

New light on US asbestos claims data



Insights from a US asbestos claims database can help with due diligence for acquisitions of companies with asbestos exposure, explains **Bradley Drew**, managing director, Navigant Consulting

In 2003, the filing rate of asbestos claims in the United States hit an all-time high. The frenzied level of filings that began in 1999 culminated with more than 60,000 claimants alleging injury from asbestos exposure in 2003. A groundswell of support for tort reform grew and within a few years, the rate of asbestos claim filings had declined significantly (see Figure 1) due to reform legislation in several states including Mississippi, Texas, Ohio and Florida.

The legislation served to hamper the ability to file claims before there was impairment. Non-malignant claim filings in those states have remained very low since 2005. An increasing percentage of filings from 2006 to 2008 were cancer cases while the unimpaired cases have essential-

ly been washed out of the system.

It is important to note that in the US only a small portion of the states have passed tort reform legislation. Several states have significant numbers of pending asbestos filings for plaintiffs who are not impaired. While non-malignant cases are being tried and settlements are being made, the larger concern should now be focused on where the mesothelioma claims are coming from both in terms of plaintiffs' counsel and jurisdiction.

Though tort reform legislation has blunted the overall number of asbestos related filings nationally, there still remain a significant number of mesothelioma filings (more than 1,500 per year) that defendant companies and their insurers need to

track and evaluate in order to gauge their liabilities in real time. It is also important for companies entering into M&A, run-off and restructuring transactions to understand where these claims are being filed and against which defendants.

Claims data and run-off transactions

So how can having this data help those considering acquiring a run-off book of business or considering a restructuring? There are several insights worth noting.

If a company is looking to buy a book of business, involved in restructuring or the purchase of a company with these liabilities, being able to track and understand the volume, nature and severity of claims is abso-

lutely crucial. It is particularly relevant during due diligence and has a bearing on whether or not to move forward, transaction pricing, and overall risk management.

By analysis of its asbestos litigation database, Navigant Consulting can advise acquirers on unique attributes of potential asbestos liability. It can help to identify where claims are coming from, how long a particular company has been receiving them, and their severity. An acquiring entity can use that information to compare it to what the selling entity is disclosing about their liabilities.

In fact the information can serve as 'pre-due diligence' by providing a basis for determining whether or not to even pursue discussions, and can enhance the due diligence process by eliminating much of the time and expense that process typically requires. Conversely, the information could provide a more rapid 'green light' to proceed with a transaction as the levels of liability are readily apparent and can speed up the process.

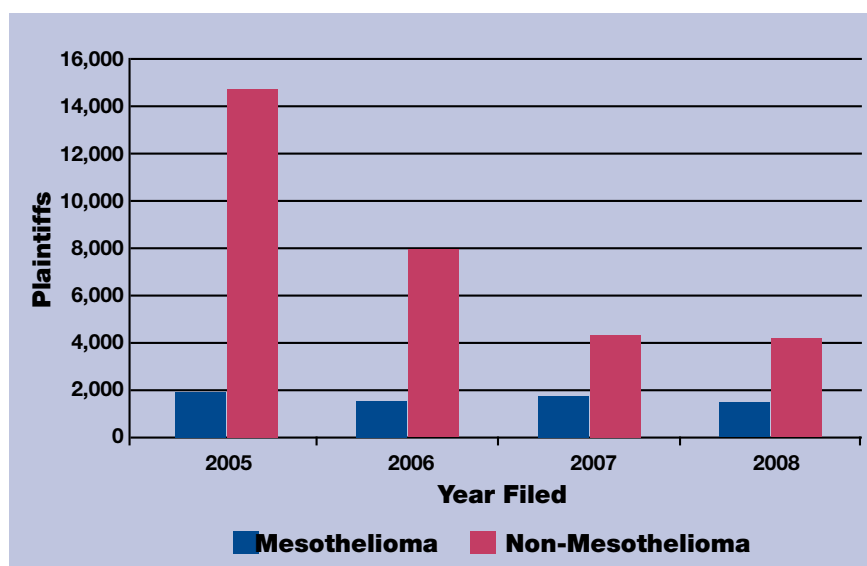
Moreover, the litigation data information can provide an important basis for finely negotiating the purchase price, based on the facts rather than incomplete and lagging information on the scope of liability. It can also guide acquirers who might wish to partition and exclude spe-

cific types of liabilities and portions of books.

Another important benefit is that the information is real-time, providing an early warning about notice of liability and loss that might otherwise take a considerable amount of time to come to light. Insurance companies typically rely on informa-

tion flowing through the underlying policyholders and their lawyers, and other insurers and down the line on notice of loss. Even if in a run-off situation where a seller fully discloses liabilities based on known filings, the lag of information coming to them could become the acquirer's problem after the fact. ●

Figure 1. Mesothelioma claims have remained steady while non-mesothelioma claims have decreased



This asbestos claim filing data has been captured and validated within the Navigant Consulting Asbestos Litigation Database. The database contains the information from nearly every asbestos complaint that is filed daily in each US jurisdiction. Filing information answers the question of location, number of filings there and the implications. This independent data service provides the ability to catch changes in filing rates across a broad spectrum of considerations, including at the jurisdictional and plaintiffs' counsel levels.

Source: Navigant Consulting