

Potential Asian Claims on U.S. Asbestos Bankruptcy Trusts

Moderator: Steven Kazan

This session was a master class on how U.S. asbestos bankruptcy trusts funds can be accessed by foreign claimants [39]. The speaker, who had been intimately involved with the construction of many of these trusts and was extremely knowledgeable about their modus operandi, used a well constructed PowerPoint presentation to take delegates through the claims process [40]. The submission of claims was not unduly complex, was free of any filing charges and did not require the services of a local or U.S. lawyer; however, all supporting documentation must be accompanied by certified abstracts or translations into English. It was more cost efficient for victims' groups or trade unions to bring the claims on behalf of their members than to pay a lawyer 25%+ of the monies obtained. All the trust funds, which collectively held \$33 billion in assets, had websites and information was easily accessible online; forms could be downloaded and claims could be submitted by email.

**Operating Bankruptcy Trusts' Assets
(in millions)**

ABB Lummus Global Inc.	40
ACandS	520
Armstrong World Industries	2,101
Artra	92
Babcock & Wilcox	1,589
Celotex	706
CE Thurston	55
Combustion Engineering	1,114
EJ Bartells	7
DII - Halliburton & Harbison Walker	2,754
Eagle Picher	496
Federal Mogul	635
HK Porter	78
JT Thorpe	187
JT Thorpe Successor Trust	190
Kaiser Aluminum	1,197
Keene	74
Manville	1,778
Narco	2,000
National Gypsum	510
Owens Corning/Fibreboard	4,476
Pilbrico	198
Raytech	89
UNR	17
United State Gypsum	4,089
United States Mineral Products	26
Western Asbestos	980

Total current assets created by confirmed bankruptcies
\$25,998,000,000

Future Trusts assets expected in pending bankruptcies

Asarco	750
PCC	3,000
Quigley	200
THAN	900
WR Grace	2,500

Total - \$7,350,000,000

**Total assets
\$33,348,000,000**

1/ Primary source is Mealey's Litigation Report: Asbestos dated November 3, 2008; and other personal communications

Lists shown by the speaker detailed 2,980 sites and 13,056 ships on which one or more of the trusts acknowledged liability in scores of countries; those countries with the most sites were: Cuba (504), Mexico (387), Brazil (236),

Peru (154), Venezuela (114), Portugal (95), Italy (95), Columbia (82), Chile (79), Japan (79), India (65), Dominican Republic (59), Argentina (58), Spain 55 [41].

As the U.S. boilermaker Babcock & Wilcox (B&W) had the most approved foreign sites (2,285) and ships (8,022), it was the focus of the remarks illustrating how a claim could be pursued. From links on the B&W Asbestos Trust website, you could access information on: how to file a claim, qualifications for payment, popular downloads, B&W approved site lists and significant occupational exposure ratings [42]. Useful website features included: FAQs, a glossary, video training programs, online tools and documents for downloading such as instructions for filing a claim, a claim form, a B&W exposure affidavit, etc. For a B&W claim to succeed, claimants must show: exposure to a B&W product, the name and location of the worksite, their occupation when they worked with the contaminated product, the length of time they worked with the product, their disease, their dependents and their economic loss (optional). If someone was employed at a worksite already on the approved B&W site list, the process was even more straightforward than otherwise.

Many non-U.S. workers might have been exposed to B&W boilers on board ships; the speaker showed how a few minutes on the internet could establish if a ship was constructed with B&W boilers installed. Taking as his example a Korean naval vessel called the ROKS Chung Mu, a few Google searches showed that:

- before 1963, the Chung Mu had been an American naval vessel called the USS Erben; it was launched in 1943 in Maine and was sold to the Korean Navy in 1963;
- the Erben (DD-631) was a Fletcher-class destroyer;
- four B & W boilers were standard for Fletcher-class destroyers.

Throughout the session, questions were asked on a range of procedural issues; such as the value of claims, feasibility of bringing a claim if a victim worked for a subsidiary, difficulties in bringing claims arising from exposures at foreign sites not on the approved list, status of a claim when a victim dies (the claim survives and is processed on behalf of surviving relatives), time frame, evidence required to prove employment and income. The session concluded with an offer of ongoing advice and consultation to NGOs and victims' group representatives at no charge.

NB. The slides from this presentation, which include detailed instructions for submitting claims to US bankruptcy trusts, can be seen on the speaker's website: <http://www.kazanlaw.com/AACWorkshop>