



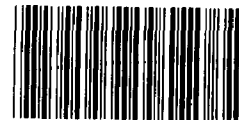
UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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GENERAL GOVERNMENT
DIVISION

SEPTEMBER 19, 1985

B-219939



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The Honorable Daniel K. Inouye
United States Senate

The Honorable Austin J. Murphy
Chairman, Subcommittee on Labor
Standards
Committee on Education and Labor
House of Representatives

Subject: The Federal Government's Cost of Asbestos
Litigation (GAO/GGD-85-80)

As you requested, we performed a study to determine the federal government's cost of asbestos litigation. We briefed your offices on the results of our work on May 13, 1985, and agreed to prepare this report which contains information on (1) the federal court system's cost of processing asbestos-related cases, (2) the Department of Justice's cost of defending asbestos-related tort claims filed against the federal government, and (3) court awards and settlements paid by the federal government in asbestos-related cases. The information is summarized below and presented in detail in the enclosure.

We performed our work at the Administrative Office of the United States Courts and the Department of Justice from March to June 1985. The Administrative Office is responsible for compiling and maintaining statistical data on the operations of the federal courts, and the Justice Department handles all asbestos litigation against the federal government. We interviewed officials at these agencies to obtain information about the federal government's involvement in asbestos litigation. However, we did not verify the information they provided.

As discussed with your offices, we were unable to obtain the requested asbestos caseload and cost data over the last 10 years because the Administrative Office and the Justice Department only had readily available data for the last few fiscal years. Also, because only limited historical information is available, we were unable, as requested, to (1) categorize asbestos caseload and cost data according to various activities and functions of the United States during historical periods

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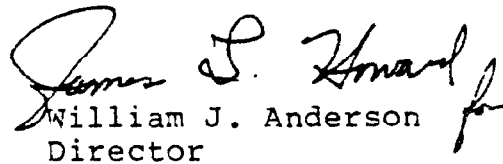
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such as World War II and the Korean conflict or (2) project future asbestos-related cases, tort claims, and costs over the next 10 years.

The Administrative Office records showed that the district courts had a total pending asbestos caseload of 8,995 as of September 30, 1984, and that the district and appellate courts expended an estimated \$10.1 million to process asbestos-related cases during fiscal year 1984. The Justice Department records showed that there were 1,785 and 2,744 cases pending against the federal government at the end of fiscal years 1983 and 1984, respectively. The number of claimants involved in these pending cases totaled 29,786 and 88,726. The Justice Department spent \$5.2 and \$5.9 million in fiscal years 1983 and 1984, respectively, to defend the asbestos-related cases. Justice officials told us that as of May 1985, the federal government had paid monetary claims due to a court award or settlement in only one asbestos-related case. Justice officials estimated that the pending caseload by the end of fiscal year 1987 will total 11,603 cases and involve 152,986 claimants. They also believe that tort claims against the government could total \$25.4 billion by the end of fiscal year 1987.

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As requested by your offices, we did not obtain agency comments on this report. Also, as arranged with your offices, we will send copies of this report to interested parties and make copies available to others upon request.


William J. Anderson
Director

The Federal Government's Cost of
Asbestos Litigation

Asbestos is a fibrous mineral that is strong, flexible, and resistant to fire, heat, and corrosion. It has been used in thousands of products commonly found in the work and home environments including roofing and flooring products; fireproofing textiles; reinforcing material in cement and pipes; and thermal and acoustical insulations. When inhaled, asbestos fibers may cause diseases such as asbestosis, mesothelioma, or lung cancer.

Asbestos litigation is emerging as a large, complex, and costly problem to the federal government. Thousands of individuals are alleging injury from exposure to asbestos and have filed lawsuits in state and/or federal courts against asbestos miners, manufacturers, suppliers, and processors and the federal government. In addition, the asbestos manufacturers and suppliers have sued the federal government because some of the alleged injuries involved asbestos materials used in ships and military products that the government purchased during and after World War II.

COSTS OF PROCESSING ASBESTOS-RELATED
CASES IN FEDERAL COURTS

The Administrative Office of the United States Courts started to compile statistics on asbestos-related cases as a separate case category in November 1983. As a result, the Administrative Office could only provide us with asbestos caseload data and cost estimates for fiscal year 1984. Table I.1 shows the U.S. district courts' asbestos caseload for fiscal year 1984.

Table I.1:U.S. District Courts' Asbestos Caseload^a
Fiscal Year 1984

	<u>Number of cases</u>
Pending cases (October 1, 1983)	5,885
Cases received	3,538
Cases terminated	<u>(428)</u>
Pending cases (September 30, 1984)	<u>8,995</u>

^aComparable data for the U.S. Courts of Appeals was not readily available at the Administrative Office.

As shown in table I.2, Administrative Office officials estimated that the federal courts spent a total of \$10.1 million processing asbestos-related cases in fiscal year 1984--\$8.4 million and \$1.7 million in the district courts and the courts of appeals, respectively.

Table 1.2:

Federal Courts' Estimated Expenditures
For Processing Asbestos-Related Cases
Fiscal Year 1984

<u>Expenditures^a</u>	<u>U.S. District Courts</u>	<u>U.S. Courts of Appeals</u>	<u>Total</u>
Salaries and benefits			
Judges	\$1,065,857	\$ 295,933	\$ 1,361,790
Clerk's office personnel	1,568,403	178,478	1,746,881
Law clerks	738,490	261,118	999,608
Secretaries	405,696	158,067	563,763
Criers and messengers	18,116	3,731	21,847
Court reporters	396,507	--	396,507
Circuit executives	--	43,201	43,201
Other personnel	30,850	1,089	31,939
Central legal staff	--	111,820	111,820
Library	--	67,484	67,484
Magistrates	372,392	--	372,392
Magistrates' staff	242,160	--	242,160
Jury expenses	589,332	--	589,332
Travel, operations, maintenance, and miscellaneous	884,551	278,163	1,162,714
Space and facilities	1,758,468	274,729	2,033,197
Court security	<u>301,101</u>	<u>46,999</u>	<u>348,100</u>
Total	<u>\$8,371,923</u>	<u>\$1,720,812</u>	<u>\$10,092,735</u>

^aExcludes support costs of the Administrative Office of the U.S. Courts and the Federal Judicial Center (the research, training, and development arm of the judicial system).

In providing us this information, Administrative Office officials advised us that data developed in a 1979 district

court time study¹ were used to estimate court time and costs for processing asbestos-related cases. These officials stated that on the basis of information now being received from the courts, asbestos-related cases are consuming more time than the 1979 time study had indicated. As a result, these officials believe their cost estimates for processing asbestos-related cases may be understated.

COSTS OF DEFENDING ASBESTOS-RELATED
TORT CLAIMS FILED AGAINST THE
FEDERAL GOVERNMENT

Since the end of 1983, the Torts Branch, within the Department of Justice's Civil Division, has had responsibility for defending all asbestos-related tort claims filed against the federal government. Prior to that time, the Torts Branch shared this responsibility with the U.S. attorneys offices. Officials in the Civil Division could only provide us with complete asbestos caseload and cost data for fiscal years 1983 and 1984. The Justice Department's asbestos caseload data are shown in table I.3.

Table 1.3:

Department of Justice's Asbestos Caseload
Fiscal Years 1983-1984

	<u>1983</u>	<u>1984</u>
Pending cases (October 1)	1,217	1,785
Cases received	582	1,002
Cases terminated	<u>(14)</u>	<u>(43)</u>
Pending cases (September 30)	<u>1,785</u>	<u>2,744</u>
Claimants involved in pending cases (September 30)	<u>29,786</u>	<u>88,726</u>

The Justice Department spent \$5.2 and \$5.9 million in fiscal years 1983 and 1984, respectively, on the asbestos litigation defense efforts, as detailed in table I.4.

¹S. Flanders, The 1979 Federal District Court Time Study 2 (Federal Judicial Center 1980).

Table I.4:

Department of Justice's
Expenditures For Asbestos Litigation
Fiscal Years 1983-1984

<u>Expenditures</u>	<u>1983</u>	<u>1984</u>
Salaries	\$1,075,766	\$2,226,197
Benefits	101,531	223,928
Travel	16,343	57,921
Litigative expenses		
Automated litigation support system contracts ^a	2,935,000	1,353,335
Computer time	65,000	346,665
Transcripts	10,992	18,025
Foreign counsel	--	80,500
Other	3,914	27,059
Expert witnesses	11,919	58,428
General overhead	<u>990,928</u>	<u>1,460,316</u>
Total	<u>\$5,211,393</u>	<u>\$5,852,374</u>

^aJustice officials told us that the Automated Litigation Support (ALS) system will be used to acquire, analyze, and store--usually on microfilm and computerized data bases--approximately 1.6 billion documents that pertain to asbestos. ALS will enable Justice attorneys to quickly locate key documents and use them in defending asbestos-related claims.

Justice officials told us that five other federal agencies--the Departments of Health and Human Services, Labor, and Navy; the General Services Administration; and the Department of Transportation's Maritime Administration--collectively spent an estimated \$370,000 on matters related to asbestos litigation in fiscal year 1984.

COURT AWARDS AND SETTLEMENTS PAID
BY THE FEDERAL GOVERNMENT IN
ASBESTOS-RELATED CASES

Justice officials told us that as of May 1985, the federal government had paid monetary claims due to court awards and settlements in only one asbestos-related case. In 1978, the federal government paid \$5.75 million to 445 individuals in the

settlement of the "Tyler I" case.² In addition, on July 27, 1984, the federal government was found liable by a district court in another asbestos-related case--Shuman v. United States. However, on June 26, 1985, a court of appeals reversed the district court's ruling.

FUTURE ASBESTOS-RELATED CASES,
TORT CLAIMS, AND COSTS

Although we were unable to project future asbestos-related cases, tort claims, and costs in the federal judicial system over the next 10 years, we obtained Justice's estimates for fiscal years 1985 to 1987. Justice estimates that at the end of fiscal year 1987, 11,603 asbestos-related cases will be pending against the federal government. This represents a 323-percent increase over the actual number of cases that were pending at the end of fiscal year 1984. A Justice budget official told us that to estimate the expected caseloads for fiscal years 1985, 1986, and 1987, the budget office used the percentage increase in the caseload data between fiscal years 1983 and 1984. The resulting numbers were then provided to the federal attorneys working on the cases who adjusted the numbers based on their knowledge of trends in the asbestos litigation area. (See table I.5.)

²Yandle, et al. v. PPG Industries, Inc., et al.; Kay, et al. v. PPG Industries, Inc., et al.; and McNeece, et al. v. United States.

Table I.5:

Department of Justice's
Estimated Asbestos Caseload
Fiscal Years 1985-1987

	<u>1985</u>	<u>1986</u>	<u>1987</u>
Pending cases (October 1)	2,744	4,362	7,072
Cases received	1,668	2,760	4,581
Cases terminated	<u>(50)</u>	<u>(50)</u>	<u>(50)</u>
Pending cases (September 30)	<u>4,362</u>	<u>7,072</u>	<u>11,603</u>
Claimants involved in pending cases (September 30)	<u>106,788</u>	<u>127,078</u>	<u>152,986</u>

Justice officials told us that the amount of future court awards and settlements in the asbestos-related cases is uncertain, but the financial stakes are high. Justice estimates that at the end of fiscal years 1985 to 1987, asbestos-related tort claims against the federal government will be \$9.5, \$15.5, and \$25.4 billion, respectively. These estimates were prepared following the same procedures used in preparing the caseload estimates. Justice also estimates that it will spend about \$10.4 million and \$10.9 million in fiscal years 1985 and 1986, respectively, on the asbestos litigation defense efforts. This represents a 76 and 85 percent increase, respectively, over the fiscal year 1984 expenditures. Justice officials told us that the contracts for the Automated Litigation Support system and the associated computer time account for most of the increase.