

AP PHOTO/CHARLES BENNETT



A FLAG flies over the entrance to the USG Corporation headquarters in Chicago on Monday, June 25, 2001. The building-products manufacturer filed for federal bankruptcy protection that month, citing the high costs of asbestos litigation. The company emerged from bankruptcy protection in 2006.

On the Trail of Risks With a Long Tail

A repository of asbestos data with information dating back to 1997, now available, can help monitor and analyze claims. *By Bradley Drew and Allan Kaufman*

Asbestos lawsuits are among the most costly sources of claims in history for defendants and their insurance and reinsurance carriers. The final cost is not yet known, and estimates have continued to increase, and increase significantly, year after year. But that's changing.

In the past few years, there has been a dramatic reduction in the rate of claims. A new asbestos filing database, known as the Navigant Consulting Asbestos Litigation Database, uses detailed filing data drawn from federal and state court filings and identifies those trends.

The database, originally developed in 2004, helps to assess whether rates are increasing or decreasing based on the numbers for a given defendant in the litigation.

The database contains filing information dating back to 1997, including the docket number, named defendants, filing date and number of claimants for all filings in major jurisdictions from 1997

through mid-2002, and for nearly every jurisdiction from mid-2002 to date. Settlement and judgment information, however, is not included in the database.

In addition to providing insight into the logic of plaintiffs' counsel, it also lists the volume of mesothelioma claims for all filings after November 2004. In light of this new information, the value of comprehensive data is greater than ever.

The availability of this data is particularly important because asbestos claims-handling presents unique difficulties. The sheer volume of claimants and the size of the awards are part of the challenge. Another challenge is the significant costs involved in defending asbestos claims efficiently. To a much greater degree than in other product liability suits, there is a propensity of plaintiffs' counsel to include multiple injured persons in the same suit.

Such legal actions allow plaintiffs to establish

How the Asbestos Litigation Database Is Currently Being Used

- Insurers are tracking the total claims filings occurring in certain states and monitoring for any movement up or down.
- Mergers & acquisitions law firms and liability estimation experts use the data to help assess the potential asbestos liability of a target company and use the information to contrast the statements regarding asbestos claims being made by the target.
- Companies are using the data to determine how many of their claims are in a given jurisdiction and how many involve the same plaintiffs, counsel or co-defendants.

—Bradley Drew and Allan Kaufman

hundreds, if not thousands, of claims against the insured while serving only one complaint. The net effect for defendants and their insurers is higher legal fees, higher administrative fees, the potential for duplicating claim payments and the expenditure of increasingly scarce resources in the attempt to get a handle on the litigation.

For both the insured and their carriers, complications from trying to manage a legal circus can lead to a misunderstanding of the scope of each party's liabilities and conflicts between the insured and their carriers as policies become impaired or exhausted.

The complications can also aggravate the difficulties in estimating the ultimate cost of claims for financial reporting purposes.

State reforms have been successful, at least for the moment, in reducing this wave of claims. Plaintiffs now must generally demonstrate an injury caused by asbestos exposure in order to gain access in several courts or jurisdictions.

Other reforms, such as limiting claims consolidation and filings by parties outside the state, have been implemented as well. Claims filings have plummeted in states—Mississippi and Ohio, for example—where specific asbestos reform legislation has been enacted.

The database can also be used to monitor the movement of claimants with less stringent injury requirements from one jurisdiction to another and can also help determine where future tort reform efforts should be focused.

Insurers, actuaries, risk managers, in-house and outside counsel, and investment analysts have struggled to monitor asbestos litigation in the absence of comprehensive information on the filing of asbestos claims. With nearly 200,000 lawsuits and 700,000 claimants across many and multiple jurisdictions, tracking claims is difficult.

COMPREHENSIVE THIRD-PARTY INFO

For carriers, reinsurers and insureds, early access to the number of claims filed, their location and nature—a nonmalignant versus a mesothelioma (malignant) claim, for example—is essential.

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Summary

- An asbestos claims database provides insurance carriers and their insured clients with advantages that include:
- Assessing a company's asbestos exposure.
- Determining the number of claims filed against a particular company, group of companies or industry.
- Determining whether claims against a company are going up or going down.
- Identifying the jurisdictions in which claims are being asserted.

UPCOMING EVENTS

FEBRUARY

20-23

NAPSLO Workshop

The National Association of Professional Surplus Lines Offices' 2008 Mid-Year Educational Workshop will be held at the Fairmont Princess Resort in Scottsdale, Ariz.
For more information: NAPSLO, www.napslo.org; 816.741.5409; info@napslo.org.

MARCH

5-7

CICA Conference

The Captive Insurance Companies Association will hold its 2008 international conference, "Captives Drive the Next Generation: Advancement & Innovation," at the Westin Kierland Resort in Scottsdale, Ariz.
For more information: CICA, www.cicaworld.com; 952.928.4655; meetings@cicaworld.com.

5-7

SIIA Conference

The Self-Insurance Institute of America's 22nd Annual Legislative/Regulatory Conference is an opportunity to speak with the policymakers that will shape the health policy agenda throughout the year. This event will be held at the Washington Marriott in Washington, D.C.
For more information: SIIA, www.siia.org;

800.851.7789.

17-20

World Insurance Forum

The World Insurance Forum, an event operated by the Bermuda Insurance Symposium, for the first time in 2008 will be held outside of Bermuda. The event themed "Where East Meets West—The New Frontier" will take place at the Dubai International Financial Centre in Dubai.
For more information: WIF, www.worldinsuranceforum.com; 441.292.6386; info@worldinsuranceforum.com.

3.31-4.2

IHPM Conference

The Institute for Health and Productivity Management hosts its fourth annual Health Management Conference geared toward examining employee benefits and integrated health management from a strategic business perspective. This year's event is at the Hyatt Regency Grand Cypress in Orlando, Fla.
For more information: IHPM, www.ihpm.org; 480.607.2660; bonnie.jean@ihpm.org.

APRIL

2-4

IIABA Conference

The Independent Insurance Agents & Brokers of America hosts the Big "I" Legislative Conference and Convention, which includes

workshops, a trade show and lobbying on Capitol Hill. The event will be held at the Marriott Wardman Park Hotel in Washington, D.C.

For more information: IIABA, www.iiaba.net; 800.221.7917; info@iiaba.org.

2-5

CPCU Leadership Summit

The Chartered Property Casualty Underwriter Society's 2008 Leadership Summit combines National Leadership Institute courses, chapter leader training, section committee meetings, business meetings and the Board of Governors meeting. This year's event will be held in Orlando, Fla.

For more information: CPCU Society, www.cpcusociety.org; 800.932.CPCU.

3-4

DMEC Behavioral Risk

The Disability Management Employer Coalition will host Behavioral Risk Management: 2008 Workforce Productivity Institute, delving into this emerging employer trend. This year's event will be held at the Marriott City Center in Minneapolis.

For more information: DMEC, www.dmec.org; 800.789.3632; conference@dmec.org.

9-11

TPA & MGU Conference

The Self-Insurance Institute of America's TPA & MGU/Excess Insurer Executive Forum is designed to bring third-party administrator and stop-loss/excess insurer professionals up-to-date with the latest developments in the alternative risk transfer industry. This event will be held at the Westin Hilton Head Island Resort in Hilton

Head, S.C.

For more information: SIIA, www.siia.org; 800.851.7789.

4.27-5.1

RIMS Conference

The Risk and Insurance Management Society will be host to thousands of risk managers, insurance professionals, brokers, insurers and executives at its 2008 RIMS Annual Conference and Exhibition. This year's event will be held at the San Diego Convention Center.

For more information: RIMS, www.rims.org; 212.286.9292

MAY

4-7

PCS Catastrophe Conference

Property Claim Services, a unit of the Insurance Service Office, hosts its annual Catastrophe Conference where experts share information on preparation and response planning for catastrophes of increasing intensity, frequency and loss potential. This year's event will be held at the Hyatt Regency in Savannah, Ga.

For more information: Insurance Service Office, www.iso.com; 800.888.4476.

17-21

AAMGA Meeting

The American Association of Managing General Agents holds its annual meeting for members to tackle issues impacting the international wholesale and excess and surplus lines insurance marketplace. This year's event is at the JW Marriott Desert Ridge Resort and Spa in Scottsdale, Ariz.
For more information: AAMGA, www.aamga.org; 610.225.1999.

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It is in the industry's interest that carriers have access to complete information to make sure they can properly anticipate future claims. The database is available to clients for one-time use, or to clients with a subscription of between \$5,000 and \$40,000 depending upon the level of detail.

Timely and comprehensive asbestos litigation data allows for:

- Proper reserving/estimation of ultimate costs.

Credible estimates of the value of the ultimate settlement cost of claims are valuable in many contexts. In the normal course, insurers and defendants need estimates for regular financial reporting. Special transactions need reserve estimates that are credible to all parties in the transaction. A legacy asbestos liability can make or break a deal for the sale of an insurer or defendant company. Even if a deal can be agreed upon, the "haircut" for asbestos exposure may be large if estimates are not sufficiently credible.

Similarly, as insurers and defendant companies consider buy-backs and insurers and reinsurers consider commutations, good estimates are

necessary to make the transaction practical and cost-effective. While any transaction can be a win-win situation, the party with better information will be better off.

- Driving strategy with respect to claims management.

Claims defense can depend on plaintiff strategy. For example, you can respond more effectively if you know when claimants filing suit in one jurisdiction against a single defendant have also filed suit against different defendants in another jurisdiction; and when claimants are making different exposure claims in different jurisdictions. This type of information is available only if you are reviewing the comprehensive asbestos claims-filing landscape.

- Rationalizing policyholder claims information.

Claims data provided by a policyholder significantly influences the ability of an insurer to effectively manage its reserving and claims-handling processes.

Access to defendant-specific tort system filings from a source other than the policyholder allows insurers to have an independent view of the volume and severity of a policyholder's claims, avoids the

risk of slow reporting and enables a valuable comparison against the actual data reported by the underlying policyholder.

- Identifying a new class of defendants or a change in plaintiff tactics.

Asbestos litigation has been ongoing for some 30-plus years and many of those involved in claims defense are feeling a false sense of comfort about their understanding of the broader movements of the litigation.

Even at this stage of the litigation, there can still be up-ticks in claims filings, the number and nature of which are important to understand. It is also possible for a new class of defendant to arise, as has happened in the past.

Moreover, as plaintiffs' attorneys adjust to the state tort reforms, action may be required to prevent the erosion of the benefits that have appeared in the recent past.

Comprehensive monitoring is valuable in flagging these and other potential new trends and liabilities. This is an essential ingredient to appropriate enterprise risk management practices for insurers and policyholders.

- Guiding legislative efforts at state and federal levels.

Many defendants, insurers and reinsurers are actively involved with the crafting of legislation at both the state and federal levels.

Too often, good legislation fails because interested parties do not have a common view of the underlying claims situation. Access to complete tort system filing data for each state will remove that impediment.

Over the past decade, the asbestos claims world has been through major ups and (now, at last) downs in claims frequency. In this new environment, it is time to assess your strategy and determine whether you have the data to achieve it.

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@ On the Web

- Deconstructing the cost-effective asbestos claims defense.

www.riskandinsurance.com