

Asbestos trial takes toll on judge

By STEPHEN TARNOFF

SAN FRANCISCO—For San Francisco Superior Court Judge Ira A. Brown Jr., the past two years of presiding over one of the largest, most complex trials ever has been a monumental task.

But Judge Brown, who in 1981 ordered that separate lawsuits involving several asbestos producers and their 75 to 100 liability insurers be combined, still believes his approach was better than trying the cases separately.

"I'm still convinced if it was going to be tried, they had to be tried together," Judge Brown said in a recent interview with *Business Insurance*.

The massive litigation ultimately became too big to hold in the courtroom in state Superior Court and was moved to a school auditorium.

"I think the auditorium worked very well," he said.

The past two years of litigation have taken a personal and professional toll on Judge Brown.

"I haven't done anything else for two years and four months," he said. But, he added, "I've never had to worry about what to do the next day."

Judge Brown has not missed a day of the trial because of illness.

He speculated that the trial could end by mid-year or early next year. "We may be looking at a third anniversary," he noted.

He said that when the trial began, he did not anticipate that it would go on for two years. He estimated that, at most, it would last 1½ years.

Judge Brown expresses few regrets, one being the order he issued prior to the trial that required involved parties produce "all relevant documents."

According to an attorney in the litigation, the order for documents was interpreted broadly and was "extremely onerous" to the parties who risked sanctions if they did not comply.

"In addition to the hard legal issues presented by the case, probably the 'thorniest problem' has been dealing with the evidentiary issues, such as which evidence is admissible against which parties," he noted. "It's the hardest problem in the conduct of the trial," he contended.

Once Judge Brown rules on the critical trigger of coverage and duty-to-defend issues argued during the recently concluded third phase of the trial, those decisions could encourage the parties to settle, according to some observers.

But Judge Brown is uncertain what impact those decisions, which are expected soon, will have on other litigation.

But he pointed out that some attorneys have indicated that the volume of the record and the information provided is so extensive that his decisions may have an impact on other asbestos and toxic tort insurance coverage cases.

Phase 3 of the trial, which lasted 14 months, encompassed extensive testimony on the medical aspects of asbestos-related diseases and the history of the drafting of insurance policies. "It (the trial) is more than I've ever wanted to know," about insurance, he said.

Judge Brown was formerly with the San Francisco firm of Thelen, Marrin, Johnson & Bridges, where he did not practice insurance law.

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Fiber industry shaken by new cancer evidence

New York Times News Service

WASHINGTON—Emerging evidence that fiberglass and other manufactured mineral fibers may cause lung cancer and other diseases is creating a sensitive and potentially far-reaching new public health issue.

The evidence, although far from conclusive, is sending tremors through the fiber industry and federal regulatory agencies. Industry officials, however, insist that the evidence shows no health problem.

These synthetic fibers, already in use as building materials, insulation, in cars, furniture, packaging and other applications in a \$3 billion-a-year industry, are increasingly being employed as substitutes for asbestos, a known cause of cancer and other serious illness.

Now, studies of the workers who make fiberglass, rock wool and ceramic fibers, as well as tests on laboratory animals, suggest that the substitutes may also pose a health threat.

The results of the studies have caused a flurry of activity in the industry. Manufacturers of the synthetic fibers have undertaken costly studies on the health effects of their products and are consulting with federal regulators.

If the fibers prove to be a serious health threat, it could result in loss of sales, expensive damage claims and extensive measures to reduce exposure among workers and possibly the general public.

The studies that are generating the most concern about the health effects of synthetic mineral fibers were based on an examination of mortality records of workers in

North America and Europe who produced them and were first exposed to relatively low levels of airborne fibers at least 30 years earlier. Scientists who have reviewed the studies agree that these workers show a higher rate of lung cancer than would normally be expected.

Industry officials insist that the evidence about fiberglass and other synthetic mineral fibers is inconclusive and that it is just as likely that the worker deaths found in the studies were caused by other factors, such as smoking, exposure to cancer-causing chemicals and family history. And even if the synthetic fibers did cause cancer, they said, the exposure levels were so low that there would be no serious public health threat.

But in the past few months, the manufacturers of fiberglass and related products, including Owens-Corning Fiberglas, Certainteed Corp. and Manville Corp., have revised technical data sheets required by the Occupational Safety and Health law to state that recent epidemiological studies have found their products may cause lung cancer.

Most of the more than a dozen scientists, public health officials and federal regulators interviewed recently said that even if the evidence about synthetic fibers causing cancer proved correct, the country probably would not be facing another health disaster of the dimensions of the asbestos epidemic. The number of premature cancer deaths caused by asbestos is now estimated at 9,000 a year and rising.

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