



AMERICAN ACADEMY *of* ACTUARIES

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March 24, 2004

Senator Bill Frist  
Majority Leader  
United States Senate  
Washington, DC 20510

Re: Asbestos

Dear Senator Frist:

The Mass Torts Subcommittee of the American Academy of Actuaries<sup>1</sup> published a monograph, “*Overview of Asbestos Issues and Trends*” in December 2001. The Academy monograph is currently being updated. Meanwhile, as S. 1125 nears debate on the Senate floor, I am pleased to provide this letter, which provides a brief summary of some of the key points regarding asbestos litigation.

- The asbestos problem, initially recognized decades ago, is not going away.
- Exposure to asbestos has been linked to malignant diseases including mesothelioma, lung and other cancers, as well as nonmalignant conditions such as asbestosis and pleural injuries.
- Asbestos use was widespread in the United States for decades, and although exposure levels have declined significantly since OSHA requirements were implemented, asbestos use is still legal in the United States today.
- The number of claimants filing lawsuits annually has increased dramatically in recent years and shows no signs of a return to prior levels experienced during the 1990s. Most of the increase in claim filings relate to individuals who are not functionally impaired (see Exhibit 1 – Manville Trust Experience).
- Approximately 730,000 claims were filed through 2002<sup>2</sup> and estimates of the ultimate number of claimants range from 1 million to 3 million.

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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> Based on analysis performed by the RAND Institute for Civil Justice. Also, note that Exhibit 1 shows 565,621 claims filed through 2002 against a single defendant – the Manville Trust.

- Many believe that some current claimants are not being compensated fairly or promptly. Additionally, there are widespread concerns that funds will not be available to compensate future claimants.
- The size of recent awards made to settle claims has also increased.<sup>3</sup> In turn, contributions paid by individual corporate defendants and their insurers / reinsurers have increased. Additionally, demands against solvent defendants have reflected upward pressure to cover amounts that are no longer funded by defendants that have sought protection from asbestos litigation through Chapter 11 bankruptcy petitions.
- At least 70 companies have sought bankruptcy protection due to asbestos litigation to date (see Exhibit 2). Further, recent bankruptcy filings (i.e., pre-packaged petitions) have exacerbated inequities in the asbestos litigation system.<sup>4</sup>
- The number of corporations named as defendants in the litigation has grown dramatically. Asbestos claimants typically name 60 to 70 defendants in each lawsuit. While approximately 300 companies were sued in the 1980s, RAND estimates that approximately 8,400 companies had been sued as of 2002. The potential culpability of this expanded list of defendants is significantly different from the initial group of companies that mined or manufactured asbestos products, knew of its dangers, and failed to protect and/or warn their workers.
- Direct costs are significant – estimates of ultimate costs relating to U.S. exposure to asbestos range from \$200 billion to \$265 billion.<sup>5</sup> More than half of the costs relate to plaintiff and defense attorney fees.
- Indirect costs are also large –
  - Bankruptcies of corporate asbestos defendants have affected 47 states, resulting in the loss of 52,000 - 60,000 jobs, with each displaced worker losing \$25,000 - \$50,000 in wages and 25% of the value of their 401(k).<sup>6</sup>
  - For every 10 jobs lost in an asbestos-related bankruptcy, an additional 8 jobs are lost in the surrounding community.<sup>7</sup>
  - Failure to enact legislative reform could reduce economic growth by \$2.4 billion per year and cost 30,770 jobs annually.<sup>8</sup>

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<sup>3</sup> RAND has reported that from 1998 to 2001, average verdict to plaintiffs in asbestos cases increased as follows:

- Mesothelioma: \$2 million to \$6.5 million
- Other Cancer: \$1 million to \$2.5 million
- Asbestosis: \$2.5 million to \$5 million

While few claims reach verdict, the increase in these values influences negotiation regarding claims that are settled.

<sup>4</sup> With incentive to obtain approval of the plans by 75% of the asbestos claimants, disease criteria have been broadly defined in order to expand the voting group, and awards to claimants within the lower disease severity classes have been generous. These higher awards to lesser impaired claimants, as well as pre-petition settlements with claimants represented by certain plaintiff firms, diminish funds available to pay claimants who will develop more serious injuries in the future. For additional information, see articles published by Mark D. Plevin / Crowell & Moring LLP

<sup>5</sup> Estimates of total ultimate cost from the Tillinghast business of Towers Perrin and Milliman USA.

<sup>6</sup> Joseph E. Stiglitz, Jonathan M. Orszag, Peter R. Orszag, "The Impact of Asbestos Liabilities on Workers in Bankrupt Firms," December 2002.

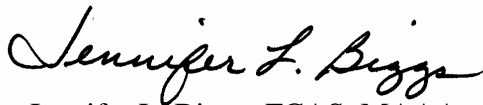
<sup>7</sup> NERA, "The Secondary Impact of Asbestos Liabilities," 2002.

- The U.S. Supreme Court has twice overturned efforts to resolve the litigation through class action settlements (Georgine and Fibreboard)<sup>9</sup> and has called upon Congress to address the situation.
- Various reform measures have been enacted or are being considered at the state level, such as
  - imposing medical criteria to bring a claim,
  - creating inactive docket systems to preserve the rights of individuals who are not currently impaired, and
  - addressing consolidation, joint and several liability, and venue issues.

However, it is difficult to implement meaningful changes on a state-by-state basis, and as long as some states are perceived as plaintiff friendly jurisdictions and claims remain portable, forum shopping will be a problem.

Several asbestos-related bills were introduced in the 108<sup>th</sup> Congress, and the issue of federal reform to the asbestos litigation crisis deserves careful attention. Thank you very much for your consideration of the information presented herein. 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 details.

Sincerely,



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

Encl: Exhibit 1 – Graph of annual claim filings against The Manville Trust  
Exhibit 2a – List of Asbestos-Related Bankruptcies  
Exhibit 2b – Graph of Bankruptcy Filings by Year

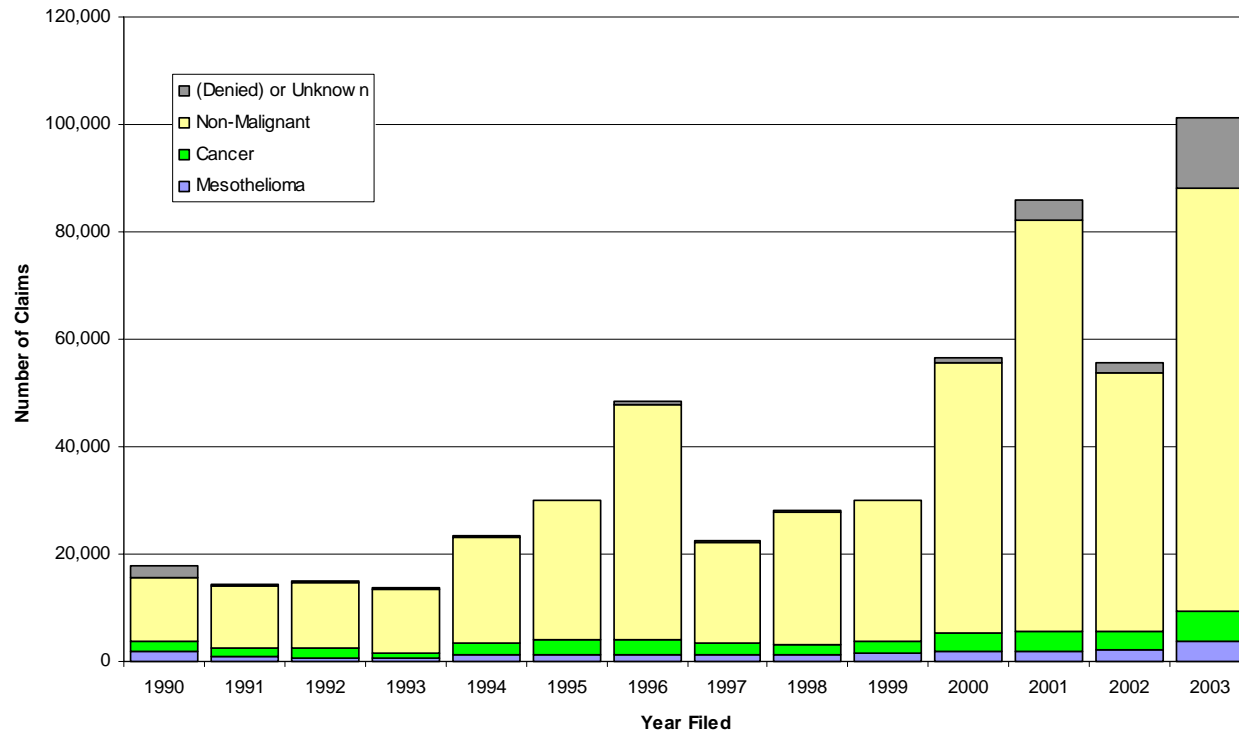
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<sup>8</sup> Navigant consulting Group, "Reducing the Asbestos Litigation Penalty: An Economic Benefit of Asbestos Reform Legislation," 2002.

<sup>9</sup> *Amchem Products, Inc. et al. v. Windsor et al.*, 96 Sup Ct. 270 (1997) and *Ortiz v. Fibreboard*, 97 U.S. 1704 (1999)

# Surge in Claim Filings

Manville Trust - Injury by Year Filed



Johns-Manville was the most prominent defendant in early asbestos litigation. The company declared bankruptcy in 1982 and The Manville Trust was formed in 1988.

We note that the high level of claim filings in 2003 was influenced by a deadline to file claims under the criteria of the 1995 Trust Distribution Process (TDP). The new 2002 TDP applies more stringent medical criteria for compensation and shifts compensation toward claimants with more severe injuries.

**Asbestos Defendants Declaring Bankruptcy<sup>1</sup>**

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

<sup>1</sup> Most (but potentially not all) of these asbestos defendants filed bankruptcy as a result of asbestos. We have attempted to include each corporation once (rather than counting multiple subsidiaries). The list does not include Harnischfeger Industries / Joy Technologies (1999) and Oglebay Norton (2004), because not caused by asbestos, as well as SGL Carbon (1998), because the filing was dismissed.

<sup>2</sup> Including subsidiaries Desseaux Corporation and Nitram Liquidators, Inc.

<sup>3</sup> Including Carey Canada, Panacon, Philip Carey Company, and Smith & Kanzler.

<sup>4</sup> Acquired Asbestospray and Spraycraft.

<sup>5</sup> Including Southern Asbestos Company and Southern Textile.

<sup>6</sup> 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.

<sup>7</sup> Including Baldwin Ehret Hill

<sup>8</sup> Including MacArthur Co., Western MacArthur Co., and Western Asbestos.

<sup>9</sup> Including Asbestos Claims Management Corp. (New National Gypsum Co.), which filed bankruptcy in 2002.

<sup>10</sup> Including Continental Producers Corp.

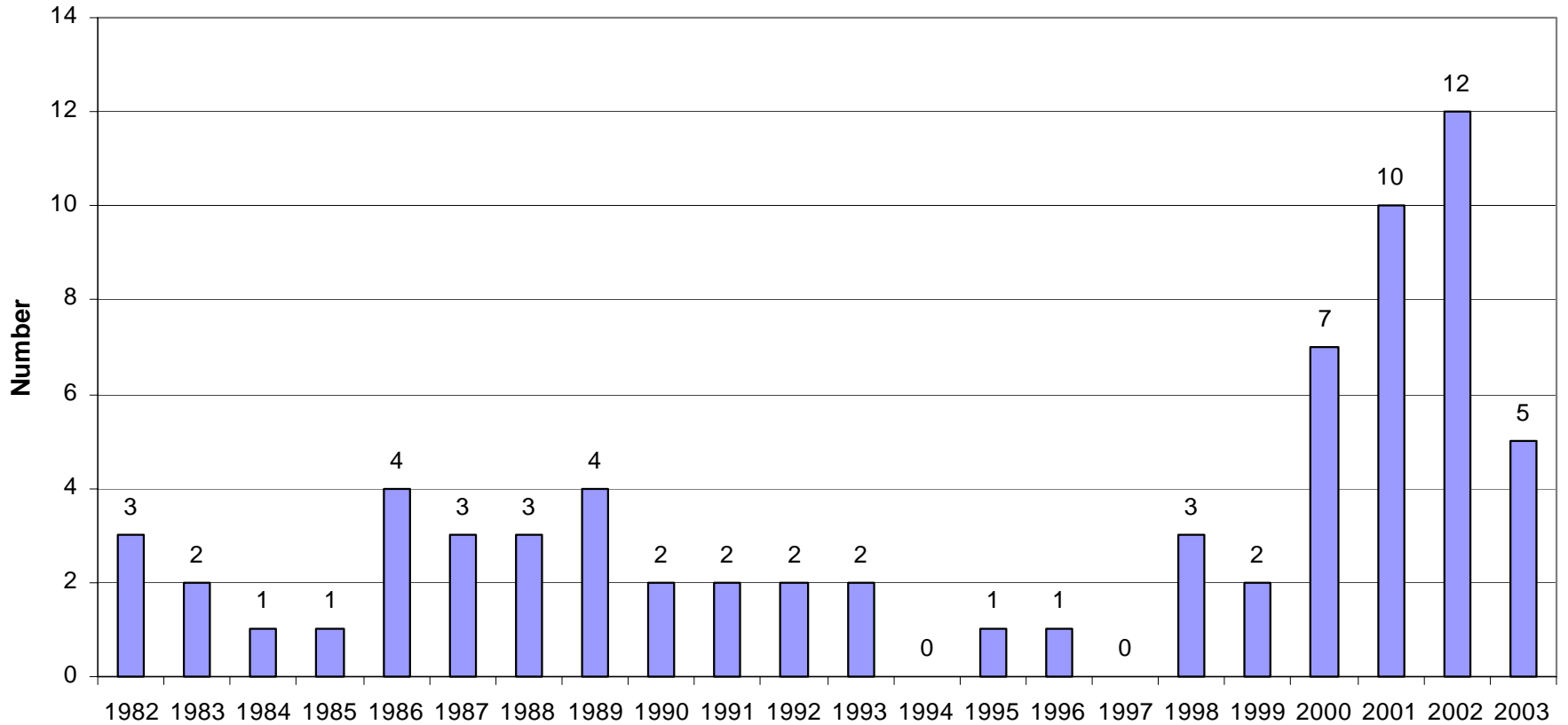
<sup>11</sup> Including Raymark Industries and Raymark Corp.

<sup>12</sup> Including Standard Asbestos Manuf. & Insulation

<sup>13</sup> Including McLean Industries and First Colony Farms.

<sup>14</sup> Including Union Asbestos & Rubber (Unarco).

# Number of Asbestos Related Bankruptcies per Year



Note: Graph excludes a bankruptcy in 1976 and one bankruptcy for which no date is available.