Just when insurers thought that there was a light at the end of the tunnel, a disturbing sight looms in the rear view mirror – a new wave of asbestos claims. The sighting is confirmed by asbestos producers, insurers, and industry analysts alike who, while they may diverge on some specifics, agree on these findings: more asbestos claims are being filed against a growing number of peripheral defendants, including many claims by individuals without demonstrable disease. They also agree that the claim surge will cost the insurance industry much more than it had anticipated for asbestos losses.

This latest claim wave has underwriting and financial implications for insurance companies worldwide. In this article, we discuss the trends and recent findings surrounding the impact of asbestos on the property/casualty insurance industry, including:
- the types of products and businesses that still have possible asbestos exposures;
- recent litigation against manufacturers and distributors of asbestos as well as against the new peripheral defendants;
- new estimates of asbestos liabilities facing property/casualty insurers; and
- the importance of reviewing asbestos exclusions.

Recent U.S. Developments
- New studies warning that previous estimates of insurers’ potential asbestos liabilities appear to have been dramatically underestimated;
Asbestos is a material with nearly universal properties: it is acid and lye resistant and fireproof. It is extracted by open-cast mining. The greatest reserves are found in Canada, Russia, South Africa and Australia.

- Crocidolite, very good acid-resistance
- Chrysotile, very good alkaline-resistance

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Asbestos claimants filing suits against peripheral defendants who manufactured products containing as little as 1% asbestos;
- Ever larger asbestos personal injury awards;
- Efforts by insureds to reclassify asbestos personal injury claims as premises claims;
- Judicial decisions expanding the rights of plaintiffs to reopen previously settled asbestos claims.

Recent International Developments
- Larger awards achieved by asbestos plaintiffs outside of the United States;
- New studies estimate past exposures to asbestos will result in some 250,000 deaths in Western Europe over the next 35 years;
- New studies conclude asbestos-related deaths in the United Kingdom could increase from 3,000 annually in 1998 to 10,000 annually by 2020;
- The French Court of Cassation, the country’s high court, has held that employers are responsible for the asbestos-related diseases and must compensate former employees suffering from asbestos-related diseases. The ruling reportedly could cost French liability insurers FFr 50 billion (US$ 6.68 billion) over the next twenty years as it paves the way for thousands of asbestos claims from former workers and from families of former employees who have died as a result of asbestos-related diseases;
- The United Kingdom’s High Court allows thousands of South African asbestos plaintiffs to file suits against a British mining company in UK courts;
- Courts in the United Kingdom and Ireland award damages to asymptomatic asbestos plaintiffs in “fear of asbestos” cases;
- An Austrian fireproofing materials manufacturer facing thousands of asbestos personal injury claims, is expected to report a net loss of about 870 million euros (US$777 million) for 2001 because of asbestos claims stemming from recently acquired U.S. subsidiaries;
- A United Kingdom Court of Appeal decision finds that asbestos personal injury cases with more than one defendant must be dismissed since plaintiffs cannot prove which defendant is responsible for exposing them to the asbestos fiber that caused cancer.

These developments, combined with the fact that products containing asbestos are still manufactured and used around the world, illustrate the need for insurers to revisit the language and use of asbestos exclusions.

Current Asbestos Uses May Expose New Policies
Many believe that the use of asbestos was banned in the United States years ago and that current exposures are limited to old buildings with asbestos-
containing materials. Unfortunately, this is not so. In July 1989, the Environmental Protection Agency (EPA) did ban the manufacture, importation, processing, or selling of almost all products containing asbestos. The ban was to be implemented over a nine-year period. In October 1991, however, a federal appellate court overturned much of the ban. The ban survived for only six asbestos-containing product categories. At that time, the EPA reportedly asked the Department of Justice to appeal that decision to the U.S. Supreme Court, but the Justice Department declined. Hence, while there has been a drastic reduction in the use of asbestos in the U.S., all asbestos and asbestos-containing products are not currently banned.

Other countries have only recently banned the use of asbestos. France did not completely ban the use of asbestos until 1997. Chile and Saudi Arabia only banned the use of asbestos in 2001. Argentina began banning certain types of asbestos in 2000 but will continue to allow the import and some use of chrysotile asbestos. A complete ban is slated to take affect in January 2003. The European Commission finally banned white asbestos, but the ban doesn’t take affect until 2005. White asbestos was the only type that was still allowed for use in European Union member countries and it was widely used in buildings through 1999.

The fact that asbestos is still in production and used at all is an important realization. Asbestos is not just an “old business” problem; lest it unexpectedly infect their current book of business, insurers need to consider how and where asbestos is found today. Asbestos risks still continue in two forms: the handling of old products containing asbestos and the production of new products containing some amount of the hazardous substance. Several studies and news reports shed some light on these products and the businesses most prone to exposure.

As for old products with asbestos, a recent Tillinghast study includes a list that includes some items still in use or found in a variety of commercial settings. Office, industrial, municipal, and school buildings are probably the largest source of asbestos-containing products. Floor and ceiling tiles, insulation, pipe covering, and wallboards with asbestos are still in place in countless structures. Once asbestos is friable, employees of building lessees, contractors, hired janitorial services, and even students can all be exposed. Add to this list the employees working with gaskets, boiler insulation, and brake linings.

Another old product resulting in recent litigation is asbestos-containing home insulation products. Homeowners in tens of thousands of American homes may be exposed to asbestos from Zonolite insulation lining attics, roofs, and crawl spaces. Several class action suits have already been filed on behalf of thousands of homeowners. More surprising is that some of these and other products are still made or sold with asbestos, however small the amounts. According to the U.S. Geological Survey, the primary uses of asbestos in the year 2000 included roofing products, gaskets, and friction products. A February 2000 article appearing in the Seattle Post-Intelligencer stated that there are over 3,000 asbestos-containing products sold in the U.S., including pipes, construction materials, floor tiles, abrasives, and automotive and aircraft brake linings.

Consider automobile brake linings, a product spanning the old and new product lists. According to a Seattle Post-Intelligencer article, General Motors reportedly still used asbestos brake linings in three models produced in 2000. A larger number of smaller companies still use asbestos while manufacturing replacement brakes or rebuilding brakes. According to the Post-Intelligencer, “hundreds of different styles of replacement brakes” continue to contain asbestos.

Asbestos clean-up was even required at the world-famous Goetheanum founded by Rudolf Steiner in Dornach near Basel/Switzerland.

Public facilities such as grandstands and horse racing tracks are closed if the asbestos concentration exceeds permissible limits.

The biggest university campus in Paris, France, with 50,000 students and staff was closed in 1995 for asbestos clean-up.
While we have focused on asbestos-containing products manufactured in the U.S., asbestos is still widely used around the world, not only for products similar to those discussed above, but in many countries asbestos may still be used for fireproofing in buildings. The chart below contains data regarding asbestos production from the U.S. Geological Survey's Website (http://minerals.usgs.gov/minerals/pubs/commodity/asbestos/070301.pdf).

New Asbestos Defendants in U.S. Litigation

For many insurers, the seeds of concern about new business were planted when more companies were sued for asbestos injuries. These “peripheral” or nontraditional defendants did not mine, manufacture, or process asbestos. Rather, they are the companies that made, used, sold, or serviced products containing asbestos, like building product manufacturers, construction contractors, and automotive parts manufacturers.

These nontraditional defendants might not be main litigation targets were it not for the bankruptcy of so many major asbestos manufacturers. At least 45 asbestos defendant firms have entered bankruptcy - nine since January 1, 2000 - and a few of them were originally considered “peripheral” to the earlier asbestos cases. Smaller and less culpable parties are now the only financially viable defendants. The recent acceleration of producer bankruptcies has translated to the surge of claims naming peripheral defendants not previously sued or viewed as asbestos risks.

According to a Wall Street Journal article, the number of asbestos defendants has increased from approximately 300 in the early 1980s to over 2,400 companies by 2000. Some of the peripheral defendants cited in this article include: Allwood Door Co., Ford Motor Co., General Motors Co., General Electric Co., Home Depot, Campbell Soup Co., Colgate-Palmolive Co., E.I. Gallo Winery, Gerber Products Co., Alcoa Inc., DuPont Co., Lockheed Martin Corp.,

### Chart: Asbestos Production

<table>
<thead>
<tr>
<th>Country</th>
<th>1999 Production*</th>
<th>2000 Production*</th>
<th>Reserves</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>7</td>
<td>7</td>
<td>Moderate</td>
</tr>
<tr>
<td>Brazil</td>
<td>170</td>
<td>170</td>
<td>Moderate</td>
</tr>
<tr>
<td>Canada</td>
<td>337</td>
<td>335</td>
<td>Large</td>
</tr>
<tr>
<td>China</td>
<td>300</td>
<td>300</td>
<td>Large</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>125</td>
<td>125</td>
<td>Large</td>
</tr>
<tr>
<td>Russia</td>
<td>700</td>
<td>700</td>
<td>Large</td>
</tr>
<tr>
<td>South Africa</td>
<td>20</td>
<td>20</td>
<td>Moderate</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>115</td>
<td>110</td>
<td>Moderate</td>
</tr>
<tr>
<td>Other countries</td>
<td>136</td>
<td>114</td>
<td>Large</td>
</tr>
</tbody>
</table>

* Production data in 1,000 metric tons

Asbestos fiber is woven into fabric. The evil witch in the movie “The Wizard of Oz” (1939), on the other hand, rode entirely unprotected on a broom with an asbestos handle.
AT&T Corp., and Dow Jones & Co. Certainly, many if not all of these firms do not fit the description of traditional asbestos defendants.

Gasket manufacturers and package products manufacturers have seen a dramatic increase in asbestos personal injury claims. Hospitals and universities that had asbestos-containing ceiling tiles or insulation have also been named as defendants in asbestos lawsuits, as have banks that financed properties containing asbestos. Oil refineries, retail, auto parts manufacturers, textile manufacturers, and other classes of business may also find themselves defendants in asbestos personal injury litigation. In some cases, the litigation has been filed by workers exposed to asbestos during production; in other cases, it was filed by contractors or employees who worked on the premises where asbestos was used.

Significant Verdicts and Settlements Against Peripheral Defendants in the U.S.

It has been suggested that the size of asbestos awards against peripheral defendants will likely be lower than the large awards juries have directed against the manufacturers and distributors of asbestos. Recent litigation against some peripheral asbestos defendants, however, seems to indicate that juries are just as willing to punish them with substantial verdicts. For example:

- In October 2001, a California jury awarded a plaintiff with mesothelioma $4.2 million. The plaintiff alleged his illness was caused by working with asbestos-containing gaskets manufactured by the defendant, Flexitalic. The defendant argued that it products emitted only background levels of asbestos.
- In August 2001, a Texas jury ordered North American Refractories (NARCO) to pay a mesothelioma plaintiff $6.1 million. The plaintiff alleged that while working as a pipefitter from 1956 to 1973, he was repeatedly exposed to a NARCO product, called Narcocast, containing one percent chrysotile asbestos. The jury found NARCO negligent for producing an unreasonably dangerous product without a warning.
- In September 2000, a New York jury ordered Sears, Roebuck & Co. and General Electric to pay a mesothelioma plaintiff $1.5 million. The plaintiff alleged that products purchased from Sears in 1950, including floor tiles, paper boiler insulation, and electrical tape, contained asbestos and caused his injuries. Sears was originally the only defendant in this case but the retailer successfully added General Electric, as manufacturer of the electrical tape, to the verdict form. The jury found Sears liable for 2% of the award ($30,000) and General Electric responsible for the remainder. According to the plaintiff’s counsel, this was the first asbestos verdict against a retailer of products containing asbestos.
- In May 2000, an Illinois jury ordered Shell Oil to pay a former roofer with mesothelioma $34.1 million. The roofer was hired by the oil company and worked at Shell facilities between 1956 and 1966 and alleged his mesothelioma was caused by exposure to asbestos contained in roofing materials on buildings owned by Shell. These verdicts are the tip of the iceberg of claims filed against peripheral defendants awaiting trial or settlement. The variety of their business activities illustrates just how far the asbestos liability chain extends. Also troubling is the relatively small exposure to asbestos experienced by some plaintiffs in these cases. A much larger number of new claims against peripheral defendants do not allege actual disease. As a result, insurers may find that companies first perceived as remote asbestos risks are anything but remote.
Recent Large U.S. Awards Against Traditional Asbestos Defendants

While we have discussed the impact of asbestos personal injury claims on new peripheral defendants, it is not our intent to minimize the impact the continuing flood of asbestos claims is having on more traditional asbestos defendants. These “traditional defendants” have generally been manufacturers and distributors of asbestos, but also include some large contracting operations and users of asbestos materials.

In the United States, more than 75,000 new asbestos personal injury claims were filed during 2001, more than any year since 1989. To date, some 575,000 people in the United States have filed asbestos personal injury claims. This number may ultimately increase to 2.5 million U.S. claimants.17

As of September 30, 2001, a dozen companies were facing a total of 1,041,054 pending asbestos personal injury claims. Halliburton, Viacom, Foster Wheeler, Kaiser Aluminum, and Metropolitan Life were all facing more than 100,000 asbestos claims each.18

According to Harris Martin Columns Asbestos, several companies made large asbestos-related payments during 2000, including:

- Fiberboard paid $920 million;
- Owens-Corning paid $685 million;
- T&N paid $324 million;
- Johns Manville paid $266 million;
- Armstrong paid $227 million;
- USG paid $162 million;
- Garlock paid $120 million;
- Dresser paid $117 million;
- W.R. Grace paid $89 million;
- DANA paid $78 million;
- Owings-Illinois paid $78 million; and
- Foster Wheeler paid $56 million.19

U.S. juries also seem to be willing to award plaintiffs suing traditional asbestos defendants ever larger sums of money. While there are numerous examples of juries awarding asbestos plaintiffs in excess of $1 million in damages, a few recent examples should suffice to illustrate this alarming trend.

In December 2001, an Illinois jury awarded a mesothelioma victim $16 million.20 Defendant, AcandS (Armstrong Contracting & Supply), argued its products were not responsible for the plaintiff’s injuries. The plaintiff worked as a fork lift operator at Owens-Illinois from 1967 to the mid 1970s. The jury awarded $8 million in compensatory damages, $7 million in punitive damages, and $1 million to the plaintiff’s spouse.

In December 2001, a Maryland jury awarded five mesothelioma victims over $40 million.21 Defendants

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In May 2001, a Maryland jury ordered AcandS Inc., to pay the families of four deceased mesothelioma plaintiffs and one living victim over $28 million.25 Plaintiffs alleged their illnesses were caused by working with the defendant’s asbestos-containing insulation.

In April 2001, a California jury ordered a pipe manufacturer and asbestos manufacturer Johns-Manville to pay an asbestos plaintiff $20 million.26 The plaintiff worked for a company that shared space with J-M A/C Pipe Corp., an asbestos cement pipe manufacturer. The jury found J-M A/C Pipe liable for half the award.

In February 2001, a Texas jury ordered Pfizer Inc., to pay an asbestosis victim $18 million.27 The jury awarded $3 million in compensatory damages and $15 million in punitive damages. The plaintiff alleged that he was exposed to asbestos while working with an insulation product manufactured by a Pfizer subsidiary.

In February 2001, a Texas jury ordered Flexitalic Inc., and United States Gypsum Co. to pay 22 Texaco refinery workers $35.2 million. Plaintiffs’ exposure allegedly arose from use of the defendants’ products.28 The jury found that the defendants’ products were unreasonably dangerous.

Significant Legal Developments

Outside of the United States

We have begun to see some larger awards being obtained by asbestos personal injury plaintiffs outside of the United States. Although too soon to call this a trend, these may be indicators of a growing willingness to give significant awards to those with asbestos-related diseases in other countries. Some other rulings, although not involving large awards, are also noteworthy. A brief discussion of some recent cases follows.

Asbestos clean-up is painstaking work which requires great attention to detail. The demolition of large facilities such as cooling towers creates considerable air pollution risks.
In January 2002, it was reported that a British widower whose spouse died of mesothelioma was awarded GBP 95,000 (US $136,800). The widower sued WB Industrial Ltd., the corporate successor to Darlington Chemical and Insulation Co., alleging his wife was exposed to asbestos dust as a ten-year-old child when her aunt, who worked at Darlington Chemical, picked her up from school after work covered in asbestos dust.

In February 2002, it was reported that the French Court of Cassation, the country’s high court, held that employers are responsible for the asbestos-related diseases of former employees and found 29 of 30 companies must compensate former employees suffering from asbestos-related diseases. In its ruling the court stated that “the employer has a safety obligation, especially with regard to sickness contracted by the employee due to products made or used by the company.” The ruling may pave the way for thousands of asbestos claims from former workers and from families of former employees who have died as a result of asbestos-related diseases. The previous French ruling, from 1898, had held that employees would receive only limited compensation for occupational diseases.

In March 2002, following the recent asbestos decision by the French high court, it was reported that French rail operator, SNCF, has agreed to pay Euros 30,000 (US $26,000) to the widows and between Euros 12,000 (US $10,400) and Euros 15,245 (US $13,200) to each child of former employees who died of asbestos-related diseases. Over 800 former employees of the rail operator have been recognized as having asbestos-related diseases.

In December 2001, a British mining company, Cape PLC, settled a suit filed on behalf of some 7,500 South African miners diagnosed with asbestos-related diseases for US $30 million. The company operated asbestos mines in South Africa from the late 1800’s to 1979. Many of the 7,500 former employees were hired as children to work in the mines. Another 2,500 South Africans from the area, including those living near the company’s crushing mill in Prieska, South Africa facility have also been diagnosed with asbestos-related diseases. The suit was originally filed in 1997, and in 1999, the British high court held that the South Africans could sue the company in British courts.

In December 2001, it was reported that a Western Australian mesothelioma victim was awarded A$1,079,394 (US $553,733). The plaintiff worked for a building company in the 1970s and often used power saws to cut through asbestos without any respiratory protection. The award, which is believed to be a record high award for a mesothelioma plaintiff in Australia, was handed down by the Supreme Court of Western Australia.

In December 2001, it was reported that the UK Court of Appeal dismissed an asbestos suit which involved more than one defendant. The court held that because asbestos plaintiffs could not prove which defendant was responsible for exposing them to the asbestos fiber that caused their mesothelioma their claim against all defendants must be rejected (Farichild v. Waddington and Leeds City Council). A lower court judge had earlier ruled that there was no scientific means of ascertaining the source of a single asbestos fiber, or fibers, responsible for the malignant transformation of the pleural cell. The Court of Appeal upheld this judgement. This case may have huge implications for asbestos victims, manufacturers, and their insurers as it may leave thousands of UK citizens with asbestos-related diseases, potentially from multiple sources, without any compensation. There is a previous Court of Appeal ruling in the UK where the court awarded dam-

### Schematic Depiction of a Human Lung Damaged by Exposure to Asbestos

The tiny asbestos fibers are deposited in every part of the respiratory system, ultimately becoming lodged in the lungs. By the time the damage is diagnosed effective treatment is often no longer possible.
In August 2001, it was reported that eleven Australian women whose husbands died from asbestos-related diseases have reached a landmark out of court settlement. The women had filed suit seeking damages related to the hardships they have suffered since their husbands’ deaths. According to the plaintiffs’ attorney, “previously widows’ claims were not regarded as viable if the widow’s husband died over the age of 65, or earlier if they weren’t working at the time of diagnosis, so that is really quite a significant breakthrough.” The settlement reportedly recognizes the economic value of the work the widows’ husbands did at home and outside of their occupation.

In July 2001, an Australian building products manufacturer was ordered to pay an asbestosis victim A$ 251,000 (US $129,040). This is reportedly the first judgement ever awarded to a West Australian asbestosis victim. The award, by the New South Wales Dust Diseases Tribunal, includes A$ 100,000 (US $51,410) for pain and suffering – the highest award ever for pain and suffering awarded to a West Australian plaintiff. The plaintiff worked for building products manufacturer James Hardie from 1954 to 1957 and subsequently worked for Telecom where he cut asbestos pipes manufactured by James Hardie.

In July 2001, it was reported that two out of court asbestos settlements have occurred in Ireland. Two employees of the Commissioners of Public Works who worked in basement of government buildings have won Irish Pounds 179,260 (about US$192,697). Twenty-two additional Public Works employees have also filed asbestos suits.

In June 2001, it was reported that the Irish High Court awarded a public works employee about US $73,140 for fear of contracting an asbestos-related disease even though the employee did not have the disease. The plaintiff had worked for the Commissioners of Public Works removing pipe insulation from 1985 to 1989 and was exposed to friable asbestos. Although the plaintiff was described as “physically well,” he allegedly developed a condition known as “reactive anxiety neurosis” about the risk of getting mesothelioma. The court found that the Commissioners of Public Works was negligent because it knew of the dangers associated with asbestos exposure and did nothing about it. A number of similar actions have reportedly been filed by other employees who worked in areas where asbestos was present.

In April 2001, it was reported that a retired British dock worker who sued his former employer for fear of contracting asbestosis won an out of court settlement for GBP 10,000 (about US $14,386). This was reportedly the first time anyone in the UK received compensation for the fear of contracting asbestosis. The plaintiff had no signs of the disease. The employer/defendant was Union Castle Line.
A Brief Discussion of the New Asbestos Reports

The lessons from these verdict summaries are reinforced by several recent studies. A summary of the highlights provides a sense of how asbestos litigation has changed, and how the new trends can affect what insurers write today.

From a financial standpoint, several rating agencies and actuarial firms have raised their asbestos cost estimates by substantial amounts. In October, 2000, A.M. Best increased to $65 billion its estimation of how much asbestos personal injury claims will cost U.S. insurers, which represents a 62% increase over its 1996 projection. Tillinghast released a similar price tag of $55 to $65 billion for U.S. insurers. Tillinghast estimated that the total liability of all defendants and insurers to be $200 billion with non-U.S. insurers paying 31% ($62 billion) of the total. Milliman & Robertson increased its estimate of the mid-range cost of asbestos personal injury claims facing U.S. insurers to $70 billion—a 56% increase over their previous $45 billion estimate—and projected total asbestos liabilities to be $275 billion. Milliman & Robertson also reported that Manville increased its estimate of the number of U.S. workers believed exposed to asbestos from 20 million in the early 1980s to 80 million today. Standard & Poor’s expected U.S. insurers to put up an additional $5 billion to $10 billion of asbestos reserves this year.

All four organizations cited increased exposures and litigation as major reasons for the higher estimates. Although they focused more on the U.S. insurance industry, recent reports of Equitas reserve strengthening reflect the international impact of asbestos liability. In July 2001, it was reported that Equitas added $2.4 billion (£1.7 billion) to its asbestos personal injury reserves due to increasing U.S. claims activity, after having paid out $15.7 billion (£11 billion) for asbestos and environmental claims since its inception. A recent Rand study offers the most comprehensive evidence that asbestos claims have not yet peaked, despite some earlier decline. In its study entitled “Asbestos Litigation in the U.S.: A New Look at an Old Issue,” Rand reports some interesting findings:

- At least five asbestos firms reported a sharp increase in new claims activity from 1998 to 2000, with two companies reporting a doubling of new filings from 1999 to 2000.
- The number of mesothelioma claims have increased since the mid-1990s, after a decline over most of that decade.
- Nonmalignant claims have increased more dramatically, so that approximately 90% of new plaintiffs do not actually have asbestos disease at the time of filing. 61% of the claims dollars paid to date have gone to claimants with nonmalignant diseases.

More to the point of spreading asbestos litigation, Rand observes that:

- More than half of the industries grouped in the U.S. Standard Industrial Classification have been named in asbestos litigation.
- “Nontraditional” defendants are now paying 60% of asbestos expenditures.
- Plaintiffs’ attorneys are identifying new defendants in industries where workers have not previously come forward in great numbers to claim compensation for asbestos injuries.
- Plaintiffs’ attorneys are developing new legal theories on which to base asbestos claims against defendants who may not have been sued previously for asbestos injuries.

Reclassification of Asbestos Claims and Other Legal Developments

Some of the increasing asbestos costs facing the insurance industry are arising from traditional defendants’ efforts to reclassify asbestos products claims into premises/operations claims. Many asbestos manufacturers also installed their products. While the product insurance coverage held by these firms has just about been exhausted, they may find new unaggregated limits if their reclassification efforts are successful. Ultimately, courts and arbitration panels will provide answers; to date, manufacturers have won some arguments that product limitations or exclusions should not apply to installation activities. The financial implications of claim reclassification are significant given the exposures of facility employees, contractors, and subcontractors working on the site, as well as employees of the manufacturer/installer. Clearly, these insureds have a great deal of interest in tapping additional and possibly unlimited liability coverage.

Courts throughout the U.S. are also playing a role in perpetuating the increasing asbestos liabilities facing defendants. To date, the Supreme Courts of California, Texas, and Wisconsin have held that plaintiffs who previously settled asbestos claims can file new lawsuits should they contract mesothelioma. These courts have generally held that asbestosis and mesothelioma are separate and distinct diseases with separate latency periods and statutes of limitations. Plaintiffs have also had some success persuading courts to allow asbestos victims to sue their employer in tort, thus circumventing the sole remedy provisions of workers’ compensation laws. In a related area, a few courts have permitted tort damages based on fear of asbestos-related illness, absent any proof of physical or emotional injury.

Asbestos is indispensable as an insulating material in the aerospace industry. The solid-fuel rockets used by the American space shuttles, for example, are sheathed in asbestos.
Revisiting Asbestos Exclusions

Given continuing asbestos exposures and that peripheral or nontraditional defendants are increasingly pulled into litigation for those exposures, insurers may wish to examine their risk assessment practices and asbestos exclusions. There is a plethora of manuscript asbestos exclusions in use today. Each exclusion is designed to fit a particular policy, so the terminology varies and wording cannot be used interchangeably.

It is possible that some of these exclusions could be interpreted by courts in certain jurisdictions to allow coverage for certain incidental uses of asbestos, thus leaving the insurer open to asbestos claims against peripheral defendants. Some clauses only exclude the losses and/or property damage. Some specifically exclude personal injury and advertising injury allegations while others reference only bodily injury and/or property damage.

The principal legal test will be whether the exclusion is susceptible to more than one interpretation, and, hence, ambiguous. In many jurisdictions ambiguity is construed against the insurance company drafting the policy, and the insured might then avoid the policy exclusion.

Insurers might also argue that they had “reasonable expectations” of coverage, and the incidental nature of any asbestos use might support their case. In any event, the variety of manuscript policies will add to the amount of litigation for those exposures, insurers and/or property damage.

There is a plethora of manuscript asbestos exclusions in use today. Each exclusion is designed to fit a particular policy, so the terminology varies and wording cannot be used interchangeably.

It is possible that some of these exclusions could be interpreted by courts in certain jurisdictions to allow coverage for certain incidental uses of asbestos, thus leaving the insurer open to asbestos claims against peripheral defendants. Some clauses only exclude the losses and/or property damage. Some specifically exclude personal injury and advertising injury allegations while others reference only bodily injury and/or property damage.

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