

## COMMENTARY: The Scourge Of Over-Naming In Asbestos Litigation: The Costs To Litigants And The Impact On Justice

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Asbestos personal injury litigation has seen a number of dramatic changes since the first case was filed in Texas nearly 50 years ago: the bankruptcy of more than 100 defendants (including many of the most significant defendants such as Johns Manville); the increase in the number of companies named as defendants from a few dozen to an estimated 10,000 or more; the change in docket profile from one overwhelmed by the filing of more than 100,000 suits by unimpaired claimants, typically generated by for-profit litigation screenings, to one dominated by a comparatively smaller number of malignant (principally mesothelioma) claims; and the willingness of some courts to alter procedural safeguards in an attempt to "process" and settle as many claims as possible. A somewhat more recent phenomenon has further increased the scope of the "elephantine mass" of asbestos litigation: the repeated over-naming of defendants that have no reason to be included in complaints or petitions.

Perhaps only in asbestos litigation would it be commonplace for companies that have no connection to asbestos claims to nevertheless be sued over and over again. There are of course rules of professional conduct in virtually every jurisdiction that require a plaintiff attorney to undertake some type of pre-suit inquiry into the applicable law and facts before filing a complaint in order to avoid filing litigation that is obviously non-meritorious or frivolous. One might think that, if followed, these types of ethical requirements would prevent the types of filing practices seen by so many defendant companies.

Yet the over-naming problem has become an epidemic, driving up costs for those entities that simply do not belong as defendants. These costs are sometimes passed on to insurance carriers who issued policies to these entities many decades ago. Companies without insurance must directly absorb the losses. The costs then become an economic

drain on those companies, their employees and their shareholders. Even those with no stake in the outcome of these cases can be negatively impacted. For example, taxpayers must bear the costs of overburdened courts but may find their own access to the legal system slowed or blocked due to the backlog of claims brought against dozens of parties who have no legitimate role in those cases.

This paper attempts to quantify the costs being incurred as a result of the over-naming problem and discuss some of the tools and techniques available to defendants in pushing back against plaintiffs who notwithstanding the requirements of pre-suit inquiry and investigation engage in over-naming filing practices.

### ***The Over-Naming Problem: Why Are We Here?***

Anyone who has ever represented defendants in asbestos litigation has probably had more than a few clients named in cases that left that counsel wondering how or why the client ever made it into the plaintiff attorney's word processing program. Even after a few claims against that defendant have been proven groundless, the company continues to be sued over and over. And while the defendant typically gets dismissed time and time again at some point in the litigation, that dismissal comes only after the company has incurred significant costs in each case.

Ground zero for this over-naming problem continues to be Madison County, Illinois, the home of nearly 28% of new asbestos personal injury filings in the United States.<sup>1</sup> As just one example, my firm recently received a new lawsuit filed in a Madison County asbestos case. The complaint alone was **57** pages long. The caption that listed the defendants consumed the first 10 pages of the initial pleading. A staggering 118 defendants were listed, many with several subsidiaries and related entities also listed under the first named party.<sup>2</sup>

Subsequently, the plaintiff in this single asbestos case was deposed for the better part of an entire day. He appeared to be a very straightforward and honest witness. He provided significant detail about his decades long work career. By the end of the deposition, the plaintiff had named approximately five premises where he may have encountered some asbestos-containing materials. Some of those encounters were as short as a day or two in length. Ultimately the plaintiff could only specifically name three manufacturers that he believed incorporated any asbestos into their products that he worked with or around during his career.

In sum, the plaintiff could name a total of only **eight entities** in his deposition in a case in which plaintiff's attorney sued **one-hundred eighteen entities**. And given the plaintiff's occupation, work history, age and geographic location – all of which, presumably were known or could have been known to the plaintiff attorney before suit was filed – there was simply no basis to believe that most of the remaining defendants could have ever played a role in exposing this plaintiff to asbestos that may have contributed to his disease.

This type of lawsuit is filed time and again in Madison County. As discussed below, for example, one company has been sued by the same law firm over 400 times in Madison County even though there were actual allegations against that defendant in only 4 cases. Unfortunately Madison County is not an outlier. You can find these types of cases in the New York City asbestos litigation (NYCAL), California, Philadelphia, West Virginia and many other hotbeds of asbestos litigation across the country.

### ***The Cost of Over-Naming: A Case Model***

By examining the costs incurred by defendants in our Madison County case example, we can gain an appreciation for the costs incurred not only in a singular case but also on an

aggregate level, as those baseless costs are incurred hundreds if not thousands of times. To begin, we take a closer look at the costs typically incurred by the defendants named in our example for which there is no evidence of any connection between those defendants and the plaintiff's claims.

In order to defend our sample case, each defendant had to hire an attorney licensed to practice in Illinois. Each defendant had to prepare and file an answer. The cost of filing an answer in Madison County is approximately one-hundred twenty seven dollars. When you add in the cost of a jury demand, the total filing costs increase to \$339.50 per defendant. Separately, it is reasonable to assume that each defendant incurred at least 2-3 hours of attorney time (as well as some amount of staff time) in order to review the complaint and prepare an answer. For purposes of this analysis we will assume conservatively that the defense counsel's rate is \$200 an hour which would mean an additional \$500. Thus, a very modest cost for the process of reviewing the complaint and getting an answer and jury demand on file in Madison County is approximately \$840 per defendant.

The plaintiff's counsel also provided initial discovery responses in the case, including the plaintiff's work history, social security records, a list of medical providers, and other basic information needed before the plaintiff could be deposed. Each defendant must review this information and then its own records to see if there is any basis for the alleged exposure either at their premises or to their product. A reasonable cost for these efforts, assuming 5 hours of time, is approximately \$1000.

The deposition of the plaintiff in this case was done telephonically. Due to the volume of cases in jurisdictions like Madison County, defendants are often forced to depose plaintiffs and other fact witnesses telephonically to control costs. This is not optimal. Our experience is that taking these depositions over the phone, without the ready access to key exhibits and demonstrative aids such as photographs, greatly impairs the defense counsel's ability to take an adequate deposition. Further, these telephone depositions are not free as there is a fee associated with the set up and participation in the deposition in the amount of \$85.

Each defendant must incur the costs of counsel preparing for and attending the deposition. There is no doubt that the plaintiff's deposition is a critical point in each asbestos case, arguably the most critical. Proper preparation requires, among other things, work site review and investigation, product identification and research, a review of the plaintiff's medical background and other disease processes and an understanding of alternative exposures. Again, taking a conservative approach for purposes of this analysis, this can easily add another 3-4 hours of attorney time and another 3-4 hours of legal assistant time, or conservatively \$1,000 per case, to the overall cost.

In our case example, the deposition took the better part of a full day or approximately eight hours of billable time for the deposition. Some depositions last for many days. While not every case is the same it is fair to assume that on average, the costs of the deposition (again using a rate of \$200 per hour) would be \$2,000.

There are other costs associated with the deposition. For example, there is a cost associated with ordering the deposition transcript. This typically runs into hundreds of dollars per deposition. The transcript is critical for the defense of the case. The transcript may be reviewed by the defendant's experts in preparation of a case report. The transcript may be also used in support of a motion for summary judgment if there is no basis for the case to proceed against the defendant. Either way, the deposition of the plaintiff and the resulting sworn testimony contained in the deposition transcript is essential for proper evaluation of any asbestos claim. A reasonable cost for the transcript may exceed \$500.<sup>3</sup>

Thus, in our case example, each defendant has spent approximately \$5,400 just to try to figure out what the plaintiff is actually claiming in the case. If you assume that only 20 of the named defendants were proper defendants in the case, when you aggregate the costs (\$5,400 x 88 named defendants where there is no colorable claim) then our sample case has generated nearly \$475,200 in unnecessary attorney fees and costs.

Unfortunately, this does not end the parade of wasted time and ballooning costs associated with the over-naming plague. In some instances, plaintiffs will try to locate co-workers to make or expand claims to include additional parties. While this may provide a basis to pursue a claim against a handful of the named defendants, typically this process does not provide evidence against the rest of the defendants. Regardless, counsel for each defendant that remains in the case must continue to prepare for and appear at the deposition of these witnesses to make sure their clients are adequately defended. This can lead to additional fees that may exceed \$2,000 per deposition for each defendant.

Plaintiffs' counsel may also engage in discovery against many defendants without any legitimate identification in the case. While this can be motivated by a good faith attempt to obtain more information, often this is used as a vehicle to apply additional pressure (and expense) on the responding party. It can often entail dozens of hours for the company and outside counsel to research and respond to the discovery requests. This can add thousands of dollars in additional fees and costs. For purposes of this analysis, we can assume that an over-named defendant will spend at least 25 hours or \$5,000 as part of this process.

In addition, defendants may need to incur expenses preparing other filings required in asbestos litigation. Courts are often unwilling to dismiss asbestos defendants, particularly when discovery is proceeding, which may mean that a defendant will have to engage in discovery motions, prepare motions in limine, and file witness and exhibit lists and other filings necessary for a proper defense of each defendant. Quite simply, a defendant may have no choice to take at least certain minimal steps to defend itself if it needs to seek summary judgment or if the sample claim we are discussing gets put on a trial list. The attorney and staff time associated with these filings vary greatly by entity, but if a defendant has no choice but to take these additional steps, a very conservative number of hours would be 20 for a cost of \$4,000 per defendant.

Further, some amount of expert costs could be incurred. Each defendant may need to retain, and perhaps prepare and defend its experts. Typically, each defendant will at least retain an industrial hygienist and a medical witness, particularly important in Illinois because of the requirements of Illinois' sole proximate cause defense as articulated in the *Nolan* decision. Even if the defendant does not request an expert report in a case – in light of the absence of any product or worksite identification – there are costs associated with designating the experts and reserving their time for review and testimony in each case. Those costs rise exponentially if the experts are required to perform an active review in the case, consult with defense counsel, give a deposition, and prepare to testify at trial. But even assuming such an active review is unnecessary, an estimate of \$5,000 per case, per defendant, would be reasonable for this phase of the defense.

Not surprisingly, defense counsel often attempts to pursue a non-suit or dismissal of the claim in cases where there is no evidence against their client. This also takes time, and money, to accomplish. Unfortunately (and frustratingly), some plaintiff's counsel are reluctant to agree to such dismissals even in the face of an absence of any evidence involving a defendant. This may be because the plaintiff's counsel continues to hope that, notwithstanding all of the facts to the contrary, some reason to keep the defendant will be found. Or given the number of defendants named in a case, plaintiff counsel simply may not be familiar with the circumstances of the individual companies they have sued. In some instances, a plaintiff attorney may only want to consider a dismissal in connection with the settlement of other claims.

Should plaintiff's counsel not agree, defense counsel may prepare and file a dispositive motion, such as a motion for summary judgment. Depending on the jurisdiction this can be a relatively simple and straightforward process, or a much more involved endeavor. An estimate of \$2,000-3,000 per defendant who has to stay in a case through the dispositive motion stage is very conservative.

Although not every defendant in our example will have to jump through each of these hoops, many will. A defendant that stays in the case through the summary judgment stage could easily have spent at least \$20,000 to defend the case in which they should never have been named in the first place. In our example, assuming just 60 of the 118 named companies were over-named and went through the summary judgment stage, this means that at least \$1.2 million of defense and transactional costs were unnecessarily incurred to defend one case.

Of course if this was just one case perhaps there would not be as much cause for concern. The problem of course is that, depending on the jurisdiction and the individual plaintiff attorney, the over-naming process is repeated in case after case.<sup>4</sup> Thus, all of the costs, all of the burdens, and all of the inefficiencies discussed above are perpetuated by the repetitious filing of claim after claim without any factual basis. And with thousands of new asbestos claims being filed every year, you begin to see the potential enormity of the scope of the over-naming problem.<sup>5</sup>

### ***Beyond the Case Model***

The impact of over-naming goes beyond the individual case costs discussed above. The over-naming process places significant burdens on the judicial system and those who pay the freight for our court system: the taxpayers. For example, the U.S. Chamber Institute for Legal Reform estimated that excessive and frivolous lawsuits cost each American family \$3,520 per year in 2007. A Towers Watson study in 2009 indicated that the direct cost of lawsuits in the U.S. tort system was \$250 billion, or approximately 2% of the gross domestic product of this country. We constantly hear from judges around the country that they are too few in number, underfunded and overwhelmed by a flood of civil litigation that threatens to break down the entire justice system.

Further, while the case model above is perhaps more sympathetic for companies with little or no connection to asbestos, the over-naming problem is also faced by companies traditionally associated with asbestos litigation. The data submitted in support of the Garlock bankruptcy in 2013 is very instructive on the impact of over-naming. Garlock was a well-known manufacturer of gaskets, including some variations that contained chrysotile asbestos. Garlock began being named in thousands of asbestos personal injury claims in the 1980's. By the year 2000, claims against Garlock and other defendants in the asbestos litigation rose to up to 50,000 per year, resulting in Garlock to expend more than \$100,000,000 per year in settlements.<sup>6</sup>

Garlock was ultimately sued in more than 700,000 asbestos personal injury claims. The company was dismissed in 150,000 claims without payment, while another 75,000 claims were abandoned against Garlock. Garlock ultimately resolved another 445,000 cases for an average of less than \$3,000 per case.<sup>7</sup> Still, this crushing mass of cases was enough to cripple the company and drive it to seek bankruptcy protection. As expert Charles Bates pointed out in the Garlock bankruptcy, "...over three decades, Garlock spent \$1.8 billion associated with managing over 700,000 asbestos claims, for 99.9% of which Garlock had little to no liability."<sup>8</sup>

Ultimately these types of filing patterns end up expanding the over-naming problem. Over

the course of the last quarter century, many of the leading defendants in asbestos litigation like Garlock (and more than 100 defendants in total) have filed for bankruptcy.<sup>9</sup> As a result, plaintiffs' attorneys searching for new sources of funding have increased the number of peripheral companies named as defendants only expanding the scope of the over-naming problem.

### ***Attempts to Address the Over-Naming Problem***

#### ***The Fallacy of the Nominal Settlement***

Many plaintiffs' lawyers, and some defendants and defense counsel, believe that the best strategy for addressing the over-naming problem is for individual defendants to forego a basic defense altogether. They argue that it is far better to pay a nominal settlement – presumably less than the costs of defense. In the alternative, some advocate that an over-named defendant should consider “block” deals where entire dockets of cases are resolved for a negotiated fee without viable product or premise identification. Why companies that clearly shouldn't be named as defendants, should have to pay to settle a case in order to avoid paying defense costs is beyond me.

But more importantly, my experience is that the nominal settlement is a fallacy. These settlements only tend to encourage the filing of more non-meritorious cases which result in even more costs being incurred; any amounts saved in the one case do not compare to the costs incurred in the additional cases that get filed. These settlements do nothing to stop the over-naming problem and only make it worse.

#### ***Legal Mechanisms Currently Available***

There are legal mechanisms already in place that should, in theory, address the over-naming problem and put the responsibility for the filing of meritorious claims back on plaintiff's counsel. First and foremost there are already in place straightforward requirements regarding pre-suit inquiry that if followed should do away with over-naming practices.

Motions for Special Exception, also known as Motions for More Definite Statement, are available in many jurisdictions to force plaintiffs to articulate and provide the basis for claims made against a defendant. Motions to Abate can also be utilized to stay an action until (and stay the expense of defending the case) until certain conditions precedent, or other prerequisites, are satisfied by the plaintiff's counsel.

Motions to dismiss are another early case mechanism that may be available to defendants. These are the state equivalents of Federal Rule of Civil Procedure 12(b)(6), a motion which asserts that dismissal is appropriate when a claim is asserted for which relief cannot be granted. However, this is typically a challenge to the legal sufficiency of a claim, rather than the factual underpinnings upon which the claim is based. As such, it may not be the best avenue for an early attack on claims lacking product or premise exposure evidence.<sup>10</sup>

No-Evidence Motions for Summary Judgment (“NEMSJ”), allowed by states such as Texas,<sup>11</sup> also may provide a relatively quick and inexpensive dismissal tool. The NEMSJ process allows defendants who have been named in cases in which there is no evidence of exposure to asbestos, causation or some other key element of the plaintiff's causes of action to file a short motion without any supporting evidence to seek a judgment dismissing the case with prejudice against the moving party. Once filed, the NEMSJ shifts the burden to the plaintiff to provide relevant and admissible evidence to support the contested element(s) of their claim.

The NEMSJ process is not perfect; the moving party still incurs costs in moving for and arguing the motions. Further, in the Texas example, the rules require that the MDL court not entertain the NEMSJ until a sufficient amount of time for discovery has passed. Thus, over-named defendants may incur substantial transactional and defense costs before they are allowed to file an NEMSJ.

Motions for sanctions may also be appropriate. For example, cases in Madison County are governed by Illinois Supreme Court Rule 137(a) provides: "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that ***to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law*** or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." (Emphasis added)

A party may file a motion under the rule to obtain sanctions but it does not give rise to a separate lawsuit:

All proceedings under this rule shall be brought within the civil action in which the pleading, motion or other document referred to has been filed, and no violation or alleged violation of this rule shall give rise to a separate civil suit, but shall be considered a claim within the same civil action. Motions brought pursuant to this rule must be filed within 30 days of the entry of final judgment, or if a timely post-judgment motion is filed, within 30 days of the ruling on the post-judgment motion.<sup>12</sup>

Illinois Courts have consistently interpreted these rules as imposing a duty and obligation on the attorney filing a lawsuit to investigate the underlying factual basis of his claim.

Rule 137 dictates . . . that litigants and attorneys have an affirmative duty to conduct an inquiry of the facts and law prior to filing an action, pleading, or other paper. The standard for evaluating conduct is one of reasonableness under the circumstances existing at the time of filing. As with a motion pursuant to section 2 -- 611, a party requesting attorney fees under Rule 137 must show that the opposing party pleaded untrue pleadings of fact without reasonable cause. The decision whether to award fees and expenses rests within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion.<sup>13</sup>

However, the party seeking sanctions for filing a groundless or meritless claim must prove that the claim was meritless at the time the pleading was filed.

"The party seeking sanctions has the burden of proving that the opponent's pleadings were untrue and made without reasonable cause. The standard for evaluating a party's conduct under Rule 137 is one of reasonableness under the circumstances existing at the time the pleading was filed. That standard is an objective one such that an attorney or party's honest belief that the claim is well grounded in fact and law is irrelevant."<sup>14</sup>

A party may also bring a separate lawsuit for malicious prosecution. Under Illinois law, however, there must be some "special injury" or special damage beyond the usual expense, time, or annoyance in defending the underlying suit.<sup>15</sup>

The requirements imposed by Illinois Supreme Court Rule 137 are not unique. Many

states have similar provisions in their statutes, court rules or rules of civil procedure.<sup>16</sup> Texas has gone even further, incorporating the Multi-District Litigation (MDL) model to control the chaos brought by thousands of individual asbestos claims. The Texas MDL court controls all aspects of asbestos personal injury claims until the cases are sent back to the originating court for trial. This level of control and consistency in rulings helps to streamline the process and to put the brakes on attempts to stack petitions with hordes of defendants that don't belong in the case to begin with.

While there are many statutory provisions, rules of civil procedure and court rules in place that can address at least some of the harm caused by the over-naming problem, ultimately these rules must be enforced by the courts. Defendants too have a responsibility here. They must diligently pursue available remedies, file timely motions and be prepared to pursue appropriate appellate remedies where necessary. The task of getting the trial courts to focus on the over-naming issue falls on their shoulders.

The potential solution to the taxing and costly over-naming problem ultimately lies in ending it where it starts: the routine addition of a company's name to a petition. This is a behavioral issue based on a perceived idea that at least some nominal money will be paid by the over-named defendant. Until that is corrected, defendants need to look to addressing the issue at the beginning of the lawsuit *before* most transactional and defense costs are incurred.

### ***Motions for Sanctions: Another Madison County Case Model***

The motion for sanctions approach was used earlier in 2017 in Madison County, Illinois by Avocet, a defendant named in approximately 400 asbestos personal injury claims in Madison County since 2008. While incurring more than \$720,000 in defense costs in the past decade defending these claims, Avocet had only made settlement payments in four cases (1%) of its entire inventory of resolved cases. The vast majority of claims brought against Avocet were ultimately dismissed without payment, but not before the complaint and discovery needed to be answered, and a myriad of other defense tasks had to be performed.

In February of 2017, counsel for Avocet demanded that plaintiffs' counsel dismiss all pending claims against Avocet in the Madison County asbestos docket or provide a factual basis for those claims. Having not been able to resolve the issue, counsel for Avocet filed a Motion for Sanctions on March 22, 2017. The Motion re-stated the factual predicate: 400 cases filed; four with liability facts; \$720,000 in costs. The Motion relied on long standing Illinois precedent that parties should not be named in legal proceeding without an adequate factual basis for potential liability.<sup>17</sup>

Oral argument on the Motion for Sanctions was held before Judge Stephen A. Stobbs, the presiding judge on the Madison County asbestos docket, on April 7, 2017. Judge Stobbs ultimately denied the Motion, based on the fact the case in question (Theresa Causey, Individually and as Special Administrator of the Estate of Thomas Griffith, deceased v. A.W. Chesterton, Inc., et al., 2013 L-001401, In the Circuit Court, Third Judicial Circuit, Madison County, Illinois) had been administratively closed, as all remaining defendants had resolved with the plaintiff or were otherwise dismissed, including Avocet. The denial of the Motion for Sanctions was immediately appealed to the Fifth Judicial District and Avocet has requested oral argument on the issues presented.

The approach by Avocet in Madison County is not often taken by defendants but it does provide a mechanism for putting the over-naming issue squarely before the judiciary using one of the tools traditionally available to defendants.

### ***Conclusion***

What is the best way to end the scourge of over-naming in asbestos litigation? Presumably if plaintiff counsel simply followed the requirements for pre-suit inquiry, and the ethical rules requiring such inquiry were enforced, the over-naming practice seen by so many defendants would be eliminated. Absent compliance with these long-standing and well-established requirements defendants are left with no choice but to be more proactive.

The Avocet approach demonstrates that making a proper record of the pattern and practice of over-naming is critical. General complaints and anecdotes by defendants and the defense bar will not suffice. But the over-naming problem cannot be overcome by a lone voice in the wilderness. A problem this large, involving so many interested parties, cries out for some broader approach, perhaps strengthening the responsibility of plaintiffs' counsel to properly vet their claims before naming defendants in a case and making sure the plaintiff has a good faith basis for pursuing claims against those defendants already exists in most jurisdictions.

Meeting the over-naming problem head on is the best course of action. Those impacted must identify specific mechanisms to raise critical issues early in the case before become buried by a mountain of unnecessary costs. These types of reforms would clearly fit within the case management orders adopted by courts in each of the jurisdictions where most asbestos claims are filed. Alternatively, legislative solutions could be pursued. For their part, the courts must overcome any reluctance they may have to enforce any new or existing pleading requirements. However, this cannot be said often or strongly enough: this vast and far reaching problem must be addressed by a broad coalition of interested parties with the vision and resolve to succeed.

### **Endnotes**

1. KCIC Asbestos Litigation: Year in Review at p. 4.
2. According to consulting firm KCIC, the maximum number of individual defendants named in the US asbestos litigation was 317 in 2014, 361 in 2015 and 458 in 2016 while the average number of asbestos defendants per case had risen from 59 to 66 over that same time span.
3. Under most contractual agreements with court reporting services, each party must order and pay for their own individual copies of these transcripts.
4. The costs vary greatly by the jurisdiction involved. For example, defending an asbestos case in California tends to be more expensive, both in gross dollars and on a claim by claim basis, than defending that same case in Madison County, Illinois. Much of this difference is driven by the scope of expert discovery, which is far more extensive in California. Regardless, the impact to defendants and their insurers from the over-naming crisis can be even more draconian in the "high dollar" jurisdictions.
5. According to the KCIC consulting firm, 4,637 new asbestos cases were filed in 2016 alone. KCIC Asbestos Litigation: 2016 Year in Review at p. 16.
6. Report of Charles E. Bates, PhD, Chairman, Bates White, LLC. (February 15, 2013) at pp. 24-25.
7. Bates Report at 32.
8. Bates Report at 33.
9. "Where Are They Now, Part Eight: An Update on Developments in Asbestos-Related Bankruptcy Cases," *Mealey's Asbestos Bankruptcy Report*, Vol. 16, No. 2 (September 2016), Co-Authors: Mark D. Plevin, Tacie H. Yoon, Leslie A. Davis, Brendan V. Mullan, Belinda Y. Liu and Galen P. Sallomi.
10. There are additional tools that defendants can utilize to try to stem the over-naming tide. One of the best is moving early for application of foreign state law. It should surprise no one that plaintiffs prefer to file in jurisdictions that hamper the defendant's ability to assert many of its best defenses. A prime example of this occurs in Illinois, where there are limited exceptions to the general rule that the trial defendant bears the entire burden for any adverse verdict, with no comparative fault available. A defendant often can change the landscape of a case by filing motions to apply foreign law, defendants

can often change the entire landscape of a case. In the Illinois example, the value of a case changes dramatically when the jury is asked to apportion responsibility among 10 or 20 entities, not just the solitary trial defendant.

11. TRCP 166a(i).

12. Ill. Sup. Ct. R. 137(b).

13. *Couri v. Korn*, 202 Ill. App. 3d 848, 855 (3d Dist. 1990) (citations omitted).

14. *William J. Templeman Co. v. W. E. O'Neil Constr. Co.*, Nos. 1-96-3434 & 1-96-3557 (consolidated), 1998 Ill. App. LEXIS 587, at \*46-47 (1st Dist. Aug. 19, 1998).

15. *Levin v. King*, 271 Ill. App. 3d 728, 730-31 (1st Dist. 1995).

16. E.g., Texas Rule of Civil Procedure Rule 13 ("The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information and belief formed after reasonable inquiry the instrument is not groundless and brought for the purpose of harassment.") See also, California's CCP § 128.7.

17. *Sterdjevich v. RMK Mgmt. Corp.*, 343 Ill. App. 3d 1 (1st Dist. 2003); *Swanson v. Cater*, 258 Ill. App. 3d 157 (2d Dist. 1994).

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