



**The Actuarial Profession**

making financial sense of the future

# US Asbestos GIRO XXX 2003 Convention

Gregory Overton & Darren Michaels

14-17 October 2003

City Hall, Cardiff

*The views expressed in this presentation are generally those of the individual presenters and not the companies that they represent, although the material does include elements that have been published by those organisations.*

# US Asbestos

---

- Background
- Deterioration in the Asbestos Claims Environment
- Current Estimates of the Ultimate Cost of US Source Asbestos
- Insurer Recognition of the Impact of the Deterioration
- Impact on the London Market
- Recent and Future Developments

# US Asbestos

---

- Background
- Deterioration in the Asbestos Claims Environment
- Current Estimates of the Ultimate Cost of US Source Asbestos
- Insurer Recognition of the Impact of the Deterioration
- Impact on the London Market
- Recent and Future Developments

## Largest Losses to the Insurance Industry

---

- September 11 Terrorist Attacks: \$30-58bn
- Hurricane Andrew, Florida 1992: \$21bn
- Northridge Earthquake, USA 1994: \$17bn
- Typhoon Mireille, Japan 1991: \$7bn
- Windstorm Daria, Western Europe 1990: \$6bn
- Windstorm Lothar, Western Europe 1999: \$6bn
- Hurricane Hugo, USA 1989: \$6bn
- **US Asbestos: \$120bn (to world-wide insurance industry)\***

\*Tillinghast Estimate

# What is Asbestos?

---

- Word is derived from ancient Greek and means “inextinguishable, unquenchable or unconsumable”
- Naturally occurring silicate with 6 varieties
  - actinolite
  - amosite
  - anthophyllite
  - crocidolite
  - tremolite
  - chrysotile
- Once considered as a “miracle mineral”
- Many favourable properties
  - flexible, strong and durable
  - resistant to fire, heat and corrosion
- Available in abundant quantities, hence inexpensive

## Where was asbestos used?

---

- Ship Building
- Boilers and machinery
- Electricity generation plants
- Oil refineries
- Wallpaper
- Textured paints
- Cement
- Building insulation
- Pipe coverings
- Wire coatings
- Asbestos cement
- Roofing
- Brake linings
- Wall and ceiling tiles and coatings

**The large number of uses leads to a large number of potential defendants**

# Asbestos is Dangerous to humans

---

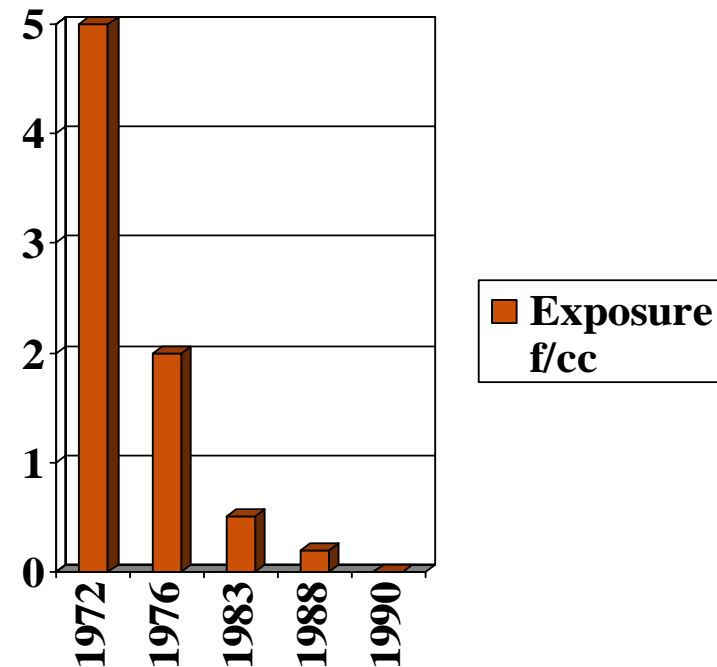
## ■ Signature diseases

- Mesothelioma
- Lung cancers
- Asbestosis
- Pleural thickening or plaques

## ■ Long Latency Period

- Typically around 40 years for mesothelioma

## US permitted asbestos exposure



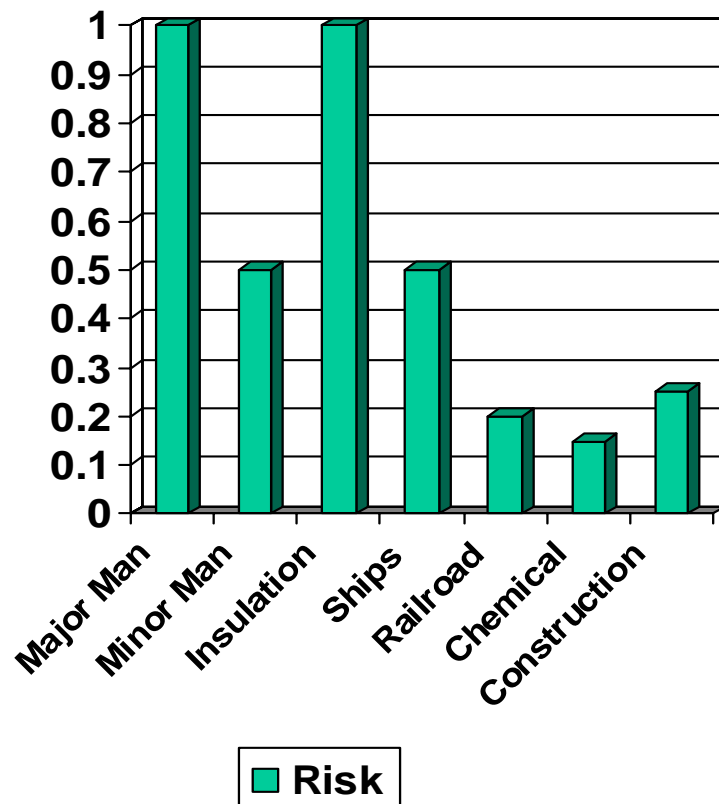
# Asbestos Diseases

Disease	Symptoms / Comments	Malignant (Y/N)	Latency Period
Mesothelioma	Cancer of membranes that cover & protect lungs. Fatal within 2 years of diagnosis	Yes	Typically 30-40 years - can be as long as 50 years
Lung Cancer	Cancer of the bronchial covering of the lungs. Often fatal	Yes	Typically 20-30 years
Other Cancers	Tumours of the throat, larynx, oesophagus, stomach, colon, lymphoid	Yes	Typically 20-30 years
Asbestosis	Non-cancerous scarring of interior lung tissue. Many cases do not involve significant impairment	No	Typically 15-30 years
Pleural Plaques/ Pleural Thickening	Scarring or thickening of pleural tissue surrounding lungs. No detectable impairment or injury	No	Depends on when detected



## Relative risks of Mesothelioma

---



- Primary manufacturers and Insulators have the highest exposure and risks
- Some primary manufacturers with separate insulation/installation subsidiaries have attempted to claim more than one limit
- Railroad, Ships etc. are also important sources of claims
- Asbestos exclusion clauses were introduced from the mid-1980s.

# Asbestos Exposure

---

- 600,000 to 700,000 tons of asbestos imported into US during last 10 years
- End uses not effectively tracked and warning label requirements are vague
- On-going exposure to:
  - asbestos containing products
  - asbestos in-place
- More than 27 million Americans with significant occupational exposure to asbestos during 20th century
- Recent forecasts of the Manville Trust suggest as many as 100 million Americans had some sort of occupational exposure
- Typically American breaths ~1 million fibres per year from natural and man-made sources

# Asbestos and the insurance Industry

---

## ■ Product Liability claims

- Arise under the products sections of CGL policies
- Normally have aggregate limits

## ■ Property Damage claims

- Diminution in value
- Removal and restoration
- Business interruption

## ■ Premises claims

- Injury to contractors and employees working at premises
- Difficult to aggregate

## ■ Other ?

## A Brief History of US Asbestos Litigation (1)

---

- At least 600,000 claims filed since early 1980's against:
  - asbestos producers (eg Johns Manville - largest producer in US from 1940's to 1970's)
  - manufacturers and distributors of asbestos related products
  - companies owning or operating facility where asbestos related products were used
- Typical claim names somewhere between 40 and 60 different defendants
- Longest running mass tort litigation in US history
- Awards can be large for the most severe forms of disease
  - mesothelioma claims tend to be settled for a few million dollars
  - non-malignant claim awards can also be sizeable due to "inventory" settlements

## A Brief History of US Asbestos Litigation (2)

---

- Insurance claims began under Workers' Compensation coverages, however amounts payable were limited
- As claims moved to being filed against producers and manufacturers rather than employers, General Liability coverages were invoked (products then non-products)
- Awards determined by juries not judges
- Punitive damages insurable in some states
- RAND estimates that total cost of resolving asbestos claims through 2000 was \$ 54 billion
  - US Insurers: \$ 22 billion
  - Non-US Insurers: \$ 8-12 billion
  - Defendants \$ 20-24 billion
- At least 5 major companies have each spent more than \$ 1 billion on asbestos litigation

# US Asbestos

---

- Background
- Deterioration in the Asbestos Claims Environment
- Current Estimates of the Ultimate Cost of US Source Asbestos
- Insurer Recognition of the Impact of the Deterioration
- Impact on the London Market
- Recent and Future Developments

## Deterioration in Asbestos Claims Environment (1)

---

- Higher than expected claim filings
  - Defendants catching up on claim filings after collapse of class action (“Georgine Settlement”)
  - Increased aggression of plaintiff attorneys
    - new law firms aggressively pursuing new claimants
    - geographical expansion of existing law firms
    - lawyers obtaining awards for unimpaired claimants as inventory settlements common
- Acceleration of claim filings
  - anticipation of tort reform
  - bankruptcy creditor lists
  - statute of limitations
  - concerns money may run out

## Deterioration in Asbestos Claims Environment (2)

---

- Mean verdicts also increased dramatically from 1998 to 2001 (RAND)
  - Mesothelioma: ~\$ 2 million to ~\$ 6.5 million
  - Other cancers: ~\$ 1 million to ~\$ 2.5 million
  - Asbestosis: ~\$ 2.5 million to ~\$ 5 million
- Coverage expansion
  - Reclassification of products claims as non-products claims by traditional products defendants with installation activities with exhausted (or nearly exhausted) products coverages
    - reinstates previously exhausted products coverages
    - opens up previously “untapped” non-products coverages
    - non-products coverages may not have aggregate limits
  - Expansion of previously agreed coverage blocks into more years of cover



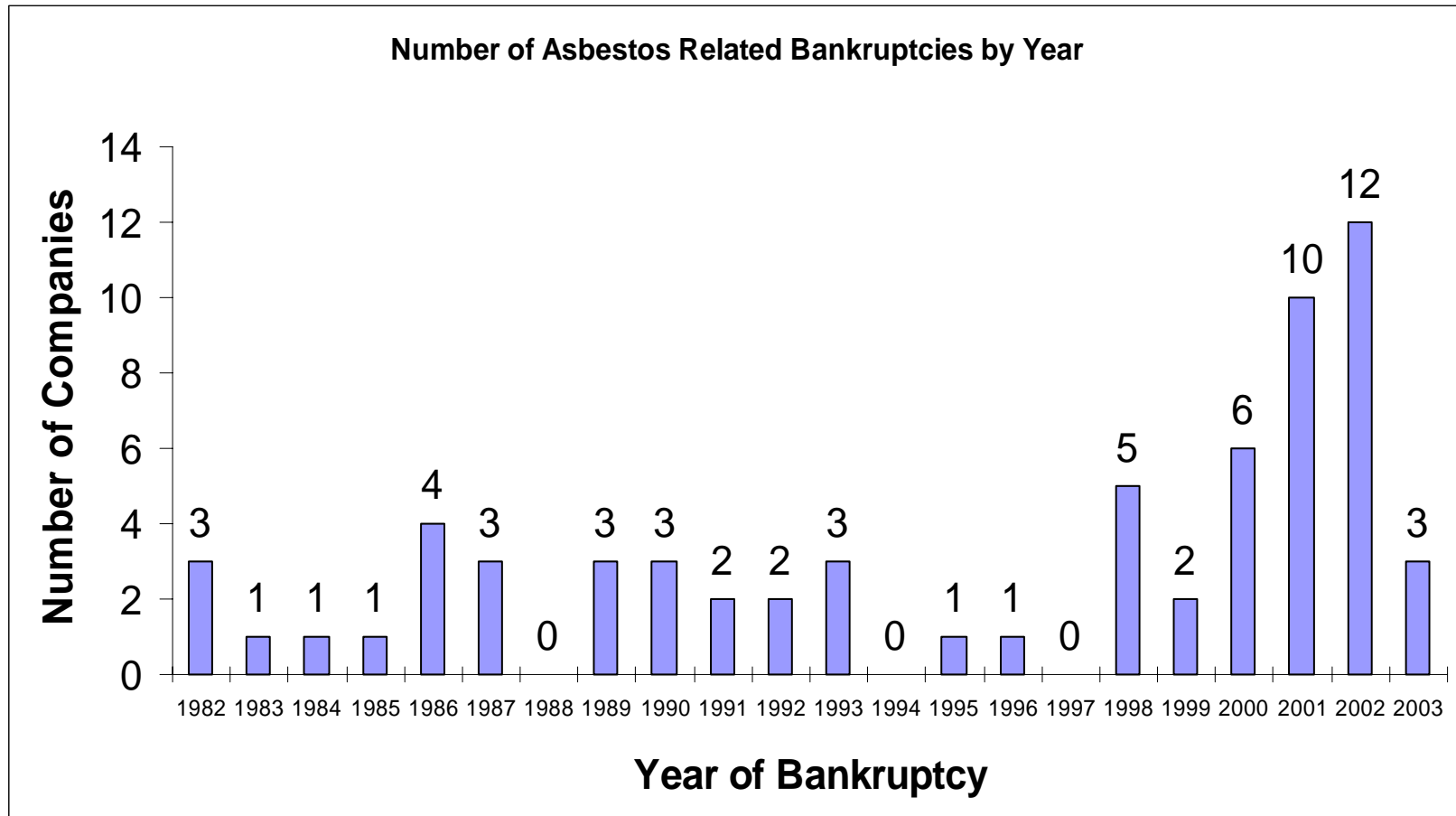
## Deterioration in Asbestos Claims Environment (3)

---

- CCR now in run-off, no longer settling claims
- Growth in the Defendant Pool or “The search for the solvent bystander”
  - Number of claims being filed against peripheral defendants is increasing as are the number of peripheral defendants
  - By late 1990’s non-traditional defendants account for 60% of asbestos expenditure
  - Number of defendants has increased from around 300 (early 1980’s) to around 8,400 according to RAND; covering the majority of industries in US economy
- Partly in response to the increasing number of asbestos defendants that are filing for chapter 11 bankruptcy
  - Main reason cited is surge in number of claims filed
  - Approximately 30 since 1 January 2000
  - Began in 1982, steady trickle 1980’s & early 1990’s, tailed off mid 1990’s, New wave from 2000 onwards

# Number of Asbestos Related Bankruptcies

---



Note: Excludes 1976 Bankruptcy and 2 Bankruptcies for which no date is available. 2003 Activity through August

## Deterioration in Asbestos Claims Environment (4)

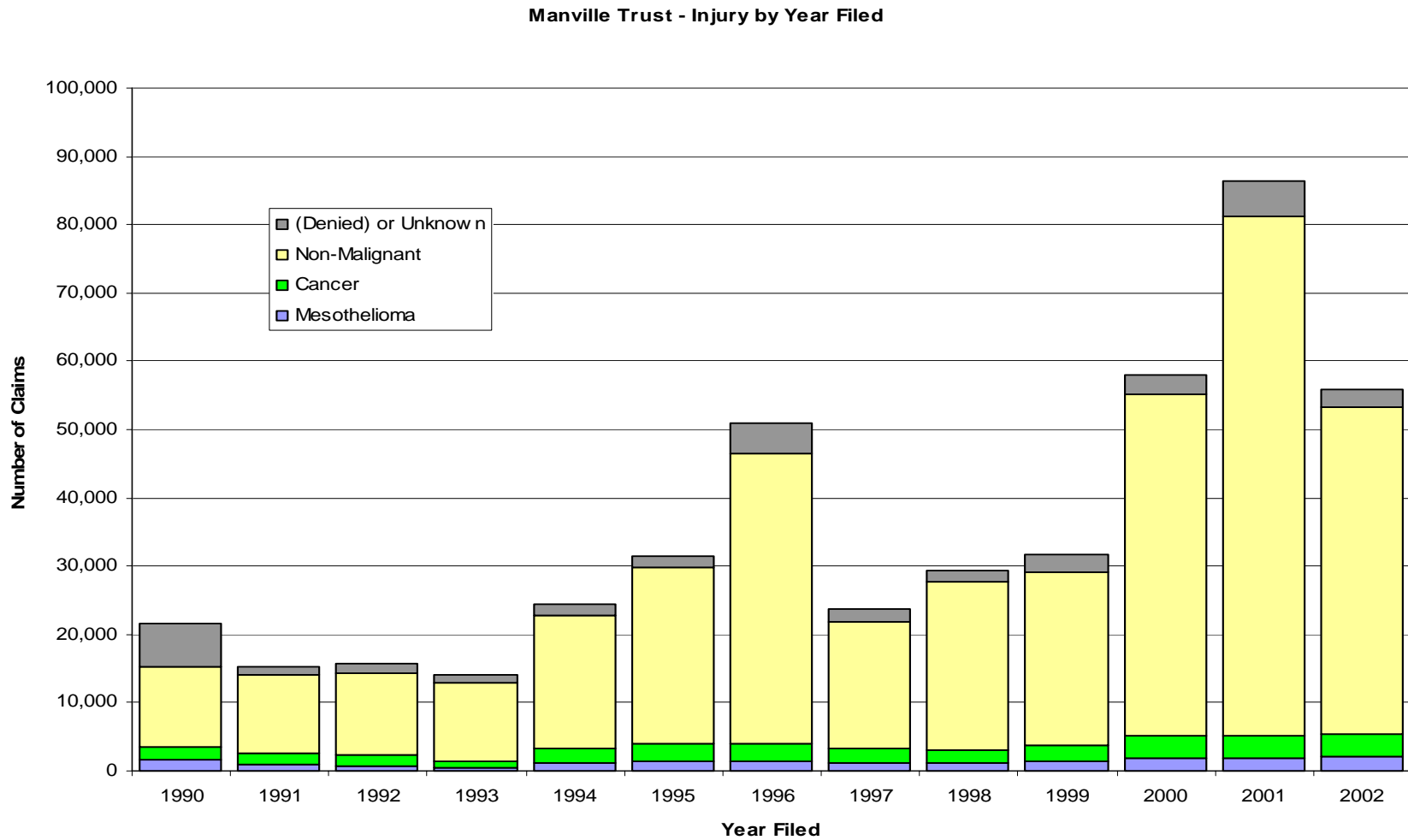
---

### ■ Consequences

- Dramatic increase in number of non-malignant and unimpaired claim filings
- Mix of claim filings shifting over time towards lower severity non-malignant and unimpaired claims

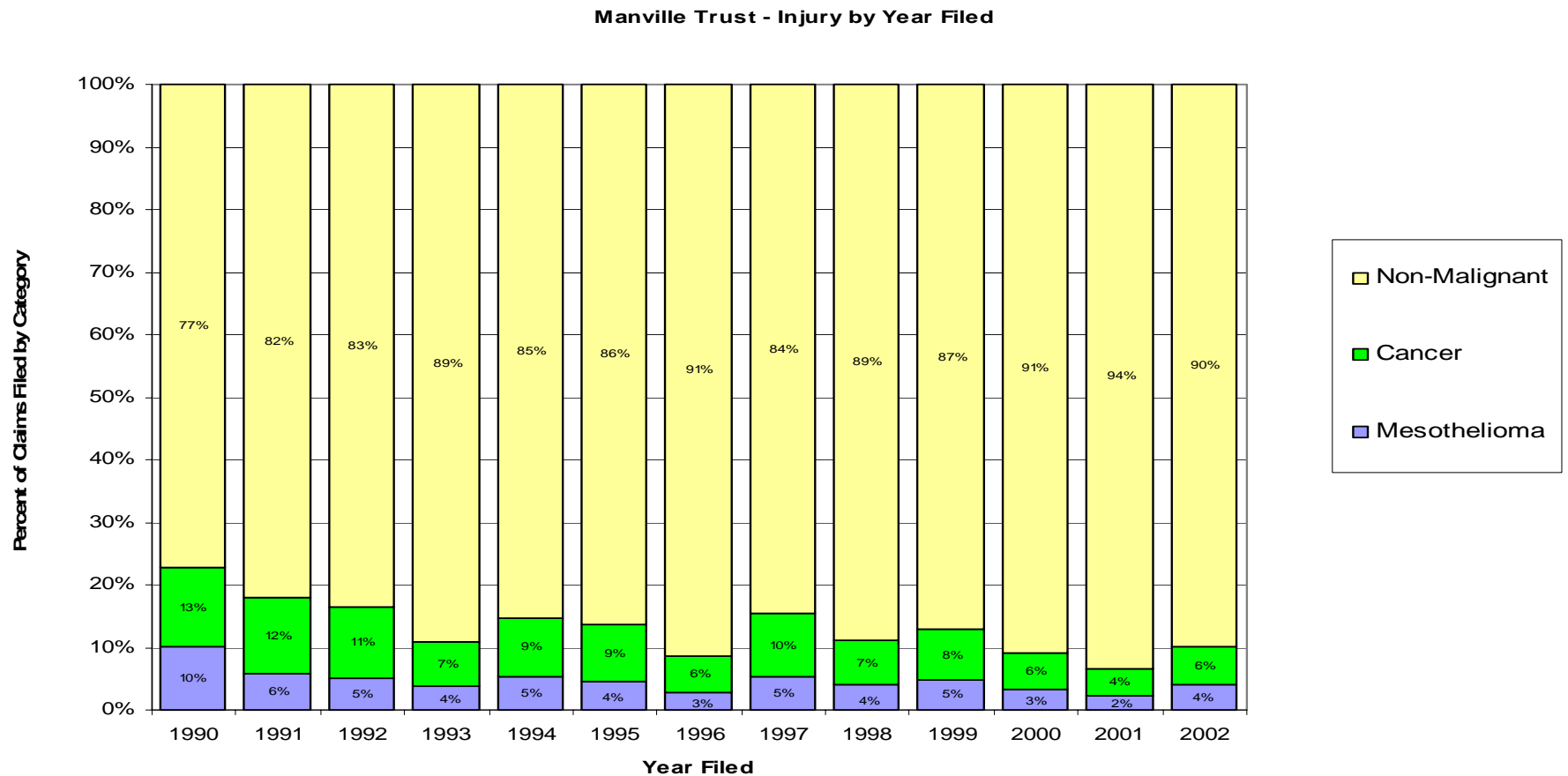
# Change in Disease Mix (1)

---



## Change in Disease Mix (2)

---



## Deterioration in Asbestos Claims Environment (4)

---

### ■ Consequences

- Dramatic increase in number of non-malignant and unimpaired claim filings
- Mix of claim filings shifting over time towards lower severity non-malignant and unimpaired claims
- Combined overall effect on ultimate cost to both defendants and the worldwide insurance industry has been upwards

# US Asbestos

---

- Background
- Deterioration in the Asbestos Claims Environment
- Current Estimates of the Ultimate Cost of US Source Asbestos
- Insurer Recognition of the Impact of the Deterioration
- Impact on the London Market
- Recent and Future Developments

## Asbestos – Estimates of the Claim “Universe”

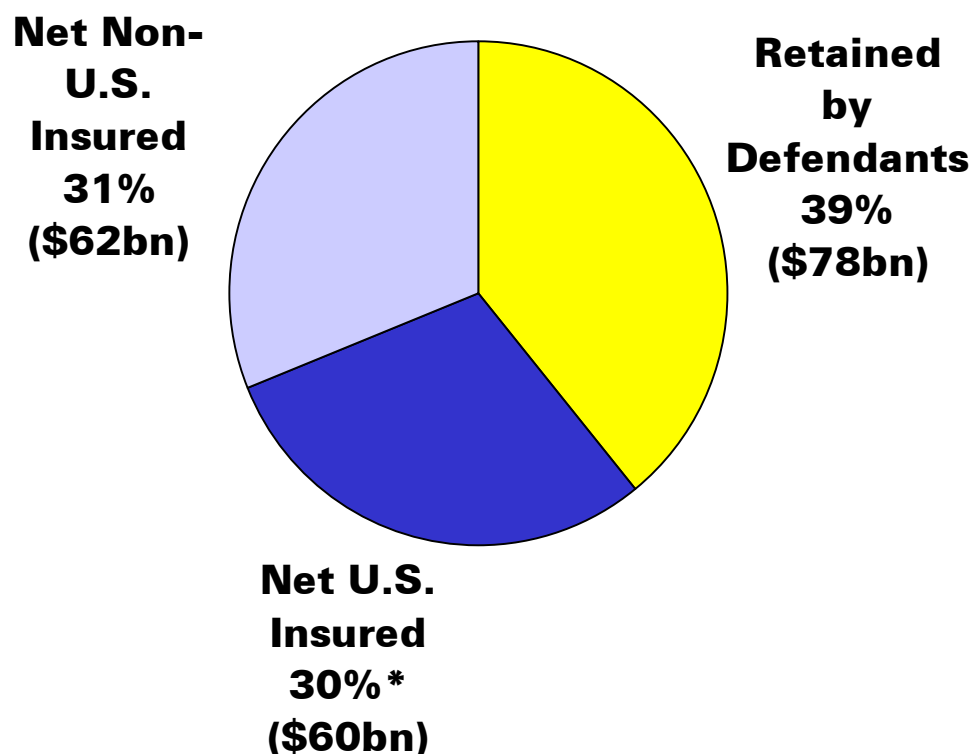
---

- Tillinghast estimate of total cost of asbestos “universe”: \$200 billion (US exposures only)
- Corresponding Milliman estimate \$275 billion
- AM Best current estimate of ultimate net cost to US insurance industry - \$65 billion (cf \$40 billion 1997)
- Tillinghast corresponding estimate - \$55-65 billion (cf \$38-43 billion December 1996)



# Tillinghast Estimate of how the \$200 billion Ultimate will be Shared between Defendants and the Insurance Industry

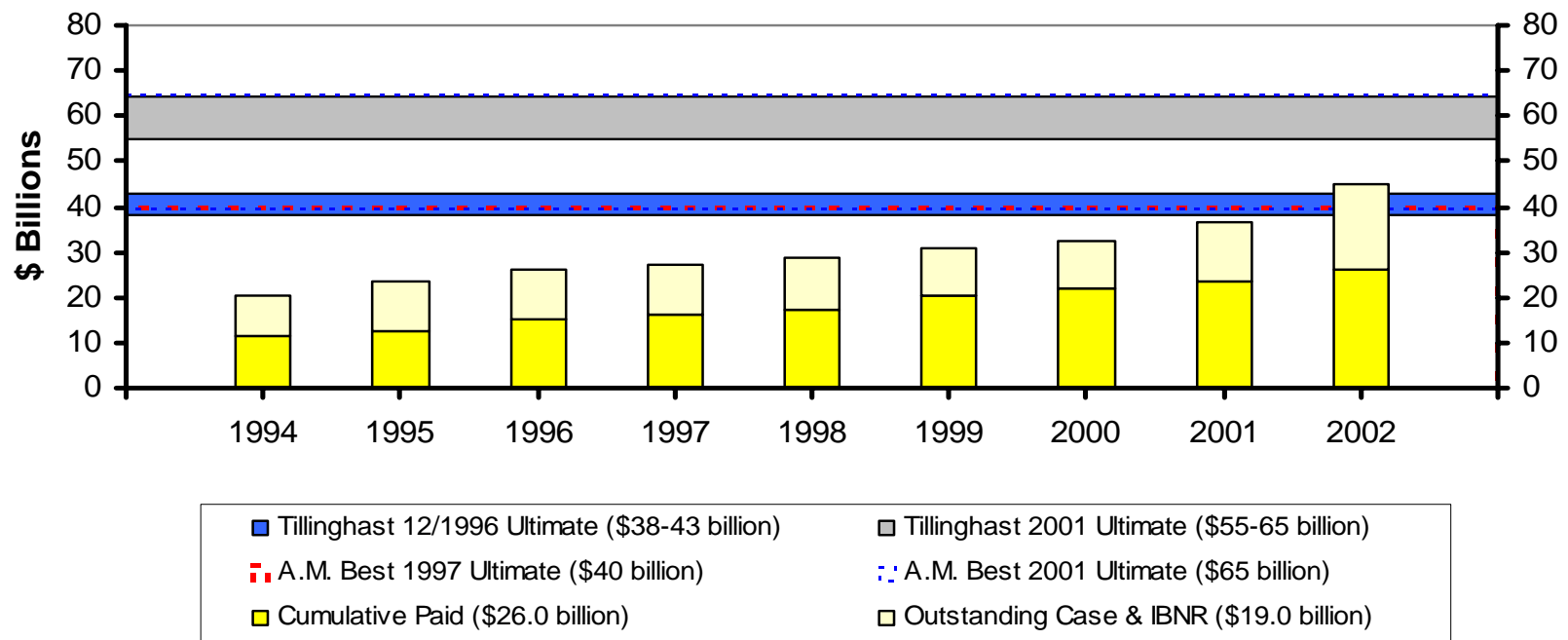
---



\*\$60 billion mid-point of \$55 – \$65 billion range of the “Universe” of net liabilities to the U.S. P/C market.

\*\*Additional details available in Emphasis 2001/3, “Sizing Up Asbestos Exposure,” a publication of Tillinghast – Towers Perrin, at [www.towers.com](http://www.towers.com).

# Paid and Reported Loss and Expense Compared to Estimates of Net US Ultimate Liability



# US Asbestos

---

- Background
- Deterioration in the Asbestos Claims Environment
- Current Estimates of the Ultimate Cost of US Source Asbestos
- Insurer Recognition of the Impact of the Deterioration
- Impact on the London Market
- Recent and Future Developments

## Recent Increases in US Asbestos Liabilities (1)

---

- US Carriers have increased asbestos reserves by almost **\$10 billion** since the start of 2003
  - The Hartford – \$4.0bn gross (12 May 2003)
  - Travelers - \$3.2bn gross (14 Jan 2003)
  - ACE USA - \$2.2bn gross A&E (27 Jan 2003)
  - Argonaut - \$52.8 million (March 2003)
- Follows further significant increases in 2001 and 2002
  - CNA - \$1bn pre-tax per AM Best (3 Aug 2001)
  - ECRA - \$1bn pre-tax estimated by AM Best (Feb 2002)
  - St Paul - \$987.5 million settlement with Western MacArthur
  - Chubb - \$590 million by 31 December 2002
  - The Hartford - Reallocation of \$540 million of “all other” run-off reserves to asbestos (July 2002)

## Recent Increases in US Asbestos Liabilities (2)

---

- Others have made statements of adequacy (CNA, AIG, Allstate)
- Increased pressure on peer companies to make similar disclosures
- Tillinghast estimated shortfall in US insurance industry net held reserves of between \$10bn and \$20bn as at 31 Dec 2002
  - not all due tomorrow
  - reserve guarantees, corporate stop loss arrangements and LPT's / finite reinsurance covers may fund a portion of shortfall

## Recent Increases in US Asbestos Liabilities (3)

---

- Some increases have also been seen amongst non-US carriers
  - Equitas (amounts in Sterling)
    - £1.5bn year-end 31 March 2000
    - £1.7bn year-end 31 March 2001
    - No change for year-end 31 March 2002
    - £0.4bn year-end 31 March 2003
  - Royal & Sun Alliance (amounts in Sterling)
    - £371m for US and UK (Feb 2002)
    - Further activity indicated in recent rights issue

## Recent Increases in US Asbestos Liabilities (4)

---

- Non US Carriers (cont.)
  - Munich Re increased reserves in American Re subsidiary by \$286m
  - SCOR - increased asbestos and environmental reserves by \$15m (November 2002)
  - Allianz - asbestos and environmental reserves increased by \$750m for Fireman's Fund subsidiary in US
  - Zurich - asbestos reserves increased by \$360m (H1 2002)

# US Asbestos

---

- Background
- Deterioration in the Asbestos Claims Environment
- Current Estimates of the Ultimate Cost of US Source Asbestos
- Insurer Recognition of the Impact of the Deterioration
- Impact on the London Market
- Recent and Future Developments



## What will be the Impact on the London Market? (1)

---

- London market carriers potentially face greater challenges than US carriers in accurately assessing asbestos liabilities
  - Exposure typically attaches at higher levels
  - Tend to be provided with less information
  - Do not necessarily have direct access to underlying defendants
  - Determining precisely where coverage sits relative to ground
  - Claims take longer to reach layers and typically develop slower
- London market carriers to may need to take similar action to US carriers
- Number of London market carriers have already increased asbestos reserves
- US carriers have been mixed in their recognition

## What will be the Impact on the London Market? (2)

---

- Three main factors driving the increases reported by the US carriers:
  - Claims from major asbestos defendants reaching higher layers and later years
    - fair proportion likely to flow through to London market
  - The emergence of additional peripheral defendants
    - less likely to flow through to London market
  - Reclassification of products claims as non-products claims by traditional products defendants
    - very uncertain due to aggregation issues

# US Asbestos

---

- Background
- Deterioration in the Asbestos Claims Environment
- Current Estimates of the Ultimate Cost of US Source Asbestos
- Insurer Recognition of the Impact of the Deterioration
- Impact on the London Market
- Recent and Future Developments

## Changes in legislative environment

---

- Tort reform at state level is improving the situation
- Mississippi – prevention of vendor shopping and limited punitive vs compensatory damages
- Greater awareness in the US regarding unimpaired claims
- New York - inactive docket for unimpaired claims
- Michigan – also looking at inactive docket
- West Virginia, Texas...

## Recent Cases

---

- Norfolk railroad - FELA - Stress-related claims: 6 retired railroad workers alleging stress of asbestos related cancer awarded between \$0.5m and \$1.2m each. Judges indicated -
  - that fear must be 'genuine and serious' – some evidence of asbestos related condition
  - that legislative reform was required to sort out the 'elephantine mass' of asbestos claims
- UNR/Fuller Austin
  - Full limits up front for bankruptcies

## **US Asbestos Trust Fund:** Introduced on 22 May 2003

---

■ Objectives: To Create a Claims Facility that will

...ensure that all injured claimants are fairly compensated in a relatively short time frame and ...

...at the same time, (by eliminating transaction costs and by fixing and limiting the contributions to the fund), provide certainty and finality with respect to asbestos liabilities for both industrial companies, insurers and reinsurers.

# US Asbestos Trust Fund

---

- Proposal: Total fund = ~~\$108~~ <sup>\$153bn</sup> billion. (undiscounted)

	\$bn*		\$bn
US industrials	28 +	US direct carriers	17
Insurance industry	28 +	US Reinsurers	2-3
US bankruptcy trusts	<u>4</u>	Non US direct carriers	4-5
Total	<u>60</u> +	Non US reinsurers	<u>4-5</u>
		Total	<u>28</u> ?

- Contributions for non US re/insurers could be based on net reserves for asbestos claims.

- Insurance industry has recently indicated not happy to pay more than the original \$45bn (undiscounted) with finality

\* discounted

## US Asbestos Trust Fund

---

- The trust will cover BI claims.
- Property Damage claims will be excluded, as will pipeline claims.
- The Fund will only pay claimants that are ill and have met the medical standards required.
- Claimants will receive compensation according to the degree of illness (\$0 - \$1,000,000).



# US Asbestos Trust Fund

---

Outstanding Issues:

- Support for the FAIR Act
- Solvency of the Asbestos trust
- Medical Criteria
- Size of payments
- Tax implications

## US Asbestos Trust Fund – the future

---

- Will the Bill make it?
- Senate vote –?
  - Senate approves? ⇒ to House of Representatives
  - House approves? ⇒ to President for signature
- If unapproved?
  - Awareness of asbestos issue raised
  - Especially wrt unimpaired claimants and need for medical criteria
  - Simpler bill may be passed instead?
  - New solutions suggested?



**The Actuarial Profession**

making financial sense of the future

# US Asbestos GIRO XXX 2003 Convention

Gregory Overton & Darren Michaels

14-17 October 2003

City Hall, Cardiff