

Asbestos Litigation: Better, But Not Over

**Casualty Loss Reserve Seminar – Chicago, IL
September 14, 2009**

Moderator:

Jennifer L. Biggs, FCAS, MAAA

Panelists:

Mark A. Behrens, Esq.

Michael J. Sehr, Esq.

Asbestos Litigation: Better, But Not Over

Session Description

- Asbestos litigation has changed dramatically in the last few years, with the pendulum swinging more in favor of defendants
- The era of mass screening of (fraudulent) claims has passed, corporate defendant bankruptcies are unlikely to resume at a significant pace, and many states have enacted reforms that focus resources on the sickest claimants
- The most serious mesothelioma claims are expected to continue for decades and remaining solvent defendants and their insurers continue to see upward pressure on the cost of these claims
- Approval of several bankruptcy trusts with \$30 - \$40 billion available to claimants will influence future claiming behaviors
- While the litigation landscape has changed for the better, significant liabilities remain and the future remains uncertain

Agenda

- Jenni Biggs
 - Introduction of Panelists
 - High Level Overview of Asbestos Litigation
- Mark Behrens
 - Update on Reforms
- Mike Sehr
 - Insurer / Claim Handler View
 - Claim Statistics
 - Primary Areas of Concern
 - Legislative, Legal, Judicial Environment
- Questions & Answers

Panelist Introduction

- Mark Behrens is a partner in the Public Policy Group at Shook, Hardy, & Bacon LLP in Washington, DC and is an expert in the fields of tort and liability reform and the judiciary. Mark will provide an update on recent legislative actions and judicial proceedings that shape the litigation environment.
- Mike Sehr is the Senior Vice President of Environmental and Mass Tort Claims at CNA Insurance Companies in Chicago and provides the front-line perspective of an insurer handling asbestos claims on behalf of their policyholders. Mike will share high level insights regarding nationwide trends, significant liability cost drivers, and areas that are of the most concern for the future.

Asbestos – High Level Overview of Litigation Environment

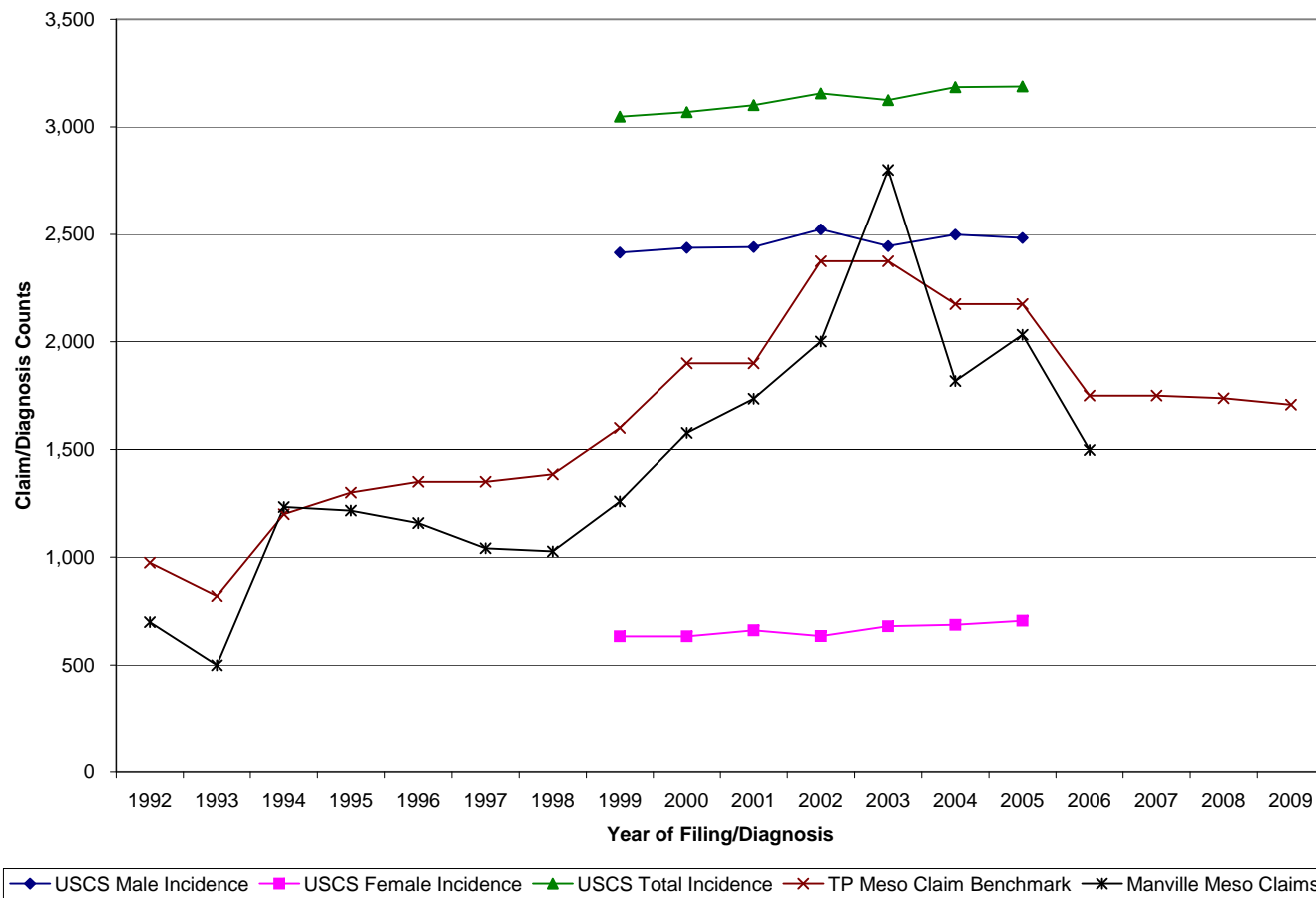


High Level Overview of Asbestos Litigation Environment

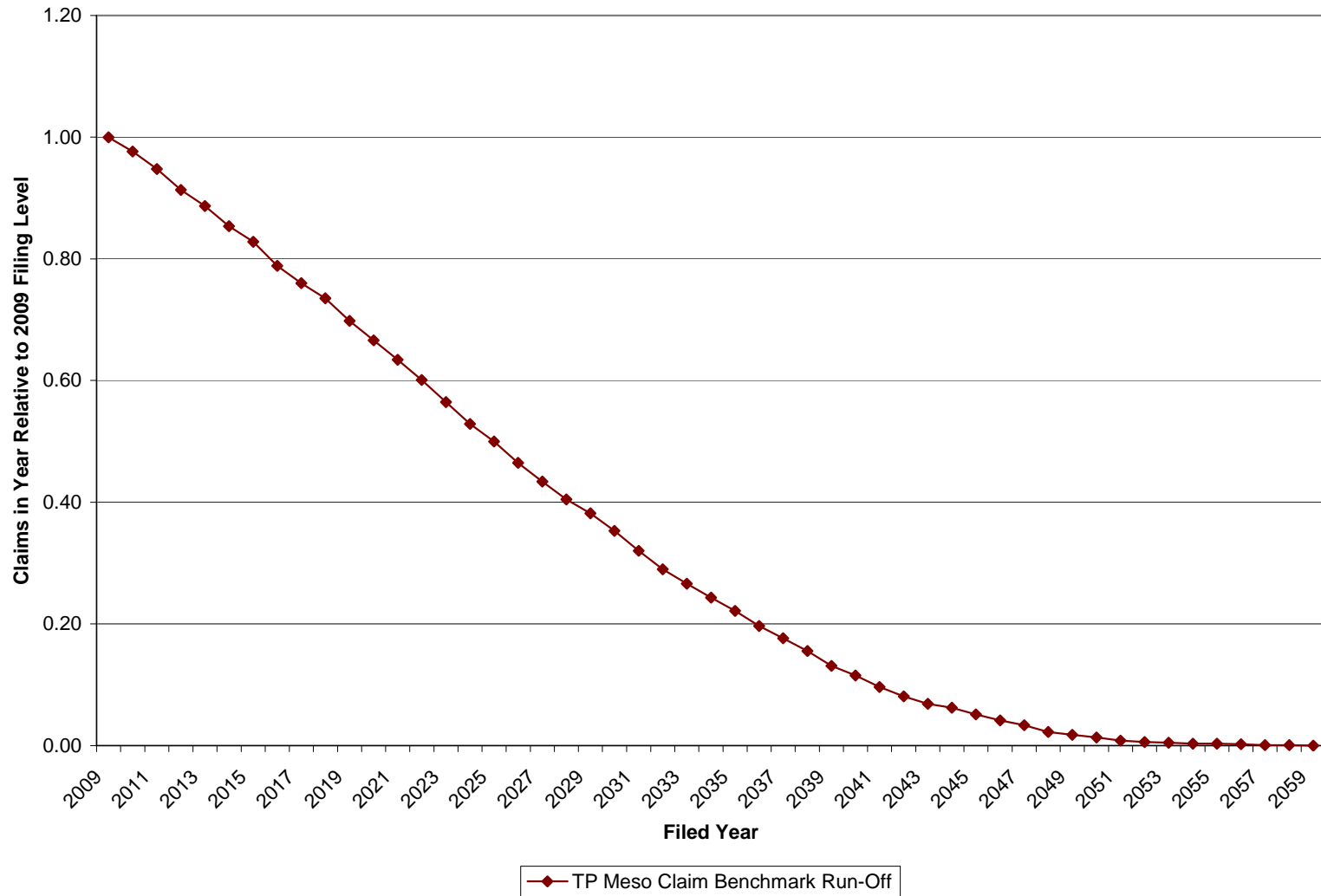
- Total claim volume surged from 2000-2003
 - Most of the surge was nonmalignant claims arose from mass screenings
 - Malignant claims peaked as well
- Total claim volume has since dropped
 - Nonmalignant claims dropped dramatically, beginning in 2004
 - No mass screenings
 - Decrease in bankruptcy filings
 - Federal reform efforts derailed
 - State tort and judicial reforms enacted
 - Cancer claims have also declined
 - Mesothelioma claims also appear to have declined from their peak and have remained fairly steady in the past few years
 - Trends vary by defendant and jurisdiction
- Future claim liabilities are expected to be driven by mesothelioma

Mesothelioma Claims: Diagnoses and Claim Filing

- Annual incidence count relatively flat (males stable; females increasing)
- Large changes in annual claim filing counts

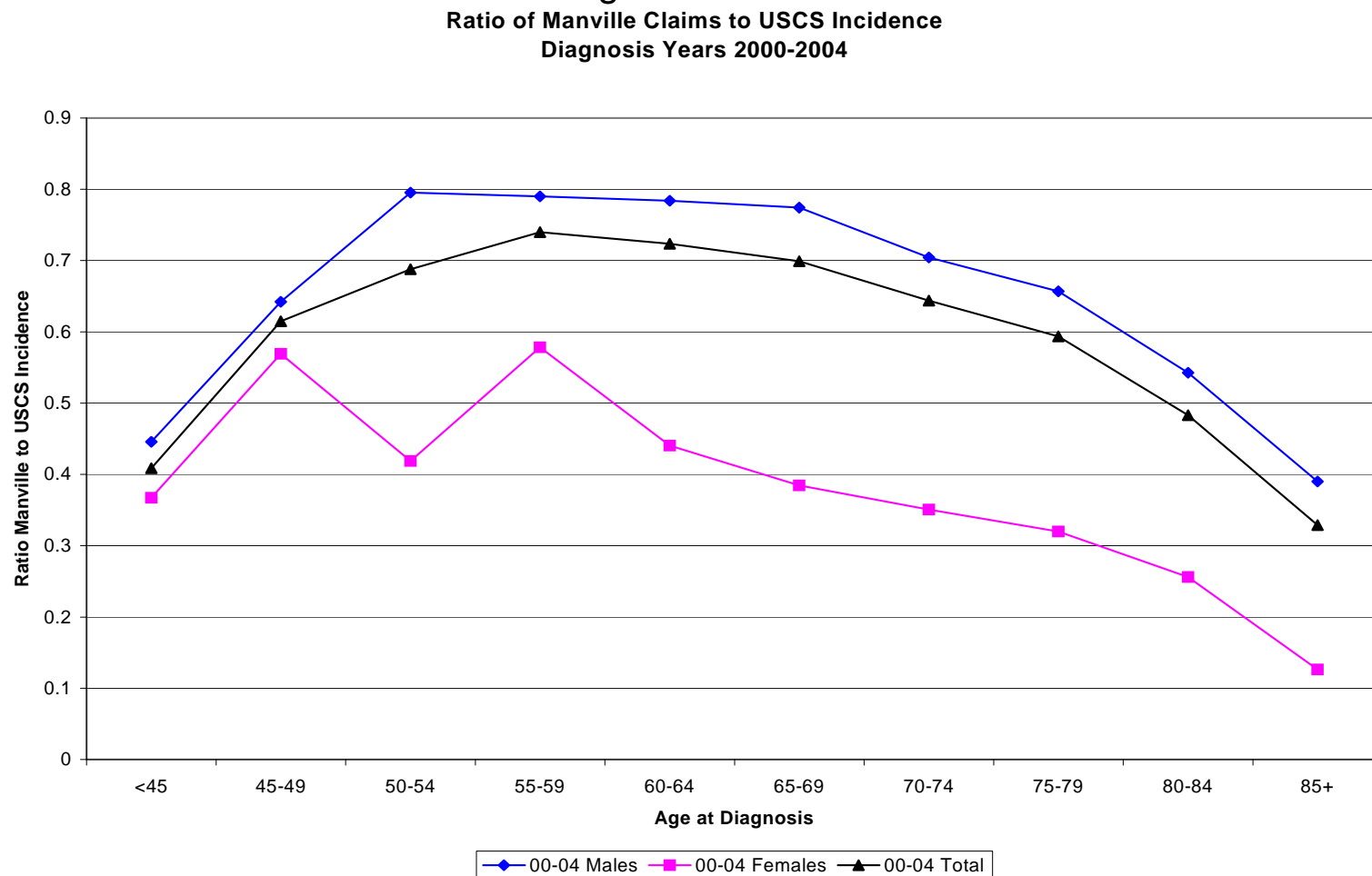


Mesothelioma Diagnoses and Claims will Continue for Decades



Mesothelioma - Propensity to Sue

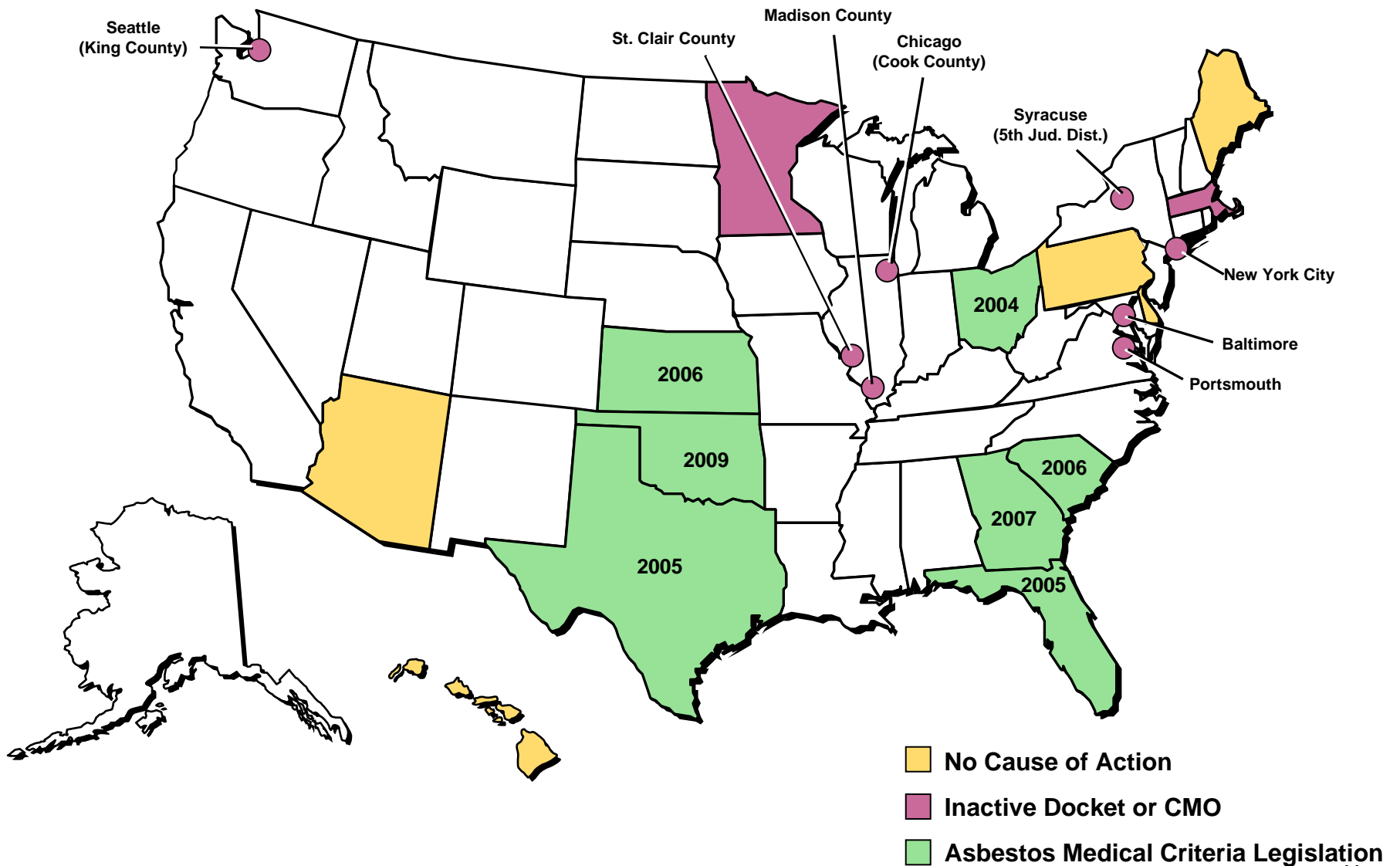
- The propensity to sue (“PTS” or claiming rate) has been volatile and less than 100% of diagnoses
- PTS has been lower for older ages and females



Update on Reforms



State Legislation/Court Orders To Address Unimpaired Asbestos Claimant Filings



Don't Miss Mark Behren's Recent Article: "What's New in Asbestos Litigation?"

- The Asbestos Litigation Environment Has Changed
 - Impacts Affecting Mass Screenings and Unimpaired Filings
 - Filings Down in General – Especially the Unimpaired
 - Change in Disease Mix: Mesothelioma Cases are the Primary Focus
- Other Trends In Asbestos Litigation
 - Rejection of Plaintiffs' Expert Causation Testimony in *de minimis* or Remote Exposure Cases
 - Migration of Claims to New Venues
 - New Theories of Liability
 - Component Supplier Liability
 - Secondhand Exposure Claimants
- Increased Transparency Between Bankruptcy and Tort Systems
 - Bankruptcy Trust claim Forms
 - Efforts to Address Potential "Double Dipping"

Insurer / Claims Viewpoint



Insurer / Claims Viewpoint from the Front Lines

- Overview of the Battlefield
- Areas of Concern
 - “Hot” Jurisdictions
 - Claim Severity
 - New Defendant Targets
 - Lung Cancer Claims
- Legislative Environment
 - Introduction of new legislation to address litigation moderating
 - Efforts to undo favorable tort reform
- Legal Environment
 - Trial Activity – New York and Michigan
 - Decisions
- Judicial Environment
 - Federal MDL
 - Judges reacting to abuses

Questions and Answers

