

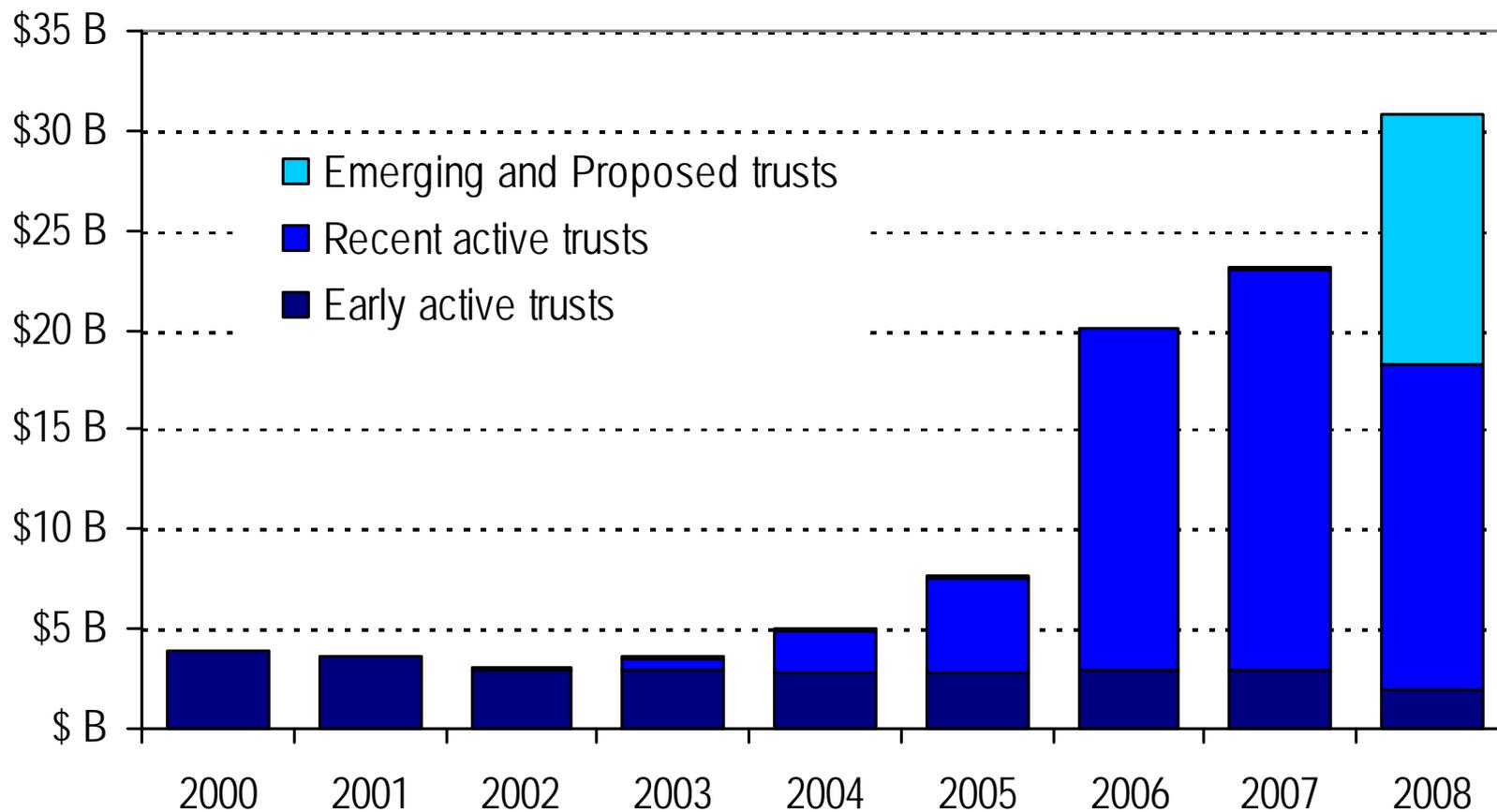
## The Claiming Game

Charles E. Bates, PhD

Perrin Conference: Cutting-Edge Issues in Asbestos Litigation

February 25, 2010

## 524(g) trusts assets are sufficient to fully cover the former tort liability of the reorganized defendants



## ***The Claiming Game* presents a case study analysis of four specific mesothelioma plaintiffs from Alameda County**

- Navy Boilerman
  - Only claimed exposure is as a boilerman in the US Navy from 1950 to 1953
  - Typical of an individual with only limited potential exposure to asbestos
- Maritime Engineer
  - Time in the Navy and California Maritime Academy from 1950 to 1955
  - Followed by a 30 year career as a maritime engineer at various commercial shipyards in northern California
- Pipefitter
  - Work through 1960s as a pipefitter installing commercial sprinkler systems
  - Worked in hospitals and industrial sites often during the construction phase
- Iron Worker
  - Began career in the Navy in 1954
  - From 1964 on was an iron worker at commercial and industrial sites including refineries and steel mills

## Case study claimants' total recoveries vary significantly depending on their exposure history

TDP Valuation	Navy Boilerman	Maritime Engineer	Pipefitter	Iron Worker
Scheduled Value	\$420,000	\$685,000	\$950,000	\$985,000
Average Value	\$585,000	\$975,000	\$1,400,000	\$1,425,000
Estimated Average IR Value*	\$640,000	\$1,070,000	\$1,595,000	\$1,615,000
Maximum Value	\$1,830,000	\$3,120,000	\$4,695,000	\$4,585,000

- Trust valuation procedures mean that actual claimant specific recoveries will vary substantially more than average values imply
- Factors that impact recoveries include:
  - Age at diagnosis
  - Jurisdiction
  - Settlement history of the plaintiff's counsel filing the claim

\* For purposes of estimating the expected payment amount for claims submitted for individual review, we assume 60% of mesothelioma claims will be filed for individual review for each trust with that option.

Note: Values listed in this chart represent contemporaneous payment values and account for trust-reported payment percentages.

## Case study claimants' known occupational exposures match them to numerous trusts' Approved Sites

Select active trust Approved Site matches*	Navy Boilerman	Maritime Engineer	Pipefitter	Iron Worker
ABB Lummus (design)	N/A	N/A	\$60,000	\$ N/A
Combustion Engineering	\$46,000	\$46,000	\$46,000	\$46,000
Eagle Pitcher	\$6,500	N/A	\$6,500	\$6,500
Western MacArthur/Western Asbestos	N/A	\$230,750	\$230,750	\$230,750

\* Additional trusts were considered besides those listed above. A complete listing is available in the *The Claiming Game* which is available for download at [www.bateswhite.com](http://www.bateswhite.com).

Note: Values listed in this chart are contemporaneous average payment values and are calculated based on trust-reported averages and payment percentages.

## Analysis of historical data allows us to calculate the probability that each claimant will file claims against additional 524(g) trusts

Select active trust naming probabilities*	Navy Boilerman	Maritime Engineer	Pipefitter	Iron Worker
Armstrong World Industries	88%	100%	75%	100%
Manville	100%	100%	100%	100%
National Gypsum	17%	20%	29%	0%
Raymark / Raytech	72%	100%	62%	67%

Select emerging trusts naming probabilities*	Navy Boilerman	Maritime Engineer	Pipefitter	Iron Worker
ASARCO	90%	56%	71%	67%
Congoleum	0%	0%	67%	73%
Federal Mogul (Flexitallic)	100%	70%	86%	67%
Federal Mogul (T&N)	0%	100%	100%	100%

\* Additional trusts were considered besides those listed above. A complete listing is available in the *The Claiming Game* which is available for download at [www.bateswhite.com](http://www.bateswhite.com).

## Case study claimants' total recoveries more than double after accounting for additional recoveries based on naming patterns

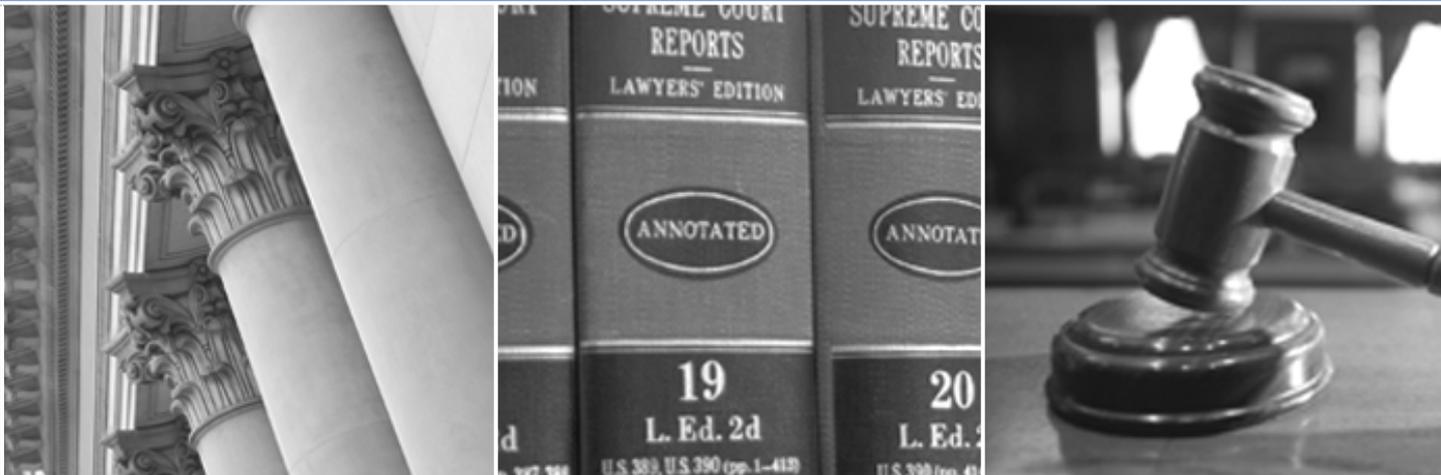
Basis for claiming	Navy Boilerman	Maritime Engineer	Pipefitter	Iron Worker
Active trusts matched on Approved Sites	\$160,000	\$445,000	\$615,000	\$690,000
Additional active trusts based on naming patterns	\$135,000	\$155,000	\$165,000	\$135,000
Additional emerging trusts based on naming patterns	\$290,000	\$375,000	\$620,000	\$600,000
Total plaintiff settlements from 524(g) trusts	\$585,000	\$975,000	\$1,400,000	\$1,425,000

Note: Values listed in this chart are contemporaneous average payment values and are calculated based on trust-reported averages and payment percentages

## Bates White's recent papers illustrate the impact of the asbestos bankruptcy wave on solvent defendants

- *The Naming Game* shows that:
  - As primary asbestos defendants filed for bankruptcy the remaining solvent defendants were named with increasing frequency and new defendants were brought into the litigation
  - Solvent defendants were forced to cover the several shares of their former codefendants
  - Mesothelioma plaintiffs in Alameda County will receive an average \$1.2 M from active and emerging trusts
- *The Claiming Game* presents a case study analysis of four specific mesothelioma plaintiffs from Alameda County:
  - Demonstrates the high degree of variability in plaintiff specific trust recoveries
  - Shows the importance of accounting for naming patterns in addition to Approved Site lists

**The lack of transparency between the trust and tort systems has prevented defendants from returning to their historical several shares**



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