



# Asbestos and environmental update – What have we learned

Rachel C Dolsky, FCAS, MAAA

September 17, 2019



# CAS Antitrust notice

The Casualty Actuarial Society is committed to adhering strictly to the letter and spirit of the antitrust laws. Seminars conducted under the auspices of the CAS are designed solely to provide a forum for the expression of various points of view on topics described in the programs or agendas for such meetings.

Under no circumstances shall CAS seminars be used as a means for competing companies or firms to reach any understanding – expressed or implied – that restricts competition or in any way impairs the ability of members to exercise independent business judgment regarding matters affecting competition.

It is the responsibility of all seminar participants to be aware of antitrust regulations, to prevent any written or verbal discussions that appear to violate these laws, and to adhere in every respect to the CAS antitrust compliance policy.

# KPMG disclaimer

This paper does not constitute or include and should not be construed to constitute or include the provision by KPMG LLP of legal advice or legal services. KPMG does not provide legal advice or legal services. All questions concerning legal interpretation or the application of law or regulations to specific facts and circumstances should be referred to legal counsel.

# Discussion outline



Industry aggregate results and issues

Other mass torts – Talc & Roundup

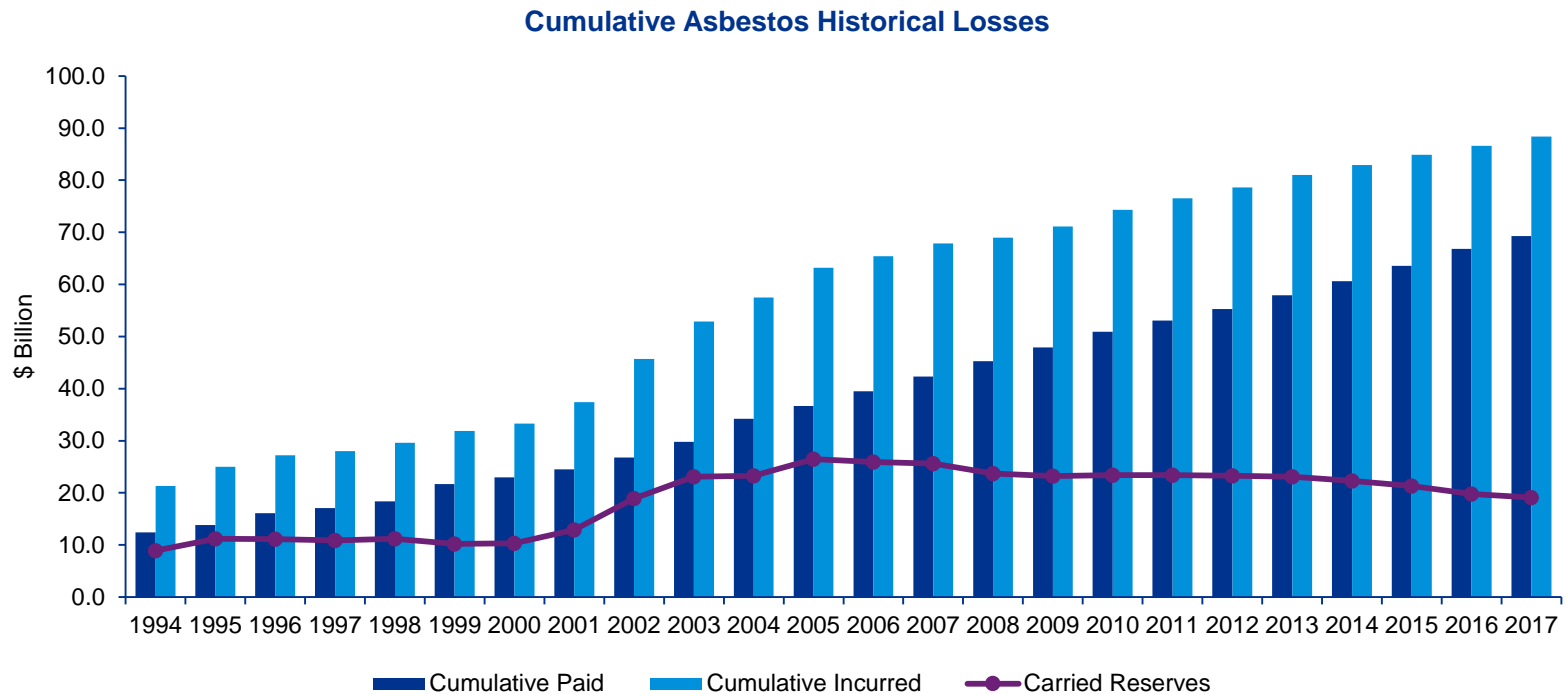
Claim filing trends

Environmental considerations & Runoff market

Challenges of A&E reserving

Interactions with claims

# Asbestos net historical losses

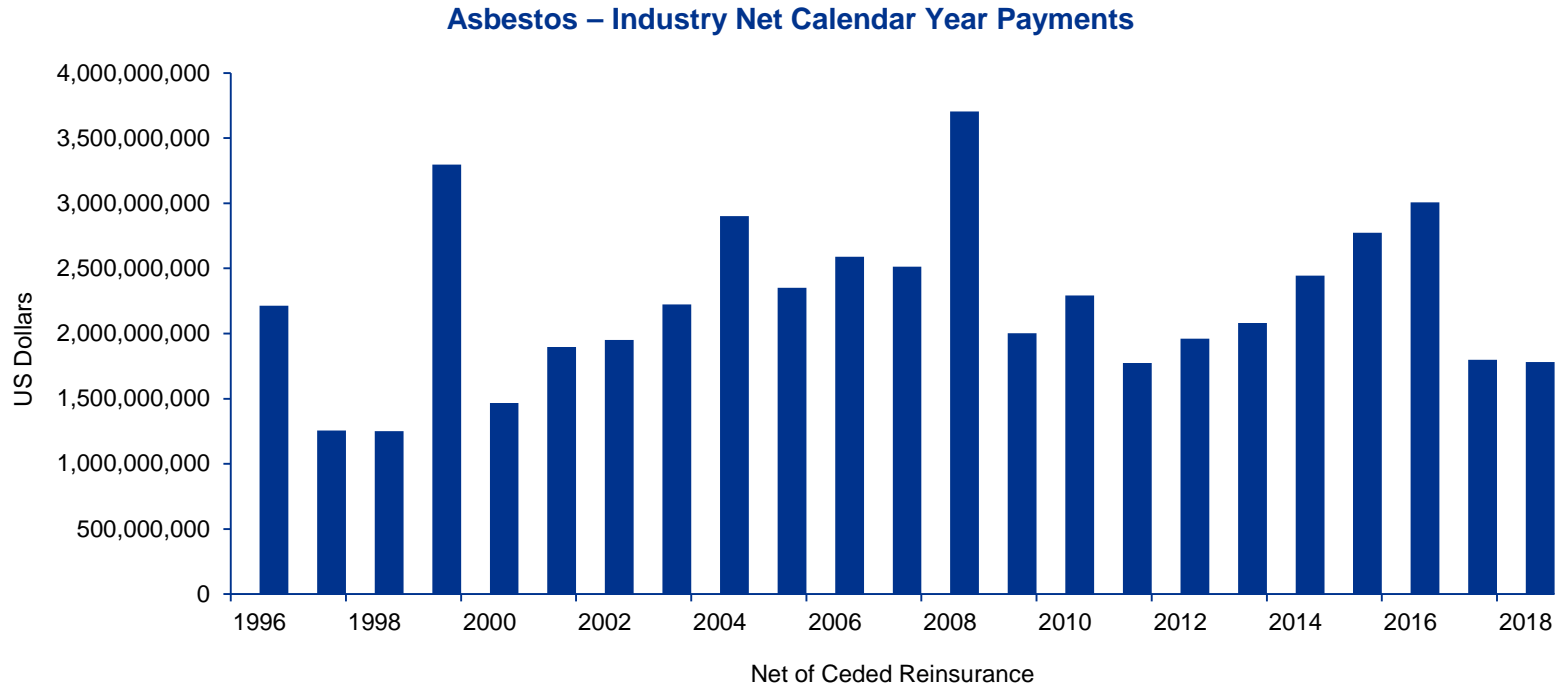


Carried reserves have slowly been declining; however, due to strengthening they have been declining at a much slower rate than industry paid losses.

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, Gupta S. 2018. *No Slowdown in Asbestos and Environmental Claims. Best's Special Report.*

# Asbestos 2018 calendar year activity



After a significant decline in 2017, 2018 paid losses of \$1.8 billion are consistent with 2017 levels.

**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 2018 calendar year activity (continued)

## Top 10 Payers of Asbestos Liabilities in 2018

Net of Ceded Reinsurance

\$000s

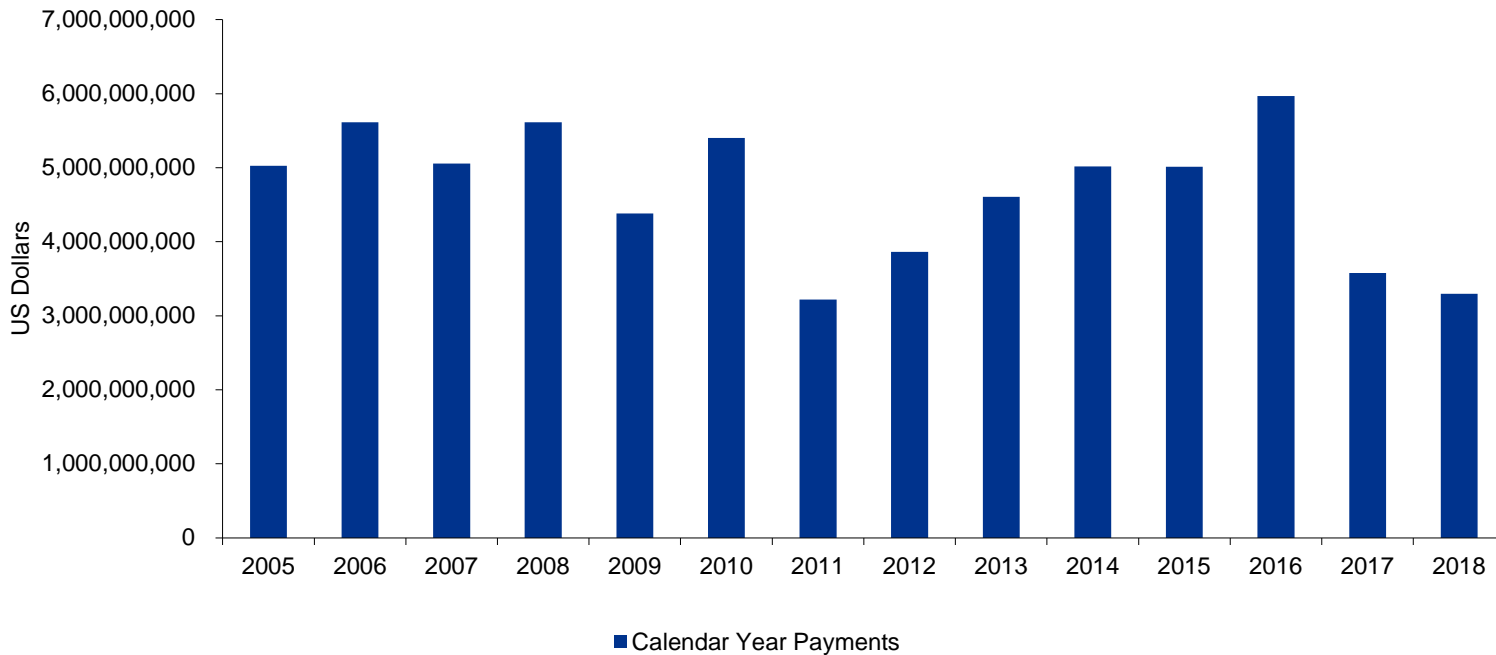
Company	2018 Calendar year payments	% of 2018 payments	2018 Net reserves	% of 2018 net reserves	1-Yr survival ratio	3-Yr survival ratio
Company A	223,679	13%	1,269,525	9%	5.7	3.2
Company B	164,746	9%	1,399,286	9%	8.5	5.5
Company C	160,312	9%	947,561	6%	5.9	6.1
Company D	156,511	9%	815,184	5%	5.2	4.0
Company E	144,796	8%	800,542	5%	5.5	5.1
Company F	140,287	8%	1,253,892	8%	8.9	9.6
Company G	134,570	8%	1,791,515	12%	13.3	9.3
Company H	97,986	5%	1,773,402	12%	18.1	26.9
Company I	77,636	4%	169,487	1%	2.2	1.5
Company J	61,033	3%	862,310	6%	14.1	9.7
All Other	420,451	24%	3,838,750	26%	9.1	N/A
<b>Total</b>	<b>1,782,007</b>	<b>100%</b>	<b>14,921,455</b>	<b>100%</b>	<b>8.4</b>	<b>6.8</b>

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



# Asbestos 2018 calendar year activity (continued)

## Asbestos Industry Gross Payments

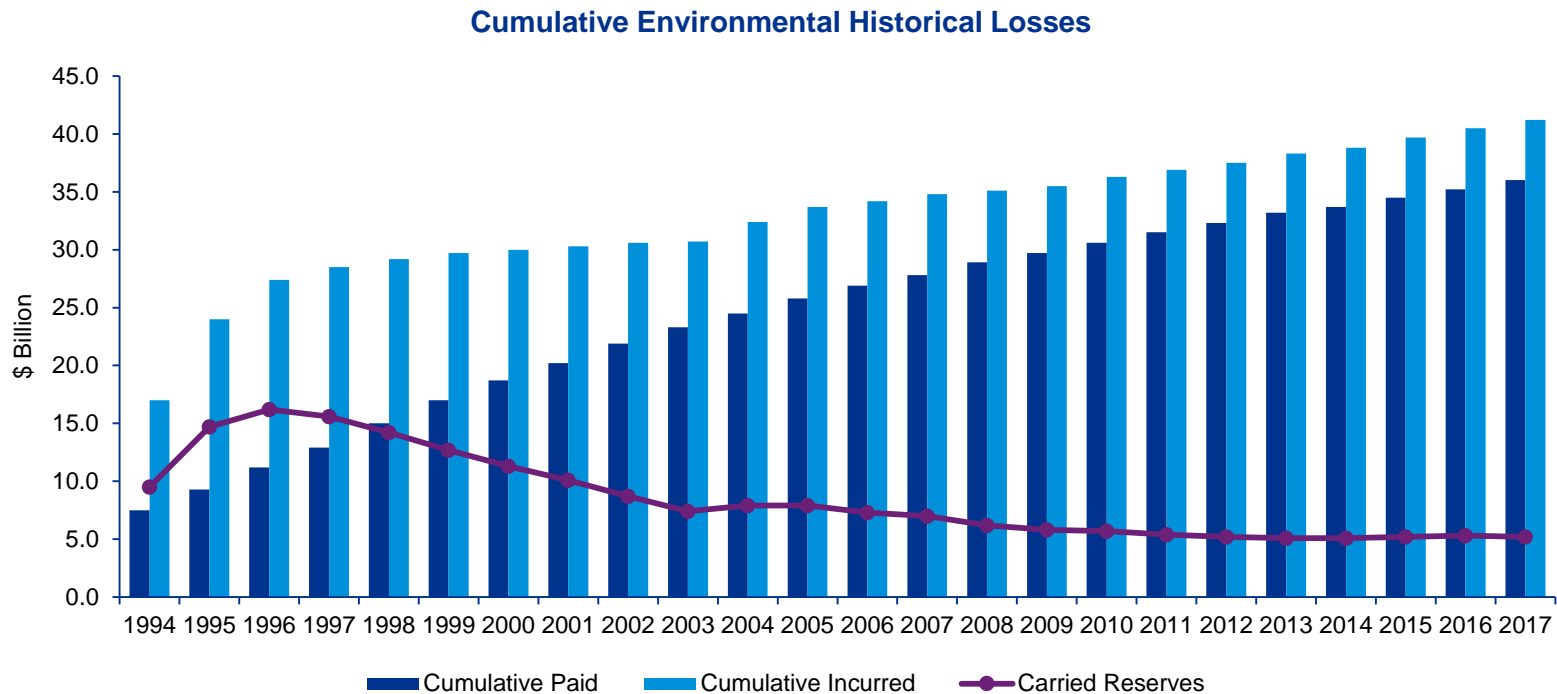


Although more volatile than net data, the gross payments in 2017 and 2018 are notably lower than in the 2013-2016 calendar years.

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

**Note:** AIG and Fairfax were removed from the Calendar Year 2011 data due to large negative payments from LPTs

# Environmental historical losses



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

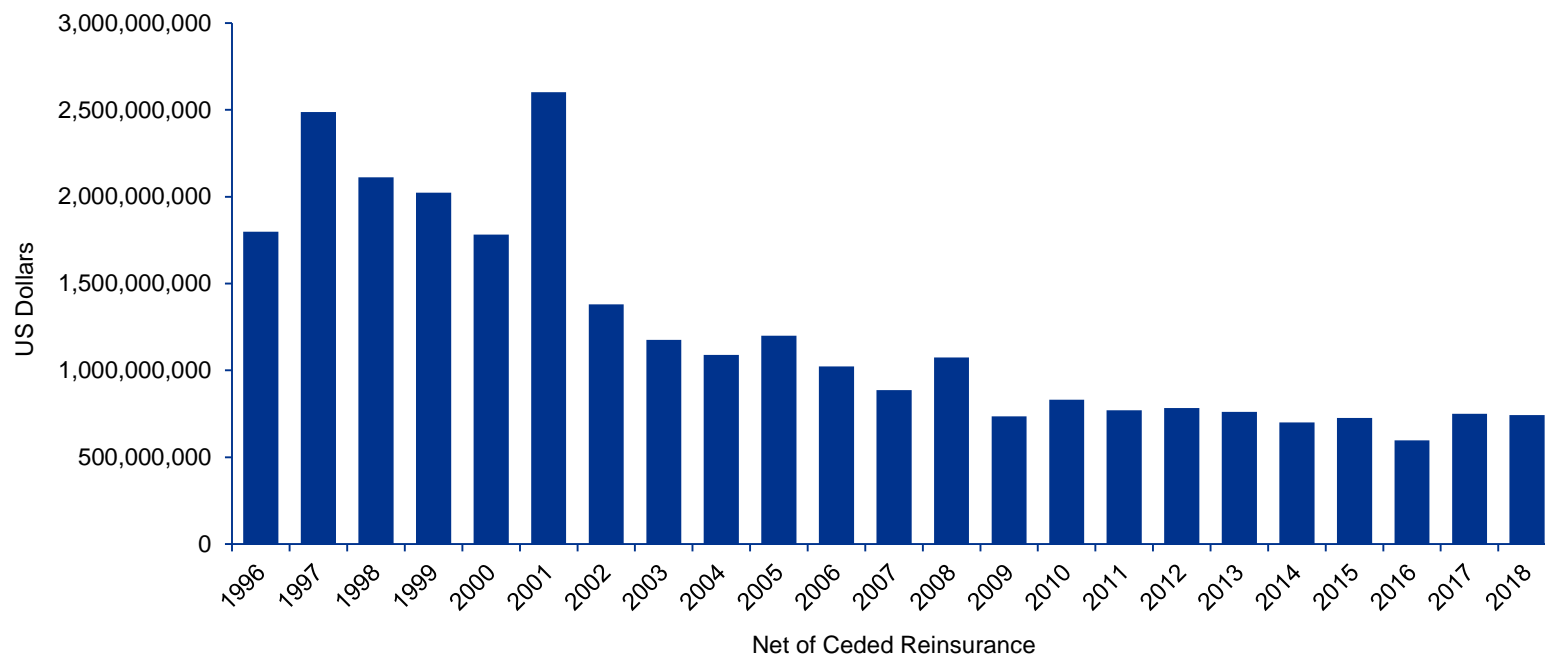
Due to the continued development on original sites that have been found to be more toxic than originally thought, and the associated increase in clean up and defense costs, in 2018 AM Best increased its estimate of the ultimate net environmental losses for the industry from \$42B to \$46B.

**Source:** O'Larte B, Gupta S. 2018. *No Slowdown in Asbestos and Environmental Claims. Best's Special Report.*



# Environmental 2018 calendar year activity

## Environmental – Industry Calendar Year Payments



Excluding 2016, 2018 net environmental payments of \$743M were in-line with the payment levels of the last seven years.

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

# Environmental 2018 calendar year activity (continued)

## Top 10 Payers of Environmental Liabilities in 2018

Net of Ceded Reinsurance

\$000s

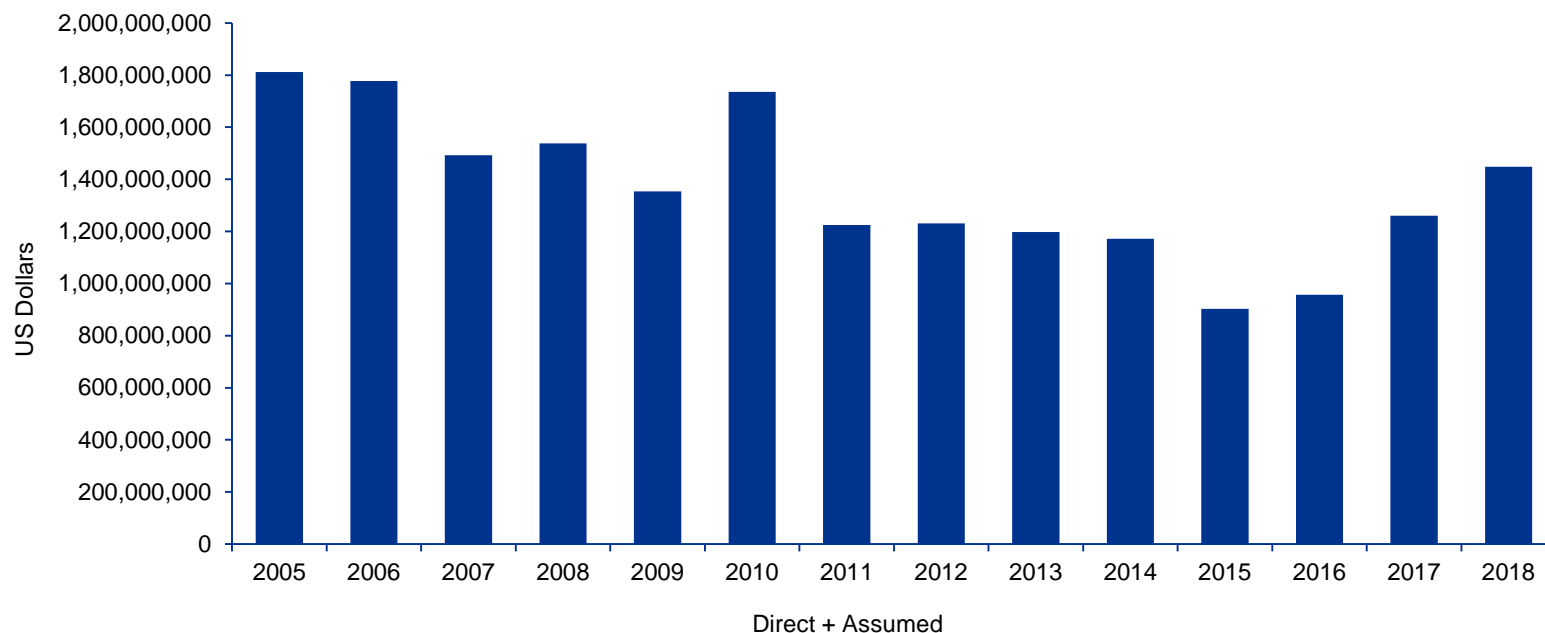
Company	2018 Calendar year payments	% of 2018 payments	2018 Net reserves	% of 2018 net reserves	1-Yr survival ratio	3-Yr survival ratio
Company A	79,997	11%	327,704	8%	4.1	4.4
Company B	34,658	5%	375,767	9%	10.8	7.9
Company C	45,188	6%	307,596	8%	6.8	7.4
Company D	23,185	3%	150,482	4%	6.5	11.6
Company E	18,320	2%	96,603	2%	5.3	3.8
Company F	23,821	3%	183,106	5%	7.7	6.4
Company G	397,282	53%	1,623	0%	0.0	0.0
Company H	40,309	5%	570,823	14%	14.2	17.9
Company I	40,737	5%	36,392	1%	0.9	1.1
Company J	20,483	3%	160,892	4%	7.9	10.5
All Other	19,233	3%	1,803,998	45%	93.8	N/A
<b>Total</b>	<b>743,211</b>	<b>100%</b>	<b>4,014,986</b>	<b>100%</b>	<b>5.4</b>	<b>5.8</b>

High payment activity associated with Company G is due to a loss portfolio transfer between the Company and a majority owned subsidiary of that Company.

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

# Environmental 2018 calendar year activity (continued)

## Environmental – Industry Gross Calendar Year Payments



On a gross basis, Company G has paid losses of \$476.5M. If you remove those payments from the 2018 gross numbers, the gross paid losses of \$972M is in line with other recent years.

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



**How much reliance can you place on industry results?**

**What are some of the potential pitfalls?**



# Other mass torts

# Talc

## 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 approximately 15,500 lawsuits related to talc.
- Lawsuits center on the question of if talc-based products like Shower-to-Shower and Johnson's Baby Powder cause ovarian cancer and mesothelioma.
- 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.
- Within the United States, lawsuits have been primarily filed in state courts in Missouri, New Jersey and California. Cases filed in federal courts in the United States have been organized as multi-district litigation in the United States District Court for the District of New Jersey.

**Source:** *The Meneo Law Group, Ron Meneo, "Talcum Powder Lawsuits" (2019).*

*Johnson & Johnson. (2019). 2019 10-Q form.*

# Talc (continued)

February 2019 – J&J’s talc supplier Imerys Talc America, Inc. filed for bankruptcy in Delaware relating to potential liability on account of Imerys’s sales of talc, including to J&J for body powders.

J&J petitioned the United States District Court for the District of Delaware to establish federal jurisdiction of the state court talc lawsuits under the “related to” jurisdictional provisions of the Bankruptcy Code. The Company’s petition was denied.

Other lawsuits against J&J related to talc include:

- A securities class action lawsuit,
- A shareholder derivative lawsuit, and
- Two ERISA class action lawsuits.

The Company has received preliminary inquiries and subpoenas to produce documents regarding these matters from Senator Murray, a member of the Senate Committee on Health, Education, Labor and Pensions, the Department of Justice, the Securities and Exchange Commission and the U.S. Congressional Subcommittee on Economic and Consumer Policy.

**Source:** *Johnson & Johnson. (2019). 2019 10-Q form.*

## Some recent successful talc cases

Plaintiff	Award	Date awarded	Jurisdiction	Case status
4 Plaintiffs In NJ	\$37.3 Million	September 11, 2019	New Brunswick, NJ	Award is compensatory only, punitive TBD
Patricia Schmitz	\$12 Million	June 12, 2019	Oakland CA	
Donna Olsen	\$325 Million	May 21, 2019	New York, NY	
Teresa E. Leavitt	\$29.5 Million	March 13, 2019	Oakland, CA	
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 – J&J won appeal for new trial
Lois Slemp	\$110 Million	May 4, 2017	St. Louis, MO	Upheld
Deborah Giannecchini	\$70 Million	October 27, 2016	St. Louis, MO	Overtured – due to jurisdiction
Gloria Ristesund	\$55 Million	May 2, 2016	St. Louis, MO	Overtured – due to jurisdiction
Jackie Fox	\$72 Million	February 22, 2016	St. Louis, MO	Overtured – due to jurisdiction

### Appeals

In 2017 the US Supreme Court ruled, in the case of Bristol-Meyers Squibb Co. vs Superior Court of California, that there needs to be a “connection between the forum and the specific claims at issue.” We understand that J&J has been successful at using this finding to help overturn a number of the verdicts against them in St. Louis on jurisdictional grounds, alleging that the plaintiff had no right to sue them in Missouri.

### Defense verdicts and settlements

Not all cases have resulted in a plaintiff verdict. In 2019 alone, at least three juries found for the defendant. Those cases were in New Jersey, South Carolina and Kentucky.

Additionally, it was revealed that on March 27, 2019 there were three confidential settlements made by J&J for cases that were either mid-trial or on the doorstep thereof.

**Source:** Obtained from public press reporting



# Roundup

1974 – Monsanto began to sell a weed killer called Roundup, which contained a man-made chemical called glyphosate.

Roundup soon became one of the most widely used weed killing agents by consumers for use on residential and commercial properties, by landscaping companies and by the government.

July 2015 – the International Agency for Research on Cancer (IARC) released a report stating glyphosate causes Non-Hodgkin's Lymphoma. The first lawsuits against Monsanto were filed later in 2015.

Plaintiffs allege that the Company ghostwrote academic articles over the years to hide the negative effects of glyphosate, they refused to perform cancer studies, and they fed the EPA "bad science."

On June 7, 2018, Bayer AG acquired Monsanto. Per its 2Q 2019 report, Bayer approximates 18,400 pending lawsuits regarding Roundup. To date, three have gone to trial, each with large verdicts. Bayer intends to appeal and continue to fight each of them.

Date awarded	August 10, 2018	March 19, 2019	May 13, 2019
Award	\$289M	\$80M	\$2.055B
Plaintiff	DeWayne "Lee" Johnson	Ed Hardman	Alva & Alberta Pilliod
Jurisdiction	San Francisco, CA	San Francisco, CA	Oakland, CA
Case status	Judgment reduced to \$78 Million	Judgment reduced to \$25 Million	Judgment reduced to \$86.7 Million



There are currently three trials scheduled in Missouri for the remainder of 2019.

**Source:** Bayer. (2019). *Half-Year Financial Report 2019*. Retrieved from <https://www.bayer.com/en/quarterly-reports.aspx>



[kpmg.com/socialmedia](https://kpmg.com/socialmedia)

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2019 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. NDPPS 890895

The KPMG name and logo are registered trademarks or trademarks of KPMG International.