

Testimony of  
**Mr. David T. Austern**

September 25, 2002

Mr. Chairman and Members of the Committee: My name is David T. Austern. I am President of the Claims Resolution Management Corporation (the "CRMC") and General Counsel of the Manville Personal Injury Settlement Trust (the "Trust"). The CRMC is a fully-owned subsidiary of the Trust and serves as its claims processing facility. The CRMC also processes asbestos claims and performs services for three other asbestos trusts. On behalf of the Trustees of the Trust and the Directors of the CRMC, thank you for the opportunity to testify at this Hearing and to submit this testimony for the record.

In summary, this statement (and my testimony of the same date) is intended to show that notwithstanding the large number of asbestos-related bankruptcies to date (over 50) and the billions of dollars paid to asbestos claimants, we have seen less than one-half of all the asbestos claims that will be filed. In fact, depending on which future claims forecast you employ, based on claims already filed and future claim forecasts, to date we have seen between 17% and 42% of the total asbestos claims that will be filed. Two leading actuarial firms predict that total losses due to asbestos liability in the United States will be from \$250 billion to \$275 billion, with a large portion of that total (between \$100 billion and \$175 billion) not covered by insurance. The Trust was established following the bankruptcy of the Johns Manville Corporation in 1982. Because of the lengthy bankruptcy proceedings and the appeals that followed, the Trust did not begin to process asbestos claims until November 1988, when bankruptcy "Consummation" occurred. At that time, the Trustees received in (then) present value dollars Two Billion, Fifty Million (\$2,050,000,000), consisting of Johns Manville Corporation stock, debt instruments, insurance collections and cash. From November 1988 through August 31, 2002, the Trust has paid over \$2.9 billion to approximately 500,000 claimants. As of August 31, 2002, the Trust had remaining assets of approximately \$1.8 billion.

Unfortunately, however, on behalf of the Trust, CRMC pays only a small percentage of each claim's liquidated value. At present, claimants receive a pro rata payment of 5% of the claim's liquidated value as determined by the Trust Distribution Process ("TDP"), the claims processing and payment plan approved following a class action filed in the United States District Court for the Eastern District of New York that established a claim payment matrix pursuant to which Trust claims are resolved.

The reason the Trust pays claimants only 5% of liquidated value is because of a substantial Trust asset/liability mismatch. Notwithstanding the Trustees' success described in footnote 3, Trust claim filings, particularly in recent years, have far exceeded the number that would allow the Trust to pay more than a fraction of a claim's liquidated value. Unfortunately, these claim filings also have exceeded, in almost every year since Trust inception, the predictions of the Bankruptcy Court's future claims forecasters and future claims forecasters retained by the Trust. During the Johns Manville bankruptcy, the testimony before the Bankruptcy Court was that the Trust could expect to receive between 83,000 and 100,000 claims during the life of the Trust that, because of the long latency period associated with all asbestos-related diseases (10 to 45 years), was expected to run from Trust inception to 2049.

Trust claim filings have far exceeded these "expectations," as follows:

1988 32,473  
1989 100,197  
1990 21,541  
1991 15,309  
1992 15,747  
1993 14,108  
1994 24,444  
1995 31,513  
1996 51,057  
1997 23,674  
1998 29,424  
1999 31,733  
2000 58,041  
2001 89,438  
Total 538,699

Notwithstanding a four-month claim filing moratorium during the first six months of 2002, while the CRMC transitioned to a more efficient and cost-effective electronic claims submission system, as of August 31, 2002, the CRMC already this year had received approximately 25,000 Trust claims. Thus, with 47 more years during which, according to the best asbestos epidemiological knowledge, Trust claims will be filed, the Trust already has received almost six times the maximum number of claims the Bankruptcy Court experts predicted it would receive. More alarming still, the current asbestos future claims forecast presents a daunting picture of the number of claims the Trust can expect to receive in the future. Depending on the calibration period used, the future claims forecasters predict that from 2001 through 2049 the Trust can expect to receive between 750,000 and 2.7 million additional claims. Other predictions of future claims filings, depending on the calibration period, are 1,030,000; 1,195,000; 1,290,000; 1,418,000; 1,578,000; and 1,615,000. The weighted average of the future claims forecast is 1,422,000.

Thus, when added to the claims already received, the prediction is that total Trust claim filings will be between approximately 1,310,000 and 3,250,000, or between thirteen times and thirty-two times the maximum number of claims predicted during the Johns Manville bankruptcy. The weighted future claims forecast will result in total Trust claims approximately twenty times the maximum number of claims predicted.

In light of the foregoing, one might reasonably speculate as to whether accurate future claims forecasting can be done at all. Indeed, not only did the Bankruptcy Court's experts badly underestimate the Trust's claim filings, the Trust's experts' experience with future claims forecasting has been almost as error prone. Presented below is a summary of the future claims forecasts the Trust has received, by forecast year, the future claims forecast, and the percentage increases from forecast to forecast:

Forecast Claim Filings Percentage Increase

Forecast Year From 2002 to 2049 From Prior Forecast

1993 48,600 108%  
1995 266,000 447%  
1997 333,500 25%

2000 441,000 32%

2001 1,422,000 222%

Among the reasons for the increases described above is that these asbestos future claim forecasts employed a medical model. This type of model assumes that the number of claims is closely tied to the number of people projected by epidemiology to develop each type of asbestos-related disease. A medical model suggests that claimants will first develop an illness, then visit a medical professional, and finally be referred to an attorney after they learn they have an asbestos-related disease. Because there is some evidence that this is not the procedure that is currently being followed, the CRMC is considering an alternative model for the purpose of predicting the number of future asbestos claims filings.

There is additional evidence to support the view that wherever we are in the asbestos claims life cycle, we have not yet received a majority of the asbestos claims that will be filed. As the members of this Committee know, while asbestos use in the U.S. has dropped sharply in the last twenty years, asbestos use is not banned. The following chart reflects asbestos consumption in the U.S. between 1961 and 2001.

The source for the data on the preceding page is the Minerals Yearbook of the United States Bureau of Mines and the United States Geological Survey. The peak apparent consumption years were 1972 and 1973. The apparent consumption figures are in metric tons, rather than in English tons (2,000 pounds), so you must add approximately 10% to the consumption figures to determine English tons.

As reflected in the chart, asbestos consumption has declined since 1973, but approximately 120,000 metric tons of asbestos were consumed in the United States as recently as 1986, and as recently as last year, approximately 22,000 metric tons were consumed.

The continuing use of asbestos and asbestos-containing products is unfortunate for a number of reasons. The first, obviously, concerns public health, as this known carcinogen that also causes many other injuries continues to be employed in the manufacture of scores of different products. From a future claims forecast point of view, the continuing use also is unfortunate. Because of the long latency periods between year of first exposure to asbestos and onset of disease (10 to 45 years), the CRMC is currently compensating claimants first exposed to asbestos during the 1950s and very early 1960s - years before asbestos consumption peaked in the United States. Injuries related to continuing use of asbestos will not be seen for decades.

The CRMC records data for each claim filed with the Trust, including year of first exposure to asbestos or an asbestos-containing product, by industry and by injury. With respect to year of first exposure by industry, for claims filed during 1990 the year of first exposure among four randomly selected industries was between 1951 and 1956; for claims filed during 2000, the year of first exposure had increased only to between 1958 and 1961. For claims filed during 1990, the year of first exposure by injury -- again, because of the long latency period -- ranged from 1947 to 1953; for claims filed during 2000, the year of first exposure by injury had increased only to between 1952 and 1961.

Thus, whether you measure year of first exposure by industry or injury, based on historic United States asbestos consumption, the CRMC can reasonably expect very substantial future claim filings for the next twelve years, or until the year of first exposure (now only 1961 for both industry and injury) reaches 1973, the most recent "peak year." But note that it was not until 1987 that apparent asbestos consumption in the United States dipped below 100,000 metric tons. It appears that substantial claim filings will continue for at least twenty-six more years, and then

will continue, albeit at a reduced rate, for at least two additional decades.

Based on the foregoing, it is apparent that at least in the world of future asbestos claims filings, what is past is not necessarily prologue. Therefore, the Committee should be made aware of the following: employing predictive factors that do not rely heavily on a medical model, Tillinghast-Towers Perrin, an international actuarial firm, has estimated that total United States domestic asbestos claims filings will be 1,636,000, a number greater than the lowest predicted number of future Trust claim filings described on page 4 above, but only approximately one-half of the highest predicted number of future Trust claim filings. Another well-known international actuarial firm, Milliman, predicts total asbestos claims filings will be 1,049,000.

Both actuarial firms, however, predict very high "ultimate losses and expenses" due to United States asbestos exposure. Tillinghast-Towers Perrin estimates the total losses to be \$250 billion, approximately \$100 billion of which will not be covered by insurance. Milliman estimates the total losses to be \$275 billion, approximately \$175 billion of which will not be covered by insurance. Both actuarial firms base their uninsured loss estimates on the assumption that all insurance companies that are liable for the asbestos losses of their insureds, both domestic and foreign, will remain solvent.

In addition, the Committee should know that as of September 1, 2002, the Trust began to operate pursuant to a Trust Distribution Process that substantially alters claim filing requirements. The CRMC is not in a position at this time to determine the extent, if any, to which future claim filings will be reduced because of changes in claim filing criteria. However, it is expected that there will be some reduction in the number of claims that are filed as a result of the criteria changes.

Because the Trust is the largest of the extant asbestos trusts, because the Trust's grantor, the Johns Manville Corporation, was - by far - the largest domestic producer of asbestos and asbestos-containing products, the CRMC and the Trust have always served as the coal mine canary for procedures and practices associated with the processing of asbestos claims. Our claims data, encompassing as it does almost 600,000 asbestos claims, is the largest asbestos data base. It does not necessarily follow from this that our analyses or predictions are infallible - indeed, experience has proven otherwise. However, I believe that data leaves little doubt that the asbestos claims liability problem is far from over. We expect that more claims will be filed in the future than have been filed thus far.

In twenty years, we have learned that time alone has not and will not solve "the asbestos problem."