

WC Asbestos Subrogation: Reserve Techniques

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Background State of Asbestos Insurance Claims

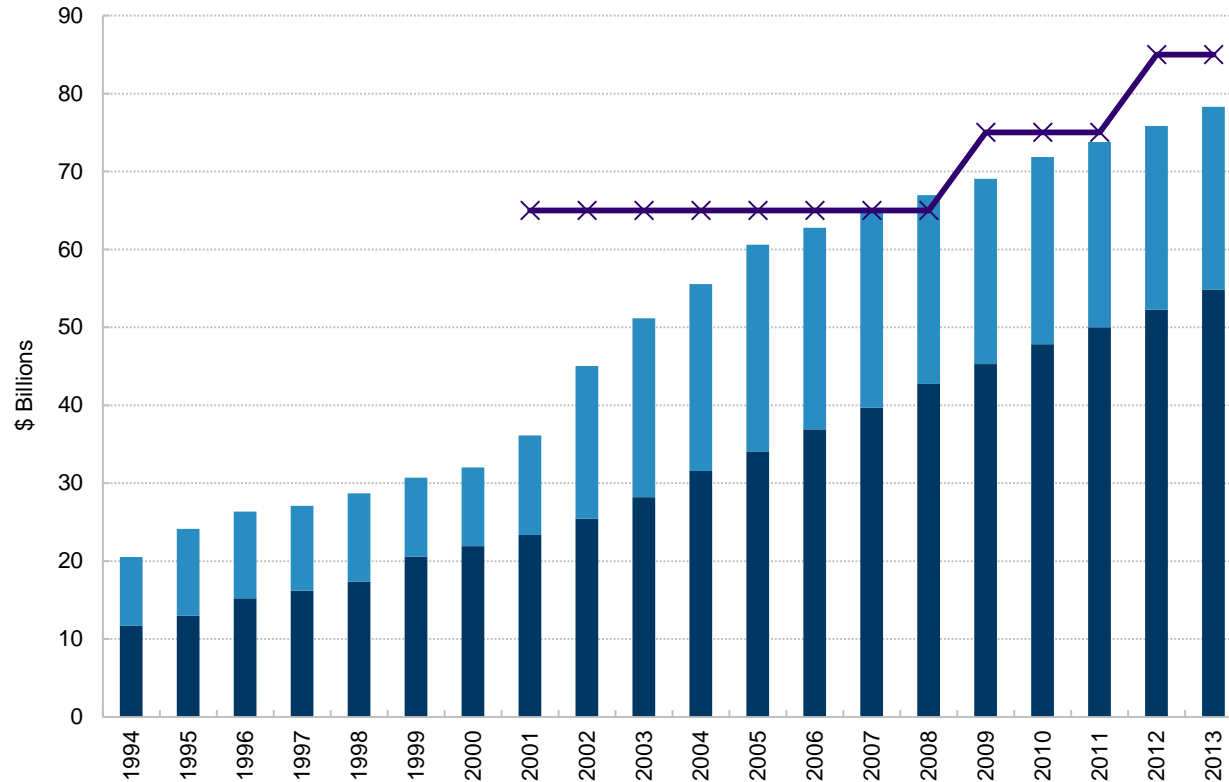


Products Liability Insurance Claims

- Asbestos claims continue to be a strain on P&C Insurers
 - Total U.S. industry incurred losses have increased every year, for the past 20 years.
 - U.S. P&C Insurers have paid more than \$2 billion in asbestos claims per year for the past 10 years.
- Tobacco Lung Cancer cases on the rise
- Garlock bankruptcy case
 - Found plaintiffs were double dipping to increase awards

U.S. Asbestos – Cumulative Net Incurred

U.S. Asbestos - Cumulative Net Incurred Loss & Expense



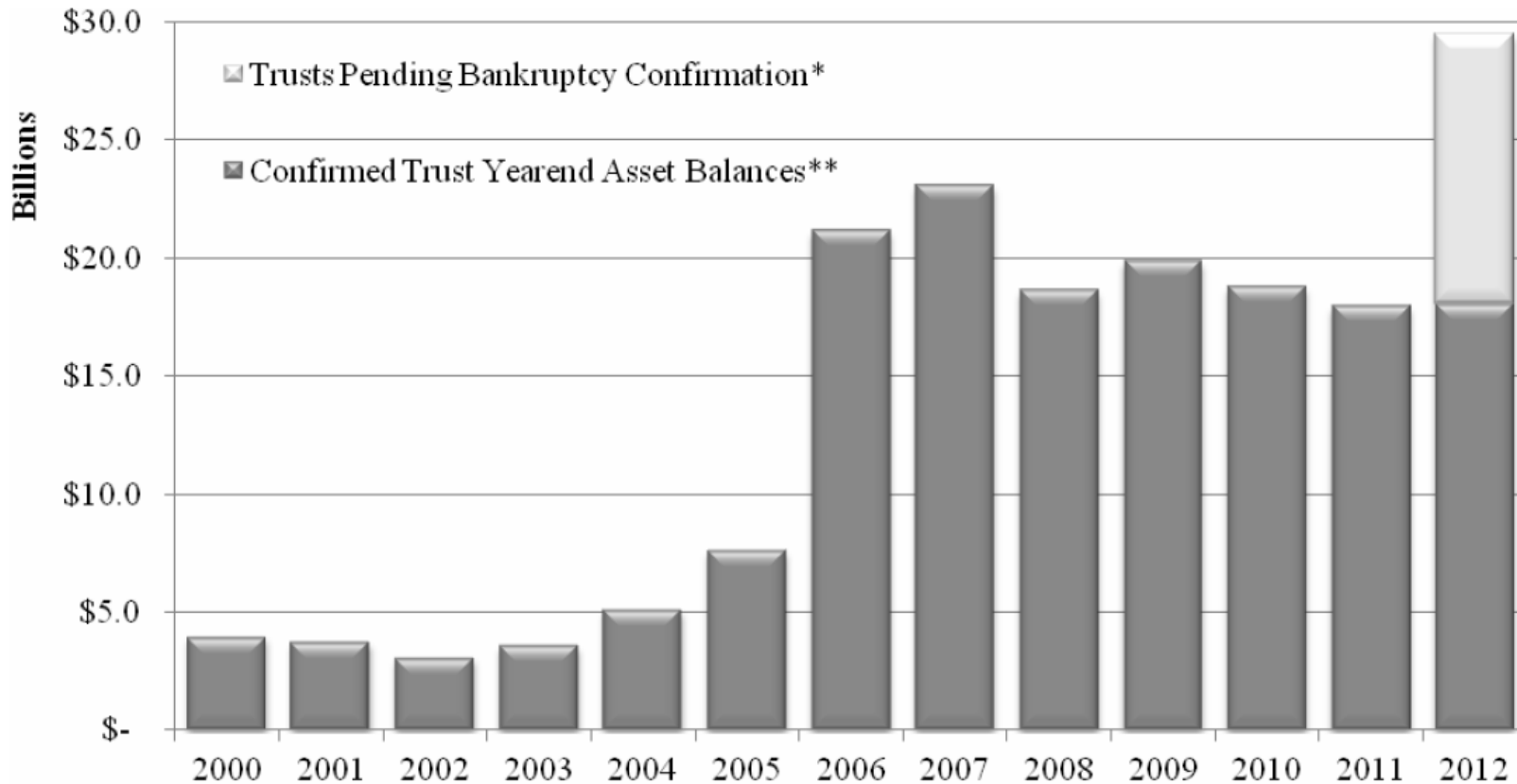
Source: A.M. Best data & research, 2014

■ Cumulative Paid (\$55 billion)
 ■ Case & IBNR Reserves (\$23 billion)

✕ A.M. Best Ultimate (\$85 billion)

Bankruptcy Trusts

Exhibit 1: Trust Yearend Assets



*Estimated present value of proposed funding based on bankruptcy disclosures

**As reported in financial statements and does not include deferred funding. As of 2012 this deferred funding amount is estimated to be a least \$640 million (see exhibit 2)

Source: "Asbestos Bankruptcy Trusts: A 2013 Overview of Trust Assets, Compensation & Governance." Mark C. Scarcella and Peter R. Kelso. June 2013. *Mealey's Asbestos Bankruptcy Report*, Vol. 12 #11.



Other Coverages Affected by Asbestos

Claimants have also found other avenues:

1. Premises
2. Health
3. Workers' Compensation



Workers' Compensation

Workers' Compensation historically has had modest exposure to asbestos claims because:

- 1) Latent nature of asbestos-related diseases
- 2) Typical age of those diagnosed with mesothelioma
- 3) Recovery potential from filing claims via products liability suits and bankruptcy trust claims is typically higher than recovery from workers compensation

However, workers' compensation exposure remains. In addition, there have been certain tort reform allowing employees to sue their employers outside of workers comp system.

- 1) Illinois: *Folta v. Ferro Engineering*
- 2) Pennsylvania: *Tooev v AK Steel Corp*

Estimating Possible Subrogation



Estimate of WC Asbestos Exposure - Industry

- In 2014, U.S. companies filing an annual statement reported \$45.3 billion in WC reserves (case + IBNR) for AY's 2004 and prior.
- \$11.0 billion from companies with only WC reserves 2004 and prior. These companies reported \$63.2 million in asbestos reserves, 0.58% of total.
- Estimate of \$261 million total identified asbestos reserves (equal to $0.58\% \times \$45.3$ billion).
- Potential for subrogation exists within this \$261 million, and also:
 - On payments already made (estimate of \$21 million per year in last 5 years)
 - On claims not identified as asbestos



Identifying Claims for Potential Subrogation

- Review historical claims based on various criteria:
 - Accident Date
 - Nature of Injury
 - Injury - Part of Body
 - Occupation
- Match to existing asbestos claims databases
- Review the matches to identify other claims which could also be candidates for recovery



Identifying Claims for Potential Subrogation

For example:

- Company XYZ, in the past 5 years has paid \$100 million in WC claims arising from AY's prior to 2000.
- Of these claims, \$40 million paid are flagged for further review (based on criteria like occupation, injury type, employer, etc.)
- These are matched to asbestos claim database and result in \$20 million with a match.



Cost of Subrogation

- Cost structure to match claims and to seek subrogation is typically matched to a success fee.

Continuing Example:

- \$10 million recovered. Fees of 20%. Net recovery of \$8 million.
- Use data on recovery received to flag other claims which may have potential recovery.

Reserving



Estimating Savings on Reserves

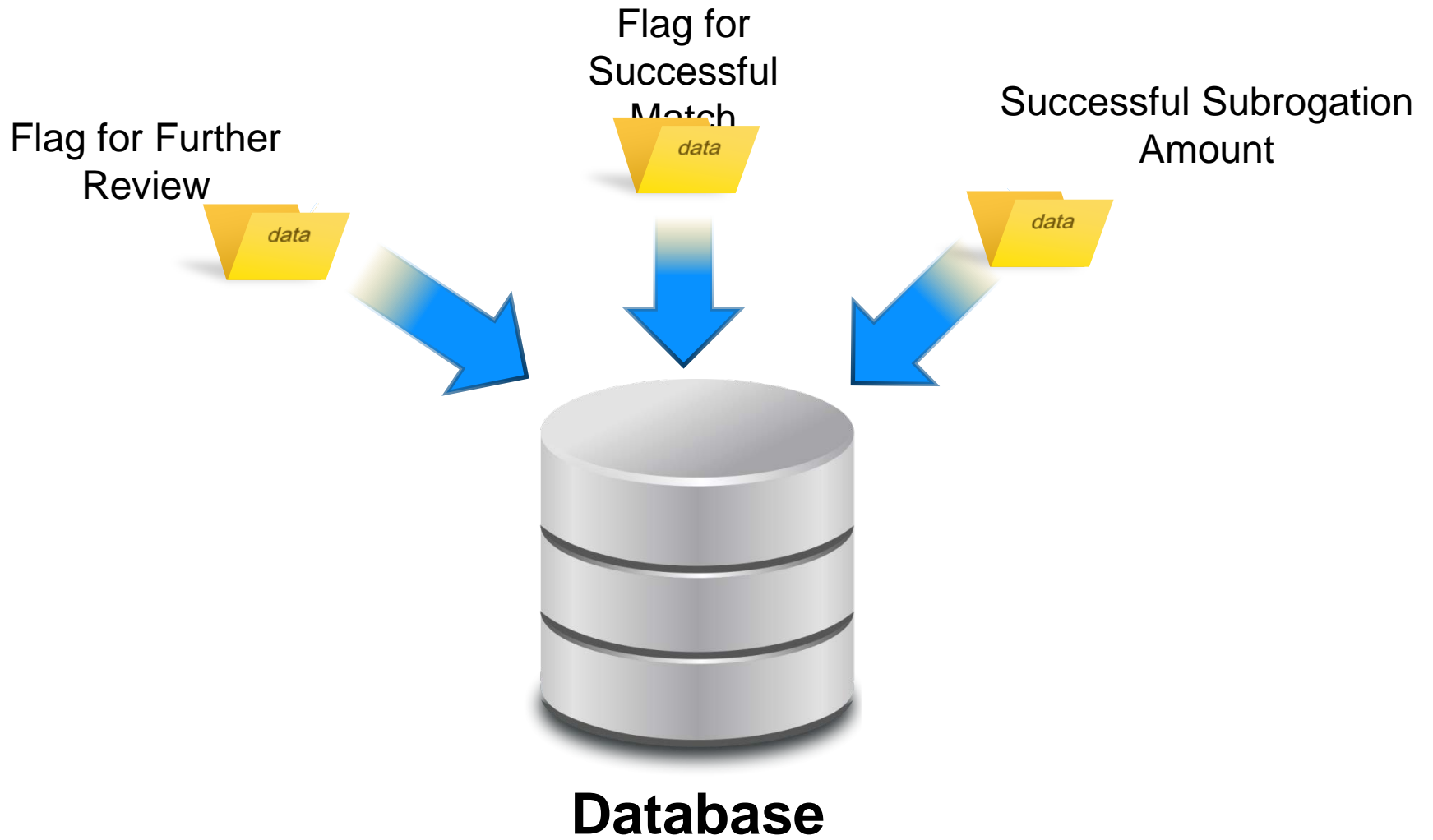
- After completing the exercise on paid claims, reduction on reserves can be estimated:
 - Identify open claims with potential for subrogation
 - Estimate portion of IBNR attributable to claims with potential for subrogation
 - Estimate recovery, after fees



Estimating Savings on Reserves

- Continuing the example:
 - \$150 million in case reserves, flagged for further review (using same criteria based on criteria such as occupation, injury type, employer, etc.)
 - Estimated \$200 million portion of IBNR attributable to similar claims
 - Assume similar match rate (50%), recovery rate (50%), and fees (20%)
 - Reduction in Reserves:
 - $\$350 \text{ million} \times 50\% \times 50\% \times (1 - 20\%) = \70 million

Track Data



Benefits of monitoring:

1. Will help to assess whether initial reserve estimates should be adjusted
2. Allows for analysis of successful pockets
3. Continued approach to identify new claims
4. Analyze calendar year effects

Critical Thinking at the Critical Time™