



# Asbestos and environmental update – what have we learned

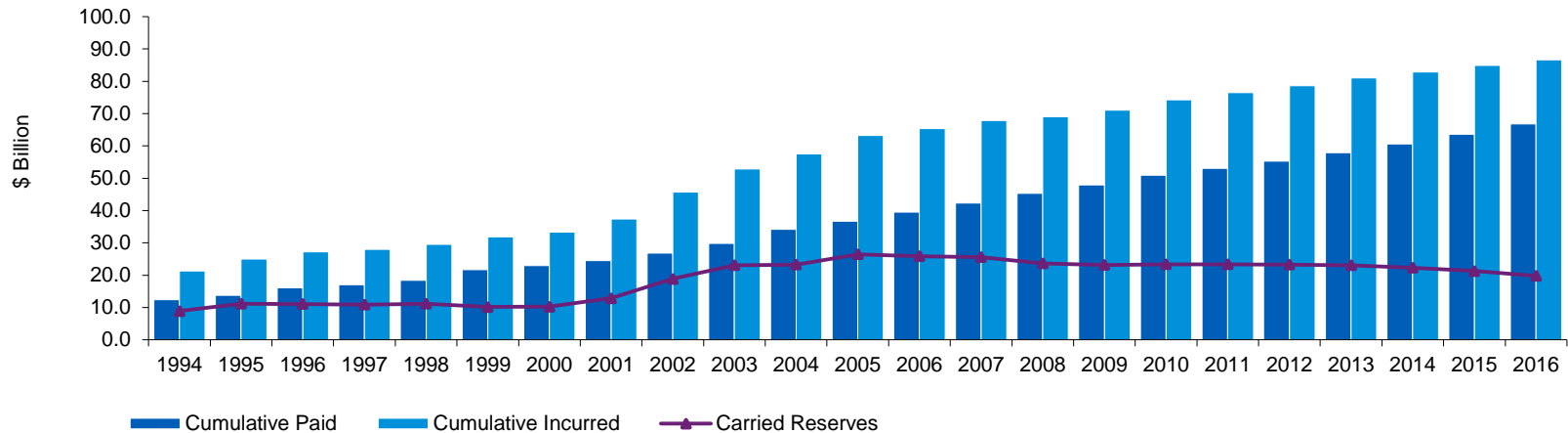
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November 13, 2018



# Asbestos historical losses

Cumulative Asbestos Losses



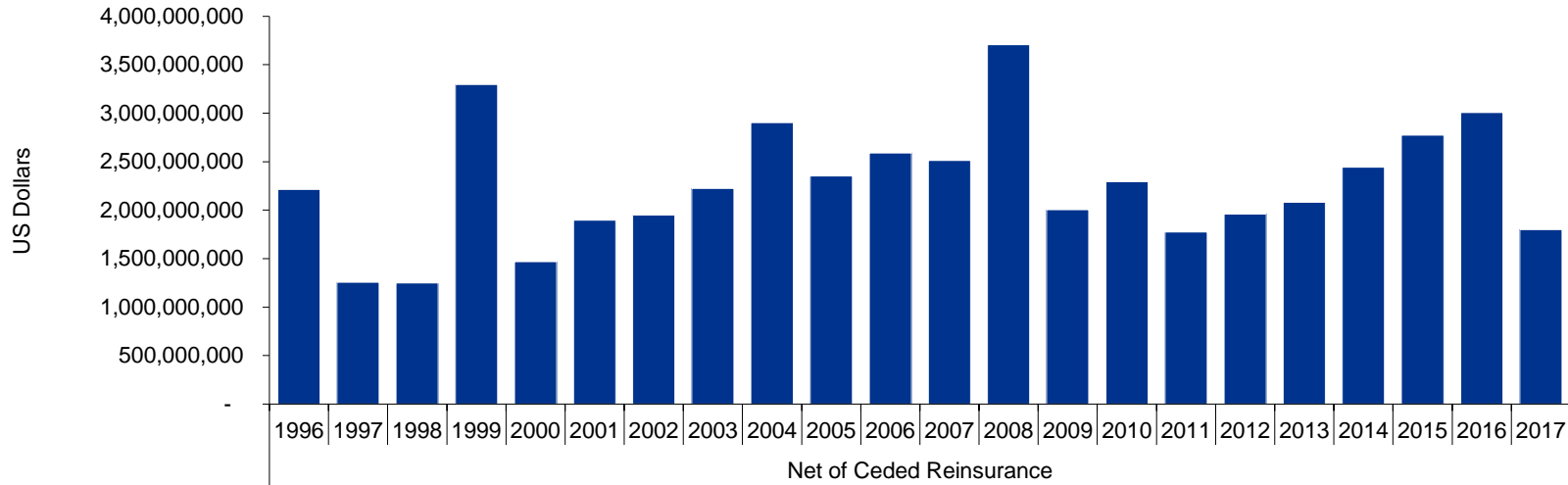
**Although the industry has continued to pay at a rate of approximately \$2 billion a year, carried reserves are not decreasing significantly, as the industry has continued to strengthen reserves every year.**

**Currently AM Best estimates ultimate asbestos losses of \$100 billion. The industry has funded slightly less than 90% of that amount.**

Source: O'Larte B, Jackson C. 2017. Asbestos Losses Continue to Rise; Environmental Losses Remain Stable. Best's Special Report.

# Asbestos 2017 calendar year activity

## Asbestos - Calendar Year Payments



**2017 paid losses of \$1.8 billion represent the first reduction in industry payments since 2010.**

**Source:** Statutory Annual Statements obtained from SNL.

**Note:** Data shown is directly from Note 33. To compare to AM Best, would need to add back LPTs related to Fireman's Fund (2002), Munich Re (2005) and Swiss Re (2008).

# Asbestos 2017 calendar year activity

(continued)

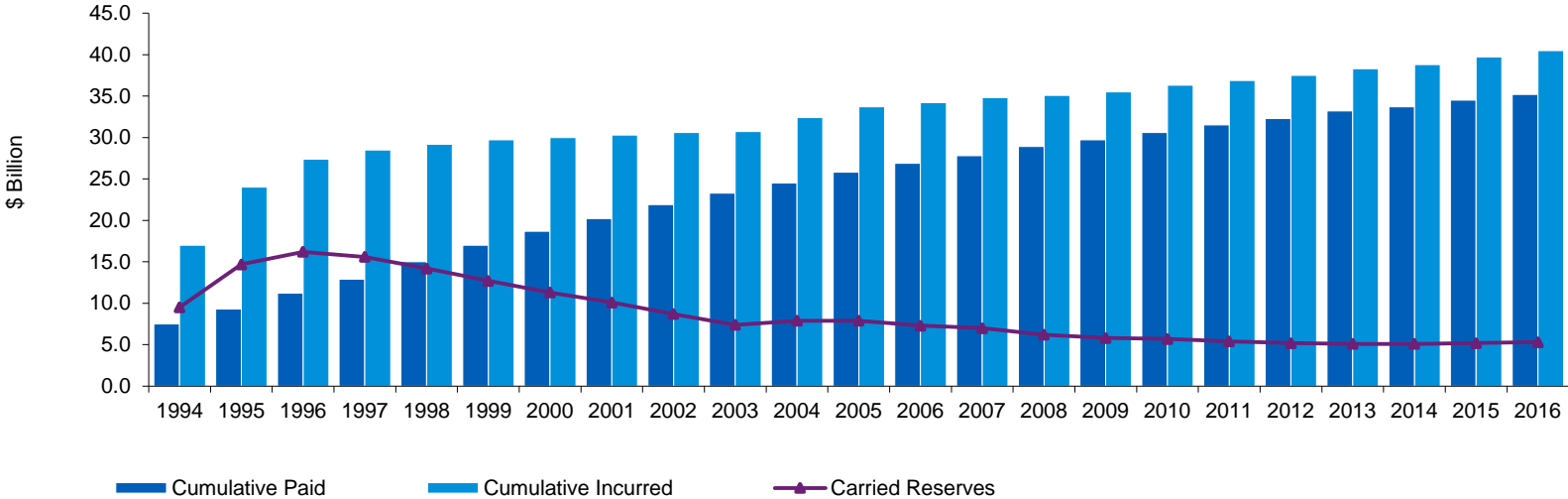
Top 10 Payers of Asbestos Liabilities in 2017						
Data in \$000s						
Company	Calendar Year 2017 Net Payments	% of 2017 Net Payments	2017 Net Reserves	% of 2017 Net Reserves	1 Yr Survival Ratio	3 Yr Survival Ratio
Company A	269,711	15%	1,269,804	8%	4.7	2.2
Company B	187,438	10%	911,390	5%	4.9	4.3
Company C	160,443	9%	249,588	1%	1.6	2.1
Company D	157,782	9%	1,090,040	6%	6.9	6.6
Company E	148,920	8%	1,396,671	8%	9.4	5.4
Company F	138,650	8%	825,623	5%	6.0	6.0
Company G	121,164	7%	1,341,279	8%	11.1	10.6
Company H	90,085	5%	877,972	5%	9.7	8.8
Company I	83,360	5%	678,512	4%	8.1	5.1
Company J	78,678	4%	1,830,226	11%	23.3	13.7
All Other	362,383	20%	6,330,721	38%	17.5	N/A
<b>Total</b>	<b>1,798,615</b>		<b>16,801,825</b>		<b>9.3</b>	<b>6.6</b>

Source: Statutory Annual Statements obtained from SNL.



# Environmental historical losses

Cumulative Environmental Losses



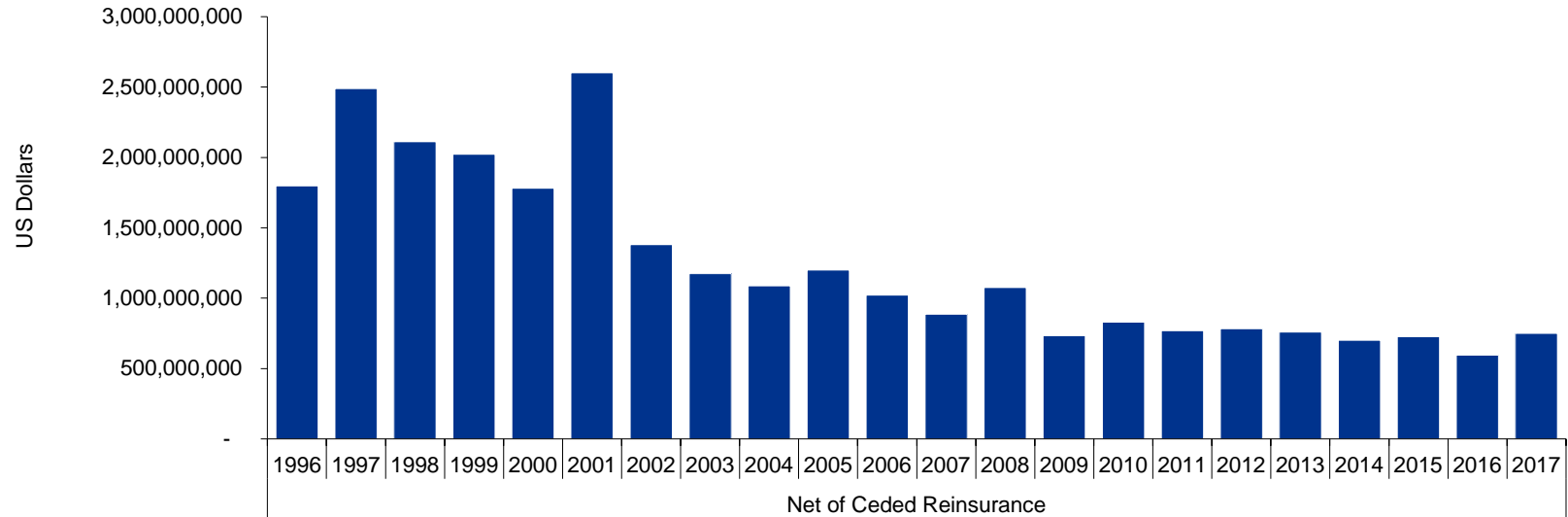
The industry has continued to strengthen environmental reserves steadily over time as well, as carried reserves remain steadily around \$5 billion per year.

AM Best estimates environmental ultimate losses of \$42 billion. The industry is currently \$1 billion underfunded and it is likely that there may ultimately be some upward pressure on that estimate.

Source: O'Larte B, Jackson C. 2017. Asbestos Losses Continue to Rise; Environmental Losses Remain Stable. Best's Special Report.

# Environmental 2017 calendar year activity

## Environmental - Calendar Year Payments



**2017 environmental payments of \$750 million are in-line with 2011–2015 payments**

**Source:** Statutory Annual Statements obtained from SNL.

**Note:** Data shown is directly from Note 33. To compare to AM Best, would need to add back LPTs related to Fireman's Fund (2002), Munich Re (2005) and Swiss Re (2008).

# Environmental 2017 calendar year activity

(continued)

Top 10 Payers of Environmental Liabilities in 2017						
Data in \$000s						
Company	Calendar Year 2017 Net Payments	% of 2017 Net Payments	2017 Net Reserves	% of 2017 Net Reserves	1 Yr Survival Ratio	3 Yr Survival Ratio
Company A	137,701	18%	478,314	10%	3.5	4.2
Company B	83,517	11%	352,704	8%	4.2	5.3
Company C	54,500	7%	339,463	7%	6.2	6.6
Company D	42,650	6%	197,178	4%	4.6	5.0
Company E	36,827	5%	196,923	4%	5.3	4.5
Company F	35,855	5%	95,791	2%	2.7	3.4
Company G	31,933	4%	276,139	6%	8.6	6.7
Company H	30,554	4%	46,592	1%	1.5	1.9
Company I	30,131	4%	546,426	12%	18.1	18.1
Company J	23,942	3%	157,987	3%	6.6	6.9
All Other	243,124	32%	1,958,857	42%	8.1	N/A
<b>Total</b>	<b>750,733</b>		<b>4,646,373</b>		<b>6.2</b>	<b>6.7</b>

Source: Statutory Annual Statements obtained from SNL.





Will recent  
supreme court  
decisions affect  
future claim  
filings?



# The U.S. Supreme Court on jurisdiction

## **Daimler AG v. Baumen et al. - 2014**

- The Court held that the ability to hear claims unrelated to the forum state is only proper where the corporation is “at home”

## **Bristol-Myers Squibb Co v. Superior Court of California - 2017**

- The Court ruled that every non-California plaintiff could not pursue a state claim against the pharmaceutical manufacturer in California because they were not injured in California.
- The Court found that even where other plaintiffs were similarly prescribed, obtained and ingested Plavix in California as the non-resident plaintiffs, the state would not be allowed to assert specific jurisdiction over the non-resident claims. According to the Court, “what is needed is a connection between the forum and the specific claims at issue”.

## **Effect of Daimler AG and Bristol-Myers**

A plaintiff can sue a company only where the plaintiff purchased or used its product, or where the company is incorporated or has its principal place of business.

### **Sources:**

Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty., 137 S. Ct. 1773 (2017)

Cunningham AB, Reese E. (2018, March 16). Out with the old, in with the new: What to expect in asbestos litigation in 2018. Westlaw. Retrieved from <https://www.huntonak.com/images/content/3/6/v2/36269/out-with-the-old-in-with-the-new-what-to-expect-in-asbestos-liti.pdf>.

American Bar Association. (2017, June 29). Supreme Court in Daimler AG v. Bauman Limits General Jurisdiction over Foreign Companies. Retrieved from <https://www.americanbar.org/>.

# Future asbestos claim filings in Madison County?

**Nearly ½ of all mesothelioma claims filed in last three years are in Madison County, IL, but the majority of plaintiffs don't have any connection to either Madison County or to Illinois.**

**Aspen American Insurance Company v. Interstate Warehousing, Inc.** – September 2017, the Supreme Court of Illinois applied the Daimler decision and found that the plaintiff did not complain of any conduct committed by the defendant in Illinois so specific jurisdiction was not satisfied. Further, as the defendant was a non-resident to Illinois and did not have its principle place of business in Illinois, the plaintiff could not establish general jurisdiction.

**Jefferies vs. Ford Motor Company** – July 2018, citing Aspen, an appellate court in Illinois allowed the dismissal of an out-of-state defendant for lack of personal jurisdiction.

## **Sources:**

Angelino B, Prochnow D. (2017, October 5). Chilling Litigation Tourism In Illinois 'Judicial Hellholes'. Retrieved from <https://www.law360.com>.

Roth B, Grube E. (2018, July 24). Illinois Appellate Court Issues a Win for Out-of-State Defendants in Asbestos Litigation Involving Non-Illinois Exposures. Retrieved from <http://www.ettdefenseinsight.com>.

# Is talc the next wave?

**Companies that manufacture, distribute and sell talc-based products have become a favorite target of plaintiff lawyers in recent years.**

Johnson & Johnson (J&J) is currently battling more than 9,000 lawsuits in state and federal courts over the question of whether talc-based products like Shower-to-Shower and Johnson's Baby Powder cause ovarian cancer.

Plaintiffs have alleged that J&J's internal records indicate that J&J knew about the potential connection between genital talcum powder use and cancer more than 40 years ago. It is argued that, instead of informing consumers about the possible relationship, the company refused to add a warning to their talc product packaging or change its formula to use safer ingredients, such as cornstarch.

**Source:** Weyant, Curtis. Talcum Powder Lawsuits. Retrieved from <https://www.consumersafety.org/legal/talcum-powder-lawsuit/>

# Some recent successful talc cases

Plaintiff	Award	Date awarded	Jurisdiction	Class
22 Women in Missouri	\$4.69 Billion	July 12, 2018	St. Louis, MO	Under appeal
Stephen Lanzo III	\$117 Million	April 11, 2018	Middlesex County, NJ	Upheld
Eva Echeverria	\$417 Million	August 21, 2017	Los Angeles, CA	Overtured
Lois Slemo	\$110 Million	May 4, 2017	St. Louis, MO	Upheld
Deborah Giannecchini	\$70 Million	October 27, 2016	St. Louis, MO	Under appeal
Gloria Ristesund	\$55 Million	May 2, 2016	St. Louis, MO	Overtured – due to BMS
Jackie Fox	\$72 Million	February 22, 2016	St. Louis, MO	Overtured – due to BMS



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