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Report to the Chairman, Subcommittee on
Labor Standards, Committee on Education
and Labor, House of Representatives

April 1988

ASBESTOS

Growth of Federal Claims, Court Cases, and Litigation Costs



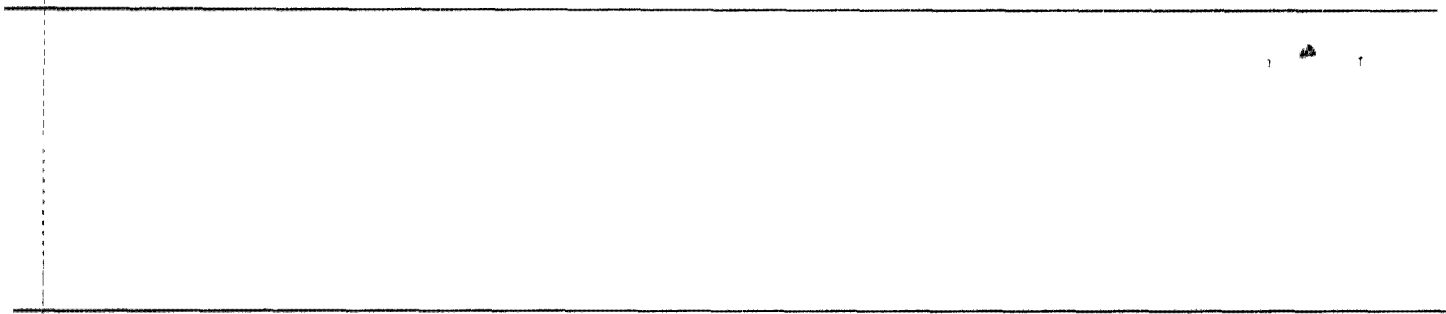
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Human Resources Division

B-219939

April 21, 1988

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

Dear Mr. Chairman:

This report is in response to your request for the most current information on (1) asbestos claims filed with the Department of Labor and (2) the costs to the government associated with processing the claims and defending the court cases in which the federal government is the defendant. Your office expressed concern about the increase in asbestos claims, cases, and costs, stating that the requested information will aid the Subcommittee with its deliberations on legislation for occupational disease compensation.

Asbestos, a fibrous mineral, is strong and flexible, as well as resistant to fire, heat, and corrosion; it has been used in thousands of commercial products found in work and home environments. When inhaled, asbestos fibers may cause asbestosis, lung cancer, or mesothelioma (tumors). Thousands of individuals—longshoremen and harbor workers as well as federal employees—who suffer from diseases or disabilities associated with job-related asbestos exposure have filed compensation claims under the Longshore and Harbor Workers' Compensation Act (the Longshore Act) or the Federal Employees' Compensation Act (FECA). The Longshore Act and FECA are administered by Labor's Office of Workers' Compensation Programs (OWCP).

Asbestos litigation is emerging as a large, complex, and costly problem for the federal government. Thousands of claimants are alleging injury from exposure to asbestos and have filed suits in state or federal courts (see p. 8) or both against asbestos miners, manufacturers, suppliers, and processors. In addition, asbestos manufacturers and suppliers have sued the federal government because some of the alleged injuries are from asbestos materials used in ships and military products that the government ordered and purchased during and after World War II; manufacturers and suppliers believe that the federal government should assume some of the risk of losses for the third-party personal injuries. The Department of Justice's Civil Division is responsible for (1) defending all asbestos injury cases filed in federal courts against the federal government and (2) compiling data on Justice's asbestos caseload and litigation costs.

Objectives, Scope, and Methodology

On the basis of your request and later discussions with the Subcommittee's office, we agreed to obtain the most current information on

- asbestos claims filed with Labor under FECA,
- asbestos claims filed with Labor under the Longshore Act,
- Labor's average processing time for asbestos claims filed under FECA and the Longshore Act,
- whether the 1984 Longshore Act amendments (see p. 15) have decreased the percentage of asbestos claims dismissed by Labor,
- Labor's costs for administering asbestos claims under FECA and the Longshore Act,
- Justice's current and projected asbestos caseload,
- Justice's costs associated with defending and litigating asbestos court cases filed under the Federal Tort Claims Act,
- asbestos court cases that (1) were dismissed and reasons for this and (2) federal money was paid for as a result of court awards and settlements,
- the federal courts' asbestos caseload, and
- the federal courts' costs associated with litigating the asbestos cases.

We did our review at the Washington headquarters of Labor, Justice, and the Administrative Office of the United States Courts, which compiles cost and other data on asbestos cases litigated in federal courts. We discussed asbestos claims and case processing with knowledgeable officials at these agencies; we obtained the requested information—the number of asbestos claims filed with Labor; court cases handled by Justice and litigated in the federal courts; and the costs to the government of processing, defending, and litigating asbestos-related cases.

A summary of our findings follows; appendix I provides the scope and results of our work in more detail.

Results in Brief

- Asbestos claims filed with OWCP under FECA decreased from 1,428 in calendar year 1983 to 891 in 1986. Benefits paid for asbestos claims under FECA, according to the latest available data from Labor, totaled about \$13.2 million in fiscal year 1985.
- Asbestos claims filed under the Longshore Act but still pending at OWCP have increased from 3,600 in August 1983 to 4,349 in August 1987. OWCP cannot, however, provide data showing what portion of the benefit payments under the act are attributable to asbestos claims.
- OWCP does not have a centralized database to determine the average time from the filing of a claim to the payment or denial of monetary benefits

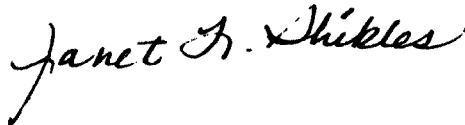
for asbestos-related injuries under the Longshore Act. For current (calendar years 1985 and 1986) FECA claims, OWCP's data show that the time between filing and final settlement and approval or denial is less than 1 year.

- Because of the limited information in OWCP's management information and accounting systems on claims filed under the Longshore Act, we could not determine the impact of the 1984 amendments on the asbestos claims under the Longshore Act that were dismissed by OWCP.
- For fiscal years 1984-87, OWCP's costs for administering all claims under FECA were between \$46.1 and \$52.3 million annually and under the Longshore Act, between \$6.8 and \$7.7 million annually. However, OWCP's administrative costs for asbestos claims under the acts are not determinable. This is because OWCP's management information and accounting systems are not designed to segregate asbestos claims cost data from other claims.
- Justice's records show that its pending asbestos cases have increased from 1,785 at the beginning of fiscal year 1984 to 2,901 at the end of fiscal year 1987. Cases filed have decreased from 1,002 in 1984 to 138 in 1987. For the 2,901 cases pending at the end of fiscal year 1987, there were 91,186 claimants, with an estimated \$13.6 billion in awards or damage claims at issue. Justice estimates that at the end of fiscal year 1989, pending asbestos cases will decrease to 2,416.
- Justice's records show that its asbestos litigation defense costs increased from about \$5.9 million in fiscal year 1984 to about \$10.2 million in 1987. The increase is due primarily to greater expenditures for automated support services (see p. 18).
- Justice's records show that the federal government has paid monetary claims for court awards and settlements in only one asbestos-related case: in 1978, \$5.75 million to 445 individuals to settle a civil suit in Tyler, Texas.
- Administrative Office records show that for fiscal years 1984 to 1987, the number of asbestos court cases terminated lagged far behind new cases filed, resulting in an increase in the number of pending cases. During the 4 years ending September 30, 1987, 21,067 cases were received by federal district courts, but only 6,898 were closed. The pending cases increased from 5,885 at the end of fiscal year 1983 to 20,278 cases at the end of 1987.
- Administrative Office records show that federal district courts and courts of appeals estimated that total costs for processing asbestos cases increased from \$10.1 million in 1984 to \$13.4 million in 1987.

As requested, we did not obtain written comments from Labor, Justice, and the Administrative Office of the United States Courts on this report. Officials from the three agencies, however, were given an opportunity to review a draft of this report and their comments have been considered in completing it.

As arranged with your office, unless its contents are announced earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to the Secretary of Labor; the Attorney General; the Director, Administrative Office of the United States Courts; and other interested parties; and will make copies available to others on request.

Sincerely yours,



Janet L. Shikles
Associate Director

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Abbreviations

FECA	Federal Employees' Compensation Act
GAO	General Accounting Office
OWCP	Office of Workers' Compensation Programs

Asbestos: Growth of Federal Claims, Court Cases, and Litigation Costs

Introduction

In a letter dated May 14, 1987, the Chairman, Subcommittee on Labor Standards, House Committee on Education and Labor, requested that we obtain (1) the most recent information on asbestos claims against the United States and (2) costs associated with processing the claims and defending the cases under the Federal Employees' Compensation Act (FECA), the Longshore and Harbor Workers' Compensation Act (Longshore Act), and other acts. The Chairman stated that the requested information will aid the Subcommittee with its deliberations on compensation legislation for occupational disease.¹

Asbestos, a fibrous mineral, is strong and flexible, as well as resistant to fire, heat, and corrosion; it has been used in thousands of commercial products commonly found in work and home environments, including roofing and flooring, fireproofed textiles, reinforced material in cement and pipes, and thermal and acoustical insulations; asbestos is also used in ship building. When asbestos fibers are inhaled, asbestosis, lung cancer, or mesothelioma (tumors) may result.

Thousands of individuals—longshoremen and harbor workers as well as federal employees who suffer from diseases or disabilities associated with their job-related asbestos exposure—have filed compensation claims; the longshoremen and harbor workers, under the Longshore Act; the federal employees, under FECA. These acts are administered by the Office of Workers' Compensation Programs (OWCP) in the Department of Labor's Employment Standards Administration. For these asbestos-related claims, the Division of Employee Benefits in Labor's Office of the Solicitor provides legal assistance to OWCP, litigation support to the Department of Justice, and data-management services to other federal agencies government-wide.

Asbestos litigation is emerging as a large, complex, and costly problem for the federal government. Thousands of individuals, alleging injury from exposure to asbestos, have filed suits in state or federal courts or both against asbestos miners, manufacturers, suppliers, and processors. In addition, asbestos manufacturers and suppliers have sued the federal government because some of the alleged injuries were attributed to

¹The Chairman's letter also requested that we respond to several questions relating to the legal issues for asbestos claims and cases under FECA, the Longshore Act, and other federal statutes. We responded separately to these legal questions. See the letter from GAO's Office of the General Counsel to the Chairman, Subcommittee on Labor Standards, House Committee on Education and Labor (B-219939, Dec. 11, 1987).

asbestos materials used in ships and military products that the government ordered and purchased during and after World War II; manufacturers and suppliers believe that the federal government should assume some of the risk of losses for third-party personal injuries. The Torts Branch in Justice's Civil Division is responsible for defending all litigation involving asbestos injury claims against the federal government.

Objectives, Scope, and Methodology

The objectives of our review were to obtain the most current information—since our 1985 reports were issued²—on asbestos claims and court cases, as well as related costs. Specifically, we obtained information on

- asbestos claims filed with Labor under FECA,
- asbestos claims filed with Labor under the Longshore Act,
- Labor's average processing time for asbestos claims filed under both acts,
- whether the 1984 Longshore Act amendments have decreased the percentage of asbestos claims dismissed by OWCP,
- Labor's costs for administering asbestos claims under both acts,
- Justice's current and projected asbestos caseload,
- Justice's costs associated with defending and litigating asbestos court cases filed under the Federal Tort Claims Act,
- asbestos court cases (1) dismissed and the reasons for this and (2) for which the federal government has made payments as a result of court awards and settlements,
- the federal courts' current asbestos caseload, and
- the federal courts' costs associated with defending asbestos cases.

We did our work primarily at the Washington headquarters of Labor, Justice, and the Administrative Office of the United States Courts; the Administrative Office compiles cost and other data on asbestos cases in federal courts.

- At Labor, we obtained data on (1) the asbestos claims filed under FECA from calendar years 1980 to 1986 and (2) the claims in process under the Longshore Act as of August 1983 and August 1987.

²In May and September 1985, we issued a report on the asbestos claims filed with Labor and another on the federal government's costs incurred in defending and litigating asbestos court cases. See Information on Asbestos Claims Filed Under the Longshoremen's and Harbor Workers' Compensation Act (HR4-46, May 1, 1985) and The Federal Government's Cost of Asbestos Litigation (GAO/GGD-85-80, Sept. 19, 1985).

- Because of limited data maintained by OWCP's Longshore Division headquarters on asbestos claims processing, we went to the Baltimore, Maryland, District Office. Here we obtained processing-time information on 63 of 254 Longshore asbestos case pending as of September 30, 1987.
- At both Justice and the Administrative Office, we obtained (1) caseload data on asbestos cases and the costs associated with defending these cases for fiscal years 1984 through 1987 and (2) other requested data, such as the payments made for asbestos court cases and projected asbestos caseloads.

As agreed with the Subcommittee office, we did not verify the claims, caseload, and cost data provided by the three agencies.

We discussed with knowledgeable officials the asbestos claim and case processing as well as the data we obtained. The officials included (1) Labor's OWCP's associate directors responsible for the Longshore Act and FECA and the deputy associate solicitor, Division of Employee Benefits; (2) Justice's director, Environmental and Occupational Disease Litigation, Torts Branch, Civil Division, and director, Office of Planning, Budget and Evaluation, Civil Division; and (3) the Administrative Office's chief of the Statistical Analysis and Reports Division and chief of the Financial Management Division.

Our work was done primarily from July 1987 to January 1988.

Labor's Asbestos Claims Filed Under FECA Have Decreased

Enacted in 1916 and amended various times, FECA provides compensation benefits (to employees or their dependents) for covered federal civilian employees who were injured or who died while on duty. FECA defines an "employee" eligible for compensation as "a civil officer or employee in any branch of the government of the United States, including an officer or employee of . . . the United States." Under the act, "injury" includes ". . . in addition to injury by accident, a disease [including asbestosis, related to] employment . . ."; "compensation" includes both the money allowances payable to an employee (or, if dead, his or her dependents) and other benefits provided by the act.

About 3 million federal employees are currently eligible to receive benefits under the act for work-related injuries. Federal retirees are also eligible for FECA benefits; in addition, certain nonfederal employees, such as law enforcement officers injured in connection with federal crimes, are eligible.

**Appendix I
Asbestos: Growth of Federal Claims, Court
Cases, and Litigation Costs**

To obtain benefits under FECA, an employee must report any work-related injuries to the employer and to Labor. The employee can elect to immediately file a claim with Labor for payment of the medical expenses or compensation (or both) or file a claim with the employer for continuation of pay. Labor, however, cannot pay an injured employee compensation during the period for which the employee receives continuation-of-pay benefits from the employer.

The Secretary of Labor has delegated responsibility for administration of FECA to OWCP, which administers the FECA program through its Division of Federal Employees' Compensation at the Washington, D.C., headquarters and 13 district offices. Generally, claims are adjudicated and serviced by the district offices. Employees dissatisfied with findings on their cases can appeal to the Branch of Hearings and Review at Labor's Washington headquarters and, ultimately, to the Employees' Compensation Appeals Board—appointed by the Secretary of Labor under the act. The board has authority to hear and make final decisions—which are not subject to judicial review—on appeals from OWCP determinations and awards.

OWCP's Division of Federal Employees' Compensation provided information for calendar years 1980-86 on the asbestos-case filings under FECA. As shown in table I.1, generally a significant downward trend has occurred since 1983; 1,428 cases were filed in 1983 compared with 891 filed in 1986.

Table I.1: Labor's Asbestos Cases Filed Under FECA (Calendar Years 1980-86)

Calendar year	Cases filed
1980	1,288
1981	1,719
1982	1,034
1983	1,428
1984	1,175
1985	828
1986	891

During fiscal years 1985-87, under FECA, the federal government paid an average estimated \$1.1 billion annually in compensation payments for medical and other related benefits, as well as for death benefits. According to the latest FECA data from Labor, during fiscal year 1985, of the total benefits paid out, about \$13.2 million were for asbestos claims; for

fiscal years 1980 through 1985, benefit payments for asbestos totaled about \$56.7 million.

Labor's Pending Asbestos Claims Under the Longshore Act Have Increased

The Longshore Act, enacted in 1927, originally covered only certain maritime employees injured, disabled, or killed while working on navigable waters. A series of extensions in other acts, beginning in 1928, led to the extension of this act to a variety of other employees, such as those working on overseas military, air, and naval bases; under federal agencies' public works contracts; and in the District of Columbia. About 1/2 million longshore and harbor workers or other employees are covered by the Longshore Act.

The Longshore Act provides medical benefits, compensation for lost wages, and rehabilitation services to covered employees who are injured or who contract an occupational disease (including asbestos-related) during their employment. These benefits are paid by self-insured employers, authorized insurance carriers, or, under particular circumstances, through the two Special Funds, authorized under the act and administered by OWCP. The Special Fund for longshore workers, for example, is financed primarily by assessments on insurance carriers and self-insurers; it pays for such items as (1) certain independent medical examinations and reviews, (2) claims against insolvent employers, (3) vocational rehabilitation costs, and (4) payments for "second" injuries to covered employees.

OWCP also administers the Longshore Act through the Division of Longshore and Harbor Workers' Compensation in the Washington headquarters. Generally, claims are adjudicated and serviced through 14 district offices, including one located in Washington, D.C.

A claim begins when a covered employee reports any job-related injury to his or her employer or to OWCP or both. If the employer accepts the claim, it must provide the necessary medical treatment and compensation if applicable; if the employer denies the claim, the employee may file the claim with OWCP for adjudication. Adjudication may consist of several steps. The first is an informal conference between the parties in which a district office official attempts to (1) ascertain the facts and (2) have the parties mutually agree on all issues leading to the final resolution of the claim. If the parties do not agree, the claim is referred for a formal hearing before one of Labor's administrative law judges, who issues a decision that may later be appealed to Labor's five-member

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Benefits Review Board. Board decisions may be appealed to a federal court of appeals.

At the end of May 1987, owcp's Longshore Division submitted its first reports, using information compiled in a newly acquired automated management information system. But at the time of our review, the division could not provide us with the number of asbestos cases (under the Longshore Act) filed, closed, and pending in the current or prior fiscal years. The division could provide only the estimated pending cases as of August 1987. As shown in table I.2, these cases have increased since August 1983.

Table I.2: Labor's Pending Asbestos Cases Under the Longshore Act as of August 1983 and 1987

District office	1983 ^a	1987
Boston		367
Philadelphia		72
Norfolk		549
New Orleans		16
Chicago		9
Seattle		203
Long Beach		152
New York		115
Baltimore		253
Jacksonville		2,241
Houston		72
San Francisco		292
Honolulu		8
Total	3,600^a	4,349

^aBreakdown by district offices not available.

According to the latest data—including asbestos claims available from Labor—payments by employers and insurance carriers for disability compensation and medical benefits under the Longshore Act totaled \$351.1 million for 98,104 claims in calendar year 1984 and \$340.4 million for 93,000 claims in calendar year 1985. Labor paid an additional \$44.6 million in fiscal year 1984, \$57.1 million in 1985, and \$63.7 million in 1986 for compensation and benefits from the Special Funds. Labor could not provide data showing what portion of the benefit payments under the Longshore Act are attributable to asbestos claims.

Labor's Processing Time for FECA and Longshore Asbestos Claims

For FECA claims, we obtained data from OWCP on the time for processing a claim from filing to adjudication for 1985 and 1986 (the two most current years for which data are available). For the 828 asbestos claims filed in 1985, average time from filing to claims approved or denied took 255 calendar days; for the 891 filed in 1986, 167. This information is shown in table I.3.

Table I.3: Average Adjudication Time Required by Labor to Process FECA Asbestos Claims (Calendar Years 1985-86)

Processing claims:	1985	1986
	Claims	
Under review	1	36
Denied	376	327
Approved for medical treatment only	147	134
Approved for other benefits	304	394
Total	828	891

Average adjudication time: ^a	Calendar days	
	Approved claims	284
Denied claims	221	163
All claims	255	167

^aThe average adjudication times presented do not reflect times for claims pending from earlier years. As of December 31, 1986, OWCP had 184 pending FECA claims.

For Longshore cases, OWCP's Longshore and Harbor Workers' Compensation Division does not have a centralized database to determine the average time from the filing of a claim to payment or denial of monetary benefits. According to a division official, each district office maintains its own case files.

We visited the division's Baltimore, Maryland, District Office to obtain filing and processing data for the 254 asbestos claims pending as of September 30, 1987. The district office gave us the claims records; of these, we identified 100 claims we believe are the oldest in their data system. From our examination of these claims, we were able to obtain the processing time for only 63, of which 49 had been in process for 4 years or more and 12 of these, for 6 to over 8 years. We were unable to determine how long the remaining 37 claims were in process because the filing dates were inaccurately recorded as the dates the cases were entered into the database rather than the dates the claims were actually filed.

According to OWCP officials, the following factors account for the prolonged processing time for asbestos claims under the Longshore Act: The processing time is determined largely by the parties (that is, the

employer and employee); in many Longshore cases, the parties choose not to complete the processing of their claims under the act. This may be due to actions pending in a state compensation claim proceeding or an employee's or employer's action against an asbestos manufacturer. The district office is not able to compel the parties to complete the claims process under the act, and no statutory provision encourages the adjudication of the claim.

Labor Does Not Have Data to Determine Impact of 1984 Longshore Amendments on Dismissals of Asbestos Claims

The 1984 amendments to the Longshore Act, enacted on September 28, 1984, made significant changes in the program. The amendments, for example, more clearly define when the time begins for filing a notice of claim or a claim for an occupational disease that does not immediately result in disability or death. To illustrate, the time for (1) notifying the employer was changed from 30 days to 1 year after the employee or survivor becomes aware that the disease and resulting disability is work-related and (2) filing a claim was changed from 1 year to 2 years after the employee or survivor has, or reasonably should have, knowledge of the relationship between work and the disease or disability. The method for computing compensation was changed to the most recent actual wages of an employee. It was previously unclear whether a claimant should be compensated on the basis of his or her most recent wages or wages paid at the time of the last exposure to asbestos. The 1984 amendments provide that (1) within 1 year of retirement, retired workers can obtain compensation based on actual wages before retirement and (2) if impairment occurs more than 1 year after retirement, compensation is based on the national average weekly wage as defined in the act.

Although Longshore officials agree that one of the objectives of the 1984 amendments was to decrease the percentage of claims dismissed (nondisposed), Longshore division officials told us that the amendments have not had that effect; these officials, however, could not furnish data to support their position. Nondisposed claims include claims that were administratively closed, withdrawn by claimants, or not resolved. (Administratively closed claims are claims that were closed by OWCP for reasons such as these: lack of pursuit by the claimant, lack of entitlement for compensation under the act, or death of a claimant who had no survivors.) Disposed claims are those that were resolved through mutual agreement of the claimant and the employer or by a decision of a Labor administrative law judge.

Because of the limited information on claims filed under the Longshore Act in the Longshore Division's management information system, we could not determine the impact of the 1984 amendments on decreasing the percentage of nondisposed asbestos claims.

Labor's Costs for Administering Asbestos Claims Under FECA and the Longshore Act Not Determinable

OWCP's estimated costs for administering FECA and the Longshore Act for fiscal years 1984-87 are as shown in table I.4. OWCP, however, could not tell us how much of the above costs are for administering asbestos claims under either act. This is because OWCP's management information and accounting systems are not designed to provide data segregating Labor's costs for administering asbestos claims under the Longshore Act and FECA.

Table I.4: Labor's Costs for Administering FECA and the Longshore Act (Fiscal Years 1984-87)

Fiscal year	FECA	Longshore
1984	\$46,056,000	\$7,192,000
1985	52,269,000	7,734,000
1986	49,819,000	6,756,000
1987	46,317,000	7,197,000

In addition to OWCP's expenditures for FECA and the Longshore Act, other offices in Labor incur expenses in administration of the two acts. These include the Solicitor's Office, the Office of Administrative Law Judges, the Office of Inspector General, and the Benefits Review Board. None of these offices, however, can identify their costs; thus, the overall Labor costs of administering asbestos claims are not determinable.

Justice's Pending Asbestos Cases Have Increased but New Court Cases Filed Have Decreased

The Justice Department has responsibility for defending all asbestos injury claims against the federal government in federal courts; this includes those cases filed by claimants who bring suit under the Federal Tort Claims Act. Individuals have been filing suits against the federal government alleging injury from asbestos exposure. In addition, 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; manufacturers and suppliers believe that the federal government should assume some of the risk of losses for the third party personal injuries.

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According to the director of the Torts Branch, only a very small portion of its total caseload—less than 1 percent—is actions or suits by individuals against the federal government. An overwhelming majority of the cases, according to the director, are actions in which the claimants are corporations that have sued the federal government.

Since the end of 1983, the Torts Branch has had responsibility for defending all asbestos-related tort cases filed against the federal government. The branch's records showed that asbestos cases received in Justice have decreased substantially since fiscal year 1984. Although some progress has been made in terminating cases pending since 1984, the pending cases have increased from 1,785 on October 1, 1983, to 2,901 on September 30, 1987. Justice's asbestos caseload for fiscal years 1984-87 is shown in table I.5.

Table I.5: Justice's Asbestos Caseload
(Fiscal Years 1984-87)

Cases	Fiscal years			
	1984	1985	1986	1987
Pending as of Oct. 1	1,785	2,689 ^a	3,112	3,125 ^a
Received	1,002	799	227	138
Terminated	-43	-376	-230	-362
Pending as of Sept. 30	2,744 ^a	3,112	3,109 ^a	2,901

^aThe number of cases pending at the end of 1984 and 1986 differ from those pending at the start of the next years by 55 cases for 1984 and 16 cases for 1986. According to Justice officials, these pending cases were compiled at different times and data from previous years were subject to change because of improvements in the accuracy and quality of the reported data.

The 2,901 pending cases in fiscal year 1987 include 91,186 claimants with an estimated \$13.6 billion in claim damages or awards at issue.

Torts Branch officials also gave us an estimate of Justice's future asbestos caseload, which they believe will decrease to about 2,416 pending cases at the end of fiscal year 1989. This would represent about a 16.7 percent decrease from the 2,901 cases pending at the end of fiscal year 1987.

Justice's Costs for Asbestos Litigation Have Increased Significantly

The Torts Branch's records show that Justice's costs for defending asbestos court cases have increased significantly—from about \$5.9 million in 1984 to about \$10.2 million in 1987. Justice's expenditures for asbestos litigation, fiscal years 1984-87, are shown in table I.6.

Of the total costs shown in table I.6, expenditures for automation contracts (for an automated litigation support system) represent the largest increase. According to Justice officials, this system is used to acquire, analyze, and store—usually on microfilm and in computerized databases—about 1.6 billion asbestos-related documents. Justice officials stated that the automated system enables its attorneys to quickly locate key documents and use them in defending asbestos-related claims.

**Table I.6: Justice's Expenditures for
 Asbestos Litigation (Fiscal Years 1984-87)**

Expenditures	1984	1985	1986	1987
Salaries	\$2,226,197	\$2,038,113	\$1,979,519	\$1,917,033
Benefits	223,928	220,116	213,788	254,774
Travel	57,921	33,640	32,985	54,687
Automation contracts	1,353,335	5,226,129	4,050,000	5,080,272
Computer time	346,665	145,000	160,000	455,000
Transcripts	18,025	22,333	20,971	97,420
Foreign counsel	80,500	85,591	103,420	327,868
Other	27,059	84,110	31,757	233,645
Expert witnesses	58,428	0	0	0
General overhead	1,460,316	1,846,499	1,737,881	1,737,881
Total	\$5,852,374	\$9,701,531	\$8,330,321	\$10,158,580

Court Awards and Settlements Paid by the Federal Government in Asbestos-Related Cases

A Justice official told us that as of October 1987, the federal government had paid monetary claims for court awards and settlements in only one asbestos-related case—in 1978, an asbestos lawsuit in Tyler, Texas, paying \$5.75 million to 445 individuals.³

In addition, on July 27, 1984, the federal government was found liable under the Longshore Act and ordered to pay the plaintiff \$145,013 as stipulated damages by a district court in the Shuman case. On June 26, 1985, however, a court of appeals reversed the district court's ruling and the case was closed without any payment,⁴ according to Justice officials.

³This is commonly referred to as the Tyler I case.

⁴Shuman v. United States, 765 F.2d 283 (1st Cir., 1985).

In another asbestos case, on July 9, 1983, Johns-Manville Corporation and Johns-Manville Sales Corporation (collectively referred to as Johns-Manville) sued the federal government for settlements, judgments, and damages resulting from 58 personal injury closed claims or suits brought against Johns-Manville.⁵ Damages were also sought for another 327 claims or suits that had not been closed. The suits were for (1) \$763,361 for settlements and judgments in the closed cases and (2) \$185,742 for attorneys' fees, costs, and expenses incurred in defending these claims and suits. The damages for the pending suits are unspecified.

All the underlying claims or suits arose during World War II from the exposure of workers to asbestos in public shipyards—either owned or allegedly controlled by the U.S. Department of the Navy—or in private shipyards—allegedly controlled by the U.S. Maritime Commission. Johns-Manville charged the federal government, acting through the Navy and the Maritime Commission, with breach of

- the implied warranty that the asbestos-containing products, principally thermal insulation, purchased under Johns-Manville's supply contracts would be free from defects and safe for use and
- its duty to reveal superior knowledge—by failing to disclose to Johns-Manville the conditions in which asbestos-containing products were used in the shipyards, including failure to enforce the government's own health and safety standards for the application and removal of asbestos-containing products.

On August 6, 1987, the claims court concluded that (1) Johns-Manville had failed to establish by a preponderance of the evidence its entitlement to recovery on any of the theories of liability (that is, its charges against the federal government) that had been tried and (2) the damages sought are unrecoverable. Accordingly, the court dismissed the complaint and the defendant's counterclaim. In October 1987, Johns-Manville appealed the claims court decision; the appeal was still pending as of December 31, 1987. An official in the Torts Branch, who handles asbestos suits against the federal government, told us that asbestos cases brought against the federal government should drop substantially in the future if the government wins the case in the court of appeals.

⁵Johns-Manville Corporation et al. v. United States, 13 Cl. Ct. 72 (1987).

Federal Courts' Asbestos Caseload Has Increased Significantly

The Administrative Office is responsible for compiling and maintaining data on the operations of the federal courts, including asbestos-type claims that are adjudicated in the district courts and courts of appeals. In addition to filing suits against the federal government, thousands of individuals—alleging injury from exposure to asbestos—are filing suits in state or federal courts or both against asbestos miners, manufacturers, suppliers, and processors.

The Administrative Office began compiling statistics on asbestos-related cases as a separate category in November 1983 and could only provide us with data on the caseload in district courts. The office does not compile or have readily available asbestos caseload data on the courts of appeals.

The data provided on the district courts showed that since 1984, terminations of asbestos cases have lagged far behind new filings. As shown in table I.7, terminated cases have increased steadily from 1984 to 1987. Cases received have increased, causing the pending cases to increase from 8,995 at the end of 1984 to 20,278 at the end of 1987.

**Table I.7: Federal District Courts'
 Asbestos Cases** (Fiscal Years 1984-87)

	Fiscal years			
	1984	1985	1986	1987
Pending cases, October 1	5,885	9,218 ^a	11,824	16,789 ^a
Cases received ^b	3,538	3,437	7,149	6,943
Cases terminated	-428	-831	-2,185	-3,454
Pending cases, September 30	8,995 ^a	11,824	16,788 ^a	20,278

^aThe number of cases pending at the end of 1984 and 1986 differ from those pending at the start of the next years by 223 cases for 1984 and 1 case for 1986. According to Administrative Office officials, the 1984 and 1986 figures were provided to GAO on the basis of interim reports prepared before the close of the fiscal year; the 1985 and 1987 figures include additional case information that became available after the interim report was prepared.

^bThe cases received, as provided by the Administrative Office, may not be complete since the figures (1) include duplicate counts representing cases transferred between district courts, which are counted as new filings by the receiving court and not adjusted downward by the transferring court and (2) exclude cases that may have been inadvertently coded by the courts as other categories rather than asbestos cases. See GAO report, *Product Liability: Extent of "Litigation Explosion" in Federal Courts Questioned* (GAO/HRD-88-36BR, Jan. 28, 1988).

The Administrative Office also provided us with data on the reasons for the district courts' terminating asbestos cases during fiscal years 1985-87. Although the data were not detailed or complete, the information provided for 2,140 of the 2,185 terminations in fiscal year 1986 illustrates the predominant reasons. Of the 2,140 cases, 1,678 were broadly categorized as terminated for such diverse reasons as cases dismissed by

the courts, settled by the parties involved and withdrawn, or discontinued by the claimants; 316 cases were terminated because the court had rendered judgments for or against the claimants. In addition, the district courts dismissed prosecution of 44 cases because the plaintiffs failed to take the required actions; the district courts also transferred or returned 102 cases to other courts for action.

Federal Courts' Costs for Asbestos Cases Have Increased

For fiscal years 1984 through 1987, the Administrative Office provided us cost estimates for the asbestos caseload at district courts as well as the courts of appeals. As shown in table I.8, the costs increased from about \$10.1 million in 1984 to about \$13.4 million in 1987.

**Table I.8: Federal District Courts' and
Courts of Appeals' Estimated Costs of
Processing Asbestos Cases** (Fiscal Years
1984-87)

Fiscal year	Estimated costs
1984	\$10,092,735
1985	11,278,347
1986	11,545,289
1987	13,427,797

In providing the cost information, the Administrative Office's chief, Financial Management Division, advised us that the office's cost estimates for asbestos cases may be understated. The estimated court time and costs for processing asbestos-related cases were based on a 1979 estimate of the percentage of personal injury product liability cases for asbestos relative to the court's total cases;⁶ very few asbestos cases, however, were in the courts when the study was conducted.

The Administrative Office also provided us with the courts' estimated expenditures on asbestos cases for fiscal years 1988-90. These estimates show that the district courts and courts of appeals expect to spend the following in future years: about \$18.0 million in fiscal year 1988; about \$20.1 million in 1989; and about \$20.9 million in 1990.

⁶S. Flanders, The 1979 Federal District Court Time Study 2 (Federal Judicial Center, 1980).

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