

Where Are They Now? Part Two:

A Continuing History Of The Companies That Have Sought Bankruptcy Protection Due To Asbestos Claims

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Commentary**Where Are They Now? Part Two:****A Continuing History Of The Companies That Have Sought Bankruptcy Protection Due To Asbestos Claims**

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More than a year ago, we published in these pages what we described then as "a (hopefully) comprehensive chronology of the asbestos-related bankruptcies and a brief summary of the status of the more prominent filings."¹ We also made the not-so-fearless prediction that the June, 2001 bankruptcy filing by USG Corp. "almost certainly will not be the last asbestos-related bankruptcy."² Not surprisingly, our crystal ball has proved completely accurate, as there have been at least ten asbestos-related bankruptcies filed in the past year and a half, bringing the total of asbestos-related bankruptcies to nearly 60 companies. More to the point, as noted by the RAND Institute for Civil Justice, both plaintiffs' and defendants' attorneys expect that all "traditional" asbestos defendants will have filed for bankruptcy by the end of 2003.³

This article updates our last one by noting the asbestos-related bankruptcies that have been filed in the past eighteen months and summarizing some key developments in asbestos bankruptcies. At the end of the article, we present a chart listing asbestos bankruptcies that have been filed so far.

1. Who Filed The Most Recent Asbestos Bankruptcies?

First among the new asbestos-related bankruptcy filings in the past eighteen months was auto-parts maker Federal-Mogul, which filed for bankruptcy protection in the United States Bankruptcy Court for the District of Delaware on October 1, 2001.⁴ Facing more than 365,000 claims and about \$700 million in costs since 1998 and expecting to pay \$900 million by 2004 to settle asbestos claims, the Michigan-based company said it was left with no other choice but to pursue Chapter 11.⁵

Federal-Mogul's filing arguably spurred the extraordinary order issued on November 27, 2001 by Chief Judge Edward R. Becker of the U.S. Court of Appeals for the Third Circuit, in which he assigned five asbestos-related bankruptcy cases pending in the District of Delaware — Federal-Mogul, Owens Corning, W.R. Grace, Armstrong World Industries and USG Corp. — to U.S. District Judge Alfred M. Wolin of the District of New Jersey for coordinated supervision.⁶ Although there has been some speculation that other cases pending in the Third Circuit might be assigned to Judge Wolin (such as G-I Holdings in New Jersey or Kaiser Aluminum in Delaware), his authority has yet to be expanded.

Swan Transportation Company, an inactive subsidiary of Tyler Technologies, was the last asbestos-related bankruptcy filing of 2001. Swan filed for Chapter 11 protection in the U.S. Bankruptcy Court for the District of Delaware on December 20, 2001.⁷ Tyler Technologies intends to use the Swan Transportation bankruptcy as a mechanism for resolving approximately 1,400 asbestos and silica claims.⁸

In January, 2002, North American Refractories Co. ("NARCO"), a subsidiary of RHI Refractories Holding Company, filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the Western District of Pennsylvania.⁹ NARCO cited "overwhelming asbestos claims" as the reason for its filing.¹⁰

In February, 2002, Kaiser Aluminum Corporation, Kaiser Aluminum and Chemical Corporation and certain wholly owned subsidiaries filed Chapter 11 petitions in the United States Bankruptcy Court for the District of Delaware, citing, among other reasons, the increasing burden of asbestos litigation.¹¹ At the time of its filing, Kaiser faced approximately 112,000 asbestos liability suits and liability costs of \$633 million or more.¹² Kaiser appears to be unusual among the recent wave of asbestos bankruptcy filings in that the debtors also face significant non-asbestos financial pressures. For instance, along with the costs of the asbestos litigation, in announcing its Chapter 11 filing Kaiser cited significant near-term debt maturities, financial problems in the aluminum industry generally, and rising costs of worker retirements and pensions.¹³ The fact that Kaiser's bankruptcy is not solely asbestos-driven promises to give the case a layer of added complexity.

Also in February, 2002, Harbison-Walker Refractories Co. and A.P. Green Industries, Inc., subsidiaries of RHI Refractories Holding Company, filed Chapter 11 petitions in the U.S. Bankruptcy Court for the Western District of Pennsylvania.¹⁴ The cases have been consolidated for administrative purposes with the Chapter 11 case of another RHI subsidiary, Global Industrial Technologies, Inc. RHI's press release announcing the Harbison-Walker and A.P. Green filings cited the "soaring number of asbestos claims" as the reason for the filings.¹⁵ Harbison-Walker faced more than 130,000 asbestos-related claims at the time of filing.¹⁶

Two asbestos bankruptcies were filed during March, 2002. First among these was refractories producer Plibrico, which filed for bankruptcy protection on March 13, 2002 in the U.S. Bankruptcy Court for the Northern District of Illinois.¹⁷ Facing approximately 100,000 asbestos-related claims, Plibrico reported that it had no choice but to seek Chapter 11 protection.¹⁸

Two days later, on March 15, 2002, Porter-Hayden Co., with 58,000 pending asbestos cases, sought Chapter 11 protection in the U.S. Bankruptcy Court for the District of Maryland.¹⁹ One of Porter-Hayden's attorneys stated that the bankruptcies of other asbestos defendants had resulted in increased settlement demands and new filings from plaintiffs' attorneys that had not previously sued Porter-Hayden.²⁰

On April 8, 2002, Shook and Fletcher, facing more than 50,000 asbestos claims, filed a "prepackaged" Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Alabama.²¹ The plan includes provisions for the creation of an asbestos trust, along with a scheme for classifying potential claims, methods of distributing settlement payments and determining equity interests, and a protocol for dealing with claim disputes.²² Shook and Fletcher indicated that if the

prepackaged plan is not approved, it would be forced to resort to more "traditional" (*i.e.*, more expensive and drawn-out) Chapter 11 procedures.²³

Citing the rising tide of asbestos claims against it, Artra Group, Inc. filed for Chapter 11 protection in the U.S. Bankruptcy Court for the Northern District of Illinois on June 3, 2002.²⁴ Facing approximately 50,000 asbestos-related claims and upwards of \$100 million in unresolved judgments, the petition encompasses numerous subsidiaries including Synkoloid Co., which has suffered several adverse verdicts over the past years.²⁵

On August 19, 2002, Asbestos Claims Management Corporation ("ACMC"), formerly known as National Gypsum Co., filed a prepackaged Chapter 11 plan in the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division.²⁶ ACMC was created under the confirmed Chapter 11 reorganization plan of National Gypsum as a vehicle to compensate asbestos claimants against National Gypsum, which had filed for bankruptcy protection in 1990. ACMC ran out of money to pay asbestos claimants, forcing claimants against ACMC to make their claims directly against "new" National Gypsum Co., a separate company established under National Gypsum's reorganization plan. ACMC and new National Gypsum Co. entered into a settlement in April, 2002 to resolve current asbestos claims as well as an estimated 400,000 future claims. New National Gypsum agreed to contribute \$347 million to the creation of an "NGC Bodily Injury Trust."²⁷ ACMC filed the Chapter 11 plan to implement the settlement and to provide new National Gypsum with an injunction against future asbestos claimants under Section 524(g).²⁸

Citing the dramatically rising number of asbestos claims against it as a result of the bankruptcy filings of several other asbestos defendants, ACandS, Inc. filed for Chapter 11 protection in the U.S. Bankruptcy Court for the District of Delaware on September 16, 2002.²⁹ ACandS reported that it had more than 250,000 asbestos claims pending against it at the time of filing.³⁰

Also pointing to an unmanageable number of asbestos personal injury claims against it, A-Best Products Co. Inc. filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the District of Delaware on September 20, 2002.³¹ A-Best reported that it was defending approximately 50,000 pending asbestos cases as of May 1, 2002.³²

On October 1, 2002, JT Thorpe Company filed a prepackaged Chapter 11 plan in the U.S. Bankruptcy Court for the Southern District of Texas, Houston Division.³³ JT Thorpe reported costs for asbestos claims to date in excess of \$110 million, half of which has been incurred since January, 2000.³⁴ JT Thorpe estimated that it has 50,000 current claims against it totaling over \$130 million and that the company is being named in approximately 600 new lawsuits per month.³⁵ JT Thorpe filed its Chapter 11 case to implement a settlement agreement among JT Thorpe, the Asbestos Claimants Committee, and Thorpe Corporation. Thorpe Corporation and its subsidiaries agreed to fund a Section 524(g) trust in an amount equal to the value of JT Thorpe in return for a release of Thorpe Corporation and certain of its subsidiaries from liability for asbestos claims.³⁶

It doesn't take much of a crystal ball to predict that the number of asbestos-related bankruptcies will continue to increase during the coming months. As JT Thorpe recently stated, a large proportion of asbestos "claims involve claimants who . . . have manifested no asbestos-related injury. With the demise of traditional manufacturing defendants, claimants are looking more and more to [other] defendants for compensation for their claims."³⁷ As companies that were heretofore peripheral to asbestos litigation are dragged into the midst of it, we are certain to see an increasing number of those companies fall under the weight of that litigation and seek Chapter 11 protection.

2. New Developments In Asbestos-Related Bankruptcies

In addition to these new bankruptcies, the past months have seen new legal strategies in the bankruptcy arena. With claims against asbestos defendants continuing to rise — some defendants saw up to 90,000 new asbestos lawsuits in 2001 alone³⁸ — and facing a tort system that has

not provided any relief, certain companies have asked the bankruptcy courts to take a more active role in changing the asbestos litigation environment.

As noted above, a major development in the field of asbestos-related bankruptcies occurred in November, 2001 when Chief Judge Edward R. Becker of the U.S. Court of Appeals for the Third Circuit assigned supervisory responsibility over five major asbestos bankruptcies to U.S. District Judge Alfred M. Wolin of the District of New Jersey.³⁹ In his order, Judge Becker stated:

[I]t is my considered judgment that these bankruptcy cases, which carry with them tens of thousands [of] asbestos claims, need to be consolidated before a single judge so that a coordinated plan for management can be developed and implemented. It is contemplated that Judge Wolin will assign a portion of these cases to various bankruptcy judges sitting in the District of Delaware so they may assist in moving these matters forward. As a significant portion of the asbestos cases in this country are proceeding under the aegis of this litigation, I deem this assignment and consolidation critically important to the administration of justice.⁴⁰

Judge Becker stated that bringing together the Armstrong World Industries, Federal-Mogul, Owens Corning, USG Corp. and W.R. Grace bankruptcies under the supervision of a single district judge might not only expedite the proceedings, but also provide some level of consistency in the rulings.⁴¹

After Judge Becker issued this order, the "Big Three" automakers (Ford, Chrysler, and General Motors) and others petitioned the court in the *Federal-Mogul* bankruptcy to use its "related to" jurisdictional power to provide a coordinated and consistent approach for resolving common issues such as medical causation issues in connection with friction products such as brake pads. (28 U.S.C. § 1334(b) extends bankruptcy jurisdiction to state law claims between non-diverse parties where the litigation may have an effect on the debtor's estate).⁴² Specifically, the movants alleged that claims against them were "related to" the debtor's bankruptcy because any resulting judgment against the movants would create indemnity claims against the debtor, which would affect the debtor's estate.

Citing the Third Circuit's decision in *Pacor, Inc. v. Higgins*,⁴³ Judge Wolin held that the claims against the movants did not qualify for "related to" jurisdiction because a judgment against the movants would not bind the Federal-Mogul estate.⁴⁴ Alternatively, Judge Wolin said he would abstain from exercising jurisdiction over the claims against the movants in light of concerns for comity and the court's orderly management of the bankruptcy.⁴⁵

The movants appealed to the Third Circuit, which held that it lacked appellate jurisdiction to review Judge Wolin's decision because of federal statutes that preclude review, "by appeal or otherwise," of district court remand orders.⁴⁶ The court acknowledged that both the Federal-Mogul bankruptcy and the movants' attempt to remove state court lawsuits to Delaware bankruptcy court were symptoms of what the court termed "the crisis created by the current asbestos litigation."⁴⁷ The court went on to say that "[a]rguably, a procedure authorizing the aggregation of state court cases, such as the Friction Product Claims, into a nationwide class action would provide a mechanism for a *Daubert* hearing like the one Defendants seek."⁴⁸ However, the court noted, "such proposals, frequently made, have not passed both houses of Congress."⁴⁹

Bankruptcy courts have also been asked to address issues concerning the huge number of claims being filed by so-called "unimpaired" claimants. The experience of the Johns-Manville Trust provides an example of the drain on assets created by unimpaired claimants. New claims filed with the Trust grew from 23,674 in 1997 to 89,438 in 2001.⁵⁰ Most of the increase was driven by claimants who do not suffer from any functional impairment, leading the Manville Trust to re-

port that "non-malignancy claims from principally unimpaired individuals continue to defy projections."⁵¹ Notably, in 2001, 93 percent of the claims filed were by persons who were not suffering from any asbestos-related cancers.⁵² Between 1999 and 2001, the Trust actually paid out more for claims in which the claimant did not even assert impairment than it paid out for all cancer claims combined.⁵³

In September 2002, the Manville Trust proposed an amendment to its payment provisions based upon the history of claims filed against it and its estimation of future claims. As a result, the value of all claims against the Trust was discounted by 95 percent of the values provided by the payment plan. Individuals with mesothelioma are still paid relatively little when compared to unimpaired claimants under the amended plan, leading many to argue that not enough has been done to address the unimpaired claimant problem. The Manville Trust further proposed to review and revise the payment plan as necessary in one year, based on the manner in which claims come in and are paid during the current year.⁵⁴

Further, in an attempt to manage the increasing number of claims made by unimpaired claimants, and to preserve assets for claimants who are truly sick, USG Corporation and W.R. Grace have sought to establish a substantive claims estimation process in their respective bankruptcy cases, which would require claimants to produce sufficient evidence and demonstrate a sufficient legal grounding for their claims before those claims would be allowed.⁵⁵ (There have been similar efforts to employ objective medical criteria in the Babcock and Wilcox and other asbestos bankruptcies.) Both motions are pending before Judge Wolin.

Another noteworthy recent trend is the recent spate of "pre-packaged" bankruptcy filings such as those filed by Shook and Fletcher and JT Thorpe (all discussed above). In these cases, the debtor circulates its plan of reorganization and required disclosure statement pre-petition and solicits the required approvals before filing its bankruptcy case. This procedure is designed to both reduce costs and minimize the amount of time the debtor is subject to bankruptcy court supervision before emerging under the protection of a channeling injunction against asbestos claims under Section 524(g) of the Bankruptcy Code. There are risks, however: for example, if parties dissatisfied with the proposed plan persuade the bankruptcy court to disapprove the disclosure statement used to solicit pre-petition acceptances of the plan or the "futures representative" selected to take part in the pre-petition negotiations, the bankruptcy case may take longer than anticipated, and any pre-petition deals could unravel. Perhaps to minimize the risk of such adverse developments, although the debtor in the APMC bankruptcy case reached pre-petition plan agreements with its creditors (including asbestos claimants) and certain other parties in interest, it did not solicit plan acceptances before filing its Chapter 11 case, preferring instead to wait for bankruptcy court approval of its disclosure statement before commencing the balloting process.

3. What's Next?

Now, a year and a half since our last article, the fact remains that with the tort system unable to control the asbestos litigation environment and no legislative solution in place, the only remedy for companies facing ever-increasing numbers of asbestos related claims is bankruptcy court. As this article was being finalized, ABB, the parent company of Combustion Engineering ("CE"), announced that mounting compensation payments to asbestos claimants could force CE into bankruptcy protection and that the company was in talks with attorneys representing asbestos claimants.⁵⁶ ABB has "seen costs soar to more than \$1 billion as thousands of healthy victims have flooded U.S. courts with claims for illnesses that may result from asbestos exposure," and the threat of CE's bankruptcy is a "direct response to [the] continued failure to find any political or judicial solution to the asbestos crisis."⁵⁷ ABB's predicament highlights the unfortunate reality that absent a change in the way courts in both the tort and bankruptcy systems manage asbestos claims, the only certainty for the future is that more and more companies will seek protection from asbestos claims through bankruptcy.

ENDNOTES

1. Mark D. Plevin and Paul W. Kalish, *Where Are They Now? A History Of The Companies That Have Sought Bankruptcy Protection Due To Asbestos Claims*, *Mealey's Asbestos Bankruptcy Report*, Vol. 1, No. 1 at 27 (Aug. 2001).
2. *Id.* at 31.
3. Deborah Hensler, Stephen Carroll, Michelle White and Jennifer Gross, *Asbestos Litigation in the U.S.: A New Look at an Old Issue*, RAND Institute for Civil Justice (Aug. 2001) at 25.
4. *In re Federal-Mogul Global, Inc., et al.*, No. 01-10578 (Bankr. D. Del., filed October 1, 2001).
5. See Terry Brennan, *Asbestos, Debt Drives Federal-Mogul Under*, *THEDEAL.com* (October 2, 2001), available at 2001 WL 25883031; Mitchell Pacelle, *Federal-Mogul Plans to Seek Chapter 11 Protection*, *WALL STREET JOURNAL*, October 1, 2001, at A3.
6. Order, Designation of a District Judge for Service in Another District Within the Circuit, Nov. 27, 2001, reproduced in *Mealey's Litigation Report: Asbestos*, Vol. 16, No. 21 (December 7, 2001).
7. See *In re Swan Transportation Co.*, No. 01-11690 (Bankr. D. Del., filed Dec. 20, 2001).
8. See Tyler Technologies, Inc., 2001 Form 8-K Report (December 28, 2001).
9. *In re North American Refractories Co.*, No. 02-20198 (Bankr. W.D. Pa., filed Jan. 4, 2002).
10. *Id.*
11. *In re Kaiser Aluminum Corp., et al.*, No. 02-10429 (Bankr. D. Del., filed Feb. 12, 2002).
12. See Robert Guy Matthews, *Kaiser Aluminum Files for Bankruptcy Under Chapter 11*, *WALL STREET JOURNAL*, February 13, 2002, at A4.
13. *Id.* A press release issued by Kaiser at the time of its Chapter 11 filing stated:

Kaiser has been facing significant near-term debt maturities at a time of unusually weak aluminum industry business conditions, depressed prices, and a broad economic slowdown that was further exacerbated by the events of September 11. In addition, the company has become increasingly burdened by asbestos litigation and growing legacy obligations for retiree medical and pension costs. The confluence of these factors has created the prospect of continued operating losses and negative cash flow, resulting in lower credit ratings and an inability to access the capital markets.

See *Kaiser Aluminum Files for Chapter 11, Cites Asbestos Litigation as Factor*, *Mealey's Litigation Report: Asbestos*, Vol. 17, No. 2 at 9 (February 2002).
14. *In re Harbison-Walker Refractories Co.*, No. 02-21627 (Bankr. W.D. Pa., filed Feb 14, 2002); *In re A.P. Green Indus., Inc.*, No. 02-21639 (Bankr. W.D. Pa., filed Feb. 14, 2002).
15. See *RHI AG Announces U.S. Refractory Subsidiaries Have Filed for Bankruptcy*, *Mealey's Litigation Report: Asbestos*, Vol. 17, No. 3 at 9 (March 1, 2002).
16. See Alexei Barrionuevo and Susan Warren, *Halliburton, Honeywell See Bankruptcies as Way to Manage Woes of Asbestos Suits*, *WALL STREET JOURNAL*, February 19, 2002, at C23.
17. *In re Plibrico Co.*, Nos. 02-09952 and 02-09957 (Bankr. N.D. Ill., filed March 13, 2002).

18. See *Refractories Maker Plibrico Files for Chapter 11 Protection in Illinois*, **Mealey's Litigation Report: Asbestos**, Vol. 17, No. 5 at 20 (April 5, 2002).
19. *In re Porter-Hayden*, No. 02-54152 (Bankr. D. Md., filed March 15, 2002); *Insulation Company Porter-Hayden Files for Chapter 11 Protection In Maryland*, **Mealey's Litigation Report: Asbestos**, Vol. 17, No. 5 at 20 (April 5, 2002).
20. Peter Geier, *The Maryland Daily Record*, Vol. 2, No. 214 (March 19, 2002).
21. *In re Shook and Fletcher Insulation Co.*, No. 02-02771-BGC-11 (Bankr. N.D. Ala., filed April 8, 2002). See also *Shook & Fletcher Set to File for Chapter 11 Protection, Soliciting Votes for Plan*, **Mealey's Litigation Report: Asbestos**, Vol. 17, No. 5 at 19 (April 5, 2002).
22. *Id.*
23. *Id.*
24. *In re Artra Group Inc.*, No. 02-21522 (Bankr. N.D. Ill., filed June 3, 2002).
25. See *Artra Group Inc. Announces Chapter 11 Bankruptcy Filing in Illinois Court*, **Mealey's Litigation Report: Asbestos**, Vol. 17, No. 9 at 16 (June 7, 2002).
26. *In re Asbestos Claims Management Corp.*, No. 02-37124 (Bankr. N.D. Tex., filed Aug. 19, 2002).
27. See *Asbestos Claims Management Corp. Files for Chapter 11 Bankruptcy Protection in Texas*, **Mealey's Litigation Report: Asbestos**, Vol. 17, No. 15 at 10 (Sept. 6, 2002).
28. See *Asbestos Claims Management Corp. Files Prepackaged Chapter 11 Plan*, HARRISMARTIN COLUMNS, October 2002, at 16.
29. *In re ACandS, Inc.*, No. 02-12687-MFW (Bankr. D. Del., filed Sept. 16, 2002).
30. See *ACandS, Inc. Files for Chapter 11 Bankruptcy Protection*, **Mealey's Asbestos Bankruptcy Report**, Vol. 2, No. 2 at 4 (Sept. 2002).
31. *In re A-Best Products Company Inc.*, No. 02-12734-JKF (Bankr. D. Del., filed Sept. 20, 2002).
32. See *Debtor's Motion for Entry of an Order Authorizing the Appointment of a Legal Representative for Future Unknown Asbestos Claimants*, *In re A-Best Products Co. Inc.*, No. 02-12734-JKF (Bankr. D. Del. Sept. 20, 2002).
33. *In re JT Thorpe Co.*, No. 02-41487-H5-11 (Bankr. S.D. Tex., filed Oct. 1, 2002).
34. See *Declaration of Gerald W. Scott in Support of JT Thorpe Company's Voluntary Petition Under Chapter 11 of Title 11 of the United States Code and First Day Motions*, *In re JT Thorpe Co.*, No. 02-41487-H5-11 (Bankr. S.D. Tex. October 1, 2002).
35. See *Notice of Designation as Complex Chapter 11 Bankruptcy Case*, *In re JT Thorpe Co.*, No. 02-41487-H5-11 (Bankr. S.D. Tex. October 1, 2002).
36. See *Declaration of Gerald W. Scott in Support of JT Thorpe Company's Voluntary Petition Under Chapter 11 of Title 11 of the United States Code and First Day Motions*, *In re JT Thorpe Co.*, No. 02-41487-H5-11 (Bankr. S.D. Tex. October 1, 2002).
37. *Id.*

38. See Soma Biswas, *Asbestos Reconsidered*, THEDEAL.com (May 16, 2002), available at 2002 WL 6790431. See generally *Asbestos Companies Report Annual Numbers of Pending Claims, New Filings in 2001*, *Mealey's Litigation Report: Asbestos*, Vol. 17, No. 8 at 9 (May 17, 2002).
39. Order, Designation Of A District Judge For Service In Another District Within The Circuit, Nov. 27, 2001, reproduced in *Mealey's Litigation Report: Asbestos*, Vol. 16, No. 21 (December 7, 2001).
40. *Id.*
41. *Id.*
42. See 28 U.S.C. § 1334(b). See, e.g., *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984); *In re Federal-Mogul Global, Inc.*, ___ F.3d ___, 2002 WL 1763923 (3d Cir. July 31, 2002).
43. *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984).
44. *In re Federal-Mogul Global, Inc.*, No. 01-10578 *et al.*, slip op. (Bankr. D. Del. Feb. 15, 2002).
45. *Id.*
46. *In re Federal-Mogul Global, Inc.*, ___ F.3d ___, 2002 WL 1763923 (3d Cir. July 31, 2002).
47. *Id.*
48. *Id.*
49. *Id.*
50. See *Asbestos Litigation: Hearing Before the Senate Comm. on the Judiciary*, 107th Cong. (Sept. 25, 2002) (statement of David Austern, General Counsel, Manville Personal Injury Settlement Trust).
51. See Year-End Report of the Manville Personal Injury Settlement Trust as of December 31, 2001, *In re Johns-Manville Corp.*, Case Nos. 82-B-11656 through 82-B-11676.
52. See David Austern, *Fiction & Facts from the Asbestos Almanacs* 10 (Aug. 2002) (presented at ALI-ABA Conference "Asbestos Litigation in the 21st Century," Sept. 19-20, 2002).
53. See *Asbestos Litigation: Hearing Before the Senate Comm. on the Judiciary*, 107th Cong. (Sept. 25, 2002) (statement of plaintiffs' lawyer Steven Kazan) (citing Letter from David Austern, General Counsel of Manville Trust, to Joseph Rice, Claims Resolution Management Corporation (Aug. 20, 2002)).
54. See *Manville Trust Distribution Process* (Sept. 4, 2002).
55. Debtor's Motion for Case Management Order for Substantive Estimation Hearings, *In re USG Corporation*, Nos. 01-2094 through 01-2104 (Bankr. D. Del. July 3, 2001); Motion as to All Asbestos Personal Injury Claims for Entry of Case Management Order, Establishment of a Bar Date, Approval of the Proof of Claim Forms and of the Notice Program, *In re W.R. Grace & Co.*, No. 01-01139 (Bankr. D. Del. Apr. 2, 2001).

USG and W.R. Grace are not breaking new ground with their attempt to use the bankruptcy court to establish a method for determining the validity of asbestos claims. For example, debtor Babcock & Wilcox ("B&W") filed a motion for a case management order in the Bankruptcy Court for the Eastern District of Louisiana on October 18, 2001. In its motion, B&W contended that more than 130,000 of 176,000 claimants who had filed proofs of claim alleging asbestosis did not suffer from any physical impairment. B&W's proposed case management order contained a protocol for determining the validity of asbestos personal injury claims similar to those proposed by USG and W.R. Grace. See *Babcock & Wilcox — Proposed Litigation Protocol*, *Mealey's Special Reports* (Oct. 2001).

56. See Alison Langley, *ABB Proposes a Settlement for All Asbestos Lawsuits*, THE NEW YORK TIMES, Nov. 2, 2002, at B2; Dan Roberts, Aline van Duyn and William Hall, *ABB Slumps on Asbestos Warning*, FINANCIAL TIMES.com (Oct. 22, 2002), available at <http://investor.ft.com/custom/ftmarkets-com/news/story.asp?guid={E79AE771-7DBE-4278-B715-919ED34972D71}&FTSite=FTMW>. See also *ABB's Asbestos Spectre Puts Skids Under Euro Peers*, FORBES.com (Oct. 22, 2002), available at <http://www.forbes.com/newswire/2002/10/22/rtr760441.html>
57. *Id.* ■

BANKRUPTCY FILINGS OVER THE YEARS

Company	Year
UNR Industries	1982
Johns-Manville	1982
Amatex Corporation	1982
Waterman Steamship Corporation	1983
Wallace and Gale Company	1984
Forty-Eight Insulations, Inc.	1985
Philadelphia Asbestos Corporation (Pacor)	1986
Standard Insulations, Inc.	1986
Prudential Lines, Inc.	1986
McLean Industries	1986
Gatke Corporation	1987
Nicolet, Inc.	1987
Todd Shipyards	1987
Raytech Corporation	1989
Delaware Insulations	1989
Hillsborough Holding Company	1989
Celotex Corporation	1990
Carey Canada, Inc.	1990
Ancor Holdings, Inc./National Gypsum	1990
Eagle-Picher Industries	1991
H.K. Porter Company	1991
Cassiar Mines	1992
Kentile Floors	1992
American Shipbuilding, Inc.	1993
Keene Corporation	1993
Lykes Brothers Steamship	1995
Rock Wool Manufacturing	1996
M.H. Detrick	1998
Fuller-Austin	1998
Brunswick Fabricators	1998
Harnischfeger Corp.	1999
Rutland Fire Clay	1999
Babcock and Wilcox Co.	2000
Pittsburgh Corning	2000
Owens Corning Corp./Fibreboard	2000
Armstrong World Industries	2000
Burns and Roe, Inc.	2001
G-I Holdings	2001
Skinner Engine Co.	2001
W.R. Grace	2001
USG Corp.	2001
E.J. Bartells	2001

BANKRUPTCY FILINGS OVER THE YEARS (cont.)

Company	Year
United States Mineral Products Co.	2001
Federal Mogul	2001
Swan Transportation Co.	2001
North American Refractories Corp. (Narco)	2002
Kaiser Aluminum	2002
Harbison-Walker Refractories Corp.	2002
A.P. Green Industries Inc.	2002
Global Industrial Technologies Inc.	2002
Plibrico Co.	2002
Shook & Fletcher	2002
Porter-Hayden	2002
Artra Group, Inc.	2002
Asbestos Claims Management Corporation (ACMC)	2002
ACandS	2002
JT Thorpe Company	2002
A-Best Products	2002

** Note — This list does not include corporations that are asbestos defendants but have filed for bankruptcy primarily for other reasons.*

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