the current system. By most accounts, even plaintiffs' lawyers who favor such a class action do not want it before Judge Weinstein. Since he slashed legal fees in the enormous and complex Agent Orange case, he has not been a favorite of some personal-injury lawyers. A number of plaintiffs' lawyers have already challenged Judge Weinstein's actions in supervising the trust set up by the Manville Corporation to compensate victims, asserting that he acted without jurisdiction.

Proponents of consolidation contend that it would reduce the enormous legal costs in a system in which about two-thirds of the money held for asbestos victims is now going to either lawyers for manufacturers or plaintiffs. It would also probably lead ultimately to a settlement in which compensation of those with lung cancer, mesothelioma and other serious and fatal diseases would be uniform.

"In the past few weeks, everyone has come to agreement that the traditional method of resolving these cases is just too time consuming and costly," Judge Lambros said in an interview on Friday. "If we don't accomplish a way for the competing sides to get together, then I think the costs through early into the next century will be enormous."

The judge added that if the cases could be consolidated, then all of the litigation could be resolved within a year to 18 months.

But opponents contend that consolidation robs each victim of a day in court and, in so doing, lumps together many people who have different diseases and problems from dissimilar products.

"There are many different issues of liability and many different kinds of plaintiffs," said Louis S. Robles, a lawyer in Miami at Robles & Gonzalez, who is representing about 1,000 clients who say they have been injured by inhaling asbestos. "Some are very young; some very old; some are deceased. The damage picture is so diverse that it is impossible to put them into one or even a few categories."

For many defendants who might otherwise favor a class action, there is one particular stumbling block. Under Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure, which governs the form of class action that is being contemplated, the defendants must be in a position of having only a limited ability to meet any judgments.

But to take such a position, the companies would have to admit that they lied for years. Many of the companies, which are publicly traded, have routinely filed statements with the Securities and Exchange Commission in which they assert that the asbestos cases against them would have no material impact on their financial health.