

**TOWERS
PERRIN
ILLINGHAM**


Emerging and Latent Risks for Commercial Liability

2007 CAS Seminar on Ratemaking

Steven C. Lin
March 8, 2007

© 2007 Towers Perrin

ASBESTOS



© 2007 Towers Perrin

Asbestos Agenda

- Development of asbestos litigation
 - Origin
 - Evolution
- Explosive growth in claims
 - Claim statistics
 - Challenges to the system
- Attempts to manage or resolve litigation
 - Bankruptcy
 - Legislation
 - Judicial actions
- Uncertainties in projecting future costs

© 2007 Towers Perrin

Development of Asbestos Litigation

- Origin
 - Link between asbestos and disease
 - Failure to warn or protect
 - Sovereign immunity shifts burden to manufacturers
- Evolution
 - Extensive product use and long disease latency
 - Mass litigation
 - Large exposed population
 - Mass screenings
 - Bulk settlements
 - Court decisions with unanticipated consequences
 - Search for sources of compensation

© 2007 Towers Perrin

Explosive Growth in Number of Claims

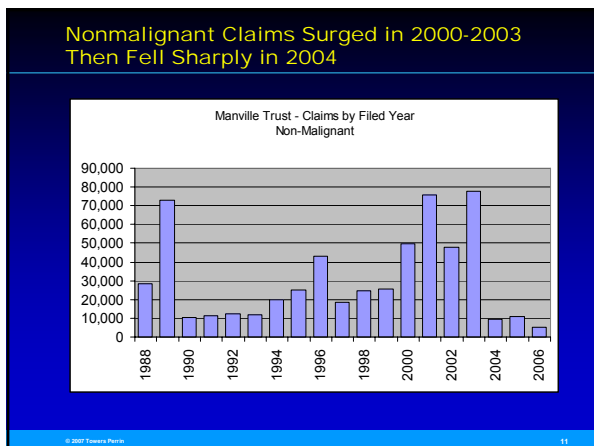
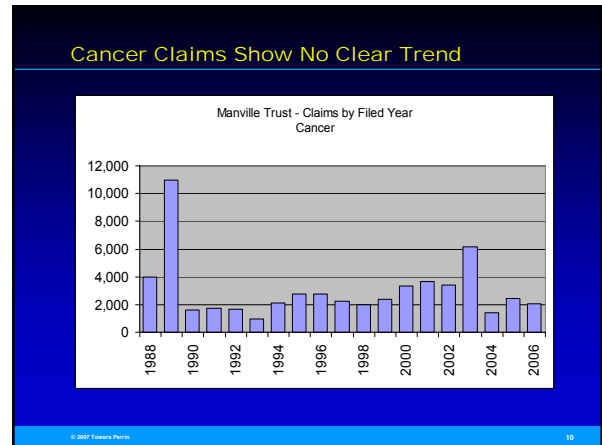
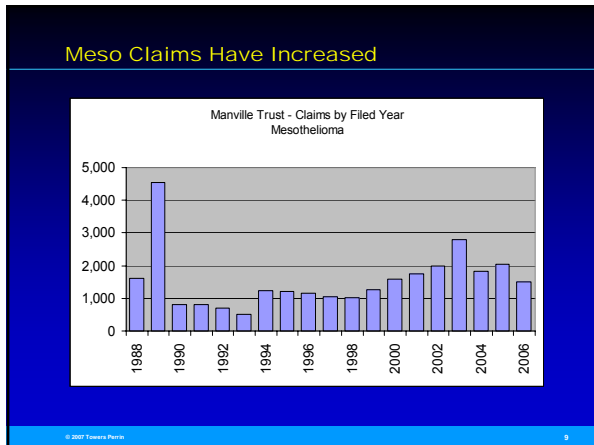
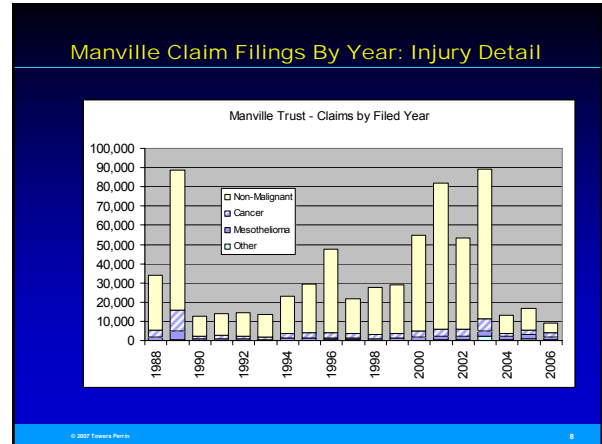
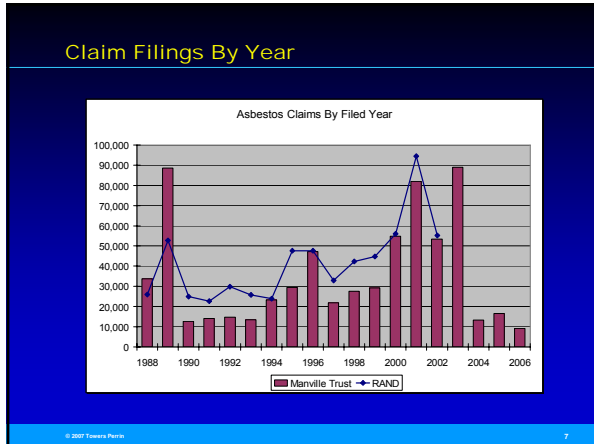
- Claim statistics
 - 322,000 open claims in 2005 (CBO)
 - 2/3 to 3/4 are unimpaired (RAND)
 - Steep increase in claim size
- Challenges to system
 - Financial stress on payers
 - Efficiency and fairness
 - Potential fraud in mass screenings

© 2007 Towers Perrin

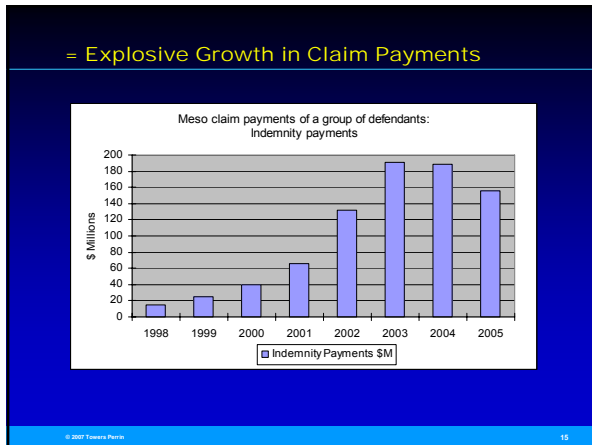
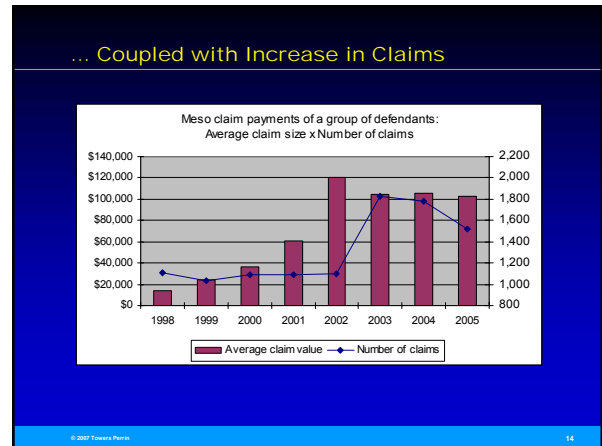
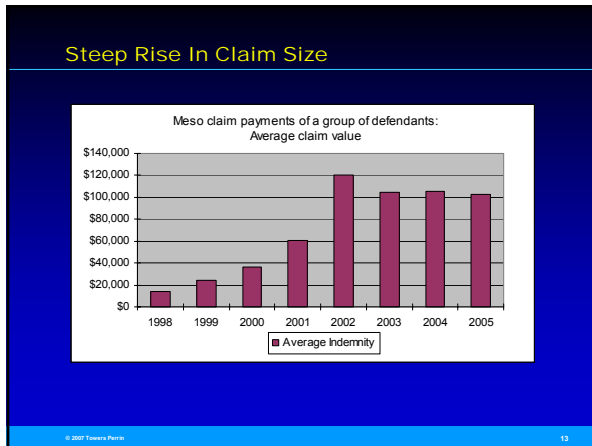
Claim Statistics

- RAND collected data through 2002
- Manville Trust has most comprehensive current data
 - Number of mesothelioma claims has increased
 - Increase in propensity to sue
 - Cancer claims show unclear trend
 - Change in SOE requirements
 - Nonmalignant claims surged in 2000-2003 then dropped sharply in 2004

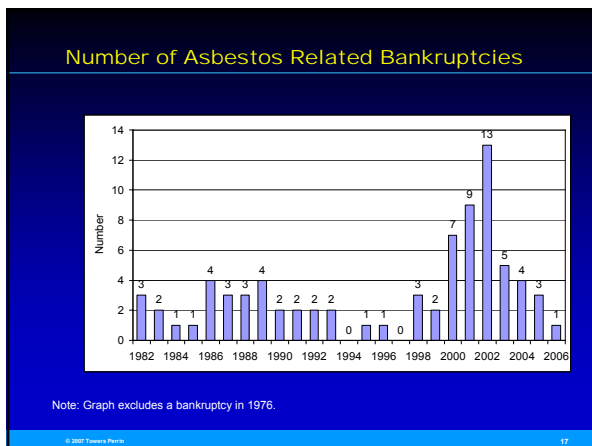
© 2007 Towers Perrin



- ### Claim Values Also Increased
- Mean verdicts to plaintiffs increased dramatically from 1998 to 2001 (RAND)
 - Mesothelioma: ~\$2M to ~\$6.5M
 - Other cancer: ~\$1M to ~\$2.5M
 - Asbestosis: ~\$2.5M to ~\$5M
 - Damages paid by individual defendants on each claim increased even more, reflecting higher shares for solvent defendants
- © 2007 Towers Perrin 12



- ### Challenges to the System
- Financial stress on payers
 - Defendant bankruptcies
 - Increased costs for insurers
 - Efficiency, fairness, and efficiency vs. fairness
 - High frictional (legal) costs
 - Strict liability, successor liability, joint & several
 - Geographic disparity and forum shopping
 - Mass consolidation vs. individual trial
 - Potential fraud in mass screenings
 - Large number of unimpaired claims
 - Scrutiny of mass screening claims



- ### Bankruptcy of Defendants
- Currently nearly 80 bankruptcies of companies with asbestos-related problems, per AAA
 - New bankruptcies:
 - Increase costs for remaining defendants
 - Domino effect
 - Cause need for additional defendants (payers)
 - Approximately 300 defendants in early 1980s
 - Estimates of ~2,000 published a few years ago
 - RAND estimates over 8,400 today
 - Defendants span 75 of 83 possible 2-digit SIC industry codes

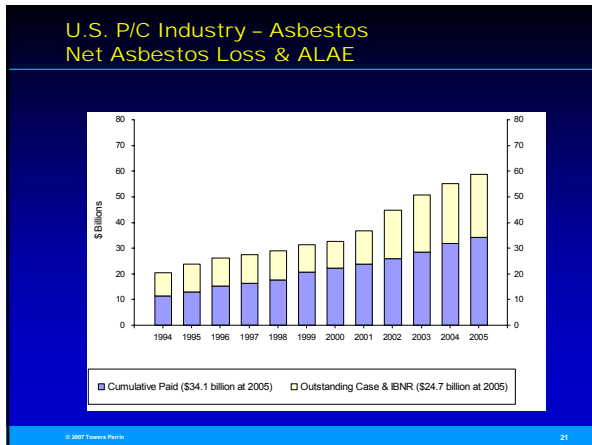
Search for New Defendants

- Representative 2005 suit in CA named 69 defendants; few were primary asbestos manufacturers

1. A.W. Chesterton Co.	24. Dowman Products Inc.	47. Pneumo-Abox Corp.
2. ACS Inc.	25. Exxon Mobil Corp.	48. Quirec Industries Inc.
3. ACF Industries Inc.	26. Ferro Engineering	49. Railroad Friction Products Corp.
4. Advocate Mines Limited	27. FOSECO Inc.	50. Rapid American Corp.
5. American Asbestos Co.	28. Foster Wheeler	51. Rich-Tex Inc.
6. American Standard Inc.	29. Frederick Meserwick Inc.	52. Special Materials Inc.
7. ASARCO Inc.	30. Garlock Sealing Technologies	53. The Reardon Co.
8. Asbestos Corp.	31. Georgia Pacific Corp.	54. Union Carbide Corp.
9. Atlas Heating and Ventilating Co.	32. Golden Gate Drywall Inc.	55. Uniroyal Inc.
10. Babcock Borsig Power Inc.	33. Griffin Wheel Co.	56. Universal Refractories
11. Bay Cities Asbestos Co.	34. Hamilton Materials Inc.	57. Vapor Corp.
12. Budd Disc Brake Co.	35. Hanson Permanente Cement Inc.	58. Viad Corp.
13. Calaveras Asbestos LTD	36. JT Thorpe & Son Inc.	59. Western MacArthur Co.
14. CAPOCO Pipe Co. Inc.	37. Kelley-Moore Paint Co. Inc.	60. Union Pacific Railroad Co.
15. Certain-Teed Corp.	38. Lake Asbestos of Quebec	61. Henry J. Kaiser, Inc.
16. Chevron USA Inc.	39. M. Slayen & Associates Inc.	62. Kaiser Center, Inc.
17. Combustion Engineering Inc.	40. Marconi Plastering Co. Inc.	63. Summit Commercial Properties.
18. Consolidated Insulation Inc.	41. Marshall Newell Supply Co.	64. Amstutz Industries Inc.
19. Crown Cork & Seal Co. Inc.	42. Murray Industrial Supply Co.	65. Ferro Corp.
20. CSR LTD	43. Owens-Illinois Corp.	66. Universal Refractories Corp.
21. D.W. Nicholson Corp.	44. Parker-Hannifin Corp.	67. Murray Industrial Supply, Inc.
22. Dee Engineering Co.	45. Pierce Lathing Co. Inc.	68. Marshall Newell Inc.
23. Douglass Insulations Co. Inc.	46. Plant Insulation Co.	69. Thyssenkrupp Budd Co.

Costs Have Increased for Insurers/Reinsurers

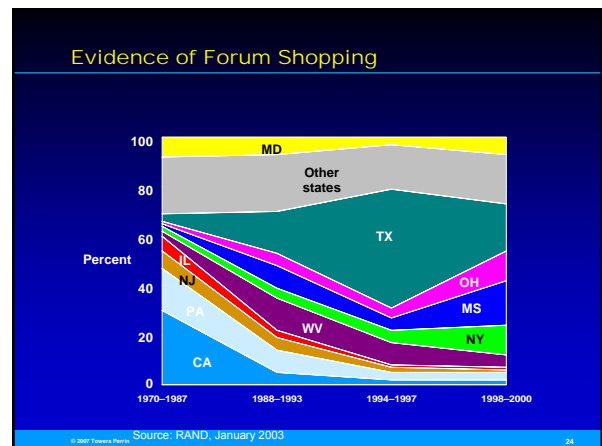
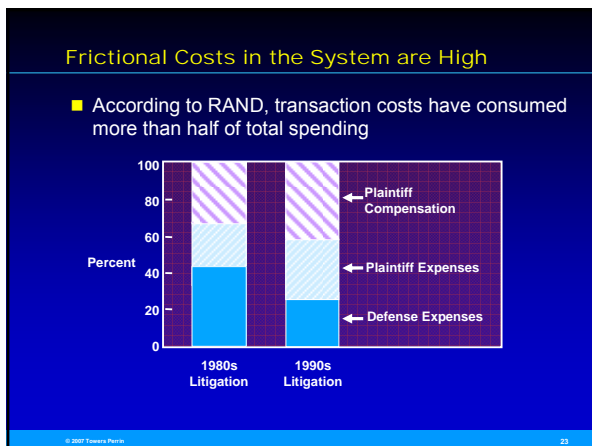
- Higher costs for existing defendants
- Additional costs for new defendants
- Additional coverage accessed
 - Higher layers than previously anticipated
 - Roll-forward of coverage blocks to later years
 - Reclassification of products claims as non-products claims
 - Identification of premises owners' exposures
 - Second hand exposure
 - Inclination of some state courts to maximize coverage

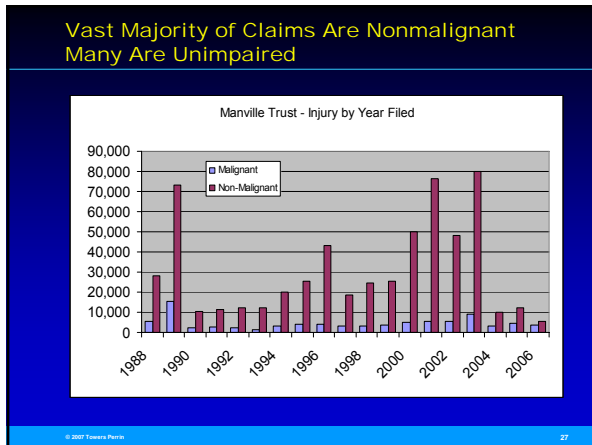
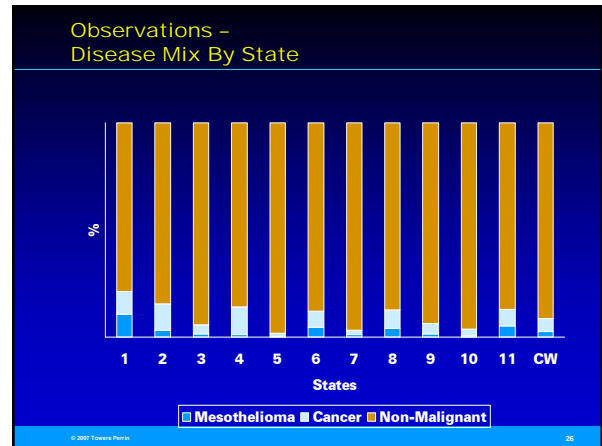
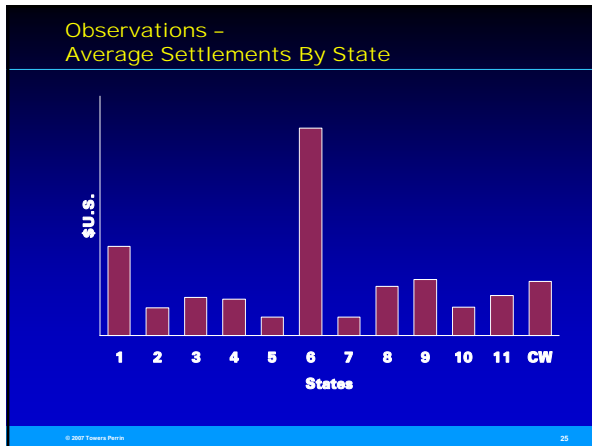


Net Asbestos Reserve Development Top 10 A&E Insurers

	St Paul/Travelers	Hartford	ACE	AIG	CNA	Nationwide
Net Asbestos Reserve 12/31/2001	1,185	479	691	330	1,268	855
Paid 2002-2005	2,314	1,596	453	382	420	568
Net Asbestos Reserve 12/31/2005	4,353	1,989	1,916	1,772	1,554	1,492
Increase since 12/31/2001	5,481	3,106	1,678	1,824	707	1,205
% Increase Relative to 12/31/2001	462%	649%	243%	552%	56%	141%

	Allstate	Liberty Mutual	Berkshire Hathaway	White Mountains	All Other	Total
Net Asbestos Reserve 12/31/2001	873	865	763	733	9,515	12,750
Paid 2002-2005	545	639	207	190	8,652	10,305
Net Asbestos Reserve 12/31/2005	1,370	1,172	1,031	978	19,710	24,632
Increase since 12/31/2001	1,242	947	474	435	18,848	22,187
% Increase Relative to 12/31/2001	184%	109%	62%	59%	198%	174%





- ### Scrutiny of Mass Screening Claims
- Johns Hopkins radiologists in 2004 study found only 4.5% of plaintiffs had abnormal X-rays
 - In 2005 silica MDL proceedings, Judge Jack concluded "diagnoses were driven by neither health nor justice: they were manufactured for money."
 - 50%+ of 10,000+ claimants previously filed asbestos claims
 - Investigation of potential fraud by Congress and federal and state grand juries
 - Suspension or rejection of claims from certain physicians and screening companies
- © 2007 Towers Perrin 28

- ### Attempts to Resolve or Manage Litigation
- Bankruptcy
 - "Backdoor" avenue to class action settlement after US Supreme Court rejections
 - New bankruptcies have slowed to a trickle
 - Federal legislation
 - FAIR Act (asbestos trust fund)
 - Bill was derailed in 2006
 - State and local efforts
 - State legislation
 - Judicial actions
- © 2007 Towers Perrin 29

- ### Examples of State Law Changes
- Medical criteria
 - Ohio, Texas
 - Forum restriction
 - Texas, Mississippi
 - Successor liability
 - Pennsylvania, Texas
 - Trial consolidation
 - Texas, Mississippi, West Virginia
 - Repeal of joint and several liability
 - Florida, Georgia, Texas (partial)
- © 2007 Towers Perrin 30

Examples of Judicial Changes

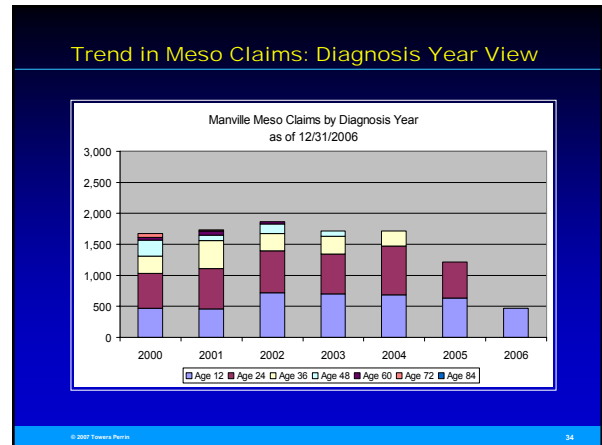
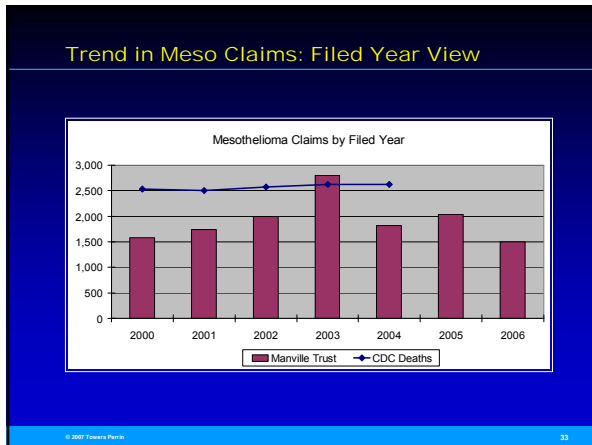
- Inactive dockets
 - Madison County, IL
 - New York City
- Increased scrutiny of claims
 - Evidence of injury
 - Product identification
- Turnover in judiciary personnel
 - Madison County, IL
 - Mississippi

© 2007 Towers Perrin 31

Uncertainties in Projecting Future Costs

- Data limitations
 - Drastic changes in claim environment since 2004
 - Diagnoses, filings, and filing lag
 - No nationwide or industry-wide databases
- Reaction of plaintiff bar to legislative and judicial changes
 - New economic or legal models
 - Emerging “forums of choice”
- Role of bankruptcy trusts
 - Return of mass screenings?

© 2007 Towers Perrin 32



Contact Information

Steven C. Lin
 Towers Perrin
 525 Market St., Suite 2900
 San Francisco, CA 94105-2708
 Phone: (415) 836-1118
 Email: steve.lin@towersperrin.com

© 2007 Towers Perrin 35