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Institute for Legal Reform

# Insights & Inconsistencies

*Lessons from the Garlock Trust Claims*

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FEBRUARY 2016



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# Executive Summary

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Newly-disclosed asbestos bankruptcy trust claim forms from the *Garlock*<sup>1</sup> bankruptcy reveal a pattern of inconsistent claiming from one trust to another. This pattern, together with evidence of fraud that has plagued these trusts and the perverse incentives created by their structure, demonstrates the need for further oversight and reform of asbestos bankruptcy trusts.

In the mid-1980s, the U.S. court system was overwhelmed by asbestos cases. Over the next decade, several attempts to solve this problem in the tort system, from joint defense organizations to mass settlements, failed. Yet out of the ashes of the Johns Manville bankruptcy a solution seemed to arise: trusts funded by bankrupt defendants into which those entities' asbestos liabilities would be channeled. The structure of the asbestos bankruptcy trust system, which gave control of the governance and payment criteria to asbestos plaintiffs' attorneys, proved over the next two decades to be rife

with fraud and abuse. In several tort cases, disclosure of trust forms revealed that exposure allegations made to the trusts had never been disclosed to the defendants in the claimants' subsequent court case.

In 2010, new light was shone on the persistence and ubiquity of fraud in the trust system during the bankruptcy proceedings of Garlock Sealing Technologies, Inc. (Garlock), a manufacturer of asbestos-containing gaskets. During the estimation phase of its bankruptcy proceedings, the Garlock claimants estimated Garlock's

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asbestos liabilities to be from \$1 to \$1.3 billion.<sup>2</sup> The court then required existing Garlock claimants to respond to personal information questionnaires (PIQs) and provide information previously filed with other asbestos bankruptcy trusts.<sup>3</sup> These disclosures, the court held, revealed that some law firms had engaged in “suppression of evidence” when their clients were “unable to identify exposure in the tort case, but then later (and in some cases previously) to be able to identify it in [t]rust claims.”<sup>4</sup> Because this pattern of

withheld evidence had inflated Garlock’s historic settlement values, the court estimated Garlock’s liability at \$125 million.<sup>5</sup>

The court recently made the PIQs and supporting trust claim forms public in response to motions by third-parties.<sup>6</sup> The unsealing of this volume of bankruptcy trust claim forms, which are closely-guarded by plaintiffs’ firms and typically available only on a case-by-case basis if at all, provides an unprecedented view into the asbestos bankruptcy trust system. The current system offers no meaningful oversight to ensure that only meritorious claims receive compensation, and indeed provides ample incentives for fraudulent claiming.

To determine what effect, if any, the trust system’s flawed design might have in practice, we analyzed a subset of the *Garlock* claims. The claims reveal a pattern of inconsistent exposure, job site, and work history disclosures across trusts. Without any means to question these inconsistencies, the trusts are open to fraudulent claiming. As explained in the following sections, external oversight of the trusts is essential to preventing such abuse of the system.

# Lack of Oversight: Built into the System

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The asbestos bankruptcy trust system evolved as an imperfect response to the “avalanche of litigation” set off by the Fifth Circuit’s 1973 decision in *Borel v. Fibreboard Paper Products Corporation*,<sup>7</sup> which established strict liability against asbestos manufacturers.<sup>8</sup> Throughout the late 1980s and 1990s, several attempts at crafting a solution in the tort system failed to resolve the crisis.

For example, the Center for Claims Resolution (CCR), formed in 1988, was a group of twenty-one asbestos producers who voluntarily conducted their legal defense jointly for the stated purpose of resolving claims for a fair value in a similar manner to individual tort system defendants.<sup>9</sup> In 1993, a large group of future asbestos claimants and the 20 remaining members of the CCR attempted to reach a class action settlement.<sup>10</sup> However, in 1997 the United States Supreme Court, in the landmark decision *Amchem Products v. Windsor*,<sup>11</sup> upheld the lower court’s decision to reject this settlement.

Meanwhile, another avenue for dealing with the unsustainable volume of claims was materializing in parallel to the tort system. In 1982, the Johns Manville Corporation filed for bankruptcy<sup>12</sup> after projections revealed that its asbestos liabilities would soon render it insolvent. As part of its bankruptcy, the

company placed its assets into a personal injury trust. The Manville Trust, in exchange for a majority position in the equity securities of the Johns Manville Corporation, assumed all of Manville’s current and future asbestos liabilities. In exchange, the reorganized corporation became the beneficiary of so-called channeling injunctions, pursuant to Section 105 of the Bankruptcy Code, which forced all asbestos claimants to assert their claims not against the Johns Manville Corporation in its reorganized form, but rather against the Manville Trust. The Trust was intended to step into the corporation’s shoes and defend those cases in the tort system.

As a result of this continued presence in the tort system, the value of the reorganized Johns Manville Corporation was still subject to variation based on perception of the Manville Trust’s legal liabilities. This, in turn, compromised the Manville Trust’s ability to monetize its holdings to pay claimants,

ultimately causing it to fail. After a series of proceedings in the Eastern and Southern Districts of New York in the early 1990s, the Manville Trust was reformed.<sup>13</sup> Section 524(g) of the Bankruptcy Code subsequently codified the reformed Manville Trust as the model for all subsequent trusts.

Under Section 524(g), the governing documents of an asbestos bankruptcy trust—the Plan of Reorganization and the Trust Distribution Procedures (TDP)—must both be approved by three-fourths of the asbestos personal injury claimants and a future claims representative.<sup>14</sup>

Significantly, the TDPs specify criteria for qualification for payment, identify compensable diseases, and provide evidentiary requirements for claims (including instructions and a detailed proof of claim form for qualifying personal injury claims). Because claims are concentrated with a select few plaintiffs' firms, this provision has effectively given those firms control over the reorganization process and, consequently, the subsequent operations and standards of the trusts.<sup>15</sup> As a result, the trusts are overseen by Trust Advisory Committees (TACs), the seats of which are filled by these same plaintiffs' attorneys, and future claims representatives (FCRs), who are themselves appointed by the plaintiffs' attorneys making up the TACs. To amend the TDP governing a trust, the FCR and 80% of the TAC must agree to the change.

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In essence, this system permits the same firms that stand to benefit when the bankruptcy trusts pay claims to write the requirements for payments by those trusts. The standards for claims that result from this process are predictably lax. Typically, for example, trusts demand only a short period of exposure to the company's products for malignant disease claimants—usually one day to six months.<sup>16</sup> This requirement can be satisfied by stating that the claimant worked at one of the trust's approved job sites (lists of which are available on the trusts' websites) or merely listing another job site and stating that the individual worked in proximity to the company's asbestos containing products. These exposure requirements amount to an “any exposure” standard, which has been rejected by multiple courts.<sup>17</sup>

The trusts also expressly state that evidence of alternative exposures is not required,<sup>18</sup> and trusts do not compare claims to determine if plaintiffs are making inconsistent assertions to different trusts. Plaintiffs' attorneys have repeatedly acknowledged the lack of rigor in these standards, stating, for example, that:

A lot of bankruptcy trusts, particularly the newer ones for mesothelioma claims, all they say [is] that there has to be meaningful and credible evidence of exposure; but that can be just a site list. That can be working at a site where somebody is; it could be the equivalent of the guy who was at the place where the auto parts were three buildings over. I would argue that doesn't prove causation, and while that may be admissible to prove something, it's not the same thing as the type of proof that would get you to a jury, or get you past a directed verdict motion on the defense's cross claim against another defendant.<sup>19</sup>

Thus, the ongoing litigation crisis and the perceived administrative simplicity of the reorganized Manville Trust, particularly after its tumultuous history, paved the way for uncritical acceptance of the Manville

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Trust as the model for all subsequent asbestos bankruptcy trusts. The plaintiffs' bar's near-absolute control of the trusts in this model hard-wired a lack of meaningful oversight into the trust system at its earliest stages and incentivized a system with a huge potential for fraud.

# Historic Evidence of Inconsistent Claiming

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Until relatively recently, the inability to access trust claims made uncovering inconsistencies in the assertions to various trusts nearly impossible. What evidence did exist regarding claiming practices, however, was not reassuring. For example, in the late 1990s the Manville Trust attempted to conduct an audit of claims made to it under a self-avowedly “claimant friendly” standard.<sup>20</sup>

The first phase of the audit suggested that 41% of the claimants had no disease or a less severe condition than claimed, and the doctors most often used by plaintiffs had an average diagnostic failure rate of 63%.<sup>21</sup> When the Trust sought to expand the audit, the affected law firms challenged it, and the presiding judge held that “the Trust had no business medically auditing claims (regardless of any authority to do so in the Trust documents).”<sup>22</sup>

As courts began to grant discovery into trust claims, other troubling practices came to light in what one plaintiffs’ attorney called “open[ing] Pandora’s Box.”<sup>23</sup> In *Kananian, et al., v. Lorillard Tobacco Company*,<sup>24</sup> for example, the plaintiff denied exposure to Manville and Celotex products.<sup>25</sup> Over plaintiffs’ lawyers’ strenuous objections, the court granted discovery of Mr. Kananian’s trust submissions.<sup>26</sup> When the

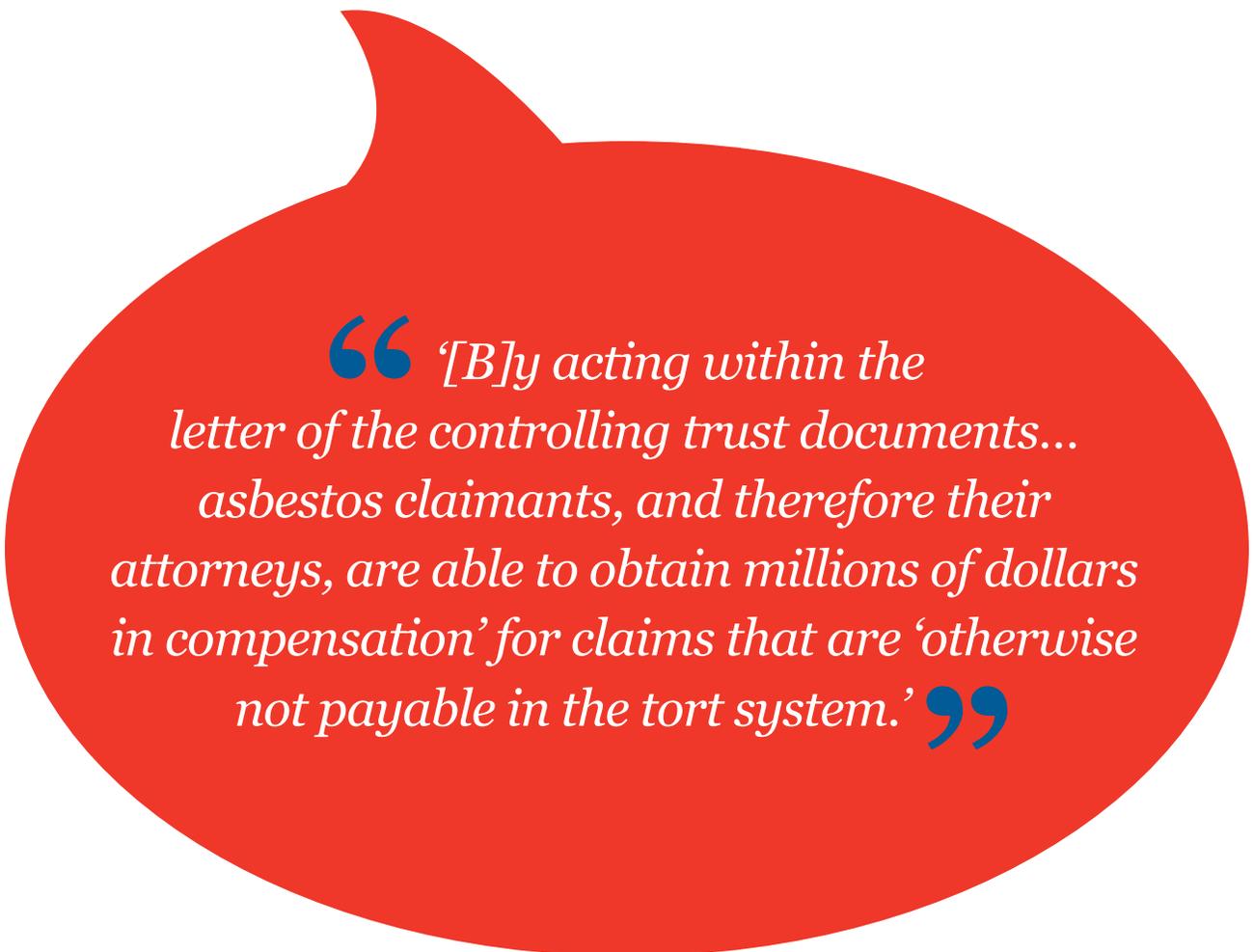
trust materials were finally produced, they revealed that, contrary to his positions in the tort case, Mr. Kananian had received substantial recoveries from the Manville and Celotex Trusts predicated on exposure to those companies’ products.<sup>27</sup> The Trusts, however, had not been informed of this substantial modification in the plaintiff’s story, nor were the funds received from the

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Trust returned.<sup>28</sup> The Trust claims also showed clear and material factual inconsistencies between and among Mr. Kananian's claim submissions to various trusts.<sup>29</sup> While the *Kananian* trust claims provided a rare glimpse into potential issues with the quality of the claims made to the trusts, the actual scope of the problem was still unknown.<sup>30</sup>

That began to change with the publication of an article titled "Institutionalized Fraud in Asbestos Bankruptcy Trusts" by former asbestos plaintiffs' attorney Thomas M.

Wilson. In his article, Wilson laid bare the crux of the problem: "by acting within the letter of the controlling trust documents," he wrote, "asbestos claimants, and therefore their attorneys, are able to obtain millions of dollars in compensation" for claims that are "otherwise not payable in the tort system."<sup>31</sup> Among the institutional loopholes built into the trusts, Wilson describes the trusts' failure to coordinate with one another to assess and offset payments based on alternative exposures.<sup>32</sup>



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# The Personal Information Questionnaires (PIQs)

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One question that even Wilson’s insider’s perspective could not answer was the degree to which the allegations made to various trusts did not accord with one another. The *Garlock* claims presented the novel opportunity to examine a large volume of trust claims in an attempt to answer that very question. We analyzed a sample set of 100 claims to compare the allegations made by individual claimants across multiple trusts.

## Methodology

Within the Garlock database, some PIQs contained exposure information submitted to the trusts. Some of this exposure information contained searchable identifiers such as site codes. By searching for these distinctive markers of exposure information, we were able to identify nine hundred and sixty-one (961) PIQs that were likely to contain some exposure information.

From this list we randomly selected 100 PIQ numbers. To randomly select the PIQ numbers for the 100-claim analytical subset, we used the “RAND()” function in Microsoft Excel to randomize the PIQs by assigning them each a non-integer number between 0 and 1. We then used the

“INDEX()” function to randomly select 100 of these numbers and their corresponding PIQ numbers.

We examined the bankruptcy trust claim forms and other documentation present in the PIQ files and recorded the dates, places, products, and descriptions of exposure provided by each claimant to each trust. We then compared the information provided to each trust.

## Results

We noted three widespread inconsistencies in the information provided to different trusts by single claimants: (1) job site inconsistencies; (2) different products listed with different trusts; and (3) date issues.

## JOB SITE INCONSISTENCIES

Sixty-nine percent of claimants did not list every place of employment at which they alleged exposure with every trust. Consequently, some job sites would be included in the claim form for one trust, but absent from another. For example, Claimant PIQ #113410 stated to the Babcock & Wilcox Trust that he was exposed as a result of work with the New York Central Railroad from 1933 to 1945. However, that job site was not listed in his USG Trust form, where he provided only information about his work as a carpenter from 1960 to 1969. And to the Kaiser Aluminum Trust he provided other job sites where he worked installing heat systems in the 1950s and 1960s. While no trust requires claimants to list every job site, the absence of this information makes it impossible for trusts to verify the employment information provided to them.

## DIFFERENT PRODUCTS LISTED WITH DIFFERENT TRUSTS

Fifteen percent of claimants did not list specific products or brands to which they alleged exposure. Of the remaining 85% that did provide 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. Claimant PIQ #61094, by way of illustration, lists Armstrong asbestos floor tiles in his Armstrong claim form and B&W boilers in his Babcock & Wilcox claim form.

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## DATE ISSUES

Over half of the claimants (55%) had date discrepancies across claim forms. Typically, these took the form of the start or end date of a particular job not matching across trust forms, or ending at the trust's exposure cutoff date. For example, Claimant PIQ #70317 stated to most trusts that he worked at International Harvester from 1955 to 1994 (as with the Armstrong World Industries, Babcock & Wilcox, Celotex, DII Industries, and USG Trusts, among others), but sometimes gave shorter date ranges (such as 1955-1979 to the AC&S Trust, or 1955-1963 to the UNR Trust).<sup>33</sup>

This subset includes only claims for which the date range, while inconsistent, were not incompatible. It also includes claims that had an overlap in dates of employment, but presented a plausible explanation for it. This includes Claimant PIQ #70287, who alleged that he worked as a truck driver at U.S. Steel from 1954 to 1980 in his DII Industries Trust form, but stated in his Owens Corning Trust form that he worked at both the Barrett Company and A.P. Green plants during this same time. However, he specified in his claim forms that he was a contract truck driver, which would typically involve working at multiple job sites.

## Other Troubling Inconsistencies

Twenty-one percent of the claims displayed even more worrisome inconsistencies, such as Claimant PIQ #64255, whose EPI claim form states that he was diagnosed with lung cancer, while all other trust forms state a diagnosis of mesothelioma. These included incompatible dates for jobs (where the dates for different jobs overlapped) and inconsistent job descriptions. For example, Claimant PIQ #60813 described his exposure to floor tiles in occupational terms, calling himself as a “tile layer” who worked around other trades, when applying to the Armstrong World Industries Trust, but described the same work as on his personal residence when applying to the NGC Bodily Injury Trust. Claimant PIQ #69779 also stated that he was a mechanical engineer in his Shook & Fletcher and Lummus Trusts claims forms from 1964-1967 and 1972-1979, respectively, but to the DII Industries/ HAL, United States Gypsum, ACandS, Kaiser Aluminum, Plibrico, Federal Mogul - Flexitallic Subfund, and NGC Trusts stated that he was a laborer or a pipefitter during various overlapping periods from 1960-1979. Claimant PIQ #96546’s Trusts claim forms variously describe him as employed as a maintenance worker, laborer, carpenter, painter, and sandblaster between 1960 and 1972.

In several instances, claimants alleged that they were working in disparate locations simultaneously. Claimant PIQ #66853, for example, stated in his EPI Trust claim form that he was employed by Honeywell in Minneapolis from 1958-1962, but several other claim forms (Celotex, DII Industries/ HAL, and PACOR Trusts) stated that he was employed by Philadelphia Electric in Hatboro, PA, over a thousand miles away, from 1960-1967.

Claimant PIQ #75411 stated in her Babcock & Wilcox Trust claim form that she was employed in Bassett, VA from 1956-1976, but stated that her spouse was employed in St. Louis, MO from 1964-1979 in her DII Industries/ HAL and DII Industries/ HW Trusts claim forms and in Houston, TX from

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1972-1995 in her THAN Trust claim form. Similarly, Claimant PIQ #96706, in his DII Industries (HAL), Plibrico, and Federal Mogul - Ferodo Trusts claim forms, stated that he worked as a laborer at Austin & Wyrosdisk in Hollywood, FL from 1961-1975, but in his Armstrong World Industries, Owens Corning FB Subfund, Kaiser Aluminum, and Raytech Trusts claim forms stated that he was a laborer at powerhouses in New York in 1963-1965.<sup>34</sup>

This 21% of serious inconsistencies also included implausible exposure allegations. Claimant PIQ #113717 stated to the Celotex Trust that he was exposed as a result of work as a dry cleaning attendant from 1934 to 1942, at the start of which he would have been 13 years old. An affidavit that was apparently not submitted to the Celotex Trust from the claimant's son states that this was summer work but that the son "[did] not know whether my father was exposed to asbestos dust at this site." Claimant PIQ #110549's claim forms<sup>35</sup> state that his first

period of exposure was 1953-1959, when he was 12-18 years old. Likewise, Claimant PIQ #70645 stated that he worked at the U.S. Naval Station in Georgia beginning in 1953, when he would have been 15 years old.<sup>36</sup> Claimant PIQ #78924 alleged exposure through her husband's work as a maintenance foreman starting in 1953, when she was 8 years old.<sup>37</sup>

Some claim forms present multiple serious inconsistencies. For example, Claimant PIQ #70423 provided many overlapping dates of employment, claimed to have worked as a pipefitter and machinist simultaneously in different states, and stated in his Raytech Trust claim form that he was 16 years old when he began work as a pipefitter. In addition to listing overlapping dates for different employers on some claim forms, Claimant 112673's Combustion Engineering claim form lists an exposure period in 1935, the year of Claimant's birth.

# Conclusion

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While these inconsistencies from one trust to another could be the result of the lax standards and institutional loopholes described by Wilson, they could also be the result of fabrication.

What is clear, however, is that the Garlock claims present evidence that the trusts, by design, do not adequately compare the allegations being made across trusts. Had any such comparison taken place, the discrepancies identified above would at least have raised red flags and demanded further explanation and documentation. That no such investigation appears to occur in

the trust system is troubling, as the potential for abuse of a system without accountability is high. When combined with the strong financial incentive provided by the over \$18 billion in funds available in the trust system and the documented history of fraudulent claiming practices, the Garlock claims demonstrate the urgent need for external oversight and reform of the asbestos bankruptcy trust system.

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# Endnotes

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- 1 *In re Garlock Sealing Technologies*, 504 B.R. 71, 73 (W.D.N.C. 2014); 11 U.S.C. § 524(g) (2012).
- 2 See Mark D. Plevin, *The Garlock Estimation Decision: Why Allowing Debtors and Defendants Broad Access to Claimant Materials Could Help Promote the Integrity of the Civil Justice System*, 23 Norton J. of Bankr. L. and Prac. 458, 458 (2014).
- 3 *Garlock*, 504 B.R. at 95.
- 4 *Id.* at 86.
- 5 See Plevin, *supra* n.2.
- 6 *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bank. W.D.N.C. Feb. 2, 2015).
- 7 *Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076 (5<sup>th</sup> Cir. 1973).
- 8 *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 470 (5<sup>th</sup> Cir. 1986) (citation omitted).
- 9 American Academy of Actuaries' Mass Torts Subcommittee, *Overview of Asbestos Claims Issues and Trends*, 18-19 (Aug. 2007), [http://www.actuary.org/pdf/casualty/asbestos\\_aug07.pdf](http://www.actuary.org/pdf/casualty/asbestos_aug07.pdf).
- 10 See *Amchem Prods. v. Windsor*, 521 U.S. 591, 599-602 (1997) (describing history of proposed settlement).
- 11 *Id.* Two years later, the Supreme Court upheld the rejection of the Fiberboard settlement over arguments that this settlement was distinguishable from that rejected in *Amchem*. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999) (reversing the certification of a settlement class).
- 12 See *In re Johns-Manville Corp.*, 68 B.R. 618 (Bank. S.D.N.Y. 1987), *aff'd sub nom. Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988).
- 13 See *Findley v. Falise (In re Joint E. & S. Dists. Asbestos Litig.)*, 878 F. Supp. 473, 485-86 (E. & S.D.N.Y. 1995).
- 14 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb).
- 15 "Moreover, because asbestos personal injury claims are controlled by a small number of influential plaintiffs' law firms – any one of which may control sufficient votes to prevent the satisfaction of this requirement – Section 524(g) provides a small group of lawyers with effective veto power over any plan." S. Todd Brown, *How Long is Forever This Time? The Broken Promises of Bankruptcy Trusts*, 61 BUFF. L. REV. 537, 550; see also Lloyd Dixon, *Et. Al., Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts*, at 8-10 (RAND Corp. 2010).
- 16 See LLOYD DIXON, ET AL., *Asbestos Bankruptcy Trusts – An Overview of Trust Structure and Activity with Detailed Reports on the Larger Trusts* (RAND 2010) at 58-186 (detailing trust requirements). Mesothelioma claims typically require only a single day of exposure to the company's products, whereas lung and other cancer claims typically require 6 months of exposure to the company's products plus 5 years of occupational exposure generally.
- 17 See, e.g., *Betz v. Pneumo Abex LLC*, 44 A.3d 27, 56 (Pa. 2012) (rejecting the "any fiber" theory on the grounds that the "any-exposure opinion [of the plaintiff's expert] is in irreconcilable conflict with itself. Simply put, one cannot simultaneously maintain that a

- single fiber among millions is substantially causative, while also conceding that a disease is dose responsive.”); *Moeller v. Garlock Sealing Techs.*, 660 F.3d 950, 955 (6th Cir. 2011); *Martin v. Cincinnati Gas & Elec. Co.*, 561 F.3d 439, 443 (6th Cir. 2009); *Lindstrom v. A-C Prod. Liab. Trust*, 424 F.3d 488, 492 (6th Cir. 2005); *Butler v. Union Carbide Corp.*, 712 S.E.2d 537, 552-53 (Ga. Ct. App. 2011).
- 18 *See, e.g.*, USG Asbestos Trust Distribution Procedures at 47-48 (“The PI Trust has no need for, and therefore claimants are not required to furnish the PI Trust with evidence of, exposure to specific asbestos products other than those for which USG or A.P. Green has legal responsibility, except to the extent such evidence is required elsewhere in this TDP. Similarly, failure to identify USG or A.P. Green products in the claimant’s underlying tort action, or to other bankruptcy trusts, does not preclude the claimant from recovering from the PI Trust, provided the claimant otherwise satisfies the medical and exposure requirements of this TDP.”). Statements materially identical to this are included in virtually all bankruptcy trusts’ TDPs.
- 19 *See* Symposium *Asbestos Bankruptcy Trusts and Their Impact on the Tort System*, 7 J. L. ECON. & POL’Y 281, 297 (2010) (comments of Nathan Finch). *See also* Pls.’ Pls.’ Joint Mot. for a Protective Order Regarding Settlements and Bankr. Claims at 1, *In re Asbestos Litig.*, No. 96-9999, at 2 (R.I. Sup. Ct. Dec. 28, 2011) (emphasis in original) (“Many of the asbestos bankruptcy trusts do not require proof of exposure to a company’s products. Rather, some trusts base their offer on medical diagnosis alone, while others care about an individual’s occupation or job location. *None of the trusts require the standard of proof that is used by a court in a civil trial.*”).
- 20 *See Adams v. Harron*, 191 F.3d 447 (4th Cir. 1999).
- 21 *Brown, supra* note 15, at 573.
- 22 Lester Brickman, *On the Theory Class’s Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality*, 31 PEPP. L. REV. 33, 134 (2004) (citing Letter from David T. Austern, President, Claims Resolution Management Corporation for the Manville Personal Injury Settlement Trust, to Lester Brickman (Oct. 3, 2001).
- 23 Transcript of January 11, 2011 Hearing at 66:5-109:8, *Warfield v. ACS, Inc.*, Case No. 24X06000460, Consolidated Case No. 24X09000163, January 11, 2011 Mesothelioma Trial Group.
- 24 *Kanianian v. Lorillard Tobacco Co.*, No. CV-442750 (Ohio Ct. Comm. Pl. Cuyahoga Cty., January 18, 2007) (order barring plaintiff’s attorney from practicing law in the Ohio Court of Common Pleas).
- 25 *Id.* at 6.
- 26 Beyond merely objecting to this discovery, plaintiff’s lawyer went so far as to urge the Celotex Trust to resist discovery while at the same time asserting to the Court that Mr. Kananian was cooperating. *Id.* at 9-10.
- 27 *Id.* at 6.
- 28 *See id.* at 5.
- 29 For example, in order to qualify under the different exposure criteria of two of the trusts, Mr. Kananian’s lawyers provided mutually exclusive recitals of his military service record. *Id.* at 19-23.
- 30 Additional evidence has subsequently accrued, however, regarding the concomitant problem of inconsistencies in the allegations made to trusts and those made in the tort system. For example, in *Warfield v. ACS, Inc.*, Case No. 24X06000460, Consolidated Case No. 24X09000163, January 11, 2011 Mesothelioma Trial Group, defendants pursued an aggressive strategy of seeking

- discovery regarding trust claims, but their efforts were strongly opposed by plaintiffs' counsel despite prior rulings holding such materials discoverable. *Warfield*, Defendant Union Carbide's Emergency Motion for Sanctions and/or Related Relief and to Shorten Time for Response, filed January 10, 2011. When production was finally made, on the literal eve of trial, the trust claims revealed substantial and inexplicable discrepancies between the positions taken in court and the trust claims including a materially different the period of exposure alleged in the litigation versus that alleged in the trust submissions. Of note, eight of the trust forms had been submitted before Mr. Warfield testified in court and thus would have been admissible to impeach his credibility.
- 31 Thomas M. Wilson, *Institutionalized Fraud in Asbestos Bankruptcy Trusts* at 2, 29-7 Mealey's Litig. Rep. Asb. 36, (2014).
- 32 *Id.* at 3-4.
- 33 *See also*, Claimant PIQ 110549, whose dates of naval service (for example his service at the Naval Training Center in San Diego) do not match on his Raytech and Western Asbestos claim forms (where service there is listed as occurring in 1959 and 1961, respectively).
- 34 *See also*, Claimant PIQ #69137 (in Celotex and ACandS Trusts claim forms, Claimant stated that he worked at Carson Tool as a machinist in Geneva, IL from 1976-1979, but in Babcock & Wilcox, DII Industries/ HAL, DII Industries/HW, Owens Corning FB Subfund, Owens Corning OC Subfund, A-Best, Combustion Engineering, Kaiser Aluminum, Plibrico, and Keene Trusts claim forms stated that he was employed as a technical salesperson in other locations in Illinois and Indiana from 1978-1979); Claimant PIQ #108706 (Plibrico Trust claim form states that Claimant was a stock handler at General Motors in Framingham, MA from 1949-1987, but Celotex Trust claim form states that he was in the U.S. Navy from 1949-1953); Claimant PIQ #112161 (each of Claimant's Trust claim forms lists a job site that overlaps with at least one other job site listed on another claim form).
- 35 Armstrong World Industries, Babcock & Wilcox, Celotex, DII Industries/HAL, DII Industries/HW, Owens Corning FB Subfund, Owens Corning OC Subfund, United States Gypsum, ACandS, Combustion Engineering, G-I Holdings, H.K. Porter, Kaiser Aluminum, Lummus, Plibrico, Porter Hayden, EPI, Keene, Raytech, Forty Eight Insulations, and Federal Mogul - Ferodo Trusts claim forms.
- 36 *See also*, Claimant PIQ #60509 (G-I Holdings Trust claim form states that Claimant's first period of exposure was 1943-1946 doing plumbing work, when Claimant was 12-15 years old); Claimant PIQ #66792 (Claimant provided an affidavit to Armstrong World Industries and United States Gypsum Trusts alleging exposure from work as a laborer beginning in 1949, when Claimant was 15 years old); Claimant PIQ #95129 (Armstrong World Industries, Babcock & Wilcox, Celotex, Owens Corning FB Subfund, Owens Corning OC Subfund, United States Gypsum, Plibrico, Keene, and Raytech Trusts claim forms state that Claimant was employed as a longshoreman starting in 1938, when Claimant was 16 years old); Claimant PIQ #76715 (Claimant alleges only four periods of exposure on his claim forms: 1954-1972, 1963-1972, 1966-1971, and 1968-1972 during which times Claimant was between 0 and 18 years old).
- 37 *See* Claimant PIQ #78924 Armstrong World Industries, Babcock & Wilcox, Celotex, DII Industries/HAL, DII Industries/HW, Owens Corning FB Subfund, Owens Corning OC Subfund, United States Gypsum, ACandS, ASARCO, Combustion Engineering, G-I Holdings, H.K. Porter, Kaiser Aluminum, Plibrico, THAN, Federal Mogul - T&N, and Federal Mogul - Ferodo claim forms.





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