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Layout & Distribution: Valéria Kozakova

Megatrend Personal Injury: Global Developments Extending the Concepts of Loss and Compensation


Christian Lahnstein

Agenda




- I. Three global developments**
- II. Three additional trends in industrialised countries**
- III. Dynamics in developing markets**
- IV. Diversity of market structures**

I. Three global developments



Ongoing tort law extension



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I. Three global developments



Ongoing tort law extension

In most countries, tort reform means extending tort law, mainly in relation to personal injuries:


- Changing standards of care, changing concepts of causation
- Extending strict liability
- Increased amounts for non-pecuniary damage
- Expanded scope of persons entitled to claim
- New legal concepts: personality/human/constitutional rights, discrimination

Tort reforms in USA and Australia restricting tort law (“in the books”, not necessarily “in action”): countercurrents

See yearbooks and studies of Munich Re in cooperation with the European Centre of Tort and Insurance Law, Vienna.

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I. Three global developments



“The end of the welfare state”

Ongoing tort law extension

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I. Three global developments



“The end of the welfare state”



- The less compensation is granted under social security (deductibles, waiting periods, cuts and caps of benefits, reduction of periods during which benefits are obtained), the more victims rely on tort law
- Increasing subrogation of health and disability insurers
- Shift from social security to private “first party” insurance, public/private partnerships

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I. Three global developments

“The end of the welfare state”


Ongoing tort law extension

Medical inflation

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I. Three global developments

Medical inflation



Dynamics of healthcare: the world’s largest industry

Health expenditure, % GDP		
	1960	2000
USA	5	13
UK	4	7
Germany	4	10.5
France	4	9.5
Japan	3	7.7

USA

15% GDP = \$1.7 trillion (2005).


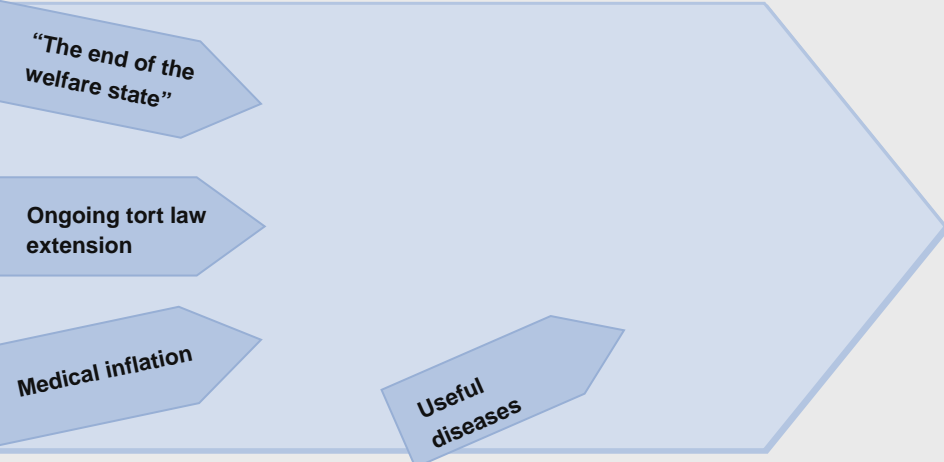
Medical inflation 1975–2005 twice the rate of general inflation. This includes the 1993–1996 decrease due to managed care, which after 1997 exhausted its price-discounting capabilities. Increase continues with introduction of new technologies and drugs.

UK: NHS expenditure

1950:	£500m
2000:	£55,000m

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II. Three additional trends in industrialised countries

“The end of the welfare state”

Ongoing tort law extension


Medical inflation

Useful diseases

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II. Three additional trends in industrialised countries

Useful diseases

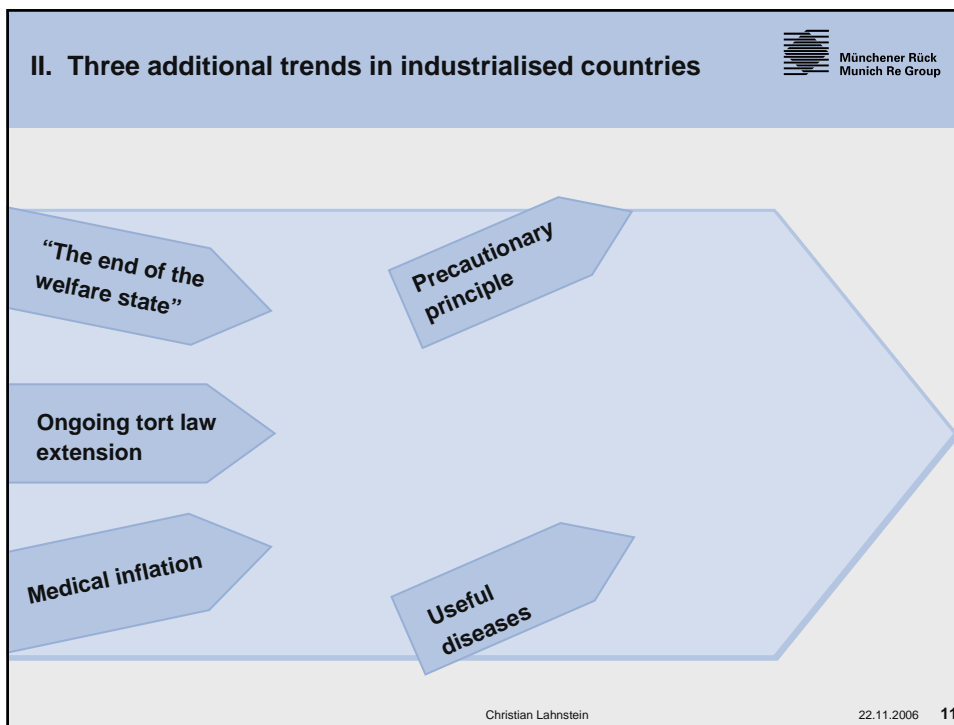


Burnout, back/neck pain, depression, post-traumatic stress and other diseases easy to imagine but impossible to prove or disprove.

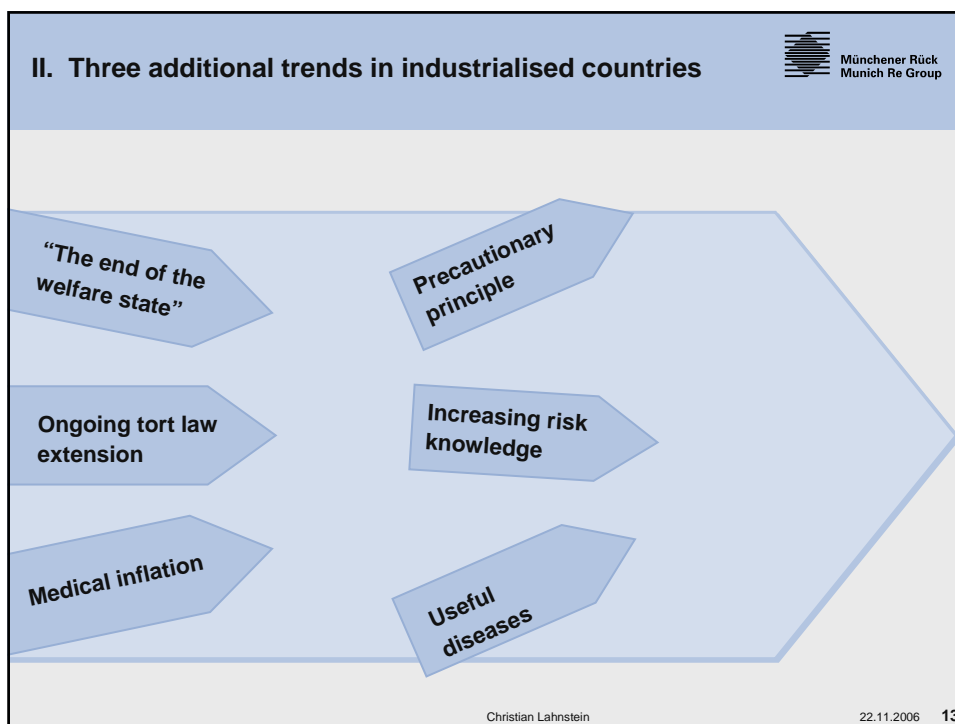
Negotiated in each local insurance / medical / legal context.

<p>Whiplash: Long-standing fashionable disease. First described in 1953 in USA, became a multi-billion dollar industry in USA and Canada. Other countries followed in the 1980s. Current annual cost in UK £3 billion. Norway: 70,000 in a population of 4.5m claim to be disabled.</p>	<p>Back pain and RSI as short-term epidemics. In the late 1980s, 8% of Swedish working population off work for 34 days/year because of back pain. RSI Australian epidemic (fibromyalgia) in the 1980s/1990s led to the near collapse of WC and disability insurance.</p>	<p>Effect on disability insurance: 10% of Norwegian working age population receive disability pension. Cost of Swiss disability insurance doubled between 1993 and 2003 (from Sfr 3.2bn to 6.4bn).</p>
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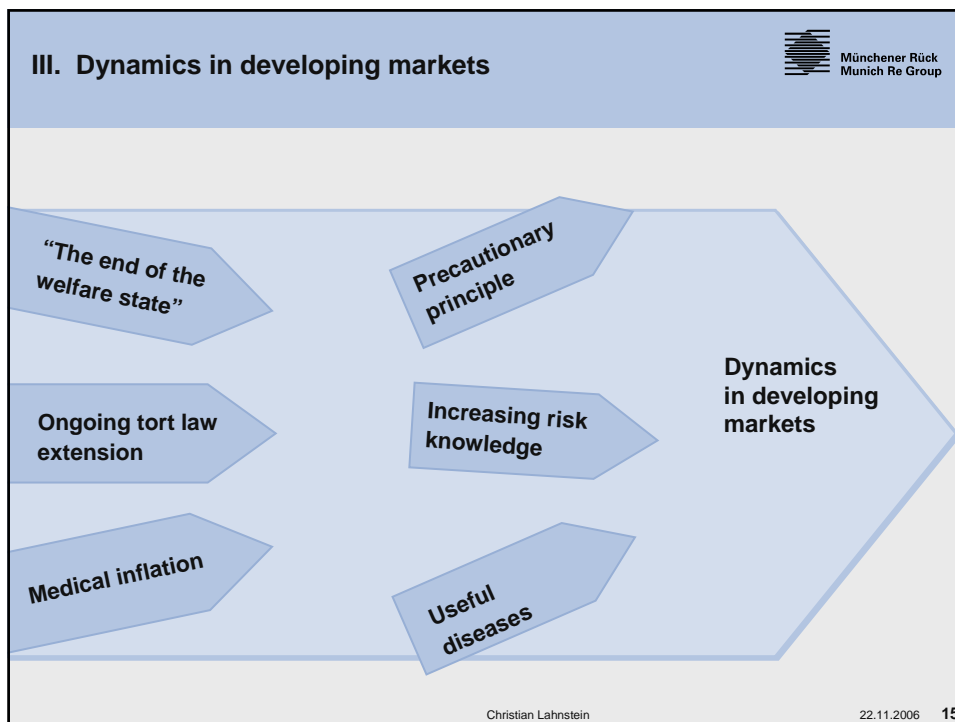
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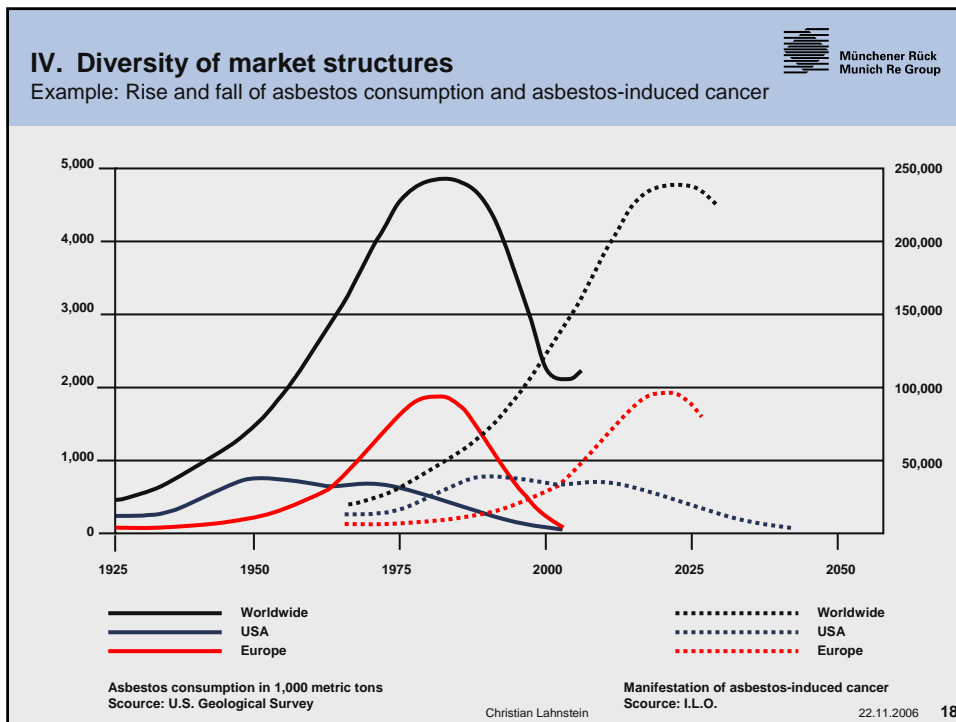
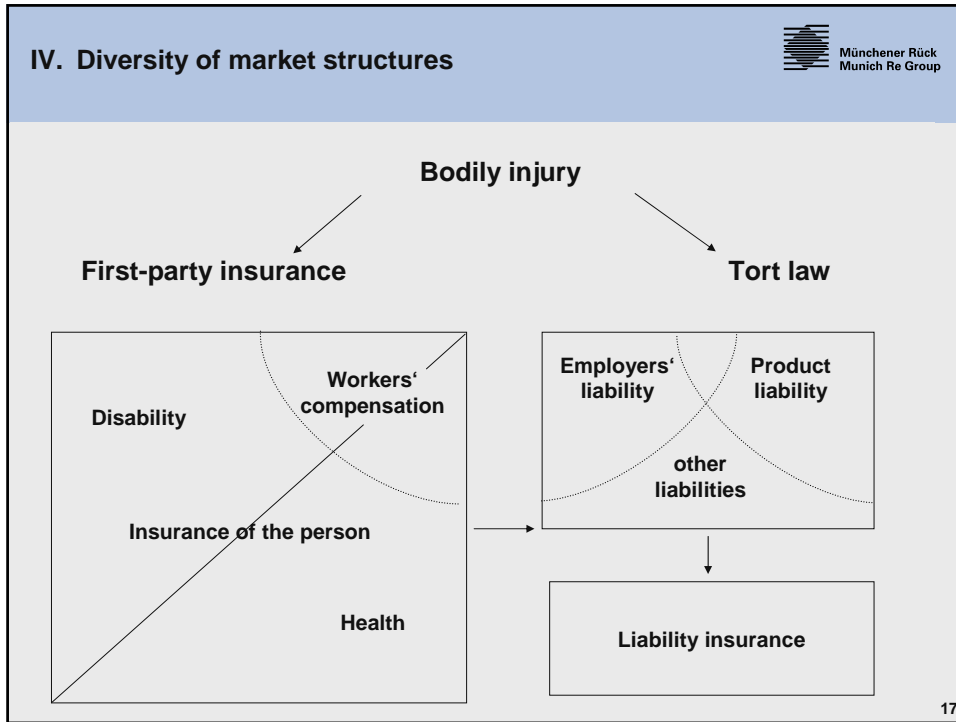
- II. Three additional trends in industrialised countries**
- Precautionary principle**
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- The role of health arguments in risk decisions of states and companies: epidemics (BSE, SARS), recall actions (pharmaceuticals, GMO products), asbestos removal
 - Overloading the politically effective risk argument (GMO)
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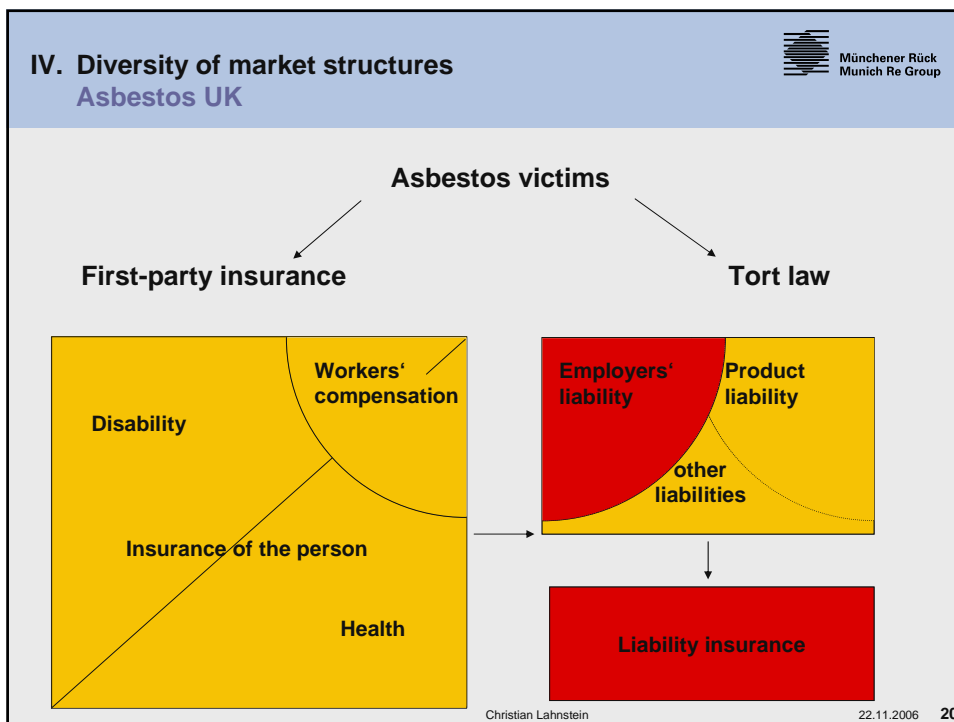
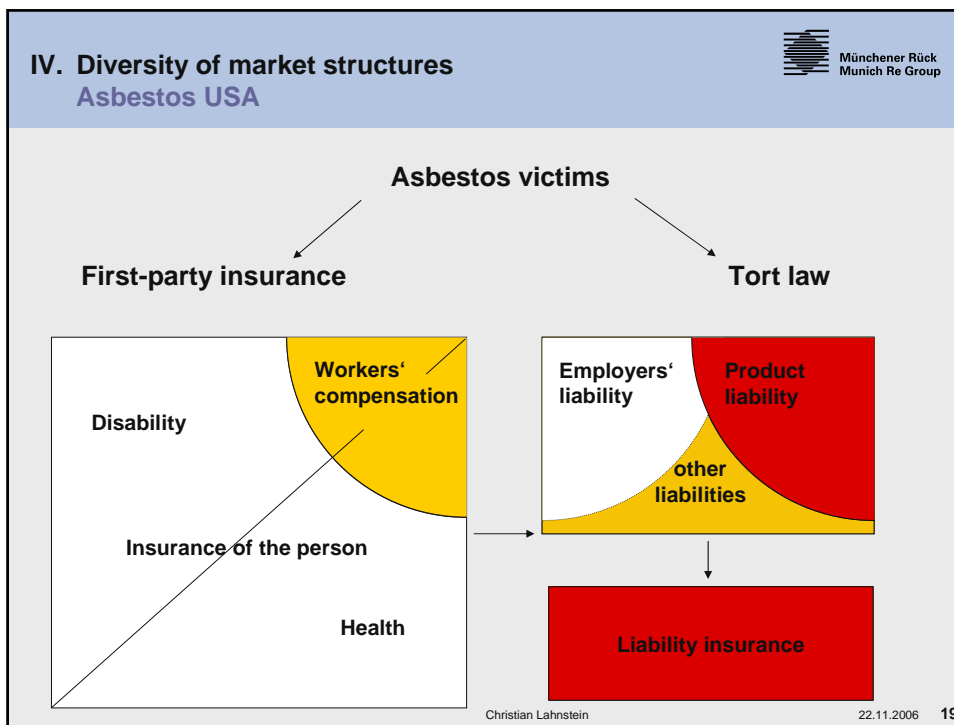


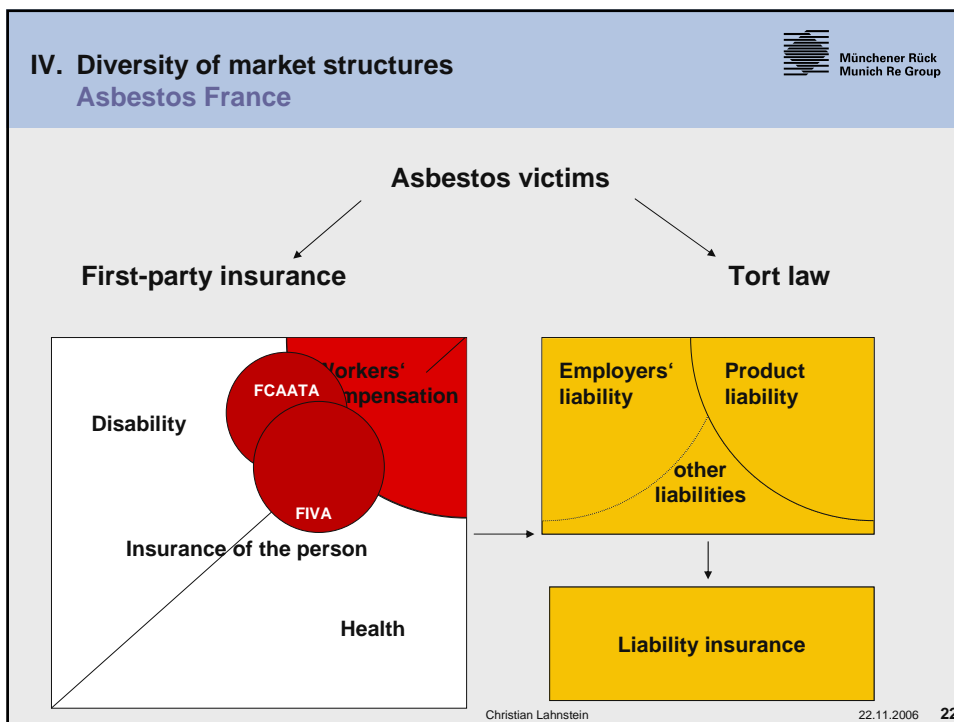
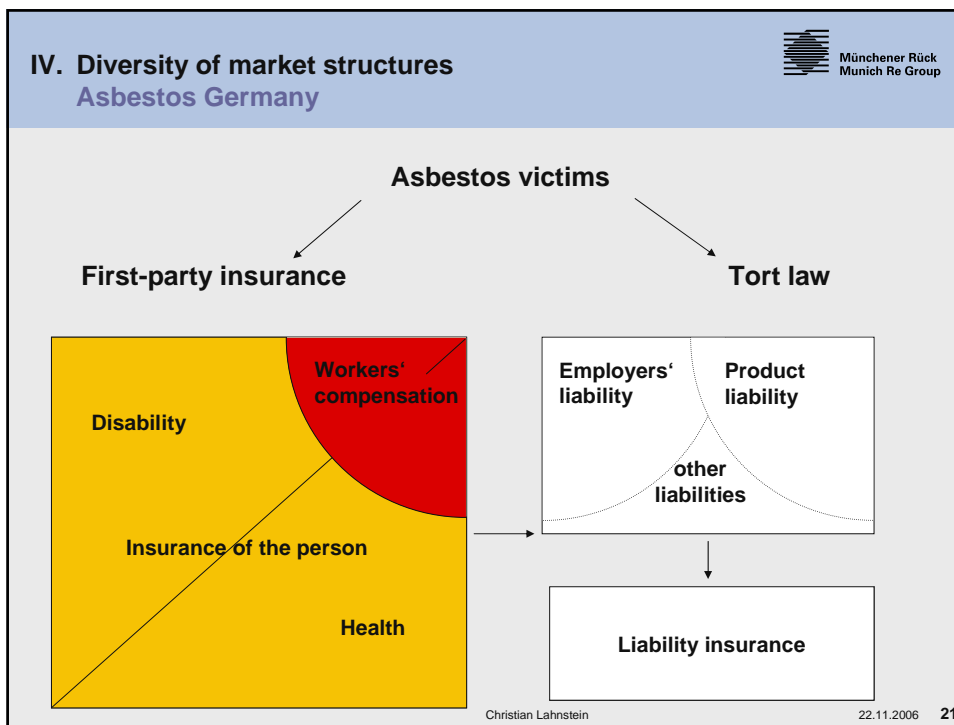
- II. Three additional trends in industrialised countries**
- Increasing risk knowledge**
- Internet enables information and mobilisation of exposed but not yet impaired populations (asbestos, pharmaceuticals)
 - Double anticipatory effect: assessment of past exposure as basis of potential future claims; compensation for fear of future disease
 - Genetic testing suggests prevention measures
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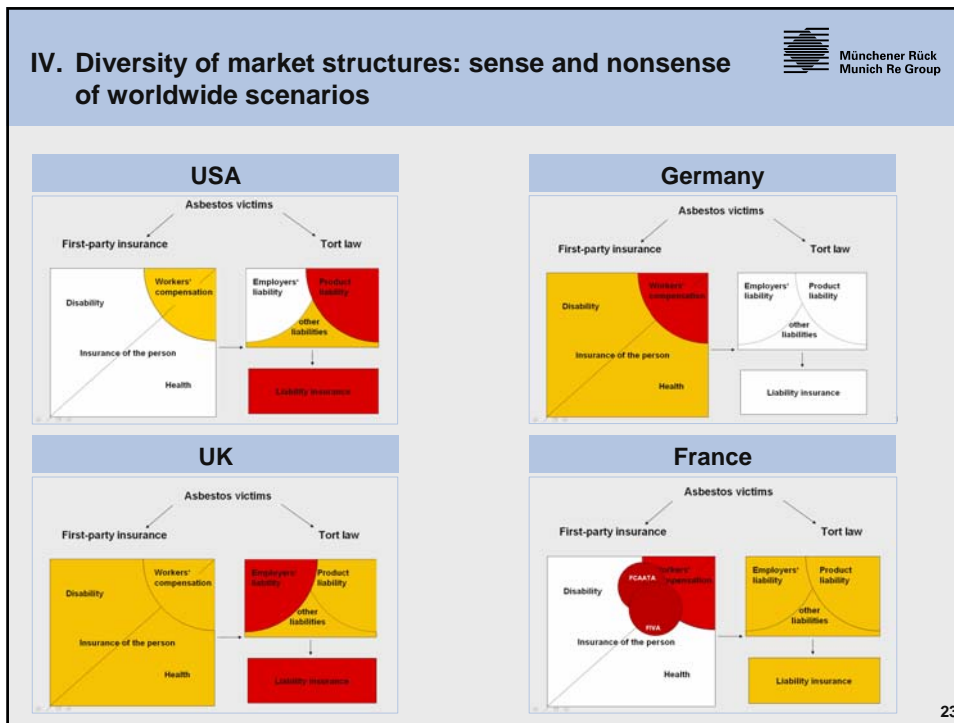


- III. Dynamics in developing markets
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- Transnational lawsuits: asbestos, pesticides, oil exploration
 - Local disasters of multinationals: Bhopal and the end of Union Carbide. Reputation, NGOs and the compliance industry. Phil Knight’s mistake: the open borderline of legal, moral or factual liability or accountability
 - Home-made social developments, non-orthodox legal innovations
 - Megacities: the motor liability insurance challenge
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Thank you very much for your attention.

Christian Lahnstein

