Developments in Asbestos

Darren Michaels

- Background
- Recent Developments
- Estimates of the Asbestos "Universe"
- Insurers/Defendants to Fight Back?
- UK Asbestos
Asbestos - Background (1)

- “Miracle Mineral”
  - flexible, strong and durable
  - fire resistant
  - abundant quantities
- Heavily used in a number of industries
  - shipbuilding
  - construction
  - railroads (brake linings)
- In the US usage peaked in the early 1970s; use virtually eliminated in workplace by early 1980s - still legally exists in many products (joint compound, flooring, tiles, etc.)

Asbestos - Background (2)

- Exposure
  - between 1940 and 1979, an estimated 27 million Americans had been exposed to asbestos through their work
  - potential exposure to asbestos-in-place if disturbed
  - at least 500,000 claims filed since early 1980s against:
    - asbestos producers (eg Johns Manville - largest producer from 1940s to 1970s)
    - manufacturers and distributors of asbestos-containing products
    - companies that owned or operated a facility where asbestos related products were used

Asbestos - Diseases (1)

- Recognised cause of disease since 1920s
- Long latency periods - can be over 50 years
- Malignant and non-malignant diseases
- “Signature” diseases make liability fairly straightforward to establish
- 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
Asbestos - Diseases (2)

<table>
<thead>
<tr>
<th>Disease</th>
<th>Symptoms / Comments</th>
<th>Malignant (Y/N)</th>
<th>Latency Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mesothelioma</td>
<td>Cancer of membranes that cover &amp; protect lungs. Fatal within 2 years of diagnosis</td>
<td>Yes</td>
<td>Typically 30-40 years - can be as long as 50 years</td>
</tr>
<tr>
<td>Lung Cancer</td>
<td>Cancer of the bronchial covering of the lungs</td>
<td>Yes</td>
<td>Typically 20-30 years</td>
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<tr>
<td>Asbestosis</td>
<td>Non-cancerous scarring of interior lung tissue. Most cases do not involve significant impairment</td>
<td>No</td>
<td>Typically 15-30 years</td>
</tr>
<tr>
<td>Pleural Plaques/Thickening</td>
<td>Scarring or thickening of pleural tissue surrounding lungs. No detectable impairment or injury</td>
<td>No</td>
<td>Depends on when detected</td>
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Asbestos - Recent Developments (1)

- Higher than expected claim filings
  - Lawyers obtaining awards for unimpaired claimants
  - Tort reforms accelerating time frame for claim filings
  - Defendants catching up on claim filings after collapse of class action ("Georgine Settlement")
  - Increased aggression from plaintiff attorneys
    - New law firms aggressively pursuing new claimants
    - Geographical expansion of existing law firms
- Number of claims filed against peripheral defendants is increasing as are the number of peripheral defendants
- Bankruptcy of major defendants (10 since 1 January 2000)

Asbestos - Recent Developments (2)

- CCR role drastically reduced
- Reclassification of products claims as non-products
  - Reinstates exhausted products coverages
  - Opens up previously "untapped" non-products coverages
  - Non-products coverages may not have aggregate limits
- Roll forward of initial coverage blocks to later years
- Inventory settlements
- Mix of disease types shifting towards lower severity non-malignant and unimpaired claims
- Combined overall effect on cost still likely to be upwards
Asbestos - Change in Disease Mix

1994 Filings - 25,800
- Lung Cancer 6%
- Mesothelioma 3%
- Non Malignant 91%

2000 Filings - 59,200
- Lung Cancer 4%
- Mesothelioma 2%
- Non Malignant 94%

Source: Manville Trust

Asbestos - Estimates of the Claim "Universe"

- 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)
- S&P expects the industry to add an incremental $5-10 billion of asbestos reserves in 2001
- RAND institute believes that all major asbestos defendants will be bankrupt within next 2 years
- Tillinghast estimate of total cost of asbestos "universe": $200 billion

Paid and Reported Loss and Expense Compared to Estimates of Net U.S. Ultimate Liability

<table>
<thead>
<tr>
<th>Year</th>
<th>AM Best 1997 Ultimate ($40.0 billion)</th>
<th>AM Best 2001 Ultimate ($65.0 billion)</th>
<th>Tillinghast 12/1996 Ultimate ($38.0-43.0 billion)</th>
<th>Tillinghast 2001 Ultimate ($55.0-65.0 billion)</th>
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</thead>
<tbody>
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Asbestos - The Fight Back?

- Some effort in recent past of a fight back by defendants and insurers
- Group of London market insurers (led by Equitas) require all claims to be supported by adequate medical evidence and product causing disease appropriately identified
- G-I Holdings filed civil racketeering suit against three plaintiff law firms
- Asbestos defendants unsuccessfully filed law suits against tobacco firms
- Attempts to pass federal reform in US have not progressed

UK Asbestos

- Insolvency of Chester Street
- Former dock worker awarded £10,000 for “stress caused by fear of contracting asbestosis”
- Judith Fairchild v Waddingtons and Leeds City Council
  - could not establish which defendant responsible for death from mesothelioma
  - since mesothelioma not caused by cumulative exposure, wrong to say contributed equally

Developments in US Pollution & APH

Amy Bouska
US Pollution Developments

- Some discussion of threats regarding natural resource damages, but no significant developments
- Superfund reform being discussed, but limited to relief for small businesses and de minimis polluters
- Slow growth in NPL site numbers; non-NPL sites increasing in importance
- Few significant coverage decisions
- On-going settlement activity and commutation of reinsurance, esp. Equitas/London Market
- Insurance industry offering coverage for real estate / remediation risks (esp. brownfields)

Tillinghast estimated ultimate US industry costs:

- $30 - 40 B

Recognized at Dec 00 per AMBest:

- $31 B

Unrecognized:

- $(-1) - 10 B

Tillinghast Ultimate ($30.0-40.0 billion)
A.M. Best Ultimate ($56.0 billion)
Cumulative Paid
Outstanding (Case & IBNR)
US Pollution -- Tillinghast Aggregate Loss Development Estimates

APH -- Other US Developments

- Tobacco
  - Judgment bonds an issue in Florida class action
  - Tobacco industry ordered to pay $18M to NY Blue Cross / Blue Shield
  - Signs of that individual actions are increasingly winning lawsuits (although $3B jury award in California reduced to $100M)
- Tread separation (Ford / Firestone) being litigated
- Lead paint litigation continues, but generally against landlords
- Fen-phen being settled

- Latex, EMF, Y2K, Norplant, tainted blood and guns -- relatively inactive
- ... but potential for Hepatitis C developments is unclear
- Breast implants -- little action due to settlement offers and Dow Coming bankruptcy
- Agent Orange and DES mostly paid
US Developments -- Toxic Mold

- Mold problem is primarily in Texas homeowners
- Texas homeowners policy forms do not limit water damage to "sudden and accidental"
- 60% increase in water damage claim costs in one year due to mold claims
- Public & media awareness fueling the problem
- Extensive hearings by the Insurance Commissioner
- Lack of identification & remediation standards
- Claims for remediation costs and bodily injury (and bad faith)

US Developments -- Toxic Mold (2)

- Mold problem is showing signs of spreading to:
  - Homeowners coverage in California (like Texas, a litigious state) and some southeastern states
  - Home builders' coverages (due to alleged poor construction causing leaking water pipes)
  - Some commercial property and landlords' coverage

US Developments -- Toxic Mold (3)

- Coverage trigger not decided but likely to be injury-in-fact
- Companies withdrawing from Texas homeowners market (e.g., Farmers & State Farm)
- Regulatory response still developing -- Texas considering caps on homeowners mold claims
- (California) Toxic Mold Protection Act of 2001 (SB 732) awaits governor's signature -- will set exposure limits & identification/remediation standards
- Significant media attention
- Plaintiffs' bar response clear: "Mold is gold."
APH -- Future Issues?

- Arsenic in playground equipment
- MTBE
  - To be banned by proposed Federal bill
  - Potentially large groundwater cleanup costs
- "Coach class syndrome"
- Employer liability for cell phone-related auto accidents
- Endocrine disrupters
- Genetically modified foods