A PUBLIC POLICY MONOGRAPH

Overview of Asbestos Claims Issues and Trends

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American Academy of Actuaries'
Mass Torts Subcommittee

American Academy *of* Actuaries

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AMERICAN ACADEMY *of* ACTUARIES

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Executive Summary

The asbestos claims problem, once described by the U.S. Supreme Court as an "elephantine mass"[1] and by insurance rating agency A.M. Best as a "tidal surge,"[2] is not going away. Litigation that most thought would decline by the end of the 20th century continues today and remains complex and uncertain. Estimates from actuarial consulting firms long involved in such work indicate that the ultimate costs arising from U.S. exposure to asbestos could range from $200 billion to $265 billion.[3] More than 2,600[4] people die each year from mesothelioma, a signature disease of asbestos exposure. However, many defendants assert that the majority of those historically filing claims and receiving compensation were not impaired. The volume and cost of the litigation have forced otherwise solvent companies to file for bankruptcy (see Reference List 2). As the initial targets in the litigation have become unable to pay their share of damages, additional, peripheral defendants (who did not manufacture asbestos-containing products and thus contend that they were generally less likely to have known of its dangers to human health) have been named in these lawsuits. Many defendant companies believe they are not getting a fair legal evaluation of their cases in court, and the Supreme Court has twice overturned efforts to resolve the litigation through class action settlements. While Congress has been called upon to act, no federal legislative reform has yet been enacted. In the absence of federal reform, however, some states that previously experienced the highest volume of asbestos claims have enacted legislative and judicial reforms.

Introduction

This monograph has been written by the Mass Torts Subcommittee of the American Academy of Actuaries. Its purpose is to provide a brief history of personal injury claims arising out of asbestos exposure to aid in understanding current issues arising from these claims. The intended audience includes those who may become involved with proposed public policy responses to these issues. This monograph has been updated to include information beyond that presented in the original release dated December 2001.

This monograph consists of the following sections:

- History of Asbestos Usage
- Health Risks Associated with Asbestos Exposure
- Current Personal Injury Claims Situation
- Concerns of Major Parties Involved in Asbestos Personal Injury Litigation
- Historical Efforts to Solve the Asbestos Claims Problem
- Recent Efforts to Solve the Asbestos Claims Problem
- Summary and Conclusions

History of Asbestos Usage

Asbestos was once considered a "miracle mineral."[5] This naturally occurring silicate has six varieties[6] and many desirable characteristics, including resistance to fire, heat, and corrosion. It is strong, durable, and flexible; its fibers can be woven into cloth. Asbestos is inexpensive because it is available in abundant quantities. Its versatility has led to its use as a component of a variety of products in numerous industries (e.g., building materials such as cement siding, insulation, roofing, flooring, and wire insulation; brake and boiler linings; gaskets; and ship building materials – especially during World War II). In fact, asbestos was classified as a strategic material during World War II.[7]

Estimates made in 1982 indicated that 27.5 million Americans had significant occupational exposure in industries traditionally associated with asbestos (e.g., shipbuilding, construction).[8] More recent estimates indicate that more than 100 million people[9] in the United States were occupationally exposed to asbestos during the 20th century.

Asbestos use in the United States has been curtailed significantly since its peak of nearly 1 million tons in 1973.[10] After Congress passed the Occupational Safety and Health Act (OSHA) in 1970, increasingly strict standards were imposed to enforce safety precautions in the workplace. However, these workplace safety standards do not protect end users of asbestos-containing products.

There were approximately 3,500 products in U.S. commerce that contained asbestos when the U.S. Environmental Protection Agency (EPA) attempted to impose a complete ban on asbestos use in 1989.[11] The EPA's ban was successfully challenged before the U.S. Court of Appeals for the Fifth Circuit with very few elements of the ban left intact.[12] Thus, asbestos-containing products are still legal in the United States. Approximately 260,000 metric tons of asbestos were imported to the U.S. during the 1990s and used in various industries including roofing products, friction products, packing, and gaskets.[13] However, the end uses are not tracked effectively, and warning label requirements are vague. As a result, potentially dangerous exposure to asbestos in the United States continues today.

Asbestos use continues at significantly higher levels abroad, especially in developing nations. In 2000, U.S. consumption of approximately 15,000 metric tons represented only 1 percent of world consumption of approximately 1.5 million metric tons.[14] Countries with the highest consumption included Russia, China, Brazil, India, and Thailand.[15] Due to the immediate benefits of some asbestos products (e.g., inexpensive cement pipes to transport clean drinking water or to dispose of sewage), its use is widespread. Unfortunately, in many nations, few safety precautions are being taken, and many people in these nations are likely to contract asbestos-related diseases.

Even if asbestos usage in products ceased immediately throughout the world, individual exposure to asbestos fibers would continue, perhaps indefinitely. This residual exposure could be caused by:

- Previously manufactured asbestos-containing products that have not been replaced or discarded;
- Dust or other waste remaining in the environment from previous use or incomplete disposal of those products;
- Erosion of naturally occurring deposits in asbestos bearing rocks.[16, 17]

Health Risks Associated With Asbestos Exposure

Several diseases have been linked to asbestos exposure, including mesothelioma, lung cancer, other cancers, asbestosis, and pleural changes.[18] A long latency period from initial exposure to asbestos to manifestation of asbestos-related disease has resulted in delayed recognition of the health hazards of asbestos. This contributed to the unrestricted (or minimally restricted) use of asbestos until OSHA standards were implemented in the 1970s.[19]

Asbestos Diseases		
Disease	Injury[20]	Average[21] Latency
Mesothelioma[22]	■ A malignant tumor rising in the pleural[23] membranes of the lungs or diaphragm and pericardial membrane of the heart. ■ Symptoms may be vague, including chest pain, shortness of breath, weakness, and weight loss. The disease may be indicated by a chest X-ray, but a full pathologist's microscopic exam is needed.[24] ■ Fatal within 1 – 2 years.	30-40 years[25]
Lung Cancer	■ A malignant tumor of the bronchi[26] covering that grows to surrounding tissue. ■ Symptoms include chest pains, cough, weakness, and shortness of breath. Chest X-ray may detect the cancer, but a pathologist's microscopic exam is needed. ■ Often fatal.	10-30 years[27]
Possible Other Cancers[28, 29]	■ Tumors of the throat, larynx, esophagus, stomach, colon, and lymphoid. ■ X-rays may detect the cancer, but a pathologist's microscopic exam is needed. ■ Often fatal.	
Asbestosis	■ A pulmonary insufficiency caused by scarring near alveoli. As the body tries to dissolve asbestos fibers trapped in lung tissue, it produces an acid that does little damage to the fibers but may cause severe scarring in the surrounding tissue. ■ Diagnosis through physical signs, history of exposure, pulmonary functioning test, and radiological findings. Some appreciable level of exposure over 10 years is likely required before a detectable, significant amount of functioning is lost. ■ Slowly progressive, potentially fatal.	20-40 years[30]
Pleural Changes	■ Generally nonimpairing fibrosis or scarring of the pleura tissue over the chest wall or diaphragm. ■ Evidenced by effusion, thickening, plaque, or calcification. ■ Do not appear to be pre-cancerous, but some believe pleural changes may increase the risk of developing lung cancer in the future.	10-30 years[31]

Current Personal Injury Claims Situation

The purpose of this section is to provide information and insight regarding lawsuits alleging asbestos injuries. This section summarizes:

- Key features of asbestos litigation;
- Available data measuring the litigation; and
- Changes in the litigation environment since the publication of the Academy's 2001 monograph.

Key Features of Asbestos Litigation

Tens of millions of Americans have been exposed to asbestos in the workplace. Workers suffering from asbestos-related injuries were originally compensated through the workers' compensation system, subject to statutory benefit limits then in effect. However, in 1973, the plaintiffs in the landmark case of *Borel v. Fibreboard*[32] were successful in holding manufacturers of asbestos-containing products strictly liable for the failure to warn of an unreasonably dangerous product.[33] Tort theory affecting asbestos litigation has continued to evolve over the years with the issuing of decisions regarding strict liability, scientific evidence, awards for emotional harm, medical monitoring, and punitive damages (see Exhibit 1). The sheer number of asbestos claims has severely challenged state court systems, in which the vast majority of asbestos cases are filed.[34] Some feel that, in attempting to mitigate this problem, courts often choose to disregard traditional tort law in asbestos cases.

Many workers with asbestos-related injuries were employed in union trades (e.g., installers and electricians) and worked at a large number of sites with asbestos-containing products during their careers. Some of these job sites exposed workers to numerous asbestos-containing products. As a result, many workers name a large number of defendants in their lawsuits. The number of defendants can vary widely, depending on the claimant's trade, exposure, and, potentially, by the bankruptcy status of possible defendants.

In many states, it has been typical for plaintiffs' attorneys to join several plaintiffs in a group to file their claims against several dozen defendants. The plaintiffs' injuries can be quite dissimilar, ranging from those who are not currently impaired or who have nonmalignant injuries to those suffering from cancer and mesothelioma. Such grouping of claims, the defendant companies assert, has forced them to make payments on claims of questionable merit in order to avoid the possibility of substantial punitive damages awarded by sympathetic juries hearing mesothelioma cases. The involvement of multiple plaintiffs and multiple defendants results in a more complicated and expensive process for resolving asbestos claims than for resolving typical tort claims (see Exhibit 2).

A disproportionate number of asbestos claims are filed in state courts in perceived pro-plaintiff jurisdictions. This is clear evidence, some say, of "forum shopping" on the part of plaintiffs' attorneys. For example, disproportionately large numbers of cases were previously filed in Texas and Mississippi. However, new claim filings in both of these states decreased dramatically after the states enacted effective tort reforms. State reforms have caused major shifts over time with regard to the jurisdictions in which asbestos claims have been filed, and it is likely that plaintiffs' attorneys will continue to assess which venues present the best environment for their clients' cases (see Exhibit 3).

In addition to asbestos lawsuits against major defendants, such as the producers of raw asbestos, installers, and insulators, many lawsuits are filed against peripheral defendants, e.g., those who manufactured products in which asbestos was encapsulated,[35] distributed products containing asbestos, or owned premises that contained asbestos. The causal connection between earlier peripheral defendants and asbestos was clear (e.g., where asbestos was used as an insulating material by boiler manufacturers). However, the relationship of asbestos to some of the more recent peripheral defendants is not as obvious (e.g., Campbell's Soup, Gerber [baby food maker], and Sears Roebuck).[36] This later group of peripheral defendants was not as likely to have known of the dangers of asbestos. Nonetheless in the current legal system, in which the plaintiff's burden of proof as to causality has sometimes been relaxed, peripheral defendants in some states can be held jointly and severally liable[37] with major asbestos producers. Parties formerly viewed as peripheral defendants are now bearing the majority of the costs of awards relating to decades of asbestos use. [38,39]

Data Sources and Trends

There is no single source of comprehensive information regarding asbestos injuries and claims. However, there are a number of sources that provide insight into the current asbestos personal injury environment, including:

- Epidemiological studies on the expected number of injuries (see Reference List 1);
- RAND's asbestos study;
- Manville Trust data;
- Consultants' estimates of ultimate asbestos payments and financial data from Property and Casualty (P&C) insurers;
- Other sources.

RAND One of the most comprehensive studies of asbestos litigation is summarized in RAND's 2005 report.[40] RAND concludes that at least 730,000 asbestos claimants filed lawsuits through 2002 against more than 8,400 defendant companies. Further, the RAND report states that the number of claims filed annually increased sharply beginning in the mid-to-late 1990s. Claimants with nonmalignant injuries account for most of the growth, and

some evidence suggests that most claimants with nonmalignant diseases are currently unimpaired. According to RAND's study, at least half of the $70 billion of asbestos claims paid by defendants and their insurers is related to nonmalignant conditions. The RAND study does not include information beyond 2002; there have been notable changes since that time, as described below.

Compensation for mesothelioma claimants typically exceeds $1 million, with lower compensation for claimants with cancer and nonmalignant conditions. However, according to RAND, the asbestos litigation system has been an inefficient mechanism for providing compensation to victims of asbestos-related disease. That study shows that defense transaction costs consumed approximately 31 percent ($21 billion) of total payments through 2002. The remaining payments (i.e., gross compensation to claimants) were split, with 27 percent of total payments ($19 billion) expended on plaintiffs' attorney fees and other legal costs, and only 42 percent of total spending ($30 billion) reaching the claimants as net compensation.

In aggregate, defense costs could increase in the future, at least temporarily, since:

- More defendants are now involved in the litigation, and defense is no longer routinely handled on a joint basis;
- Many defendants have abandoned settlement strategies;
- Newer defendants are incurring significant discovery costs as they work to understand their exposure and potential defenses;
- Coverage disputes between defendants and their insurers as well as between insurers and their reinsurers may increase (e.g., proof of coverage for newer defendants, premises/operations claims).[41]

However, for some individual defendants, defense costs might decrease as their investments in developing defense strategies are completed, and as the volume of claims has declined.

Manville Trust Another key source of asbestos claimant information is the Manville Personal Injury Trust (Manville Trust). Johns-Manville Corporation, the largest manufacturer of asbestos-containing products and the largest supplier of asbestos in the U.S., filed for bankruptcy in August 1982 as a result of asbestos litigation. The Manville Personal Injury Trust ("Manville Trust") was formed to distribute limited assets among current and future asbestos claimants who were exposed to Manville products. The Manville Trust claim statistics provide a useful proxy for total U.S. asbestos–claim–filing information, as most qualified injured workers have eventually filed claims against the Manville Trust.

The timing of claims filed against the Manville Trust often differs from that of claims filed against solvent defendants in federal or state courts. The Manville Trust does not have a statute of limitations, and claims have often been delayed until those claimants' court cases are resolved to avoid an offset to court awards. Additionally, discovery issues relating to exposure might result in delays in filing claims against bankruptcy trusts.[42]

Manville Trust claims through December 31, 2006 are summarized in Exhibit 4. At first glance, the Manville Trust data shows some curious aberrations. The total number of U.S. claims spikes to nearly 90,000 in 2003, followed by significant decreases in 2004 through 2006. When interpreting the Manville Trust data, it is important to recognize that changes in the Trust Distribution Process (TDP) and other factors have influenced claim-filing rates over time. Background information regarding the Manville Trust, summarized at the bottom of Exhibit 4, coupled with a more refined review of the claim-filing data, provides context for these seemingly abrupt changes.

When reviewing the Manville Trust claim-filing data by disease type, it is apparent that mesothelioma claims have increased steadily since 1998 to a peak of 2,800 U.S. claims in 2003. The spike in 2003 is attributable to a change in the TDP that became effective during that year. Similarly, lung and other cancer claims against the Manville Trust generally increased from 1998 to 2003.

Other reasons for the increased filing rate during 2000-2003 include:

- Greater medical awareness and more frequent diagnosis of mesothelioma cases;
- Greater propensity of claimants to sue as a result of the efforts of some plaintiffs' attorneys;[43]
- The recent asbestos-related bankruptcies as well as claim-filing deadlines for inclusion on creditor lists;
- Expedited action on the part of claimants unsure of the future legal climate.

The number of nonmalignancy claims has shown more variation over time than malignancy claims. These claims represented about 90 percent of the total claims filed in the 1998 to 2002 period.[44] While some nonmalignancy claims are life threatening (e.g., severe asbestosis)[45], most claimants with nonmalignant conditions do not exhibit signs of impairment. Epidemiological considerations (i.e., the population exposed, disease latency,

and manifestation) are not as useful for predicting future nonmalignancy claims as they are for predicting future malignancy claims.[46] The frequency of nonmalignancy claims is generally more influenced by factors seen as litigation-related, such as media advertising recruitment efforts and mass screenings.[47]

While the number of nonmalignancy claims decreased substantially for 2004 through 2006 under the limited experience of Manville's 2002 TDP, the number of claims could increase from this historically low level in future years. Although the payments for nonmalignancy claims were reduced under the 2002 TDP, the incentive to pursue these claims could be restored as several of the more recent bankruptcy plans have been confirmed. At least $30 billion in assets is expected to be available for distribution once several approved bankruptcy plans are operational.[48] As long as even minimal payments to unimpaired claimants are not eliminated, it might be worthwhile for claimants to pursue these small payments across multiple trusts, especially if the trusts establish efficient online mechanisms to process the claims.

Consultant Estimates and P&C Annual Statements Industry experts have estimated that ultimate costs of asbestos personal injury claims in the U.S. will range from $200 to $265 billion.[49] The large variation in cost estimates reflects high uncertainty in disease emergence, incidence rates, and legal costs. Additional uncertainty exists as to who will ultimately pay these costs (i.e., the remaining viable defendants, their insurers, or some other source). It has been estimated that $60 to $70 billion of the costs will be borne by the U.S. property/casualty insurance industry.[50] As of year-end 2006, U.S. insurers and reinsurers[51] had paid more than $36 billion and held nearly $24 billion in liability reserves to pay future claims, as disclosed in their annual statements, which are filed with state insurance departments.[52, 53] The incurred losses (estimated cost related to paid claims, plus the liability reserves established for future claims) recorded by U.S. insurers have increased by nearly 84 percent from $33 billion to $60 billion in the six years from 2001 through 2006, reflecting the difficulty in accurately estimating these liabilities.[54]

Other Sources The large volume of pending asbestos claims has challenged the U.S. court system. In August 2005, the Congressional Budget Office estimated that there were about 322,000[55] asbestos bodily injury cases pending in state and federal courts. As a result of asbestos litigation, many companies, including nearly all of the major manufacturers of asbestos-containing products, have declared bankruptcy (see Reference List 2). As numerous corporate defendants have entered bankruptcy proceedings, there has been upward pressure on demands for claim settlements from the remaining solvent defendants, and plaintiffs continue to name additional peripheral defendants. At least one company in nearly every U.S. industry is now involved in asbestos litigation.[56]

Changes in the Litigation Environment

There have been several important changes in the litigation environment since the last Academy asbestos monograph was published in 2001. Notable differences include:

- Changes in some jurisdictions that now restrict nonmalignancy claims or restrict the extent to which claimants' actions may be combined in a single lawsuit;
- Venue reform and joint and several liability reform in some states;
- Emerging information that has challenged the validity of some chest X-rays used to justify nonmalignancy claims;
- A significant decrease in the number of new nonmalignancy claims in 2004 to 2006 compared with 2000 to 2003.

Defendant companies contend that the grouping of large numbers of claimants in a single lawsuit makes it difficult and costly for them to assess the validity of each claimant's case. Considerable doubt has recently emerged, for example, about some diagnoses obtained through mass screening programs. This is further discussed in the section titled, "Recent Efforts to Solve the Asbestos Claims Problem."

A 2004 Johns Hopkins Medical Institutions study[57] published in *Academic Radiology* called the diagnoses of some physicians into question. In the study, independent radiologists reviewed approximately 500 chest X-rays that had previously been entered into evidence in asbestos lawsuits and were examined by physicians retained by plaintiffs' attorneys. The independent radiologists found abnormalities in 4.5 percent of the films, as compared with the results of the original readings, in which 96 percent of the films purportedly showed evidence of asbestos-related disease. The objectivity of "B" readers (those certified to assess respiratory occupational illness) has recently been under increased scrutiny.

In February 2005, physicians' depositions taken in the Silica Multi-District Litigation (MDL) hearings[58] presided over by U.S. District Court Judge Janis Graham Jack in Corpus Christi, Texas, raised questions about the silicosis diagnoses of 10,000 claimants. The physicians' depositions revealed that, although it is highly unlikely for someone to have both silicosis and asbestosis, some doctors had diagnosed claimants with asbestosis at one time and silicosis later. More than 50 percent of the silica claimants had previously filed asbestos claims with the Manville Trust. Judge Jack concluded, "These diagnoses were driven by neither health nor justice: they were manufactured for money."[59]

While Judge Jack's decision is not binding on the state judges to whom the silica MDL cases are returned, it is expected that her decision will lead to increased medical evidentiary standards for silica as well as asbestos claims. For example, the Celotex, Eagle Picher, and Manville bankruptcy trusts suspended their acceptance of claims from certain medical screening companies and/or physicians, citing concerns about their reliability.[60] Additionally, federal grand juries in New York and Texas are investigating the situation.[61] These hearings have also generated increased scrutiny of evidence in state courts. In April 2006, judges in Cleveland dismissed about 4,200 asbestos cases that included testimony by physicians whose credibility is now in doubt.[62]

The combined effect of this heightened scrutiny, in conjunction with stricter medical criteria legislation adopted by some states and inactive dockets established in some state courts, has led to fewer mass settlements of pending claim inventories and will likely affect whether and how mass screenings are conducted in the future. However, it is not yet clear whether the reduced claim activity in 2004 to 2006 truly represents a permanent change in claim filing behavior or whether it is just a temporary aberration, before future claim reports revert to the significantly higher levels of prior years.

Concerns of Major Parties Involved in Asbestos Personal Injury Litigation

There are many parties involved in asbestos litigation. Some concerns of these groups are outlined below.

Seriously Injured Claimants

This group contains those whose injuries are detectable and indisputable (e.g., mesothelioma, serious asbestosis). It is widely believed that these individuals deserve to be compensated in some form for the injuries they have suffered.

- Due to the short life expectancy of the claimants, this group places high importance on resolving its claims quickly, which is often difficult or impossible in the current legal environment.
- Compensation systems with high transaction costs diminish the funds available to meet this group's greater needs.
- Those who will develop serious illnesses in future years face another risk. The companies that made the products that caused their injuries may become bankrupt, rendering the companies unable to compensate them.
- With scarce resources, there is also a concern that the awards paid for nonmalignancy claims will exhaust the funds that otherwise would be available to compensate individuals who will suffer in the future from more serious asbestos-related diseases.

Nonseriously Injured and Unimpaired Claimants

The majority of the claimants in this group are presently unimpaired, although they may have an X-ray that shows pleural changes.

- One concern of those with a pleural condition is that if they do not proceed with a lawsuit today, a statute of limitations issue may prevent them from being eligible to recover damages for more serious conditions that they may develop in the future. This concern has been addressed in some states through an inactive docket or pleural registry,[63] as described in the "State Reform" section.
- Another concern of this group is that if its members do not proceed with a lawsuit now, money may not be available to compensate them if they develop a serious injury later. For example, awards of punitive damages in the near future may reduce funds available to pay for the claims of those with more serious injuries that may emerge later.
- Additionally, this group faces future health uncertainty and continuing expenses for ongoing medical monitoring.

Plaintiffs' Attorneys

The issues for the plaintiffs' attorneys generally match those of their clients as described above and also encompass the desire for compensation and reward for the cost of acquiring and developing these cases.

- Plaintiffs' attorneys who represent seriously injured claimants have been more supportive of legislative changes to the asbestos litigation system than those who represent nonseriously injured and unimpaired claimants.
- On February 11, 2003, the House of Delegates of the American Bar Association (ABA) voted to support legislation that would establish specific medical criteria that must be satisfied by those alleging nonmalignancy asbestos-related diseases in order to file an asbestos lawsuit. The proposal would also toll all applicable statutes of limitations until the medical criteria were met.

Judges

The two main concerns of this group are trial docket pressures and fairness of results. These concerns have been voiced as far back as the 1980s and relate to the volume of asbestos lawsuits. Some feel that trial docket pressures force actions that speed up the trial process and potentially produce less equitable results. For example, inequities may occur when the claims of those with significantly different injuries are consolidated, or the periods of time allowed to conduct discovery are shortened.[64]

Major Asbestos Defendants

These are the companies that manufactured asbestos-containing products and have been involved in asbestos litigation since the 1980s. Many of them have filed for Chapter 11 bankruptcy protection.

- For the most part, these defendants have stated that they cannot get a fair trial in state court. This is illustrated in the Babcock & Wilcox and W.R. Grace bankruptcy filings, in which the companies have attempted to have their liability determined under federal bankruptcy rules with defined medical criteria.
- Another related concern is that the consolidation of claims of seriously injured and nonseriously injured claimants may, as a consequence of juror sympathy, result in disproportionately high awards to the nonseriously injured.
- This group is concerned that it is paying awards that should be funded, at least in part, by other parties.[65] For several asbestos-related diseases, there is a material synergistic effect between exposure to asbestos and smoking. To date, however, asbestos company lawsuits against the tobacco industry have been unsuccessful.[66]
- This group is concerned that uninjured plaintiffs are being compensated.
- This group is concerned that the current system for compensating asbestos-related injury victims is prohibitively expensive.
- This group wants to achieve finality by putting the consequences of past business practices behind them.

Peripheral Asbestos Defendants

An increasing number of peripheral asbestos defendants (e.g., those that are accused of having asbestos encapsulated in their products or of having asbestos on their premises) have been sued in asbestos litigation. Plaintiffs' attorneys have raised the profile of these defendants, largely prompted by the bankruptcy filings of the initial asbestos product manufacturers.

- Some members of this group believe that they should not be held liable for asbestos-related injuries because the asbestos in their product was encapsulated and thus should not have contributed to the injury.
- This group is concerned that it will take on a share of liability that was previously borne by the now-bankrupt manufacturers of asbestos-containing products.
- The peripheral defendants say it is unfair to hold them accountable for the same knowledge of health risks as the major defendants in the same lawsuit. This group is also concerned that the vast majority of cases have been brought to trial in venues they perceive to be favorable to plaintiffs. For example, only two percent of the original plaintiffs in the *Cosey* litigation[67] in Mississippi were from the county in which the lawsuit was filed, suggesting that the venue was chosen for reasons other than geographical convenience.[68]
- This group also contends that courts too often fail to require the use of objective evidence to evaluate the credibility of claims of injury. This issue was raised as far back as 1991, when plaintiffs' attorney Ron Motley commented, "There are gross abuses in our system. We have lawyers who have absolutely no ethical concerns for their own clients that they represent, we have untrammeled screenings of marginally exposed

people, and the dumping of tens of thousands of cases in our court system, which is wrong [and] should be stopped."[69]

- Another concern of these defendants is that they are, at times, held responsible for liability that should be borne by non-U.S. companies. It can be difficult or impossible for plaintiffs' attorneys to bring suit against non-U.S. companies, where such suits would ultimately be resolved in federal court. Due to the potential difficulty in bringing suit, and because plaintiffs' attorneys typically prefer to litigate in state rather than federal court, some U.S. defendants contend that minimal or no effort is made to pursue foreign defendants.
- Relative to plaintiffs' awards, defense expenses are considerably higher for peripheral defendants. This is due in part to the fact that a peripheral defendant may be named in a suit at little or no cost to the plaintiff(s). However, because discovery often takes place just before the trial, the peripheral defendant may find it nearly impossible to be dismissed from the case before incurring significant costs. Peripheral defendants often pay to settle lawsuits, even when they do not believe they are liable, because the risk of being subjected to an adverse judgment when nearly everyone else has settled is extremely high.
- Similar to the major defendants, this group wants to achieve finality by putting the consequences of past business decisions behind them.

Insurers and Reinsurers

The concerns of this group are generally the same as for their policyholders, the major and peripheral defendants; however, in addition:

- This group is concerned about the interpretation of its contracts and the possible liabilities that may be imputed to them, some or all of which they never intended to insure.
- There is increased concern among members of this group regarding settlements with claimants who currently have no clearly identifiable injury, and with policyholders making small payments to claimants who may not be able to establish product identification. This concern has been publicly voiced by Equitas, a United Kingdom insurer. In response to that concern, on June 1, 2001, Equitas began to require greater disclosure of this type of information before settling claims.
- This group wants predictability of financial results and finality with respect to quantifying their expected liabilities.

Employees/Retirees of Firms with Asbestos Liabilities

According to a study commissioned by the American Insurance Association regarding the economic impact of asbestos-related bankruptcies, "the bankruptcies associated with asbestos liabilities have had a marked deleterious effect on workers in those firms." "These companies are spread across the nation, with 47 states having at least one asbestos-related bankruptcy." Other key findings of the study include:

- Bankruptcies led to a loss of an estimated 52,000 to 60,000 jobs;
- Each displaced worker at the bankrupt firms will lose, on average, an estimated $25,000 to $50,000 in wages over his or her career because of periods of unemployment and the likelihood of having to take a new job paying a lower salary;
- The average worker at an asbestos-related bankrupt firm with a 401(k) plan suffered roughly $8,300 in pension losses, which represented, on average, roughly a 25 percent reduction in the value of the 401(k) account.[70]

Historical Efforts to Solve the Asbestos Claims Problem

Asbestos defendants and their insurers/reinsurers have attempted to craft various solutions to the asbestos claims problem over the years (see Exhibit 5). These efforts include the Wellington Agreement between asbestos producers and their insurers in 1985, the formation of the Center for Claims Resolution (CCR) in 1988, the CCR Futures Deal in 1993 (i.e., the Georgine Settlement), the Fibreboard Settlement in 1993, and the Owens Corning Fiberglas National Settlement Program in 1998. There have been repeated calls for legislative reform, especially after unsuccessful attempts to settle claims on a class action basis (e.g., Georgine and Fibreboard) (see Exhibit 6).

Congress has also made attempts to solve the asbestos claims problem. A federally administered central fund was proposed as early as 1977. Other bills were introduced in 1980, 1994, and annually since 1999 (see Exhibits 7 and 8).

Recent Efforts to Solve the Asbestos Claims Problem

Federal Reform

Various federal proposals to solve the ongoing asbestos litigation crisis have been considered by the U.S. Congress over the past few years, as shown in Exhibit 8. Of these proposals, the trust fund approach has been pursued most vigorously. The Senate Judiciary Committee approved the latest version of the Fairness in Asbestos Injury Resolution (FAIR) Act (S. 852) in May 2005. Full floor debate began in February 2006; however, the FAIR Act did not have the 60 votes necessary to overcome a procedural point of order. A substantially similar bill, S. 3274, was introduced in May 2006. At that time, the Senate Judiciary Committee held a hearing on the subject, but the bill, which was also known as the FAIR Act, was never brought before the full Senate for debate.

Both bills would have established a no-fault trust from which claimants meeting asbestos exposure and medical criteria would have been compensated for their injuries. The proposed trust would have been funded with $140 billion of contributions from corporate defendants, insurers, and existing bankruptcy trusts.

Any proposed trust fund legislation is likely to be subject to considerable debate on many issues, such as:

- How many claims of various disease types will be filed? Mesothelioma and severe asbestosis are considered predictable illnesses based on epidemiological factors; however, there are widely differing projections of future claims for asbestos-related cancers and nonmalignant pleural conditions.
- Will the medical and occupational exposure criteria appropriately identify victims of asbestos-related diseases?
- Are the proposed awards appropriate?
- Is the proposed funding adequate?
- Will the allocation of funding from the various classes of contributors (i.e., corporate defendants, insurers, reinsurers, and existing bankruptcy trusts) be viable and fair, and will it provide a final release from future asbestos-related liabilities for the contributors[71]?
- Should the federal government contribute to the trust fund because of, for example, the asbestos exposure that occurred in shipyards operated by the U.S. Navy?[72]
- Will the fund be operated efficiently?
- Will any proposed statute withstand constitutional challenges?

State Reforms

As potential federal reform has been debated in Congress, several states have implemented judicial and legislative reforms in an effort to improve their tort claims process. These state reforms are intended to focus courts' resources on the most serious injury claims. State reforms typically fall into the following categories:

- **Inactive Dockets**[73] – Inactive dockets are intended to preserve the right of those who do not currently meet the specific medical criteria to pursue litigation in the future. Jurisdictions with inactive dockets (or pleural registries) include Illinois (Chicago, St. Clair County, Madison County, and Cook County); Maryland (Baltimore); Massachusetts (Boston); Minnesota; New York (New York City and Syracuse); Virginia (Portsmouth); and Washington (Seattle and King County). As a result of these reforms, asbestos litigation in these states will likely become a more individualized process involving single-plaintiff claims by the most severely injured claimants.[74] The more individualized process is likely to increase expenses for claimants and defendants.[75] It may also increase the average compensation for malignancy claims.[76] Additionally, the limited number of mesothelioma claims might cause more plaintiffs' attorneys to focus on cancer claims.
- **Medical Criteria Statutes** – Florida, Georgia, Kansas, Ohio, South Carolina, Tennessee, and Texas have passed legislation that requires asbestos claimants to satisfy certain medical criteria in order to bring a claim.[77]
- **Restrictions of Case Consolidation and Venue Rules** – Some jurisdictions, notably Mississippi, Texas, and West Virginia, have revised laws governing case consolidation and choice of forum,[78] tightening restrictions regarding the connection between the plaintiff, defendant, and venue of the case.
- **Other Legislation** – Legislation limiting successor liability, adopted previously by the Pennsylvania legislature, was also adopted in Texas. Other state reforms relate to "innocent sellers"[79] and caps on non-economic and punitive damages.[80]

Defendants' Efforts

Rather than wait for federal and state reforms, many defendants have sought their own solutions to the asbestos problem by negotiating global settlements with plaintiffs' attorneys and/or seeking bankruptcy protection. Under current bankruptcy law, defendants create a trust from which all asbestos claims will be paid. Section 524(g) of the bankruptcy code allows defendants to resolve asbestos claims in an equitable manner and eventually emerge from bankruptcy "asbestos-free."[81]

While various parties have counted the number of companies and their affiliates that have filed for bankruptcy protection as a result of asbestos litigation differently, the Academy's list contains the names of 80 companies that sought bankruptcy protection through 2006 (see Reference List 2). While the rate of bankruptcies increased significantly from 2000 to 2002, it has slowed in the past few years as "pre-packaged" bankruptcies have been challenged. Unlike bankruptcy petitions filed by some insolvent defendants, pre-packaged petitions have been filed as a means to resolve asbestos litigation while the defendants still have resources to pay the claims. Additionally, some defendants have delayed possible bankruptcy plans as they await the outcome of federal and state legislative efforts. Additional details regarding the features of asbestos-related bankruptcies are shown in Exhibit 9.

Summary and Conclusions

The magnitude of the asbestos claims problem has led to 80 bankruptcies and it is widely believed that the system has not handled asbestos-related personal injury claims efficiently. This view is supported by RAND's estimate that only about 42 percent of the total spending on asbestos injury claims reaches the claimants as net compensation.

Given the number of people occupationally exposed and the long latency, asbestos disease is expected to continue for decades to come. Billions of dollars are spent each year, and substantial future costs are anticipated. However, there is considerable uncertainty regarding the future cost of asbestos-related claims under the current tort system, especially relating to the number and value of mesothelioma claims. The uncertainty is further complicated by the dramatic increase in the number of nonmalignancy claims from 2000 to 2003 and the subsequent decrease in these claims from 2004 to 2006. While it appears that mass screening activities have subsided and that various state reforms have been effective in focusing the courts' resources on claimants with the most severe injuries, it is not yet known whether the number of lower-valued nonmalignancy claims will remain at the current levels or if the number will increase again in the future.

Numerous federal proposals intended to resolve asbestos litigation have been introduced since the last release of the asbestos claims monograph in 2001, but to date all have failed. While federal reform may provide a comprehensive solution, those involved in drafting legislation in the form of a trust fund have felt the need to balance many opposing views. As potential federal reform has been debated in Congress, some states have implemented their own judicial and legislative reforms in an effort to improve their tort processes. History has shown that tort reform in one state can lead to increased asbestos claim filings in other states. Therefore, in the absence of federal reform, additional state reforms will likely be needed to continue making progress toward the objective of providing compensation for seriously injured claimants while preserving the legal rights of unimpaired individuals.

Exhibits

Reference Lists

Evolving Legal Theory — Exhibit 1

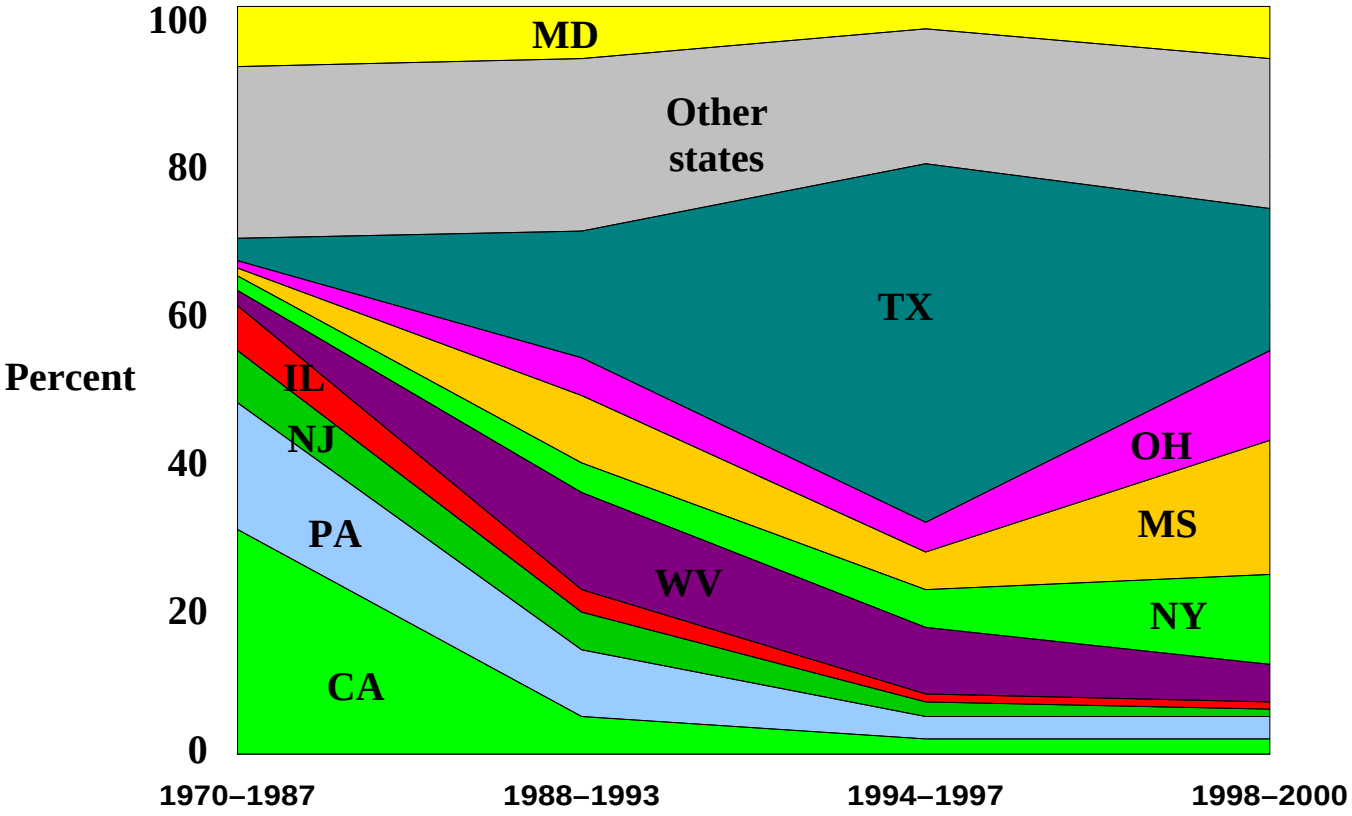
Date	Case	Significance
1973	Borel v. Fibreboard Paper Products Corp.[82] ■ U.S. Court of Appeals, Fifth Circuit	■ Shifted asbestos awards from the workers' compensation system to the court system.[83] ■ Several manufacturers held jointly and severally liable using theory of strict liability for failure to warn. — Premise of Joint and Several Liability – adopted by several states because insulation workers were exposed to products of many manufacturers. It was not possible to determine source of asbestos fibers causing injury and, typically, none of the manufacturers provided warnings regarding the dangers of asbestos.[84] — Strict Liability – Restatement of Torts, Section 402A – adopted by the American Law Institute in 1965. States that "one who sells any product in a defective condition unreasonably dangerous to the consumer … is subject to liability for physical harm thereby caused to the ultimate user or consumer…"[85] ■ Court said danger of asbestos was recognized in the 1920s and 1930s.[86]
1982	Beshada v. Johns-Manville Products Corp.[87] ■ NJ Supreme Court	Superstrict Liability – Holding asbestos defendants liable for failure to warn even if the defendant did not know/would not have known of risk posed by exposure to asbestos.[88]
1993	Daubert v. Merrell Dow Pharmaceuticals[89] ■ U.S. Supreme Court	U.S. Supreme Court established the "gatekeeping" function of trial court judges with the goal of ensuring that new proffered scientific evidence is relevant and reliable.[90]
1997	Metro North Commuter R. Co. v. Buckley[91] ■ U.S. Supreme Court	U.S. Supreme Court decided it was inappropriate to award damages for emotional harm and medical monitoring to plaintiffs who had not yet exhibited any sign of physical illness. The decision was motivated partly by the fact that payments to plaintiffs who are not currently ill would hasten bankruptcy among defendants by draining limited resources away from those who had already begun to exhibit symptoms of illness.[92]
2003	Norfolk & Western Ry Co. v. Ayers[93]. ■ U.S. Supreme Court	■ The Supreme Court held that mental anguish claims resulting from the fear of developing cancer may be recovered under the Federal Employers' Liability Act (FELA) by a railroad worker suffering from asbestosis caused by work-related exposure to asbestos.[94] ■ The court declined to consider requiring an initial apportionment of damages among potential tortfeasors, thus allowing a worker to recover his entire damages from a railroad whose negligence caused an injury and placing the burden of seeking contribution from other tortfeasors on the railroad.[95]
2003	State Farm Mut. Auto. Ins. Co. v. Campbell, et al.[96] ■ U.S. Supreme Court	■ The Supreme Court held that, where full compensatory damages were $1 million, a punitive damages award of $145 million was excessive and violated the due process clause of the 14th Amendment.[97] ■ In light of the substantial compensatory damages award, the court found that applying guidelines from BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996), likely would justify a punitive damages award at or near the compensatory damages amount.[98]

The Asbestos Tort Claim Process[99] — Exhibit 2

	Typical Tort Claim	Typical Asbestos Tort Claim
Plaintiff	One injured plaintiff	Claims on behalf of hundreds or thousands of plaintiffs: ■ Are filed by same attorney(s) on same date ■ Have common feature (e.g., same labor union, location, or one-time place of employment) ■ May involve dissimilar degree of injury/disease suffered
Defendant	Clearly identified party or parties	Multiple defendants and complications including: ■ Long latency of diseases ■ Pervasiveness of asbestos use throughout various industries, with representation of many as defendants
Event	Single event causing injury at certain time and location	■ Injury occurred over multiple years (i.e., each exposure of one plaintiff to asbestos fiber is an event, to which is added the length of time during which fibers are in the lungs causing damage) ■ Multiple locations (i.e., every location where asbestos was present over multiple years) ■ Many different products were present at some work sites
Claim Filing	Short lag between event and filing (a few months to a few years)	Lag of up to several decades
Forum	Clear, undisputed location, i.e., where event occurred; limited number of choices of forum	Broad discretion for plaintiff(s) to file claim(s) in forum of choice
Discovery	Focused	Complicated and expensive ■ Multiple parties claiming dissimilar injuries ■ Multiple exposures – name and organizational changes ■ Long time lag – lost records
Claim Resolution	Relatively timely resolution after filing (several months to a few years)	Long process due to: ■ Multiple plaintiffs with varying levels of asbestos exposure and seriousness of medical conditions ■ Multiple defendants with varying levels of liability exposure and legal strategies ■ "Events" over many years at many locations
Who Pays?	Defendant(s) and/or their insurer(s)	Multiple insurers on multiple policies spanning multiple years and layers of coverage

Exhibit 3

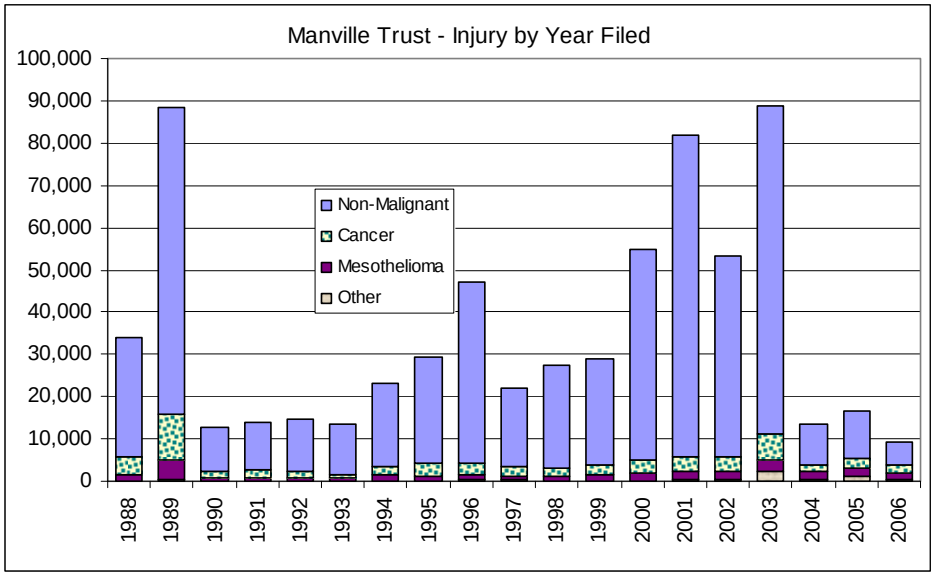
Percentage of Claims Filed in State Courts by State

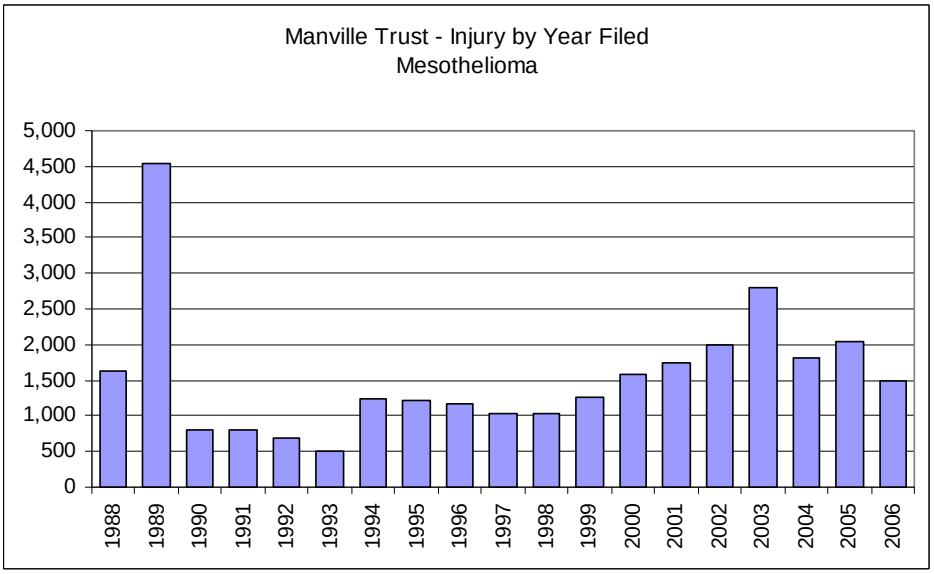


Source: RAND, January 2003

According to RAND, initial asbestos cases were filed equally between federal and state courts, and state cases were heavily concentrated in areas of high asbestos exposure (e.g., shipyards). Over time, fewer cases were filed in federal courts as the federal MDL (Multi-District Litigation) Panel transferred cases to Judge Charles Weiner of the Eastern District of Pennsylvania, and medical criteria and an inactive docket were effectively imposed. Additionally, state court cases migrated significantly. More than 60 percent of state claims were filed in California, Illinois, New Jersey, and Pennsylvania from 1970 to 1987. However, from 1998 to 2000, nearly two-thirds of claims were filed in five different states: Texas, Mississippi, New York, Ohio, and West Virginia. Filings in Texas increased steadily until 1997, when tort reform restricting claims from other jurisdictions was enacted. RAND concludes that the change is more reflective of "the (perceived) attractiveness (or lack thereof)" of the legal doctrine and procedural rules of the jurisdictions than changes in the epidemiology of asbestos-linked diseases. It is noteworthy that the five states with the highest proportion of claims from 1998 to 2000 have subsequently enacted various reforms. A key question is whether new forums of choice will emerge.

Claims Filed Against the Manville Personal Injury Trust[1] Exhibit 4





[1] Although Johns-Manville sought bankruptcy protection in 1982, the Manville Trust did not become operational until 1988. The claim filing statistics show a backlog of claims filed in 1989. Claim filing rates quickly exceeded initial expectations, and payments were essentially stayed from 1991 to 1994. In 1995, payments resumed at 10 percent of their scheduled values. In 2001, the pro-rata payment was reduced to 5 percent, and a new TDP was introduced in 2002. The high level of filings in 2003 was influenced by a deadline to file claims, after which all future claims would be subject to the new 2002 TDP criteria. The revised 2002 TDP applies more stringent medical and exposure criteria, shifting compensation toward claimants with more severe injuries. Source: Claims Resolution Management Corporation

Pages 18-19 comprise the layout of a single exhibit

Prior Efforts to Solve the Asbestos Claims Problem — Exhibit 5

Effort	Stakeholders	Purpose
Wellington Agreement[100] signed June 19, 1985	■ Approximately 34 asbestos producers ■ Approximately 16 insurers	■ Create the Asbestos Claims Facility (ACF). ■ Provide claimants with an efficient and more equitable alternative to the tort system. ■ Reduce legal costs for plaintiffs and defendants. ■ End disputes over insurance coverage.
Center for Claims Resolution (CCR) – Formed 1988[101]	■ Originally approximately 21 asbestos producers	■ Successor organization of the ACF. ■ Resolve claims for a fair value.
CCR Futures Deal – 1993[102]	■ 20 asbestos defendants	■ CCR's proposed settlement to Georgine class action.[103] The class would have included possible future injured parties who had not yet developed any perceptible asbestos-related disease.[104]
Fibreboard Global Settlement Agreement[105] (1993 class action settlement)	■ A single asbestos defendant and its insurers	■ Global settlement of 186,000 pending plus future personal injury claims.[106]
Owens Corning Fiberglas (OCF) National Settlement Program (NSP) – December 1998[107]	■ Initially one asbestos defendant, OCF ■ Later applied to Fibreboard after its acquisition by OCF	■ To resolve OCF (and later Fibreboard) claims.[108]

Pages 18-19 comprise the layout of a single exhibit

Prior Efforts to Solve the Asbestos Claims Problem — Exhibit 5

Features/Operations	Outcome
Asbestos Claims Facility (ACF)[109]: ■ Costs shared among members using formula based on each producer's previous litigation experience. ■ Each member paid percentage share,[110] regardless of whether: — Producer was named in suit;[111] — Claimant could prove that injury was caused by that producer's product.[112] ■ Claimants required to show asbestos-related impairment.[113] ■ Claims evaluated based on employment, medical, and compensation history. ■ Claimant could receive non-cash "settlement" if there was no current disease (tolled the statute of limitations). ■ Claimant could return to tort system if not satisfied with ACF's settlement offer. ■ ACF did not pay punitive damages.[114]	■ ACF dissolved October 3, 1988, after withdrawal of seven largest producer members.[115] ■ Resulted largely from disputes among producers over their allocated shares of costs. ■ Insurance coverage agreements resolved by Wellington Agreement remained in place when ACF was dissolved.[116]
Center for Claims Resolution (CCR): ■ CCR more aggressive than the ACF in settling claims.[117]	■ After the CCR Futures Deal was overturned, the CCR continued to negotiate and settle claims on behalf of its members. It settled 350,000 claims and paid over $5 billion from 1988 to 2000.[118] ■ On February 1, 2001, the CCR announced it was "changing its method of operation to allow members more flexibility and customized representation in handling their individual asbestos liability."[119] ■ As of August 1, 2001, stopped settling new asbestos claims on behalf of its remaining 14 members.[120]
■ Claimant had to provide sworn proof of exposure to asbestos-containing product of at least one CCR member.[121] ■ Claimant had to satisfy certain medical, exposure, and latency criteria.[122] ■ Case flow caps (maximum annual claim filings) were specified for next 10 years.[123] ■ Ranges of settlements by disease category were set for next 10 years, and increase in average claim amounts for second 10-year period was limited to 20 percent above initial levels.	■ Class decertified[124] because the disparity among claimants' illnesses was found to be greater than their commonality. ■ The Supreme Court observed that "the argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure. Congress, however, has not adopted such a solution."[125] ■ Reversal resulted in flood of new claims against CCR member companies.
■ Class allowed very limited opt-outs.[126] ■ There was also "Trilateral Agreement" back-up plan for $2 billion funded by two of Fibreboard's insurers: Continental Casualty and Pacific Indemnity, in case global settlement was not approved.[127]	■ Settlement rejected by U.S. Supreme Court in 1999 because:[128] — It excluded some potential plaintiffs; — There were questions about fairness of distribution;129 — There were conflicting interests within class; and — The Supreme Court held that more consideration should have been given to Fibreboard's financial condition.[130]
■ Initially resolved 90 percent of OCF's pending claims.[131] ■ Established fixed payments for future claims without litigation.[132] ■ Private agreement between OCF and plaintiffs' counsel did not require court approval.	■ Originally, NSP was well accepted. ■ OCF underestimated size of its liability,[133] and NSP accelerated timing of payments. ■ OCF filed for bankruptcy protection on October 5, 2000.[134]

Calls for Legislative Action		Exhibit 6 Sheet 1
Date	Source	Comment
1990	U.S. Supreme Court Panel (led by Chief Justice Rehnquist)	1991 report said "situation has reached critical dimensions and is getting worse," and that courts were "ill-equipped to address the mass of claims in an effective manner."[135]
1996	State ex rel. Appalachian Power Co. v. MacQueen[136]	"Congress, by not creating any legislative solution to these problems, has effectively forced the courts to adopt diverse, innovative, and often nontraditional judicial management techniques to reduce the burden of asbestos litigation that seem to be paralyzing the active dockets."[137]
1997	Amchem Products, Inc. v. Windsor, et al.[138]	The Court observed that "[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure. Congress, however, has not adopted such a solution."[139]
1999	Ortiz v. Fibreboard[140]	Supreme Court refers to "elephantine mass of asbestos cases" and says "litigation defies customary judicial administration and calls for national legislation."[141]
1999	The Fairness in Compensation Act of 1999: Legislative Hearing on H.R. 1283	"The victims of [the asbestos litigation] crisis are the most injured plaintiffs, especially future plaintiffs, who don't get as much as they should; defendants who are bankrupted *way out of proportion to harm they caused*; jurors and judges whose judgment is skewed by natural human reactions to the cases before them; and society itself, which is paying grotesque sums of money to lawyers and uninjured persons, when that money should be going to the most-injured and to medical research."[142]
2003	Norfolk & Western Ry. Co. v. Ayers[143]	"Courts, however, must resist pleas of the kind Norfolk has made, essentially to reconfigure established liability rules because they do not serve to abate today's asbestos litigation crisis."[144]

Calls for Legislative Action		Exhibit 6 Sheet 2
Date	Source	Comment
2005, 2006	Fairness in Asbestos Injury Resolution Act	"This bill saves an overburdened legal system. This bill saves asbestos victims from unfair and untimely compensation. This bill saves ordinary Americans from a tremendous strain on our national economy. And this bill saves veterans who have nowhere else to turn."[145] "In fact, the Supreme Court has, on more than one occasion, struck down attempted global settlements while simultaneously calling upon Congress to act. The fact is, the Supreme Court was right--the asbestos problem is a horrific mess and it is time for Congress to intervene.[146] "We commend Judge Janis Jack for exposing all of the fraud rampant in silica litigation. But there are still hundreds of thousands of asbestos claims pending and rampant fraud has been a problem for decades. If we keep asbestos cases in the courts, the profit motive remains for trial lawyers to recruit unscrupulous doctors to deliver bogus diagnoses. A key advantage of the trust fund bill is that it will stop this madness and ensure that only the truly sick receive the compensation they deserve."[147] While it is true that there is an asbestos litigation system out there, the system is broken. Many who cannot identify where they were exposed to asbestos recover nothing. The asbestos crisis is a national tragedy and we need a national legislative solution that is fair and equitable to all. That is what S. 3274 provides.[148]

Historical Legislative Involvement Through 2002

Exhibit 7
Sheet 1

Date	Effort	Details	Outcome
1977	H.R. 8689, H.R. 9496 - Bill(s) sponsored by Rep. M. Fenwick (R-N.J.) – district included the building materials research and development center of Johns-Manville.	The bill would compensate asbestos victims through a federally administered central fund.	Reintroduced in 1981; did not pass.
1980	S.2740 - Asbestos Health Hazards Compensation Act Introduced by Sen. Gary Hart (D-Colo).	The bill ■ Barred victims of asbestos disease from filing suits under tort system; ■ Left administration of asbestos-compensation claims with states; ■ Called for establishment of federal minimum standards for compensating asbestos workers.	Reintroduced in 1981; did not pass.
1994	H.R.5116 - Bankruptcy Reform Act of 1994	■ Section 524(g) of bankruptcy code enables debtor in Chapter 11 reorganization to establish "a trust toward which the debtor may channel future asbestos related liability … to provide explicit legislative guidance to ensure the equitable treatment of mass future asbestos claimants." ■ Creditors obtain at least 50 percent of the value of the company if it emerges from bankruptcy. ■ Bankruptcy allows: — A stay on claims; — Requirement of medical criteria; — Appointment of representative for future claimants; — Estimations/provision for liquidation of claims.	Enacted January 25, 1994. The Babcock & Wilcox Chapter 11 Informational Brief stated that "Congress has provided a mechanism for resolution of asbestos mass-tort claims within the bankruptcy system."

Historical Legislative Involvement Through 2002

Exhibit 7
Sheet 2

Date	Effort	Details	Outcome
1999-2000	H.R. 1283 – Fairness in Compensation Act of 1999 Introduced by Rep. Henry J. Hyde (R-IL)	The bill would have: ■ Established Asbestos Resolution Corporation; ■ Set up Office of Asbestos Compensation; ■ Created alternative dispute resolution (ADR) process; ■ Required proof of medical eligibility; ■ No imposition of statute of limitations; ■ Permitted full compensatory awards (including pain and suffering, emotional distress, and loss of consortium); ■ Barred punitive damages; ■ Received funding from defendant companies, not through tax revenue.	Passed out of House Judiciary Committee, but never considered by full House of Representatives.
2001	H.R. 1412 – Retroactive Tax Relief Introduced by Rep. Mac Collins (R-GA)	■ This bill would have amended Internal Revenue Code 468B(b) to provide that no tax be imposed on any settlement fund to resolve present and future asbestos claims. ■ Would have amended Section 172(f) to provide that portion of any specified loss attributable to asbestos may be carried back to taxable years in which taxpayer was first involved in production/distribution of asbestos products to reduce income tax payments in prior years.	Introduced and referred to the Ways and Means Committee; did not act Proponents said bill would ensure that victims get just compensation and help prevent further bankruptcies. Opponents described bill as "industry bailout" and asbestos "feeding frenzy" for the bar because attorneys will get most of $300 to $500 million that it would have cost taxpayers over next 10 years.

Historical Legislative Involvement Through 2002

Exhibit 7
Sheet 3

Date	Effort	Details	Status
2001	S. 1048 Introduced by Sen. Mike DeWine (R-Ohio)	The bill would have amended Internal Revenue Code of 1986 to provide relief for payment of asbestos-related claims.	Referred to Committee on Finance.
2002	S. 2641 - Ban Asbestos in America Act of 2002 Introduced by Sen. Patty Murray (D-WA)	The bill would have amended Toxic Substances Control Act to reduce health risks posed by asbestos-containing products.	Referred to Committee on Environment and Public Works.
2002	S. 3136 - Libby Health Care Act Introduced by Sen. Max Baucus (R-MT)	To establish the "Montana Asbestos Related Disease Health Care Trust Fund." Would have declared as eligible to receive medical benefits anyone who: ■ Has asbestos-related disease or illness ■ Has an eligible medical expense ■ Either was a worker at the vermiculite mining and milling facility in Libby, Montana; or lived, worked, or played in Libby, Montana, for at least 6 consecutive months before December 31, 1990.	Referred to Committee on Environment and Public Works.
2002	H.R. 4696 Introduced by Rep. Chris Cannon (R-Utah)	The bill would have amended federal bankruptcy law to allow a nonmalignant asbestos-related claim for: ■ Permanent breathing impairment; or ■ A survivor claim where decedent's death was caused by exposure to asbestos or asbestos-containing products.	Referred to Committee on Judiciary Subcommittee on Commercial and Administrative Law.

Asbestos-Related Bills Introduced into the 108th Congress		Exhibit 8 Sheet 1
Bill	Effort	Status
H.R. 1114	Asbestos Compensation Act of 2003 Rep. Mark Kirk (R-Ill.)	Introduced 3/6/2003; referred to Committee on the Judiciary.
H.R. 1586	Asbestos Compensation Fairness Act of 2003 Rep. Chris Cannon (R-Utah)	Introduced 4/3/2003; referred to Committee on the Judiciary.
H.R. 1737	Asbestos Victims' Compensation Act of 2003 Rep. Calvin Dooley (D-Calif.)	Introduced 4/10/2003; referred to Committee on the Judiciary.
H.R. 2277	Ban Asbestos in America Act of 2003 Rep. Henry Waxman (D-Calif.)	Introduced 5/22/2003; referred to Committee on Energy and Commerce Subcommittee on Environment & Hazardous Materials.
H.R. 2503	Asbestos Claims Tax Fairness Act of 2003 Rep. Michael Collins (R-Ga.)	Introduced 6/18/2003; referred to Committee on Ways and Means.
S. 413	Asbestos Claims Criteria and Compensation Act of 2003 Sen. Don Nickels (R-Okla.)	Introduced 2/13/2003; referred to Committee on the Judiciary.
S. 1115	Ban Asbestos in America Act of 2003 Sen. Patty Murray (D-Wash.)	Introduced 5/22/2003; referred to Committee on Environment and Public Works.
S. 1125	Fairness in Asbestos Injury Resolution (FAIR) Act of 2003 Sen. Orrin Hatch (R-Utah)	Introduced 6/4/2003; Passed 10-8 by the Senate Judiciary Committee 7/10/2003.
S. 2290	Fairness in Asbestos Injury Resolution (FAIR) Act of 2004 Sen. Orrin Hatch (R-Utah)	Introduced 4/7/2004; Senate did not reach 60 votes needed to invoke cloture for debate before the full Senate 4/22/04; further negotiations mediated by Chief Judge Emeritus Edward Becker of the Third Circuit U.S. Court of Appeals ended without agreement on 5/6/2004.

Asbestos-Related Bills Introduced into the 109th Congress		Exhibit 8 Sheet 2
Bill	Effort	Status
H.R. 1360	Fairness in Asbestos Injury Resolution Act of 2005 Rep. Mark Kirk (R-Ill.)	Introduced 3/17/2005; referred to the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.
H.R. 1957	Asbestos Compensation Fairness Act of 2005 Rep. Chris Cannon (R-Utah)	Introduced 4/28/2005; referred to Committee on the Judiciary.
H.R. 3533	A bill to provide that net operating losses shall not be reduced in connection with a discharge of indebtedness in chapter 11 bankruptcy cases involving asbestos-related claims Rep. Dave Camp (R-Mich.)	Introduced 7/28/2005; referred to Committee on Ways and Means Subcommittee on Trade.
S. 668	Asbestos Standards Enforcement Act of 2005 Sen. Arlen Specter (R-Pa.)	Introduced 3/17/2005; referred to Committee on Health, Education, Labor, and Pensions.
S. 852	Fairness in Asbestos Injury Resolution Act of 2006 Sen. Arlen Specter (R-Pa.)	Introduced 4/19/05; referred to Committee on the Judiciary Cloture motion on the measure withdrawn by unanimous consent in Senate on 2/14/2006.
S. 3274	Fairness in Asbestos Injury Resolution Act of 2006 Sen. Arlen Specter (R-Pa.)	Introduced 5/26/06; referred to Committee on the Judiciary. Committee on the Judiciary held hearings on 6/7/2006. Hearings printed: S.Hrg. 109-594.

Asbestos-Related Bills Introduced into the 110th Congress		Exhibit 8 Sheet 3
Bill	Effort	Status
S. 742	Ban Asbestos In America Act of 2007 Sen. Patty Murray (D-Wash.)	Introduced on March 1, 2007; then referred to Committee on Environment and Public Works; voted out of committee on August 1, 2007. Will now proceed to consideration by full Senate.
S. Res. 108	A bill to designate the first week of April 2007 as "National Asbestos Awareness Week" Sen. Max Baucus (D-Mont.)	Introduced on March 15, 2007; then referred to Committee on the Judiciary.
S. Con. Res. 21	An original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2008 and including the appropriate budgetary levels for fiscal years 2007 and 2009 through 2012. Bill would provide an unspecified reserve fund for possible asbestos reform legislation. Sen. Kent Conrad (D-N.D.)	Introduced and placed on Senate calendar on March 16, 2007; considered and agreed to in Senate on March 23, 2007. Received and held in House on March 28, 2007.

The development of the rules that apply to asbestos-related bankruptcies can be traced to the Johns-Manville bankruptcy. This asbestos-related bankruptcy was unique in that many potential creditors/claimants had not yet developed the disease that would be the basis for their claims against the estate, due to the long latency period for asbestos-related diseases. The judge in the case appointed a "futures" representative to represent the interests of these claimants and make sure they were treated fairly relative to the then-existing creditors. The Johns-Manville bankruptcy process was formalized when Congress amended the bankruptcy code in 1994, creating Section 524(g), which specifically addresses asbestos-related bankruptcies and makes a provision for future claimants. The key features of a Section 524(g) Trust are shown in the table below.

Key features of a Section 524(g) Trust:[149]

- The bankruptcy court may bind future claimants to the plan of reorganization. A futures representative is appointed to represent this group.
- The reorganization plan must create a trust that provides the following:
  1) The Trust assumes the asbestos-related liabilities of the company.
  2) The Trust is funded, at least in part, by securities of the reorganized company.
  3) The Trust must be a majority owner of the voting shares of the company.
  4) The Trust must use its assets and income to pay asbestos claims.
- The bankruptcy court must make the following findings in support of the channeling injunction for the asbestos claims:
  1) The company is likely to be subject to substantial future demands for asbestos claims.
  2) The actual amounts of demands cannot be known or predicted.
  3) Pursuit of demands outside the plan is likely to delay the bankruptcy process.
  4) At least 75 percent of present asbestos claimants must vote in support of the plan.
  5) The Trust must treat future demands substantially the same as current claims.
  6) The plan, viewed in its entirety, must be fair and equitable to future claimants.

Defendants generally sought Section 524(g) protection in their initial bankruptcy filings as they exhausted insurance covering asbestos claims. Thus, the debtors in these asbestos-related bankruptcies faced negative equity values or cash-flow problems similar to debtors filing for bankruptcy protection for (i.e., non-asbestos) reasons. From 2002 to 2003, there was an increase in the number of asbestos pre-packaged (or "pre-pack") bankruptcy filings. However, it is possible that the *Congoleum* decision will discourage future pre-pack bankruptcy filings.[150]

Differences between traditional and pre-pack filings are summarized in the table below.

Traditional

- Can take years to complete[1]
  - File petition
  - Negotiate with creditors
  - File reorganization plan
  - File disclosure statement
  - Solicit votes
  - Be confirmed via hearing
- Insurance coverage generally exhausted or settled, or insurers included in negotiations
- Court appoints claimant representatives
  - Futures Representative involved in negotiation for >50 percent equity

Pre-Packaged

- Intended to be completed within a few months of filing
  - Negotiate and vote before filing
  - Appear at combined hearing to confirm plan and disclosure
- Insurers' interests typically not represented in pre-petition negotiations
- Commonly include a pre-petition trust to pay near full value on current claims
  - Plaintiffs' attorneys with large inventories negotiate matrix agreements that benefit their own clients but owe no duty to all claimants
    - Disease criteria broadly defined
    - Claimants not fully compensated, so remain eligible to vote on the bankruptcy plan
    - Generous awards to lower disease severity classes
  - Significant portion of equity can be secured (therefore not available to bankruptcy trust)

[1] Johns-Manville filed for bankruptcy protection in 1982, and its plan was not confirmed until 1988; Babcock & Wilcox filed for bankruptcy protection in 2000, and its plan was not confirmed until 2006.

Various Epidemiological Studies		Reference List 1 Sheet 1
Year	Source	Study
1979	Hammond, Selikoff & Seidman (Annals of the New York Academy of Sciences)	Asbestos Exposure, Cigarette Smoking, and Death Rates.
1980	Higginson	Proportion of Cancers Due to Occupation, Preventive Medicine
1980	Hogan & Hoel	Estimating Cancer Risk Associated with Occupational Asbestos Exposure Risk Analysis
1980	McDonald & McDonald (Cancer 46: 1650-1656)	Malignant Mesothelioma in North America
1980	McDonald, Liddell, Gibbs, Eyssen & McDonald (British Journal of Industrial Medicine)	Dust Exposure and Mortality in Chrysotile Mining
1981	Enterline	Proportion of Cancer Due to Exposure to Asbestos, Banbury Report 9: Quantification of Occupational Cancer
1981	McDonald	Mesothelioma as an Index of Asbestos Impact, Banbury Report 9: Quantification of Occupational Cancer
1981	Peto, Henderson, Pike	Trends in Mesothelioma Incidence in the U.S. and the Forensic Epidemic Due to Asbestos Exposure During World War II, Banbury Report 9: Quantification of Occupational Cancer
1981 (Reissued June, 1982)	Irving Selikoff (Mount Sinai School of Medicine)	Disability Compensation for Asbestos-Associated Disease in the United States
1982	William Nicholson, George Perkel, Irving Selikoff	Occupational Exposure to Asbestos: Population at Risk and Projected Mortality – 1980-2030
January 1982	Paul MacAvoy (Yale)	The Economic Consequences of Asbestos-Related Disease
August 2, 1982	Alexander Walker (Statistics and Epidemiology Research Corporation)	Projections of Asbestos-Related Disease 1980-2009
September 1982	Conning & Company	The Potential Impact of Asbestos on the Insurance Industry
July 1983	Kakalik, Ebener, Felstiner, Shanley (RAND – The Institute for Civil Justice)	Costs of Asbestos Litigation
September 15, 1983	Kenneth Manton (Congressional Research Service, The Library of Congress)	An Evaluation of Strategies for Forecasting the Implications of Occupational Exposure to Asbestos
1984	National Research Council (NRC) National Academy Press	Asbestiform Fibers: Nonoccupational Health Risks
June 1986	William Nicholson	Airborne Asbestos Health Assessment Update
1988	British Journal of Industrial Medicine	Projection of Asbestos Related Diseases in the United States, 1985-2009
1988	Lippmann, M. (Environmental Research)	Asbestos Exposure Indices
1990	Lippmann, M. (Environmental Health Perspective)	Effects of Fiber Characteristics on Lung Deposition, Retention, and Disease
1988	Lippmann, M. (Environmental Research)	Asbestos Exposure Indices
1990	Lippmann, M. (Environmental Health Perspective)	Effects of Fiber Characteristics on Lung Deposition, Retention, and Disease
1990	Mossman, Bignon, Corn, Seaton & Gee (Science 247: 294-301)	Asbestos: Scientific Development and Implications for Public Policy
1991	Landrigan & Kazemi (Annals of the New York Academy of Sciences)	The Third Wave of Asbestos Disease: Exposure to Asbestos-In-Place – Public Health Control
1991	Selikoff & Seidman (Annals of the New York Academy of Science)	Asbestos-Associated Deaths Among Insulation Workers in the United States and Canada, 1967-1987

Various Epidemiological Studies		Reference List 1 Sheet 2
Year	Source	Study
January 20, 1992	Shearson Lehman Brothers	Charting the Asbestos Minefield: An Investor's Guide
July 1992	Frederick Dunbar, National Economic Research Associates, Inc. (NERA)	Forecast of Asbestos-Related Personal Injury Claims Against National Gypsum Company: Final Report
July 15, 1992	Mark Peterson (Legal Analysis Systems, Inc.)	Findings Re: Liability of National Gypsum for Pending and Future Asbestos Personal Injury Claims
June 1993	Dunbar & Martin (nee Neuman) (NERA)	Estimating Future Asbestos Claims: Lessons from the National Gypsum Litigation
August 13, 1993	Stallard & Manton (Duke University) Presented to U.S. District Court, Eastern District of New York, Judge Jack B. Weinstein presiding, September 7, 1993, and entered into testimony March 15, 1994.	Estimates and Projections of Asbestos Related Diseases and Exposures Among Manville Personal Injury Settlement Trust Claimants, 1990-2049.
September 23, 1993	Dan Rourke, The Resource Planning Corporation (RPC)	The Manville Personal Injury Settlement Trust Claims Forecast Model
1994	Spirtas, Heineman, Bernstein, Beebe, Keehn, Stark, Harlow & Benichou (Occupational and Environmental Medicine)	Malignant Mesothelioma: Attributable Risk of Asbestos Exposure
March 8, 1994	Stallard & Manton (Duke University) Submitted to U.S. District Court, Eastern District of New York, as sworn testimony, Judge Jack B. Weinstein presiding, March 15, 1994.	Projections of Asbestos Related Personal Injury Claims Against the Manville Personal Injury Settlement Trust, Males 1990-2049, by Occupation, Date of First Exposure, and Type of Claim
After 1994	William Blot (International Epidemiology Institute, Ltd.)	Trends in Asbestos-Related Diseases
March 4, 1995	The Lancet Volume 345, Number 8949	Continuing increase in mesothelioma mortality in Britain
1996	Stayner, Dankovic & Lemen (American Journal of Public Health)	Occupational Exposure to Chrysotile Asbestos and Cancer Risk: A Review of the Amphibole Hypothesis
1996	The Cologne Re	Asbestos-Related Claims in the USA and Impact on the Reinsurance Industry
1997	Bertram Price	Analysis of Current Trends in United States Mesothelioma Incidents
2000	Bocchetta, DiResta, Powers, Freso, Tosolini, Testa, Pass, Rizzo & Carbone (Proceedings of the National Academy of Sciences)	Human Mesothelial Cells are Unusually Susceptible to Simian Virus 40 – Mediated Transformation and Asbestos Carcinogenicity
2001	Stallard, Manton, & Cohen	Forecasting Product Liability Claims: Epidemiology and Modeling in the Manville Asbestos Case
2001	Mealey's Asbestos Bankruptcy Conference 2001/David T. Austern	The Manville Trust Experience
2004	Bertram Price and Adam Ware (American Journal of Epidemiology)	Mesothelioma Trends in the United States: An Update Based on Surveillance, Epidemiology, and End Results Program Data for 1973 through 2003
2005	Eric Stallard, Kenneth G. Manton, and Joel E. Cohen	Forecasting Product Liability Claims: Epidemiology and Modeling in the Manville Asbestos Case

Reference List 2

Asbestos Defendants Declaring Bankruptcy[1]

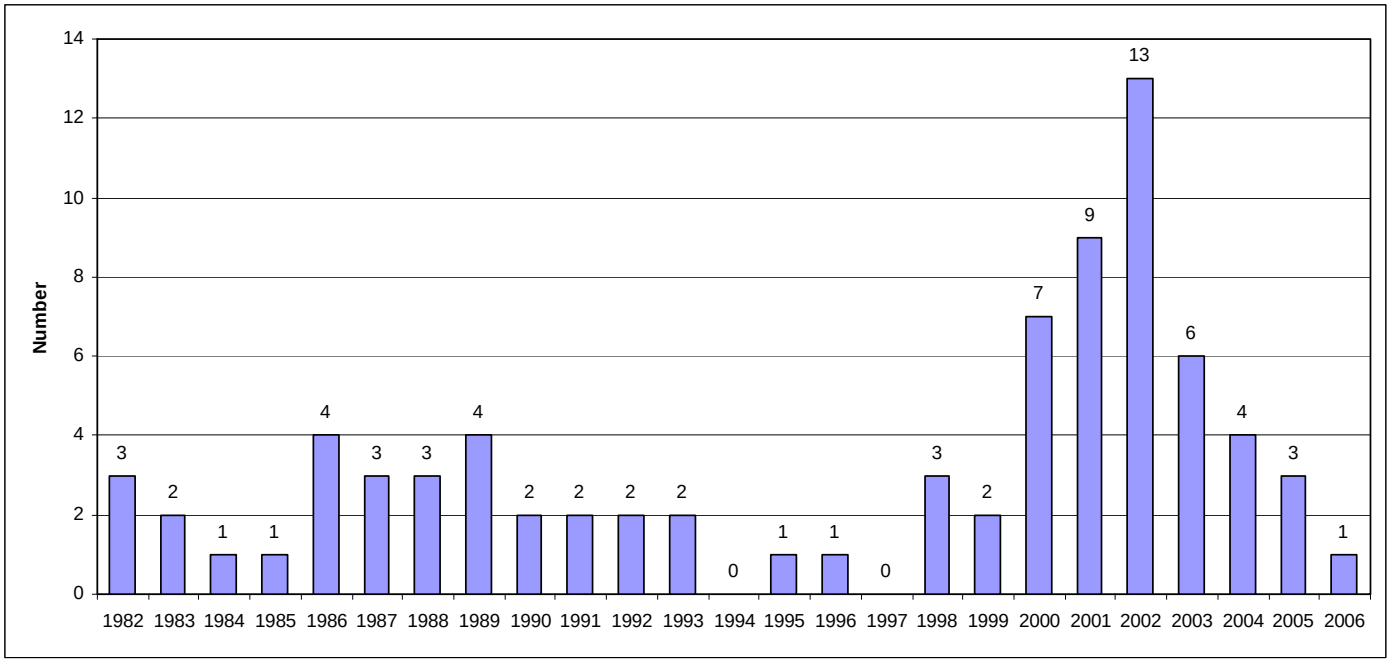
Sheet 1

(*denotes pre-packaged bankruptcies)

	Company	Year of Bankruptcy
1.	ABB Lummus Global Inc.	2006
2.	A.P. Green	2002
3.	API Inc.	2005
4.	A-Best	2002
5.	*AC&S	2002
6.	Amatex Corporation	1982
7.	American Shipbuilding	1993
8.	Armstrong World Industries[2]	2000
9.	Artra Group, Inc. (Synkoloid)	2002
10.	Asbestec Industries	1988
11.	Asarco	2005
12.	Atlas Corporation	1998
13.	Babcock & Wilcox[3]	2000
14.	Bethlehem Steel	2001
15.	Brauer Supply	2005
16.	Brunswick Fabrications	1988
17.	Burns & Roe Enterprises	2000
18.	Cassiar Mines	1992
19.	Celotex[4]	1990
20.	C.E. Thurston	2003
21.	Chemetron Corp.	1988
22.	*Combustion Engineering	2003
23.	*Congoleum	2003
24.	Delaware Insulations	1989
25.	E.J. Bartells	2000
26.	Eagle Picher Industries	1991
27.	Eastco Industrial Safety Corporation	2001
28.	Federal Mogul[5]	2001
29.	Flintkote	2004
30.	Forty-Eight Insulations	1985
31.	*Fuller-Austin Insulation	1998
32.	Gatke Corp.	1987
33.	G-I Holdings	2001
34.	H&A Construction[6]	1983
35.	H.K. Porter Co.[7]	1991
36.	*Halliburton subsidiaries[8]	2003
37.	Harbison Walker	2002
38.	Harnischfeger Industries	1999
39.	Hillsborough Holdings[9]	1989
40.	*J.T. Thorpe, Co. (Texas)	2002
41.	J.T. Thorpe, Inc. (California)	2002
42.	Johns-Manville[10]	1982
43.	Kaiser Aluminum and Chemical	2002
44.	Keene Corp.[11]	1993
45.	Kentile Floors	1992
46.	Lone Star Steel	1989
47.	Lykes Brothers Steamship	1995
48.	M.H. Detrick	1998
49.	*MacArthur Companies[12]	2002
50.	Muralo Co.[13]	2003
51.	National Gypsum[14]	1990
52.	Nicolet	1987
53.	North American Asbestos Corporation[15]	1976
54.	North American Refractories (NARCO)	2002
55.	Owens Corning Fiberglas[16]	2000
56.	Pacor (Philadelphia Asbestos Corporation)	1986
57.	Pittsburgh Corning	2000
58.	Plibrico	2002
59.	Porter Hayden	2002
60.	Proko Industries Inc.	2003
61.	Prudential Lines	1986
62.	*Quigley[17]	2004
63.	Raytech Corporation[18]	1989
64.	Rock Wool Manufacturing	1996
65.	Rutland Fire & Clay	1999
66.	*Shook & Fletcher	2002
67.	Skinner Engine Company	2001
68.	Special Electric	2004
69.	Standard Insulations Inc.[19]	1986
70.	Stone & Webster	2000
71.	Swan Transportation	2001
72.	Todd Shipyards	1987
73.	U.S. Gypsum[20]	2001
74.	U.S. Mineral (Isolatek International)	2001
75.	United States Lines[21]	1986
76.	*Utex Industries	2004
77.	UNR Industries[22]	1982
78.	W.R. Grace	2001
79.	Wallace & Gale	1984
80.	Waterman Steamship Corp.	1983

[1] The Subcommittee believes that this list represents all asbestos defendants that have filed for bankruptcy protection as a result of asbestos-related litigation, based on its interpretation of information obtained or compiled from public sources it deems reliable. The Subcommittee cannot and does not guarantee the accuracy, validity, timeliness, or completeness of the information provided to the reader for any particular purpose. We have attempted to include each corporation only once, not counting subsidiaries. The list does not include Washington Group International (2001), Oglebay Norton (2004), or Dana (2005) because their bankruptcies were not caused by asbestos litigation, or SGL Carbon (1998), because the filing was dismissed. In October 2004, Crane announced its intent to file a prepackaged bankruptcy petition. However, in January 2005, Crane announced that it was no longer pursuing the resolution of its asbestos liability through a prepackaged bankruptcy.

Number of Asbestos-Related Bankruptcies Per Year



Note: Before 1982, there was only one asbestos-related bankruptcy, in 1976.

It is likely that the lower rate of filing of bankruptcy petitions since 2003 has resulted from challenges to "pre-packaged" bankruptcies along with consideration of potential federal and state judicial reforms.

Notes to Reference List 2, Sheet 1:

[2] Including subsidiaries Desseaux Corporation and Nitram Liquidators, Inc.
[3] Including Americon, B&W Construction, and Diamond Power International.
[4] Including Carey Canada, Panacon, Phillip Carey Company, and Smith & Kanzler.
[5] Including T&N (Limpet; Keasbey & Mattison); GHI (fka Flexitallic, Inc.); Ferodo (fka Nuturn); F-M Products (fka Moog Automotive, Inc., successor-by-merger to Wagner Electric Corporation); Felt Products Mfg. Co. (fka Fel-Pro Inc.); and Vellumoid.
[6] Acquired Asbestospray and Spraycraft.
[7] Including Southern Textile, formerly known as Southern Asbestos Company.
[8] Including Kellogg Brown & Root, Inc. (KBR), DII Industries (formerly Dresser Industries), Mid-Valley, Inc., KBR Technical Services Inc., Kellogg Brown & Root Engineering Corp., Kellogg Brown & Root International Corp. (a Delaware Corporation), Kellogg Brown & Root International Inc. (a Panamanian corporation), and BPM Minerals.
[9] Other Celotex entities later filed for bankruptcy in 1990.
[10] Including Advocate Mines of Canada.
[11] Including Baldwin Ehret Hill.
[12] Including MacArthur Co., Western MacArthur Co., and Western Asbestos.
[13] Includes affiliate Norton and Son; claims arise from purchase of Synkoloid assets from parent, Artra Group.
[14] Including parent Aancon Holdings Inc. as well as Asbestos Claims Management Corp. (New National Gypsum Co.), which filed for bankruptcy protection in 2002.
[15] Including Continental Producers Corp.
[16] Including subsidiary Fibreboard.
[17] Channeling injunction and trust will relate to both Pfizer and Quigley claims.
[18] Including Raymark Industries (successor of Raybestos Manhattan) and Raymark Corp.
[19] Including Standard Asbestos Manuf. & Insulation.
[20] Includes USG Interiors, L&W Supply Corp., and Beadex Manufacturing Co.
[21] Including McLean Industries and First Colony Farms.
[22] Including Union Asbestos & Rubber (Unarco).

Endnotes

[1] The U.S. Supreme Court referred to asbestos litigation as an "elephantine mass" in *Ortiz v. Fibreboard*, 527 U.S. 815, 821 (1999).

[2] A.M. Best referred to asbestos claims as a "tidal surge" in *Asbestos Claims Surge Set to Dampen Earnings for Commercial Insurers*. Special Report (7 May 2001), 3.

[3] A discussion of estimation methods is beyond the scope of this monograph. Estimates of total ultimate cost obtained from Tillinghast–Towers Perrin and Milliman USA 2001 studies.

[4] Approximately 2,600 annual malignant mesothelioma underlying and non-underlying causes of death summarized at Table 48, ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/Health_US/hus04tables/ (last visited on March 16, 2007). Estimates of annual mesothelioma incidence based on SEER data range from approximately 2,560 (equals 2,000 males plus 560 females) by Bertram Price and Adam Ware, American Journal of Epidemiology, Volume 159, Number 2, 1/15/2004, "Mesothelioma Trends in the United States: An Update Based on Surveillance, Epidemiology, and End Results Program Data for 1973 through 2003" to approximately 2,750 implied by NERA Economic Consulting, "Where are Mesothelioma Claims Heading?" Paul Hinton, Ron Miller, Faten Sabry and Fred Dunbar, with a range of 2,500 to 2,900 shown from 1989 to 2003 in Figure 5, SEER Estimated Total Incidence Adjusted for Coastal Population, as published for Mealey's Asbestos Bankruptcy Conference, December 4-5, 2006.

[5] "Asbestos: A tiny but lethal fiber," http://www.pilotonline.com/special/asbestos/primer.html (6 May 2001) (last visited on March 16, 2007). Also referred to as the "magic mineral" in the *British Journal of Industrial Medicine 47* (1990), 361.

[6] The six varieties are actinolite, amosite, anthophyllite, crocidolite, tremolite, and chrysotile. According to the July 1977 *Scientific American*, chrysotile once accounted for more than 95 percent of asbestos use worldwide. It has a serpentine structure and is noticeably softer and more flexible than the other types.

[7] "Eliminating Asbestos From Fireproofing Materials," *Chemical Innovation 30*, no. 6 (June 2000), 21-29.

[8] 1982 Mt. Sinai School of Medicine study conducted by Dr. William Nicholson, Dr. Irving Selikoff, and George Perkel, Shearson Lehman Brothers, Inc. *Industry Report* (20 January 1992), 6.

[9] Austern, David, "The Manville Trust Experience," in *Mealey's Asbestos Bankruptcy Conference 2001*, (2001), 118.

[10] Alleman, James E. and Brooke T. Mossman, "Asbestos Revisited," *Scientific American* (July 1997), 74.

[11] http://leahy.senate.gov/press/200209/092502c.html (last visited on October 16, 2006).

[12] *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (C.A.5, 1991). Only future product uses and products made outside the U.S. remained banned after the 1991 decision.

[13] Virta, Robert L., "U.S. Department of the Interior, U.S. Geological Survey, Worldwide Asbestos Supply and Consumption Trends from 1900 to 2000," p. 22, 24.

[14] http://minerals.usgs.gov/minerals/pubs/commodity/asbestos/asbesmyb03r.pdf (last visited on October 17, 2006).

[15] Virta, Robert L., p. 58, 59.

[16] "Asbestos," at http://www.epa.gov/ttn/atw/hlthef/asbestos.html, last updated on March 9th, 2006 (last visited on March 16, 2007).

[17] California ambient asbestos white paper at http://www.arb.ca.gov/toxics/asbestos/asbestos.htm (last visited on March 16, 2007).

[18] http://www.atsdr.cdc.gov/asbestos/asbestos/health_effects/index.html (last visited on March 16, 2007); http://www.cancer.gov/cancertopics/factsheet/Sites-Types/mesothelioma (last visited on March 16, 2007).

[19] http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=PREAMBLES&p_id=784 (last visited on March 21, 2007).

[20] Exposure to asbestos impairs pulmonary function and gives rise to disease.http://www.atsdr.cdc.gov/tar/self_care_guide.html (last visited on March 21, 2007).

[21] Actual latency periods for individuals may be shorter or longer.

[22] Signature disease caused by exposure to asbestos.

[23] The pleural space is the space between the inner and outer lining of the lung. It is normally very thin and lined only with a very small amount of fluid.

[24] A limited-use blood test was approved by the FDA to detect mesothelioma in patients who have had surgery; use of the test to detect mesothelioma is being explored, as reported in "Test Kit Targets Cancer Linked to Asbestos," Philadelphia Business Journal, John George, March 2, 2007.

[25] http://www.atsdr.cdc.gov/HEC/CSEM/asbestos/physiologic_effects.html (last visited on April 9, 2007).

[26] Bronchi are the two primary divisions of the trachea that lead into the right and left lung.

[27] http://www.atsdr.cdc.gov/HEC/CSEM/asbestos/physiologic_effects.html (last visited on April 9, 2007).

[28] "It is now universally agreed that exposure to asbestos fibers can, in certain circumstances, lead to three diseases: asbestosis, lung cancer and mesothelioma of the lining of the lung (pleura) or stomach (peritoneum). It can also cause a group of benign conditions of the pleura. Controversy remains over whether it may cause a group of other cancers, including cancers of the larynx, gastrointestinal tract and kidney," according to Frederick C. Dunbar, Denise Neumann Martin, and Phoebus J. Dhrymes in *Estimating Future Claims, Case Studies from Mass Tort and Product Liability*. (Andrews Professional Books, 1996).

[29] Regarding laryngeal cancer, "[t]he Committee concluded that the evidence is sufficient to infer a causal relationship between asbestos exposure and laryngeal cancer," according to page 6 of the Executive Summary of Asbestos: Selected Cancers, Committee on Asbestos: Selected Health Effects Board on Population Health and Public Health Practices, Institute of Medicine, The National Academic Press, 2006.
[30] http://www.atsdr.cdc.gov/HEC/CSEM/asbestos/physiologic_effects.html (last visited on April 9, 2007).
[31] http://hazmap.nlm.nih.gov/cgi-bin/hazmap_generic?tbl=TblDiseases&id=423 (last visited on April 9, 2007).
[32] *Borel v. Fibreboard Paper Products Corp.*, 493 F.2d 1076 (5th Cir. 1973).
[33] *See* Jay Tidmarsh and Roger H. Trangsrud, *Complex Litigation and the Adversary System* Ch. 2 (1998).
[34] http://www.stanford.edu/group/i-rite/statements/2001/boggio.html (last visited on March 29, 2007).
[35] Encapsulated means contained by physical barriers that resist accidental disturbance and release. http://www.dhr.virginia.gov/pdf_files/Asbestos1.PDF (last visited on March 26, 2007).
[36] "Still Killing," *Economist* (19 August 2000); *Wall Street Journal* (5 March 2001).
[37] Joint and several liability allows enforcement of the entire judgment against any one of a group of joint tortfeasors. In some jurisdictions, joint and several liability remains, despite the adoption of comparative fault, and in others it has been eliminated by comparative fault. http://www.nspe.org/govrel/gr2-4017.asp (last visited on March 26, 2007).
[38] "Companies want to pay what they paid 15 or 20 years ago, and don't want to take into consideration that there might be fewer companies to pay, which means higher shares of liability." Fred Baron, of the Dallas law firm Baron & Budd, as quoted in "Asbestos Suits Target Makers of Wine, Cars, Soups, Soaps," *Wall Street Journal* (12 April 2001).
[39] RAND Institute for Civil Justice, "*Asbestos Litigation*" by Stephen Carroll, Deborah Hensler, Jennifer Gross, Elizabeth M. Sloss, Matthias Schonlau, Allan Abrahamse, J. Scott Ashwood. 2005 (can be obtained at http://www.rand.org/publications/, last visited on March 26, 2007).
[40] RAND Institute for Civil Justice, "*Asbestos Litigation*" by Stephen Carroll, Deborah Hensler, Jennifer Gross, Elizabeth M. Sloss, Matthias Schonlau, Allan Abrahamse, J. Scott Ashwood. 2005 (can be obtained at http://www.rand.org/publications/, last viewed on March 26, 2007).
[41] http://www.lawreview.piercelaw.edu/PLRarticles/vol3no2/torch.pdf (last visited on March 29, 2007).
[42] "Trusts Busted," *The Wall Street Journal* (5 December 2006).
[43] Plaintiffs' attorney activities include the creation of asbestos litigation specialty firms, union hall X-ray screenings, and Sunday sports page and Internet advertisements. See Richard B. Schmitt, "How Plaintiffs' Lawyers Have Turned Asbestos Into a Court Perennial," *Wall Street Journal* (5 March 2001).
[44] http://www.citizen.org/documents/NoLogJam.pdf (last visited on March 26, 2007).
[45] http://www.cancer.org/docroot/PED/content/PED_1_3X_Asbestos.asp?sitearea=PED (last visited on March 26, 2007).
[46] *See* http://www.ded.uscourts.gov/JHR/05-59a.PDF (last visited on March 26, 2007).
[47] *See* http://www.nlcpi.org/books/pdf/Vol6Number6June2002.pdf (last visited on March 26, 2007).
[48] "Having Your Tort and Eating It Too?," by Charles Bates, PhD and Charles Mullin, PhD, published in Mealey's Asbestos Bankruptcy Report, Vol. 6, #4, November 2006.
[49] Estimates of total ultimate cost obtained from Tillinghast–Towers Perrin and Milliman USA 2001 studies.
[50] Estimates of the net amount insured by U.S. property/casualty insurers and reinsurers obtained from Tillinghast–Towers Perrin and Milliman USA 2001 studies.
[51] A reinsurer provides insurance to direct insurance companies by contracting to accept the transfer, in whole or in part, of a risk or contingent liability covered under an existing insurance contract.
[52] A.M. Best Special Report, Asbestos and Environmental Losses Edge Toward Peak in 2004 as Funding Gap Narrows, March 2006.
[53] A.M. Best Note 33 data for electronic filers, June 2007 (preliminary estimate of year-end 2006 information as summarized in electronic filings of Note 33 of the Annual Statement).
[54] These statistics were compiled by the Tillinghast business of Towers Perrin based on its review of Note 33 data provided by A.M. Best.
[55] Congressional Budget Office Cost Estimate, S. 852 Fairness in Asbestos Injury Resolution Act of 2005, August 25, 2005, p. 8.
[56] RAND Institute for Civil Justice, "*Asbestos Litigation*" by Stephen Carroll, Deborah Hensler, Jennifer Gross, Elizabeth M. Sloss, Matthias Schonlau, Allan Abrahamse, J. Scott Ashwood. 2005. Available for purchase at http://www.rand.org/publications/ (last visited on March 26, 2007). Current defendant corporations span 75 out of 83 possible 2-digit SIC industry codes.
[57] "*Comparison of 'B' Readers' Interpretations of Chest Radiographs for Asbestos Related Changes*" by Joseph N. Gitlin, DPH, Leroy L. Cook, BA, Otha W. Linton, MSJ, Elizabeth Garrett-Mayer, PhD Acad Radiol 2004; 11:843-856.
[58] *In re Silica Products Liability Litigation*, 398 F.Supp.2d 563 (S.D. Tex. 2005).
[59] *Id.* at 635.
[60] http://www.celotextrust.com/news_details.asp?nid=22; Eagle-Picher Personal Injury Settlement Trust Memo to Claimants' Counsel, 10/19/2005; and Claims Resolution Management Corporation memo Re: *Suspension of Acceptance of Medical Reports*, 9/12/2005 (last visited on March 26, 2007).
[61] Glater, Jonathan D., *Civil Suits Over Silica in Texas Become a Criminal Matter in New York*, NY Times, 5/18/2005, B1.

[62] Cleveland Plain Dealer, Asbestos litigation cases cut, Thomas W. Gerdel, April 5, 2006.
[63] "Some courts have adopted mechanisms for separating out claims by individuals who are not presently sick. For example, in Massachusetts, judges have developed an inactive docket, which allows plaintiffs with asbestos-related pleural diseases to toll the statute of limitations until they develop asbestosis or some type of malignancy. Cases on the inactive docket are exempt from discovery and can only be placed on the active docket by the filing of a subsequent complaint. A similar inactive docket approach is used by some courts in Maryland. Victor E. Schwartz and Leah Lorber, "A Letter to the National's Trial Judges: How the Focus on Efficiency is Hurting You and Innocent Victims in Asbestos Liability Cases," *American Journal of Trial Advocacy* 24, no. 2 (2001). See also Mark A. Behrens and Monica G. Parham, "Stewardship for the Sick: Preserving Assets for Asbestos Victims through Inactive Docket Programs," *American Journal of Trial Advocacy* 24, no. 2 (2001), 17.
[64] Effective August 9, 2006, the Michigan Supreme Court banned consolidation of asbestos cases for trial or settlement, stating, "It is the opinion of this Court that each case should be decided on its own merits, and not in conjunction with other cases." Michigan Supreme Court Administrative Order No. 2006-6 Prohibition on "Bundling" Cases. http://www2a.cdc.gov/phlp/docs/2003-47-080906.pdf (last visited on March 26, 2007).
[65] E.g., the tobacco industry and makers of polio vaccines. SV40 (Simian Virus 40) has been found in the cells of certain rare cancers, including mesothelioma. It has been alleged that contamination of early batches of the Salk vaccine and test batches of the Saben vaccine (both polio vaccines) cause mesothelioma. However, these findings have not met the Daubert standard for court admissibility.
[66] The Manville Trust sued the tobacco industry in *Falise v. American Tobacco Co.*, which ended in a mistrial in January 2001. The suit was later dropped. Additionally, 22 asbestos-injury plaintiffs and Owens Corning filed suit against several tobacco companies in 1998, alleging a conspiracy to hide the health risks associated with cigarette smoking and asbestos exposure. The Jefferson County Circuit Court dismissed the suit in May 2001, ruling that Mississippi's law prohibits recovery for an indirect injury. "Updates," *Business Insurance* (28 May 2001).
[67] *Cosey v. E.D. Bullard Co.*, Civ. No. 95-0069 (Miss. Cir. Ct. Jefferson County, 1995).
[68] Henry J. Hyde, "Statement of House Judiciary Committee Chairman Henry J. Hyde, Committee on the Judiciary, Hearing on H.R. 1283, Fairness in Asbestos Compensation Act of 1999," prepared for the House Committee on the Judiciary, 106th Cong., 2d sess., 1999; at http://www.lakesidepress.com/Asbestos/HTML/HR1283-FairnessAct1999.htm (last visited on March 26, 2007).
[69] Ronald L. Motley and Susan Nial, "Critical Analysis of the Brickman Administrative Proposal: Who Declared War on Asbestos Victims' Rights?" in *Proceedings of the Administrative Conference of the United States, October 31, 1991 Colloquy: An Administrative Alternative to Tort Litigation to Resolve Asbestos Claims*.
[70] "*The Impact of Asbestos Liabilities on Workers in Bankrupt Firms,*" Joseph E. Stiglitz, Jonathan M. Orszag, Peter R. Orszag, December 2002, Executive Summary, 3.
[71] Insurers and reinsurers have expressed concern that they could be required to make significant front-ended contributions to a trust (comparable to their total current liability reserves), yet additional payments could be required from them if it is determined that a fund is insufficient to pay its obligations (including potential borrowing costs), and if claims then revert to the court system. http://209.85.165.104/search?q=cache:aa3djtOnaT0J:rl.cpcusociety.org/file_depot/0-10000000/0-10000/8114/folder/28746/Issues-Asbestos.doc+front+ended+asbestos+trust&hl=en&ct=clnk&cd=10&gl=us (last visited on March 26, 2007).
[72] "The Asbestos Mess," The Wall Street Journal, March 8, 2006.
[73] Some plaintiffs on inactive dockets might eventually develop qualifying medical conditions. Future incidence of mesothelioma is included within future disease projections based on the timing of exposure and disease latency. http://www.hro.house.state.tx.us/focus/asbestos78-16.pdf (last visited on March 26, 2007).
[74] *See* http://www.courts.mi.gov/supremecourt/resources/administrative/2003-47-Maniloff.pdf (last visited on March 26, 2007).
[75] *See* http://www.courts.mi.gov/supremecourt/resources/administrative/2003-47-Maniloff.pdf (last visited on March 26, 2007).
[76] Inactive dockets and pleural registries may free plaintiffs' attorneys to focus more of their attention on development of their "active" cases. That increased attention may reveal stronger cases against defendants previously characterized as peripheral. For this reason, plaintiffs' attorneys' settlement demands are likely to increase, with settlements themselves increasing commensurately.
[77] "Three States Mandate Medical Criteria for Asbestos Impairment," Best's Insurance News, June 7, 2006.
[78] *See* http://www.nera.com/newsletter/COV_Asbestos_MT1254.pdf (last visited on March 26, 2007).
[79] "As a result of product liability, sellers are often brought into litigation despite the fact that their conduct had nothing to do with the accident or transaction giving rise to the lawsuit…" Innocent Sellers Fairness Act H.R. 5500, 109th Congress 2d Session.
[80] *See, e.g.*, http://www.atra.org/states/MS (last visited on March 26, 2007).
[81] http://www.ewg.org/reports/asbestos/facts/fact2.php (last visited on March 26, 2007).
[82] *Borel v. Fibreboard Paper Products Corp.*, 493 F.2d 1076 (5th Cir. 1973).
[83] *See* http://www.rand.org/pubs/documented_briefings/DB397/DB397.pdf (last visited on March 26, 2007).
[84] *See* http://www.cato.org/pubs/journal/cj6n3/cj6n3-4.pdf (last visited on March 26, 2007).
[85] http://www.saf.org/LawReviews/Steffey.html (last visited on March 26, 2007).
[86] *See* http://multinationalmonitor.org/mm2000/00september/interview.html (last visited on March 26, 2007).
[87] 447 A.2d 539 (N.J. 1982)

[88] http://www.fed-soc.org/pdf/Nullification.PDF (last visited on March 26, 2007). A later N.J. Supreme Court case, *Fischer v. Johns Manville Corp.*, 512 A.2d 466 (1986), held that evidence of a defendant's state of knowledge, although inadmissible on a claim for compensatory damages in a strict liability case, could be admissible on a claim for punitive damages.
[89] 509 U.S. 579 (1993).
[90] http://cyber.law.harvard.edu/daubert/ch3.htm (last visited on March 26, 2007).
[91] 521 U.S. 424 (1997).
[92] http://www.oyez.org/oyez/resource/case/818/ (last visited on March 26, 2007).
[93] 538 U.S. 135 (2003).
[94] http://www.law.cornell.edu/supct/html/01-963.ZS.html (last visited on March 26, 2007).
[95] http://www.law.cornell.edu/supct/html/01-963.ZS.html (last visited on March 26, 2007).
[96] 538 U.S. 408 (2003).
[97] http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=01-1289 (last visited on March 26, 2007).
[98] http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=01-1289 (last visited on March 26, 2007).
[99] Jay Tidmarsh and Roger H. Trangsrud, *Complex Litigation and the Adversary System* Chs. 1-4 (1998).
[100] http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=2nd&navby=case&no=957806 (last visited on March 26, 2007).
[101] http://www.sconet.state.oh.us/rod/newpdf/4/2003/2003-Ohio-1776.pdf (last visited on March 26, 2007).
[102] http://www.citizen.org/litigation/forms/cases/CaseDetails.cfm?cID=105 (last visited on March 26, 2007).
[103] Also known as Amchem v. Windsor; conditional class certification was granted by U.S. District Judge Weiner on February 15, 1993.
[104] The class was ultimately dissolved by a decision of the United States Supreme Court (*Amchem Products Inc. v. Windsor*, 521 U.S. 591 (1997), which applied the Rule 23 requirements for litigation class actions to settlement class actions. Jay Tidmarsh and Roger H. Trangsrud, *Complex Litigation and the Adversary System* Ch. 5 (1998).
[105] Initially approved by the U.S. District Court for the Eastern District of Texas in *Ahearn v. Fibreboard Corp.*, 162 F.R.D. 505 (1995).
[106] The United States Supreme Court ultimately held that applicants for contested certification of a settlement class must demonstrate that the fund allocation process address any conflicting interests among the class members (*Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999)).
[107] http://www.rand.org/pubs/documented_briefings/DB362.0/DB362.0.pdf (last visited on March 26, 2007).
[108] In 2000, OCF filed for bankruptcy. http://www.rand.org/pubs/documented_briefings/DB362.0/DB362.0.pdf (last visited on March 26, 2007).
[109] http:// www.nationalcenter.org/AsbestosLehman.pdf (last visited on March 26, 2007).
[110] *See Liberty Mut. Ins. Co. v. Lone Star Indus., Inc.*, WL 3747713 (Conn. Super. 2005); *see also Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co.*,45 Cal.App.4th 1 (Cal.App.1.Dist. April 30, 1996).
[111] *Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co.*,45 Cal.App.4th 1 (Cal.App.1.Dist. April 30, 1996).
[112] "Thus the traditional requirement of product identification and proximate cause was eliminated for the desired common good of reducing litigation expenses, which threatened to exceed the total indemnity paid." Best's Review May 12, 1993.
[113] *I.U. North America, Inc. v. A.I.U. Ins. Co.*, 896 A.2d 880 (Del. Super. 2006).
[114] *Matter of National Gypsum Co.*118 F.3d 1056 (C.A.5 Tex. 1997).
[115] *See United States Fire Ins. Co. v. National Gypsum Co.*, 101 F.3d 813 (C.A.2 (N.Y.), 1996).
[116] http://www.casact.org/pubs/proceed/proceed97/97187a.pdf (last visited on March 26, 2007).
[117] As of October 1992 (after four years of operation), the CCR had resolved 115,000 claims and had 55,000 claims pending.
[118] http://www.nationalcenter.org/AsbestosLehman.pdf (last visited on March 26, 2007).
[119] "Today the one-time emissary has been knocked down to clerical assistant, existing, for the most part, to process claims." The Wall Street Journal February 7, 2001.
[120] Business Insurance June 25, 2001, 2.
[121] http://www.ngcbitrust.org/NGCBITRUST/DownloadableForms/CRP.pdf (last visited on March 26, 2007).
[122] *Id.*
[123] The development of this mechanism was described in detail in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997).
[124] The U.S. Court of Appeals for the Third Circuit in Philadelphia decertified the class on May 10, 1996, and, on June 27, 1996, the manufacturers' petition for a rehearing was denied. The U.S. Supreme Court upheld, (6-2) the lower court's decision on June 27, 1997, with Justice Ginsburg stating that the "sprawling class" did not meet the requirements of Rule 23.
[125] *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 595 (1997).
[126] *Georgine v. Amchem Prod.,Inc.*, 83 F.3d 610, 620 (C.A.3 (P.A.) 1996).
[127] http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=97-1704 (last visited on March 26, 2007).
[128] *Id.*
[129] Forty-five thousand pending claims also represented by the counsel achieving the class action settlement were settled in a separate agreement for a higher average amount.

[130] Fibreboard was allowed to keep virtually all of its net worth, paying only $500,000, and potential insurance funds were greater than $2 billion.
[131] http://select.nytimes.com/gst/abstract.html?res=F60A15F73E590C758DDDAB0994D0494D81&n=Top%2fReference%2fTimes%20Topics%2fSubjects%2fA%2fAsbestos (last visited on March 26, 2007).
[132] http://sec.edgar-online.com/2000/05/15/15/0000950109-00-002215/Section8.asp (last visited on March 26, 2007).
[133] OCF underestimated the frequency and severity of claims in the National Settlement Program (NSP) as well as the number of opt-outs. Credit Suisse First Boston 11/28/2000, 10.
[134] http://www.rand.org/pubs/documented_briefings/2005/DB362.0.pdf (last visited on March 26, 2007).
[135] The six-member committee issued its 43-page report, *Report of the Judicial Conference Ad Hoc Committee on Asbestos Litigation 2*, at the annual meeting of the Judicial Conference of the United States on March 12, 1991. See The National Law Journal. Also see the District of Delaware U.S. Bankruptcy Court. *W.R. Grace Informational Brief* (2001), 15 (footnote 27).
[136] 479 S.E. 2d 300, 304 (W.Va. 1996).
[137] *Id.*
[138] 521 U.S. 591 (1997).
[139] *Id.*
[140] 527 U.S. 815, 821 (1999).
[141] *Id.*
[142] Statement by William N. Eskridge, Jr., as quoted in Babcock & Wilcox Company, Informational Brief, (22 February 2000), 37.
[143] *Norfolk & Western Ry. Co. v. Ayers*, 538 U.S. 135 (2003).
[144] *Id.* at 166.
[145] Senator. Hatch: Trial Lawyers Getting Rich Off of Asbestos Claims, US Fed News, 9 February 2006.
[146] Senator. Hatch: Trial Lawyers Getting Rich Off of Asbestos Claims, US Fed News, 9 February 2006.
[147] Testimony of Governor John Engler, President of the National Association of Manufacturers, "U.S. Senator Arlen Specter (R-PA) Holds a Hearing on S.3274, The "Fairness in Asbestos Injury Resolution Act of 2006" - Committee Hearing, 7 June 2006.
[148] Testimony of James Grogan, president of the International Association of Heat and Frost Insulators and Asbestos Workers, "U.S. Senator Arlen Specter (R-PA) Holds a Hearing on S.3274, The "Fairness in Asbestos Injury Resolution Act of 2006" - Committee Hearing, 7 June 2006.
[149] Overview of Asbestos-Related Bankruptcy Law, Mealey's National Asbestos Litigation Conference, 2002. Goodman and Mack.
[150] Shannon P. Duffy, "Conflicts of Interest Put End to Congoleum's Pre-Packaged Bankruptcy Plan"; at http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1129552519464 (last visited on March 26, 2007).