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Asbestos Litigation Update

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It Wasn't Our Imagination

The past couple of years have brought anecdotal evidence of an increase in settlements and judgments in asbestos litigation, as well as higher litigation costs. The feeling that asbestos cases were demanding higher payouts was borne out by the recent report published by A.M. Best Co., Inc., *U.S. Asbestos and Environmental Liabilities*. According to news reports about Best's findings and estimates, the insurance industry's asbestos losses for 2009 will reach about 75 billion dollars, a jump of approximately 50 percent over 2008 levels, which saw a 47 percent decrease.

Best pointed to a number of factors that may have affected this increase, including what Best described as a "subtle shift of losses away from products liability claims to non-products claims involving more peripheral defendants for higher settlement amounts." We previously identified and reported this trend to our clients and their insurers. As more products manufacturers and suppliers exhaust insurance coverage and file for bankruptcy protection we have seen this shift towards contractors and others for whom strict products liability theories do not apply. We also observed and reported on the trend toward higher settlement demands for cases that previously would have settled for nuisance value. Clearly, plaintiffs are casting a wider net and bringing in defendants that had been overlooked or ignored in years past. According to Best, in some instances this trend away from products claims may result in more "per occurrence" limits being available should an aggregate, such as the products and completed operations aggregate, not apply. In explaining the rise in losses Best also pointed to mixed results in tort reform, a topic that has been raised, but not acted upon in California.

Burnham Brown will continue to be aggressive in our approach to defending our clients in asbestos litigation and in preparing cases for trial. We recognize the truth in the axiom that the easiest way to achieve a fair settlement is to be fully prepared for trial. It is an axiom by which we live.

Patrick Callahan's practice emphasizes litigation in the areas of professional liability, healthcare, employment, construction defect, commercial and products liability. Mr. Callahan can be reached at 510-835-6802 and pcallahan@burnhambrown.com.