

Discriminatory Trusts

Nicole Langston, Assistant Professor of Law

Vanderbilt Law School

nicole.langston@vanderbilt.edu

ABSTRACT

There are thousands of mass tort claimants with asbestos or opioid claims that have been funneled into bankruptcy. Both torts began as epidemics that were attributed to certain occupations, like mining and shipbuilding, as well as geographic locations, like rural areas. Both torts also initially affected lower-class white men, who principally make up the “current claimants” in these mass tort bankruptcy cases. However, there has been an increasing prevalence of asbestos and opioid exposure for women and people of color, oftentimes the “future claimants” —those who have been exposed to a harmful product but the injury has not yet manifested. Due to inequality outside of the bankruptcy system, women and people of color have unequal access to treatment and have higher mortality rates, making them more likely to have larger claims that can quickly deplete mass tort trusts if these factors are not considered. As a result, women and people of color are at risk for receiving a lower distribution for their claims than their similarly situated white-male counterparts. For the bankruptcy system to uphold its normative principle of “fair distribution” amongst claimants, there cannot be discriminatory trusts.