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Claims **Beyond the Factory Gates** **Dust-Up** The Development of  
Liability in Relation to Technological Change **Section 524(g)**  
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**Disease in Five Canadian Provinces** **Asbestos Disaster**  
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**2000 The Fairness in Asbestos Injury Resolution Act of 2003**  
**Asbestos Litigation Asbestos-related Diseases Asbestos**  
*Workers' Recovery Act* **Legal Aspects of Medicine**

This book traces the emergence and transformations of asbestos compensation to explore the wider issue of to what extent legal systems have converged in the era of globalization. Examining the mechanism by which asbestos compensation is delivered in Belgium, England, Italy and the United States, as well as the cultural forces and actors which contribute to its emergence and transformations, the book advances our understanding of how law operates within cultural norms, routines, and institutional relations of capitalist societies. With material gathered from 50 interviews and from primary and secondary sources, the author considers law as a cultural phenomenon, national styles of legal culture and the convergence and divergence of legal cultures, and law as a form of institutionalized power. This report describes the creation, organization, and operation of asbestos personal-injury trusts and compiles publicly available information on the assets, outlays, and governing boards of the 26 largest trusts. The authors find that the publicly available information provides a rich source of information on trust activity but that more detailed information is needed to determine their impact on important compensation outcomes. The RAND Institute for Civil Justice (ICJ) began analyzing asbestos litigation with an initial study in the early 1980s. That study was the first to examine the costs of and compensation paid for asbestos personal injury claims. It was followed by other research that addressed the courts' responses to asbestos litigation and a number of studies of mass tort litigation in general. *Beyond the Factory Gates* examines the issue of asbestos and health in the USA between the early 1900's to the mid-1970s. Areas covered include the emergence of medical concern about the three fatal diseases related to asbestos (asbestosis, lung cancer and mesothelioma); the actions of the US

Navy (the main consumer of asbestos-based insulation products); the response of the federal government before and after enactment of the Occupational Safety and Health Act in 1970; and the roles of organized labour and the asbestos industry. The book provides an important insight into occupational health and its regulation in twentieth century America, and is original in several ways. First, there is no satisfactory history of asbestos, health and medicine in the USA - a major gap in the literature. Second, no previous publication has examined the asbestos issue 'beyond the factory gates' in a non-manufacturing context and explored the complex interactions between organised labour, the US Government, business corporations and the US navy. Finally, *Beyond the Factory Gates* avoids the one-sided, anti-business interpretations that predominate much of the existing literature. It accepts that the history of asbestos is in many ways a human tragedy, but it rejects simplistic, universalised arguments that this has been a tragedy with a cast only villains, dupes and victims. Asbestos litigation is the longest-running mass tort litigation in U.S. history. Through 2002, approximately 730,000 individuals have brought claims against some 8,400 business entities, and defendants and insurers have spent a total of \$70 billion on litigation. Building on previous RAND briefings, the authors report on what happened to those who have claimed injury from asbestos, what happened to the defendants in those cases, and how lawyers and judges have managed the cases. Japan's asbestos disasters, encompassing both occupational disease and environmental pollution, have been caused principally by the asbestos textile, asbestos cement water pipe, and construction industries. This book is unique in its interdisciplinary approach to those disasters as it incorporates medical science, economics, political science, law, architecture, environmental engineering, sociology, and journalism. Written by authorities in their fields, the chapters reflect the integration of these disciplines in topics that include a historical review of

asbestos issues in Japan, asbestos-related diseases, international aspects of the asbestos industry, public policy, divisions of responsibility, relief activities in emergencies, and countermeasures enacted by local governments. The lessons of asbestos problems and policies in Japan are particularly important for developing countries to prevent the proliferation of asbestos disasters. This volume serves as a textbook on asbestos issues for all countries, especially where there is widespread use of asbestos. Section 524(g) of the Bankruptcy Code was adopted to protect unknown future asbestos personal injury victims' rights and prospects for financial recovery. To serve these goals and satisfy the demands of due process, Section 524(g) provides two basic forms of virtual representation for future victims - requiring the appointment of an independent legal representative and aligning the interests of future victims with current claimants (75% of whom must approve any plan that invokes Section 524(g)). In recent years, however, the 75% super-majority vote requirement has been transformed into a veto power wielded by a small group of law firms, who control sufficient votes to block any proposed asbestos reorganization plan. These firms use this power to dictate critical steps in the process - including who will be appointed as the future victims' statutory legal representative - and demand terms that violate black letter bankruptcy law. Thus, the current approach leads to a bizarre paradox: the only way to obtain sufficient votes to confirm an asbestos reorganization plan is to include provisions that will render it unconfirmable (or, at least, unable to withstand challenge on appeal). The only way to overcome this paradox as a practical matter is to buy off all current parties who may object, usually by making deals that encroach upon the interests of future victims. This article challenges the legal and practical justifications for the asbestos veto and outlines several modest modifications to the asbestos bankruptcy process. By restoring traditional negotiating leverage, returning voting power to asbestos victims, ensuring that legal

representatives are unburdened by conflicts of interest, and aligning current and future victims' interests; this proposal outlines a more balanced, equitable approach to protecting future victims. The simple reason for creating this book was my impression that the law is having an increasing impact on the practice of medicine. There is hardly a physician I know who has not been deeply troubled by legal problems professionally, economically, and most important of all, psychologically. The past decade has seen medical practice premiums steadily rising. Multimillion dollar verdicts have not been unusual. Having disregarded these vital issues for many years, physicians have suddenly become very aware of litigation-related problems. Having been interested for a long time in the logic of the law and the romance of legal research, I thought it would be useful to create a book that would result in the blending of great minds in law and medicine. It has been my long standing observation and belief that the approach of professors of medicine, and that of learned members of the bar and bench, when put together, produce unique results. Putting these views together has been the real challenge in editing this book. A study of how established rules of tort law have responded to technological change. With the passage of the Asbestos Hazard Emergency Response Act, AHERA, Public Law 99-519, it was clear that great quantities of asbestos would be disturbed and would require proper management and disposal. If these were poorly done, many people would be placed at risk unnecessarily. Into such an environment, a book dealing with the many diverse facets of asbestos abatement, written by people with substantial experience, seemed reasonable and appropriate, but even more so, necessary. Asbestos litigation is the longest-running mass tort litigation in U.S. history. Through 2002, approximately 730,000 individuals have brought claims against some 8,400 business entities, and defendants and insurers have spent a total of \$70 billion on litigation. Building on previous RAND briefings, the

authors report on what happened to those who have claimed injury from asbestos, what happened to the defendants in those cases, and how lawyers and judges have managed the cases. This book is for the busy and new practitioner who is building their experience and expertise in asbestos claims. It is not written from the perspective of one side or the other. It is intended to neutrally state the position of the law and procedure in relation to dealing with claims of asbestos-related injury and to give some honest, frank and practical guide in doing so. Invariably, asbestos litigation is complex and time-consuming, and as such it is hoped that this practical guide will be a readily available initial source of reference to assist the practitioner who needs to refresh themselves on a certain topic, or to assist the practitioner in providing a core grounding of the key issues likely to be encountered in their caseload. It has been our privilege to practice in this area of law and it is an even bigger privilege for us to share those experiences and points of understanding with those who read this book. We sincerely hope it provides the type of assistance, and to some degree, re-assurance, that we all need from time to time in our work in this area of litigation.

**ABOUT THE AUTHORS** Jonathan Owen was called to the Bar by Inner Temple in 2004, having completed his undergraduate degree at Magdalen College, Oxford, and the Bar Vocational Course at Nottingham Law School. He is a tenant at Ropewalk Chambers, in Nottingham, where he has practised since completion of pupillage. He has a broad civil practice with a particular focus on personal injury and industrial disease work. Gareth McAloon was called to the Bar by Lincoln's Inn in 2010. He is a tenant at Ropewalk Chambers, in Nottingham. Gareth specialises in all aspects of personal injury work, predominantly on the Multi-Track. He is a specialist practitioner in all aspects of industrial disease claims including; asbestos claims, NIHL claims, HAVS claims and repetitive strain injuries. In addition, Gareth is instructed in inquests and clinical negligence claims. The high

value nature and complexity of the cases he deals with means that he has regular contact with medical and engineering experts both in Court and in his case preparation. This report assesses the decision to apply sections 44 and 46 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) to mesothelioma compensation claims. These sections prevent winning claimants recovering from defendants success fees charged by their lawyers or premiums for insurance against having to meet defendants' costs (after the event, or ATE, insurance). They applied to all other personal injury claims since April 2013, but section 48 of LASPO required Ministers to undertake a review before they could be brought into effect for claims relating to mesothelioma. The section 48 review was not prepared in a thorough and even-handed manner and a fresh consultation should be undertaken. The Government was not reconciled to the concession it was forced to make to exempt mesothelioma cases from its provisions, and determined to review the exemption as soon as it could. In its haste the Government failed to ensure that relevant information, such as a cost-benefit analysis of the changes, was available to interested parties. It also shoehorned part of its section 48 review into a wider consultation on changes to the mesothelioma claims process. The Committee also urges expedition of the primary legislation needed to bring into effect the Third Party (Rights Against Insurers) Act 2010, which will enable a claim to be issued against an insurer without a judgment first having had to be obtained against an insolvent insured party. The Ministry of Justice should also work in tandem with the Department of Health to reduce delays in the production of medical records of mesothelioma victims. In an era of polarization, narrow party majorities, and increasing use of supermajority requirements in the Senate, policy entrepreneurs must find ways to reach across the aisle and build bipartisan coalitions in Congress. One such coalition-building strategy is the "politics of efficiency," or reform that is aimed at eliminating waste from existing policies and

programs. After all, reducing inefficiency promises to reduce costs without cutting benefits, which should appeal to members of both political parties, especially given tight budgetary constraints in Washington. *Dust-Up* explores the most recent congressional efforts to reform asbestos litigation—a case in which the politics of efficiency played a central role and seemed likely to prevail. Yet, these efforts failed to produce a winning coalition, even though reform could have saved billions of dollars and provided quicker compensation to victims of asbestos-related diseases. Why? The answers, as Jeb Barnes deftly illustrates, defy conventional wisdom and force us to rethink the political effects of litigation and the dynamics of institutional change in our fragmented policymaking system. Set squarely at the intersection of law, politics, and public policy, *Dust-Up* provides the first in-depth analysis of the political obstacles to Congress in replacing a form of litigation that nearly everyone—Supreme Court justices, members of Congress, presidents, and experts—agrees is woefully inefficient and unfair to both victims and businesses. This concise and accessible case study includes a glossary of terms and study questions, making it a perfect fit for courses in law and public policy, congressional politics, and public health. *Asbestos for Surveyors* is a practical reference guide for all those responsible for identifying and dealing with asbestos in buildings. The book is based upon the Control of Asbestos at Work Act 2002 and is intended to be a guide to the technical aspects of asbestos and why it was originally used. It illustrates where it may be found in buildings, what type of survey is required and how to undertake it. The information that the dutyholder needs from the surveyor to compile an adequate management plan is also detailed. This edition has been fully revised to take account of the Control of Asbestos Regulations 2006 (SI 2006/2739), which came into force in November 2006. The regulations, which replaced three existing sets of asbestos regulations with a single set of rules, reduce exposure limits and introduce mandatory training for those



working with asbestos. *An Air That Still Kills* is the alarming and still-unfolding story of the deadliest environmental disaster in the United States. The catastrophe began in Libby, Montana, where hundreds of people died and thousands more were sickened from the asbestos that contaminated a vermiculite mine. But mine owner W.R. Grace spread the danger across North America when it exported the lethal vermiculite, which still lurks in as many as 50 million homes, businesses and schools. First authored by Andrew Schneider and David McCumber, this updated book includes frightening new disclosures by Schneider about the growing threat from Libby's uniquely potent form of asbestos. The latest studies by some of the nation's foremost experts say that Libby asbestos - with even minimal exposure - can sicken and kill at rates thousands of times greater than previously thought. But few people know the danger that hides in their attics and walls, because regulators have repeatedly failed to warn the public effectively. No one is tracking how many people have died from asbestos contamination, or where, or how many more will die. The only certainty is that the toll will continue to rise. *An Air That Still Kills* is a haunting, meticulously reported account that will introduce you to the courageous miner's daughter and the cowboy crooner who took on one of the nation's most powerful corporations, and to the government team who at first refused to believe the duo. That team now continues to risk careers by fighting uncaring bureaucrats to help prove the town's residents right. The greed, power and politics that claimed so many lives will make you furious. The stories of tireless perseverance against all odds will astonish you. And the ongoing risk of a horrifying death faced by millions should make you mad as hell. This book traces the emergence and transformations of asbestos compensation to explore the wider issue of to what extent legal systems have converged in the era of globalization. Examining the mechanism by which asbestos compensation is delivered in Belgium, England, Italy and the United States, as well as the

cultural forces and actors which contribute to its emergence and transformations, the book advances our understanding of how law operates within cultural norms, routines, and institutional relations of capitalist societies. With material gathered from 50 interviews and from primary and secondary sources, the author considers law as a cultural phenomenon, national styles of legal culture and the convergence and divergence of legal cultures, and law as a form of institutionalized power. Examines the dimensions of current asbestos litigation and the potential future effects of the litigation on the U.S. economy. Asbestos is not just a problem of the past, nor is there an identifiable point in the future by which we can stop worrying about its legacy. In various countries around the world asbestos production and consumption continues unabated, storing up problems for the future. In countries that have banned the use of asbestos, such as the UK, the continued presence of this material in buildings public and private will have consequences for decades to come. Asbestos: the Future Risk is a special report that pulls together the historical background as to how this mineral came to be so widely used; the medical view of asbestos related diseases and their treatment; the current patterns of consumption that indicate where future claims may come from; and current practice for dealing with asbestos in the built environment, exposure to which has spread asbestos-related diseases to people outside those occupations that worked directly with asbestos. Asbestos: the Future Risk provides an all-round update on the present state of knowledge and sets out the challenges faced by claimants, governments, private companies, public authorities, lawyers and insurers. Asbestos was once known as the 'magic mineral' because of its ability to withstand flames. Yet since the 1970s, it has become a notorious and feared 'killer dust' that is responsible for thousands of deaths and an epidemic that continues into the new millennium. This is the first comprehensive account of the UK asbestos health problem, which provides an in-depth look at the occupational health experience of

one of the world's leading asbestos companies-British asbestos giant, Turner & Newall. Based on a vast company archive recently released in American litigation, 'Magic Mineral to Killer Dust' gives an unprecedented insight into all aspects of the asbestos hazard - dust control, workmen's compensation, government regulation, and the development of medical knowledge. In particular, it looks at the role of industrialists, doctors, factory inspectors, and trades unionists, highlighting the failures in regulation that allowed the commercial development of a material that was known to be lethal since at least 1900. Written by one of the leading asbestos experts for attorneys, occupational and environmental health professionals, and others in the field of toxic substances control, this updated resource provides a comprehensive examination of the public health history of asbestos. Includes extensive discussion of corporate knowledge and responsibility for asbestos hazards and detailed discussion of alternatives to asbestos.

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