
Claims Team Presentation

Asbestos 101

September __, 2015



Agenda

1. Asbestos History and Background
2. Asbestos-Related Injuries
3. Litigating Asbestos Claims
4. Insurance Coverage
5. Asbestos Litigation – Then and Now

Asbestos History & Background

What is Asbestos?

MORE SCIENTISTS AND EDUCATORS SMOKE KENT
with the Micronite Filter than any other cigarette!

SMALL PORTION OF AMERICAN SCIENTISTS AND EDUCATORS	
KENT	24.0
WALTON	1.0
WALTON	1.0
WALTON	1.0
WALTON	1.0

SMALL PORTION OF AMERICAN SCIENTISTS AND EDUCATORS	
KENT	24.0
WALTON	1.0
WALTON	1.0
WALTON	1.0
WALTON	1.0

"KENT is my favorite, too."
says **BOB COUSY**,
famous ALL-STAR guard
of the Boston Celtics



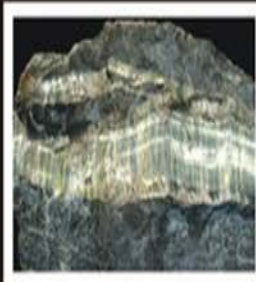
Let this magic mineral,
ASBESTOS,
protect the buildings
on your farm!



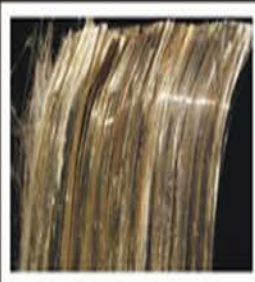
Asbestos History & Background

What is Asbestos?

ASBESTOS



CHRYBOTILE



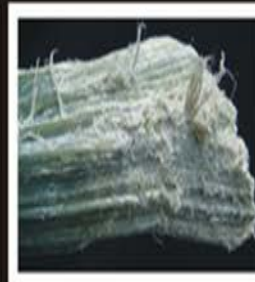
AMOSITE



CROCIDOLITE



TREMOLITE



ACTINOLITE



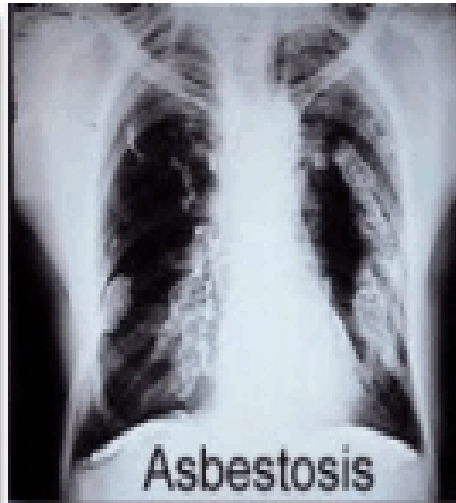
ANTHOPHYLLITE

Asbestos-Related Injuries



Asbestos-Related Injuries

Asbestosis, Lung Cancer, Mesothelioma



Litigating Asbestos Claims



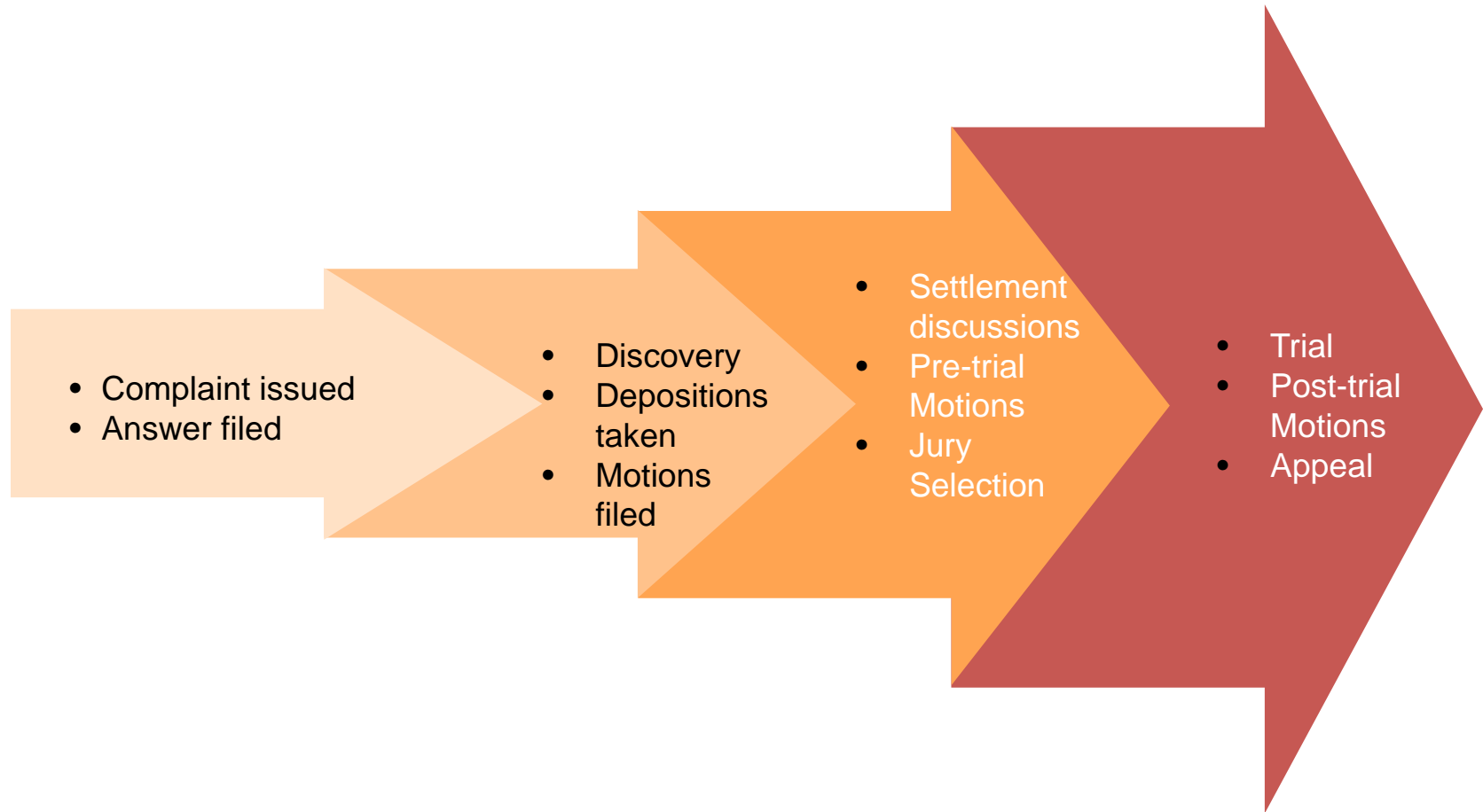
Litigating Asbestos Claims

Legal Standards of Liability



Litigating Asbestos Claims

Defending the Claim



Insurance Coverage

COMMERCIAL GENERAL LIABILITY
CG 00 01 12 04

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

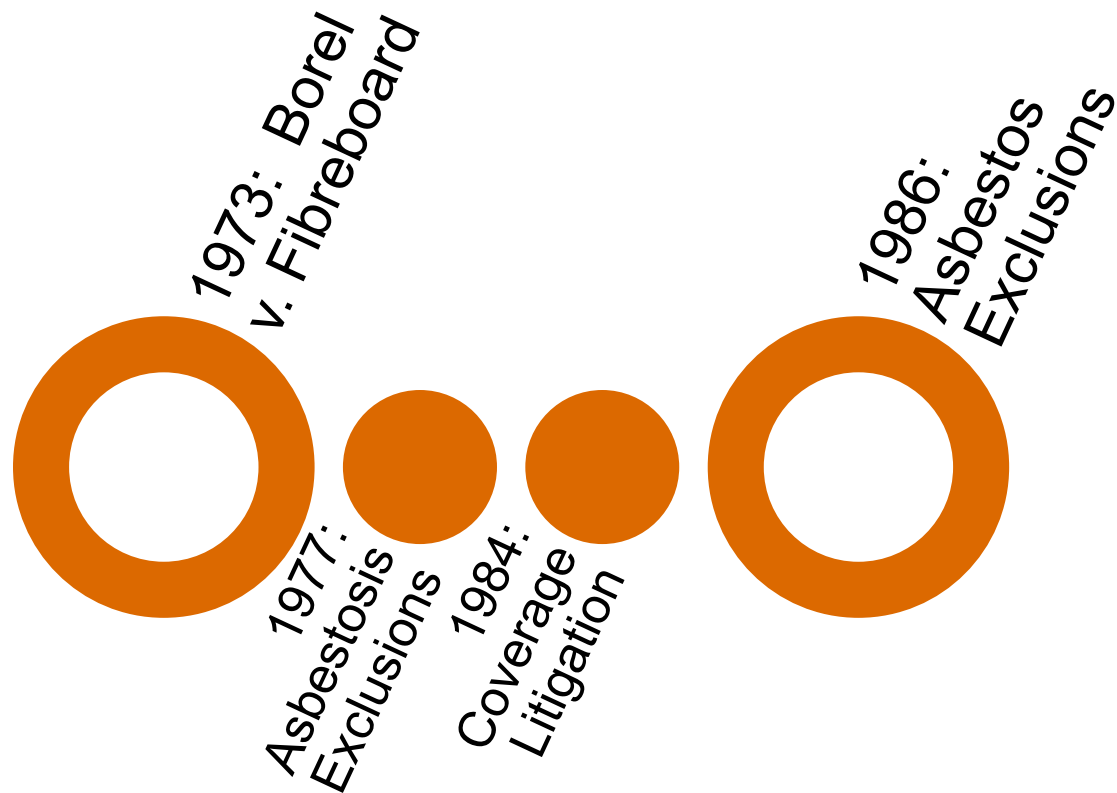
The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and
 - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the

Insurance Coverage

Asbestos Exclusions



Insurance Coverage

Asbestosis Exclusion

9. ASBESTOSIS EXCLUSION

Claims and actions in respect of bodily injury resulting from asbestosis and/or related diseases directly or indirectly caused by or contributed to or arising from :

9.1 Mining, processing, transport, distribution and/or storage of asbestos

9.2 Manufacture of asbestos products and/or processing of raw materials containing asbestos

9.3 Installation, removal or treatment of asbestos materials

Insurance Coverage

Asbestos Exclusions

LIABILITY ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASBESTOS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE FORM

- A. The following is added to Paragraph 2., Exclusions of both Section I - Coverage A - Bodily Injury And Property Damage Liability, and Section I - Coverage B - Personal And Advertising Injury Liability:

This insurance does not apply to:

Asbestos

1. "Bodily injury", "property damage", "personal and advertising injury" or "reduction in value" related to the actual, alleged, or threatened presence of, or exposure to "asbestos" in any form, or to harmful substances emanating from "asbestos". This includes ingestion, inhalation, absorption, contact with, existence or presence of, or exposure to "asbestos". Such injury from or exposure to "asbestos" also includes, but is not limited to:
 - a. The existence, installation, storage, handling or transportation of "asbestos";
 - b. The removal, abatement or containment of "asbestos" from any structures, materials, goods, products, or manufacturing process;
 - c. The disposal of "asbestos";
 - d. Any structures, manufacturing processes, or products containing "asbestos";
 - e. Any obligation to share damages with or repay someone else who must pay damages because of such injury or damage; or
 - f. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with the above.
2. Any loss, cost or expense, including, but not limited to payment for investigation or defense, fines, penalties and other costs or expenses, arising out of any:
 - a. Claim, "suit", demand, judgment, obligation, order, request, settlement, or statutory or regulatory requirement that any insured or any other person or entity test for, monitor, clean up, remove, contain, mitigate, treat, neutralize, remediate, or dispose of, or in any way respond to, or assess the actual or alleged effects of "asbestos"; or
 - b. Claim, "suit", demand, judgment, obligation, request, or settlement due to any actual, alleged, or threatened injury or damage from "asbestos" or testing for, monitoring, cleaning up, removing, containing, mitigating, treating, neutralizing, remediating, or disposing of, or in any way responding to or assessing the actual or alleged effects of, "asbestos" by any insured or by any other person or entity; or
 - c. Claim, "suit", demand, judgment, obligation, or request to investigate which would not have occurred, in whole or in part, but for the actual or alleged presence of or exposure to "asbestos".

This exclusion applies regardless of who manufactured, produced, installed, used, owned, sold, distributed, handled, stored or controlled the "asbestos".

Insurance Coverage

Traditional Coverage Issues

SUPREME COURT OF THE STATE OF NEW YORK
ALL COUNTIES WITHIN NEW YORK CITY

In Re: NEW YORK CITY
ASBESTOS LITIGATION

This Document Relates To:

Index No.

v. Plaintiffs,
, et. al., Defendants.

PLAINTIFFS' FIRST STANDARD
SET OF LIABILITY
INTERROGATORIES AND
REQUEST FOR PRODUCTION OF
DOCUMENTS

All plaintiffs, pursuant to the CPLR and the Case Management Order (CMO) of Justice Helen Freedman, propound the following interrogatories to each and every defendant, to be answered under oath within thirty (30) days of service, and request that each defendant produce in accordance with the CPLR and the CMO such documents within thirty (30) days of service of same. These interrogatories are continuing in character and require you to file supplementary answers if you obtain further or different information after your initial answers and before trial, including in such supplemental answers, the date upon and the manner in which such further or different information came to your attention. (For further instructions and definitions see Appendix A.)

Notice

Named Insured

Products v. Non-
Products

Allocation of Loss

Application of Limits

Insurance Coverage

Traditional Coverage Issues

Cooper Brothers

Lybrand, Ross Bros & Montgomery

Coopers & Lybrand

Price Waterhouse & Co.

PricewaterhouseCoopers

Notice

Named Insured

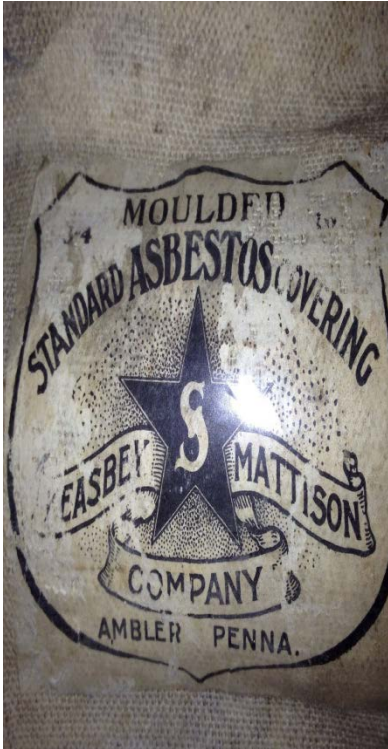
Products v. Non-Products

Allocation of Loss

Application of Limits

Insurance Coverage

Traditional Coverage Issues



Notice

Named Insured

Products v. Non-Products

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Insurance Coverage

Traditional Coverage Issues

Exposure
Trigger

Manifestation
Trigger

Continuous
Trigger

Injury-in-fact
Trigger

Notice

Named Insured

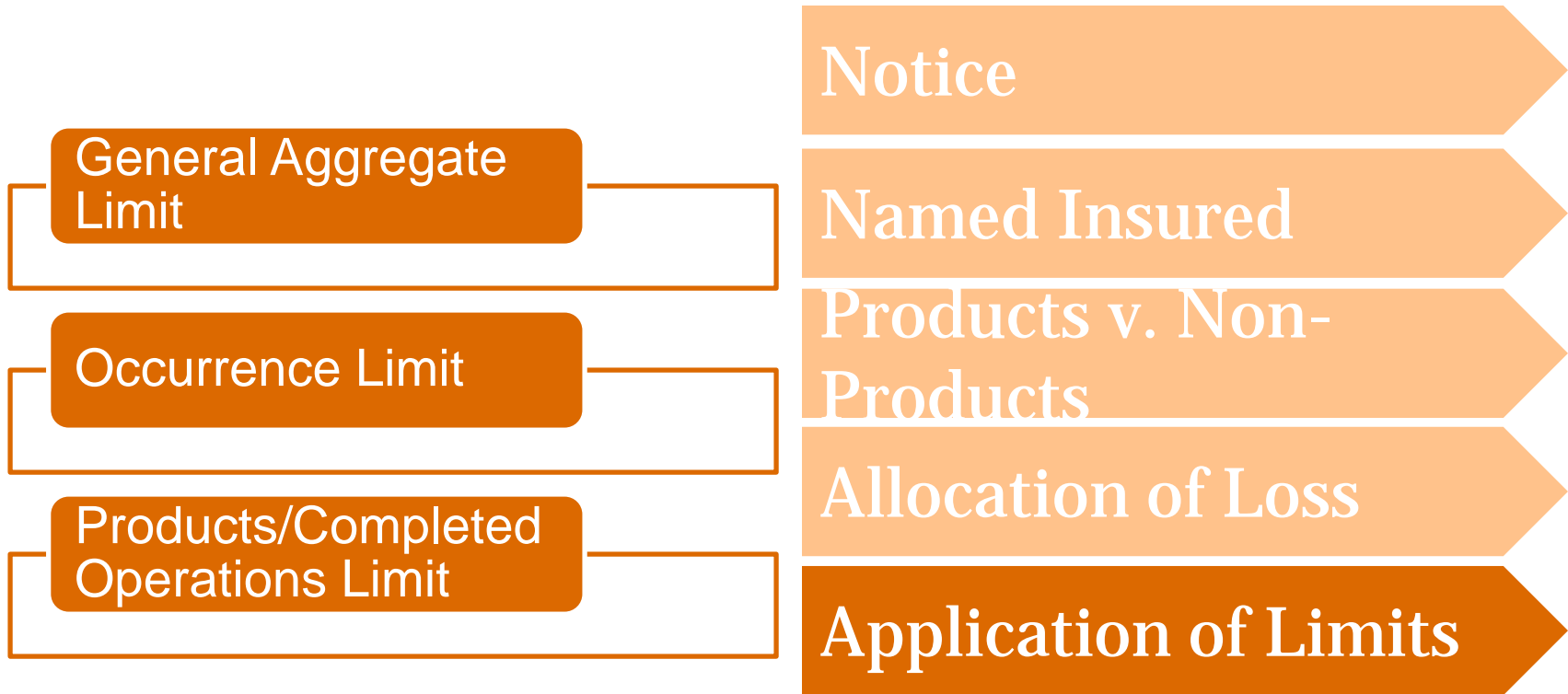
Products v. Non-
Products

Allocation of Loss

Application of Limits

Insurance Coverage

Traditional Coverage Issues



Insurance Coverage

Additional Coverage Considerations

Non-Cumulation of Liability — Same Occurrence:

If the same occurrence gives rise to personal injury, property damage or advertising injury or damage which occurs partly before and partly within any annual period of this policy, each occurrence limit and the applicable aggregate limit or limits of the policy shall be reduced by the amount of each payment made by the company with respect to each occurrence, either under a previous policy or policies of which this policy is a replacement, or under this policy with respect to previous annual periods thereof.

Non-Cumulation

Duty to Defend

Wellington

Unique Coverage Laws

Insurance Coverage

Additional Coverage Considerations

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.

Non-Cumulation

Duty to Defend

Wellington

Unique Coverage Laws

Insurance Coverage

Additional Coverage Considerations

The Wellington Agreement

The Agreement Concerning Asbestos-Related Claims, or Wellington Agreement, was executed on June 19, 1985. Its provisions, insofar as they have or may impact on reinsurance recoveries, can be summarized as follows:

- I.2 The Agreement applies only to asbestos-related bodily injury claims, not property damage claims.
- II. The Agreement establishes the Asbestos Claims Facility (ACF) for "evaluation, settlement, payment or defense" of claims. In 1988, the ACF was dissolved, and replaced by the Center for Claims Resolution (CCR).
- III.3 Termination of membership in ACF does not modify rights and obligations of signatories (perpetual existence per Section XXI.3).
- IV.1 ACF has exclusive authority and discretion to "administer, evaluate, settle, pay or defend all asbestos-related claims".
- VI.1 Each producer's percentage share of liability for each and every claimant is determined by past asbestos experience (Appendix A-1). Producer's percentage shares remained unchanged through life of ACF, but changed with CCR in 1988, and to named-only in 1991.
- V.2 Insurers agree to abide by the percentage share of liability as determined by their insured producers.
- VIII.1 Insurers agree to give up significant coverage defenses except for those preserved in Appendix B.
 - 6 Broad Alternative Dispute Resolution (ADR) requirement, including mediation, and built-in appeal before three-arbitrator panel. ADR results are confidential, without precedential value, and are to be provided only to Wellington subscribers.
- IX.1 Each producer designates a coverage block to run from date of first involvement with asbestos to its chosen end date, generally prior to SIR's, large deductibles, or asbestos exclusions. Coverage Block, described in Appendix D schedules of insurance coverage, is used to pay claims.
 - .2 Insurers are allocated pro rata share of responsibility for producer's share of liability (Section VI.1) from date of first exposure to any asbestos product to date of diagnosis.
- X.1 Bathtub approach - excess insurers drop down to cover for exhausted/ non-signatory coverage; and
 - .2 Horizontal contraction to cover exhausted/ non-signatory coverage
- XI.3 Allocated expenses presumed not to apply against limits of primaries, and presumed to apply against limits of excess policies.
- XV.2 Coverage is divided between "Pre-date" and "Post-date" policies, the dates to be agreed between producer and its insurers. Post-date policies are generally, but not always, those which start after end of coverage block.
- XVII.1 A. Pre-date policies carry an imputed aggregate for their non-products coverage, which coverages were generally issued without aggregates. Imputed aggregate determined by an occurrence limit multiplier.
 - B. Post-date policies do not carry an imputed aggregate.
- XVIII. "Stub" periods of less than 12 months carry full aggregate limits.
- XX. Since signatory insurers make payments in lieu of non-signatories, producers are required to go after non-signatories and obtain reimbursement for signatories.
- XXI.3 Agreement is perpetual, notwithstanding demise of ACF and CCR. ACF demise in 1988. Center for Claims Resolution (CCR) formed in 1988, and demise in 2001.

Non-Cumulation

Duty to Defend

Wellington

Unique Coverage Laws

Insurance Coverage

Additional Coverage Considerations

- PA: Pick and Spike
- Illinois: Doughnut Hole
- New Jersey: Coverage Gaps
- California: *Cumis* Counsel

Non-Cumulation

Duty to Defend

Wellington

Unique Coverage Laws

Asbestos Litigation – Then and Now

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In Re: NEW YORK CITY
ASBESTOS LITIGATION

Index No. 400000/1988

-----X

This Document Applies to All Cases in which
Oakfabco, Inc., is Named as a Defendant

**NOTICE OF SUGGESTION
OF BANKRUPTCY**

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PLEASE TAKE NOTICE that on August 7, 2015, Oakfabco, Inc. (“the Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Illinois, which case is encaptioned *In re: Oakfabco, Inc.*, Case No. 15-27062.

PLEASE TAKE FURTHER NOTICE that pursuant to Section 362 of the Bankruptcy Code, the filing of the petition stays, among other things, the initiation or continuation of judicial, administrative or other actions or proceedings against the Debtor or any act to obtain possession of or exercise control over property of the Debtor.

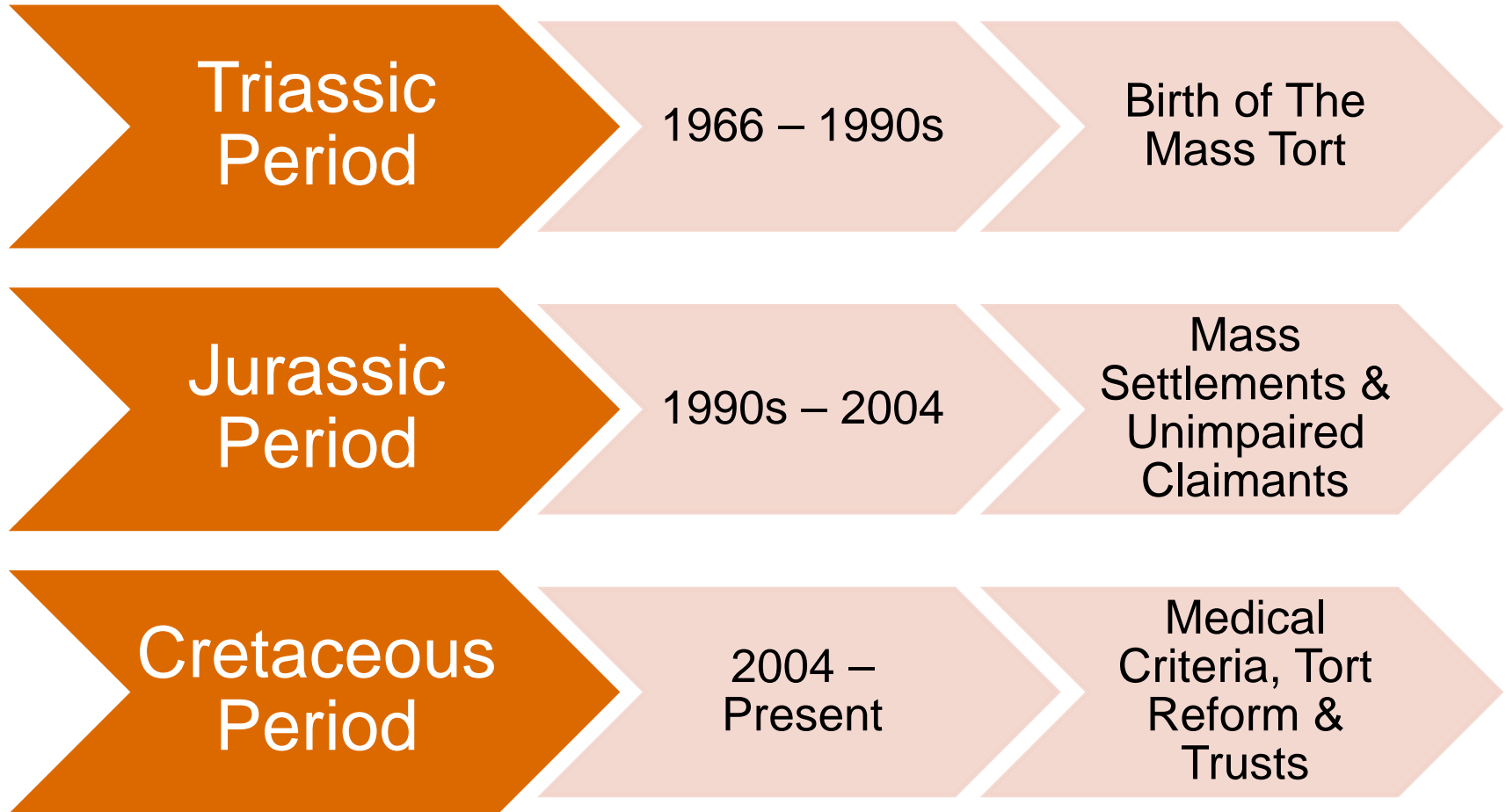
Dated: August 10, 2015

Respectfully Submitted,

**HAWKINS PARNELL
THACKSTON & YOUNG LLP**

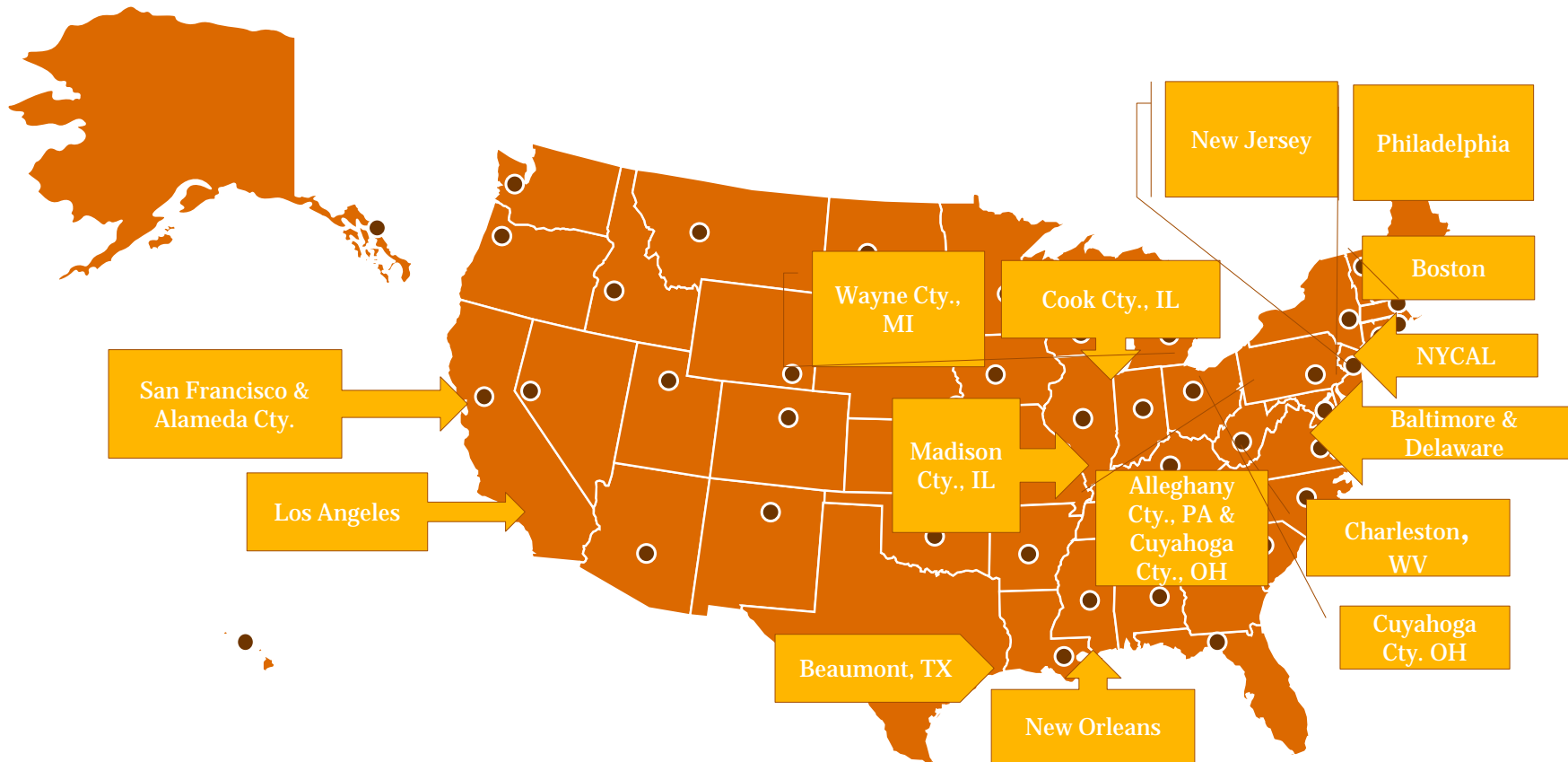
Asbestos Litigation – Then and Now

History of Asbestos Litigation



Asbestos Litigation – Then and Now

Most Active Jurisdictions



Asbestos Litigation – Then and Now

Current Trends & Issues



\$85 Billion Net Asbestos Losses*

*<http://news.ambest.com/presscontent.aspx?altsrc=14&refnum=22066>

Philadelphia:
Former Employee
Asbestos Litigation

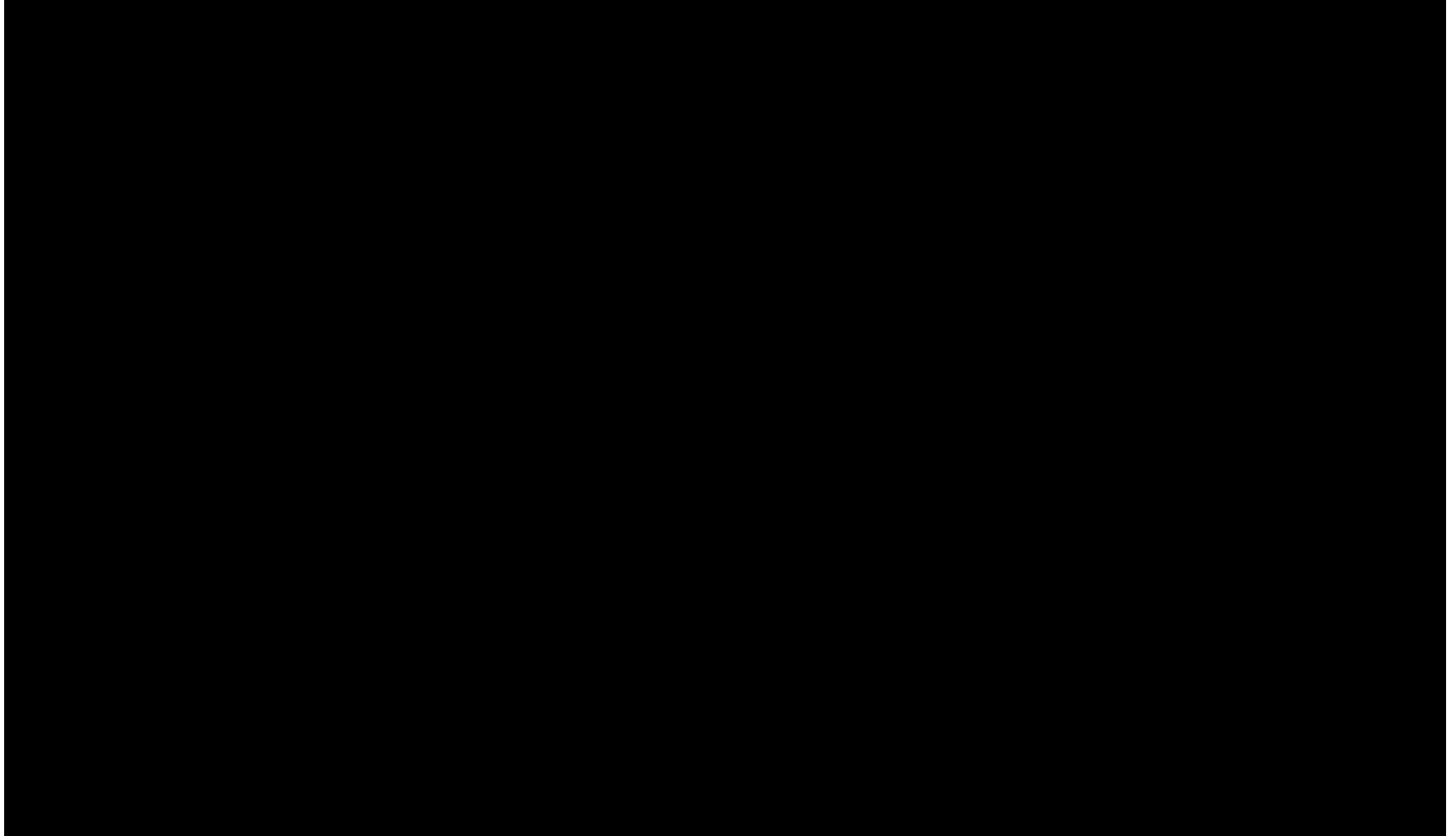
Alameda Cty.: \$71
million verdict

Los Angeles: Punitive
Damages Upheld

Madison Cty., IL:
Record Asbestos
Filings

NYCAL:
Punitive Damages =
Higher Resolution
Costs

Asbestos 101



Thank You!