

FILE NAME: Insurance Industry (INS)

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DOCUMENT DESCRIPTION: Unpublished Conference Presentation - The Setting Up of an Asbestos Claims Settling Company to Work & Settle Claims on Behalf of Insurers

VENUE: Barbican Centre, London

TIME & DATE 10 00 am to 12 30 pm Wednesday, 12th April, 1984

TOPIC: The setting up of an Asbestos claims settling company to work and settle claims on behalf of insurers

IN ATTENDANCE: Mr R Jackson, Chairman Asbestos Working Committee
(R A Jackson Syndicate)

Mr J Ayliff, Claims Manager " " "
(R A Jackson Syndicate)

Mr P Keene, " " "
(Lord Day & Lords Lawyers)

Various Direct/Reinsurers Continent & Overseas Companies

AIMS: To simplify, hasten, centralise and to cut the legal costs of Asbestos claims settlements

Opening Speech (R A Jackson)

Asbestos related claims are the most serious insurance problem so far, in view of the amount of claims and the various interpretations put on the insurance policies by the American Courts. It has been shown that the Insurance Industry has been very slow to react to the problem, especially in respect of the court interpretations which give the maximum cover to the Assureds

It is, therefore, proposed to set up this company to deal with the Central Handling of all Asbestos related claims.

It should results in:-

- Reduced law suits
- b) Reduction in defence costs
 - c) Co-ordination of defence handling
 - d) Reduction in time effort and expense
 - e) A better cash flow to settle claims
 - f) No punitive damages

It is felt that this is the last chance to get Asbestos claims on to an "even keel"

American companies have been approached and they have shown great interest in this proposal

The London Market share of Asbestos losses will be substantial and London will have a large sum to pay when the excess policies become involved. As London is also a reinsurance based Market this Market will obviously be affected in the longer term.

Mr Jackson stated that the London Market was nearly 100% behind the scheme to set up this claims handling organisation.

No minutes have been issued or will be, because of the fear of a leak prior to the public announcement in 2 - 3 weeks when all attending the meetings will get written advice.

The Asbestos Claims Committee is to be 12 in number. In view of the size and number of claims, some form of delegated authority was needed.

J Ayliff

Mr Ayliff started his deliberations by stating that a conservative estimate of deaths through Asbestos related diseases in the USA would be 265,000 between 1980 and 2015.

There are at present 33,000 claims and they are subject to an increase of 400 - 500 per month, which are causing a "log jam" in the American Courts. This increases legal fees and time delays. Therefore, the Plaintiffs, the American Bar, Insurance Companies are very interested in the proposal to set up this central claims handling body.

Court Interpretations on coverage

It was felt that because the courts were interpreting insurance policies to the best advantage of the Assured, the whole concept of claims handling had to be dealt with on the basis of coverage from the date of first contract to the date the disease manifested itself. Here examples were given:

Case Law

Case: 48 Insulations

Ruling on coverage: 1st date of exposure to manifestation

Keene Case:

Ruling on coverage: period of ingestion to final exposure and through to manifestation

It is accepted that the so called date of enlightenment - this is when Asbestos related policies realised the problems involved, was 1975 and, therefore, the coverages and deductibles were from then on not as generous if at all towards Asbestos producers. This means that the philosophy of the proposals mentioned herein would act commonly up to 1975 and then respond in line with the policies individual limitations thereafter.

The settlement basis would be for example, on a policy which was exposed for the first time in 1940 and then until 1975 by virtue of claims. The 1940 coverage would be used until exhausted and then the 1941 coverage would respond until that was exhausted, then coverage would move to 1942 policy year and so on.

The Actual formation of the Asbestos Claims Company would be:

Chief Executive

Financial Advisers

Legal Executive

Data Processing Executive

Board of Directors: 6 insurers, 6 Asbestos producers and 3 outside legal Executives

- 150 Staff

It should be stated that 85% of the American Bar agree with this resolution for setting up this Company.

The 7 largest Asbestos Lawyers in the State agree with the resolution for setting up this Company.

As a final note, it was stated that manifestation for Asbestos related diseases can be from 20-40 years from the first exposure and that exclusions re Asbestosis do not necessarily benefit insurers as there are many other illnesses which are caused by Asbestos which fall outside these exclusions.

NB

The actual cost of removing Asbestos from properties where it is deemed to be a health hazard and the ensuing cost is something that will become an added problem to insurers involved in this coverage; the full exposure in respect of this has yet to be realised.

To resolve some of these problems the Travellers Insurance Co/Firemans Fund/Cigna Ins Co tried to rationalise coverage

The Asbestos council was then set up in 1973 to try to reach agreement in respect of coverage

The thoughts behind setting up the Asbestos Claims Handling Committee are to cut duplication of effort and expenses and to avoid punitive damage suits in the USA courts. The logistics are at present 33,000 Asbestos claims, say x 10 Insurance Company participants = 330,000 claim files which make the defence of these cases expensive

Composition of the Company

Claims would be filed with the facility. Authority would be given to negotiate and put cases via tort where no agreement could be reached

Facility would be set up using members of US Insurance Carriers by co-opting staff from their Asbestos claims sections. It is envisaged that approximately 150 staff will be required, together with a computer system to produce figures for shares in the policies, together with computed settlement formulae worked out between insurers and insured. It will be able to respond to meritorious claims and will have dispute procedures available to assureds. These will be impartial and will allow no legal costs to be incurred as at present the majority of money is absorbed in legal costs and not in settlements. The expenses running the facility are expected to be based on an entry fee for subscribers, plus a percentage of indemnity and defence expenditure if applicable. Asbestos producers will not be required to pay until their insurance coverage is exhausted

It is proposed that the settlement basis be on exposure to manifestation, the duration period incorporating all coverage therein

It is recognised that prior to 1966 primary policies had no aggregate products cap and, therefore, the coverage be limited to 10 aggregate losses in the first \$100,000, or a maximum of \$3,500,000 with a limit of \$1m primary. Defence costs however, were unlimited prior to 1966 and, therefore, even when a cover exhausted the primary policies still has the right to defend