

ASBESTOS AND INSURANCE : How to Facilitate a Settlement

INTRODUCTION

Even with the possibility of a legislative solution to asbestos mass tort actions, companies being sued and their insurance carriers continue to negotiate settlements, and to litigate coverage and bankruptcy actions. Ultimately, the goal of the parties is to achieve a satisfactory resolution rooted in the facts of the particular case and the realities of litigation risk. It is therefore necessary to understand the issues important to each side and to evaluate that information in a logical and clear framework. This structure allows for the realistic estimation of future asbestos claims and the appropriate allocation of potential damages to insurance coverage.

In this issue, we describe typical analyses and methodologies used in asbestos insurance settlement negotiations. In particular, we focus on methods used to forecast future asbestos-related claims and to allocate the liabilities to insurance coverage.

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For more information on The Brattle Group's work in environmental, mass tort, and insurance areas, or to inquire about a presentation on this topic at your firm, please contact Gayle S. Koch in Cambridge at 617.864.7900 or Gayle.Koch@brattle.com.

Asbestos-related claims continue to flood the tort system and cause conflict between companies and insurance carriers. Companies continue to face claims and the dilemma of how to fund both defense and any potential awards. In addition, they must worry about the impact of disclosure on stock price, and consider various protective options under the Bankruptcy Code. One of the assets a company soon turns to is its insurance policies.

However, insurers also have significant issues to consider. An insurance carrier will need to evaluate the veracity of claims including injury and product identification. They will want to monitor settlements of underlying policies to ensure exhaustion, assess products versus operations claims, and evaluate the allocation of claims to available coverage. They also will want to participate in bankruptcy proceedings that affect the timing and magnitude of claims. At the end of negotiations, they may also need documentation to support subsequent reinsurance claims.

Negotiations between insurers and policyholders facing asbestos-related claims are often tense as both parties evaluate a myriad of facts while balancing settlement and litigation positions against financial realities. Moreover, the uncertainty as to whether and when a legislative solution may be achieved introduces significant strategic risk.

The Brattle Group has extensive insurance experience including rate-setting, claims data assessment and auditing, claims forecasting and valuation, allocation to available coverage, and valuation of litigation risk. In this newsletter we review the major steps used in evaluating asbestos-related claims and the allocation of costs to insurance policies for the purpose of resolving disputes between policyholders and insurers.