“Moral dilemmas,” for all their philosophical interest, can sometimes obscure the more pressing, primal problems of human need and suffering. As the young and healthy debate the morality of euthanasia and assisted suicide, a terminally ill centenarian may be begging for an end to the parade of medical treatments that preserve his lonely, painful life. While affluent, primarily male politicians thunder against the immoralities of abortion, a poor woman may be dying of a botched operation performed out of desperation in an area where clean, safe abortion clinics do not exist. Our constant wrangling over moral issues often proves to be a stumbling block to the most universal of moral goals, the alleviation of human suffering.

However, we must be constantly vigilant with regard to the morality of our actions, making sure that our own personal profit does not come at the expense of someone else’s well-being. When a doctor prescribes an unnecessary, though painful and expensive, treatment so that she may receive an incentive from her HMO, her actions are immoral. When a lawyer accepts a fee to represent a case in court, knowing that the case is frivolous and that no wrong has actually been done, his actions are immoral – he is draining human and financial resources from cases in which someone has clearly been wronged.

Much has been made over the amount of groundless litigation clogging our nation’s dockets in recent years. Tort reform is a perennial political topic, though no one reform seems capable of stopping the flood of lawsuits, both trivial and meaningful. This is in part due to the ambiguity inherent in the definition of a “meaningful” lawsuit. A
perfect example of this ambiguity is the mass lawsuits that were filed in the wake of the
bankruptcy of certain asbestos debtors – was it immoral for law firms, in concert with
medical screening companies, to diligently seek out anyone and everyone who might
have been exposed to asbestos and file “junk” lawsuits based on this exposure?

At first glance, this seems to be the case. The gruesome, heartrending description
of mesothelioma contained in MARF’s letter makes it clear that those who suffer from
the disease desperately need the rapidly decreasing asbestos funds for treatment and
research. On a scale of 0-100, the doctors and scientists of MARF state, the suffering of
mesothelioma patients “typically [rates] at the highest range of this scale,” whereas
“pleural disease claimants without lung impairment” may not “rate at all.” In the face of
such suffering, what moral person could thoughtlessly siphon away funds that rightfully
belong to the terminally ill? If the mass filers indeed brought before the courts people
who had been exposed to asbestos but did not and would never experience any adverse
effects and profited from such litigation, then perhaps their actions were indeed immoral.

Despite all this, we cannot assume anything about the mass filers’ motives or the
quality of their cases. It is easy to cast them as callous villains seeking to drain the pool
of asbestos money for their own gain. However, since their views are not represented in
either letter, we must give them the benefit of the doubt, as it is conceivable that they
thought of themselves as tireless crusaders for the victims of asbestos exposure,
providing a voice for the voiceless—those too poor or isolated to seek compensation. It
is even possible that some mesothelioma patients were discovered in this manner. Some
claimants and their families could have been suffering for years without knowing that
asbestos exposure was the cause of their debilitation. Also, asbestos is such a harmful
compound that it would be extremely difficult to find anyone who was exposed to it without being harmed in any way. Given the lengthy latency period for many asbestos-related ailments, there may be many members of the large class action lawsuits who seem healthy now, but whose health will rapidly deteriorate in a decade or two. Seen in this light, the mass lawsuits cannot properly be called “junk” lawsuits -- if an attempt has been made to bring to light everyone whose health has been deteriorated by asbestos exposure, how can such an effort be dismissed as “junk”?

While some lawyers will never tire of wrangling over the blurred line between a legitimate lawsuit and an illegitimate one, it is important to remember that, as Shep Hoffman states in a letter to his colleagues, “to the extent that there are immoral, unscrupulous and unethical parties involved in asbestos litigation, they are first and foremost the perpetrators of our clients’ injuries.” The asbestos debtors themselves share some of the responsibility for the disappearance of available funds; by refusing to settle out of court in certain cases, instead engaging in lengthy, high-profile court cases they were bound to lose, they have only themselves to blame for the ensuing bankruptcy. The raging debate as to whether it was wrong for law firms to seek possible asbestos plaintiffs deflects too much attention from the culpability of asbestos debtors and obscures the misery of the men and women who suffer from mesothelioma and other debilitating diseases ensuing from their exposure to asbestos. By perpetually debating the morality of mass lawsuits, lawyers are absurdly casting themselves as the victims of the asbestos debacle, blaming other lawyers rather than those companies that criminally exposed employees to asbestos for their clients’ suffering and for the inadequacy of available funds for compensation.
MARF’s letter describes mesothelioma in all of its grim details – the crushing pain, the misery and financial hardship borne by the patients’ families, the utter lack of knowledge and interest on the part of the greater medical community, the debilitation that follows even relatively successful treatment. The letter is like a clear, plaintive voice cutting through the cacophonous debate – a solution is needed.

This solution will never arise from a debate over the morality of the mass lawsuits. The immense suffering of asbestos victims trivializes and cheapens the lawyers’ moral debate. No amount of polemics or pontification on the part of lawyers will ever lead to the slightest improvement in the lives of the victims of asbestos exposure. The issue of asbestos bankruptcies, which has heretofore been cast in moral terms, needs to be reexamined from a more pragmatic viewpoint. Put simply, while the lawyers haggle, the victims of asbestos exposure continue to suffer. Some sort of concerted effort is direly needed on the part of all lawyers involved in the asbestos suits to find a practical, humane way to distribute the available funds. For all the talk of morality, this is the only true moral issue at stake.

After all, what is it that enables lawyers to feel pride in their vocation? Aside from the cynical few, who point to a Lexus and a home in a gated community as the greatest reward for their work, most lawyers would cite more intangible prizes: the satisfaction of helping others find justice in an unjust world, the punishment of the guilty and the compensation of their victims. When lawyers engage in such finger-pointing as over the mass filer lawsuits, they are losing sight of these rewards. When their work is consumed by internecine bickering, something of the nobility of their profession is lost.
With an issue such as this one, where the victims’ suffering is so great, it is essential that lawyers do not lose sight of their quest for justice. The fundamental problem at hand is that various companies exposed their employees to asbestos, and now these employees are beginning to suffer the noxious effects, including mesothelioma. Therefore, lawyers should strive to bring the criminal companies to justice and force them to pay compensation to their victims, so that the victims’ various diseases and ailments might be cured or at least lessened. However, as Shep Hoffman makes perfectly clear, the funds available for such cures and treatments are rapidly decreasing. Lawyers should attempt to find a practical solution for the disbursement of these decreasing funds without placing the blame on one another for their depletion. No matter whose fault it is that the asbestos debtors are going bankrupt, the fundamental problem remains: sick patients are desperately in need of compensation. There is no room in such an issue for any lawyer to assert his or her superior morality to any other lawyer. All involved lawyers should realize and accept that there is a limit to their responsibility. Moral pronouncements are the domain of newspaper columnists and magazine commentators. The lawyers’ duty is merely to bring the perpetrators of asbestos exposure to justice and to fairly distribute any damages collected. True, this responsibility lacks some of the glamour of moral haranguing, but that in no way diminishes its necessity.

If the asbestos lawyers are truly interested in conducting their cases morally, it is important that they recognize the suffering of asbestos patients and treat the alleviation of that suffering as the ultimate moral objective. This, not other lawyers’ conduct, should be the primary moral concern for all involved parties.
A disease such as mesothelioma needs special consideration. Although it affects only 5 to 10% of all people exposed to asbestos, this significant minority suffers horribly from permanent pain and disability, and eventually an excruciating premature death. Even the most effective treatments are astronomically expensive, often require extensive travel, and may at best lessen the patient’s pain. Compounding the physical misery of the disease is an utter paucity of research being done to find a cheaper, more effective treatment for the disease. Since there is a latency period of 15 to 50 years between exposure and onset of the disease, there is some hope for those who have not begun to experience the disease in its full effect – perhaps a cure can be found in time to save them from the suffering they seem doomed to experience. Such a cure, however, cannot be found until some practical formula is developed for the allocation of asbestos funds, before they are consumed entirely by bankruptcy and ravenous insurance companies.

No one, especially in light of MARF’s letter, would argue against the speedy, equitable allocation of funds to the victims of asbestos exposure. With more than 200,000 claims filed since 1997, however, this task has reached enormous proportions. What is needed more than any moral debate is a concerted effort on the part of all involved lawyers to practically distribute whatever funds are available. Shep Hoffman is correct in his assessment of the heated moral debate – it is “divisive and unproductive.” Rather than attempting to assert their moral superiority over the mass filers, all concerned lawyers should begin a discussion that is solely pragmatic and whose only aim is fairly compensating asbestos victims to the best of their ability. Perhaps an organization should be formed – an association for asbestos lawyers – whose purpose is to coordinate the actions of such lawyers in order to achieve a just solution to the problem of damage
payments. Such an organization could even extend its offer of membership to the so-called “junk” filers in an attempt to integrate the plaintiffs they have brought forward into a coordinated system of compensation. By appealing to the practical mission of equitable disbursement to all victims, perhaps such an organization will also appeal to the lawyers’ nobler instincts and end the moral bickering that has been plaguing the profession.

It is cases such as this one that provide lawyers with the opportunity to demonstrate that, contrary to popular perception, they are not mere “ambulance chasers” or useless hagglers bent on turning a profit. By putting aside their differences and working together to provide fair and equitable compensation for victims of asbestos exposure, they can demonstrate the nobility of their profession. Each lawyer is responsible for his or her own moral conduct and no one else’s. The time and energy that has until now been expended complaining of others’ immorality must now be focused on obtaining justice for the victims. All lawyers involved in asbestos litigation must do their best to transcend the moral squabbling that has for so long stood in the way of justice for the victims of asbestos exposure.