

Introduction _____ 15

1 Asbestos-Related Losses in the United States _____ 15

1.1 Nature of Asbestos _____ 15

1.2 Types of Asbestos-Related Losses _____ 16

1.3 Financial Import of Asbestos-Related Losses _____ 17

1.4 Primary Coverage of Asbestos-Related Losses _____ 18

**2 Definition of Occurrence and Event in Excess of
Loss Reinsurance Treaties** _____ 19

2.1 Importance of Definition in Ascertaining Whether and How
Losses May be Aggregated at the Reinsurance Level _____ 19

2.2 General Principles of Reinsurance Treaty Interpretation _____ 21

2.2.1 Interpret the Terms of the Treaty According to Plain Meaning _____ 23

2.2.2 Where Treaty Terms are Ambiguous, Ascertain Intentions of
Parties as Expressed in Other Documents — Course of Conduct _____ 24

2.2.3 Where No Other Clear Evidence of Intentions Exists, Consider
Customs and Usages of Industry at the Time of Treaty Drafting _____ 25

2.2.4 Other Considerations — Equity and Public Policy _____ 26

2.3 Potential Consequences of Dispute Resolution by Arbitration _____ 26

2.4 Occurrence Definitions at the Reinsurance Level Differ from
Those Found at the Primary Level _____ 27

2.5 The Per Victim Definition _____ 28

2.5.1 Absent an Aggregate Extension Clause, Use of Per Victim
Approach Results in No Aggregation _____ 29

2.5.2 Examination of Sample Wordings _____ 29

2.5.3 Effect Analysis — Legal Precedents _____ 30

2.5.4 Consequences of Denying Aggregation upon Primary Insurer
— Potential Opposition by Courts _____ 31

2.6	Per Product Definitions _____	32
2.6.1	Cause Analysis — Legal Precedents _____	32
2.6.2	Raw Material Asbestos _____	32
2.6.3	Per Generic Asbestos Product _____	33
2.6.4	Per Insured Approach _____	34
2.6.5	Per Batch (Per Shipment) Approach _____	36
3	The Effect of Aggregate Limits upon the Scope of Coverage Provided by an Excess of Loss Reinsurance Treaty _____	37
3.1	Aggregate Limits May Supercede Occurrence Definition _____	37
3.2	Degree of Aggregation Permitted Depends upon Terms of Excess Aggregate Clause _____	38
3.3	Comparison of the Degree of Aggregation Permitted under Aggregate Limits Clauses with Degree of Aggregation Permitted under Occurrence Definitions _____	38
4	Timing of the Occurrence or Event _____	39
4.1	The Allocation of Losses to Individual Treaty Years Depends upon the Timing of the Occurrence _____	39
4.2	The Timing of the Occurrence or Event Depends upon the Definition of Occurrence _____	40
4.2.1	The Per Victim Definition _____	40
4.2.2	The Per Raw Material Asbestos Definition _____	42
4.2.3	The Per Generic Asbestos Product Definition _____	43
4.2.4	The Per Insured Definition _____	43
4.2.5	Allocation Per Batch _____	43
4.2.6	Summary _____	43
4.3	Allocation of Losses under Reinsurance Treaties with Aggregate Limits _____	44
	Conclusions _____	44

Expert Opinion on the Reinsurance Law of England

Part 2

45

The Treatment under Excess of Loss Reinsurance Contracts of Asbestos-Related Claims Emanating from the U.S.A.

47

Colin V. Croly, Solicitor, Partner of Barlow Lyde & Gilbert, Solicitors, London

1	Facts and Consequent Coverage Problems	47
1.1	Factual and Statistical Background	47
1.2	The Relevance of the Question of Aggregation	48
1.3	Evidential Problems of Victims	48
2	"Loss Occurrence"	49
2.1	The "Trigger Theories"	49
2.2	The Relevance of the Trigger Theories	50
2.3	Keene Corporation v. Insurance Company of North America	51
2.4	Hancock Laboratories, Inc. v. Admiral Insurance Co.	52
3	General Principles of English Law	53
3.1	The Relevance of English Law	53
3.2	The Treatment of Non-English Law	53
3.3	Arbitration Clauses in Reinsurance Treaties	54
3.3.1	Arbitration Clauses Generally — Honourable Engagement	54
3.3.2	Eagle Star Insurance Co. Ltd v. Yuval Insurance Co. Ltd.	54
3.3.3	Home Insurance Co. v. Administratia Asigurarilor de Stat	55
3.3.4	The Effect of Honourable Engagement Clauses	56
3.4	Test Cases	56
3.5	Uncertainties Caused by U.S. Law and Arbitration	57
3.6	Construction of Reinsurance Treaties under English Law	57
3.6.1	Reinsurance Defined	57
3.6.2	Insurance Defined	57
3.6.3	General Construction of Contracts	58
3.6.4	The Contra Proferentem Rule	58
4	Occurrence, Event and Accident: Approaches to Construction	59
4.1	Definitions	59
4.2	Practical Approaches	60
4.3	The Any-One-Victim Approach	61
4.4	The Any-One-Insured Approach	61
4.5	The Any-One-Product Approach	62

4.6	Other Possible Theories _____	62
4.7	Owens-Illinois, Inc. v. Aetna Casualty and Surety Co. _____	63
5	The Lloyd's "White Papers" _____	64
5.1	The Purpose of the "White Papers" _____	64
5.2	The First "White Paper" _____	64
5.3	The Second "White Paper" _____	65
6	The English Legal Authorities _____	66
6.1	The Importance of the Treaty Wording _____	66
6.2	Contracts of Indemnity _____	66
6.3	South Staffordshire Tramways v. Sickness and Accident Assurance _____	67
6.4	Forney v. Dominion Insurance Co. Ltd. _____	68
6.5	Distillers Co. Bio-Chemicals v. Ajax Insurance Co. Ltd. _____	68
6.6	Causation _____	70
6.7	Leyland Shipping Co. Ltd. v. Norwich Union _____	70
6.8	Wayne Tank & Pump Co. Ltd. v. Employers Liability _____	71
7	Application of Authorities to the Facts _____	72
7.1	The Dominant Cause _____	72
7.2	The Any-One-Victim Approach _____	73
7.3	The Effect of Evidential Aids _____	73
7.4	Aggregate Extension Clause _____	74
7.5	Summary _____	74
8	The Wellington Agreement _____	75
8.1	The Agreement _____	75
8.2	Effect on Reinsurance Treaties _____	76
8.3	Following the Settlements _____	76
9	Conclusions _____	77
9.1	Uncertainties _____	77
9.2	Treaty Wording _____	78
9.3	Dominant Cause _____	78
9.4	Series of Events _____	78
9.5	Aggregate Extension Clause _____	78
9.6	The Wellington Agreement _____	78
9.7	The Future _____	79

European Product Liability Congress of the Cologne Re. Berlin, 1986	
Part 3 _____	81
Genesis of the Wellington Agreement _____	82
Harry H. Wellington, Sterling Professor of Law Yale Law School, New Haven, Connecticut	
Asbestos Claims Facility from a Reinsurer's Point of View _____	97
N. David Thompson President and Chief Executive Officer, North American Re, New York	
Asbestos Claims — What is One Occurrence under Reinsurance Treaties? _____	102
Robert F. Hall Senior Vice President, American Re, New York	
Asbestos — The London Response _____	106
Robin A. G. Jackson Chairman of the London Asbestos Working Party Chief Non-Marine Underwriter, Merret Group (at Lloyd's), London	
The Any-One-Product Approach _____	115
Dr. Otmar Schmidlin Senior Vice President, Swiss Re, Zurich	
The Importance of the Aggregate Extension Clause _____	122
John S. Butler, Barrister Legal Officer, Mercantile & General, London	
Bibliography _____	130
Appendices _____	135
The Lloyd's "White Papers"	
Appendix 1 _____	136
Reference Material to Part 1	
Appendix 2 _____	148
Examples of Aggregate Extension Clauses	
Appendix 3 _____	160