

## **THE CRUSHING WAVE OF ASBESTOS CLAIMS: ITS UNDERTOW IS PULLING COMPANIES INTO BANKRUPTCY**

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Richfield, OH - (July 12, 2001) In the last eighteen months, rapidly escalating asbestos claims caused several Fortune 500 companies to seek bankruptcy protection. Among them are Owens Corning (October 2000), Babcock & Wilcox (February 2000), Armstrong World Industries (December 2000), G.I. Holdings (fka GAF Corp. (January 2000), W.R. Grace (April 2001) and USG Corporation (June 2001). With the major manufacturers of asbestos products in bankruptcy, asbestos plaintiff lawyers are now pursuing new industries. For years, companies saw claims arise from plaintiffs who were exposed to asbestos during maritime activities in World War II. Today, companies that either manufactured or used small quantities of asbestos in their products, or those that had asbestos insulating their facilities are now facing claims. Even companies that used contract workers could be swept into the courtroom because their contractors are not covered by workers' compensation. These new defendants had either nominal or no asbestos liability claims in the past.

Recently, Tillinghast Towers-Perrin announced it has increased its estimates for the total cost of asbestos losses to between \$55 and \$65 billion. Although 25 years have passed since the peak usage of asbestos, claims are higher than ever. Epidemiologists believe that the claims are not going to disappear until 2050. How will companies combat asbestos-related complaint and ultimately stay afloat? "Their 'life raft' is most likely contained in their own files -

their historic insurance policies," replies Lori Siwik, vice president and counsel for Risk International, a risk management consulting firm.

Commercial general liability ("CGL") policies have long provided broad coverage for property damage, bodily injury, personal injury, and advertising liability. Most property and casualty insurance companies wrote insurance policies with split limits of liability: one set of limits for products and completed operations, another set of limits for premises liability and other operations. Typically, the products and completed operations had an aggregate limit in the policies. That is, the insurance company only had to pay a certain amount of money in settlements (the aggregate limit) and once that money was paid, the product coverage was exhausted. Unlike products coverage, most CGL policies do not contain aggregate limits for premises operations. As a result, a company faced with asbestos premises claims may tap into its insurance coverage again and again to obtain coverage for the claims.

The recent wave of asbestos claims has hit oil, chemical and steel companies, utilities and railroads. Those companies should pursue coverage under the premises operations coverage in their CGL policies. The vast majority of claims against corporate America to date have been product claims. Many companies with historic asbestos liabilities have exhausted their products coverage. Those companies should

see if their previous claims can be re-categorized. Companies should also look to first-party property policies<sup>3/4</sup> "premises operation" coverage within the CGL policies<sup>3/4</sup> and insurance of other companies such as contractors, subcontractors, property owners, architects and engineers.

"A company receiving asbestos liability claims should look at all possible insurance policies. Because asbestos exposures typically occurred over time, insurance policies in place from the 1930's to the present may provide coverage for the asbestos liability claims depending upon the relevant time period for each claim," states Siwik. In a recent National Underwriter article, it was reported that the total cost for asbestos losses could total \$200 billion in the United States with insureds picking up 39% of the claim costs, U.S. insurance companies absorbing another 30% while non-U.S. insurers would be responsible for the remaining 31% of claim costs.

A complete understanding and blueprint of the precise insurance coverage is essential. "We have assisted numerous clients in obtaining insurance coverage for their asbestos claims by reviewing all insurance policies and then negotiating with their insurance carriers," states Siwik. "For one client we even negotiated an agreement with insurance carriers to pay for the client's legal defense in asbestos-related litigation. Another client's employees alleged asbestos exposure during the course of employment. The insurance carriers that issued the client's primary insurance coverage declined coverage citing the employee exclusion or the workers' compensation exclusion. Upon analysis of their insurance profile, we found that two umbrella policies did not contain these exclusions," adds Siwik. Negotiations with those carriers are underway to provide coverage for the claim.

In order to understand and blueprint the insurance coverage, however, it is important to have evidence of the insurance policy. Finding this evidence requires a thorough process known as insurance archaeology - the art of locating historic or lost insurance policies or reconstructing coverage from secondary evidence. Companies may find insurance evidence by looking in stored business records or by interviewing long-time and former employees. Policies, insurance certificates, parts of policies, letters containing policy numbers and even the insurance policies themselves are often found among old business records stored and forgotten in lofts, basements, garages or warehouses. Where this so-called "primary evidence" cannot be found, correspondence with insurance agents or brokers which alludes to coverage for particular time periods will suffice. Additionally, correspondence provides the names and/or addresses of the agents or brokers for later contact. "Secondary evidence" demonstrates coverage to the insurance carrier.

For those companies engulfed in increasing asbestos liability claims and for those that are just breaking the surf, the value of insurance coverage cannot be overstated. The insurance companies know that there is coverage for the asbestos liability claims and, according to A.M. Best, have set aside an additional \$10.3 billion to pay for them. Insurance carriers have already paid \$21.6 billion for asbestos claims.

Risk International is one of the nation's leading risk management consulting firms also specializing in insurance archaeology, insurance claim handling and negotiation, risk science and forensics and litigation support.