MEALEY'S® LITIGATION REPORT

Asbestos

Turning The Page: How Legislative Reform And Judicial Changes Are Reshaping Asbestos Litigation In The Mountain State

By
Thomas M. Hancock
and
Marc E. Williams

Nelson Mullins Riley & Scarborough LLP
Huntington, West Virginia

A commentary reprinted from the January 14, 2026 issue of Mealey's Litigation Report: Asbestos

LexisNexis®

Commentary

Turning The Page: How Legislative Reform And Judicial Changes Are Reshaping Asbestos Litigation In The Mountain State

By
Thomas M. Hancock
and
Marc E. Williams

[Editor's Note: Thomas M. Hancock and Marc E. Williams are partners at Nelson Mullins Riley & Scarborough LLP in Huntington, West Virginia. Any commentary or opinions do not reflect the views of Nelson Mullins or LexisNexis® Mealey Publications™. *Responses are welcome.]*

Introduction

For decades, West Virginia has been a focal point for asbestos litigation, often ranking among the busiest jurisdictions for mass tort cases nationwide. At the beginning of 2025, over 6,000 asbestos cases were pending before West Virginia's Mass Litigation Panel, a staggering figure. Historically, asbestos complaints in West Virginia named an extraordinary number of defendants. For a time, West Virginia averaged 185 defendants per case, nearly three times the national average.[1] This practice, known as "over-naming," creates inefficiencies, inflates costs, and burdens courts and businesses alike.[2]

In the past, plaintiffs in the Mountain State were incentivized to name as many defendants as possible because of limited procedural opportunities to dismiss defendants on jurisdictional or factual grounds. Work began on solving these issues with the 2021 passage of West Virginia House Bill 2495, a bold legislative step to curb over-naming. Yet, meaningful change required more than statutory language in West Virginia's asbestos litigation environment, it demanded procedural enforcement and judicial leadership. After years of incremental progress, negotiated revisions to the Case Management Order (CMO), and a new judge at the helm, West Virginia's asbestos docket is finally transforming.

The Over-Naming Issue

Over-naming emerged as a systemic issue after major asbestos manufacturers declared bankruptcy in the early 2000s. Attorneys representing plaintiffs sought compensation from new or previously remote defendants as bankruptcies dried up traditional revenue streams. The total number of defendants involved in the asbestos litigation skyrocketed "from around 300 defendants in the early 1980s"[3] to "almost 12,200 unique defendant entities named on complaints" in 2023.[4] The number of defendants in individual cases jumped too, "ensnar[ing] many innocent companies in the process."[5] The founder and president of consulting firm KCIC said in 2019, "It is common for us to see mesothelioma dismissal rates above 90%."[6] Likewise, a leading asbestos claim handler said that "[v]ery many defendants get dismissed 85-95% of the time from these lawsuits for zero dollars."[7]

The West Virginia Mass Litigation Panel's consolidated trial groups scheduled tri-annually, along with the docket's focus on settlement, also incentivized volume filings.

The result: bloated complaints, skyrocketing defense costs, and clogged dockets. In many cases, up to 70% of defendants were dismissed or settled without liability, after incurring significant defense costs.[8]

These mass dismissals underscored the inefficiency of the system.

A substantial number of defendants named in West Virginia asbestos cases had never sold a product in the state, never manufactured or distributed the products alleged, and were often dismissed on the eve of trial. Yet, they continued to be included in complaints. These dynamics strained judicial resources and created a litigation environment where claim quantity often overshadowed quality. This was aggravated by a judicial case management philosophy that emphasized mediations and settlements, rather than dispositive motion practice to eliminate defendants who do not belong in cases.

Legislative Response: House Bill 2495

Enacted in 2021, West Virginia House Bill 2495 introduced an important reform. Plaintiffs must now file a sworn information form within 60 days of the complaint, detailing exposure evidence for each named defendant, including dates, locations, product identification, and exposure specifics.[9] The statute imposes a continuing duty to supplement disclosures and authorizes automatic dismissal without prejudice for non-compliant parties.[10]

This thorough disclosure requirement was meant to replace the "see work history" approach to discovery responses so common in West Virginia prior to the statute's enactment. The statute was designed to create an environment where "sue first and discover facts later" was no longer the default.[11] The goal was clear: shift asbestos litigation from a shotgun approach to a more evidence-driven process.

The Impact on the West Virginia Asbestos Docket

For plaintiffs, the statute demands rigorous pre-filing investigation. Gone are the days of speculative naming. Counsel must now substantiate claims with concrete evidence. Defense attorneys, in turn, leverage admissions from sworn forms to challenge exposure allegations earlier in the case lifecycle. The emphasis on documentation elevates claim quality, reduces meritless filings, and promotes fairness.

The early impact of the statute was incremental. Fringe defendants and some secondary defendants who pushed the issue began to obtain dismissals earlier in the process, as plaintiffs' counsel were more motivated to consider dismissals before the mediation or trial date due to the threat of a motion based on the statute. Over time, this resulted in fewer cases being filed against fringe defendants, while having no effect on the major defendants, who continued to participate and settle cases based on historic exposure evidence.

Disclosures also became more detailed as the approach to sworn disclosures continued to evolve based on counsel's experience with the statute and its requirements. Even plaintiffs' firms who were providing fulsome disclosures prior to the statute's passage began including expanded information as the disclosures evolved. Receiving the information earlier in the process allows defense counsel to better evaluate exposure histories, prepare for depositions more thoroughly, and alert clients and insurance carriers to high-exposure cases earlier in the litigation process.

Judicial Buy-in: The Missing Piece

Longtime asbestos Judge Ronald E. Wilson acknowledged the problem of over-naming in West Virginia and at one point expressed frustration that it was complicating his ability to resolve cases. In a 2020 letter to attorneys, Judge Wilson said, "In my judgment the phrase 'you reap what you sow' may come true to those who abuse the liberal civil justice procedure for suing questionable defendants, accusing them of causing personal injury to their clients when the evidence of their liability amounts to a mere gamble in a lawsuit."[12]

Under Judge Wilson, however, West Virginia's Asbestos Mass Litigation Panel prioritized settlements and predictability. A clean docket and procedural compliance sometimes played a secondary role. Judge Wilson ran three trial groups per year, plus additional "backlog" trial groups, consistently achieving settlements throughout his tenure on the bench.

Prior to the enactment of the over-naming statute, Judge Wilson imposed an initial disclosure requirement that obligated plaintiffs to provide detailed information, but compliance with these directives was generally inadequate. In some instances, plaintiffs failed to submit disclosures altogether, while others offered only cursory responses such as "see work history" in lieu of substantive identification of defendants. Compounding the issue, many defense counsel

refrained from challenging the insufficiency of these disclosures, opting for informal resolution rather than filing motions that might disrupt the status quo.

Things changed in the fall of 2023. Defense counsel raised the requirements of the over-naming statute by filing a substantial number of motions to dismiss. These motions came to a head prior to the October 2023 trial group, and at that mediation, plaintiff and defense counsel reached an agreement to amend the CMO to align with the statute.

The CMO Amendments on Over-Naming

The compromise reached in the fall of 2023 incorporated the requirements of the over-naming statute into West Virginia's Asbestos CMO and provided a procedural framework, including a meet and confer process, to enforce the statute's terms.[13] These amendments to the CMO require any party seeking a dismissal based on failure to comply with the over-naming statute to confer and discuss with opposing counsel topics such as the basis for dismissal, any need for additional discovery, and the specific information missing from the sworn disclosures.

Since the CMO was amended, the quality and quantity of information on product identification being provided in the disclosures mandated by the over-naming statute have significantly improved. Further, the CMO's meet-and-confer requirement has provided the parties with an opportunity to have an informal discussion about the merits of dismissal.

The meet-and-confer process has benefited plaintiffs by allowing them to correct a perceived deficiency in the disclosures without defending a full-blown motion to dismiss. The meet-and-confer process has proven to be more than a procedural courtesy—it is now a strategic checkpoint. Plaintiffs gain a critical opportunity to cure deficiencies without incurring the cost and delay of formal motion practice.

The meet-and-confer process has also benefited defendants, who in some situations are receiving early dismissals, and in other situations are receiving additional facts and information about the basis for the plaintiff's claim, which they can use to better prepare to litigate a case on the merits. In some instances, these informal discussions have led to creative resolutions, such as stipulations on product identification or agreements to streamline depositions, reducing litigation friction and fostering cooperation in an otherwise adversarial environment. For example, situations have arisen where a defendant may not have been properly disclosed under the statute, but plaintiff's counsel is aware that an upcoming witness is going to identify that defendant. The meet-and-confer process allows the parties to share this information, and then the plaintiff can amend the disclosure, or the defendant can agree that it isn't necessary since the deposition will clarify the product identification.

The meet-and-confer process under the over-naming statute has been successful, resulting in a substantial number of dismissals. And in cases where a dismissal is unwarranted, the process provides a forum for the parties to discuss the case and share more information than required by the statute, helping to achieve more accurate case reserves and settlement values more quickly than before.

A New Judge and a New Philosophy of Judicial Case Management

The next step in the evolution of the West Virginia docket took place when Judge Wilson lost re-election in May of 2025 and retired after 43 years on the bench. The Supreme Court of Appeals appointed Senior Judge Jack Alsop, a longtime veteran of non-asbestos toxic tort matters on the Mass Litigation Panel, to replace Judge Wilson.[14] Assisted by retired Justice John Hutchison, Judge Alsop immediately focused on the backlog of old cases by targeting them for dismissal.

A Focus on Cleaning Up the Docket

On March 10, 2025, Judge Alsop held a status conference to discuss potential changes to the CMO and to ask counsel to review several lists of cases, both to eliminate duplicate cases, and to identify unresolved, undismissed cases. A number of these cases were from before 2008, when the Court began using File & ServeXpress e-filing. The Motley Rice firm was tasked with taking the lead role for the plaintiffs in this effort, and informed the Court on April 24, 2025, that they had identified 6,031 cases to be reviewed for dismissal. Of the 6,031 cases, 4,282 were resolved, but had never been dismissed. 337 cases had been dismissed by order, but remained open administratively. Those have been cleared from the docket. The remaining approximately 1,412 cases are either still pending

or remain under review. This process is ongoing, and the Court recently granted plaintiffs' counsel an additional 60 days to review the remaining cases. More progress should happen soon.

Changes to the CMO to Effectuate Dismissals

On July 25, 2025, Judge Alsop also revised the CMO to add new paragraphs about the final dismissal of cases.[15] This amendment enshrined existing practices for dismissing cases and included forms to make the final dismissal of cases more uniform. Although these changes will not affect litigation strategy significantly, they will streamline the system for processing dismissals in the Clerk's office, which should prevent the issues that caused the massive case backlog dealt with in 2025. The amendment also demonstrates that Judge Alsop is willing to implement new procedures for case management when necessary.

A New Approach to Motions Practice

In addition to cleaning up the excess unresolved cases, Judge Alsop is taking a more hands-on approach to motions practice. Judge Wilson would rarely schedule hearings on significant motions and preferred mediation to resolve cases rather than issuing lengthy, multipart orders on complex motions. In contrast, Judge Alsop has demonstrated a willingness to engage deeply with complex legal issues, issuing highly detailed rulings, including orders over seventy pages long.[16] Judge Alsop's rulings so far signal that he will be taking a more hands-on approach to motions practice and parties can expect detailed and comprehensive orders when circumstances warrant. This raises the stakes for both plaintiffs and defendants seeking relief through motions in West Virginia asbestos litigation.

New Statute, CMO Overhaul, and Fresh Judicial Leadership Poised to Transform Asbestos Litigation in West Virginia

As discussed, meaningful change of excessive over-naming practices has been a multi-step process in West Virginia. The over-naming statute was a key first step. By curbing over-naming, the statute promotes efficiency, reduces costs, and restores fairness to the process. After statutory reform is achieved, the experience in West Virginia is that attorneys on the ground must be willing to push for compliance and other procedural changes to effectuate the statute's intent. And, the judge managing asbestos cases must enforce the statute.

West Virginia now has all three. As a result, filings are decreasing. Filings against fringe defendants are decreasing significantly. Earlier dismissals are driving costs down. And information is flowing more freely between counsel, allowing cases to be evaluated sooner and more effectively. The process may have been slower than originally envisioned when the over-naming reform began, but it is coming to fruition and paying dividends in West Virginia.

Finally, it is also important to note how the over-naming statute has not affected the major players in the litigation. Premises defendants and the manufacturers of commonly identified products have seen little to no change in how their cases are defended. These defendants generally settle cases at the same rate, and for substantially the same amounts, as they did before the statute. This demonstrates that the statute has not hindered access to justice by plaintiffs against potentially culpable defendants, as settlements continue to be reached for the defendants who are subject to historical identification at the most common workplaces in West Virginia.

Conclusion

Will the over-naming statute, the alterations to the CMO, and Judge Alsop's approach reduce overall filings or simply improve case quality? Early indicators suggest both, with quality changes coming first. Other jurisdictions are watching closely, and West Virginia's experience may influence similar reforms elsewhere.

Judge Alsop's distinct jurisprudential style will shape the litigation moving forward, as he has already shown a willingness to take decisive action to clean up the docket and issue difficult rulings on complex issues.

The over-naming statute and this new judge represent a pivotal shift in asbestos litigation in the Mountain State, beginning the process of transforming West Virginia's docket from volume-driven to evidence-driven.

Endnotes

1. Megan Shockley, *West Virginia Takes Action Against Over-Naming*, KCIC.com, Apr. 22, 20121, https://www.kcic.com/trending/feed/west-virginia-takes-action-against-over-naming/.

2. James Lowery, *The Scourge of Over-Naming in Asbestos Litigation: The Costs to Litigants and the Impact on Justice*, 32-24 Mealey's Litig. Rep. Asb. 22 (2018).

3. Mark Behrens & Christopher Appel, *Over-Naming of Asbestos Defendants: A Pervasive Problem in Need of Reform*, 36-4 Mealey's Litig. Rep. Asb. 16 (2021).

4. KCIC, *Asbestos Litigation: 2023 Year in Review*, at 14 (2024), https://www.kcic.com/media/2345/kcic_report_asbestos-annual-report_2023.pdf.

5. Behrens & Appel, *supra*.

6. Jonathan Terrell, *The Most Interesting Panel at Perrin's Asbestos Litigation Conference*, KCIC, Sept. 13, 2019, https://www.kcic.com/trending/feed/the-most-interesting-panel-at-perrins-asbestos-litigation-conference/.

7. *Id.* (citing Tom Ryan, President of Resolute).

8. Mary Margaret Gay, *The Name Game: Over-Naming in West Virginia Asbestos Litigation*, W. Va. Record, Mar. 15, 2021, https://www.gayjoneslaw.com/over-naming-wv-asbestos-litigation; Chris Dickerson, *Over-naming Continues to be a Problem in W. Va. Asbestos Cases, Study Shows*, W. Va. Record, Jan. 21, 2021, https://www.legalnewsline.com/west-virginia-record/over-naming-continues-to-be-a-problem-in-w-va-asbestos-cases-study-shows/article_df29c331-6047-5fe2-aa0b-616e9ecb986e.html.

9. W. Va. Code § 55-7G-4(d).

10. *Id.* at § 55-7G-4(e)-(g); *see also* Robert H. Wright, *West Virginia Latest State to Legislatively Address Asbestos-Defendant Over-Naming*, WLF Legal Pulse, May 20, 2021, https://www.wlf.org/2021/05/20/wlf-legal-pulse/west-virginia-latest-state-to-legislatively-address-asbestos-defendant-over-naming/.

11. Gay, *supra*.

12. Chris Dickerson, *Asbestos Judge Criticizes Plaintiffs[']* Attorneys for Lack of Action, Suing Too Many Defendants, W. Va. Record, Feb. 11, 2020, https://www.legalnewsline.com/west-virginia-record/asbestos-judge-criticizes-plaintiffs-attorneys-for-lack-of-action-suing-too-many-defendants/article_cc03cdc3-8126-5bb9-9677-155c1f24d575.html.

13. *In re Asbestos Pers. Injury Litig.*, Civ. A. No. 03-C-9600, Second Supplemental Case Management Order (W. Va. Kanawha Cty. Cir. Ct. May 27, 2025), https://www.courtswv.gov/sites/default/pubfilesmnt/2024-05/20240528SecondCaseManagementOrder.pdf.

14. *In re Asbestos Pers. Injury Litig.*, Civ. A. No. 03-C-9600, Order Assigning Presiding Judge Effective January 1, 2025 (W. Va. Kanawha Cty. Cir. Ct. Dec. 26, 2024), https://www.courtswv.gov/sites/default/pubfilesmnt/2024-12/AsbestosLitigation_OrderAssigningPresiding%20Judge_effective_2025-01-01.pdf.

15. *In re Asbestos Pers. Injury Litig.*, Civ. A. No. 03-C-9600, Amendment to Paragraph 27 of the 2012 Asbestos Case Management Order (W. Va. Kanawha Cty. Cir. Ct. July 28, 2025), https://www.courtswv.gov/sites/default/pubfilesmnt/2025-07/Amendment%20to%20Paragraph%2027%20of%202012%20Asbestos%20Case%20Management%20Order.pdf.

16. *Crites v. 3M Co.,* Civ. A. No. 24-C-69, Order Denying Motion to Dismiss (W. Va. Kanawha Cty. Cir. Ct. Sept. 10, 2025). The order did not address the over-naming statute, so is substantively beyond this article's scope. ■

MEALEY'S LITIGATION REPORT ASBESTOS
edited by Bryan Redding
The Report is produced twice monthly by

1600 John F. Kennedy Blvd., Suite 1655, Philadelphia, PA 19103, USA
Telephone: 1-800-MEALEYS (1-800-632-5397)
Email: mealeyinfo@lexisnexis.com
Web site: lexisnexis.com/mealeys
ISSN 0742-4647