

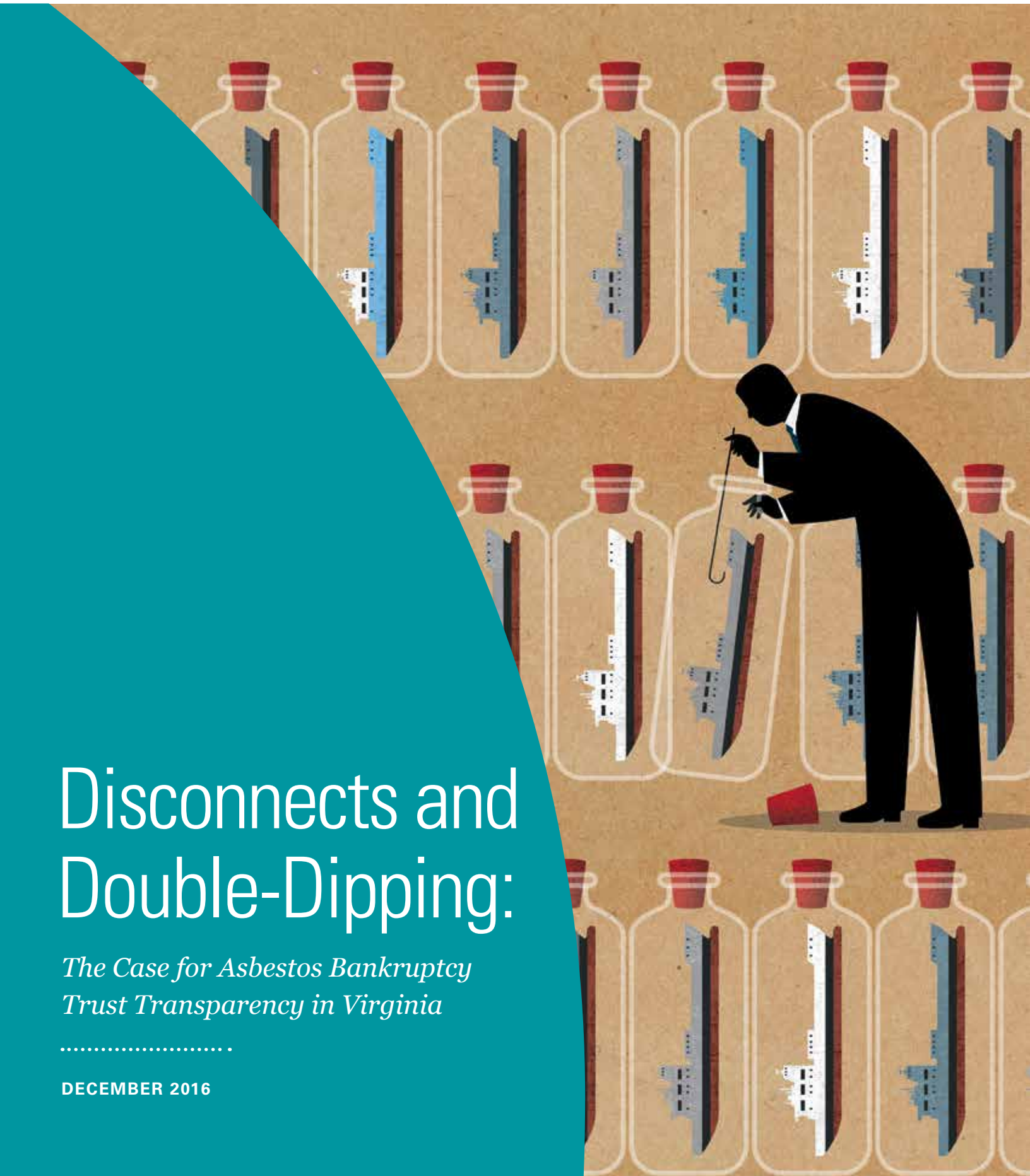


U.S. CHAMBER
Institute for Legal Reform

Disconnects and Double-Dipping:

*The Case for Asbestos Bankruptcy
Trust Transparency in Virginia*

.....
DECEMBER 2016





U.S. CHAMBER
Institute for Legal Reform

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Executive Summary

Asbestos litigation has existed for over four decades. For years, the litigation was focused on the major asbestos producers until those companies were overwhelmed with asbestos claims and forced into bankruptcy. In 1982, Johns Manville became the first asbestos-producing company to file bankruptcy. A flood of claims over the next 20 years forced dozens of other companies to file Chapter 11 bankruptcies. The companies reorganized under a special asbestos provision of the Bankruptcy Code and are now exempt from asbestos personal injury lawsuits. Trusts approved by bankruptcy courts have been set up to pay people with asbestos-related injuries caused by exposure to their products. Today, billions of dollars are held in these privately managed trusts to pay asbestos claimants.¹

Despite the exit of the major asbestos producers from the tort system, asbestos litigation shows no signs of abating. Asbestos personal injury lawsuits continue to be filed by the thousands against still-solvent companies. The targets in the litigation today are often newer defendants or those remote from asbestos production, such as makers of pumps, valves, gaskets and automotive friction (brake) products. These products were associated with a type of fiber (chrysotile) that is far less potent than the highly toxic amphibole asbestos-containing thermal insulation sold by the

major asbestos producers—and arguably not potent at all, except in very large doses not present in most occupations.

Thus, asbestos claimants have two separate avenues to obtain recoveries: (1) settlements or judgments in asbestos personal injury lawsuits against still-solvent companies; and (2) payments from asbestos trusts for exposures to the products of the historically most culpable companies. Claimants do not have to pick one or the other; they can obtain money from both systems for the exact same injury.

“ By manipulating the timing of when trust claims are filed—specifically, by delaying the filing of asbestos trust claims until after an asbestos personal injury case is settled or goes to verdict—plaintiffs can withhold information regarding alternative exposures from tort system defendants, potentially increasing the amount they receive in recovery from those defendants.”

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These abuses were documented in a watershed opinion by a North Carolina federal bankruptcy judge in 2014 in a case called *In re Garlock Sealing Technologies, LLC*.² The judge found that gasket and packing manufacturer Garlock’s settlements of mesothelioma (asbestos-related cancer) claims in the tort system were “infected by the manipulation of exposure evidence by plaintiffs and their lawyers.”³ The judge described an effort by plaintiffs and their lawyers to “withhold evidence of exposure to other asbestos products and to delay filing claims against bankrupt defendants’ asbestos trusts until after obtaining recoveries from Garlock (and other viable defendants).”⁴ The court noted that “while it is not suppression of evidence for a plaintiff to be unable to identify exposures, it is

suppression of evidence for a plaintiff to be unable to identify exposure in the tort case, but then later (and in some cases previously) to be able to identify it in Trust claims.”⁵ Recent studies described in this report have confirmed the systemic nature of the abuses described by the judge in *Garlock*.⁶

This study examines trust claiming activity in wrongful death cases in Newport News. Newport News was chosen because it is the epicenter of asbestos litigation in Virginia—home to seven of every ten asbestos cases filed in the Commonwealth—and it has the most robust data of any jurisdiction within Virginia. Wrongful death cases were chosen because payments from asbestos trusts, along with other settlements, are publicly available in such cases pursuant to Virginia statute.⁷ Though the findings comprise a portion of all asbestos cases filed in Newport News, they are believed to be representative of Newport News asbestos cases in general.

This study finds that Virginia has not escaped the problems that were documented in *Garlock* and elsewhere. Rather, it reveals the delayed filing of asbestos trust claims by Newport News claimants to deny personal injury defendants access to alternative exposure history information contained in the submissions. Further, Newport News asbestos plaintiffs routinely deny or are unable to recall many trust-related exposures during personal injury cases—when it would be helpful to defendants to establish other causes for the person’s injury—but later file claims with numerous trusts (sometimes as many as 25 different trusts) and obtain trust payments that have exceeded \$1 million.

To address these discrepancies, Virginia law should require plaintiffs to file and produce all asbestos trust claims before trial. A growing number of states have enacted such asbestos bankruptcy trust transparency legislation, including regional competitors Tennessee and West Virginia. This common sense reform would speed up trust system recoveries for plaintiffs, allow juries to reach more fully informed decisions regarding the cause of a plaintiff’s asbestos-related disease, provide fairness to defendants, and restore the integrity of the civil justice system.

Disconnect Between Asbestos Bankruptcy Trust and Personal Injury Lawsuit Systems

In most states, there is limited coordination and transparency between the asbestos bankruptcy trust and civil personal injury systems. The disconnect between these two compensation systems has resulted in tactics by plaintiffs' lawyers that disadvantage tort defendants while inflating plaintiffs' recoveries.

Evolution of Asbestos Litigation

Asbestos use in the U.S. was once widespread, especially during and after World War II, and before the promulgation of regulations by the federal Occupational Safety & Health Administration in the early 1970s.

In earlier years, asbestos litigation was focused on "the asbestos miners, manufacturers, suppliers, and processors who supplied the asbestos or asbestos products that were used or were present at the claimant's work site or other exposure location."⁸ Target defendants often included manufacturers of thermal insulation containing potent amphibole asbestos fibers.

Asbestos litigation expanded significantly in the late 1990s as hundreds of thousands of cases began to be filed, including by plaintiffs who were not sick. The U.S. Supreme Court referred to the litigation as a "crisis."⁹ Mass filings pressured many traditional defendants into bankruptcy.

“ The litigation became an ‘endless search for a solvent bystander,’ and that continues today. ”

After the exit of the major asbestos producers from the tort system, the litigation shifted away from the bankrupt companies and "towards peripheral and new defendants associated with the manufacturing and distribution of alternative asbestos-containing products such as valves, pumps, gaskets, automotive friction products, and residential construction products."¹⁰

The litigation became an "endless search for a solvent bystander,"¹¹ and that continues today. As one commentator has explained: "Defendants who were

once viewed as tertiary have increasingly become lead defendants in the tort system, and many of these defendants have also entered bankruptcy in recent years.”¹²

Proliferation of Bankruptcy Trusts

Over 115 companies with asbestos-related liabilities have filed bankruptcy.¹³ The U.S. Bankruptcy Code provides a mechanism for these companies to reorganize their asbestos liabilities into court-approved, privately managed trusts, and emerge from bankruptcy with immunity against asbestos-related personal injury lawsuits.¹⁴

There are presently over 60 asbestos trusts in existence to “answer for the tort liabilities of the great majority of the historically most-culpable large manufacturers that exited the tort system through bankruptcy over the past several decades.”¹⁵ As of 2011, these trusts collectively held \$36.8 billion to pay asbestos claims independent of the civil tort system.¹⁶

Asbestos trusts are designed to settle claims quickly. As the *Wall Street Journal* has explained:

Unlike court, where plaintiffs can be cross-examined and evidence scrutinized by a judge, trusts generally require victims or their attorneys to supply basic medical records, work histories and sign forms declaring their truthfulness. The payout is far quicker than a court proceeding and the process is less expensive for attorneys.¹⁷

Control of trust governance and payment criteria generally rests with trustees who are plaintiffs’ lawyers.¹⁸ If a claimant meets

“ Trust recoveries are separate from personal injury settlements or judgments a person may obtain for the exact same injury.”

a trust’s criteria for payment—criteria which are less rigorous than the civil tort system—the claimant will receive a payment.¹⁹

It is common for claimants to receive multiple trust payments because each trust operates independently and workers were often exposed to many companies’ products.²⁰

Trust recoveries are separate from personal injury settlements or judgments a person may obtain for the exact same injury.²¹ In one recent case, a typical mesothelioma plaintiff’s total recovery was estimated to be \$1-1.5 million, “including an average of \$560,000 in tort recoveries and about \$600,000 from 22 trusts.”²²

Asbestos Bankruptcy Trust Claims: Manipulation and Abuse

A disconnect and lack of transparency exist between the asbestos trust and civil personal injury compensation systems. These factors have led to well-documented abuses, including the withholding of evidence of trust-related exposures by plaintiffs and delaying of trust claim

filings to deny defendants access to such information. As commentators have explained:

[C]laimants have alleged exposure to the products of bankrupt entities in their trust filings, but then ignore or flatly deny those exposures when they target solvent defendants in tort litigation. Claimants also attempt to shield their trust recoveries from disclosure in tort suits by concealing their trust claims or not filing the claims until the tort suit has concluded.²³

For example, in testimony before Congress, an attorney discussed an asbestos case from Loudon County, Virginia, that the judge called the “worst deception used in discovery” that he had seen in his “22 years on the bench.”²⁴ The plaintiff claimed that his illness was caused by asbestos-containing friction products, but he “made numerous trust claims certifying exposure to products made by many of the traditional defendants and had even filed a separate tort suit against the traditional defendants.”²⁵ After hearing the evidence, the judge dismissed the case as a fraud on the court.²⁶

In a widely reported case in Cleveland, Ohio,²⁷ documents from multiple bankruptcy trust submissions revealed that the plaintiff’s lawyers “presented conflicting versions of how [the plaintiff] acquired his cancer.”²⁸ Emails and other documents from the plaintiff’s attorneys showed that their client had accepted monies from entities that produced products to which he was not

exposed and one settlement trust form was “completely fabricated.”²⁹ The judge said, “In my 45 years of practicing law, I never expected to see lawyers lie like this.”³⁰ “It was lies upon lies upon lies.”³¹

Another example occurred in Maryland,³² where defendants were forced to file motions to compel production of a plaintiff’s trust claims despite the fact that prior rulings required the materials to be produced.³³ “At a hearing on the matter, plaintiff’s counsel explained that he had been slow in producing the trust materials because he disagreed with the court’s prior ruling, some two years previously, and went on to complain that the court had ‘opened Pandora’s Box’ by requiring their disclosure.”³⁴ When the materials were finally produced on the eve of trial, the “reasons for counsel’s reluctance to produce the trust materials were made clear. There were substantial and inexplicable discrepancies between the positions taken in [c]ourt and the trust claims.”³⁵

“*In a widely reported case in Cleveland, Ohio, documents from multiple bankruptcy trust submissions revealed that the plaintiff’s lawyers ‘presented conflicting versions of how [the plaintiff] acquired his cancer.’*”

In testimony before Congress, Delaware Superior Court Judge (ret.) Peggy Ableman discussed an asbestos case she presided over involving 22 defendants.³⁶ The plaintiff claimed exposure to asbestos solely through laundering her husband's work clothes. The plaintiff's lawyer "emphatically reported" that no bankruptcy submissions had been made and no monies had been received.³⁷ Two days before trial, however, plaintiff's counsel reported the existence of two bankruptcy trust settlements—a disclosure that was "directly inconsistent with [counsel's] unequivocal representations to the Court and to opposing counsel at the pretrial conference."³⁸ By late afternoon of the following day, the day before trial, it was learned that 20 asbestos trust claims had been filed.³⁹ Further, the "representations to the bankruptcy trusts painted a much

broader picture of exposure to asbestos than either plaintiff or any of plaintiff's attorneys had acknowledged during the entire course of the litigation."⁴⁰

As discussed further in the study, these examples have proven to be just the tip of the iceberg with respect to plaintiffs (1) delaying trust claim filings to deny defendants access to exposure history information in the submissions; (2) withholding of trust-related exposures during asbestos personal injury litigation; and (3) providing exposure history statements in personal injury cases that are inconsistent with subsequent trust claiming activities. These are serious problems nationally and in the Commonwealth.

Garlock and Other Recent Reports Expose Widespread Asbestos Trust Claims Manipulation

In 2014, a North Carolina federal bankruptcy judge issued a watershed opinion documenting how plaintiffs’ lawyers delay asbestos trust claim submissions and withhold evidence of trust-related exposures to gain an unfair litigation advantage in personal injury cases. The judge found that the mesothelioma claim settlements of gasket and packing manufacturer Garlock Sealing Technologies, LLC in the tort system were “infected by the manipulation of exposure evidence by plaintiffs and their lawyers.”⁴¹ Recent studies described below have confirmed the judge’s findings as to the systemic nature of asbestos trust claims manipulation and abuse.

The *Garlock* Bankruptcy Decision

Prior to the bankruptcies of most major asbestos producers in the early 2000s, gasket and packing manufacturer Garlock Sealing Technologies, LLC had been a relatively minor defendant in asbestos litigation.

When “the focus of plaintiffs’ attention turned more to Garlock as a remaining solvent defendant,” however, “evidence of plaintiffs’ exposure to other asbestos products often disappeared.”⁴² This

“occurrence was a result of the effort by some plaintiffs and their lawyers to withhold evidence of exposure to other asbestos products and to delay filing claims against bankrupt defendants’ asbestos trusts until after obtaining recoveries from Garlock (and other viable defendants).”⁴³

The court found that “[t]he withholding of exposure evidence by plaintiffs and their lawyers was significant and had the effect of unfairly inflating the recoveries against Garlock”⁴⁴

Importantly, in a sampling of personal injury cases that Garlock settled or tried to verdict before it entered bankruptcy, “Garlock demonstrated that exposure evidence was withheld in *each and every one* of them.”⁴⁵

For example, in a California case that resulted in a \$9 million verdict against Garlock, the plaintiff “did not admit to any exposure from amphibole insulation ... and claimed that 100% of his work was on gaskets.”⁴⁶ Discovery in Garlock’s bankruptcy case, however, revealed that the plaintiff’s lawyers filed 14 asbestos trust claims post-verdict, including several against amphibole insulation manufacturers.

In a Philadelphia case that Garlock settled for \$250,000, the plaintiff “did not identify any exposure to bankrupt companies’ asbestos products” in his tort lawsuit.⁴⁷ Further, in answers to written interrogatories, the plaintiff’s lawyers said the plaintiff had “no personal knowledge” of such exposure.⁴⁸ Discovery in Garlock’s bankruptcy case showed, however, that “this plaintiff’s lawyer failed to disclose exposure to 20 different asbestos products for which he made Trust claims.”⁴⁹ The court added, “Fourteen of these claims were supported by sworn statements, that contradicted the plaintiff’s denials in the tort discovery.”⁵⁰

It was more of the same in a Texas case that resulted in a \$1.35 million verdict against Garlock. The plaintiff denied knowing the name Babcock & Wilcox and his lawyers told the jury in his tort case that there was “no evidence that [the

“ *The court found that [t]he withholding of exposure evidence by plaintiffs and their lawyers was significant and had the effect of unfairly inflating the recoveries against Garlock ...* ”

plaintiff’s] injury was caused by exposure to Owens Corning insulation.”⁵¹ But discovery in Garlock’s bankruptcy case showed that the day before the plaintiff denied any knowledge of Babcock & Wilcox, his lawyers had filed a claim against that trust on his behalf. After the verdict, the lawyers also filed a claim with the Owens Corning trust. The court noted, “[b]oth claims were paid—upon the representation that the plaintiff had handled raw asbestos fibers and fabricated asbestos products from raw asbestos on a regular basis.”⁵²

The court in *Garlock* acknowledged that the sampling of cases was just a portion of the thousands that were resolved by Garlock in the tort system, but the “fact that *each and every one of them* contain[ed] demonstrable misrepresentation [wa]s surprising and persuasive.”⁵³ The court said it appeared “certain that more extensive discovery would show more extensive abuses.”⁵⁴

Subsequent Studies Confirm Widespread Patterns of Abuse

The Garlock bankruptcy provided “the most extensive database about asbestos claims and claimants that has been produced to date”⁵⁵ The Garlock Discovery Database was made publicly available in 2015 and has enabled further study of the pervasiveness of asbestos claims manipulation.

A November 2015 study examined 1,844 mesothelioma lawsuits resolved by asbestos defendant Crane Co. from 2007 to 2011 that could reliably be matched to the Garlock Database.⁵⁶ The data showed “a similar pattern of systemic suppression of trust disclosures that was documented in the Garlock bankruptcy.”⁵⁷ The analysis revealed:

- In cases where Crane was a codefendant with Garlock, plaintiffs eventually filed an average of 18 trust claim forms.⁵⁸
- On average, 80% of these claim forms or related exposures were not disclosed by plaintiffs or their law firms to Crane in the underlying tort proceedings.⁵⁹
- Overall, nearly half of all trust claims were filed after Crane had already resolved the tort case.⁶⁰

In February 2016, the U.S. Chamber Institute for Legal Reform (ILR) followed up with an analysis of 100 randomly sampled trust claims within the Garlock Database.⁶¹ ILR found that 69% of claimants “did not list every place of employment at which they alleged exposure with every trust.”⁶² Additionally, 15% “did not list specific products or brands to which they alleged exposure,” and of the remaining 85% of claimants that provided at least one brand of asbestos-containing material, “all provided only the products applicable to a particular trust on that trust’s claim form rather than every product to which they claimed exposure.”⁶³ Fully 55% of claimants had “date discrepancies across claim forms.”⁶⁴

The principal takeaways are that delayed filings of asbestos trust claims to deny defendants access to the information in those submissions, withholding of trust-related exposures in tort cases, and exposures history statements by asbestos plaintiffs that are inconsistent with subsequent trust claiming activities are pervasive. These practices and variances cannot simply be attributed to a few bad actors or clerical errors, but appear to be the “norm” in asbestos litigation.⁶⁵

“ [D]elayed filings of asbestos trust claims to deny defendants access to the information in those submissions, withholding of trust-related exposures in tort cases, and exposures history statements by asbestos plaintiffs that are inconsistent with subsequent trust claiming activities are pervasive. ”

Asbestos Trust Claims Manipulation in Virginia

Newport News is home to many asbestos cases because it is a major shipbuilding center; asbestos was widely used in that industry. High win rates and large payouts are also a big draw to the Circuit Court for the City of Newport News. Virginia has not escaped the systemic problems that were revealed in *Garlock* regarding asbestos trust claim manipulation and abuse.

The Circuit Court for the City of Newport News received 513 asbestos case filings from January 2013 through April 2015—“seven of every ten asbestos cases filed in the entire Commonwealth.”⁶⁶ 128 more asbestos cases were filed from May through December 2015 (205 filings for the year). In 2016, 91 additional asbestos cases were filed in Newport News through September.⁶⁷

Asbestos plaintiffs in Newport News enjoy the nation’s highest win rate at trial—85%—and multi-million-dollar verdicts are common.⁶⁸ Plaintiffs in Newport News benefit from “legal and evidentiary rulings that lower the bar for plaintiffs while tying defendants’ hands,”⁶⁹ leading the American Tort Reform Foundation (ATRF) to label Newport News a “Judicial Hellhole.”⁷⁰

The causation instruction that Newport News judges have historically given to juries in ship repair cases is an “example of the imbalance that occurs in that

jurisdiction and a key reason that asbestos plaintiffs do well there.”⁷¹ Ship repair cases are generally governed by maritime law,⁷² which requires a plaintiff to show that exposure to the defendant’s product was a “substantial factor” in causing the person’s alleged harm.⁷³ Decisions from the U.S. Court of Appeals for the Sixth Circuit and the manager of the federal asbestos multi-district litigation, among others, hold that “mere ‘minimal exposure’ to a defendant’s product is insufficient to establish

“ *Asbestos plaintiffs in Newport News enjoy the nation’s highest win rate at trial—85%—and multi-million-dollar verdicts are common.* ”

causation.”⁷⁴ Instead, proof of substantial exposure is required ...”⁷⁵ In contrast, Newport News juries have been instructed that a plaintiff only needs to show that exposure to the defendant’s product “was not an imaginary or possible factor or having only an insignificant connection with the harm.”⁷⁶ Newport News has been outside the mainstream.

Further, defendants in Newport News are “categorically prohibited from presenting dose reconstruction evidence to show that their low-dose products were not dangerous, so no warning was required.”⁷⁷ Newport News judges justify this prohibition by relying on Virginia case law regarding excluding the opinions of car accident reconstruction experts, a very different situation.⁷⁸ There do not appear to be other jurisdictions that consistently exclude all dose reconstruction evidence; rather, the admissibility of such evidence turns on its reliability.⁷⁹

In addition, the ban on presenting “dose reconstruction” evidence appears to apply only to defendants, as Newport News judges “allow frequent witness stand appearances by a particular plaintiffs’ expert who testifies about comparable work practice studies.”⁸⁰

Because of the lax causation standard and limitations placed on asbestos defendants in Newport News, the “critical evidence often comes down to the testimony and documentations about the products and materials to which the plaintiff was allegedly exposed.”⁸¹

Plaintiff testimony about the types and brands of products they remember working around has evolved to fit the

landscape.⁸² Plaintiffs typically identify solvent defendants, but not most asbestos producers that exited the tort system through bankruptcy, except perhaps Johns Manville.⁸³

The typically-named solvent defendant is more often a low-dose chrysotile defendant without access to documents from half a century ago that would allow it to refute directly the contention that its product was present at a particular jobsite. Moreover, there are practical challenges to finding former co-workers who are willing (even if able) to contradict the testimony of a former colleague dying of mesothelioma.

Defendants, therefore, rely upon third-party (often government) documents and expert testimony “either to call into question whether their product was present at a plaintiff’s worksite or to prove the presence of alternative and more potent sources of exposure, such as amphibole-containing thermal insulation.”⁸⁴ In a typical case involving a Navy sailor in another jurisdiction, this evidence would include ship drawings, specifications, and other government documents, as well as the testimony of a Navy expert “to demonstrate the vast amount of asbestos-containing insulation throughout the vessel.”⁸⁵

For Newport News defendants, however, “the admissibility of this evidence has been subject to an absurdly exacting requirement of direct proof that these other asbestos-containing products were being used in the plaintiff’s workspace while the plaintiff was working in that compartment—proof that decades later simply does not exist.”⁸⁶ Circumstantial evidence is excluded as speculative.⁸⁷

“ In cases decided under Virginia law, post-verdict filing of trust claims prevents judgment defendants from obtaining setoff credits for those payments, allowing plaintiffs to ‘double dip.’ ”

This same standard does not apply to plaintiffs’ witnesses. To the contrary, again using a Navy case as an example, these witnesses will often testify that there were numerous brands of a particular product onboard a ship. They will also testify that they did not work with the plaintiff every day, and will admit that they cannot say they have a specific recollection of seeing the plaintiff work with the defendant’s product. Nevertheless, testimony from these co-workers is permitted as circumstantial evidence to corroborate the plaintiff’s testimony about products he used.⁸⁸

Newport News is also an outlier in its categorical ban against the admissibility of Navy/employer knowledge.⁸⁹ The circuit court prohibits such evidence for purposes of a “sophisticated purchaser” defense, although the issue is debatable as a matter of Virginia law.⁹⁰ Other courts have allowed defendants to argue that the Navy was the sole cause of a harm because enlisted persons had to use the products.⁹¹ The information is also relevant to issues for which it should be admissible, such as the “state of the art.”⁹²

Finally, as documented later, “Newport News asbestos cases lack transparency with respect to alternative sources of exposure.”⁹³

A Deeper Dive into Newport News

To explore the extent of these issues in Newport News, a review was conducted of asbestos wrongful death cases tried in Newport News from 2006 to 2014. The sampling is believed to be representative of Newport News asbestos cases in general. The study focused solely on product identification by plaintiffs.

The case analysis revealed that asbestos trust claims are routinely filed *post-verdict* in Newport News actions, undoubtedly to disadvantage personal injury defendants. As others have found, “[p]ublicly available data indicates that millions of dollars of asbestos bankruptcy trust payments have been recovered post-verdict by asbestos plaintiffs in Newport News.”⁹⁴

In maritime cases, this practice can mislead juries by diverting blame away from immune former insulation defendants, placing it solely on the still-solvent but more remote defendants in the trial. In cases decided under Virginia law, post-verdict filing of trust claims prevents judgment defendants from obtaining setoff credits for those payments,⁹⁵ allowing plaintiffs to ‘double dip.’

The analysis also revealed that plaintiffs in Newport News asbestos cases routinely deny or are unable to recall most trust-related exposures during discovery in personal injury cases—when such information could be helpful to defendants—but then file claims with those and many other trusts post-verdict and obtain payments that can be substantial in the aggregate.

Following are several case examples:

CHAPMAN v. JOHN CRANE, INC.

In April 2014, Earl Chapman filed a civil action in the Circuit Court for the City of Newport News. He alleged that he developed mesothelioma from exposure to asbestos as a machinist mate on several U.S. Navy ships from July 1950 to December 1953 and from 1960 through 1974.⁹⁶ After leaving the Navy, Mr. Chapman worked for several months at a private company doing ship repair, where he also described being exposed to asbestos.⁹⁷

During his depositions, Mr. Chapman recalled the names of solvent pump, valve, and gasket manufacturers named as defendants in his case—admitting that his attorneys had shown him photos to refresh his recollection.⁹⁸

Mr. Chapman also recalled working around some trust-related products (i.e., Johns Manville, Flexitallic (T&N Subfund of Federal-Mogul asbestos trust), Eagle-Picher, Leslie Controls, Worthington pumps (DII Industries), Owens Corning, and Armstrong World Industries), but did not recall exposure to Raybestos-Manhattan brand sheet gaskets.⁹⁹

6/17/14
Deposition of Earl Chapman
pp. 63-64

Q: Do you recall Raybestos-Manhattan brand sheet gasket material from your time in the Navy?

A. No. The Ray—Raybestos sounds familiar but not—not in this context, yeah. No, No.

Nevertheless, Mr. Chapman’s estate eventually filed a claim with and received a \$1,137 payment from the trust responsible for claims involving Raybestos-Manhattan brand sheet gasket material (i.e., Raytech Corp. asbestos trust), among many others.

So far, Mr. Chapman’s estate has received almost \$265,000 in settlements with 16 asbestos trusts—many more trust-related products than Mr. Chapman recalled during three days of depositions.

Chapman Trust Claims

Bankruptcy Trust	Amount*	Date Recorded
1 Armstrong World Industries Personal Injury Settlement Trust	\$38,500	4/19/2016
2 Celotex Asbestos Settlement Trust	\$8,635	4/19/2016
3 Fibreboard Asbestos Personal Injury Trust	\$14,040	4/19/2016
4 T&N SubFund of Federal Mogul Asbestos Personal Injury Trust	\$3,000	4/19/2016
5 U.S. Gypsum Asbestos Personal Injury Trust	\$43,710	4/19/2016
6 Babcock & Wilcox Company Asbestos PI Trust	\$10,710	4/19/2016
7 Manville Personal Injury Settlement Trust	\$21,875	4/19/2016
8 Leslie Controls, Inc. Asbestos Personal Injury Trust	\$5,000	4/19/2016
9 Raytech Corporation Personal Injury Settlement Trust	\$1,137	4/19/2016
10 A.P. Green Asbestos Trust	\$5,956	5/20/2016
11 Eagle-Picher Industries Personal Injury Trust	\$11,334	5/20/2016
12 Keene Creditors Trust	\$1,000	5/20/2016
13 Owens Corning Asbestos Personal Injury Trust	\$23,865	5/20/2016
14 W.R. Grace Asbestos Trust	\$46,800	5/20/2016
15 C.E. Thurston & Sons Asbestos Trust	\$8,750	9/14/2016
16 Dill Industries, LLC Asbestos PI Trust/Halliburton	20,363	9/14/2016
Total Trust Payments	\$264,675	

**Rounded to nearest dollar*

All of the Chapman trust claim filings appear to have been delayed until after defendant John Crane, Inc. was found liable in a bench trial and the parties stipulated to damages of \$300,000 in October 2015.¹⁰⁰

FARMER v. OWENS-ILLINOIS, INC.

In another recent case, plaintiff Thomas Farmer alleged that he developed mesothelioma from exposure to asbestos as a machinery installer and quality inspector doing commercial ship repair and Navy vessel construction from 1956 to 1974 at the Newport News shipyard.¹⁰¹

“ All of the Chapman trust claim filings appear to have been delayed until after defendant John Crane, Inc. was found liable in a bench trial and the parties stipulated to damages of \$300,000 in October 2015. ”

During his depositions, Mr. Farmer was able to recall the names of solvent defendants in his case—though he admitted that his attorneys had shown him photos of those products to refresh his recollection.¹⁰

5/24/11
Deposition of Thomas Farmer
pp. 273-74

Q: Okay. What you recall is being shown photos of valves of the def—of those parties that are defendants to the lawsuit; is that correct?
[Objection]

Q: Is that correct?

A. Yeah.

In contrast, Mr. Farmer’s recollection was limited regarding immune former insulation manufacturers whose asbestos-containing products were likely prevalent on the ships he repaired and constructed. Mr. Farmer’s attorneys apparently did not need to refresh his recollection as to those nonparty exposures.

5/2/11
Deposition of Thomas Farmer
p. 48

Q: And do you recall seeing any photographs of pipe covering?

A. I don’t think so.

5/24/11
Deposition of Thomas Farmer
p. 133

Q: Okay. And your counsel asked you this morning about some product photographs. You were shown, for example, a—gasket photographs. I understand that you haven’t had the benefit of seeing photographs of any of these insulation products. Is that a fair statement?
[objection]

A. Of the insulation—

Q. Yes, sir.

A. —itself? No.

For instance, Mr. Farmer admitted that piping and steam lines were everywhere on his ships—miles and miles of pipes—and were covered with asbestos insulation.¹⁰³ When repairs were being conducted, asbestos dust was created “[m]ost of the time.”¹⁰⁴ He said, “I’ve seen where it looked like snow coming down in there.”¹⁰⁵ And he admitted that he would have been breathing dust daily from those tasks.¹⁰⁶ Yet, he was unable to recall the names of the manufacturers of those products,¹⁰⁷ with the exception of “Owens.”¹⁰⁸

Mr. Farmer also recalled using asbestos cloth as a “pillow many a time” and to “make jackets out of it to wrap around us to keep us warm.”¹⁰⁹ He admitted that asbestos cloth was prevalent throughout his ships, but could not recall ever seeing any names associated with that material.¹¹⁰

In addition, Mr. Farmer testified that making a gasket from sheet gasket material would create dust and “[s]ometimes it’d make [him] start coughing.”¹¹¹ He recalled exposures to gaskets and packing from solvent defendant John Crane, Inc. as well as Garlock and Johns Manville, but could not recall other materials used at the shipyard.¹¹²

Mr. Farmer was specifically asked about a number of products to try to refresh his recollection about possible trust-related exposures. He denied seeing any Eagle-Picher, A.P. Green, Fibreboard, or Keene products, among others.¹¹³

5/3/11
Deposition of Thomas Farmer
pp. 183-184

Q: Did you ever see any Eagle-Picher products or A.P. Green Products?
[objection]

A. No.

Q. Fibreboard, Keene?

A. No.

5/3/11
Deposition of Thomas Farmer
p. 190

Q. Do you believe you were exposed to Eagle-Picher products?

A. Not that I know of.

Q. A.P. Green products?

A. Not that I know of.

He was not familiar with Raybestos-Manhattan and was unable to recall C.E. Thurston as a major supplier of asbestos to the shipyard where he worked.¹¹⁴

Further, in response to Requests for Admission, Mr. Farmer’s attorneys specifically denied exposure to “asbestos fibers from asbestos-containing refractory material”¹¹⁵ and various trust-related exposures,¹¹⁶ including exposures to Eagle-Picher, Keene, Fibreboard, Raybestos-Manhattan, and U.S. Gypsum products.¹¹⁷

Nevertheless, Mr. Farmer’s estate eventually filed and settled claims with the

North American Refractories Co. (\$75,000), U.S. Gypsum (\$31,000), Eagle-Picher (\$15,592), A.P. Green (\$5,885), Fibreboard (\$10,260), Keene (\$1,000), Raytech Corp. (\$1,050), and C.E. Thurston (\$6,250) asbestos trusts, among many others.

In total, Mr. Farmer’s estate has obtained settlements with 25 asbestos trusts totaling over \$405,000.

Farmer Trust Claims		
Bankruptcy Trust	Amount*	Date Recorded
1 U.S. Mineral Products Asbestos Personal Injury Settlement Trust	\$1,250	1/10/2014
2 T&N SubFund of Federal Mogul Asbestos Personal Injury Trust	\$3,000	2/28/2014
3 Manville Personal Injury Settlement Trust	\$26,250	2/28/2014
4 Porter Hayden Bodily Injury Trust	\$6,300	2/28/2014
5 Eagle-Pitcher Bodily Injury Trust	\$15,592	3/20/2014
6 U.S. Gypsum Asbestos Personal Injury Trust	\$31,000	9/4/2014
7 U.S. Mineral Products Asbestos Personal Injury Settlement Trust	\$150	9/4/2014
8 Raytech Corporation Personal Injury Settlement Trust	\$1,050	9/4/2014
9 Owens Corning Asbestos Personal Injury Trust	\$18,920	9/4/2014
10 Keene Creditors Trust	\$1,000	9/4/2014
11 Fibreboard Asbestos Personal Injury Trust	\$10,260	9/4/2014
12 DII Industrial, LLC Asbestos PI Trust/Harison-Walker	\$48,594	9/4/2014
13 DII Industrial, LLC Asbestos PI Trust/Halliburton	\$20,363	9/4/2014
14 Celotex Asbestos Settlement Trust	\$9,551	9/4/2014
15 C.E. Thurston & Sons Asbestos Trust	\$6,250	9/4/2014
16 Babcock & Wilcox Company Asbestos PI Trust	\$6,750	9/4/2014
17 ASARCO Personal Injury Settlement Trust	\$37,400	9/4/2014
18 Armstrong World Industries Personal Injury Settlement Trust	\$38,500	9/4/2014
19 N. American Refractories Co. Asbestos Personal Injury Trust	\$75,000	11/21/2014
20 Leslie Controls, Inc. Asbestos Personal Injury Trust	\$5,000	11/21/2014
21 Congoleum Plan Trust	\$5,469	7/16/2015
22 Combustion Engineering 524(g) Asbestos PI Trust	\$20,250	7/16/2015
23 A.P. Green Asbestos Trust	\$5,885	7/16/2015
24 H.K. Porter Company Inc. Asbestos Trust	\$600	2/23/2016
25 G-I Holdings, Inc. Asbestos Personal Injury Trust	\$11,595	9/22/2016
Total Trust Payments	\$405,979	

**Rounded to nearest dollar*

These claim filings appear to have been delayed until after defendant John Crane, Inc. was found liable in a bench trial and the parties stipulated to damages of \$600,000 in September of 2013.¹¹⁸

HERMAN v. OWENS ILLINOIS, INC.

In 2013, a Circuit Court for the City of Newport News awarded \$1 million to the estate of John Herman following a jury trial on liability.¹¹⁹ Mr. Herman alleged exposures to asbestos while working on ships in Norfolk as a machinist mate in the U.S. Navy and Reserves from 1955 through the late 1970s.¹²⁰

During the personal injury case, Mr. Herman testified that he recalled various solvent defendants’ products and some trust-related exposures, including Johns Manville, Flexitallic, Leslie Controls, and Worthington pumps.¹²¹ Mr. Herman did not recall other trust-related exposures, including Armstrong, Amatex, Porter, and Raybestos.¹²² His estate, however, filed claims with and obtained settlements with all of these trusts.

Further, in response to specific discovery requests, Mr. Herman stated that he did not have sufficient information to admit or deny many trust-related exposures, including Celotex, Owens Corning and Eagle-Picher.¹²³

Herman Trust Claims		
Bankruptcy Trust	Amount*	Date Recorded
1 Manville Personal Injury Settlement Trust	\$26,250	5/31/2013
2 C.E. Thurston & Sons Asbestos Trust	\$6,250	9/6/2013
3 Porter Hayden Bodily Injury Trust	\$6,300	9/6/2013
4 U.S. Mineral Products Asbestos Personal Injury Settlement Trust	\$1,250	9/6/2013
5 Raytech Corporation Personal Injury Settlement Trust	\$1,050	10/3/2013
6 U.S. Gypsum Asbestos Personal Injury Trust	\$31,000	10/3/2013
7 Eagle-Pitcher Industries Personal Injury Trust	\$17,119	11/12/2013
8 Armstrong World Industries Personal Injury Settlement Trust	\$22,000	11/15/2013
9 Babcock & Wilcox Company Asbestos PI Trust	\$6,750	11/15/2013
10 Fibreboard Asbestos Personal Injury Trust	\$10,260	11/15/2013
11 Owens Corning Asbestos Personal Injury Trust	\$18,920	11/15/2013
12 Amatex Trust Claim Facility	\$350	5/20/2014
13 ASARCO Personal Injury Settlement Trust	\$37,400	5/20/2014
14 Celotex Asbestos Settlement Trust	\$9,488	5/20/2014
15 H.K. Porter Company Inc. Asbestos Trust	\$800	5/20/2014
16 Keene Creditors Trust	\$1,000	5/20/2014
17 J.T. Thorpe Settlement Trust	\$22,898	5/20/2014
18 Dill Industries, LLC Asbestos PI Trust/Halliburton	\$20,363	10/29/2014
19 A.P. Green Asbestos Trust	\$5,850	2/9/2016
20 Leslie Controls, Inc. Asbestos Personal Injury Trust	\$5,000	2/9/2016
Total Trust Payments	\$250,299	

**Rounded to nearest dollar*

After the tort suit was resolved, however, Mr. Herman’s estate obtained settlements with every one of these trusts.

In all, Mr. Herman’s estate has obtained settlements with 20 trusts totaling over \$250,000. All or virtually all of the trust claims appear to have been filed post-verdict.¹²⁴

MORTON v. GARLOCK SEALING TECH., LLC

In November 2008, a Circuit Court for the City of Newport News jury returned a defense verdict in an asbestos case brought by the family of a former shipyard worker, Stanley Morton.¹²⁵ Mr. Morton alleged that he developed mesothelioma from exposure to asbestos while working as an electrician and maintenance worker for over three decades, including repairing Exxon oil tankers.¹²⁶ Exxon countered that there was no firm evidence that Mr. Morton was exposed to asbestos on the Exxon ships and that the shipyard was responsible for worker safety.¹²⁷

Though Exxon ultimately prevailed, courthouse records indicate that Mr. Morton reached settlements with multiple defendants totaling over a half a million dollars. Presumably, these settlements were influenced by the representations made regarding Mr. Morton’s asbestos exposures.

Publicly available records indicate that asbestos trust claims that had been filed early in the case were withdrawn, presumably to deny defendants access to the information. For instance, in February 2008—months before Mr. Morton’s discovery and de bene esse depositions—

“ Publicly available records indicate that asbestos trust claims that had been filed early in the case were withdrawn, presumably to deny defendants access to the information. ”

claims against the U.S. Gypsum, Armstrong World Industries, Babcock & Wilcox, Owens Corning/Fibreboard, and DII Industries asbestos trusts were withdrawn.

These trust claims were re-filed shortly after the verdict. For instance, in early December 2008, less than two weeks after the verdict, trust claims were filed on Morton’s behalf with the Owens Corning/Fibreboard and Babcock & Wilcox trusts. These claims resulted in payments of roughly \$114,000 (Owens Corning), \$50,000 (Babcock & Wilcox), and almost \$36,000 (Fibreboard). Approximately a week after those trust claims were filed, additional trust claims were filed with the U.S. Gypsum and Armstrong World Industries trusts. These claims resulted in payments of almost \$95,000 and \$25,000, respectively.

Farmer Trust Claims

Bankruptcy Trust	Amount*	Date Recorded
1 Manville Personal Injury Settlement Trust	\$26,250	5/4/2009
2 U.S. Gypsum Asbestos Personal Injury	\$94,575	5/4/2009
3 H.K. Porter Company Inc. Asbestos Trust	\$1,260	8/3/2009
4 Keene Creditors Trust	\$1,375	8/30/2009
5 UNR Asbestos-Disease Claims Trust	\$1,642	8/30/2009
6 Celotex Asbestos Settlement Trust	\$18,910	8/30/2009
7 C.E. Thurston & Sons Asbestos Trust	\$10,000	8/30/2009
8 NGC Bodily Injury Trust	\$12,510	8/30/2009
9 DII Industrial, LLC Asbestos PI Trust/Halliburton	\$21,500	8/30/2009
10 Armstrong World Industries Personal Injury Settlement Trust	\$24,573	8/30/2009
11 Kaiser Aluminum & Chemical Corporation Asbestos Personal Injury Trust	\$30,571	8/30/2009
12 Fibreboard Asbestos Personal Injury Trust	\$35,961	8/30/2009
13 Babcock & Wilcox Company Asbestos PI Trust	\$50,342	8/30/2009
14 Owens Corning Asbestos Personal Injury Trust	\$114,079	8/30/2009
15 Eagle-Pitcher Industries Personal Injury Settlement Trust	\$19,441	10/28/2009
16 Porter Hayden Bodily Injury Trust	\$6,300	3/19/2010
17 Amatex Trust Claim Facility	\$700	6/3/2010
18 DII Industrial, LLC Asbestos PI Trust/Harison-Walker	\$25,481	2/16/2011
19 U.S. Mineral Products Asbestos Personal Injury Settlement Trust	\$1,250	10/24/2011
20 Combustion Engineering 524(g) Asbestos PI Trust	\$36,248	4/13/2012
21 J.T. Thorpe Settlement Trust	\$54,668	7/13/2012
22 Raytech Corporation Personal Injury Settlement Trust	\$1,050	10/16/2012
23 G-I Holdings, Inc. Asbestos Personal Injury Trust	\$11,470	11/16/2012
24 Western Asbestos Settlement Trust	\$405,139	2/30/2013
25 T&N SubFund of Federal Mogul Asbestos Personal Injury Trust	\$3,000	6/16/2013
26 N. American Refractories Co. Asbestos Personal Injury Trust	\$75,000	1/8/2015
27 A.P. Green Asbestos Trust	\$5,851	7/1/2016
28 Congoleum Plan Trust	\$6,636	7/1/2016
Total Trust Payments	\$1,095,782	

**Rounded to nearest dollar*

In all, after the verdict, Morton's estate recorded settlements with 28 asbestos trusts totaing nearly \$1.1 million.

In his personal injury case, Mr. Morton could not recall trust-related exposures such as UNARCO, Celotex, Amatex, Porter Hayden, U.S. Gypsum, Raytech, and Combustion Engineering, among others.¹²⁸

9/20/06
Deposition of Stanley Morton
pp. 325-327

Q: U-N-A-R-C-O?

A: I don't recall that.

Q: UNR?

A: I don't recall that.

Q: [sic] Celotex?

A: I don't recall right now.

Q: National Gypsum?

A: National Gypsum, I have been around that product. I can't tell you when or where right now.

Q: Okay. [sic] AC&S?

A: No, ma'am, I can't—

Q: Amatex?

A: Not that I can recall.

Q: Armstrong World Industries?

A: Not that I recall. That's a well-known name but I don't recall that.

Q: Combustion Engineering?

A: Not that I can recall.

Q: Eagle Picher?

A: I don't recall that right now.

Q: okay. [sic] Keene Corporation?

A: No, ma'am.

Q: Porter Hayden?

A: No, ma'am.

Q: Raytech?

A: No, ma'am.

Q: USG Corporation?

A: Not that I recall right now.

Q: And W.R. Grace?

A: No, ma'am. I don't recall that.

Despite Mr. Morton's failure to recall such trust-related exposures, Mr. Morton's estate obtained settlements with trusts established by each of these companies after his trial.

ONEY v. GARLOCK SEALING TECH., LLC

In April 2007, a Circuit Court for the City of Newport News jury awarded \$9.25 million to the widow of a shipyard worker who allegedly developed mesothelioma from exposure to asbestos at the Newport News shipyard.¹²⁹ Vaughn Oney, the decedent, was employed at the shipyard from mid-1962 to early 1963 in the main machine shop and from February 1963 to February 1994 as an outside machinist and supervisor.¹³⁰

After the verdict, Mr. Oney's estate recorded settlements with 23 asbestos trusts totaling almost \$728,000. It appears that all or virtually all of these trust claims were filed post-trial.

For example, the estate filed claims in June 2008—a little more than a year after the verdict—with the U.S. Gypsum, Babcock & Wilcox Company, and Owens Corning/Fibreboard asbestos personal injury trusts on the same day, and with the DII Industries

Oney Trust Claims

Bankruptcy Trust	Amount*	Date Recorded
1 Manville Personal Injury Settlement Trust	\$26,250.....	8/22/2008
2 DII Industrial, LLC Asbestos PI Trust/Harison-Walker	\$67,877.....	11/25/2008
3 DII Industrial, LLC Asbestos PI Trust/Halliburton	\$32,488.....	11/25/2008
4 Celotex Asbestos Settlement Trust	\$18,638.....	11/25/2008
5 C.E. Thurston & Sons Asbestos Trust	\$10,000.....	11/25/2008
6 Eagle-Pitcher Industries Personal Injury Settlement Trust	\$21,846.....	11/25/2008
7 Western Asbestos Settlement	\$182,033.....	4/13/2009
8 U.S. Gypsum Asbestos Personal Injury Trust	\$103,307.....	4/13/2009
9 Babcock & Wilcox Company Asbestos PI Trust	\$75,069.....	4/13/2009
10 Combustion Engineering 524(g) Asbestos PI Trust	\$36,248.....	4/13/2009
11 Kaiser Aluminum & Chemical Corporation Asbestos Personal Injury Trust	\$30,521.....	4/13/2009
12 Keene Creditors Trust	\$1,375.....	4/13/2009
13 Armstrong World Industries Personal Injury Settlement Trust	\$24,963.....	10/2/2009
14 Porter Hayden Bodily Injury Trust	\$6,300.....	11/10/2009
15 H.K. Porter Company Inc. Asbestos Trust	\$1,260.....	11/10/2009
16 Owens Corning Asbestos Personal Injury Trust	\$28,864.....	12/28/2009
17 Fibreboard Asbestos Personal Injury Trust	\$16,158.....	12/28/2009
18 Amatex Trust Claim Facility	\$700.....	5/6/2010
19 NGC Bodily Injury Trust	\$27,267.....	6/30/2011
20 U.S. Mineral Products Asbestos Personal Injury Settlement Trust	\$1,250.....	10/18/2011
21 Raytech Corporation Personal Injury Trust	\$1,050.....	8/8/2012
22 G-I Holdings, Inc. Asbestos Personal Injury Trust	\$11,470.....	9/25/2012
23 T&N SubFund of Federal Mogul Asbestos Personal Injury Trust	\$3,000.....	4/7/2014
Total Trust Payments	\$727,904	

**Rounded to nearest dollar*

trust, resulting in payments of approximately \$103,000 (U.S. Gypsum), \$75,000 (Babcock & Wilcox), \$29,000 (Owens Corning), \$16,000 (Fibreboard), \$68,000 (DII/Harbison-Walker) and over \$32,000 (DII/Halliburton).

At Mr. Oney's deposition, however, he could not recall the names of any of the manufacturers of pipe covering, cloth, cement, or related boxes or bags of such products he may have worked around while constructing submarines.¹³¹ Mr. Oney also said that he had "no idea" who supplied the insulation that was used on an aircraft carrier he serviced.¹³²

He recalled working with some trust-related products, including Johns Manville, Flexitallic, Worthington pumps, and Leslie Controls,¹³³ but these were only a few of the many asbestos trust claims he filed.

If all of Mr. Oney's almost two dozen trust-related claims had been available at trial, so the jury could have learned about the totality of his exposures to asbestos, the outcome in the tort case might have been different. Instead, because the trust claim filings were delayed until after the tort case, and only a fraction of Mr. Oney's trust-related exposures were identified in discovery, the defense was put at a disadvantage.

It appears that Mr. Oney's estate ultimately obtained a full recovery in the tort case, plus another three-quarters of a million dollars from asbestos trusts that was not offset against his tort case damages.

“ If all of Mr. Oney's almost two dozen trust-related claims had been available at trial, so the jury could have learned about the totality of his exposures to asbestos, the outcome in the tort case might have been different. ”

The Case for Asbestos Trust Claim Transparency

As the Newport News sampling indicates, Virginia’s courtrooms have not been immune from the product identification abuses that have plagued other courts. A number of states have enacted legislation requiring claimants to file and disclose their asbestos trust claims before trial in a personal injury case. Virginia should also enact asbestos bankruptcy trust claim transparency legislation to fix the disconnect and address the routine manipulation of trust claims to disadvantage defendants. Such a law would promote the integrity of the civil justice system.

Newport News Plaintiffs’ Lawyers Game the System to Disadvantage Tort Defendants

The analysis and case examples reflect a strategy by Newport News plaintiffs’ lawyers to disadvantage defendants and maximize funds obtained from the tort and trust systems, as documented in the *Garlock* bankruptcy and other reports.

The opaqueness of the current system is what has enabled such activities to go undetected for so long. If more information is available regarding other asbestos claimants—not just the recorded trust settlements in wrongful death cases—it is possible other patterns or practices would be discovered. Based on the limited information available, however, there is enough evidence to demonstrate problems in Virginia’s asbestos litigation that need to be addressed.

Legislatures Have Responded to Abuse With Trust Transparency Reform

Since 2012, a growing number of other states, including regional competitors Tennessee and West Virginia, have enacted laws that fix the disconnect and lack of transparency between the asbestos trust and personal injury systems. These laws provide a mechanism to compel plaintiffs to file and produce all asbestos trust claim forms before trial.¹³⁴

For example, the West Virginia and Tennessee laws provide that “the plaintiff shall provide all parties with a sworn statement identifying all asbestos trust claims that have been filed by the plaintiff or by anyone on the plaintiff’s behalf ... or that potentially could be filed by the plaintiff against an asbestos trust.”¹³⁵ Further, “the plaintiff shall make available to all parties all trust claims materials for each asbestos trust claim that has been filed by the plaintiff”¹³⁶ If the defendant believes there are additional trust claims that could be filed by the plaintiff, the defendant “may move the court for an order to require the plaintiff to file the asbestos trust claim.”¹³⁷

The recent laws also generally provide that trust claims materials are presumed to be relevant and are admissible in evidence.¹³⁸

Trust transparency laws diminish opportunities for inconsistent claiming behavior by plaintiffs and enable defendants to assess cases based on more accurate and reliable exposure information. Trust

claims materials contain important exposure history information that can help identify fraudulent or exaggerated exposure claims; establish that a nonparty was solely responsible for the plaintiff’s harm; and allow judgment defendants to obtain set-off credits for trust claim payments received by the plaintiff.¹³⁹

Further, transparency has not been shown to burden personal injury claimants.¹⁴⁰ All that is sought is information and a change in the timing of trust claim filings. Claims that are routinely filed post-settlement or post-verdict would simply need to be filed earlier.

There has been no showing that reforms requiring asbestos trust claims to be filed earlier in a case either close courthouse doors or result in delays for claimants. As commentators have explained, “tort lawsuits continue to be filed in jurisdictions that have enacted reforms. Compensation has been neither delayed nor denied in those jurisdictions.”¹⁴¹

“ Trust transparency laws diminish opportunities for inconsistent claiming behavior by plaintiffs and enable defendants to assess cases based on more accurate and reliable exposure information.”

In fact, requiring trust claims to be filed earlier in a case “helps, not hurts, people suffering from asbestos disease because it puts money in their pockets more quickly than delaying the claims until after trial.”¹⁴² Veterans, in particular, would benefit from such laws. For this reason, “although the support is not unanimous, mainstream veterans organizations like AMVETS have supported reforms” that would bring about greater transparency between the asbestos trust and personal injury tort systems.¹⁴³

Virginia Should Enact Trust Transparency Reform

Virginia law should require plaintiffs to file and produce all asbestos trust claims before trial. This common sense reform would speed trust system recoveries for claimants, allow juries to reach more fully informed decisions regarding the cause of a plaintiff’s asbestos-related disease, provide fairness to defendants, and restore the integrity of the civil justice system. Legislation to fix the current disconnect between the personal injury and asbestos trust systems also would protect solvent Virginia employers from the types of abuses described in *Garlock* and help preserve resources needed to compensate honest asbestos claimants.¹⁴⁴

“In fact, requiring trust claims to be filed earlier in a case helps, not hurts, people suffering from asbestos disease because it puts money in their pockets more quickly than delaying the claims until after trial.”

Endnotes

- 1 See U.S. Gov't Accountability Office, GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts* 3 (Sept. 2011), <http://www.gao.gov/assets/590/585380.pdf>.
- 2 *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71 (W.D.N.C. Bankr. 2014).
- 3 *Id.* at 82.
- 4 *Id.* at 84.
- 5 *Id.* at 86.
- 6 See, e.g., Peggy Ableman *et al.*, *A Look Behind the Curtain: Public Release of Garlock Bankruptcy Discovery Confirms Widespread Pattern of Evidentiary Abuse Against Crane Co.*, 30:19 *Mealey's Litig. Rep.: Asbestos* 1 (Nov. 4, 2015), <http://www.mccarter.com/2015/11/04/Litigation%2011.4.15.pdf>.
- 7 See Va. Code Ann. § 8.01–55; see also *Perreault v. The Free Lance-Star*, 666 S.E.2d 352, 358 (Va. 2008) (requiring “a party seeking approval of a compromise settlement of a wrongful death claim to file in the court a written petition that includes the complete and unredacted terms of the compromise settlement.”).
- 8 James S. Kakalik *et al.*, *Costs of Asbestos Litigation* 3 (Rand Corp. 1983), <http://www.rand.org/pubs/reports/R3042.html>.
- 9 *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 597 (1997).
- 10 Marc C. Scarcella *et al.*, *The Philadelphia Story: Asbestos Litigation, Bankruptcy Trusts and Changes in Exposure Allegations From 1991-2010*, 27:19 *Mealey's Litig. Rep.: Asbestos* 1, 1 (Nov. 7, 2012), http://www.bateswhite.com/media/publication/11_media.617.pdf.
- 11 ‘Medical Monitoring and Asbestos Litigation’—A Discussion with Richard Scruggs and Victor Schwartz, 17:3 *Mealey's Litig. Rep.: Asbestos* 19 (Mar. 1, 2002) (quoting plaintiffs’ attorney Richard Scruggs).
- 12 S. Todd Brown, *Bankruptcy Trusts, Transparency and the Future of Asbestos Compensation*, 23 *Widener L.J.* 299, 306 (2013).
- 13 See Mark D. Plevin *et al.*, *Where Are they Now, Part Eight: An Update on Developments in Asbestos-Related Bankruptcy Cases*, 16 *Mealey's Asbestos Bankruptcy Rep.* 1, Chart 1 (Sept. 2016), <https://www.crowell.com/files/Where-Are-They-Now-Part-Eight-An-Update-On-Developments-In-Asbestos-Related-Bankruptcy-Cases.pdf>.
- 14 See 11 U.S.C. § 524(g); see also Lloyd Dixon *et al.*, *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts* (Rand Corp. 2010), http://www.rand.org/content/dam/rand/pubs/technical_reports/2010/RAND_TR872.pdf.
- 15 William P. Shelley *et al.*, *The Need for Further Transparency Between the Tort System and Section 524(g) Asbestos Trusts, 2014 Update—Judicial and Legislative Developments and Other Changes in the Landscape Since 2008*, 23 *Widener L.J.* 675, 675-76 (2014).
- 16 See U.S. Gov't Accountability Office, *supra*.
- 17 Dionne Searcey & Rob Barry, *Asbestos Claims Rise, So Do Worries About Fraud*, *Wall St. J.*, Mar. 11, 2013, at A1, <http://www.wsj.com/articles/SB10001424127887323864304578318611662911912>.

- 18 See Daniel Fisher, Plaintiff Lawyer Offers Inside Look At 'Institutionalized Fraud' at Asbestos Trusts, *Forbes*, May 8, 2014, <http://www.forbes.com/sites/danielfisher/2014/05/08/plaintiff-lawyer-offers-inside-look-at-institutionalized-fraud-at-asbestos-trusts/#6bfd4040633b>.
- 19 See U.S. GAO, *supra*, at 21.
- 20 See Lester Brickman, Fraud and Abuse in Mesothelioma Litigation, 88 *Tul. L. Rev.* 1071, 1078-79 (2014).
- 21 See Lloyd Dixon & Geoffrey McGovern, Bankruptcy's Effect on Product Identification in Asbestos Personal Injury Cases iii (Rand Corp. 2015) ("Plaintiffs now often receive compensation both from the trusts and through a tort case."), http://www.rand.org/pubs/research_reports/RR907.html; see also U.S. GAO, *supra*, at 15 ("Although 60 companies subject to asbestos-related liabilities have filed for bankruptcy under Chapter 11 and established asbestos bankruptcy trusts in accordance with § 524(g), asbestos claimants can also seek compensation from potentially liable solvent companies (that is, a company that has not declared bankruptcy) through the tort system.").
- 22 *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 96.
- 23 Daniel J. Ryan & John J. Hare, Uncloaking Bankruptcy Trust Filings in Asbestos Litigation: A Survey of Solutions to the Types of Conduct Exposed in Garlock's Bankruptcy, 15:1 *Mealey's Asbestos Bankr. Rep.* 1, 2 (Aug. 2015), [http://www.marshalldennehey.com/media/pdf-articles/O%20374%20by%20D.%20Ryan%20%26%20J.%20Hare%20%2808.15%29%20Mealey%27s%20Asbestos%20Bankruptcy%20Report.pdf](http://www.marshall Dennehey.com/media/pdf-articles/O%20374%20by%20D.%20Ryan%20%26%20J.%20Hare%20%2808.15%29%20Mealey%27s%20Asbestos%20Bankruptcy%20Report.pdf).
- 24 See Asbestos Claims Legislation, Hearing Before The Subcommittee on Courts, Commercial and Administrative Law of the Committee on the Judiciary, House of Representatives, 112th Cong. (May 10, 2012) (statement of Leigh Ann Schell), 2012 WLNR 9840045 (citing *James L. Dunford v. Honeywell Corp.*, No. CL-25113, Va. Cir. Ct. Loudon County)).
- 25 *Id.*
- 26 See Daniel Fisher, Double-Dippers, *Forbes*, Aug. 19, 2006, <http://www.forbes.com/forbes/2006/0904/136.html>: "In 2004 a Loudoun County, Va. judge threw out James Dunford's mesothelioma suit against Ford and other automotive parts makers because Dunford's lawyers failed to disclose claims they'd made against bankruptcy trusts in other states. In the lawsuit, Dunford said he got sick after working in gas stations for two years in the early 1980s. What he didn't say was that he'd already collected money from building-products trusts based on his claims of being a construction worker. Medical studies have shown construction workers are far more likely to contract asbestos-related cancer than car mechanics are."
- 27 See *Kananian v. Lorillard Tobacco Co.*, 2007 WL 4913164 (Ohio Ct. Com. Pl. Cuyahoga Cnty. Jan. 17, 2007).
- 28 James F. McCarty, Judge Becomes National Legal Star, Bars Firm from Court Over Deceit, *Cleveland Plain Dealer*, Jan. 25, 2007, at B1.
- 29 Daniel Fisher, Double-Dippers, *Forbes*, Sept. 4, 2006, at 136, 137, <http://www.forbes.com/forbes/2006/0904/136.html>.
- 30 McCarty, *supra* (quoting Judge Harry Hanna).
- 31 *Id.*
- 32 *Warfield v. AC&S, Inc.*, No. 24X06000460, Consolidated Case No. 24X09000163, (Md. Cir. Ct. Baltimore City), Jan. 11, 2011 Mesothelioma Trial Group (M 112).

- 33 See Problems with Asbestos Compensation System, Hearing Before The Subcommittee on the Constitution of the Committee on the Judiciary, House of Representatives, 111th Cong. (Sept. 9, 2011) (statement of James L. Stengel), 2011 WLNR 24791123.
- 34 *Id.*
- 35 *Id.*
- 36 See Asbestos Claims Transparency, Hearing Before The Subcommittee on Regulatory Reform, Commercial and Antitrust Law of the Committee on the Judiciary, House of Representatives, 113th Cong. (Mar. 13, 2013) (statement of Hon. Peggy L. Ableman), 2013 WLNR 7440143.
- 37 *Id.*
- 38 *Id.*
- 39 See *id.*
- 40 *Id.*
- 41 *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 82.
- 42 *Id.* at 73.
- 43 *Id.* at 84.
- 44 *Id.* at 86; see also *id.* at 94 (withholding of exposure evidence by asbestos plaintiffs' counsel was "widespread and significant.").
- 45 *Id.* at 84 (emphasis in original).
- 46 *Id.*
- 47 *Id.*
- 48 *Id.* at 85.
- 49 *Id.*
- 50 *Id.*
- 51 *Id.*
- 52 *Id.*
- 53 *Id.*
- 54 *Id.* at 86.
- 55 *Id.* at 95.
- 56 Peggy Ableman *et al.*, A Look Behind the Curtain: Public Release of Garlock Bankruptcy Discovery Confirms Widespread Pattern of Evidentiary Abuse Against Crane Co., *supra*.
- 57 *Id.* at 1.
- 58 *Id.*
- 59 *Id.*
- 60 *Id.*
- 61 See U.S. Chamber Institute for Legal Reform, Insights & Inconsistencies 8 (2016), http://www.instituteforlegalreform.com/uploads/sites/1/InsightsAndInconsistencies_Web.pdf.
- 62 *Id.* at 9.
- 63 *Id.*
- 64 *Id.*
- 65 Recently, civil actions have been filed against some plaintiffs' law firms for alleged suppression of information in violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO Act). See Amanda Bronstad, RICO Action Filed Against Asbestos Lawyers, Nat'l L.J., June 10, 2016, <http://www.nationallawjournal.com/id=1202759600617/RICO-Action-Filed-Against-Asbestos-Lawyers?slreturn=20160725115532>.
- 66 See Mark A. Behrens, A 'Perfect Storm' Confronts Asbestos Defendants in Newport News, 24:11 Legal Opinion Letter (Wash. Legal Found. June 5, 2015), http://www.wlf.org/publishing/publication_detail.asp?id=2505.

- 67 See PLN-CCMS-10.03 Caseload Statistics of the Circuit Courts, January 2015-September 2016 Filings, http://www.courts.state.va.us/courtadmin/aoc/judpln/csi/stats/circuit/ccmsmonthly/2016/ccms_1003.pdf
- 68 See Behrens, A 'Perfect Storm' Confronts Asbestos Defendants in Newport News, *supra*.
- 69 See American Tort Reform Foundation, Judicial Hellholes 2015/2016, at 30, <http://www.judicialhellholes.org/wp-content/uploads/2015/12/JudicialHellholes-2015.pdf>.
- 70 See *id.*
- 71 *Id.*
- 72 See *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995); *Sisson v. Ruby*, 497 U.S. 358 (1990); *Garlock Sealing Technologies, LLC v. Little*, 620 S.E.2d 773 (Va. 2005); *John Crane, Inc. v. Jones*, 650 S.E.2d 851 (Va. 2007).
- 73 See *Lindstrom v. A-C Prod. Liab. Trust*, 424 F.3d 488, 492 (6th Cir. 2005) (citing *Stark v. Armstrong World Indus., Inc.*, 21 F. App'x 371, 375 (6th Cir. 2001)); *Connor v. Alfa Laval, Inc.*, 842 F. Supp. 2d 791, 797 (E.D. Pa. 2012). The Virginia Supreme Court has rejected substantial factor causation. See *Ford Motor Co. v. Boomer*, 736 S.E.2d 724 (Va. 2013).
- 74 *Mortimer v. A.O. Smith Corp.*, 2015 WL 1606173, at *1 (E.D. Pa. Jan. 8, 2015) (citing *Lindstrom*, 424 F.3d at 492).
- 75 *Lindstrom*, 424 F.3d at 492; *Hasenberg v. Asbestos Corp. Ltd.*, 2015 WL 1280216, at *1 (S.D. Ill. Mar. 18, 2015) (quoting *Lindstrom*, 424 F.3d at 492).
- 76 *Exxon Mobil Corp. v. Minton*, 737 S.E.2d 16, 26 (Va. 2013). In the most recent asbestos trial in Newport News, the *[Parker]* case from early 2016, the court gave a different instruction than the one given to juries over the past decade. The new instruction needs to be improved, but is a step in the right direction for defendants. [See *Parker v. John Crane, Inc.*, No. CL14-02913F-15 (Va. Cir. Ct. Newport News City 2016)].
- 77 American Tort Reform Foundation, Judicial Hellholes 2015/2016, *supra*, at 31.
- 78 See, e.g., *Keesee v. Donigan*, 524 S.E.2d 645 (Va. 2002); *Tittsworth v. Robinson*, 475 S.E.2d 261 (Va. 1996); *Brown v. Corbin*, 423 S.E.2d 176 (Va. 1992); *Thorpe v. Commonwealth*, 292 S.E.2d 323 (Va. 1982).
- 79 See, e.g., *Smith v. Union Carbide Corp.*, 2015 WL 575315 (E.D. La. Feb. 11, 2015); *In re Asbestos Prods. Liab. Litig. (No. VI) (Staton v. Am. Standard)*, 2012 WL 1392553 (E.D. Pa. Mar. 28, 2012), report and recommendation adopted, 2012 WL 1409282 (E.D. Pa. Apr. 23, 2012); *In re Asbestos Prods. Liab. Litig. (No. VI) (Larson v Bondex Int'l)*, 714 F. Supp. 2d 535 (E.D. Pa. 2010); see also *Cook v. Rockwell Int'l Corp.*, 580 F. Supp. 2d 1071 (D. Colo. 2006).
- 80 American Tort Reform Foundation, Judicial Hellholes 2015/2016, *supra*, at 31; see also Pretrial Hr'g Trans., *Parker v. John Crane, Inc.*, No. CL14-02913F-15 (Va. Cir. Ct. Newport News City), Feb. 12, 2016, at 224:12.
- 81 American Tort Reform Foundation, Judicial Hellholes 2015/2016, *supra*, at 31.
- 82 See Lloyd Dixon & Geoffrey McGovern, Bankruptcy's Effect on Product Identification in Asbestos Personal Injury Cases (Rand Corp. 2015) (finding bankruptcy reduces the likelihood that trust-related exposures will be identified by plaintiffs in interrogatories and depositions), http://www.rand.org/pubs/research_reports/RR907.html; Marc C. Scarcella et al., The Philadelphia Story: Asbestos Litigation, Bankruptcy Trusts And Changes in Exposure Allegations From 1991-2010, 27:19 Mealey's Litig. Rep.: Asbestos 1, 11 (Nov. 7, 2012) (stating "while exposures to thermal insulation products remain prevalent among today's plaintiff population, the identification of exposure to those products is greatly diminished compared to the claims filed prior to the Bankruptcy Wave that had comparable (or even identical) exposure histories.").

- 83 See Ableman *et al.*, A Look Behind the Curtain: Public Release of Garlock Bankruptcy Discovery Confirms Widespread Pattern of Evidentiary Abuse Against Crane Co., *supra*.
- 84 American Tort Reform Foundation, Judicial Hellholes 2015/2016, *supra*, at 31.
- 85 *Id.*
- 86 *Id.*
- 87 See Pretrial Hr'g Trans., *Sanders v. John Crane, Inc.*, No. CL800724PT (Va. Cir. Ct. Newport News City), May 26, 2009, at 272:21-25 (plaintiff's counsel: "You can't get an inference of exposure simply because you are on a ship.... I can't come in here and say, my client was on a ship and John Crane's product was on a ship. Therefore, he was exposed. I can't – you can't connect those dots."); Pretrial Hr'g Trans., *Minton v. Exxon-Mobil Corp.*, No. CL09-D1505F-15 (Va. Cir. Ct. Newport News City), Feb. 15, 2011, at 98:8 (granting plaintiff's motion to exclude defense expert who intended to testify about the amount of insulation aboard Navy aircraft carriers).
- 88 See John Crane, Inc.'s Motion in Limine to Exclude Passage of Testimony From James T. Lassiter Regarding Pneumatic Wire Brush, *Herman v. John Crane Inc.*, No. CL10-00800F-15 (Va. Cir. Ct. Newport News City), Mar. 29, 2013 (motion to exclude co-worker's testimony that did not place plaintiff "anywhere in the vicinity when a pneumatic wire brush was in use" to remove gasket material); Email from Hon. Timothy S. Fisher to Counsel, *Herman v. John Crane Inc.*, No. CL10-00800F-15 (Va. Cir. Ct. Newport News City), Apr. 3, 2013 (denying the motion).
- 89 See Behrens, A 'Perfect Storm' Confronts Asbestos Defendants in Newport News, *supra*.
- 90 A "sophisticated purchaser" defense was rejected by the federal asbestos MDL, *Mack v. Gen. Elec. Co.*, 896 F. Supp. 2d 333 (E.D. Pa. 2012) (maritime), and implicitly in two early Virginia federal cases, *Oman v. Johns-Manville Corp.*, 764 F.2d 224 (4th Cir. 1985), and *Willis v. Raymark Indus., Inc.*, 905 F.2d 793 (4th Cir. 1990), but has been recognized in other Virginia federal cases. See *Goodbar v. Whitehead Bros.*, 591 F. Supp. 552 (W.D. Va. 1984), *aff'd sub nom. Beale v. Hardy*, 769 F.2d 213 (4th Cir. 1985); *Marshall v. H.K. Ferguson Co.*, 623 F.2d 882 (4th Cir. 1980); *Amos v. BASF Corp.*, 1996 U.S. Dist. LEXIS 20604 (W.D. Va. July 15, 1996); *Fisher v. Monsanto Co.*, 863 F. Supp. 285 (W.D. Va. 1994); *Amos v. BASF Corp.*, 1996 U.S. Dist. LEXIS 20604 (W.D. Va. July 15, 1996), *aff'd*, 125 F.3d 847 (4th Cir. 1997).
- 91 See *McCrossin v. IMO Indus., Inc.*, 2015 WL 575155, at *5 (W.D. Wash. Feb. 11, 2015); *In re Brooklyn Navy Yard Asbestos Litig. (Joint E. & S. Dist. Litig.)*, 971 F.2d 831, 838 (2d Cir. 1992); *Owens-Corning Fiberglas Corp. v. Stone*, 1996 WL 397435, at *7 (Tex. Ct. App.-Austin July 17, 1996).
- 92 See *Anderson v. Owens-Corning Fiberglas Corp.*, 810 P.2d 549 (Cal. 1991); *Bernier v. Raymark*, 516 A.2d 534 (Me. 1986).
- 93 American Tort Reform Foundation, Judicial Hellholes 2015/2016, *supra*, at 31.
- 94 *Id.* at 32.
- 95 See Va. Code Ann. § 8.01–35.1.
- 96 See Complaint, *Chapman v. John Crane, Inc.*, No. CL14-01383P-03 (Va. Cir. Ct. Newport News City), Apr. 24, 2014.
- 97 See Deposition Upon Oral Examination of Earl W. Chapman, Taken on Behalf of the Plaintiff, *Chapman v. John Crane, Inc.*, No. CL14-01383P-03 (Va. Cir. Ct. Newport News City), June 26, 2014, at 124-25.
- 98 See *id.* at 147.
- 99 See Deposition Upon Oral Examination of Earl W. Chapman, Taken on Behalf of the

- Defendants, *Chapman v. John Crane, Inc.*, No. CL14-01383P-03 (Va. Cir. Ct. Newport News City), June 17, 2014, at 48, 55, 63-65, 83, 139-40; Deposition Upon Oral Examination of Earl W. Chapman, Taken on Behalf of the Defendants, *Chapman v. John Crane, Inc.*, No. CL14-01383P-03 (Va. Cir. Ct. Newport News City), June 18, 2014, at 33, 98, 113, 119, 193; Deposition Upon Oral Examination of Earl W. Chapman, Taken on Behalf of the Plaintiff, *supra*, June 26, 2014, at 120, 152.
- 100 Plaintiff's Responses to Warren Pumps' First Set of Requests for Admission, Interrogatories, and Requests for Production, *Chapman v. John Crane, Inc.*, No. CL14-01383P-03 (Va. Cir. Ct. Newport News City), July 8, 2015, at 13 ("Plaintiff states that no claims have been made against any asbestos settlement or claim trust at this time for the Decedent's mesothelioma."); Plaintiff's Response to Cleaver-Brooks, Inc.'s First Set of Interrogatories, and Requests for Production of Documents, *Chapman v. John Crane, Inc.*, No. CL14-01383P-03 (Va. Cir. Ct. Newport News City), July 8, 2015, at 9 ("Plaintiff states that no claims have been filed or submitted to date."); Order, *Chapman v. John Crane, Inc.*, No. CL14-01383P-03 (Va. Cir. Ct. Newport News City), Oct. 13, 2015.
- 101 *See* Complaint, *Farmer v. Owens-Illinois, Inc.*, No. CL11-00102P-03 (Va. Cir. Ct. Newport News City), Jan. 29, 2011; Deposition Upon Oral Examination of Thomas E. Farmer, *Farmer v. Owens-Illinois, Inc.*, No. CL11-00102P-03 (Va. Cir. Ct. Newport News City), May 24, 2011, at 16-17, 20-22; *see also* Motion to Revive and Amend Complaint as Wrongful Death Action, Clarify Name of Employer and Years of Exposure to Asbestos Dust, Fibers, and/or Particles and Amend Ad Damnum, *Farmer v. Owens-Illinois, Inc.*, No. CL11-00102P-03 (Va. Cir. Ct. Newport News City), Nov. 30, 2011; Amended Complaint, *Farmer v. Owens-Illinois, Inc.*, No. CL11-00102P-03 (Va. Cir. Ct. Newport News City), Nov. 30, 2011; Second Amended Complaint, *Farmer v. Owens-Illinois, Inc.*, No. CL11-00102P-03 (Va. Cir. Ct. Newport News City), May 23, 2013.
- 102 Deposition Upon Oral Examination of Thomas E. Farmer, *Farmer v. Owens-Illinois, Inc.*, No. CL11-00102P-03 (Va. Cir. Ct. Newport News City), May 2, 2011, at 64 (stating that apart from seeing photos of Johns Manville, John Crane and Garlock gaskets plaintiff had not seen photographs of any other gasket material); Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 24, 2011, at 273-74 (plaintiff shown photos of only select valve companies named as defendants in the lawsuit).
- 103 Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 2, 2011, at 218; Deposition Upon Oral Examination of Thomas E. Farmer, *Farmer v. Owens-Illinois, Inc.*, No. CL11-00102P-03 (Va. Cir. Ct. Newport News City), May 3, 2011, at 221; Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 24, 2011, at 120-21.
- 104 Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 3, 2011, at 229.
- 105 Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 2, 2011, at 59-60.
- 106 Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 3, 2011, at 229-30.
- 107 *See* Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 24, 2011, at 131-32.
- 108 Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 2, 2011, at 49 ("Owens is all I remember.").
- 109 *Id.* at 54.
- 110 *Id.*; *see also* Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 24, 2011, at 134.
- 111 Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 2, 2011, at 94.
- 112 Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 24, 2011, at 35, 94.

- 113 Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 3, 2011, at 183-85; *see also id.* at 190.
- 114 Deposition Upon Oral Examination of Thomas E. Farmer, *supra*, May 2, 2011, at 99, 188.
- 115 Plaintiff's Responses to John Crane Inc.'s Requests for Admissions, Interrogatories, and Requests for Production of Documents, *Farmer v. Owens-Illinois, Inc.*, No. CL11-00102P-03 (Va. Cir. Ct. Newport News City), June 11, 2013, at 6.
- 116 *Id.* at 8.
- 117 *Id.* at 6-7.
- 118 *See* Plaintiff's Responses to Goulds Pumps, Inc.'s Case Specific Interrogatories and Requests for Production, *Farmer v. Owens-Illinois, Inc.*, No. CL11-00102P-03 (Va. Cir. Ct. Newport News City), July 5, 2013, at 14 ("no such claims have been filed or submitted at this time"); *see also* Order, *Farmer v. Owens-Illinois, Inc.*, No. CL11-00102P-03 (Va. Cir. Ct. Newport News City), Sept. 17, 2013.
- 119 *See* Final Order, *Herman v. John Crane Inc.*, No. CL10-00800F-15 (Va. Cir. Ct. Newport News City), Apr. 25, 2013; Order Approving Payment of Verdict for the Several Liability of John Crane Inc., *Herman v. John Crane Inc.*, No. CL10-00800F-15 (Va. Cir. Ct. Newport News City), May 29, 2013.
- 120 *See* Complaint, *Herman v. Owens-Illinois, Inc.*, No. CL10-00800F-15 (Va. Cir. Ct. Newport News City), May 6, 2010, at 5.
- 121 *See* Deposition Upon Oral Examination of John J. Herman, *Herman v. Owens-Illinois, Inc.*, No. CL10-00800F-15 (Va. Cir. Ct. Newport News City), Aug. 11, 2010, at 433-34, 436-38, 443, 483-85, 498, 509, 519, 543, 544, 549; Deposition Upon Oral Examination of John J. Herman, *Herman v. Owens-Illinois, Inc.*, No. CL10-00800F-15 (Va. Cir. Ct. Newport News City), Aug. 12, 2010, at 73, 98, 103, 109, 117, 151, 153, 157, 192, 200, 206, 208.
- 122 *See* Deposition Upon Oral Examination of John J. Herman, *supra*, Aug. 11, 2010, at 436, 483-85.
- 123 *See* Plaintiffs' Responses to John Crane Inc.'s Requests for Admission, Interrogatories and Requests for Production of Documents, *Herman v. Owens-Illinois, Inc.*, No. CL10-00800F-15 (Va. Cir. Ct. Newport News City), June 30, 2011, at 11-13.
- 124 Plaintiff's discovery responses filed roughly two years after the complaint and just a few months before trial indicate that no trust claims had been filed with any trusts at that time. *See* Plaintiffs' Responses to John Crane Inc.'s Second Requests for Admissions, Interrogatories and Requests for Production of Documents, *Herman v. Owens-Illinois, Inc.*, No. CL10-00800F-15 (Va. Cir. Ct. Newport News City), Feb. 19, 2013, at 12.
- 125 *See* Peter Dujardin, Exxon-Mobil Cleared of Wrongdoing in Cancer Death, Daily Press, Nov. 26, 2008, http://articles.dailypress.com/2008-11-26/news/0811250146_1_asbestos-litigation-shipyard-asbestos-related-cancer; *see also* *Morton v. ExxonMobil Corp.*, No. CL0601108 (Va. Cir. Ct. Newport News City May 6, 2009) (court entering judgment on the verdict in favor of defendant ExxonMobil decided on Nov. 25, 2008).
- 126 *See* Dujardin, *supra*.
- 127 *See id.*
- 128 *See* Deposition Upon Oral Examination of Stanley L. Morton, *Morton v. Owens-Illinois, Inc.*, No. 01180-VC (Va. Cir. Ct. Newport News City), Sept. 20, 2006, at 325-27. Mr. Morton testified to some trust-related exposures, such as Johns Manville, Babcock & Wilcox, Owens Corning and Halliburton. *See* Deposition Upon Oral Examination of Stanley L. Morton, *Morton v. Owens-Illinois, Inc.*, No. 01180-VC (Va. Cir. Ct. Newport News City), Sept. 19, 2006, at 80-81, 89, 96-97, 103-04, 112-13, 120, 138, 144-45; Deposition Upon Oral Examination of Stanley L. Morton, *supra*, Sept. 20, 2006, at 272, 326.

- 129 See Sara Stefanini, *Widow Gets \$9M Over Asbestos Poisoning*, Law360, Apr. 13, 2007, <http://www.law360.com/articles/22598/widow-gets-9m-over-asbestos-poisoning>.
- 130 See *Abbreviated Complaint, Oney v. Garlock Sealing Technologies, LLC*, No. 00301TF (Va. Cir. Ct. Newport News City), Feb. 21, 2006.
- 131 See *Videotape Deposition Upon Oral Examination of Sharon Vaughn Oney, Oney v. Garlock Sealing Technologies, LLC*, No. 00301TF (Va. Cir. Ct. Newport News City), July 13, 2006, at 77-78.
- 132 *Id.* at 171-72.
- 133 See *id.* at 74, 168, 1179-81, 185, 205-208, 223, 237.
- 134 See *Ariz. Rev. Stat. § 12-782; Ohio Rev. Code §§ 2307.951 to 2307.954; Okla. Stat. tit. 76, §§ 81 to 89; Tenn. Code Ann. §§ 29-34-601 to 609; Tex. Civ. Prac. & Rem. Code Ann. §§ 90.051-.058; Utah Code Ann. §§ 78B-6-2001 to 2010; W. Va. Code §§ 55-7F-1 to 55-7F-11; Wis. Stat. § 802.025; see also Ga. Code Ann. § 51-14-7(a)(9).*
- 135 *Tenn. Code Ann. § 29-34-603(a); W. Va. Code §§ 55-7F-4(a).*
- 136 *Tenn. Code Ann. § 29-34-603(b); W. Va. Code §§ 55-7F-4(b).*
- 137 *Tenn. Code Ann. § 29-34-606(a); W. Va. Code §§ 55-7F-7(a).*
- 138 See *Tenn. Code Ann. § 29-34-604(a); W. Va. Code §§ 55-7F-5(a).*
- 139 At the federal level, the *Furthering Asbestos Claims Transparency Act (FACT)* passed out of the U.S. House of Representatives in January 2016. The Act would require asbestos trusts to file publicly available quarterly reports describing “each demand the trust received from, including the name and exposure history of, a claimant and the basis for any payment from the trust made to such claimant.” To protect claimant privacy, “any confidential medical record or the claimant’s full social security number” is to be excluded from the report. Trusts shall provide any information related to payment from, and demands for payment from, the trust, subject to appropriate protective orders, to any party in an asbestos-related action. The trust may demand payment for any reasonable cost incurred by the trust to comply with the request.
- 140 John J. Hare & Daniel J. Ryan, *Uncloaking Bankruptcy Trust Filings in Asbestos Litigation: Refuting the Myths About Transparency*, 15:9 *Mealey’s Asbestos Bankr. Rep.* 1 (Apr. 2016), <http://www.marshalldennehey.com/media/pdf-articles/O%20413%20by%20J.%20Hare%20%26%20D.%20Ryan%20%2804.2016%29%20Mealey%27s%20Asbestos%20Bankruptcy%20Report.pdf>.
- 141 *Id.* at 3.
- 142 *Id.* at 2.
- 143 *Id.*
- 144 Alternatively, Virginia Circuit Courts should enter case management orders to address transparency issues, “including mandatory disclosure of all trust claims, the timing of filing of claims, the evidentiary issues regarding admissibility at trial and presumptions attributed to them, the responsibility of attorneys to monitor and disclose claims filed by other counsel, and the procedures for challenging non-submission of claims.” Peggy L. Ableman, *The Time Has Come for Courts to Respond to the Manipulation of Exposure Evidence in Asbestos Cases: A Call for the Adoption of Uniform Case Management Orders Across the Country*, 30:5 *Mealey’s Litig. Rep.: Asbestos* 1 (Apr. 8, 2015), http://www.mccarter.com/files/Uploads/Documents/Mealeys_Ableman_4-8-15.pdf. This approach is a less preferable than legislation because it would not cover all courts in the Commonwealth and could be undermined by forum-shopping.



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