

US Asbestos Liability

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Agenda

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- Current US Asbestos Environment
- Legislative Efforts in the US
- Evaluation Considerations
 - Importance of Data
 - Insurance Coverage
 - Allocation

“The most objectionable aspects of this asbestos litigation can be briefly summarized: dockets in both federal and state courts continue to grow; long delays are routine; trials are too long; the same issues are litigated over and over; transaction costs exceed the victims’ recovery by nearly two to one; exhaustion of assets threatens and distorts the process; and future claimants may lose altogether.”

1991

*Report of the US Judicial Conference Ad Hoc Committee on Asbestos Litigation,
appointed by US Supreme Court*

Chief Justice William Rehnquist



Current US Asbestos Environment



US Asbestos Crisis

Past, Present and Future

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	1982	2001	2002	Cumulative Future
Number of Claimants	21,000	600,000	730,000	1-3 million
Number of Defendants	300	6,000	8,400	8,500+
Costs to Date	\$1 billion	\$54 billion	\$70 billion	\$200-265 billion
Bankruptcies	3	60	73	73+

Source RAND

Claim Filings and Costs

- As of year end 2003: **300,000** claims pending
 - Estimated that approximately **25%** will not meet MPIST strict medical criteria
- During 2003, approximately **100,000** claims filed
 - Approximately **90%** of cases filed are thought to be “unimpaired”
- Number of mesothelioma cases has been increasing in recent years
- Increasing share of claims being brought by workers who did not routinely handle asbestos, but asbestos was present in the workplace
- Additional peripheral defendants being sued (e.g. retailers) which now account for more than half of asbestos expenditure
- Geographic distribution has changed
- Whilst unimpaired claim filings are dropping in certain states due to legislation, costs for severe asbestos-related diseases, such as mesothelioma and severe asbestosis, are increasing sharply (greater than inflation).

Changing Claims Situation

Case Study: Johns Manville

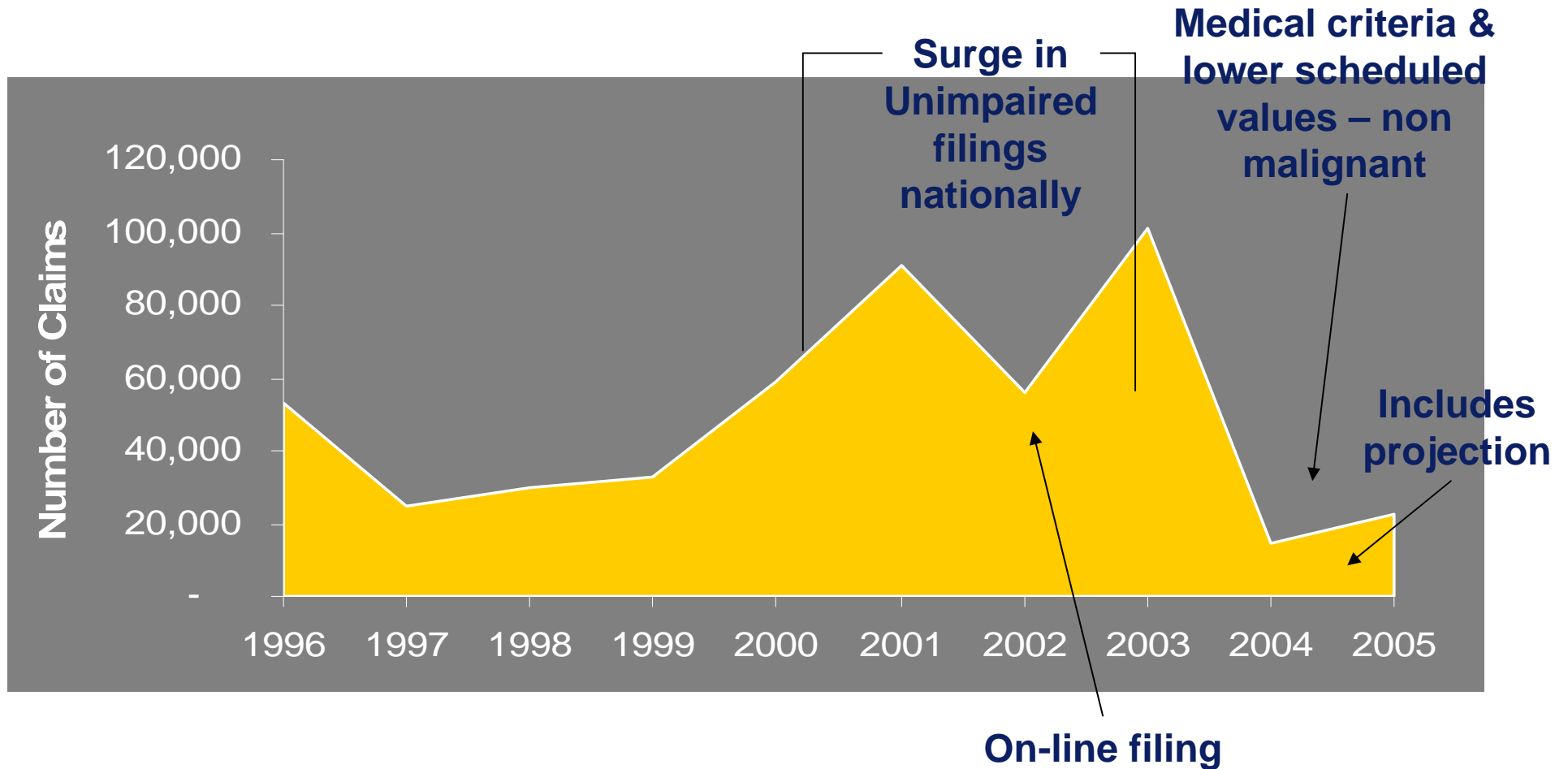
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		<u>Factual</u>	<u>Projection</u>
Aug 1982	Bankruptcy Filing	22,000 Pending	
Oct 1988	Plan affirmed		83,000 – 100,000 anticipated
Dec 1989		146,000 total claims filed	
Jul 1990	Trust bankrupt		
Jan 1992		190,000 total claims filed	
1994	Forecast 1995 – 2049		350,000 – 580,000
1995		280,000 total claims filed	
1997	Forecast 1997 – 2049		450,000 – 650,000
1998		396,000 total claims filed	
Mid 2001	Forecast by Trust		750,000 – 2.7m
2002		590,000 total claims filed	
2003	2002 TDP Approved; stricter medical criteria	101,200 claims filed in year	
2004	Filings drastically decrease	14,600 claims filed in year	

Changing Claims Situation

Johns Manville

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Products vs Non-Products

- Another bite at the cherry
- Claims that policyholders argue are outside the products/completed operations hazard definition
 - Failure to warn
 - “Down-wind claims”
 - Employee claims outside WC laws
 - Premises Operations
 - Installation Operations

Occurrences

Approach

Impact

Each Claimant

Thousands of individuals claims affecting lower level coverage

Each Premise Location

Multiple occurrences potentially affecting all levels of coverage dependent upon future volumes of claims

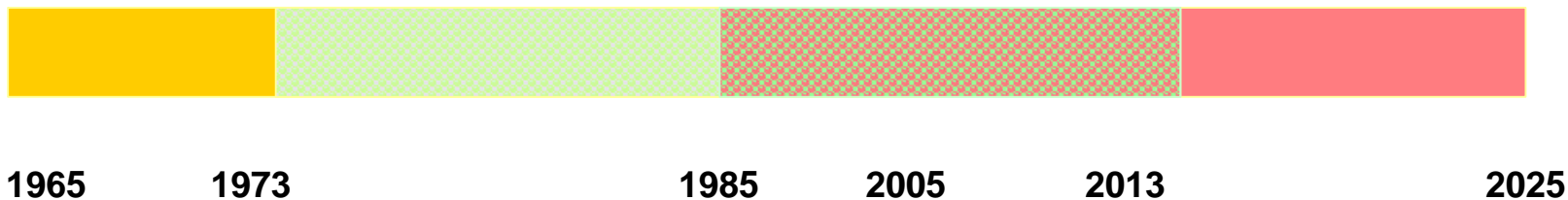
Decision to install

One occurrence per year of exposure – potential impact to all coverage

Changing Claim Situation

Exposure Periods

- Asbestos usage peaked in 1973 in the US
 - Theoretically beginning of end of continual high dosage exposure
- First exposure cut-off 1985
 - Exclusions in policies of most traditional defendants, and claims made coverage
 - Expect claimants to have relatively low dosage exposure
 - Dramatically lessens risk of high dosage diseases – asbestotic/pleurals



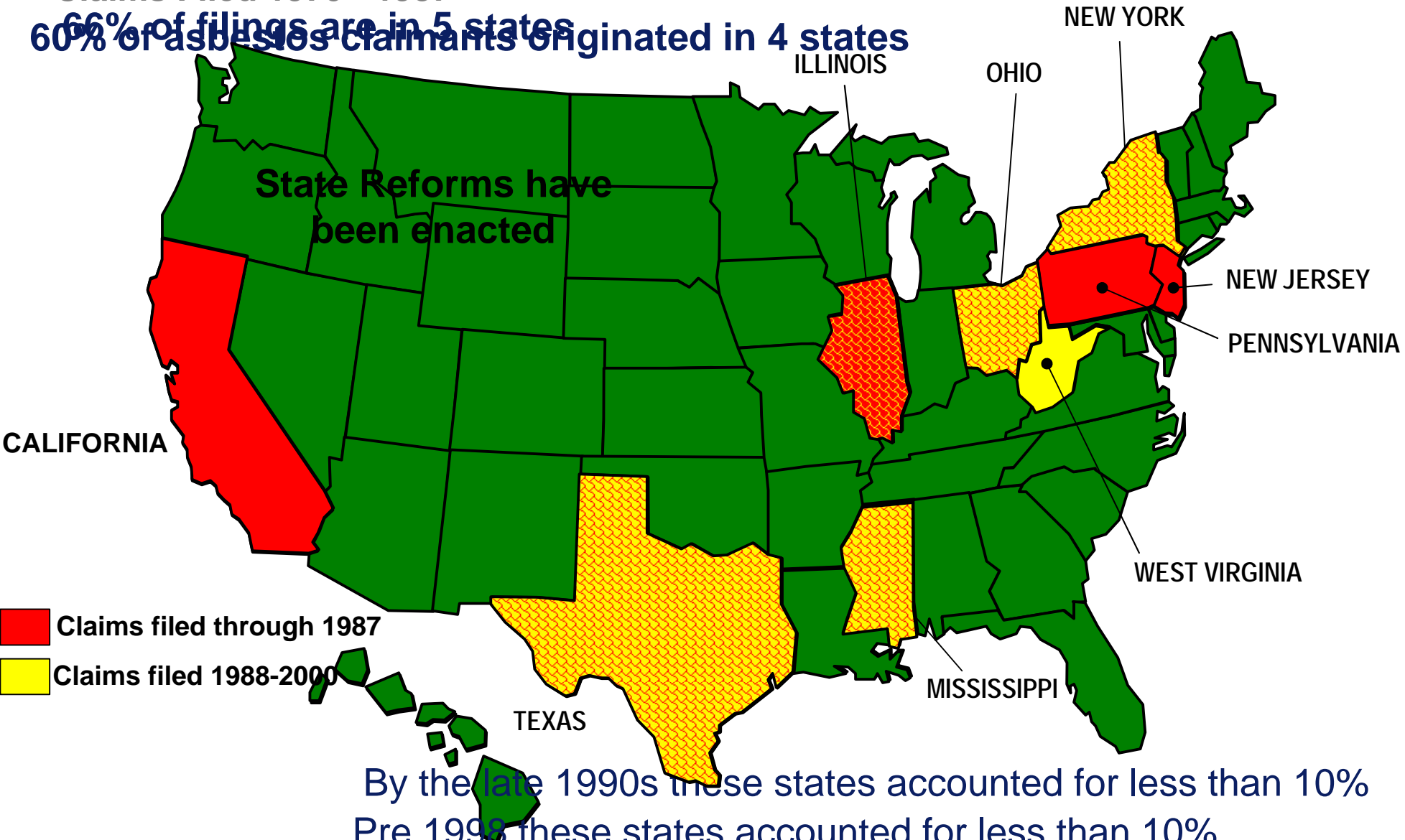
Legislative Efforts in the US



Geographic Distribution Geographic Distribution

Claims Filed 1970 - 1987
Claims Filed 1988 - 2000

66% of filings are in 5 states
60% of asbestoses claimants originated in 4 states



By the late 1990s these states accounted for less than 10%
Pre 1998 these states accounted for less than 10%

Federal Legislation

The FAIR Act

How does the FAIR Act work?

- Administrative system for resolving bodily injury claims resulting from exposure to asbestos
- National trust fund to pay all claims on a no-fault basis
- Matrix of compensation based on strict medical criteria
- Total contributions will be \$140 billion to be paid over 27 years
- Trust fund funded by mandatory contributions from 3 sources:
 - Defendant companies with history of asbestos liability
 - Existing bankruptcy trusts
 - Insurers/Reinsurers
 - spent more than \$1 million on asbestos defense costs and/or indemnity
- Establishes national mesothelioma research and treatment program

US Asbestos Federal Legislation

The FAIR Act

- Senate consideration of the FAIR Act in 2005 remains remote. Anticipated to be scheduled first quarter 2006.
- Majority of the 18 members of the Senate Judiciary Committee have expressed serious concerns over the trust fund's survivability and ability to provide finality
- Constitutional experts expressed reservations over the bill's constitutionality. At best, constitutional challenges will delay the bill's implementation, at worst they will throw cases back into the court system where they started out and perpetuate the asbestos litigation crisis.
- Several states have enacted laws that establish medical criteria standards before individuals can pursue litigation. These efforts have been effective in reducing fraud and directing limited resources to those victims who are truly injured and deserve compensation.
- Asbestos Compensation Fairness Act of 2005 proposed in House of Representative (HR 1957) is based on the medical criteria provisions included in enacted state legislation

US Asbestos Federal Legislation

Bates White Study

- Concluded proposed Trust Fund not financially viable;
- Estimated that FAIR ACT would create entitlements valued at \$300 billion resulting in a \$160 billion shortfall. This is result in the Trust Fund sunseting within three years of its inception.
- Two categories of claimants pose the greatest threat to the Fund's financial viability.
 1. The FAIR Act would create entitlements for many individuals with lung and other cancers who were not compensated in the historical tort environment – creating at least a ten-fold increase in the number of claims.
 2. The FAIR Act also could revive dormant claims, which have settled with most but not all defendants. These individuals could recover the difference between amounts previously collected in the tort system and the award levels specified FAIR Act

Critiques of Bates White Study

- Study's estimate of projected claim population is far higher than previous studies:
 1. Assumed exposed population numbers to be far higher than any other study.
 2. Overestimates prevalence of pleural plaques in general population.
 3. Allows for everyone with cancer to file an asbestos claim – i.e. ignores causality issues relating to lung cancer.
- Does not take into account that claimants have to meet several criteria in order to be eligible for compensation. Cancer claims, for example, need to show at least 5 years of substantial occupational exposure to asbestos.

US Asbestos - Signs of Change?

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Statute of Limitations

**Establishment of Inactive
Dockets/Pleural Registries**

Overpayment to “unimpaired” claimants

Strict Medical Criteria

Forum Shopping

State Legislation

Joint and Several Liability

State Legislation

Consolidated Lawsuits

State Legislation

Screening

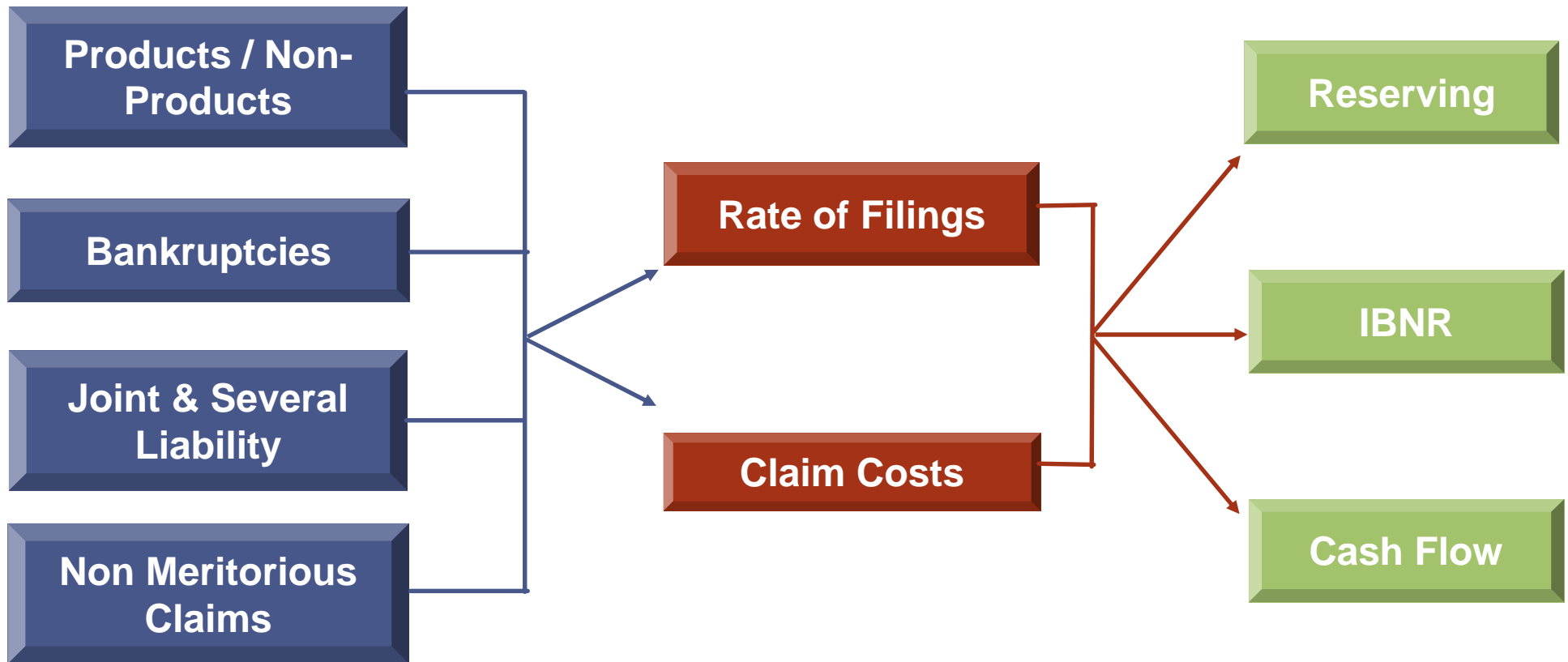
Not economically viable

Evaluation Considerations



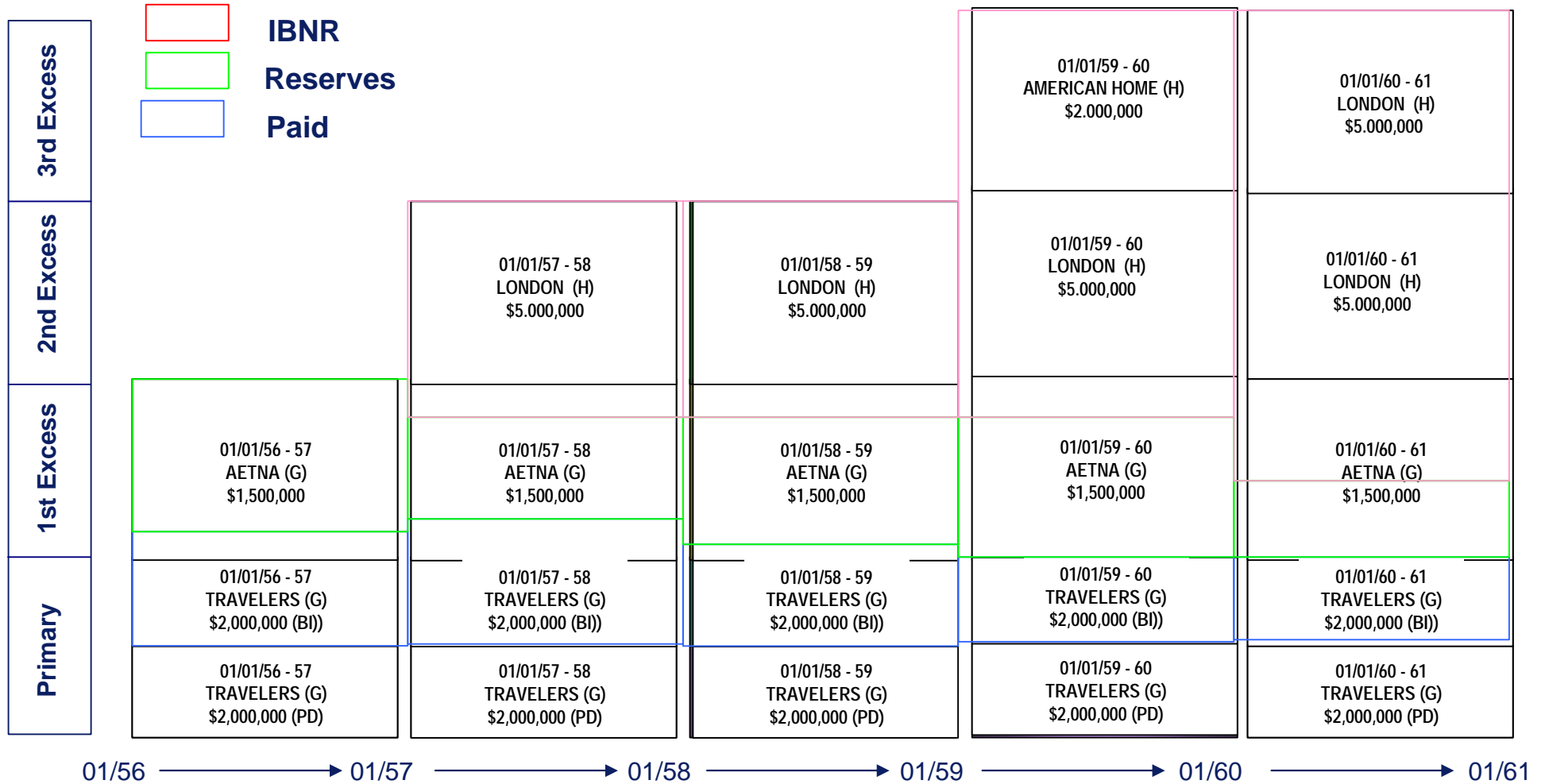
The Future - Factors affecting liability

Claim Valuation



The Future Asbestos Co. Coverage Chart

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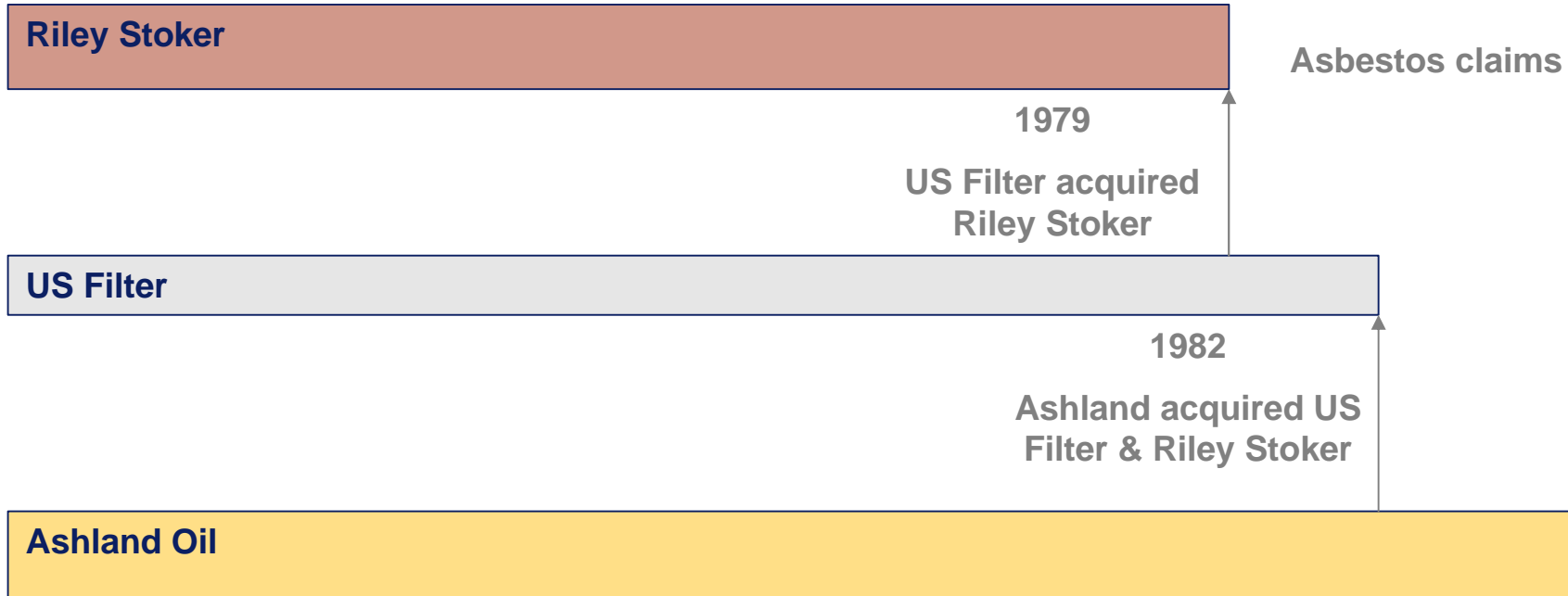
Importance of Data

- Quality
 - accuracy of pertinent data and possible gaps
- Understanding & Interpretation
 - limits, excess points, cost conditions,
 - Who is the policyholder?
 - Types of losses

Coverage Block

- What determines Coverage Block
 - Basis for start date and end date
 - Understanding of coverage
 - Ownership of subsidiaries
 - Exclusions
 - Claims made
- Coverage block may vary for each type of claim
 - Products
 - Non products
 - Premises

Assured Specific Analysis Coverage



Riley Stoker asbestos claims allocated to:

- Riley coverage until 1979
- US Filter coverage 1979 through 1982
- Ashland Oil from 1982

Ashland Oil coverage pre 1982 not liable for Riley Stoker asbestos claims

Coverage

Common Issues

- Stub Periods
 - Full limit
 - Pro-rata share
 - Part of annual limit
- Exclusions
- Cost conditions
- Application of underlying coverages
- SIR/Deductibles
- Policy limits
 - Products vs. Non Products
 - All in Aggregates
- Type of Coverage – e.g. claims made

Allocation

Common Issues

- Allocation
 - Trigger of Coverage
 - Basis of Allocation – pro-rate - Unitary vs time-on-risk
 - Spillover – collapsing/non collapsing coverage block
- What determines allocation
 - Legal Precedence / Prevailing Law
 - Settlement Agreement
- Allocation may vary by type of claim, or entity (e.g. subsidiary)

Allocation Products Claims

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Pro-rata Allocation	Trigger		
Triple Trigger	First exposure through earlier of diagnosis, filing, or death	Claims collapse to begin and end of coverage block	Collapses to Available Coverage
Stonewall	First exposure through earlier of diagnosis, filing, or death	Claims end date is date of available coverage (i.e. pre-exclusions)	Does not collapse to available coverage
Carter Wallace	First exposure through earlier of diagnosis, filing, or death	Claims end date is date of available coverage (i.e. pre-exclusions)	Does not collapse to available coverage
Fuller Austin	All Sums (Generic) – policyholder can select which policy year to respond.	In bankruptcy situation, applicable policy limits are payable when bankruptcy plan is affirmed	