

# SF asbestos settlements rise rapidly

## Plaintiffs' lawyers seeing fewer trials in San Francisco court for asbestos litigants

By Saul Sugarman  
Daily Journal Staff Writer

When plaintiffs' attorney Jeffrey A. Kaiser picks a venue for filing asbestos cases, he seldom considers his home turf, San Francisco County Superior Court.

Kaiser and other attorneys have observed that San Francisco's newly minted asbestos department — which opened in 2010 — has driven up settlement numbers and sent fewer asbestos cases to trial, leaving some plaintiffs' attorneys looking to Los Angeles as a better option for new filings.

"The key to successful litigation is having a trial," said Kaiser, a name partner at San Francisco-based products liability firm Kaiser Gornick LLP. "A trial date prompts people to settle."

Asbestos settlements in San Francisco have doubled since Judge Harold E. Kahn opened the asbestos court in 2010. Among the court's active cases, fewer than 20

percent settled in 2009, a statistic that jumped to a little more than 49 percent in 2010 and rose again to 56 percent in 2011, according to numbers provided by court spokeswoman Ann E. Donlan.

Active cases have dropped from roughly 1,700 in 2009 to 530 this year, according to Donlan.

"I'm trying to reach early and efficient resolutions, if possible," said Judge Teri L. Jackson, who took over the asbestos court in October last year. She said everyone deserves their day in court, but "if I have to weed out cases that should resolve, that's my job as a judge."

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Another hurdle for plaintiffs is whether their lawsuit is considered a "preference case" under California's Code of Civil Procedure, which entitles terminally ill litigants and those of an advanced age to a trial within 120 days.

Jackson said when she started in the asbestos court, she heard maybe one preference motion a month. Now she hears up to two each week. Except in one or two instances, all San Francisco asbestos lawsuits that made it to trial this year have been preference cases, Jackson said.

The diminishing trial availability in San Francisco is reflected by a corresponding raise in filings in Los Angeles.

Between 2009 and 2011, the number of asbestos cases filed in San Francisco court dropped by half, from roughly 440 cases to 220, according to the numbers from Donlan. Filings steadily rose in Los Angeles County Superior Court from more than 160 cases to 210 in the same time period, said Los Angeles court spokeswoman Mary Hearn in an email.

Hearn said she did not have settlement numbers of asbestos cases in Los Angeles County "due to limited staff resources."

Judge Emilie H. Elias, who began hearing asbestos motions for Los Angeles, San Diego and Orange counties last year, did not respond to requests seeking comment.

Stephen M. Nichols, who defends asbestos cases in Los Angeles for McKenna Long & Aldridge LLP, said non-preference cases are still making it to trial in Los Angeles. But

he is concerned ongoing budget cuts to the state's judiciary might pare back trial availability.

"There's this myth that defendants want to put off trials so they don't have to resolve their cases," he said.

Nichols and other defense attorneys have observed a greater symmetry in rulings on motions since Elias opened the court, which has benefited defendants in preparing for trial.

"Prior to September 2011, L.A. asbestos cases were assigned randomly for all purposes to one of 47 judges in the Central District," Hearn said in an email.

Lisa L. Oberg, another McKenna attorney who defends asbestos cases in San Francisco, said San Francisco had a "somewhat fragmented system" before Kahn, with discovery and trial matters heard in separate departments.

"There wasn't the continuity that we have with the current asbestos department," Oberg said. "The department [under Jackson] has helped enormously in the efficiency and consistency of rulings."

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