

## **Babcock & Wilcox Files Motion, Roadmap For New Claims Protocol**

NEW ORLEANS — Babcock & Wilcox Co. (B&W) on Oct. 18 filed a motion in Louisiana bankruptcy court for a case management order establishing the protocol for determining the validity of asbestos personal injury claims (In re: Babcock & Wilcox Co. et al., No. 00-558; Bkcy. No. 00-10992 [R-5], E.D. La. Bkcy.).

Contending that the court system was flooded with questionable asbestos personal injury claims just before the July 30, 2001, bar date, B&W's motion and accompanying background briefs, the "Report to the Court" and the "Roadmap," propose a "new way" of compensating asbestos victims and handling their claims and cites the importance of "separating the wheat from the chaff" when going through the claims determination process in bankruptcy court.

(Motion in Section C. Document #48-011030-104M. Report available. Document #48-011030-008S. Roadmap available. Document #48-011030-009S.)

### **Protocol**

B&W's motion alleges that analysis of the company's historical settlement program and preliminary analyses of the asbestos personal injury proofs of claim show that B&W has been and continues to be burdened with a massive amount of unsupported claims. B&W must, therefore, assert defenses and establish a protocol for determining the validity of claims, the motion says.

B&W contends that out of 176,000 claimants who allege to have asbestosis, more than 130,000 have no physical impairment. As of the July bar date, 221,375 claims had been filed against B&W.

According to B&W, the company will assert only defenses that can resolve large numbers of claims. Those defenses include defenses relating to the specialized, limited role B&W played with respect to asbestos and the identification of its products at various worksites; defenses based on science and the evidentiary admittance rules of Daubert, including lack of injury and lack of causation; and defenses that entail the patent deficiencies in the proofs of claims, such as duplicate claims and claims paid in full before the petition date.

The company asserts that the product identification defense should defeat approximately two-thirds of the 221,375 proofs of claim based on a preliminary analysis that 68 percent of the exposure sites sampled could not allege that the claimant even worked at a site where a B&W boiler was present.

### **Exemplar Objections**

B&W's motion asks the U.S. Bankruptcy Court for the Eastern District of Louisiana to enter a case management order establishing the sequencing and timing for its consideration of the various categories of claims objections and defenses and the procedures or protocol for litigating the objections or defenses. When the case management order is entered, B&W would file exemplar objections and summary judgment motions for each of the initial claim objections to be considered. Should B&W prevail, the company would file omnibus objections and summary judgment motions to all other similarly situated claims, the company says.

In B&W's accompanying "Report to the Court," the company provides an update about the worsening tort system crisis in asbestos litigation and provides an update on developments with the claim processes set by the Bankruptcy Court last year, including the mass filing of 49,000 "settled" claims in March 2001, and a preliminary summary of data from the proofs of claim filed by the July 30 bar date.

B&W's "Roadmap," also filed Oct. 18, details the defenses B&W will assert and includes background on precedent-setting decisions involving government contractor defenses and issues revolving around the statute of repose, punitive damages, product identification and medical causation under the gatekeeping rules of Daubert. The "Roadmap" also contains an appendix that outlines how ILO Readings (International Classification of Radiographs of the Pneumoconiosis) and lung function tests work.

Representing B&W are David M. Bernick, John Donley and Theodore L. Freedman of Kirkland & Ellis in Chicago and Jan M. Hayden of Heller, Draper, Hayden, Patrick & Horn in New Orleans.