

Injury Claims Trends in the U.S. - What's Up and What's Down

Updates from across the Atlantic.

Weightmans' Insurance Insights

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By Matthew S. Schorr

What's Up

Climate Change

Climate change litigation in the U.S. is primarily based on federal (especially) and state statutes, such as the Clean Air and Water Acts, and the Endangered Species Act. This area of claims will likely continue to increase as individuals, municipalities, counties and states seek damages from fossil fuel companies and others for alleged environmental harm.

Talc Claims

Are also anticipated to increase, at least until a global settlement, which Johnson & Johnson has favoured in recent years, because the latency period for asbestos cancers is so long (30 years or more). This means that many new diagnoses of ovarian and uterine cancers will spawn new lawsuits for years to come. Thus far, 27,000 claims have been filed against J&J; these claims are consolidated in New Jersey federal court. Other individual suits in state court have resulted in very large verdicts. The claims allege that J&J (and a few others like Colgate) knew their talcum powder was contaminated by asbestos. In 2019, J&J voluntarily recalled one batch of talcum powder because it contained chrysotile asbestos (a less potent form of asbestos). In May of 2020, J&J stopped selling talcum powder in the U.S.

& Canada, which will have the effect of reducing future claims. J&J has reserved \$4 billion for talc lawsuits.

Pharmaceutical claims: will likely continue unabated, especially in hotspots like Philadelphia, Chicago, New York, and Los Angeles. Recent lawsuits in cases involving transvaginal mesh, Risperdal, and other pharma products have resulted in extremely large verdicts ranging from \$8 billion (in a Philadelphia Risperdal lawsuit) to the many-millions. These large verdicts have spawned new lawsuits.

What's Going Down

Molestation Claims

Whereas climate change, talc, and pharmaceutical claims will likely increase, molestation claims will likely wane. Specifically, the Boy Scouts declared bankruptcy in 2020 and recently offered a global settlement of about \$750 million. However, other claims, like priest abuse claims, will continue, and they might also increase because many states have abrogated or diluted the statute of limitations for new claims.

Teflon Claims

Will probably also wane because DuPont and others settled in January of 2021 for approximately \$4 billion, which resolved claims in the

federal multidistrict litigation pending in Ohio. Weed killer claims, similarly, will decrease because, after several big verdicts, Bayer (which inherited the litigation when it bought Monsanto) agreed to pay \$10 billion to settle 95,000 pending claims (\$1.25 billion will be set aside for future claims). However, 40,000 people opted out of their settlement, so the litigation will continue in a diminished capacity.

Business Interruption Claims

Will also continue to decrease. Slightly more than 1,500 claims have been filed nationwide since March of 2020. One-third of the claims have been filed by those in the food service business, primarily restaurants; one-fourth have been filed as class actions; and in one-third of the filed cases, the policies did not have virus exclusions. The cases are difficult to win, especially in federal court—94% of the cases filed in federal court have been dismissed, and 54% of the cases filed in state court have been dismissed. Ohio and Missouri have been most favourable to plaintiffs/insureds. Only one case (Louisiana) has gone to trial (bench) and the judge ruled for the insurer. Some big chains are still expected to file

lawsuits, but the volume of claims has slowed down.

Chronic Traumatic Encephalopathy (CTE) Claims

Have also declined after a 2015 settlement in which the NFL created (and a Pennsylvania federal judge approved) a compensation scheme valued at about \$1 billion. Future CTE claims will be determined by the NFL's payment scheme. There have been new allegations that payments under the scheme are infected with racial bias, but those likely will be resolved by the NFL without significant new litigation. New helmet claims continue to be filed, primarily against helmet manufacturer Riddell. Certain claims by bellweather plaintiffs in a class action against Riddell were recently dismissed by an Illinois federal court based on deficiencies in the plaintiffs' expert's analysis, but the remainder of the lawsuits will proceed.



Matthew S. Schorr is Assistant Director of the Casualty Department and a member of the Board of Directors at Marshall Dennehey, the U.S. founding law firm of Insurance Law Global. Contact Matthew at msschorr@mdwgc.com.