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Asbestos Bankruptcy Report

Asbestos Bankruptcy Trusts: A 2013 Overview of Trust Assets, Compensation & Governance

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Commentary

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Introduction

In 2009, we began compiling detailed information on asbestos bankruptcy trust activity from publically available sources. Our initial work served as the foundation for the 2010 study by the RAND Institute for Civil Justice on *Asbestos Bankruptcy Trusts* that included trust asset and compensation data through 2008.¹ Since then we have consulted on issues related to asbestos bankruptcy trust compensation and governance for defendants and insurers, provided resources to the Government Accountability Office ("GAO") for their 2011 study on the asbestos bankruptcy trust system, and provided legislative testimony on asbestos trust transparency bills at both the state and federal level.

Last year we published a Mealey's commentary based on trust information and data through 2011 to serve as a brief update to the comprehensive work previously conducted by RAND.² The following commentary is a continuation of our work with data and information through 2012. While detailed information about individual claims made to and payments made from asbestos trusts is limited, this paper intends to serve as a resource by providing a general

overview of the information that is currently disclosed by the 524(g) asbestos trust compensation system. The paper will summarize the latest financial and claim information provided by the trusts through their 2012 annual reports, including changes in trust payments made to current and future asbestos claimants, and the ratio of payments to malignant and non-malignant claimants. It will also highlight statistics on the operations and current governance of asbestos trusts, including examples of information disclosure policies that have been the focus of recent legislative efforts intended to provide a greater level of transparency to trust activities and claim filings.

The statistics and other information in this paper are derived from the publicly available documentation produced by various asbestos bankruptcy trusts established pursuant to Section 524(g) of the U.S. bankruptcy code and the publicly available documentation produced during the proceedings of various Section 524(g) bankruptcy reorganizations.

Background

In the three decades since Johns Manville and UNR Industries filed the first asbestos bankruptcy cases, nearly 100 companies have filed for bankruptcy protection due, in part, to asbestos litigation.³ The vast majority of these companies utilized section 524(g) to reorganize and establish a bankruptcy trust to pay current and future asbestos claimants and channel claims away from the reorganized company. Today,

many of these companies have emerged from the 524(g) bankruptcy process leaving in their place dozens of trusts funded with tens of billions in assets to pay claims. Since 2006 more than 30 trusts have been created through bankruptcy reorganization, funding the trust system with an additional \$20 billion in assets. From 2006 through 2012 the entire trust system has paid out over \$15 billion to asbestos claimants, with remaining assets as of yearend totaling over \$18 billion.⁴ In addition, there is approximately \$11 to \$12 billion in proposed funding from bankruptcies still pending confirmation.⁵

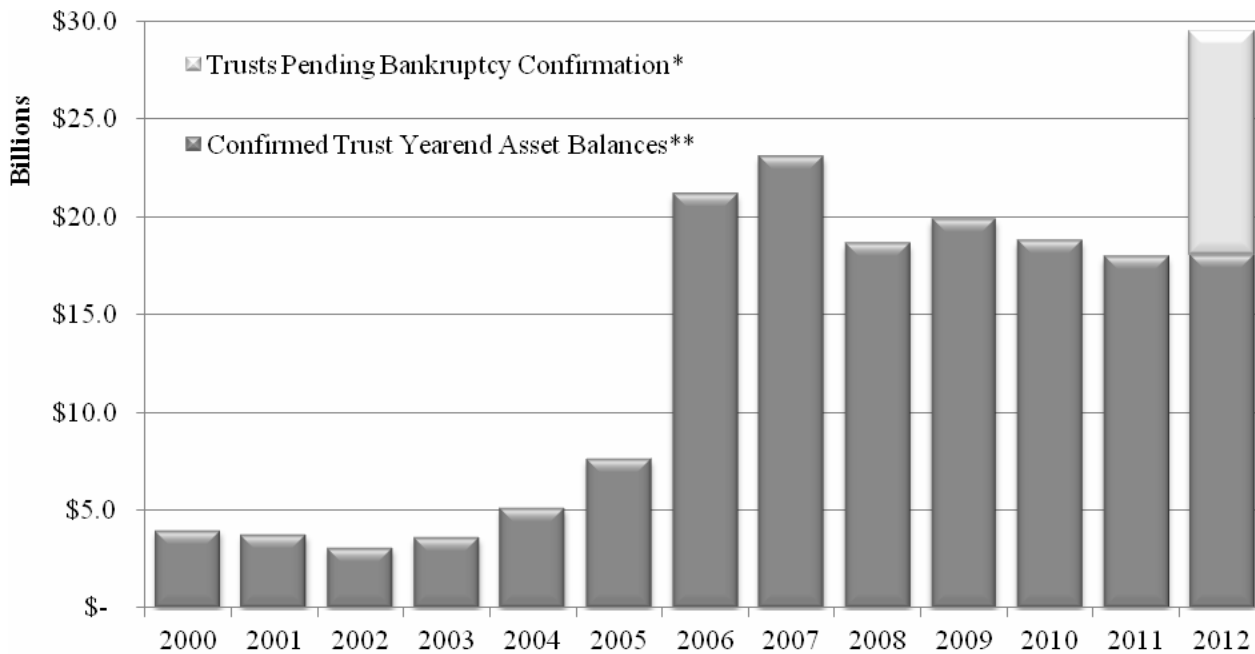
With that amount of money at stake, it is not surprising that there has been recent state and federal legislative efforts as well as growing interest from academic researchers and the press aimed at examining the transparency of asbestos bankruptcy trusts and what is currently known about 524(g) bankruptcies. Courts in the civil justice system have echoed similar interest in asbestos trust transparency as those entities strive to properly allocate liability in the underlying tort

litigation between both culpable solvent companies and bankruptcy trusts.

Bankruptcy trust assets

Asbestos bankruptcy plans formed under section 524(g) involve the creation of trusts designed to compensate similarly situated current and future asbestos plaintiffs in an equitable manner.⁶ The trusts are often funded with cash, reorganized debtor stock, insurance, and other assets provided by the debtor company (or parent company), and exist to expeditiously pay current and future claims. Beginning with the codification of section 524(g) in 1994 and predominantly during the years 2000-2003, nearly 70 companies filed for bankruptcy protection.⁷ Today, over \$18 billion in assets currently reside in the trust system. Another \$11 to \$12 billion in additional assets is designated for trusts pending completion of the 524(g) bankruptcy reorganization process.⁸ Exhibit 1 shows the growth of the trust system over time and the assets earmarked for pending but not yet confirmed 524(g) trusts.

Exhibit 1: Trust Yearend Assets



*Estimated present value of proposed funding based on bankruptcy disclosures

**As reported in financial statements and does not include deferred funding. As of 2012 this deferred funding amount is estimated to be at least \$640 million (see exhibit 2)

Exhibit 2: Confirmed Trust Annual Financial Activity (dollars in millions)

Balance	2006	2007	2008	2009	2010	2011 ⁹	2012 ¹⁰	Total
Beginning Assets	\$7,641	\$21,217	\$23,117	\$18,660	\$19,907	\$18,810	\$17,986	
Funding Received	\$12,081	\$2,944	\$1,055	\$3,078	\$640	\$795	\$286	\$20,879
Investment Gains/Income	\$897	\$670	(\$1,971)*	\$2,363	\$1,306	\$766	\$1,449	\$5,480
Other Additions	\$1,223	(\$16)	(\$70)	\$25	(\$58)	(\$86)	(\$77)	\$941
Claim Payments	(\$463)	(\$1,450)	(\$3,360)	(\$3,927)	(\$2,779)	(\$2,041)	(\$1,251)	(\$15,270)
Trust Expenses	(\$95)	(\$132)	(\$156)	(\$147)	(\$180)	(\$176)	(\$172)	(\$1,057)
Taxes/Other Deductions	(\$68)	(\$115)	\$44	(\$145)	(\$26)	(\$81)	(\$150)	(\$541)
Ending Assets	\$21,216	\$23,118	\$18,660	\$19,907	\$18,810	\$17,986	\$18,072	
							Deferred funding and settlements ¹¹	\$638
							Current Confirmed Trust Assets	\$18,710

*Includes \$166 million in special dividends received by the Armstrong World Industries Asbestos PI Settlement Trust that we previously classified as "Other Additions" in our 2012 commentary.

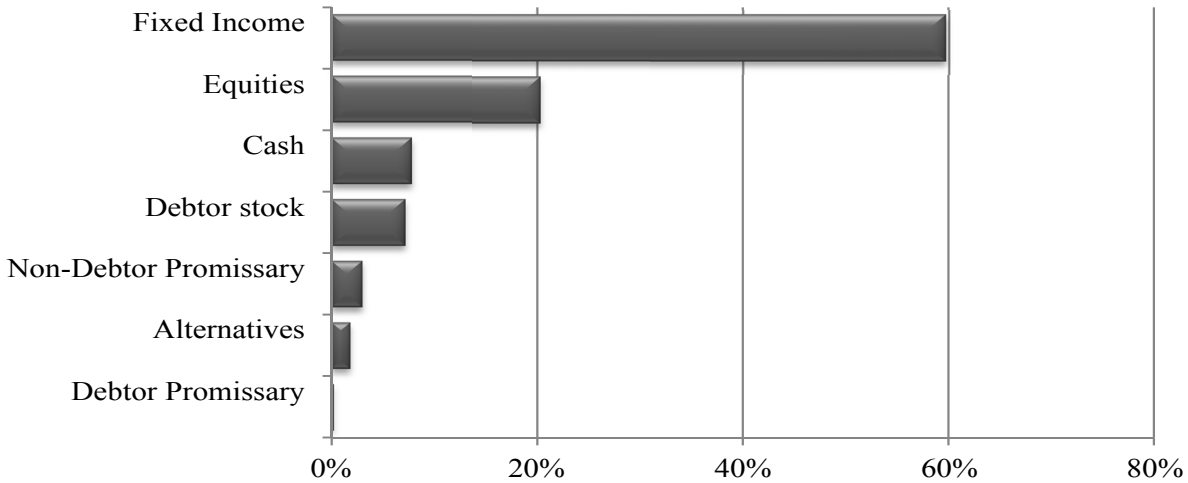
Exhibit 2 shows how rapidly the trust compensation system has grown in recent years. As of yearend 2005, the entire trust system only had \$8 billion in assets. From 2006 through 2012, asbestos trust assets have grown by more than \$27 billion while paying out over \$15 billion to claimants. Including operational costs and other non-claim expenses, the net growth in trust assets since 2005 has exceeded \$10 billion.

In 2012, asset levels remained relatively constant as claim payments dropped to \$1.25 billion and were completely offset by \$1.45 billion in realized and unrealized investment gains and income. In fact, the trust system has recovered from the 2008 recession by earning over \$5.9 billion in realized and unrealized investment gains and income since 2009 for an annual return on investment ("ROI") of nearly 8%. Taking into account the 2008 recession the trust system as a whole has earned an annual ROI of approximately 4% since 2006. Exhibit 3 summarizes the weighted-average asset allocation from 2007 through 2012 for 15 of the largest trusts as measured by total fair market value of investments as of yearend 2012.¹² The 2012 fair market value of investments totaled over \$15 billion across the 15 trusts, representing more than 80% of confirmed trust assets. The data shows that trusts

tend to allocate a majority of assets in conservative fixed income holdings as opposed to equities that are subject to more potential volatility. The data also shows that while many trusts emerge from bankruptcy with significant equity in the reorganized debtor, most of those shares are liquidated following confirmation.

Bankruptcy trust claim payments

As the bankruptcy trusts assets have grown over time, so have payments to asbestos claimants. Beginning in 2006, dozens of trusts came "online" and distributed over \$15 billion in claim payments through 2012. This dramatic increase in claim payments was due, in part, to the resolution of substantial claim inventories that built up during the lengthy bankruptcy process, some of which dated back to the late 1990s and included tens of thousands of non-malignant claims. As illustrated in Exhibit 4, as these claim inventories have been paid down the amount of aggregate annual claim payments has decreased significantly. However, annual claim payments should increase once the pending bankruptcies of Pittsburgh Corning, North American Refractories ("NARCO"), and W.R. Grace are confirmed and trusts are established to begin paying claims.¹³

Exhibit 3: Trust average asset allocation from 2007 through 2012

In the thirteen years since the bankruptcy wave began, the trust system has paid out over \$18 billion to claimants with an additional \$5 to \$6 billion paid by certain debtors prior to confirmation as part of bankruptcy pre-packaged (“Pre-Pack”) settlement negotiations. These Pre-Pack payments were not made through an operating trust. The largest contributor to Pre-Pack payments was Halliburton, which committed \$2.7 billion in Pre-Pack funds around 2004. It is more common today for Pre-Pack payments to be negotiated pre-confirmation but the assets sufficient to cover the cost of these settlements are funded to the trust post-confirmation for immediate distribution. For example, the T H Agriculture & Nutrition, LLC Industries Asbestos Personal Injury Trust distributed nearly \$400 million in Pre-Pack negotiated payments in the months following the trust’s effective date in fourth quarter of 2009. In these instances the Pre-Pack payments are reported on trust annual reports and accounted for in Exhibit 4 as part of Confirmed Trust Claim Payments.

Bankruptcy trust claim valuation

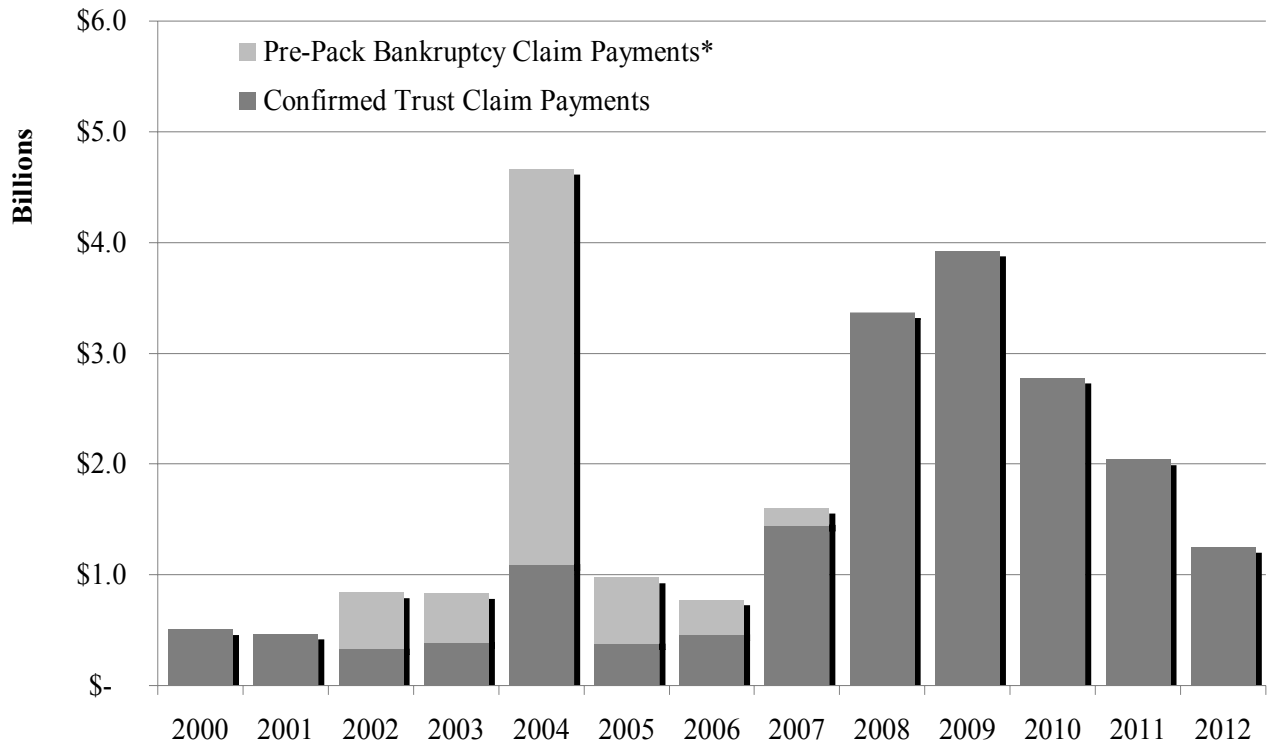
The procedures that determine the payment an individual claim will receive are outlined for each trust in documents typically titled Trust Distribution Procedures (“TDP”).¹⁴ These procedures describe the processes in which claims are reviewed, qualified, and paid if compensable. A TDP will provide a list of compensable disease categories that may range from

malignant asbestos-related injuries such as mesothelioma and lung cancer to less severe non-malignant respiratory injuries such as asbestosis and pleural plaques.

Trusts typically provide two processes under which a claim can be qualified and paid. The first process is often referred to as “Expedited Review” and is based on a minimum set of presumptive medical and exposure criteria. Claims that qualify for payment and file under Expedited Review will receive a schedule amount that is not negotiated. Alternatively, many trusts will offer an “Individual Review” option allowing for claim amounts up to a published maximum. Factors that determine the actual amount an Individual Review claim receives may include, but are not limited to, age at diagnosis, jurisdiction, and settlement history of the plaintiff’s counsel.¹⁵ The average amount for all claims paid under either Expedited or Individual Review is often represented by a published average, representing the most likely amount for a typical claim. Trusts that are unable to pay claimants 100% of the specified claim amount will establish a “Payment Percentage” that uniformly reduces the actual payment by a fixed percentage.

Trust Payment Percentages are subject to change over time based on projections of future claim obligations. If future liability expectations increase, then trusts will likely decrease individual claim payments in an attempt

Exhibit 4: Trust and Bankruptcy Pre-Pack Claim Payments



**Pre-pack settlement amounts for Combustion Engineering, NARCO, DII (Halliburton), Congoleum and Pfizer (Quigley). These amounts paid or committed outside of the 524(g) Trust funds total between \$5 and \$6 billion.*

to maintain assets far enough into the future to be in a position to pay all claims in an equitable manner. Conversely, if future liability expectations decrease, then trusts will likely increase individual claim payments. This is done to maximize claim payments while ensuring that trust assets will be sufficient to pay all future claimants. For many trusts, when payments increase, prior claimants are given retroactive, or “True-Up” payments equal to the difference between what they previously received from the trust and what the trust is currently paying similarly situated claimants. As a result, there is no downside risk to pursuing payment from a trust as quickly as possible. Rather, there is only downside risk of waiting to pursue a trust claim as values may decrease over time. Exhibit 5 summarizes the Payment Percentages for the twenty-seven trusts that have made Payment Percentage adjustments since 2008.

To quantify the impact these changes in Payment Percentages can have on net claim payments, Exhibit 6 summarizes the net claim payment for 6 large trusts (8 potential payments) that were processing and paying claims at the Delaware Claims Processing Facility (“DCPF”) as of 2008. Significant decreases in Payment Percentages result in a decline of nearly 40% in net claim payments to a claimant collecting all 8 potential payments across the 6 trusts. In fact, the average Payment Percentage across all trusts weighted by each trust’s annual claim payments has decreased by 30% since 2008.

Bankruptcy trust payments to malignant and non-malignant claims

Of the \$18.7 billion in current and deferred confirmed trust assets, \$16.4 billion is associated with twenty-three trusts that govern annual aggregate claim payments to

Exhibit 5: Summary of Payment Percentage Changes as of Yearend

Trust	Initial Pay%	12/31 2008	12/31 2009	12/31 2010	12/31 2011	12/31 2012
A-Best Asbestos Settlement Trust	3.6%	3.6%	17.4%	17.4%	17.4%	17.4%
API, Inc. Asbestos Settlement Trust	13.5%	13.5%	55.0%	55.0%	30.0%	30.0%
ARTRA 524(g) Asbestos Trust	7.5%	7.5%	7.5%	7.5%	0.5%	0.5%
Babcock & Wilcox Company Asbestos PI Settlement Trust	34.0%	34.0%	15.0%	15.0%	11.9%	7.5%
C. E. Thurston & Sons Asbestos Trust	40.0%	40.0%	40.0%	40.0%	80.0%	25.0%
Celotex Asbestos Settlement Trust ¹⁶	12.0%	14.1%*	14.1%	9.4%	9.4%	9.4%
Combustion Engineering 524(g) Asbestos PI Trust	48.3%	48.3%	48.3%	48.3%	48.3%	44.0%
DII Industries, LLC Asbestos PI Trust ¹⁷	100%	100%	52.5%*	52.5%	52.5%	52.5%
Eagle-Picher Industries PI Settlement Trust	31.9%	38.0%	38.0%	38.0%	31.0%	31.0%
G-I Asbestos Settlement Trust	8.6%	--	8.6%	8.6%	7.4%	7.4%
H. K. Porter Asbestos Trust	4.6%	4.6%	6.3%	6.3%	6.3%	4.0%
J.T. Thorpe Settlement Trust	50.0%	40.0%	40.0%	45.0%	45.0%	45.0%
JT Thorpe Company Successor Trust	18.5%	38.0%	57.0%	57.0%	57.0%	57.0%
Kaiser Asbestos PI Trust	39.5%	39.5%	39.5%	39.5%	35.0%	35.0%
Keene Creditors Trust	1.1%	1.1%	1.1%	0.8%	0.8%	0.8%
Lummus 524(g) Asbestos PI Trust	100%	100%	100%	100%	10.0%	10.0%
Manville PI Settlement Trust	10%	7.5%	7.5%	7.5%	7.5%	7.5%
NGC Bodily Injury Trust ¹⁸	55.6%	55.6%	55.6%	55.6%	18.0%	18.0%
Owens Corning Fibreboard Asbestos PI Trust - FB Subfund	25.0%	25.0%	11.0%	11.0%	9.5%	7.6%
Owens Corning Fibreboard Asbestos PI Trust - OC Subfund	40.0%	40.0%	10.0%	10.0%	10.0%	8.8%
Plibrico Asbestos Trust	1.1%	8.5%	8.5%	8.5%	1.2%	1.0%
Raytech Corporation Asbestos PI Settlement Trust	2.0%	2.0%	2.0%	2.0%	0.8%	0.8%
Shook & Fletcher Asbestos Settlement Trust	65.0%	100%	100%	100%	100%	70.0%
T H Agriculture & Nutrition Industries Asbestos PI Trust	100%	--	100%	100%	30.0%	30.0%
U.S. Gypsum Asbestos PI Settlement Trust ¹⁹	45.0%	45.0%	45.0%	30.0%	30.0%	20.0%
UNR Asbestos-Disease Claims Trust	18.6%	1.1%	1.1%	1.2%	0.8%	0.8%
Western MacArthur-Western Asbestos Trust	31.5%	40.0%	40.0%	44.0%	44.0%	44.0%

**Amendments to TDP increasing gross payment values in conjunction with, or in lieu of a Payment Percentage change. See endnote for more detail.*

Exhibit 6: Net Mesothelioma Claim Payments from DCPF trusts (dollars in thousands)

Trust	12/31 2008	12/31 2009	12/31 2010	12/31 2011	12/31 2012
Armstrong World Industries Asbestos PI Settlement Trust	\$26	\$26	\$26	\$26	\$26
Babcock & Wilcox Company Asbestos PI Settlement Trust	\$41	\$18	\$18	\$14	\$9
Celotex Asbestos Settlement Trust	\$18	\$18	\$12	\$12	\$12
DII Industries, LLC Asbestos PI Trust - Halliburton	\$29	\$40	\$40	\$40	\$40
DII Industries, LLC Asbestos PI Trust - Harbison-Walker	\$68	\$96	\$96	\$96	\$96
Owens Corning Fibreboard Asbestos PI Trust – FB Subfund	\$45	\$20	\$20	\$17	\$14
Owens Corning Fibreboard Asbestos PI Trust - OC Subfund	\$108	\$27	\$27	\$27	\$24
United States Gypsum Asbestos PI Settlement Trust	\$101	\$101	\$68	\$68	\$45
Total Net Payment	\$437	\$346	\$306	\$300	\$265
Percent Change from 2008	--	21%	30%	31%	39%

malignant and non-malignant claim groups through the application of a Claims Payment Ratio. The Claims Payment Ratio mandates that a percentage of annual claim payments are made to either Category A or Category B claims as defined in the Trust Distribution Procedures.²⁰ In all cases, Category A claims include malignant disease categories, and in most cases also include severely disabling asbestosis claims. Conversely, Category B claims typically include less impaired or unimpaired non-malignant claims. For the group of twenty-three trusts, the Category A Claim Payment Ratio ranges from as low as 60% to as high as 90% with an average of 73.4% when weighted by 2012 year end trust asset balances. At a minimum, this means that nearly \$4.4 billion in confirmed trust assets are earmarked for less impaired non-malignant asbestosis and pleural claims. Exhibit 7 summarizes these figures.

Exhibit 8 summarizes trust claim payments by disease groupings since 2008. Many trusts choose not to disclose disease or disease groups for claim payments made to pre-petition or Pre-Pack settlements that are distributed through the trust. As a result there are significant payments made to claims with no disease or disease group classification and are denoted as “Not Specified” in Exhibit 8. Absent payments made

to the Not Specified group, Exhibit 8 suggests that at minimum \$2.6 billion in payments have been made since 2007 to non-malignant claims. Assuming that the payments made to the Not Specified group were distributed at the same ratio as the malignant and non-malignant groups (-76%/24%) then the total amount paid to non-malignant claims during the period would be over \$3.5 billion.

The percent of total payments made to non-malignant claims has decreased since 2007 as large inventories of non-malignant claims once pending litigation prior to and during bankruptcy reorganizations continue to be paid down. In fact, since 2009 the ratio of malignancy to non-malignancy payments has been relatively constant at 82%, suggesting that many of the trust Claim Payment Ratios may need to be adjusted to allow more annual funding for malignant claims.

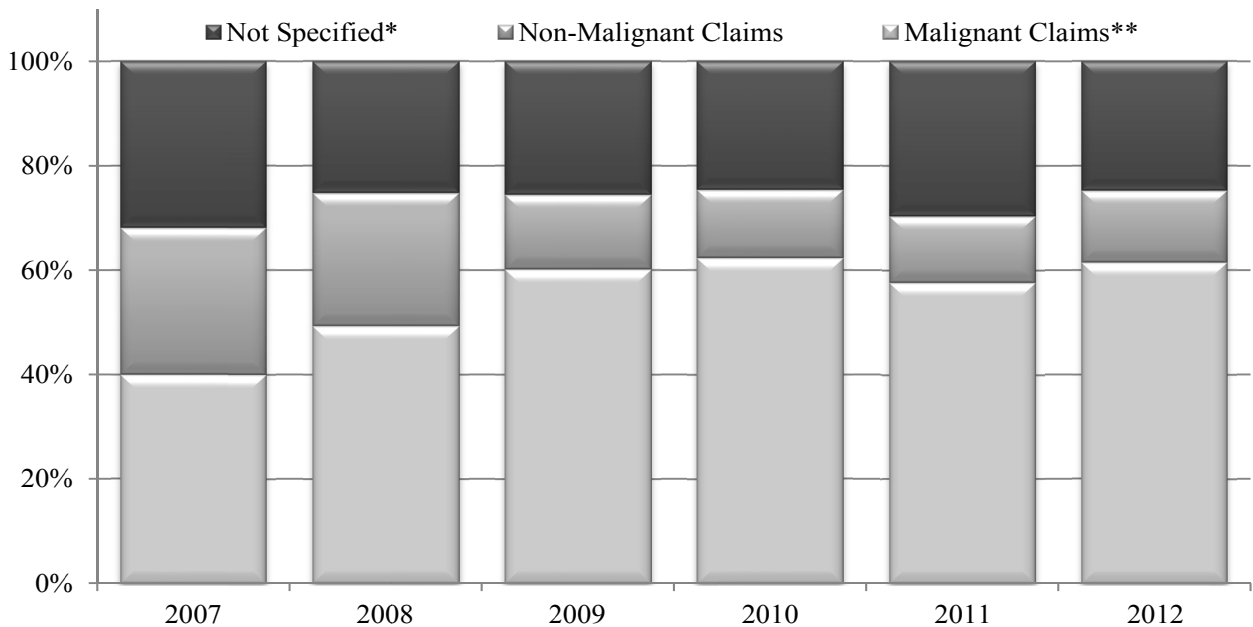
As noted previously, detailed information about individual claims made to and payments made from asbestos trusts is limited. Furthermore, most trusts choose not to report injury level statistics beyond the disease groups summarized in Exhibit 8. In fact, of the hundreds of annual reports we reviewed, only 54 annual reports across 13 trusts provided injury level statistics on the number of claims paid and corresponding

Exhibit 7: Summary of Trust Claim Payment Ratios (dollars in millions)

Trust	2012 YE Assets	Category A	Category B
AC&S Asbestos Settlement Trust	\$282	82.9%	17.1%
Armstrong World Industries Asbestos PI Settlement Trust	\$2,653	65.0%	35.0%
ARTRA 524(g) Asbestos Trust	\$24	65.0%	35.0%
ASARCO LLC Asbestos PI Settlement Trust	\$1,034	90.0%	10.0%
Babcock & Wilcox Company Asbestos PI Settlement Trust	\$645	62.0%	38.0%
Burns and Roe Asbestos PI Settlement Trust	\$154	60.0%	40.0%
Christy Refractories Asbestos PI Trust	\$17	90.0%	10.0%
Combustion Engineering 524(g) Asbestos PI Trust	\$951	87.0%	13.0%
Congoleum Plan Trust	\$235	75.0%	25.0%
DII Industries, LLC Asbestos PI Trust	\$2,091	60.0%	40.0%
Federal Mogul U.S. Asbestos PI Trust ²¹	\$780*	63.1%	36.9%
G-I Asbestos Settlement Trust	\$618	85.0%	15.0%
J.T. Thorpe Settlement Trust	\$149	90.0%	10.0%
Kaiser Asbestos PI Trust	\$746	70.0%	30.0%
Leslie Controls, Inc. Asbestos PI Trust	\$63	80.0%	20.0%
Lummus 524(g) Asbestos PI Trust	\$29	80.0%	20.0%
Owens Corning Fibreboard Asbestos PI Trust	\$323	80.0%	20.0%
Motors Liquidation Co. PI Trust	\$1,688	65.0%	35.0%
Plibrico Asbestos Trust	\$115	65.0%	35.0%
T H Agriculture & Nutrition Industries Asbestos PI Trust	\$501	80.0%	20.0%
Thorpe Insulation Company Asbestos PI Settlement Trust ²²	\$543*	84.0%	16.0%
U.S. Gypsum Asbestos PI Settlement Trust	\$1,975	85.0%	15.0%
Western MacArthur-Western Asbestos Trust ²³	\$783	82.5%	17.5%
Total / Dollar Weighted Average	\$16,399	73.4%	26.6%
	Category A and B Funding	\$12,030	\$4,369

*Asset totals include deferred or outstanding payment commitments not currently included as part of net claimant equity on trust audited financials. See endnotes for more details.

Exhibit 8: Trust Claim Payments by Disease Group as a Percent of Total Claim Payments²⁴



**Pre-petition and Pre-confirmation settled claims are typically not reported by trusts at the disease category level.*

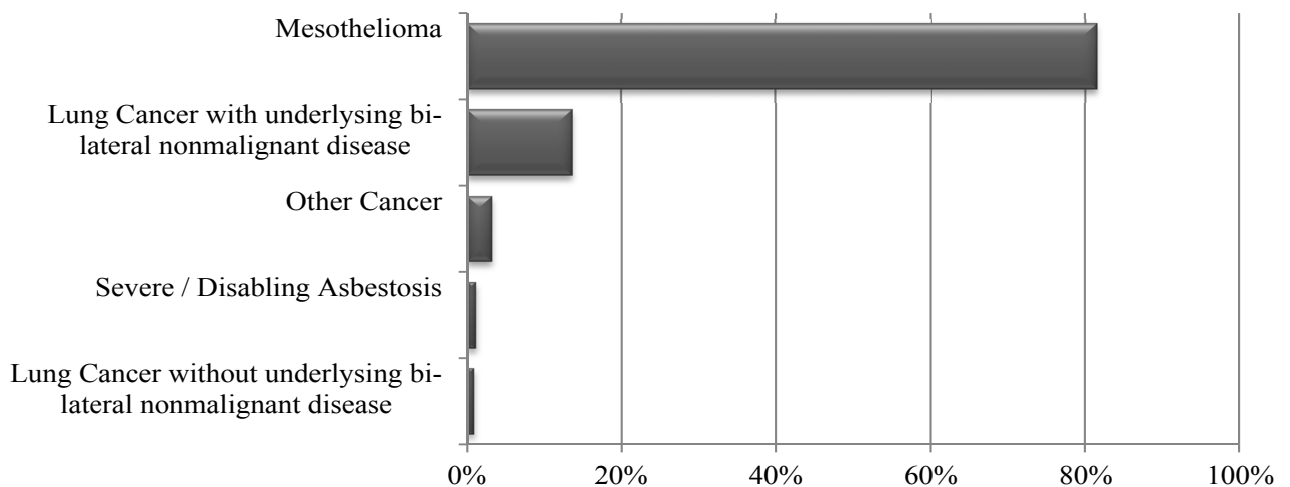
***Malignant claim category may include severely disabled asbestosis claims for certain trusts.*

payments.²⁵ As illustrated in Exhibit 9, the limited data shows that from 2007 through 2012 approximately 80% of payments made to malignant and severely disabling asbestosis injuries have gone to mesothelioma claims.

Bankruptcy trust claim processing facilities

Bankruptcy trusts under 524(g) are designed to compensate claimants expeditiously and at a minimal cost. Many trusts seek to accomplish this at an administrative level by contracting with existing asbestos

Exhibit 9: Breakdown of malignant claim payments from 2007 through 2012*



**Malignant claim category may include severely disabled asbestosis claims for certain trusts.*

Exhibit 10: Trust Assets and Claim Payments by Claims Administrator (dollars in millions)

Claims Processing Administrator	No. of Trusts	2012 YE Assets	2012 Claim Payments	2006-12 Claim Payments
Delaware Claims Processing Facility ²⁶	7	\$10,326	\$486	\$10,250
Verus Claims Services ²⁷	15	\$4,778	\$432	\$2,270
Western Asbestos Settlement Trust ²⁸	3	\$1,475	\$71	\$776
Claims Resolution Management Corp.	3	\$891	\$153	\$1,128
Claims Processing Facility ²⁹	4	\$465	\$46	\$238
Trust Services Inc.	3	\$327	\$28	\$421
MFR Claims Processing, Inc.	4	\$364	\$30	\$115
Other ³⁰	7	\$83	\$4	\$71
Total*	46	\$18,710	\$1,251	\$15,270

*Totals for 2012 YE Assets and Claim Payments include estimates for a few Trusts that have not made 2012 annual reports available. See endnote 7 that provides detail on how estimates for these missing annual reports have been applied.

claim facilities such as Verus, LLC (“Verus”), or by partnering with one another to establish a multiple trust processing facility like the before mentioned DCPF. These facilities reduce administrative and processing expenses by leveraging overhead and other fixed costs across multiple trusts. In doing so, these facilities create a “one-stop shop” allowing plaintiff attorneys to electronically file bulk claim submissions against multiple trusts. Verus and DCPF represent the two largest facilities both on number of trusts and total assets. In fact, as of year end 2012, of the

\$18.7 billion in confirmed trust assets, \$15.1 billion is associated with one of these two facilities. The two facilities were responsible for over 70% of all trust claim payments in 2012, and over 80% since 2006. Exhibit 10 provides a summary of these figures.

Bankruptcy trust expenses and claim review

To further expedite the processing of claims, most trusts have established presumptive medical and exposure criteria to quickly determine if a claim qualifies for payment. The resolution procedures developed to govern

Exhibit 11: Trust expenses category as a percent of total Trust expenses³¹

Trust Expenses Category	2006	2007	2008	2009	2010	2011	2012
Trustee Fees and Expenses	9.7%	8.7%	7.6%	8.1%	7.1%	7.6%	7.4%
TAC Fees and Expenses	3.0%	1.8%	1.6%	1.4%	1.7%	1.5%	0.9%
FCR Fees and Expenses	1.8%	1.7%	1.3%	1.1%	2.0%	1.6%	1.7%
Legal and Professional Fees	30.9%	26.7%	25.2%	26.9%	34.9%	30.4%	25.5%
Investment Fees	8.1%	19.0%	19.0%	16.3%	16.5%	17.9%	19.0%
Insurance Expense	6.4%	3.5%	2.5%	2.5%	2.2%	2.4%	2.8%
General Administration Expense	14.5%	10.3%	9.3%	9.5%	7.3%	7.4%	9.9%
Claim Processing Costs	21.1%	28.5%	33.9%	34.7%	27.0%	30.9%	32.2%
Other Expenses ³²	4.6%	-0.1%	-0.4%	-0.5%	1.3%	0.3%	0.5%
Total	100%	100%	100%	100%	100%	100%	100%

Exhibit 12: Summary of Trust Assets and Claim Payments by TAC Firm (dollars in millions)³³

TAC Member Firm / Affiliation	No. of Trusts	2012 YE Assets	2012 Claim Payments	2006-12 Claim Payments
Kazan, McClain, Lyons, Greenwood & Harley	19	\$14,880	\$900	\$13,010
Baron & Budd, P.C.	15	\$12,510	\$720	\$11,990
Motley Rice, LLC	11	\$12,040	\$720	\$11,700
Cooney & Conway	15	\$12,270	\$710	\$10,180
Weitz & Luxenburg	14	\$11,780	\$650	\$11,140

this process are often standardized across trusts allowing plaintiff attorneys to utilize the same claims material for multiple trust submissions, thus minimizing their filing costs per claim. This is not a negotiated or compromising process. Our review of these procedures has shown that for mesothelioma claims the minimum medical and exposure criteria are virtually the same across many trusts. As a result, trusts spend little on claim processing costs relative to claim payments. Exhibit 2 above shows that over \$1 billion has been spent since 2006 on trust expenses. The figures in Exhibit 11 below suggests that over this same period, approximately 30% of trust expenses were associated with claim processing costs, or roughly \$320 million. When compared to the \$15.3 billion in claim payments made over that same span, it suggests that the trusts are spending approximately 2 cents to review, process, and pay \$1.00 in claim payments.

Bankruptcy trust governance

The formation of a reorganization plan and resultant trust under section 524(g) involves negotiations with representatives of asbestos personal-injury claimants, the debtor, the legal representative for future claimants ("FCR") and other creditor constituencies with standing in the bankruptcy. Subsequent to the establishment of the trust following plan confirmation, it is often the representatives of asbestos claimants who assume the leadership roles in advising the management of trust assets and distribution of claim payments over time. These representatives make up the Trust Advisory Committee ("TAC"). Exhibit 12 summarizes the law firms that have attorneys as TAC members on the highest frequency of trusts and the recent assets held and claim payments made collectively across those trusts.

The administration of the bankruptcy trust once it becomes operational is split between the trustees, the TAC and the FCR. The trustees are the primary trust fiduciaries and handle reporting requirements, meeting with trust investment managers, and establish, supervise and administer the trust under the provisions of the TDP.³⁴ The TAC members represent the fiduciary interest of current asbestos claimants and the FCR represents the interests of future demand holders.³⁵ As typically outlined in the Trust Agreements that are confirmed as part of the bankruptcy Plan of Reorganization ("POR"), trustees have the ability to amend trust operating procedures and policies post-confirmation with the consent of the TAC and FCR.³⁶

As outlined this commentary's 2012 predecessor, in recent years several trusts have amended their TDPs post-confirmation to include a "Confidentiality" provision and a "Sole Benefit" clause. The Confidentiality provision mandates that a claimant's submission to a respective trust and all associated information is to be treated in the course of settlement negotiations and is afforded all the applicable confidentiality privileges and protections. The Sole Benefit clause states that evidence submitted to a respective trust to establish proof of claim is for the sole benefit of the respective trust, not third parties or defendants in the tort system.

Example of a Confidentiality provision:

"Confidentiality of Claimants' Submissions. All submissions to the Asbestos PI Trust by a holder of an Asbestos PI Claim or a proof of claim form and materials related thereto shall be treated as made in the course of settlement discussions between the holder and the Asbestos PI Trust and intended by the parties to be confidential and to be protected by all applicable state and federal privileges,

including, but not limited to, those directly applicable to settlement discussions. The Asbestos PI Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only (a) with the permission of the holder, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) and/or section 105 of the Bankruptcy Code or other applicable law, (b) to such other persons as authorized by the holder, (c) in response to a valid subpoena of such materials issued by the Bankruptcy Court, (d) as provided in Section 2.2(c) above and (e) as provided in Section 1.4(f) of the Asbestos PI Trust Agreement. Furthermore, the Asbestos PI Trust shall provide counsel for the holder a copy of any subpoena referred to in (c) immediately upon being served. The Asbestos PI Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privilege before the Bankruptcy Court and before those courts having appellate jurisdiction related thereto.³⁷

Example of a Sole Benefit clause:

“Evidence submitted to establish proof of exposure to Kaiser products is for the sole benefit of the Asbestos PI Trust, not third parties or defendants in the tort system. The Asbestos PI Trust has no need for, and therefore claimants are not required to furnish the Asbestos PI Trust with evidence of exposure to specific asbestos products other than those for which Kaiser has legal responsibility, except to the extent such evidence is required elsewhere in the Asbestos TDP. Similarly, failure to identify Kaiser products in the claimant’s underlying tort action, or to other bankruptcy trusts, does not preclude the claimant from recovering from the Asbestos PI Trust, provided the claimant otherwise satisfies the medical and exposure requirements of the Asbestos TDP.”³⁸

These types of amendments made following confirmation of the POR by the bankruptcy and district courts raise questions about the overall lack of transparency and external oversight of trust operations.

Legislative efforts and bankruptcy trust transparency

Given the amount of assets concentrated across a limited number of trustees and advisors, legislative efforts have been initiated recently at both the state and federal level in an attempt to establish a reasonable level of public accountability and oversight that is currently lacking in the trust system.

State bills

Trust transparency legislation proposed on the state level seeks to address the issue defendants and courts have been wrestling with for the past few years – how to compel plaintiff counsel to produce information regarding exposures to the products of reorganized companies into tort proceedings in a timely manner so liability can be allocated among the full complement of culpable solvent and bankrupt defendants. Over the past decade, many asbestos dockets had previously established case management orders (“CMO”) mandating the timely disclosure of trust claims and exposure information. However, lengthy statute of limitation provisions adopted by most trusts allow claims to be filed up to three years after the date the plaintiff was diagnosed with an asbestos-related disease. As a result, plaintiff attorneys have very little economic incentive to pursue trust claims until after the lawsuit in the civil tort has been resolved. This renders basic discovery procedures and CMOs in many courts ineffective, because plaintiff attorneys can not disclose trust claim filings that have not been made yet. The emergence of trust transparency legislation in the states stems from these early efforts by the judiciary and the importance the state courts recognized in mandating the systematic production of bankruptcy trust claim and exposure information early in tort proceedings.

On Dec. 20, 2012, Ohio Governor John R. Kasich signed into law H.B 380, state legislation in Ohio that gives plaintiff counsel 30 days from filing a tort complaint to disclose any trust claims and payments they have already made or will likely make in the future to collect from 524(g) asbestos bankruptcy trusts. Where the CMOs lacked an enforcement mechanism to enforce the production of trust claim information, the Ohio legislation gives the state court judge the ability to extend a trial date for plaintiff counsel that don’t comply with the new trust disclosure rules. The bill also gives defendants the ability to introduce evidence to the court regarding which trusts the plaintiff may be eligible to collect from and move for a stay in the proceedings if the defendants don’t believe that plaintiff counsel has been forthright and made a good-faith effort to produce their client’s bankruptcy trust claims.

The Ohio bill was followed by passage of similar trust transparency legislation earlier this year by the Oklahoma state legislature. On May 7, Oklahoma Governor Mary Fallin signed a bill requiring asbestos plaintiffs to disclose trust claims submitted to bankruptcy trusts within 90 days of filing a tort complaint

and 180 days before the trial date. The legislation entitles offsets for defendants found liable at trial for recoveries from the trusts based on the current trust values for the claim and category of disease. Proposals for similar trust transparency legislation have been introduced over the past year in Wisconsin, Illinois, Louisiana, Mississippi and Pennsylvania. Bills in several of those states are still pending.

Federal bill

In parallel to the legislative efforts in the states, a federal bill has been introduced in the U.S. House of Representatives that would require asbestos bankruptcy trusts to produce quarterly reports publically detailing the plaintiffs who have filed with bankruptcy trusts, been paid by bankruptcy trusts and information regarding the basis for payment. Originally introduced in 2012, the Furthering Asbestos Claim Transparency Act of 2013 ("FACT Act"), was reintroduced by House Judiciary Committee Chairman Robert W. Goodlatte on March 6, 2013. Chairman Goodlatte described the bill as:

"... common-sense legislation that is designed to promote transparency, discourage fraud and ensure that funds meant to benefit legitimate future asbestos victims are not used to pay abusive claims. If asbestos trusts are to have assets available to pay the claims of deserving future claimants tomorrow, Congress must take steps to assure that trust assets will be better protected today."⁹

The FACT Act seeks to amend title 11 of the U.S. bankruptcy code and require the public disclosure by 524(g) trusts of quarterly reports that "contain detailed information regarding the receipt and disposition of claims for injuries based on exposure to asbestos." In addition to the quarterly reports, the FACT Act would allow defendants, at their own expense, to submit to the trusts inquiries regarding the claim status of individual claimants. As proposed, the bill would apply to all 524(g) asbestos bankruptcy trusts and require that the trusts post quarterly reports on the bankruptcy court's public website.

On May 21, 2013, the FACT Act passed out of the House Committee on the Judiciary by a vote of 17-14. The bill now heads to the House floor for full consideration.

Conclusion

It has been 30 years since Johns Manville filed for bankruptcy and 25 years since its trust began paying claimants. More than 800,000 claims later, the

Manville trust continues to compensate asbestos victims and has been joined by dozens of other trusts who collectively hold over \$18 billion in confirmed assets with an additional \$11 to \$12 billion pending bankruptcy confirmation. With trust claim payments exceeding \$15 billion since 2006, the trust system has become a substantial, alternative source of compensation to what plaintiffs are already receiving in the tort system. As a result, tort defendants, state courts and legislators have been faced with the challenge of finding effective and efficient methods of integrating these dual compensation systems into one. Moreover, with bankruptcy trusts now representing a significant share of overall plaintiff recoveries, questions and concerns have been raised about trust claiming and compensation trends that have resulted in a 30% to 40% decrease in the amount trust claimants are receiving today relative to just 5 years ago. If trust assets are mismanaged and subsequently depleted then future claimants will be deprived of the equitable treatment that 524(g) was intended to preserve.

As the trust transparency issue continues to evolve and legislatures, courts, academics and other interested parties strive to learn more about the trust disclosures, we plan to update this paper going forward to provide the most current snapshot as possible of what is known about the asbestos bankruptcy trust compensation system.

Endnotes

1. Dixon, Lloyd, et al., *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trust*, RAND Institute of Civil Justice (2010).
2. Scarcella, Marc C. and Peter R. Kelso. "Asbestos Bankruptcy Trusts: A 2012 Overview of Trust Assets, Compensation & Governance." Mealey's Asbestos Bankruptcy Report 11, no. 11 (2012).
3. "Where are They Now, Part Six: An Update on Developments in Asbestos-Related Bankruptcy Cases," Mealey's Asbestos Bankruptcy Report, Vol. 11, No. 7 (February 2012).
4. Figures based on information gathered from Section 524(g) trust annual reports.

5. Estimated present value of proposed funding based on bankruptcy disclosures from W.R. Grace, Pittsburgh Corning, North American Refractories, Flintkote, Quigley, Plant Insulation, and AP Green. There are other pending 524(g) bankruptcy reorganizations currently active but no estimates of proposed trust funding has been disclosed in publically available bankruptcy documents that we were able to find.
6. 11 U.S.C. Section 524(g)(2)(B)(i)(1); 11 U.S.C. Section 524(g)(2)(B)(ii)(V).
7. *Supra* 1.
8. *Supra* 4.
9. 2011 annual reports were not available for H.K. Porter, Keene, Rutland Fire, and M.H. Detrick Trusts. In order to estimate the aggregate balances for 2011 we applied the average asset and liability flows from the prior 3-years for these specific Trusts.
10. 2012 annual reports were not available for H.K. Porter, Keene, Rutland Fire, and M.H. Detrick Trusts. In order to estimate the aggregate balances for 2011 we applied the average asset and liability flows from the prior 3-years for these specific Trusts.
11. Deferred note payments and insurance settlements that are not included as part of net claimant equity on trust financials but are due in the future. For example, the Federal Mogul U.S. Asbestos Personal Injury Trust, T&N sub-fund has outstanding note payment due totaling \$240M that are reported in the notes of the trust annual report financial statements, but are not included in the trust accounting of Net Claimant Equity.
12. Armstrong World Industries Asbestos Personal Injury Settlement Trust; Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust; Celotex Asbestos Settlement Trust; Combustion Engineering 524(g) Asbestos PI Trust; DII Industries, LLC Asbestos PI Trust; Eagle-Picher Industries Personal Injury Settlement Trust; Kaiser Asbestos Personal Injury Trust; Manville Personal Injury Settlement Trust; NGC Bodily Injury Trust; Owens Corning Fibreboard Asbestos Personal Injury Trust - FB Subfund; Owens Corning Fibreboard Asbestos Personal Injury Trust - OC Subfund; United States Gypsum Asbestos Personal Injury Settlement Trust; Western MacArthur-Western Asbestos Trust; ASARCO LLC Asbestos Personal Injury Settlement Trust (2010-2012); T H Agriculture & Nutrition, LLC Industries Asbestos Personal Injury Trust (2010-2012).
13. The North American Refractories Company Asbestos PI Settlement Trust is scheduled to commence claim processing in August 2013.
14. Some trusts refer to their procedures as Claim Resolution Procedures ("CRP").
15. First Amended and Restated Combustion Engineering 524(g) Asbestos PI Trust Distribution Procedures, Section 5.3(b)(2).
16. In June 2008 the Celotex Trust increased its TDP values in lieu of increasing the Payment Percentage from 14.1% to 18.3%. Notice is available on Celotex Trust website.
17. In October 2009 the DII Trust increased its TDP values by more than double (e.g. Harbison-Walker Mesothelioma average value increased from \$68K to \$182K), prior to decreasing the Payment Percentage from 100% to 52.5%.
18. NGC trust decreased its Payment Percentage twice in 2011 (First to 41% in July and then to 18% in November).
19. United States Gypsum trust decreased its Payment Percentage twice in 2010 (First to 35% in April and then to 30% in November).
20. United States Gypsum Asbestos Personal Injury Settlement Trust Distribution Procedures, Section 2.5.
21. 2011 YE balance of \$540M, plus the outstanding principle on the Thornwood promissory note totaling \$240M as of 12/31/2012 per Note 3 of the 2012 of the trust audited financials. As of 12/31/2012, the portion of the \$413M from insurance settlements was approximately \$128M. Assuming these settlements represent the portion of trust funds associated with the FMP (Wagner) liability, then the asset weighted average Claim Payment Ratio for the T&N(60%) and FMP(79%) is 63.1% for Category A Claims and 36.9% for Category B Claims.

22. Page 10 of the Court of Appeals opinion by Judge Gould in the Thorpe Insulation bankruptcy reorganization, suggests that \$600M in insurance had been settled to fund the trust plus an additional \$1.75M in funding. To date, the trust has received \$202M, so for purposes of this paper we have added the difference of \$398M to the 2012 ending balance of \$145M to represent the current total of committed trust funding.
23. Section 2.5 of the TDP allocates annual claim payments of 88.35% to Western Asbestos/Western MacArthur (CA) claims and the remaining balance for MacArthur claims from either MN or ND. The Category A Claims Payment Ratio for CA claims is 84%, and for MN and ND claims it is 71.5%, which when weighted by the 88.35%/11.65% split yields an average Category A Claims Payment Ratio for the entire trust of 82.5% with the balance of 17.5% for Category B Claims.
24. Claim payments by disease category are sometimes reported by trusts on a payment basis as opposed to an accrual basis that is typically used in the trust financials. As a result, the claim payment commitments reported in Exhibit 2 and 3 from the trust financials may differ from claim summary level in Exhibit 4.
25. The trust annual reports with disease level claims paid and payment summary data include A-Best Asbestos Settlement Trust (2008,2010-2012); API, Inc. Asbestos Settlement Trust (2007-2012); Armstrong World Industries Asbestos Personal Injury Settlement Trust (2007); Bartells Asbestos Settlement Trust (2007-2012); C. E. Thurston & Sons Asbestos Trust (2007-2012); DII Industries, LLC Asbestos PI Trust (2007-2012); H. K. Porter Asbestos Trust (2007-2010); Hercules Chemical Company, Inc. Asbestos Trust (2011-2012); Keene Creditors Trust (2007-2010); Plibrico Asbestos Trust (2007-2012); Porter Hayden Bodily Injury Trust (2009-2012); Raytech Corporation Asbestos Personal Injury Settlement Trust (2007-2010); United States Mineral Products Company Asbestos Personal Injury Settlement Trust (2010,2012).
26. Figure includes an estimate of deferred assets for the Federal Mogul U.S. Asbestos PI Trust. *See* endnote 11 for more detail.
27. The 2012 annual report for the H.K. Porter Asbestos Trust was not available for download. As a result the YE 2012 asset and claim payment balances in this table include estimates for this trust.
28. Figure includes an estimate of deferred assets for the Thorpe Insulation Company Asbestos PI Settlement Trust. *See* endnote 22 for more detail.
29. The 2012 annual report for the Keene Creditors Trust was not available for download. As a result the YE 2012 asset and claim payment balances in this table include estimates for this trust.
30. The 2012 annual report for the M.H. Detrick and Rutland Fire Trusts were not available for download. As a result the YE 2012 asset and claim payment balances in this table include estimates for these trusts.
31. Percentages based on approximately 40 Trusts that provided sufficient expense detail as part of the annual report. The trust financials we reviewed included additional line-item detail on expenses totaling \$899 million, or approximately 85% of the total expenses reported in Exhibit 2.
32. Other expenses may include refunds and other similar accounting entries that may create negative balances.
33. *Supra* 26-30.
34. United States Gypsum and Armstrong World Industries 2011 trust annual reports.
35. *Ibid.*
36. *See for example* Section 7.3 of the Armstrong World Industries, Inc. Asbestos PI Settlement Trust Agreement.
37. *See for example* Section 6.5 of the Kaiser Aluminum & Chemical Corporation 3rd Amended Asbestos Distribution Procedures.
38. *See for example* Section 5.7(b)(3) of the Kaiser Aluminum & Chemical Corporation 3rd Amended Asbestos Distribution Procedures.
39. Press release of Congressman Blake Farenthold, "House Judiciary Committee Approves Rep. Farenthold's Fact Act." ■

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