



# AMERICAN ACADEMY *of* ACTUARIES

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October 2, 2002

The Honorable Orrin G. Hatch  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Ranking Member Hatch:

Thank you for inviting me to provide written testimony on behalf of the Mass Torts Subcommittee of the American Academy of Actuaries<sup>1</sup> regarding the Judiciary Committee's September 25 hearing on asbestos litigation. My testimony was based on the Academy's monograph, "Overview of Asbestos Issues and Trends," published December 2001 (referenced throughout as the "Academy monograph"). I am pleased to offer this letter, which updates and clarifies some of the information contained in our prior testimony (in a question-and-answer format), and I respectfully request that it be submitted for inclusion in the hearing record.

Q1. Do you have more recent information concerning the current personal injury claim situation, since the Academy monograph was published?

A1. There is updated information concerning the number of claimants and the number of defendants.

The Academy monograph reported that the Manville trust had received over 500,000 claims through June 2001.<sup>2</sup> As Mr. Austern stated in his testimony last week, the Manville trust had received about 564,000 claims through August 2002. This includes a four-month filing moratorium in 2002.<sup>3</sup>

The Academy monograph reported a defendant count of more than 2,000 companies.<sup>4</sup> The Rand Study<sup>5</sup> now places the defendant count at over 6,000.

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<sup>1</sup> The American Academy of Actuaries is the public policy organization for actuaries practicing in all specialties within the United States. A major purpose of the Academy is to act as the public information organization for the profession. The Academy is non-partisan and assists the public policy process through the presentation of clear and objective actuarial analysis. The Academy regularly prepares testimony for Congress, provides information to federal elected officials, comments on proposed federal regulations, and works closely with state officials on issues related to insurance. The Academy also develops and upholds actuarial standards of conduct, qualification and practice, and the Code of Professional Conduct for all actuaries practicing in the United States.

<sup>2</sup> Academy monograph, p. 3.

<sup>3</sup> The Manville Trust reported in its second quarter 2002 report that it had changed its procedures for reporting claim counts, in that it would no longer include "disqualified" claims in future reported claim counts. Hence the previously reported 500,000-claim count and the new 564,000 claim counts may not be entirely comparable. If the Manville data is used for determining overall asbestos claim trends, we recommend making adjustments for the four-month filing moratorium in 2002, the change in claim filing systems, and the change in the level of compensation by disease type.

<sup>4</sup> Academy monograph, p. 4.

- Q2. There are varying estimates of the percentage of plaintiffs with malignant diseases versus those that have nonmalignant diseases versus those that are not currently impaired. Please clarify.
- A2. The Academy monograph states that "...2,000 new mesothelioma cases filed each year. There are another 2,000 to 3,000 cancer cases.... There are a smaller number of serious asbestosis cases. The remaining cases are either pleural injuries or claimants who do not currently exhibit signs of injury. It is estimated that more than 90 percent (or more than 54,000 claims filed during 2000) are for claimants alleging nonmalignant injuries."<sup>6</sup>

We note, as referenced in the Academy monograph, that claimants with nonmalignant injuries include both the impaired and the unimpaired. Thus, the testimony of Professor Dellinger, attributing an estimate of 90 percent of claimants as unimpaired to the Academy monograph is not consistent with that document.<sup>7</sup>

- Q3. Have there been any additional bankruptcies since the Academy's monograph was published in December 2001?
- A3. We believe there have been at least 64 distinct asbestos-related bankruptcies. In addition to the 52 asbestos defendants declaring bankruptcy (shown in Reference List 2 of the Academy monograph), there have been at least 12 additional bankruptcies, as shown below with the year of filing.

A.P. Green, 2002	North American Refractories,
A-Best, 2002	(NARCO)/RHI ,2002
AC&S, 2002	Plibrico, 2002
ARTRA (Synkoloid), 2002	Porter Hayden, 2002
Bethlehem Steel, 2001	Shook & Fletcher, 2002
Harbison Walker, 2002	Swan Transportation, 2001
Kaiser Aluminum and Chemical, 2002	

- Q4. Have there been any changes in the way plaintiffs' attorneys view the asbestos situation?
- A4. The Academy monograph outlined the "Concerns of Major Parties Involved in Asbestos (Personal Injury) Litigation," including plaintiffs' attorneys. The Academy monograph noted that the issues for plaintiffs' attorneys are generally the same as those of their clients: "Seriously Injured Claimants" and "Nonseriously Injured and Unimpaired

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<sup>5</sup> "Asbestos Litigation Costs and Compensation - An Interim Report, p. 47, Rand Corporation, p. iv and 49.

<sup>6</sup> Academy monograph, p. 3.

<sup>7</sup> On page 8 of his testimony, Dellinger says "...up to one half of asbestos claims are now filed by people who have little or no physical impairment.' That number is perhaps too conservative. For instance, Professor Edley estimated in 1992 that claims by unimpaired plaintiffs then accounted for 60 to 70 percent of new claims, with the trend toward unimpaired claimants steadily increasing, Edley House Testimony at 5, and some current estimates are as high as 90 percent, see Jennifer Biggs et al., "Overview of Asbestos Issues and Trends," p. 3.

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Claimants.” While the concerns of these groups as stated in the Academy monograph<sup>8</sup> remain accurate, the plaintiffs’ attorneys who represent seriously injured claimants are more likely to believe that legislative changes are needed in the asbestos system than are those who represent nonseriously injured and unimpaired claimants, as illustrated by the attached letter (see Attachment 1).

Thank you very much for your consideration. Please do not hesitate to contact Greg Vass, the Academy’s Senior Casualty Policy Analyst, at (202) 223-8196 if you have any questions or would like additional information.

Sincerely,

Jennifer L. Biggs, FCAS, MAAA  
Chairperson  
Mass Torts Subcommittee  
American Academy of Actuaries

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<sup>8</sup> Academy monograph, p. 5-6.