

**Expert Report of Lester Brickman, Esq.
Benjamin N. Cardozo School of Law**

in

In re Garlock Sealing Technologies LLC, et al., Case No. 10-BK-31607

April 23, 2013



Introduction

1. I am a professor of law at the Benjamin N. Cardozo School of Law and have been qualified by a number of courts as an expert on the history of asbestos litigation and the use of litigation “screenings” to generate mass numbers of claims; asbestos claim settlement practices; and asbestos bankruptcy trusts and the effects of changes in trust distribution procedures on the generation of asbestos claims. I have written nine articles on asbestos litigation which have been published in law reviews and widely cited and downloaded; testified before Congress on four occasions on the abuses prevalent in asbestos litigation and asbestos bankruptcy practices; and was one of two law professors consulted by the U.S. Government Accountability Office in preparing a report on asbestos trusts “who have published and are well-known experts in the areas of asbestos litigation and bankruptcy trusts.” U.S. Gov’t Accountability Office, Report to the Chairman, H. Comm. on the Judiciary, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts* at 5, GAO-11-819 (Sept. 2011) (“GAO Report.”) In addition, I have researched, written extensively, and taught courses and seminars on legal ethics and the legal profession for 45 years, including a seminar on the ethics of legal fees and the impact of contingency fee financing of tort litigation on the tort system.

2. I have been retained by counsel for the debtors, Garlock Sealing Technologies LLC. et al. (“Garlock”) to prepare an expert report and provide expert testimony in connection with the above captioned matter. I have been asked to render an opinion based upon my scholarly research and the materials I have examined in connection with this litigation, as to whether Garlock’s historical settlements of mesothelioma claims after the bankruptcy wave of 2000-2001 reflected Garlock’s

liability under tort law. It is my understanding that Mark Peterson on behalf of the Official Committee of Asbestos Personal Injury Claimants and Francine Rabinovitz on behalf of the Future Claimants' Representative, in their respective reports, both assume that Garlock's settlement values and settlement rates (*i.e.*, the percentage of filed claims for which Garlock paid a settlement) in the five year time period prior to the June 2010 petition date, reflect Garlock's legal liability. For my time in preparing this report, I am being paid a fee of \$925 an hour. I attach as Exhibit A, a list of materials that I have relied on in preparing this report. I may review additional materials in the possession of the debtors which are subject to discovery requests made in this case. If my review leads me to revise or add to my report, I will file a supplemental report.

3. As I discuss in Parts IV and V of this report, it is my conclusion, based on the materials I have reviewed and my scholarly research, that contrary to the opinions offered by Drs. Peterson and Rabinovitz, Garlock's historical settlements following the bankruptcy wave in the years 2000-2001 do not provide a reliable measure of the debtor's liability and therefore cannot be relied upon for the purpose of accurately valuing Garlock's liability for pending and future mesothelioma claims. This is so because many plaintiffs and their counsel who brought suit against Garlock systematically suppressed the production of evidence of plaintiffs' exposures to asbestos-containing products other than those manufactured by Garlock. The evidence I present in Part IV indicates that during pre-trial discovery in tort suits brought against Garlock after the 2000-2001 bankruptcy wave, plaintiffs and their counsel often denied that plaintiffs had any exposure to asbestos-containing products manufactured by bankrupt companies. However, these plaintiffs had, in fact (1) filed asbestos bankruptcy trust claims both

before bringing suit against Garlock and after having completed the tort suit; and as well (2) filed Rule 2019 Statements and ballots in multiple bankruptcies asserting that plaintiffs had been meaningfully and credibly exposed to the products of other manufacturers to an extent that such exposures created legal liability for plaintiffs' asbestos-related diseases. Nonetheless, this evidence was frequently concealed from Garlock -- often by use of deceit and misrepresentation. Indeed, relying on Garlock's settlement history in the post 2000-2001 period would ratify the multiple instances of deceit and misrepresentation committed by plaintiffs and their counsel as detailed in this report. The suppression of evidence that I discuss in Part IV was not simply of exposures to non-Garlock products but rather to the *predominant* exposures to asbestos-containing non-Garlock products which actually caused plaintiffs' injuries. The intended effect of this suppression of vital evidence was to significantly inflate Garlock's claim resolution costs by driving up settlement and defense costs and increasing Garlock's litigation risk. The increase in litigation risk required Garlock to settle claims which it would have contested and, in fact, did contest, most often successfully, before the suppression strategy was instituted at the time of the 2000-2001 bankruptcy wave. The problem with this suppression of evidence is described by Judge Peggy L. Ableman, (ret.), former Delaware Superior Court Judge responsible for all asbestos litigation in the State of Delaware:

In the final analysis, there can be no real justice or fairness if the law imposes obstacles to ascertaining and determining the complete truth. From my perspective as a judge, it is not simply the sheer waste of resources that occurs when one conducts discovery or trials without knowledge of all of the facts, although that circumstance is indeed unfortunate and one that courts can ill afford in this day and age. What is most significant is the fact that the very foundation and integrity of the judicial process is compromised by withholding of information that

is critical to the ultimate goal of all litigation – a search for, and discovery of, the truth.

Furthering Asbestos Claim Transparency (FACT) Act of 2013: Hearing on H.R. 982 Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. On the Judiciary, 113th Cong. (Mar. 13, 2013) (statement of Judge Peggy L. Ableman (ret.) Del. Super. Ct. (“Ableman Testimony”)).

4. My descriptions of the asbestos litigation phenomenon have been extensively cited and have come to be widely accepted in the legal and academic communities. In 1991, I was asked by the Administrative Conference of the United States, an agency in the executive branch of the federal government, to draft a proposed administrative alternative to asbestos litigation and to organize a colloquy to consider that proposal. In addition, I have testified on four occasions before congressional committees on asbestos litigation and bankruptcy issues. My qualifications to testify as an expert on the history of asbestos litigation have been challenged in three *Daubert*¹ proceedings. Each time, the courts rejected the challenge.² In rejecting a challenge in the Armstrong World Industries bankruptcy in 2006, U.S. District Court Judge Eduardo Robreno (who subsequently presided over the asbestos MDL, *In re Asbestos Prod. Liab. Litig. (No. VI)*, MDL No. 875 (E.D. Pa.), where his rulings resulted in the dismissal of tens of thousands of asbestos claims because of invalid medical evidence) stated:

Dr. Brickman has been shown to be qualified as an expert in the history of asbestos litigation, he has been studying the subject for 15 years, he has published at least seven articles on the subject and has testified

¹ *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993).

² In a fourth case, a *Daubert* challenge was raised as to my qualifications to testify about how the practices of a law firm and a doctor it hired to read over 20,000 x-rays were consistent with the entrepreneurial model I presented and constituted a scheme to generate false medical evidence. The challenge was dismissed as moot. *CSX Transp. v. Gilkison*, Case No. 5:05 CV202, 2013 WL 85253 (N.D. W.VA., Jan. 7, 2013).

three times before congressional committees on asbestos litigation and asbestos bankruptcy and has been qualified by at least two federal judges as an expert on the history of asbestos litigation and he has supplied a full and complete written expert testimony in a third asbestos bankruptcy proceeding. Therefore, I think that under Rule 702, he is qualified by virtue of skill, education, experience to aid the Court in -- in this case.

Secondly, the opinions rendered in the report appear to be reliable. Dr. Brickman relies on sources and data which are recently relied [on] by experts in his field and others have relied upon. . . his opinion. So . . . I find his opinion to be reliable. . . .

[P]lacing the issues in this case. . . in the historical context of asbestos litigation and claim settlement, will provide the Court with a greater understanding of the debtor's future liability. A good deal of the testimony in this case has involved a change in the lay of the land in the last few years and how that will affect the debtor's future liability. And . . . I believe that the testimony of Professor Brickman will be helpful to the court and . . . that his testimony fits well with the facts of the case. . . .

Transcript of Hearing at 22:20-23:21, *In re Armstrong World Indus., Inc.*, Case No. 00-CV-4471 (E.D. Pa., May 25, 2006). Attached hereto as Brickman Exhibit B is a more complete statement of my qualifications with regard to asbestos litigation and bankruptcies. Attached hereto as Brickman Exhibit C is a copy of my curriculum vitae. Also attached as Brickman Exhibit D is a list of my prior testimony in the past four years.

5. For the past twenty five years, I have studied: (1) the rise of asbestos claims generated by mass "screenings" (the primary method of recruitment of asbestos claimants) which I have termed "litigation screenings;" (2) the processes by which mostly unreliable medical evidence has been created in support of the hundreds of thousands of nonmalignant claims generated by such screenings; (3) the judicial treatment of these claims; and (4) how the asbestos bankruptcy process has been unwittingly used to effectively endorse the use of screenings, the production of unreliable medical evidence, and the suppression of witness testimony of exposures to the asbestos-containing products of companies that were bankrupted by asbestos litigation. In these

studies, I initially focused attention on a comparative handful of doctors (“litigation doctors”) who have provided a substantial portion of all of the “medical” records generated by litigation screenings to support claims for compensation.

6. My study of asbestos litigation has led me to identify an entrepreneurial model for the development of nonmalignant asbestos claims that began to emerge in the mid to late 1980s. Spurred on by enormous financial incentives and the billions of dollars in fees to be generated, lawyers transformed the basis for asbestos litigation from a traditional model of an injured worker seeking out a lawyer to sue for compensation to an entrepreneurial model. Screening enterprises working for lawyers systematically recruited hundreds of thousands of workers who may have had occupational exposure to asbestos. Litigation doctors hired by these enterprises reliably manufactured hundreds of thousands of x-ray reports and diagnoses of asbestosis for money despite the fact that these workers were mostly asymptomatic and most had no asbestos-related injury recognized by medical science. This model accounted for substantially all of the hundreds of thousands of nonmalignant asbestos claims filed in the 1988-2003 period, which comprised approximately 80%-90% of all asbestos claims filed in that period.

7. The Relevance of the Entrepreneurial Model to Mesothelioma Litigation.

The estimation proceeding in this bankruptcy is limited to estimating Garlock’s liability for pending and future mesothelioma claims. My study of the entrepreneurial model indicates that it generated hundreds of thousands of nonmalignant claims that were, in the words of U.S. District Court Judge Janis Jack, manufactured for money. Though focused on nonmalignant litigation, this model nonetheless sheds light on how plaintiffs’ counsel in mesothelioma litigation were able to target Garlock in the post 2000-2001 bankruptcy

wave era by suppressing evidence of plaintiffs' exposures to non-Garlock products. The practice of suppressing witness testimony to maximize tort claim values is a core element of the entrepreneurial model that has been carried over into mesothelioma litigation. In both sets of litigations, the suppression of evidence of plaintiffs' exposures to bankrupts' products is designed to sublimate truth in favor of maximizing profit. Thus, in both nonmalignant and mesothelioma litigation, counsels' motivations are identical: to drive up tort claim values by resort to deceitful practices. As expressed by an attorney in the Shein Law Center in explaining why the firm did not disclose its knowledge that the plaintiff suing Garlock had previously signed fourteen sworn statements, under penalty of perjury, that during his employment, he "frequently and regularly worked in close proximity" to the asbestos-containing products of various bankrupt companies, "our goal is to maximize a client's recovery." *See* Ex. E, introduced in Part IV of this report. Maximizing a client's recovery, according to the evidence presented in Part IV, includes "sublimating truth." The evidence presented in Part IV indicates that clients' recoveries are maximized by plaintiffs' falsely denying exposures to the products of the bankrupts in responding to discovery, failing to disclose prior trust claim filings as well as the intention to file trust claims as soon as the tort suit is concluded--even in jurisdictions where providing this information is mandated by courts' case management orders and standard interrogatories. Clients' recoveries are further maximized by counsels' failure to disclose--and seeking to suppress Garlock's ability to discover--that counsel had filed ballots and Rule 2019 Statements in multiple asbestos bankruptcies that attested to their clients' exposures to the bankrupts' products that were sufficiently substantial to have caused plaintiffs' injuries -- evidence that was contrary to the testimony and counsel's

argument in the suits against Garlock. In consonance with false denials and inconsistent filings, the evidence presented *infra* Part IV also includes counsel making arguments to juries that a plaintiff was not exposed to particular products of companies in bankruptcy even while counsel had already filed or, immediately after resolution of the tort case, would file trust claims attesting to exposure to the very products that counsel, in argument, had denied exposure to. Suppressing Garlock's access to evidence that would show that plaintiffs' denials of exposure to the products of bankrupts were false increased the costs imposed on Garlock to prove that its product were not a substantial, if any, factor in causing plaintiffs' injury. Indeed in the context of mass tort litigation, plaintiffs' counsel's strategy is to maximize the costs to defendants (and the courts) of examining the merits of each claim. The higher the costs, which in some cases can mount into the hundreds of thousands of dollars, the greater the imposition on defendants to settle nonmeritorious claims. Garlock's settlement history after the bankruptcy wave in 2000-2001 well illustrates this point.

8. The Techniques of Witness Preparation Used in Nonmalignant Asbestos Litigation Applied to Mesothelioma Litigation. Historically, nonmalignant and malignant claimants have been represented by different law firms. Baron & Budd was one of the firms that used litigation screenings to generate tens of thousands of nonmalignant suits. The Baron & Budd "script memo," described *infra* ¶ 27, instructed clients to lie about their exposures to the products of bankrupts and "implanted false memories" with regard to the products to which plaintiffs' claimed exposure. The Baron & Budd techniques of witness preparation have migrated to firms that focus on mesothelioma litigation. Ironically, the progeny of Baron & Budd have been

instrumental in this migration. According to discovery undertaken by Garlock, *see infra* Part IV, four of the six law firms which were the subject of Garlock's discovery, trace roots back to Baron & Budd. Thus, Andrew Waters and Peter Kraus left Baron & Budd, where they were partners, to found Waters & Kraus. Jeffrey Simon and Ron Eddins were both lawyers at Waters & Kraus (and Jeffrey Simon was previously a lawyer at Baron & Budd) who left to found the firm of Simon Eddins & Greenstone (now Simon Greenstone Panatier Bartlett). Joseph Belluck and Jordan Fox were lawyers with Baron & Budd who founded Belluck & Fox. Troy Chandler, formerly at Williams Kherkher, was a lawyer at Baron & Budd. Shein Law Center regularly serves as local counsel in Philadelphia mesothelioma cases with Waters & Kraus. Finally, the David Law Firm is a referral firm that regularly refers cases to Baron & Budd, Waters & Kraus and Belluck & Fox and its 30(b)(6) designee in this case worked at Baron & Budd. These six firms were not heavily involved in nonmalignant filings, having been founded shortly before or after nonmalignant filings dropped precipitously. But in discovery of the 15 Designated Plaintiff cases, these firms routinely engaged in discovery abuse and provided different or inconsistent stories about their plaintiffs' asbestos exposures in mesothelioma claims. *See infra* ¶¶ 67-69.

9. Introductory Summary. My Report is divided into six parts:

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In Part I, I present the elements of the entrepreneurial model for generating mostly fraudulent nonmalignant asbestos claims. This includes discussion of mass screenings and how they were promoted, the absence of any medical purpose for these litigation screenings, the administration of x-rays on an assembly line basis at screenings, the evidence that the B Readers hired to read the x-rays engaged in fraud and suppressed evidence that would have allowed defendants to determine that the B Readers were finding evidence of fibrosis in 50-90% of the x-rays they read—(far in excess of what clinical studies indicated), how a federal judge thwarted a billion dollar scheme to defraud defendants in the silica MDL, and the use of witness preparation techniques to suppress evidence in order to maximize claim values including discussion of the Baron & Budd “script memo.”

In Part II, I discuss: the substantial decline in the number of nonmalignant tort suits; the dual system for compensation of malignant claimants: trust claims and the tort

system; the aggregate value of trust assets and the substantial increase in trust payments beginning in 2006; the control exercised by plaintiffs' counsel's over the formation and operation of trusts; how that control has been used to inflate tort claim values; the impact on Garlock; the attempt to limit defendants' access to Rule 2019 Statements and ballots; the manipulation of trust distribution procedures to inflate tort values, in particular, the addition of "confidentiality," "sole benefit" and "withdrawal and deferral" provisions to trust distribution procedures and their significance; the evidence of deceitful practices in malignancy-based asbestos litigation; and the relevance of the Baron & Budd "script memo" to mesothelioma litigation.

In Part III, I discuss Garlock's litigation strategy prior to the 2000-2001 bankruptcy wave and how the bankruptcy wave impacted Garlock, substantially raising Garlock's average cost to settle mesothelioma claims.

In Part IV, I discuss Garlock's use of discovery to obtain evidence that plaintiffs and their counsel suppressed evidence of plaintiffs' exposures to the products of bankrupts. I also discuss fifteen Designated Plaintiff cases that are described in a memo from Robinson, Bradshaw and Hinton, prepared at my request, and appended to this report as Exhibit E, which provides evidence of the nature of the deceit and misrepresentation engaged in by plaintiffs and their counsel.

Finally, in Part V, I present my conclusion based on the material I have consulted and my scholarly research. Contrary to the opinion offered by Drs. Peterson and Rabinovitz, it is my opinion that Garlock's settlement history following the bankruptcy wave of 2000-2001 does not provide a reliable measure of Garlock's liability and

therefore cannot be relied on for the purpose of accurately valuing Garlock's liability for pending and future mesothelioma claims.

I. The Entrepreneurial Model: Generating Nonmalignant Asbestos Claims

10. Mass Screenings. The core of the entrepreneurial model, developed in the mid to late 1980s, was the mass screening, usually accomplished by hiring one of approximately 15-20 screening enterprises which have been paid tens of millions of dollars by law firms to recruit at least seven hundred thousand potential litigants from among the approximately 27 million workers who have been occupationally exposed to asbestos. The actual recruitment effort has often been facilitated by hiring former union officials or paying current union officials to steer members to certain lawyers.

11. Litigation Screenings Have No Medical Purpose. Plaintiffs' lawyers and their retained experts contend that these screenings have a valid medical purpose. Nothing could be further from the truth. Medical screenings seek to detect early signs of disease for the purpose of instituting a medical regime or treatment. Asbestos screenings are not undertaken for *any* medical purpose but rather are done *solely* to generate asbestos claims which in turn generate substantial contingency fees. The doctors hired by plaintiffs' counsel and screening companies provide no health services; indeed, they adamantly deny the existence of a doctor-patient relationship. The largest of the screening enterprises, Most Health Services, Inc., which has screened over 400,000 potential litigants, acknowledges that it performs no health services. In a Third Circuit Brief filed by Most Health Services, Inc., the company explained

[T]he *sole purpose* for [law firms'] contractual relationship with Most and its decision to sponsor asbestos screening programs is anticipation of future litigation against asbestos manufacturers. . . . [T]he entire

screening process from the moment [the law firm] becomes involved is geared toward collecting evidence for future asbestos litigation.

Memorandum In Support of Motion For Case Management Order Concerning Mass Litigation Screenings at 6, *In re Asbestos Prods. Liab. Litig.*, (No. VI), MDL 875 (E.D. Pa. Oct. 12, 2001) (emphasis added in Memorandum (citing Brief of Appellants at 19, *In re Asbestos Prods. Liab. Litig.*, Nos. 98-1166 and 98-1165 (3d Cir. Mar. 21, 2000)).

12. How Litigation Screenings are Promoted. The screening companies and law firms made arrangements with unions to post flyers on union bulletin boards and to send out letters urging attendance at screenings. In addition, they sent out mass mailings and placed advertisements in local media where a screening was to take place. With such promotional come-ons as “Find out if YOU have MILLION DOLLAR LUNGS,” millions of mailings announcing the screenings were sent promising “free x-rays” and the opportunity for potential claimants to cash in despite the absence of any symptoms. See Lester Brickman, *On the Theory Class’s Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality*, 31 PEPP. L. REV. 33, at 76-78, 77 n.124 (2003-2004) (“Brickman, *Asbestos Litigation*”).

13. Administering X-rays. The screening companies typically brought mobile x-ray vans to shopping center parking lots, motels, union halls and other locations where they administered x-rays on an assembly line basis. Asbestos screening companies uniformly failed to follow medical protocols for performing chest x-rays and regularly operated in violation of state licensing laws and regulations relating to administering x-rays.

14. X-rays Read by Selected B Readers. The x-rays produced at litigation

screenings were read by a comparative handful of B Readers³ hired by screening companies or plaintiffs' lawyers. Indeed, the reliance on a small group of B Readers is a defining characteristic of the nonmalignant entrepreneurial model. These B Readers were chosen because of their bought-and-paid-for propensity to reliably read the vast majority of the x-rays as indicating the presence of interstitial lung disease (fibrosis) graded as 1/0 on the ILO scale⁴ and "consistent with asbestosis." In doing so, these readers virtually always contravened published guidelines and medical protocols for reading chest x-rays.

15. Evidence of Fraudulent X-ray Readings. My research has led me to conclude that the B Readers selected by plaintiffs' firms to produce the large majority of the medical reports used to support screening-generated claims were not hired to actually read x-rays. Rather the product that each of these litigation doctors was selling to lawyer-

³ A B Reader is a doctor, usually a radiologist or a pulmonologist, who has been certified by the Public Health Service's National Institute for Occupational Safety and Health ("NIOSH") as having competence in reading chest radiographs (x-rays) for lung changes that might be consistent with a lung condition (pneumoconiosis) caused by the inhalation of dusts and grading them on the International Labor Office ("ILO") classification system. The NIOSH B Reader program was established to reduce the level of variability among x-ray readers by objectively documenting proficiency in evaluating the characteristics and patterns of images on chest x-rays for occupationally related lung disease using the ILO classification system.

⁴ Because of the need for a valid, reproducible categorization system for chest radiographs, in 1950, the International Labor Organization (ILO) developed a standardized classification system to facilitate international comparisons of data on pneumoconiosis. On the ILO scale, chest x-rays are classified according to the number of abnormalities (termed "opacities") in a given area of the chest film. A zero corresponds to no abnormalities, one to slight, two to moderate, and three to severe opacities. While the ILO has devised a grading scale designed to reduce the amount of variability in such x-ray readings, the process remains to some degree subjective. For this reason, B Readers give two classifications: the category that they think most likely and the next most likely. The result is a twelve point scale, with results ranging from 0/0 (normal x-ray appearance), to 3/3 (severe abnormalities). See *In re Joint E. & S. Dist. Asbestos Litig.*, 237 F. Supp.2d 297, 308 (E.D.N.Y. 2002). The vast majority of x-rays generated by asbestos screenings are read as "1/0" which means the X-ray on first impression is abnormal ("1") but may be normal ("0"). A reading of 1/1 is stronger than a 1/0 and means that the Reader found clear evidence of irregularities. For purpose of identifying and locating opacities, the ILO form divides the lungs into six zones, upper, middle and lower, left and right. For a diagnosis of asbestosis, the opacities should be found bilaterally in the lower zones. Nonetheless, a B Reader may assign a 1/0 grade even if he finds irregular opacities in only one of the six zones.

buyers was a “signature” percentage of positive x-ray readings, that is, a predetermined percentage of radiographic evidence of fibrosis which was unique to that litigation doctor. Indeed, this percentage was the litigation doctors’ stock-in-trade. *See* Lester Brickman, *Disparities Between Asbestosis and Silicosis Claims Generated by Litigation Screenings and Clinical Studies*, 29 CARDOZO L. REV. 513 at 584-591 (2007) (“Brickman, *Disparities*”). My research has further led me to determine that these B Readers provided positive readings for 50-90% of the screening-generated x-rays they read. *Id.* at 525-530. These percentages far exceeded the results of most clinical studies of the prevalence of asbestosis in occupationally exposed workers. Moreover, seven clinical studies or their equivalents in which neutral B Readers re-read x-rays initially read by litigation doctors as 1/0 or higher, found error rates that ranged from 60-97% but were mostly in the 90% range. *Id.* at 550-557).

16. Suppression of Negative X-Ray Readings. Evidence that litigation doctors were selling predetermined percentages of radiographic evidence of fibrosis is also found in the concerted refusal of litigation doctors, screening companies and plaintiffs’ lawyers to disclose information that would enable computation of the percentages of x-rays they read as 1/0 (or higher), that is, as indicating fibrosis “consistent with asbestosis.” The obvious if not compelling reason for this concerted effort to withhold such information is the disparity that it would have shown between clinical studies of the prevalence of fibrosis for different occupational groups and the far higher “off the chart” rates found by litigation doctors in litigation screenings. This vigorous effort to cover up the positive rates of litigation doctors included not only litigation doctors’ and lawyers’ refusals to produce negative B reads (so the positive rate could be computed) but also doctors and

screening company principals invoking their Fifth Amendment protection against self-incrimination as a basis for refusing to answer questions posed in depositions and at a congressional hearing about their x-ray readings and diagnoses. (For discussion of the extent of this concerted effort to preclude disclosure of positive rates, *see* Brickman, *Disparities* at 584-587).

17. Suppression of Evidence in Malignant Litigation. An analogous effort to withhold vital information with regard to identification of the products claimed to have caused injury to tort plaintiffs occurs in malignant litigation. Under the control of plaintiffs' counsel, asbestos bankruptcy trusts have sought to prevent Garlock and other asbestos defendants in the tort system from discovering trust claims and supporting information filed by tort plaintiffs as to which products were responsible for causing their disease. As discussed *infra* ¶¶ 60-63, this suppression of exposure evidence has driven up the settlement and defense costs as well as the litigation risk of Garlock and other tort defendants. Moreover, as further discussed *infra* Part IV, there is compelling evidence of widespread deceit and misrepresentation by plaintiffs and their counsel with regard to exposure claims.

18. Plaintiffs' Counsel's Control Over the Production of Evidence. Another element of the entrepreneurial model is plaintiffs' counsel's control over the production of evidence in asbestos litigation -- control which is used to suppress evidence in order to inflate the value of tort claims. One reflection of that control is the sea change that took place when litigation doctors changed their findings of asbestosis for the great majority of those screened to instead report silicosis, leading to an eruption of silicosis claims of epidemic proportions in the 2002-2004 period. In that period, approximately 20,000

silicosis claims were filed, mostly in state courts in Mississippi and Texas—an anomalous phenomenon in view of the fact that as a result of government regulation and industry practice, there had been a 70% decline in the death rate from silicosis over the previous thirty years. See Lester Brickman, *On the Applicability of the Silica MDL Proceeding to Asbestos Litigation*, 12 CONN. INS. L.J. 289, 300-02 (2006). The reason for this phantom epidemic was that the U.S. Senate looked poised to enact legislation to provide an industry-funded administrative alternative to asbestos litigation, which would, *inter alia*, both limit attorney fees and the recovery for nonmalignant unimpaired asbestosis claims to medical monitoring expenses. See Lester Brickman, *An Analysis of the Financial Impact of S.852: The Fairness In Asbestos Injury Resolution Act of 2005*, 27 CARDOZO L. REV. 991, 994-95 (2005). Many plaintiffs' lawyers, though strenuously lobbying against the bill, believed that it might well pass. *Asbestos: Mixed Dust and FELA Issues. Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 11-12 (Feb. 2, 2005) (statement of Lester Brickman) ("Brickman, Silica Hearing") quoting Heath Mason, co-owner of N&M, Inc., who testified that the reason his company changed from asbestos to silica screening was because of the "Hatch Bill"). Worried about the future of claim generation and concerned that the end game had begun for asbestos litigation, some plaintiffs' lawyers began directing the screening enterprises that they had hired to screen hundreds of thousands of workers exposed to asbestos-containing products for asbestosis, to instead screen for silicosis. These screening companies and the litigation doctors shifted gears from ginning up asbestosis claims to ginning up silicosis claims. See *In re Silica Prods. Liab. Litig. (MDL 1553)*, 398 F. Supp. 2d 563, 597 (S.D. Tex. 2005).

19. The Silica MDL. An MDL proceeding was commenced consisting of 10,000 silicosis claims presided over by U.S. District Court Judge Janis Jack in Texas. When evidence surfaced that the x-ray readings and diagnoses of silicosis for the 10,000 claimants may have been fraudulently generated, Judge Jack presided over a *Daubert* hearing to test the reliability of the 10,000 or so medical reports produced by a mere handful of litigation doctors; in addition, she permitted the defendants to undertake extensive discovery of the doctors and screening companies. Her actions were unprecedented in mass tort litigation. Indeed, most judges, out of reluctance to, in effect, put the tort system on trial, would not have permitted the defendants to conduct the extensive discovery that she allowed. Judge Jack was a former nurse and therefore had personal knowledge of the litigation doctors' lack of medical probity. But for the fortuity of Judge Jack's selection to preside over the MDL, the pervasive multi-billion dollar fraud that she uncovered would have succeeded and likely never have come to public attention.

20. Retreading of Asbestos Claims. Among the evidence of fraud that was introduced was the revelation that approximately 60% of the silicosis claimants had previously filed asbestosis claims, a phenomenon that became known as "retreading." *See Brickman, Silica Hearing at 12.* While it is medically possible for a claimant to have the dual diseases of asbestosis and silicosis, it is a "clinical rarity," *MDL 1553*, 398 F. Supp. 2d at 594-96, a medical euphemism for "virtually never." Indeed, this dual disease phenomenon is so rare that most pulmonologists have never seen a single such case. *Id.* at 595. "Retreading" was done by simply having B Readers re-read x-rays previously read as indicating radiographic evidence of fibrosis that was "consistent with asbestosis," as

no longer being consistent with asbestosis and instead being consistent with silicosis. In some cases, the same B Readers were contradicting their own prior x-ray readings. *See* Defendants' Motion For Production of Pulmonary Diagnoses And Evaluations at 4, *In re: Texas State Silica Prods. Liab. Litig.*, MDL Cause No. 2004-70000 (Tex. 295th Dist. Ct. Apr. 3, 2007).

21. Percentage of Positive X-ray Reads in the Silica MDL. Other evidence of fraud that was uncovered in the unprecedented discovery permitted by Judge Jack, though only after she repeatedly threatened contempt citations for failure to provide records, was the percentage of "positive" findings of silicosis. As summarized by Judge Jack, over 92% of the 6,510 B reads produced as part of plaintiffs' initial disclosures were positive. *MDL 1533*, 398 F. Supp. 2d at 629. Dr. Ray Harron, a litigation doctor, had a positive rate of 99%. *Id.* at 606-08. Dr. Harron produced more than 100,000 medical reports for use in asbestos litigation.

22. The Scheme to Manufacture Diagnoses for Money. The testimony by doctors and screening companies and the records produced in response to subpoenas enforced by threats of contempt led Judge Jack to conclude in a scathing report that "it is apparent that truth and justice had very little to do with these diagnoses . . ." *Id.* at 635. Rather the claim generation process being used was a "*scheme [by] lawyers, doctors and screening companies*" to "*manufacture . . . [diagnoses] for money,*" *id.* (emphasis added) -- the equivalent of a finding of fraud. "[E]ach lawyer had to know that he or she was filing at least some claims that falsely alleged silicosis." *Id.* at 636.

23. The Silica MDL Findings Apply to Asbestos Litigation. Judge Jack's extensive findings corroborate the existence of the illegitimate entrepreneurial model of

asbestos claim generation that I have identified and also support my conclusion that the vast majority of the hundreds of thousands of B Readings and diagnoses rendered by some of the same litigation doctors used in asbestos litigation are not only unreliable but simply manufactured for money. Indeed, taking note of peer reviewed literature to the effect that the x-ray readings and resultant diagnoses of asbestosis are not medically sound, Judge Jack found that the “evidence of the unreliability of the B-reads performed for this [silica] MDL is matched by evidence of the unreliability of B-reads in asbestos litigation.” *Id.* at 629.

24. The Demise of Litigation Screenings. Judge Jack’s report led to the convening of a grand jury by the U.S. Attorney for the Southern District of New York and an extensive investigation. This proceeding as well as Judge Jack’s report had a chilling effect on litigation screenings. Though some litigation screenings continue to take place, the era of large scale litigation screenings has passed. Nonetheless, in the period 1987-2003, Garlock was one of the many companies that fell prey to this fraudulent scheme, having been sued hundreds of thousands of times by screening-generated nonmalignant claimants. As noted in the report of Garlock expert, Charles E. Bates, Garlock spent hundreds of millions of dollars to defend against and settle hundreds of thousands of these mostly bogus nonmalignant claims. Report of Charles E. Bates, PhD (Feb. 15, 2013) at 24-27, 32-34, 59.

25. Witness Preparation Techniques To Suppress Evidence that Adversely Affect Claim Values. Another example of plaintiffs’ counsel’s control over the production of evidence in asbestos litigation is the frequent changes in witness testimony concerning the products to which plaintiffs were exposed. Plaintiffs’ counsel use witness

preparation techniques to produce plaintiffs' testimony that denies or minimizes their exposures to asbestos-containing products that were manufactured by companies that had filed bankruptcy and instead identifies only or mostly the products manufactured by the defendant(s) being sued in the tort system. This evergreen process enables plaintiffs' counsel to increase peripheral defendants' liabilities, as was the case with Garlock, as well as renewing the supply of solvent defendants to replace the flow of funds that was interrupted as leading defendants entered bankruptcy.

26. The Effect of the Johns-Manville Bankruptcy on Witness Testimony. The practice of using witness preparation techniques to generate false testimony first became evident in the aftermath of the bankruptcy of the Johns-Manville Corp. ("Manville"). Prior to 1982, the focus of asbestos litigation was on Manville, then the largest producer of asbestos-containing products. Asbestos claimants and witnesses testified that the company produced the dominant share of the asbestos-containing construction materials encountered by claimants and as a consequence, the company paid out the most funds to claimants and their lawyers. The 1982 bankruptcy of the company imposed an immediate stay on all payments to tort claimants, thus halting the main flow of revenue derived from asbestos litigation. Payments would not resume until 1988 when a "run on the bank" depleted the assets of the trust that was created to pay Manville's asbestos claims, resulting in a further delay in payments and a series of substantial reductions in the amounts paid out per disease category. Accordingly, the more witnesses would continue to identify the company's products as dominating the list of asbestos-containing products to which claimants claimed exposure, the less funds would then be available to pay to claimants and their counsel. However, immediately after the bankruptcy, witness

testimony underwent a sea change. See Andrew T. Berry, *Asbestos Personal Injury Compensation and the Tort System: Beyond "Fix It 'Cause It's Broke,"* 13 CARDOZO L. REV. 1949, 1951 n. 9 (1992) ("Berry, *Beyond Fix It*"). Whereas, for example, testimony in the Philadelphia Navy Yard cases put Manville's share of workplace product as high as 80%, post-bankruptcy, witnesses testified that Manville products accounted for an increasingly declining percentage of asbestos-containing products used at work sites. Thus, in the Brooklyn Navy Yard cases, after hearing witness testimony, the jury apportioned only 9-11% of the overall liability to Johns-Manville. Brickman, *Asbestos Litigation* at 138-39; *In re E. & S. Dists. Asbestos Litig.*, 772 F. Supp. 1380, 1398 (E.D.N.Y. 1991). Letting the cat out of the bag, a witness who was deposed just months after the Manville bankruptcy, testified that only 25% of the asbestos-containing products used at a shipyard were manufactured by Manville. Earlier in that deposition, the witness had at first estimated that "basically, most of the [asbestos-containing] materials [were made by] Johns-Manville. . . ." He then added, "I wasn't supposed to mention that, was I?" Quoted in Berry, *Beyond Fix It*, at 1951 n.9.

27. Witness Preparation Techniques: The Baron & Budd "Script Memo."

Some of the methods used by plaintiffs' counsel's to produce evidence that maximizes claimants' recoveries and suppresses evidence in order to inflate claim values were revealed in an extensive series of reports in 1998 by newspaper reporters who investigated the litigation screening practices of Baron & Budd, one of the leading asbestos plaintiffs' law firms in the country. This investigation revealed the extensiveness of the practice of witness preparation that focused on implanting false memories in asbestos claimants. In 1997, a novice lawyer at Baron & Budd inadvertently

produced a twenty page internal memo titled “Preparing For Your Deposition,” later referred to as the “Script Memo.” Claimants were instructed to memorize the information that a paralegal had filled out for them on their Script Memos but to never mention the Script Memo. Brickman, *Asbestos Litigation* at 144. The Memo included instructions for the client on how to prepare for his deposition including specific answers, even though false, that were to be given regarding product exposure. One of the companies highlighted in this part of the Memo was Garlock. For example, claimants were told to “Know the **Names** of All the Products Listed on Your Work History Sheets (such as A.P. Green, Kaylo, *Garlock*, etc.” and “Know which **Names** go with which “**Types** of products (for instance *GARLOCK* made GASKETS and KAYLO made PIPE COVERING, etc.)” (Script Memo at 1, bold and capitals in original, emphasis (italics) added). The newspaper reported that in filling out the form, former employees of Baron & Budd told them that “[w]orkers were routinely encouraged to remember seeing asbestos products on their jobs even if they didn’t truly recall,” Brickman, *Asbestos Litigation* at 139, and where necessary employees would “implant false memories,” *id.* at 140. This led one former paralegal to explain that by the time she finished preparing a client, she had a product “ID for every manufacturer that we needed to get ID for.” *Id.* at 139-140. (For a detailed discussion of how false memories were implanted, *see id.* at 137-156). Baron & Budd paralegals were also instructed to steer clients away from identifying the product of bankrupt companies such as Johns-Manville and to “warn. . . [the client] not to say you were around [a certain product] -- even if you were -- after you knew it was dangerous,” *id.* at 152, and to deny they ever saw warning labels on product packages. *Id.* at 144. Finally, clients were assured that defense lawyers who questioned

them in a deposition would have no way of knowing what products were actually used at relevant job sites, signaling that anything the client testified to could not be challenged.

Id. Despite the considerable evidence that use of the Script Memo constituted subornation of perjury, Baron & Budd emerged unscathed.⁵

28. Suppression of Evidence in Malignant Litigation. As discussed *infra* ¶ 54 and Part IV, suppression of the production of evidence, a core element of the entrepreneurial model of nonmalignant asbestos litigation, has been carried over into malignant litigation. Plaintiffs' counsels in malignant litigation use witness preparation techniques to the same end, that is, to suppress product identification testimony that would diminish the value of claims brought against solvent companies. In trust claims filed prior to or subsequent to tort claims filed against Garlock, claimants asserted meaningful and credible exposure to non-Garlock products which gave rise to legal liability for the asbestos-related diseases that were the subject of the trust claims. However, when suing Garlock, plaintiffs and their counsel often failed to disclose and indeed, hid from disclosure, the exposures that they had asserted in trust claims, or would later assert, caused plaintiffs' diseases. *See infra* Part IV.

29. Plaintiffs' Counsel's Control Over The Production of Medical Evidence: Another Sea Change. Further evidence of plaintiffs' counsel's control over the production of evidence in asbestos litigation involves a radical change in the medical evidence produced by the litigation doctors hired by plaintiffs' counsel. Pleural plaque

⁵ Baron & Budd secured appellate court rulings that the "Script Memo" was privileged. A Texas appellate court rejected an argument that the Memo fell within the ambit of the crime fraud exception, holding that the exception did not apply if the attorney was the one proposing to the client that they jointly engage in a crime. After all attempts to discover the origin of the "script memo" were quashed, the court withdrew its opinion. Brickman, *Asbestos Litigation* at 154-156.

claims once dominated asbestos litigation. Unlike asbestosis, pleural plaques are not found in lung tissue. They are deposits of collagen fibers, detectable only by X-rays, that are visible fifteen to twenty or more years after initial and substantial exposure to asbestos, as thickenings of the lining (pleura) of the lungs. The vast majority of individuals diagnosed solely with plaques have no lung impairment. For most, it is a totally benign condition which has been likened to freckles on the skin which result from exposure to sunlight. Furthermore, there is no scientifically credible evidence that those occupationally exposed workers diagnosed with pleural plaques have any greater likelihood of contracting an asbestos-related disease than if no pleural plaques were found. Nonetheless, during the late 1980s and early 1990s, pleural plaque claims were a major factor in asbestos litigation. See Brickman, *Asbestos Litigation*, *id* at 51-54.

In the period extending from the late 1980s to the early 1990s, pleural plaque claims amounted to approximately 45-60% of case volumes whereas mild asbestosis claims accounted for 15-25%. Lester Brickman, *The Asbestos Litigation Crisis: Is There A Need for An Administrative Alternative?*, 13 *CARDOZO L. REV.* 1819, 1861 n.174, 1862 (1992) (Brickman, "Asbestos Litigation Crisis"). This was consistent with medical studies that show that among those exposed to asbestos in a variety of settings, pleural plaques are two to three times more likely to be prevalent than pulmonary asbestosis. See sources cited in Brickman *Disparities* at 558 nn.130-31. However, beginning by the mid-1990s, a massive shift occurred in the disease mix. Pleural plaque claims declined precipitously while asbestosis claims climbed even more precipitously. Instead of a disease mix of 45-60% pleural plaques and 15-25% mild (1/0) asbestosis, 70% of new claims were filed as asbestosis claims. See Brickman, *Asbestos Litigation*, *id.* at 108-110.

To accomplish this massive shift in diagnoses of asbestos-related conditions, plaintiffs' litigation doctors essentially had to stop finding pleural plaques when reading x-rays and instead find a condition "consistent with asbestosis." Indeed, new claimants were being mostly diagnosed in the mid-1990s as having asbestosis or conditions "consistent with asbestosis," not pleural plaques, even though these claimants had worked alongside other claimants at the identical work sites at the same times, most of whom were previously determined by these litigation doctors to have pleural plaques, rather than asbestosis. *Id.* No medically relevant event explains this sea change in asbestos claiming. How then could such a tectonic shift have occurred in medical diagnoses?

30. The Extinction of Most Pleural Plaque Claims. The explanation of this phenomenon is rooted in the terms of a global settlement entered into between most of the leading plaintiffs' lawyers and most of the then-solvent major asbestos defendants. Adjunct to the massive *Georgine* class action settlement, later invalidated by the Third Circuit and the U.S. Supreme Court,⁶ plaintiffs' attorneys settled their then current inventory of 50,000 claims including tens of thousands of pleural plaque claims for approximately \$750 million. *See G-I Holdings, Inc. v. Baron & Budd*, 179 F. Supp. 2d 233, 248-249 (S.D.N.Y. 2001). However, in exchange, in the separate *Georgine* settlement, they agreed to effectively value future pleural plaque claims at zero and to inform new potential claimants that counsel would not seek compensation on their behalf unless they manifested with actual disease. *See Georgine v. Amchem Prods. Inc.*, 83 F.3d 610, 620-21, 630 (3d. Cir. 1996). In reaction to the settlement, plaintiffs' lawyers

⁶ *See Georgine v. Amchem Products, Inc.*, 878 F.Supp 716 (E.D. Pa. 1994), *vacated by* 83 F.3d 610 (3d Cir. 1996), *aff'g sub nom, Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997) (noting that the proposed settlement sought to settle the claims of "hundreds of thousands, perhaps millions" of individuals against 20 companies). 521 U.S. at 597.

immediately began reclassifying what would almost certainly have been new pleural plaque claims as asbestosis claims. From the perspective of medical science, pleural plaques and fibrosis consistent with asbestosis are wholly separate and distinct conditions. From a litigation point of view, they are simply alternative means of accessing compensation.

II. The Incorporation of Elements of the Entrepreneurial Model into Malignant Asbestos Litigation

31. The Status of Nonmalignant Tort Suits. Average tort claim filings, including both nonmalignant and malignant filings, peaked in 2003 and then dropped steadily through 2007, declining by 85%. The drop in filings was largely due to the substantial drop in nonmalignant filings. *See How Fraud and Abuse in the Asbestos Compensation System Affect Victims, Jobs, the Economy and the Legal System*, Hearing before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 112th Cong. §VI(A) (Sept. 9, 2011) (written statement of Lester Brickman). Since 2007, tort filings have been fairly stable, hovering about 20% of the 2001 level and consisting mostly of suits based on malignancies.

32. Malignant Claims: Bankruptcy Trust Payments and Assets. Malignant litigants continue to obtain compensation from both suits filed in state and local courts and claims filed with bankruptcy trusts. Since 2006, nearly 30 bankruptcy trusts have been created, bringing the total number of trusts to 60. GAO Report at 3; Marc C. Scarcella & Peter R. Kelso, *Asbestos Bankruptcy Trusts: A 2012 Overview of Trust Assets, Compensation & Governance*, 11-11 MEALEY'S ASBESTOS BANKRUPTCY REPORT 1 June 2012 ("Scarcella & Kelso"). From 1988 when the first trust was established

through 2008, trusts paid about 2.4 million claims totaling \$10.9 billion. GAO Report at 16. An additional \$5 to \$6 billion was paid by certain debtors prior to plan confirmation as part of pre-packaged settlements. Scarcella & Kelso at 2-4. Trust claim payments rose rapidly between 2006 and 2008. In 2008, trusts paid about 575,000 claims totaling \$3.3 billion; in 2009, an addition \$3.6 billion was paid and in 2010, \$3 billion. GAO Report at 16-17. Nonetheless, trust assets grew substantially in this period. As of year-end 2005, trust assets totaled \$8 billion. However, from 2006 through 2011, an additional \$20 billion was added. Scarcella & Kelso at 2. As of 2011, 60 trusts have been established with about \$37 billion in assets. GAO Report at 1, 3.

33. Malignant Claims: Tort Litigation. Malignant claimants also seek compensation from defendants in the tort system whose ranks have been considerably thinned by one hundred bankruptcies. When the 2000-2001 bankruptcy wave occurred, plaintiffs' counsel raised their settlement demands to make up for the interruption of payments from solvent defendants. Defendants reasonably anticipated that after all of the §524(g) trusts became operational, raising bankruptcy trust assets to approximately \$37 billion, their share of the compensation paid to those injured by exposure to asbestos would substantially decline as trusts were in position to and did pay billions of dollars to claimants. Plaintiffs' counsel, however, have developed effective methods to impede and even deny tort defendants the ability to have their liability reflect the billions of dollars being paid to claimants by the trusts. What follows in this report is an explanation of how plaintiffs' counsel have been able to suppress evidence of plaintiffs' predominant exposures to the products of the companies that had filed bankruptcy and thereby deny tort defendants, in particular, Garlock, the ability to uncover and present evidence of

plaintiffs' much more substantial asbestos exposures to the products of the companies that filed for bankruptcy during and after the 2000-2001 bankruptcy wave.

34. The Control Exercised by the Leading Asbestos Law Firms Over the Formation and Operation of Bankruptcy Trusts. The same baker's dozen or so law firms that represent the large majority of asbestos claimants also represent the majority of claimants in asbestos-related bankruptcy proceedings and the operation of the trusts created under § 524(g). These leading asbestos law firms largely control the asbestos bankruptcy process and the operation of the trusts created under § 524(g). (The structure of 524(g) trusts is analyzed in Lloyd Dixon, Geoffrey McGovern & Amy Coombe, RAND Inst. For Civil Justice, *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts* 11-14 (2010) ("RAND Report"). There are four structural components of § 524(g) trusts that are of relevance to the issues discussed in this report. The "asbestos creditors' committee" ("ACC") initially consists of tort creditors who are selected by the U.S. Trustee, 11 U.S.C. § 1102(a)(1); however, the practice is for those tort creditor/clients to cede control to their attorneys through powers of attorney. 7 COLLIER ON BANKRUPTCY ¶ 1102.02 (2)(a)(iii)(A) (15th ed. 1996). Thereafter, the appointed members of the committees fade from view. The handful of law firms so selected not only constitute the ACCs,⁷ they draft the Trust

⁷ An examination of the bankruptcies of Armstrong World Industries, Babcock & Wilcox, Combustion Engineering, Federal-Mogul, G-1 Holdings, Global Industrial Technologies, Owens Corning, Pittsburgh Corning, W.R. Grace and USG indicates that there is a high concentration of the same law firms which effectively constitute the asbestos tort creditors committees in these bankruptcies. Thus, Baron and Budd is in nine of these ten bankruptcies as is Weitz and Luxenberg, with a few other firms also having substantial participation: Goldberg Persky (7), Kazan, McClain (7), Kelley & Ferraro (6), Ness Motley (6), Silber Perlman (4), and Peter Angelos, Cumbest, and Levy Phillips-each serving on two committees. Of 26 selected trusts examined in a RAND Report, a handful of firms dominated the membership on the trusts' asbestos claimants committees and trust advisory committees, including Kazan McClain (15

Distribution Procedures (“TDP”) which, as discussed below, establish the criteria for the payment of the very claims which they are asserting. (Notably, four of the law firms listed in footnote 7 as exercising substantial control over the creation of § 524(g) trusts are on the Garlock ACC (the Official Committee of Asbestos Personal Injury Claimants): Weitz & Luxenburg, Kazan McClain, Cooney and Conway, and Ness Motley (now Motley Rice). In addition, two other law firms on the ACC Committee are spin-offs from Baron & Budd: Waters & Kraus and Simon Eddins & Greenstone). In addition to their control over the ACCs, though formally appointed by the bankruptcy judge, plaintiffs’ counsel effectively select both the trustees to operate the § 524(g) bankruptcy trusts that will be created to actually pay the claims and the administrator of the trust and effectively determine the appointment of the “future claimants representative” (“FCR”) to represent the interests of future claimants. They also constitute the “trust advisory committee” (“TAC”) which has authority over trustees’ actions and exercises control over changes in the trusts’ structure. Medical and exposure criteria for determining payment levels to claimants are set forth in the TDP. *See* 11 U.S.C. § 524 (g)(2)(B)(ii)(V). Many TDPs include a matrix of payment values for varying levels of asbestos-related diseases. *See, e.g.,* MANVILLE PERSONAL INJURY SETTLEMENT TRUST, 2002 TRUST DISTRIBUTION PROCESS § D (2002), *available at* <http://www.mantrust.org/FTP/C&DTDP.pdf>. As discussed *infra* ¶ 35, the TDPs that have been established reflect this high degree of control particularly in the incorporation of features that limit the ability of tort defendants to obtain evidence of plaintiffs’ exposures to the products of bankrupt companies, and where applicable, to credit trust payments against tort liability.

trusts), Baron & Budd (11 trusts), Cooney and Conway (11 trusts), Weitz and Luxenburg (11 trusts) and Motley Rice (8 trusts). Predominantly, these law firms were represented on the TACs which control the process of amending the TDPs. RAND Report at 38-40, 43.

35. Inflation of Tort Claims Values. Plaintiffs' counsels have used their effective control over the creation and administration of asbestos bankruptcy trusts to add provisions to TDPs designed to limit defendants' ability to use discovery to access trust claims and thus determine which asbestos-containing products, other than those of defendants, that plaintiffs or their counsel have identified as creating legal liability for their diseases. Evidence has become increasingly available that limiting defendants' access to trust claims has been used to conceal the fact that the product exposures set forth in the trust claims to qualify the claimant for payment differ markedly from, and are inconsistent with, the exposures being asserted in tort litigation. The net effect is to inflate the value of asbestos claims filed in the tort system. If defendants such as Garlock had reasonable access to evidence of plaintiffs' exposures and their trust claim filings, they could use this evidence to argue effectively that exposure to their own products was not a substantial, or indeed any, factor in causing a plaintiff's disease especially where the exposures claimed in the tort litigation were relatively insignificant when compared to other exposures claimed or to be claimed in trust filings.

36. The Effect on Garlock. Garlock has been especially victimized by these actions. Prior to the 2000-2001 bankruptcy wave, Garlock was usually able to prove that plaintiffs had substantial exposures to non-Garlock products. In the post-bankruptcy wave, evidence of these exposures has been suppressed. If Garlock had been able to obtain the evidence that plaintiffs had submitted to bankruptcy trusts, or would submit immediately after resolution of the tort claim with Garlock -- in which plaintiffs had asserted or would assert sufficiently substantial exposures to result in legal liability -- then Garlock could have more easily and less expensively demonstrated as it did before

the bankruptcy wave and with increasing success after the bankruptcy wave (although at high cost), that its products could not have been a substantial factor in bringing about the plaintiff's injuries, as state law often requires. But this is precisely why plaintiffs and their counsels suppressed this evidence. Doing so maximizes claim values -- increasing Garlock's tort liability and thus driving up Garlock's settlement costs. The importance of evidence of plaintiffs' exposure to high dose asbestos products of bankrupt defendants is demonstrated in the U.S. 6th Circuit Court of Appeals decision in *Moeller v. Garlock Sealing Technologies LLC*, 660 F.3d 950, 2011 (6th Cir. 2011), reversing a verdict for the plaintiff and directing a verdict in Garlock's favor. The court concluded that in light of evidence that plaintiff had been exposed to asbestos insulation manufactured by the leading defendants who were taken out of the tort system in the bankruptcy wave, plaintiff's work with Garlock gaskets could not have been a substantial cause of his disease, as that "would be akin to saying that one who pours a bucket of water into the ocean has substantially contributed to the ocean's volume." *Moeller*, 660 F. 3d at 955. The value such evidence has in demonstrating that Garlock's products were not a substantial cause of plaintiffs' injuries is precisely why plaintiffs' counsel seek to suppress information about trust filings and plaintiffs deny the very exposures that they and their counsels set forth to qualify for payments by trusts. To understand the interrelationship between trust claims and tort litigation, it is necessary to briefly review elements of the asbestos bankruptcy process.

37. Rule 2019. As protection against conflicts of interest, Federal Rule of Bankruptcy Procedure 2019(a) requires that attorneys representing more than one creditor file a verified statement listing the creditors, the amount and nature of their claims (as

well as the acquisition date of claims acquired within the last year), the facts surrounding the attorney's employment in the case, and the nature and amount of any claims or interests owned by the attorney at the time he or she was hired. This requirement enables the court to identify actual or potential conflicts which may require conflicted counsel to withdraw from representing one or more of the lawyer's clients. *See* 2 FEDERAL RULES OF BANKRUPTCY PROCEDURE 184, Rule 2019 Selected Case Comment (Alan N. Resnick and Henry J. Sommer, eds., Collier Pamphlet Ed. 2004). Every law firm representing more than one plaintiff with a claim against the debtor is required to file this statement. However, in practice, plaintiffs' lawyers representing asbestos claimants numbering in the hundreds and thousands in bankruptcy proceedings routinely failed to file such disclosures and strongly resisted efforts to secure compliance.⁸ Only in the last decade have courts begun mandating compliance with Rule 2019. In 2004, U.S. Bankruptcy Judge Judith Fitzgerald issued an omnibus order requiring all counsel representing more than one creditor in several specified asbestos bankruptcy proceedings to comply with Rule 2019 or else the votes of their clients would not be counted in the § 524(g) vote on approving the plan of reorganization. *See* Revised Order Requiring Filings of Statements Pursuant to Fed. R. Bank. P. 2019, *In re Owens Corning*, Case No. 00-3837 [Dkt. 13091] (Bankr. D. Del. Oct. 22, 2004).⁹ However, although Judge Fitzgerald ordered counsel to

⁸ Plaintiffs' counsel's strenuous efforts to resist compliance with Rule 2019 include the bizarre story of leading asbestos attorney Joe Rice of Motley Rice (co-chair of the Garlock ACC) refusing to schedule his own deposition and ducking service of process in order to evade compliance with Rule 2019. *See* Lester Brickman, *Ethical Issues in Asbestos Litigation*, 33 HOFSTRA L. REV. 833, 856 n. 104 (2005).

⁹ In Delaware, this order was directed at counsel representing more than one creditor or equity security holder in Owens Corning, Armstrong World Industries, W.R. Grace & Co., USG Corp., United States Mineral Products Company, Kaiser Aluminum Corporation, Inc., ACandS, Inc., Combustion Engineering, Inc., and The Flintkote Company bankruptcies. In

submit exhibits in compliance with Rule 2019, she further ordered that the exhibits were not to be scanned into the docket and instead would be kept confidential and only accessible if the court ruled favorably on a motion to access the exhibits. *See id.* In contrast, U.S. Bankruptcy Judge Kathryn C. Ferguson, presiding over the Congoleum bankruptcy, ordered full compliance with Rule 2019, including public disclosure of personal injury and wrongful death claimants represented by firms. *See Order Requiring Compliance with Bankruptcy Rule 2019 and Granting Other Relief, In re Congoleum Corp.*, Case No. 03-51524 [Dkt. 1153] (Bankr. D. N.J. July 26, 2004). Judge Ferguson's order was in response, *inter alia*, to a motion to compel the law firm of Motley Rice to provide the information called for by Rule 2019. U.S. District Court Judge Chesler affirmed Judge Ferguson's order, holding that *complete* disclosure in compliance with Rule 2019 is necessary to ensure the overall fairness of the reorganization plan. *See* opinion at 22-28, *Baron & Budd, P.C. v. Unsecured Asbestos Creditors Committee (In re Congoleum Corp.)*, Case No. 04-5634 [DKT. 34] (D.N.J. Feb. 25, 2005); Order, *Baron & Budd, P.C. v. Unsecured Asbestos Claimants Committee (In re Congoleum Corp.)*, Case No. 04-5634 [Dkt. 35] (D.N.J. Feb. 25, 2005).

38. In response to Judge Fitzgerald's order, while this bankruptcy case was pending, Garlock filed motions to access the exhibits to the Rule 2019 filings in the twelve bankruptcies presided over by Judge Fitzgerald. Judge Fitzgerald denied Garlock's motions. Garlock appealed from an October 7, 2011 Order Denying Motions for Access to 2019 Statements, Denying Motions to Intervene and Denying Motions to Reopen Certain Closed Cases. Judge Fitzgerald entered essentially identical Orders and

Pennsylvania, this order was directed at counsel representing more than one creditor or equity security holder in the Pittsburgh Corning, NARCO/GIT, and Mid-Valley bankruptcies.

Opinions in each of the nine Delaware Bankruptcy Cases and the three Western District of Pennsylvania cases. Garlock then appealed these orders to the District Court for the District of Delaware which modified the Orders and permitted Garlock access to the 2019 exhibits which had been kept from public access. Opinion, *In re: Motions for Access of Garlock Sealing Tech. LLC*, Case No. 11-1130 [Dkt. 641] (D. Del., Mar. 1, 2013).

39. Rule 2019 Statements. In Rule 2019 Statements, claimants' counsel assert that their clients have claims against the bankrupt and often explicitly state that their clients were exposed to the asbestos-containing products of the debtor and that these exposures caused the claimant's disease. An example of such a statement is provided in the Pittsburgh Corning Corporation bankruptcy, which states:

2. I have personal knowledge of the facts set forth herein. I make this Verified Statement ("Statement") pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure and the Court's Order of October 22, 2004.

4. As of the date of this Verified Statement, the Firm represents thousands of personal injury claimants (the "Claimants" or individually "Claimant") who have been injured by asbestos products manufactured, marketed, distributed, sold, or produced by Pittsburgh Corning Corporation ("Debtor") and others, and thus hold claims against, *inter alia*, the Debtor. . . .

6. The nature of the claim held by each Claimant is a personal injury tort claim for damages caused by asbestos products manufactured by the Debtor.

Amended Verified Statement of Baron & Budd, P.C. under Bankruptcy Rule 2019, *In re Pittsburgh Corning Corp.*, Case No. 00-22876 [Dkt. 38291] (Bankr. W.D. Pa. Dec. 17, 2004). The firm of Waters and Kraus filed a Rule 2019 Statement virtually identical to ¶¶ 2 and 4 of the Baron & Budd Statement. *See* Verified Statement of Waters and Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 in the Global Industrial

Technologies, Inc. Bankruptcy (Dec. 9, 2004). Waters and Kraus's role in Garlock's asbestos litigation experience is discussed *infra* ¶ 70.

40. Opposition to Access to Rule 2019 Statements. The reason why plaintiffs' counsel strenuously oppose efforts by defendants to access Rule 2019 Statements is that such access would often show that their clients asserted exposures to products manufactured by multiple bankrupts that counsel must have known would substantially conflict with the exposure claims being asserted in the tort actions. Indeed, there is credible evidence, discussed in *infra* Parts III and IV, that counsel did know of plaintiffs' substantial product exposures at the time of filing tort claims, as revealed in Rule 2019 Statements and in other evidence, which were not disclosed in pre-trial discovery. Moreover, delaying or denying trust claim filings would have the intended effect of not only denying defendants this vital evidence but also the ability to gain credits against tort verdicts in states which allowed those credits.

41. Plaintiffs' counsel's efforts to first evade compliance with Rule 2019 and thereafter to limit access to the exhibits to its Rule 2019 Statements and certain trust claims data appear designed to facilitate the suppression of product exposure evidence that would enable defendants in the tort system to present evidence that a claimant's disease was primarily caused by exposure to products other than those produced by the defendant. As set forth in Part IV of this report, Garlock has used its limited ability to access certain Rule 2019 Statements and trust claims data to compile evidence that plaintiffs and their counsel suing Garlock in tort failed to disclose material evidence of exposure to the products of the bankrupts despite being asked to provide evidence of all other exposures of plaintiffs and despite court rules requiring such disclosures. Garlock

will soon begin receiving Rule 2019 exhibits that it has been seeking which are expected to provide additional material evidence of suppression of exposures to the products of bankrupts.

42. Garlock's Access to §524(g) Ballots. Similarly, through this bankruptcy case, Garlock has been able to obtain ballots cast by claimants and their attorneys in asbestos bankruptcy cases, which are the only other documents revealing the identities of creditors who participated in the prior bankruptcy cases. In order to vote on a Chapter 11 plan, claimants (or their attorneys on claimants' behalf) are generally required to certify that they have a claim because of exposure to asbestos-containing products for which the relevant debtor is responsible. *See, e.g.*, Owens Corning 2006 Class A7-M Ballot (requiring attorney to certify under penalty of perjury that each claimant listed in master ballot "has experienced Owens Corning Exposure . . . with respect to which Owens Corning has legal liability."). Although these ballots are court filings, they are generally filed with a balloting agent and not made readily available to the public. Garlock obtained access in these cases by subpoenaing the balloting agents, but was opposed by the Garlock ACC in this case -- another apparent attempt by the plaintiff's bar to obscure the identities of the persons who alleged exposure to the various debtors' products.

43. Manipulating TDPs to Further The Scheme to Inflate Tort Values. In furtherance of the scheme to increase the value of tort claims by, *inter alia*, impeding and even preventing tort defendants from accessing plaintiffs' claim filings with trusts, plaintiffs' counsel have included in trust TDPs or have modified trust TDPs post-confirmation to include several provisions to advance the scheme. One of those, a "confidentiality" provision, generally states that all information submitted to trusts by an

asbestos claimant is to be treated as made in the course of settlement negotiations and is intended to be confidential and protected by all applicable privileges. In other words, the message to tort defendants from the lawyers that control the trusts is: Keep Out. As of 2011, 65% of asbestos trusts have adopted procedures in their TDPs intended to prevent access to exposure allegations that were part of trust filings as well as other vital information. GAO Report at 28.

44. TDP Confidentiality Provisions. An example of the now standard “confidentiality” provision comes from the Babcock & Wilcox Personal Injury Asbestos Settlement Trust’s TDP:

Confidentiality of Claimants' Submissions. All submissions to the PI Trust by a holder of a PI Trust Claim of a proof of claim form and materials related thereto shall be treated as made in the course of settlement discussions between the holder and the PI Trust, and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including but not limited to those directly applicable to settlement discussions. **The PI Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only in response to a valid subpoena of such materials issued by the Bankruptcy Court. The PI Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privileges before the Bankruptcy Court and before those courts having appellate jurisdiction related thereto.**

See The Babcock & Wilcox Co., Asbestos Personal Injury Settlement Trust Distribution Procedures § 6.5 (Jan. 4, 2008), available at <http://www.bwasbestostrust.com/files/Revised%20B%20W%20TDP%201.pdf> (emphasis added). Not only does the Babcock & Wilcox Trust require a subpoena for production of claims information, it requires that the subpoena issue from the Bankruptcy Court. Additionally, the Trustee is ordered to take the initiative to challenge the subpoena -- constraints that further reflect the degree

of control exercised by a dozen or so law firms over the drafting of the plan of reorganization and the adoption and amendments of the TDPs.

45. Many Courts Have Rejected Plaintiffs' Counsel's Efforts to Prevent Tort Defendants from Accessing Trust Claims. Over the strenuous opposition of the asbestos plaintiffs' bar seeking to suppress the product exposure information in trust filings, over twenty courts have held that claim forms submitted to asbestos bankruptcy trusts and factual information such as medical records submitted in support of trust claims are discoverable in civil litigation.¹⁰ In addition, several courts have promulgated standing case management orders ("CMOs") requiring asbestos plaintiffs to disclose certain bankruptcy-related information.¹¹ A 2010 CMO issued by the West Virginia court tasked with adjudicating asbestos cases in West Virginia provides:

No later than one hundred twenty (120) days prior to the date set for trial for the asbestos action, a claimant shall provide to all parties a statement of any and all existing claims that may exist against asbestos trusts. In addition, the statement shall also disclose when a claim was or will be made, and whether there has been any request for deferral, delay, suspension or tolling of the asbestos trust claims process. The statement must contain an Affidavit of the Plaintiff or Plaintiffs' counsel that the statement is based upon a good faith investigation of all potential claims against asbestos trusts.

... As to any claims already asserted against asbestos trusts, the claimant shall produce final executed proofs of claim together with any supporting materials used to support such claim against the asbestos trusts, all trust claims and claims material, and all documents or information relevant or related to such claims asserted against the asbestos trusts, including but not limited to, work histories, depositions, and the testimony of the claimant and others as well as medical documentation.

¹⁰ For a listing of decisions and orders requiring tort plaintiffs and/or trusts to produce documentation relating to trust claims filed by plaintiffs, see Victor E. Schwartz, *A Letter To The Nation's Trial Judges: Asbestos Litigation, Major Progress Made Over the Past Decade and Hurdles You Can Vault in the Next*, 36 AM. J. TRIAL ADVOC. 1, 18 n.86 (Summer 2012).

¹¹ See *id.* at 18 n.87.

Order, In re Asbestos Pers. Injury Litig., No. 03-C-9600 (W. Va. Cir. Ct. Kanawha County Mar. 3, 2010) (amending case management order and addressing claims against bankruptcy trusts).

46. Barriers Erected to Prevent Accessing Trust Claims. Substantial evidence, presented *infra*, indicates that plaintiffs and their counsel often simply ignore the requirement in CMOs that plaintiffs provide defendants with a statement of any and all existing claims that may exist against asbestos trusts. Additionally, plaintiffs' counsel continue to erect barriers to tort defendants' accessing trust claim filings. Written discovery propounded to plaintiffs related to bankruptcy trusts is almost always met with objection. See *Furthering Asbestos Claims Transparency (FACT) Act of 2012: Hearing on H.R. 4369 Before the Subcomm. on Courts, Commercial and Administrative Law of the H. Comm. on the Judiciary*, 112th Cong. at 15 & n.16, Ex. A (May 20, 2012) (testimony of Leigh Ann Schell) ("Schell Testimony"). Even subpoenas served on the trusts are vigorously opposed by plaintiffs' counsel. Schell Testimony at 15 & n.17. Indeed, on December 28, 2011, the three plaintiffs' firms representing all plaintiffs within the Rhode Island Asbestos Docket filed a joint motion for a blanket protective order asking the court to prevent "the disclosure of the terms and supporting documentation of any settlement entered into between any plaintiff and any named or unnamed defendant or bankruptcy trust." *Id.* at 15-16 & n.18. In July 2011, Wertz & Luxenberg commenced an effort to overturn the long standing portion of the New York City asbestos CMO requiring mesothelioma plaintiffs to file their trust claims before trial and disclose them -- an effort that was ultimately rejected in November 2012.

47. The “Sole Benefit” Provision Added to TDPs. In consonance with the purpose for amending TDPs by including “confidentiality” provisions, plaintiffs’ counsel have also amended trusts’ TDPs by adding a paragraph that provides that evidence submitted to the trust is for the “sole benefit” of the trust and claimants are not required to list any other exposures in filing a claim except those for which the trust is responsible. In addition, if an asbestos plaintiff in a tort action fails to identify exposure to products of a reorganized company or fails to do so when filing claims with other trusts, then the plaintiff would not be precluded from recovering as an asbestos claimant from that trust. *See Scarcella & Kelso.* This provision is intended to enable plaintiffs and their counsel to limit the exposure evidence they must provide in support of trust claims as well as the consequences of failing to identify product exposures. The second paragraph of the Armstrong World Industries TDP § 5.7(b)(3), quoted below, is the standard “sole benefit” provision in trust TDPs:

Evidence submitted to establish proof of exposure to AWI Products/Operations is for the sole benefit of the PI Trust, not third parties or defendants in the tort system. 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 AWI is responsible, except to the extent such evidence is required elsewhere in the TDP. Similarly, failure to identify AWI Products/Operations 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 the TDP.

Amended and Restated Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust Distribution Procedures § 5.7(b)(3) (July 14, 2010).

48. Withdrawal and Deferral of Trust Claims. Another TDP provision that further facilitates inflating the value of tort claims involves the timing of trust claim filings. Most TDPs require, as does the Combustion Engineering TDP, that trust claims must meet either (i) for claims first filed in the tort system against CE prior to the Petition Date, the applicable statute of limitations and repose that was in effect at the time of the filing of the claim in the tort system, or (ii) for claims not filed against CE in the tort system prior to the Petition Date, the applicable statute of limitations that was in effect at the time of the filing with asbestos PI Trust.

Combustion Engineering § 524(g) Asbestos PI Trust Distribution Procedures § 5.1(a)(2) (Sept. 16, 2009). Meeting these requirements would make trust claims more vulnerable to tort defendants' discovery efforts. However, most TDPs, in § 6.3, allow a claimant to first file a trust claim to meet the applicable statute of limitations and then to withdraw the claim "at any time. . . and file another claim subsequently without affecting the status of the claim for statute of limitations purposes." Section 6.3 further provides that

[a] claimant can . . . request that the processing of his or her Trust Claim by the Trust be deferred for a period not to exceed three (3) years without affecting the status of the claim for statute of limitation purposes, in which case the claim shall also retain his or her original place in the FIFO Processing Queue.

E.g., Amended and Restated Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust Distribution Procedures § 6.3 (July 14, 2010). Thus, a plaintiff suing Garlock or other defendant, can have filed trust claims, then withdrawn or deferred the trust claims, completed the tort suit, and then immediately refiled or revived the trust claims asserting product exposures that are inconsistent with the product exposures claimed in the tort action to be responsible for causing the claimed disease. Thus, § 6.3 further facilitates plaintiffs' and their counsel's denials in the course of pre-trial discovery that they had filed trust claims, despite having done so. Upon refiled or reviving the

trust claims, plaintiffs and their counsel will almost certainly assert product exposures which are inconsistent with the claims of causation advanced in the tort litigation. The practice of using TDP § 6.3 for this purpose is laid bare in *Barnes and Crisafi v. Georgia Pacific* (N.J. Super. Ct. June 12, 2012) which is described *infra* ¶ 52(4). There plaintiffs' counsel justified their denial of filing any trust claims -- when they had in fact filed at least four trust claims -- on the grounds that the claims were "deferral claims." An irate judge emphatically rejected that excuse stating that her order required *all* trust claims to be disclosed, including "deferral claims" and that "[t]he defense is entitled to know that." *Id.* She then re-opened discovery to permit the defendant to further investigate the plaintiff's trust filings.

49. The Timing of the TDP Changes. The timing of the TDP changes is noteworthy. The "sole benefit" and "deferral" provisions were mostly added in the 2006-2010 time period; that is also the period when "confidentiality" provisions became standard in TDPs. This time period is when there was an influx of new trusts and the bulk of the trust money began to be paid out. *See* RAND Report at 35-37. Coincidentally, that is also the time when concerns about double dipping were gaining attention and the *Kananian* case, described *infra* ¶¶ 50-52, was being litigated. As set forth in Parts II and IV, plaintiffs' frequently and falsely deny exposure to the products of bankrupts. From the evidence presented here, I conclude that the TDP changes discussed above are an effort by plaintiffs' counsel to contain these concerns and prevent defendants from demonstrating that plaintiffs' denials are simply false by barring defendants such as Garlock from accessing trust claim filings containing evidence of plaintiffs' exposures to the products of bankrupt companies.

50. Fraudulent Practices in Malignancy-Based Litigation. Plaintiffs' counsel's efforts to increase tort claim values are not limited to opposing disclosure of Rule 2019 Statements and exhibits, adding TDP provisions designed to prevent defendants from accessing product exposure claims contained in trust filings and concealing the existence of trust claims not yet filed which are based on extensive exposures to products not disclosed in pre-trial discovery. More direct actions, some apparently fraudulent according to presiding judges and, designed to conceal trust claim filings, have come to light. Plaintiffs' counsel have argued that fraudulent actions to suppress the production of exposure evidence submitted with trust filings are rare and that the widely reported case of *Kananian v. Lorillard Tobacco Co.*, Case No. CV442750 (Ct. of Com. Pl., Cuyahogo Cty. Ohio) was a one-off. See Elihu Inselbuch, Ann McMillian & Andrew Sackett, *The Effrontery of The Asbestos Trust Transparency Legislative Efforts*, 28-2 MEALEY'S LITIG. REP. ASB. at 7, 12 n.58 (2013). Nonetheless, evidence of widespread fraud is mounting. Harry Kananian died of mesothelioma in 2000 and was represented by two law firms. As described in a Wall Street Journal article, in *Kananian*, "[one] law firm filed a claim to one trust, saying Kananian had worked in a World War II shipyard and was exposed to insulation containing asbestos. It also filed a claim to another trust saying he had been a shipyard welder. A third claim, to another trust, said he'd unloaded asbestos off ships in Japan. And a fourth claim said that he'd worked with 'tools of asbestos' before the war. . . . Two more claims [were submitted] to two further trusts, with still different stories [Counsel then] sued Lorillard Tobacco, this time claiming its client had become sick from smoking Kent cigarettes,

whose filters contained asbestos for several years in the 1950s.” Kimberly A. Strassel, Opinion, “*Trusts Busted*, WALL ST. J., Dec. 5, 2006, at A18 .

51. *Kananian v. Lorillard Tobacco*. More explicit description of the fraud practiced on the court in *Kananian* is provided by presiding Cleveland, Ohio Judge Harry Hanna. See Order, *Kananian v. Lorillard Tobacco Co.*, Case No. CV 442750 (Cuyahoga Cty. Ct. (Ohio) of Com. Pl., Jan. 18, 2007) (“Order”). As Judge Hanna explained, the California law firm of Brayton Purcell (“BP”) filed a claim with the Manville Trust in which they stated that Kananian was a shipyard laborer working in direct contact with Johns-Manville products. However, there was no evidence that he had ever worked with those products. Order, ¶ 2. When the Ohio court ordered the BP counsel to produce the Manville Trust filing which he essentially refused to do, the firm were forced to produce an internal e-mail acknowledging that the filing was inaccurate. Nonetheless, prior thereto, BP counsel lied to the court, stating that the claim form was “entirely accurate.” *Id.* ¶ 3. To delete the inaccurate filing, the BP counsel then submitted an amended claim form to the Manville Trust but repeatedly denied doing so to the court. *Id.* The BP counsel “continued the deceit in its amended answers to Lorillard’s Interrogatories.” *Id.* The BP counsel also denied that claim forms had been filed with other trusts even as BP and an associated firm had received monies on behalf of Kananian from multiple trusts. *Id.* The BP counsel also lied when he stated that original claim forms had not been submitted to the bankruptcy trusts, claiming that the forms were unsigned. In fact, they were signed. *Id.* ¶ 5. The BP counsel also denied having any control over the law firm with which it was associated with in representing Kananian and maintained ignorance about what that firm did with the amended claim form.

However, “[c]ommunication between Brayton Purcell and . . . [the associated firm] prove otherwise.” *Id.* ¶ 6. Counsel’s representations were false. *Id.* The BP counsel also filed a false privilege log to conceal his initial deception. *Id.* ¶ 7.

52. Opening a Pandora’s Box of Deceit. Judge Hanna's ruling received national attention for exposing “one of the darker corners of tort abuse” in asbestos litigation: inconsistencies between allegations made in open court in tort cases and those submitted to trusts set up by bankrupt companies to pay asbestos-related claims. An editorial in the Wall Street Journal found this to be evidence of “rampant fraud inherent in asbestos trusts.” Editorial, *Cuyahoga Comeuppance*, WALL ST. J., Jan. 22, 2007, at A14. As the *Cleveland Plain Dealer* reported, Judge Hanna's decision ordering the plaintiff to produce proof of claim forms “effectively opened a Pandora’s box of deceit . . . reveal[ing] that [counsel] presented conflicting versions of how Kananian acquired his cancer.” James F. McCarty, *Judge Becomes National Legal Star, Bars Firm from Court over Deceit*, CLEVELAND PLAIN DEALER, Jan. 25, 2007, at B1.

53. The *Kananian* Case is Not an Outlier. The *Kananian* case was the first to gain national notoriety for exposing the fraudulent practice of suppression of evidence of product exposures in order to drive up settlement costs of defendants such as Garlock and increase their litigation risk. *Kananian* is by no means an outlier. Rather it has been a harbinger of widespread revelations of fraudulent practices including plaintiffs’ outright lies about their exposures, facilitated by plaintiffs’ counsel’s suppression of defendants’ ability to obtain evidence of plaintiffs’ product exposures. Below, I present examples where such practices appear.

(1). In a Maryland case, *Warfield v. AC&S, Inc.*, No. 24X06000460, Consolidated Case No. 24X09000 J 63 (Jan. 11, 2011), Mesothelioma Trial Group (M 112), defendants seeking discovery of trust claims were forced to file motions to compel, despite the fact that prior rulings made it clear that trust claims materials had to be produced. Schell Testimony at 20-21 & n.36 (citing to motions filed and transcripts of hearing). Ms. Schell testified that 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. The reason for the counsel's reluctance to produce the trust materials became clear when the documents were produced shortly before trial--there were substantial and inexplicable discrepancies between the positions taken in court and before the trusts. Despite specific and explicit discovery requests, the plaintiff had failed to disclose nine trust claims. In addition, the exposure period alleged in the litigation was significantly and materially different from the exposure period alleged in the trust claims. In the tort system, Warfield claimed under oath that he was exposed to asbestos between 1965 and the mid-1970's only. This time period focused liability on the solvent defendants in the case and conveniently avoided the application of a Maryland statutory damage cap that would apply to later exposures. Before Warfield's testimony limiting the time frame of his alleged exposure, he had submitted 8 of his 9 trust claims certifying exposure from 1947 to 1991 which if claimed in the tort suit would have triggered the statutory damage cap.

Schell Testimony, at 20-21 (footnotes omitted).

(2). In another Maryland case, the plaintiff amended his discovery responses to assert that the only asbestos-containing material to which he had been exposed was that of the only remaining solvent defendant. Just prior to trial, however, the plaintiff was compelled to produce trust claims filed in 2008, before his initial discovery responses, which were inconsistent with his initial discovery responses. Schell Testimony, *id.* (footnotes omitted). Additional evidence of gross inconsistencies in factual

representations in tort cases litigated in Baltimore, Maryland are set forth in *How Fraud and Abuse in the Asbestos Compensation System Affect Victims, Jobs, the Economy and the Legal System: Hearing before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 112th Cong. at 103-04 (Sept. 9, 2011) in (written statement of James L. Stengel).

(3). In *James L. Dunford v. Honeywell Corp.*, et al, No. CL-25113, Circuit Court, County of Loudoun, Va. , three U.S. automakers presented multiple examples of misrepresentations made in a case in which the plaintiff asserted his illness was due to exposure only to friction products. In fact, however, the plaintiff had 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. Judge Thomas D. Horne described the case pending before him as the “worst deception” used in discovery that he had seen in his 22 years on the bench, finding it a fraud upon the court. Schell Testimony at 21-22 & n.41, Ex. G (citing to and attaching a transcript of the hearing on the motion for sanctions).

(4). In a New Jersey case, *Barnes and Crisafi v. Georgia Pacific*, Case Nos. MID-L-5018 & MID-L-316-09 (N.J. Super. Ct. 2012), representative plaintiffs for deceased workers sued Georgia Pacific alleging that the decedents’ only known asbestos exposures were to asbestos-containing joint compound. They denied filing any trust claims and that the decedents had any known exposures that would support such claims. On the eve of trial, Georgia Pacific’s lawyers obtained information from the Johns Manville (“JM”) trust that one of the two plaintiffs had filed a trust claim, information that not only contradicted that plaintiff’s testimony but also violated the court’s standing

discovery order that all trust claims be disclosed and produced prior to trial. The plaintiffs' lawyers, from the Red Bank, New Jersey firm Cohen, Placitella and Roth, professed to lack knowledge regarding the JM claim, explaining that their co-counsel, the Motley Rice firm, was handling any claims the two plaintiffs might have against bankruptcy trusts (claims that plaintiffs had previously represented did not exist). After the court ordered Cohen Placitella to contact Motley Rice during a break to verify whether in fact a JM claim had been filed, the plaintiffs' firm confirmed that Motley Rice had filed JM claims for *both* plaintiffs. In addition, they reported that Motley Rice had filed claims against the Armstrong, Fibreboard and Owens Corning Trusts for one plaintiff and against the Armstrong, Owens Corning, Raytech, Synkoloid, US Minerals, and US Gypsum Trusts for the other plaintiff.

The plaintiffs' raised the common excuse for their failure to identify their trust filings that the claims were "deferral claims," filed merely to toll the statute of limitations. The court rejected that characterization categorically, concluding that the failure to disclose the numerous trust claims was prejudicial to Georgia Pacific. It continued the trial and reopened discovery to permit Georgia Pacific an opportunity to investigate exposures underlying such trusts:

THE COURT: This is my problem. I don't see the difference between a claim and a deferral claim, in terms of what I have ordered to be produced. At the very least, it means that a defendant may want to do additional discovery, at the very least. So it goes way beyond the issue of putting it on the verdict sheet. . . .

This is a major problem and—you know, when I required claims to be filed, I had no idea that someone was going to interpret that, in such a way that, apparently, there was an assumption that deferral claims didn't have to be produced. . . .

I really hope that I am not going to have to do something and be sure in all future orders, that I have to say, well, all papers filed. Because someone is going to narrowly interpret what's a claim and decide that some piece of paper they filed isn't a claim, so it doesn't fall within my order.

You know, I would hope that people are not taking that position, because I think there is certainly, with dealing with The Court, when it's my order and my requirement, I would hope that some good faith would be exercised and there would not be an interpretation of my order, that would exclude the production of something—that I may not have—I mean, it seems to me, that the high road here, at the very least, would have been to raise it and ask me if I included such filings in the word, claims. And as I said, clearly, I did.

Now, this is a major problem and I'll hear both of you on it. But the reason for producing claims in bankruptcies is not solely for the issue of whether it should go on the verdict sheet. The fact that a plaintiff did or did not sign the claim, is not the end all, be all, for my rational [sic] for requiring these claims be filed.

Admissions that a plaintiff may or may not have—have made, due to the signature on the claim, again, is not the end all, be all of why I require that they be produced. This is an information gathering tool, in my view. So, if a claim is filed, of any kind, including a deferral claim, that means that somebody thinks that there is a potential that this person was exposed to a product manufactured, sold or distributed by this particularly [sic] entity and a defendant, certainly has the right to investigate that. And investigate the basis for that belief and even if the basis for that belief is solely the attorneys, because their experience is that, on a particular site, this product was usually there.

The defense is entitled to know that. And certainly, is entitled to an opportunity to investigate that. To make a decision as to whether they want to bring—well, it wouldn't be bringing, 'cause it's a bankruptcy trust, but the decision to investigate it, because maybe they're gonna take a position there in empty chair and all the exposure, really, was from this other product, and that their product, the exposure was so de minimis, that no one could find that was the—contributing cause, and certainly, they're entitled to make that argument.

Transcript of Pre-Trial Conference at 133:11-136:6, *Barnes v. Ga. Pac.*, Nos. MID-L-5018-08 & MID-L-316-09 (N.J. Super. Ct. App. Div. June 12, 2012).

(5). In a Texas case brought by the Dallas plaintiffs' firm Waters & Kraus, defendants discovered that plaintiffs had failed to disclose several claims they had filed against asbestos trusts. In *Stoekler v. Am. Oil Co.*, No. 23,451 (Tex. 159th Dist. Ct. 2004), Waters & Kraus disclosed for the first time three days after commencement of trial that Mr. Stoekler had filed trust claims against the Johns Manville, Celotex, Eagle Picher and HK Porter Trusts. See Transcript of Trial on Merits at 62-74, *Stoekler v. Am. Oil Co.*, No. 23,451 (Tex. 159th Dist. Ct. Jan. 28, 2004). Waters & Kraus itself filed the

claims for Mr. Stoeckler but the Waters & Kraus trial lawyers (Jeffrey Simon and Jonathan Smith-George) denied any knowledge. Once revealed, Mr. Simon first argued that the claim forms contained no assertion by Mr. Stoeckler that he was actually exposed to trust products because he had filed the claims based on the trusts' presumption-of-exposure provisions. The Court rejected this contention, pointing out that trust forms Mr. Stoeckler submitted required claimants to provide information regarding their exposures to products for which the trusts were responsible and that Mr. Stoeckler had identified a specific trust product to which he claimed exposure.¹² Mr. Smith-George then argued that the product identification was made by his lawyer, not Mr. Stoeckler. The court also quickly rejected this distinction:

THE COURT: Okay. Signature of claimant or representative. Are you telling me that Mr. Stoeckler didn't authorize this? Is this where we're going?

MR. SMITH-GEORGE: I am just telling you that he has not seen them. I am telling you the truth.

THE COURT: Okay. So, did he or did he not authorize this form being submitted on his behalf?

MR. SMITH-GEORGE: He's never seen these documents. He has -- he was represented by counsel.

THE COURT: That's still not answering my question. And you know where this goes, to the Code of Professional Conduct.

Let's take a recess. Counsel, please see me and my office.

Id. at 74. There is no transcript of the continued proceedings in chambers but the court never reconvened the jury as the trial ended abruptly.

(6). In a second Waters & Kraus case, *Brassfield v. Alcoa, Inc.*, No. 2005-61841 (Tex. 11th Dist. Ct. 2005), defendants discovered just days prior to trial that the plaintiff had made trust claims against the Johns-Manville, Eagle Picher, and Celotex

¹² Another example of a Rule 2019 Statement submitted by Waters and Kraus which verifies that the claimant had "been injured by asbestos products manufactured, marketed, distributed, sold or produced by . . . Debtor . . . and thus hold claims against, *inter alia*, the Debtor" is set forth *supra* ¶ 39.

Trusts. The claims had been filed by Edward O. Moody PA, a firm that had referred the plaintiff to Waters & Kraus. The Moody firm had suspiciously withdrawn the Manville claim after the trust offered to pay \$17,000 but later re-filed it. Waters & Kraus, which had previously announced in open court that the plaintiff had filed no claims at all, denied having knowledge of the three claims filed by Moody. The judge summoned the Moody firm to court to provide information regarding the claims. Blaming the absence of knowledgeable staff members who filed the claims and the nuances of his firm's record-keeping system which he appeared not to fully comprehend, Edward Moody testified that he had no clue as to why his firm had withdrawn the Manville claim, even though the Manville Trust had approved a substantial payment and then later re-filed the claim. He further testified that he could provide neither specific information about the trust claims nor the reasons they had not been disclosed. Mr. Moody's lack of knowledge of how his firm kept records of trust claim filings was timely. *See generally* Transcript of Motion for Continuance, *Brassfield v. Alcoa, Inc.*, No. 2005-61841 (Tex. 11th Dist. Ct. Nov. 22, 2006). The court continued the trial to provide defendants the opportunity to investigate the trust claims. *Id.* at 40:18-41:4.

54. The Continuing Relevance of the Baron & Budd "Script Memo." Clients are well aware of the importance of limiting acknowledgement of product exposures to just those products manufactured or distributed by the defendant(s) being sued. No doubt, this awareness is engendered by counsel's tutelage. In this regard, it is instructive to re-examine the Baron & Budd "script memo" discussed *supra* ¶ 27. Among the many admonitions to plaintiffs who were instructed to study the script filled out by the firms' paralegals as preparation for their deposition is the instruction to "Not [to] mention

product names that are not listed on your Work History Sheets. The defense attorneys will jump at a chance to blame your asbestos exposure on companies that were not sued in your case.” Clients are further instructed to “Never . . . give specific quantities or percentages of any product names. The reason for this is that the other manufacturers can say you were exposed more to another brand than to theirs, and so they are NOT as responsible for your illness!” Finally, clients were reassured that defendants had no way of knowing if they lied about their product exposures. As put in the Memo: “Keep in mind that these [defense] attorneys are very young and WERE NOT PRESENT at the jobsites you worked at. They have NO RECORDS to tell them what products were used on a particular job, even if they act like they do.”

55. Insight into the Extensiveness of Plaintiffs’ Suppression of Trust Claims.

It is simply not possible to even begin to estimate how much money asbestos defendants paid out as a consequence of plaintiffs making false claims as to product exposures. An inkling of the nature of this abusive, if not fraudulent practice is discussed in a pretrial hearing before Judge Peggy L. Ableman in Pretrial Hearing Transcript, *Montgomery v. Am. Steel & Wire Corp. In re Asbestos Litig.*, Case No. 09C-11-217 ASB (Super. Ct. New Castle Cty., Del., Nov. 7, 2011) (“Ableman Transcript”) and in Judge Ableman’s recent congressional testimony discussing the case. *Furthering Asbestos Claim Transparency (FACT) Act of 2013: Hearing on H.R. 982 Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. On the Judiciary*, 113th Cong. (Mar. 13, 2013) (statement of J. Peggy L. Ableman (ret.) Del. Super. Ct.) (“Ableman Testimony”).

56. Judge Peggy Ableman's Commentary on a Plaintiff's Fraudulent Concealment of Trust Filings. In 2009, June Montgomery was diagnosed with pleural mesothelioma. Her son, Brian Montgomery, a sheriff's deputy in Broward County, Florida, assisted his mother and father in finding an attorney and retained the Law Offices of Brent Coon several weeks later. They also retained the Florida firm of Levin, Papantino, Thomas, Echsner & Proctor, P.A. Brian had also retained Delaware counsel who then filed a lawsuit in Delaware on behalf of June and Arthur Montgomery, June's husband, against 22 defendants, alleging that June's mesothelioma was caused by exposure to asbestos from the products and/or conduct of the named defendants. Judge Ableman, who was solely responsible for Delaware's asbestos docket, presided. The Delaware court had adopted Standing Order No. 1 which set forth mandatory disclosure obligations related to bankruptcy trust claims. The disclosure requirements specifically included "claims made to trusts for bankrupt asbestos litigation defendants." Nonetheless, the Montgomery plaintiffs failed to identify twenty bankruptcy trusts to which they had submitted claims through the Brent Coon law firm. Plaintiffs claimed that June Montgomery was exposed to asbestos solely through laundering of her husband's work clothing when he worked as an electrician at the Everglades Power Plant. In response to an interrogatory asking Plaintiffs to identify all entities who were not defendants to which products June Montgomery had been exposed, Plaintiffs identified none of the twenty trusts to which claims had been submitted. Judge Ableman, in describing her own reaction to the proceeding, stated that "[a]lthough [Arthur Montgomery] has spent his entire career as an electrician, with and around a wide variety of products and materials, at multiple locations throughout Florida, the impression gained from the Complaint,

answers to written discovery, and Mr. Montgomery's sworn [deposition] testimony was that the bulk of his work around asbestos occurred only during a short period at the Everglades Power Plant." Ableman Testimony. Compounding the deceit, plaintiffs specifically denied submitting claims to the trusts formed by Owens-Corning, U.S. Gypsum, Armstrong World Industries, Babcock & Wilcox, Plibrico and ASARCO, even though they had, in fact, submitted such claims. The fraudulent scheme was exposed because, in the words of Judge Ableman, "Foster Wheeler [one of the named defendants] was aware of other cases where lawyers representing asbestos claimants had submitted conflicting work histories to multiple trusts [and]. . . filed a motion in advance of trial requesting that the Court order disclosure of all pretrial settlements, including monies received from bankruptcy trusts." *Id.* Counsel for plaintiffs stated that no bankruptcy submissions had been made and no monies received. *Id.* Two days before a two-week trial was to commence, plaintiff's counsel reported that his client had received two bankruptcy settlements of which he was previously unaware. The following day, the defendant learned that, in fact, twenty bankruptcy trust claims had been submitted. Although Mrs. Montgomery's claimed exposure was solely from the take-home fibers on her husband's clothing, in Judge Ableman's words, "it became obvious that one or more of Plaintiff's attorneys had been claiming exposure through Mrs. Montgomery's own employment. That is, she worked with and around these products herself." *Id.*

57. "The Core of this Case has been Fraudulent." As the judge solely responsible for Delaware's asbestos docket, Judge Ableman's characterizations of what he had observed in this case bear emphasis. This, he said "is dishonesty at its highest level." Ableman Transcript at 3. "This is trying to defraud. . . . [I]t happens a lot [in this

litigation].” *Id.* at 7. In her congressional testimony Judge Ableman observed that “[a]bsent full disclosure, the defendants cannot be informed of the full extent of an individual’s exposure. They are therefore often led to believe-- erroneously--that their products were far more responsible for the plaintiffs’ disease than what may have been the case, because they have no way of knowing the substance of an individual plaintiff’s claims.” Ableman Testimony. This is precisely the position that Garlock found itself in when, coincident with the asbestos bankruptcy wave of 2000-2001 and thereafter, claimants and their witnesses and counsel failed to disclose and even concealed evidence of exposure to the products of the newly bankrupted companies that had previously provided the bulk of the compensation to tort claimants and instead ascribed their disease solely or primarily to Garlock’s gaskets. Delaware Counsel claimed that his client had lied to him about product exposures, concealed the fact of applications to numerous trusts and the receipt of payment, Ableman Transcript at 13, 15-17 and that the Brent Coon law firm was also responsible for the deceit. *Id.* at 13-14, 28. The court called these actions examples of “dishonesty and disreputableness,” *id.* at 23, and stated that “[t]he core of this case has been fraudulent.” *Id.* at 25.

III. The Garlock Experience

58. Garlock’s Litigation Strategy in the Pre-Bankruptcy Wave Period.

Garlock is a well-known manufacturer of gaskets and packing material. Indeed, in the Baron & Budd “script memo,” Garlock is one of the product manufacturers singled out by the law firm for plaintiffs to know *by name* as the manufacturer of gaskets. *See supra* ¶ 26. Garlock’s products were typically used in industrial settings in proximity to thermal insulation and refractory products. Even though Garlock was named as a

defendant in over 600,000 tort claims, workers' exposures to asbestos from Garlock's products were insubstantial especially when compared to the extensive exposures to asbestos from thermal insulation and refractory products. *See Moeller*, 660 F.3d 950. This enabled Garlock in the 1990s to successfully contest claims that its products were substantial factors in causing plaintiffs' diseases, and to prevail in over 90% of the mesothelioma cases filed against it that went to trial. Nonetheless, Garlock found that it was more economical to settle the vast majority of the asbestos claims in the 1990s for nominal amounts -- for Garlock's mesothelioma claims the resolution average was \$5000 -- rather than incur the \$100,000 cost of preparing a case for, or actually proceeding to trial, irrespective of how much the claims lacked merit.

59. The Upsurge in Claim Filings in the late 1990s. Filings against Garlock and its codefendants increased to nearly 50,000 cases per year in 2000. While the average settlement remained nominal, \$2,148 in 2000 across all cases, the huge volume of filings drove up the total settlement cost to over \$100 million in 2000. The upsurge in claim filings resulted in the bankruptcy filings of most of the thermal insulation and refractory product manufacturers that had been co-defendants with Garlock pre-2000.

60. The Impact of the 2000-2001 Bankruptcy Wave on Garlock. The 2000-2001 bankruptcy wave, largely a consequence of the hundreds of thousands of fraudulent nonmalignant claims generated by litigation screenings, ushered in a new era in asbestos litigation. While malignancy claim values in the tort system increased, nonmalignant tort filings peaked in 2003 and fell precipitously in 2004. As the bankruptcy wave interrupted the flow of payments of the then leading defendants in the tort system (including Owens Corning, Fibreboard, Armstrong World Industries, Babcock & Wilcox,

W.R. Grace, Federal-Mogul, Turner & Newell, Pittsburgh Corning, U.S. Gypsum and GAF), plaintiffs' counsel sought to replace the temporary cessation of cash flow by raising their settlement demands directed towards solvent defendants. Garlock, formerly a peripheral defendant, was one of the companies so targeted. Without the thermal insulation and refractory product manufacturer co-defendants whose products accounted for the large majority of plaintiffs' exposures to asbestos-containing products and targeted by a strategy of suppressing evidence of plaintiffs' exposures to the products of their former co-defendants that had been most responsible for plaintiffs' injuries, Garlock's settlements and defense costs rose substantially as did its litigation risk. For example, Garlock's average settlement costs increased to \$3,644 in 2006 and \$9,719 in 2007. In addition to the cost increase, the nature of the claims changed dramatically. Whereas prior to the bankruptcy wave, over 90% of Garlock's expenditures were on non-mesothelioma claims, by 2009, 85% of Garlock's asbestos expenditures were for mesothelioma claims. In fact, the number of mesothelioma claims filed against Garlock doubled just a few years after the bankruptcy wave as plaintiffs' counsel responded opportunistically to Garlock's loss of its coterie of co-defendants.

61. The Effect of the Bankruptcy Wave on Garlock's Average Cost to Settle Mesothelioma Claims. Many of the new mesothelioma filings against Garlock presented tenuous exposure claims and were dismissed without payment. Nonetheless, settlement costs rose significantly. During the 1990s, Garlock's average resolution cost for a mesothelioma claim was \$5,000 -- a small fraction of what it would have cost Garlock to litigate these claims. After the bankruptcy wave hit, Garlock's average cost to settle a mesothelioma claim rose to \$35,000. Moreover, while defending a mesothelioma claim

in the 1990s cost Garlock about \$100,000, the cost rose to several hundreds of thousands of dollars in the wake of the bankruptcy wave. This increase in mesothelioma costs had no medical basis. Indeed, with billions of dollars that would eventually be paid out for mesothelioma claims by bankruptcy trusts, one might have anticipated that settlement costs would have declined as these funds become available to plaintiffs. The litigation strategy embraced by plaintiffs and plaintiffs' counsels, to suppress evidence of exposure to the thermal insulation and refractory products of the bankrupt companies, instead prevailed.

62. Garlock's Higher Settlement Costs. Confronted with a huge increase in defense costs, Garlock was compelled to settle many claims in the 2000s at much higher costs than previously. As calculated by Garlock's expert, Charles E. Bates, while approximately "13% of the more than \$1.3 billion that Garlock has paid historically to resolve nearly 600,000 asbestos claims was for payments made to several hundred claimants out of trial risk concerns, [t]he remaining 87% of payments were paid to the 99.9% of claims resolved solely to avoid the much higher defense costs." Report of Charles E. Bates, PhD at 10, Feb. 15, 2013. Dr. Bates further estimated "that less than 30% of the \$575 million that Garlock has paid historically to resolve more than 22,000 mesothelioma claims over the past three decades was for payments made to less than 500 claimants out of liability concerns." *Id.*

63. In theory, Garlock should have been able to continue to demonstrate in trials that Garlock played only an incidental if any role in causing plaintiffs' diseases and that it was the vastly more concentrated exposures to the thermal insulation and other products of Owens Corning, Fibreboard, W.R. Grace, Armstrong World Industries,

Pittsburgh Corning, Babcock & Wilcox, Federal-Mogul, G-I Holdings (GAF), USG and others that were the substantial factors in causing plaintiffs' diseases. In fact, however, Garlock's ability to maintain its defense was severely compromised as plaintiffs and plaintiffs' counsel, in a move all too familiar to those who have studied asbestos litigation, denied exposures to the products of Garlock's former codefendants even as they had filed claims with the trusts attesting to exposures to the products of these same former defendants prior to suing Garlock or immediately after conclusion of the suit. The effects of these often false denials of exposures to non-Garlock products have been heightened by plaintiffs' counsel's adoption of TDP provisions that have facilitated the suppression of evidence of exposures to other products. *See supra* ¶¶ 43-49. And although Garlock continued to have success after 2000 in convincing courts and juries that its products were not a cause of mesothelioma, its defense became more expensive to prove and its trial risk increased as well.

IV. Garlock's Discovery and the Evidence Obtained That Plaintiffs and Their Counsel Suppressed Evidence of Plaintiffs' Exposures to the Products of Bankrupts

64. Nature of the Discovery Undertaken by Garlock.¹³ Garlock has attempted to obtain discovery since the beginning of its bankruptcy case, concerning discovery abuse and the practice, known as "double dipping," of plaintiffs and plaintiffs' counsel providing different or inconsistent stories about a plaintiff's asbestos exposure in

¹³ At my request, counsel for Garlock has prepared a memorandum summarizing the evidence that Garlock has obtained in this bankruptcy proceeding pertaining to discovery abuse in mesothelioma cases brought by plaintiffs against Garlock. Memorandum from Robinson, Bradshaw & Hinson, P.A., re Summary of Double Dipping and Discovery Abuse in Cases Studied by Garlock in its Bankruptcy Case, April 12, 2013 ("RBH Memo"). I have relied on this Memo for the material I present in Part IV of this report. I am appending the RBH Memo to this report as Exhibit E. For additional citations to the motions, orders and other proceedings referred to in Part IV, *see* Exhibit E (RBH Memo).

mesothelioma claims. In March 2011, Garlock moved to obtain trust claim forms, ballots, and 2019 Statements from approximately 500 claimants with whom Garlock settled between 2000 and 2010, represented by 33 law firms. Motion of Debtors for Order Pursuant to Bankruptcy Rule 2004 Directing Production of Documents from Specified Past Asbestos Claimants [Dkt. 12290] (Mar. 23, 2011). The Bankruptcy Court denied this motion. Subsequently, Garlock attempted to once again obtain discovery that would permit it to show that it was the victim of discovery abuse and double dipping. First, it requested leave to serve a subpoena on the Delaware Claims Processing Facility (“DCPF”) for 10 trusts to obtain four pieces of data concerning Garlock’s approximately 11,000 settled claimants: (a) when they filed a claim against any of the trusts; (b) if approved, when the claim was approved; (c) if paid, when the claim was paid; and (d) if not approved or paid, the status of the claim. Motion of Debtors for Leave to Serve Subpoenas on Delaware Claim Processing Facility LLC [Dkt. 2143] (Apr. 27, 2012). The Bankruptcy Court granted leave to serve the subpoena and eventually enforced the subpoena. *See, e.g.,* Order Granting in Part and Overruling in Part Objections to Subpoena by Delaware Claims Processing Facility, LLC and Associated Trusts, Establishing Claimant Objection Procedures, and Governing the Confidentiality of Information Provided in Response to the Subpoena [Dkt. 2430] (Aug. 7, 2012). The Bankruptcy Court also permitted Garlock to serve subpoenas to obtain ballots from past asbestos bankruptcy cases in which claimants who alleged exposure to the debtor’s products cast ballots, usually through their attorneys, on its plan of reorganization. Order Denying Motion by Official Committee of Asbestos Personal Injury Claimants for

Protective Order With Respect to Garlock's Subpoenas to Ballot Agents [Dkt. 2024] (Mar. 13, 2012).

65. Garlock next gathered discovery retained in its counsel's files from a sample of past claimants who received well above average settlements from Garlock. Garlock compared the discovery from these cases to the DCPF and ballot data, and identified more than two hundred cases where a claimant had asserted a claim against a trust or cast a ballot but had not identified exposure to a product for which the trust or bankrupt was responsible during tort system discovery. *See* Supplemental RFA List #1, RFA List #2, and RFA List #1.A to the Debtors' Amended Responses to Requests for Admissions Nos. 1 and 2 of the Official Committee of Asbestos Claimants' First Set of Requests for Admission and Supplemental Interrogatory Responses and Document Requests Pursuant to Stipulation (Jan. 16, 2013).

66. During the fact discovery period for the estimation proceeding, in connection with 30(b)(6) subpoenas on six law firms,¹⁴ Garlock requested production of trust claim forms, ballots, and 2019 Statements from 17 plaintiffs (the "Designated Plaintiff"). Fifteen of these plaintiffs had settled with Garlock between 2004 and 2010, and were identified through the procedure described in the preceding paragraph. One plaintiff was a judgment plaintiff. One plaintiff has a pending claim. As stated in the RBH Memo, the cases were selected because (a) they generally were among the highest settlements ever obtained from Garlock by the six law firms, which themselves had above average settlement averages; (b) they were a manageable number of cases where

¹⁴ Waters & Kraus, Simon Greenstone Panatier & Bartlett (f/k/a Simon Eddins & Greenstone, or "Simon Eddins"), Belluck & Fox, The David Firm, Williams Kherkher Hart & Boundas ("Williams Kherkher"), and the Shein Law Center. In a few cases, multiple law firms represented a particular claimant.

documents could be obtained in the time permitted; (c) they came from jurisdictions where Garlock paid the most in settlements, including Los Angeles, San Francisco, New York City, Texas and Philadelphia; and (d) they included cases important in Garlock's history, including the largest adverse verdict ever obtained against Garlock (*Treggett*), the only significant mesothelioma verdict against Garlock after 2005 (Garlock's appeal has been stayed) (*Torres*), and the largest pre-verdict settlement a plaintiff ever obtained from Garlock (*Phillips*).

67. The Evidence Uncovered. The Designated Plaintiff discovery and the depositions of the law firms demonstrated that the law firms with the highest settlement averages from Garlock engaged in discovery abuse and double dipping. The trust claims and bankruptcy case filings displayed startling discrepancies from what plaintiffs told Garlock during pre-trial discovery in their tort cases. In the fifteen cases summarized in the RBH Memo, plaintiffs had on average 19 product exposures evidenced by trust claims, ballots, and 2019 Statements that had never been identified in discovery. *See Ex. E*, Appendix to RBH Memo, summarizing in tabular form the claims and filings based on undisclosed exposures. On average, only 1.8 of the exposures underlying trust claims, ballots and 2019 Statements had been identified in discovery. In eleven of the fifteen cases, 2019 Statements, ballots, or trust claims had been filed before Garlock resolved the case. In numerous cases (*Golini, White, Ornstein, Massinger*),¹⁵ the plaintiff himself executed affidavits or declarations attesting to personal knowledge, under penalty of perjury, of exposures to particular products that had never been disclosed in discovery, often quantifying the exposure using such terms as "frequent, regular, and proximate." In

¹⁵ All references to cases are to the Designated Plaintiff cases discussed in the RBH Memo.

one of the cases (*Golini*), the plaintiff executed the sworn statements *before* ever filing his case against Garlock and then at his deposition, denied any knowledge of particular products of bankrupt companies where he had (unknown to Garlock) already attested under penalty of perjury to frequent, regular, and proximate exposure.

68. The trust claims also demonstrated discrepancies between the work history plaintiffs described to Garlock in tort system discovery and the work history they used to sustain trust claims. For example, the trust claims showed plaintiffs alleging frequent and regular exposures to asbestos at sites or in contexts whereas in the tort system they denied any exposure to asbestos. One plaintiff in the tort system claimed he was only exposed to asbestos through his father's work clothes, after he had already executed an affidavit (unknown to Garlock) attesting to regular exposure to asbestos during his own employment in the Air Force (*Massinger*). Another plaintiff in a declaration attached to a trust claim attested to personally removing and installing pipe insulation when he had denied ever seeing such activity when deposed in the tort system (*Ornstein*). Yet another plaintiff's claim form stated that he regularly handled raw asbestos fibers when in the tort case he said the only asbestos products he ever handled were Garlock gaskets (*Torres*). The plaintiff who obtained the largest verdict against Garlock in its history not only asserted over a dozen trust claims based on exposures never disclosed in tort discovery but also based a number of the claims on asbestos exposure in the "shipyard construction/repair" industry at a shipyard but in the tort case he claimed that he never went on board a ship and only did classroom work (*Tregget*). Another plaintiff's wife swore that the plaintiff was exposed to asbestos including pipe insulation aboard ships, and that he had told her that insulation caused his mesothelioma soon after diagnosis,

when in the tort system, the plaintiff swore he was never aboard ships and instead removed gaskets in a machine shop all day (*White*).

69. Finally, the cases and depositions demonstrated that plaintiffs' firms engage in practices designed to prevent these discrepancies from ever being discovered. Two law firms—Waters & Kraus and Shein Law Center—admitted they delay filing trust claims until after the completion of tort litigation. Kraus Dep. Tr. 41:13-42:24; Shein Dep. Tr. 43:20-44:23, 137:2-9. Another law firm—The David Firm (a referral firm)—admitted it delays filing trust claims when the trial lawyers tell it to do so, even in jurisdictions like New York, which requires that all trust claims a plaintiff intends to file be filed three months before trial and disclosed to defendants. Cooper Dep. Tr. 43:15-46:11, 75:1-7. The law firms that refused to admit having a practice of delaying trust claim also exhibited, in the Designated Plaintiff cases, a practice of delaying claims. Moreover, the David Firm attested that the Belluck & Fox firm engages in this practice. *See id.*; Appendix to RBH Memo (describing timing of trust claims in Simon Eddins, Belluck & Fox, and Williams Kherkher cases). In all of the Designated Plaintiff cases, confidentiality provisions in TDPs, *see supra* ¶ 44, prevented Garlock from ever learning about the discrepancies between trust claims and tort discovery before discovery in this bankruptcy case. Indeed, during the bankruptcy case, the Official Committee of Personal Injury Claimants, controlled by the plaintiffs' law firms, opposed every effort by Garlock to obtain the evidence described in this report and the RBH Memo (Ex. E).

70. Of the fifteen Designated Plaintiff cases summarized in the RBH Memo, four involved the Waters and Kraus law firm which was formed by two lawyers who had been partners in the Baron & Budd firm. *See supra* ¶ 8. Waters & Kraus, based in Dallas,

Texas, is one of the most prominent mesothelioma plaintiff's law firms in the United States and brought many suits against Garlock for plaintiffs suffering from mesothelioma. Peter Kraus admitted that it was Waters & Kraus's practice to delay its clients' filing of trust claims in several liability law jurisdictions in order to avoid having courts put bankrupt defendants on the verdict sheet and having defendants argue for a smaller share of liability. *See supra* ¶ 70 and RBH Memo (Exhibit E). In the five year period prior to these bankruptcy cases, Garlock paid more money to settle mesothelioma claims brought by Waters & Kraus than it paid for mesothelioma claims brought by any other law firm. In the *Treggett* case described in the RBH Memo, Waters & Kraus obtained the largest verdict against Garlock in its history. Waters & Kraus represents a claimant on the Official Committee of Asbestos Personal Injury Claimants (as do Belluck & Fox and Simon Greenstone).

71. Suppressing Evidence of Trust Claim Filings: The Conflict Between Referral Counsel and Trial Counsel in Mesothelioma Litigation. In addition to the findings discussed above, Garlock's discovery revealed the impact that the existence of referral firms had on the disclosure of exposure information in asbestos litigation -- particularly mesothelioma litigation. Mesothelioma litigation is the most heavily recruited form of litigation in the United States today, with massive efforts devoted to finding the small number of people diagnosed each year and bringing suit on their behalf. For example, the "mesothelioma practice" of entire law firms appears to be devoted almost entirely to recruiting mesothelioma plaintiffs and then referring them to other firms to handle the tort litigation, with the referral firm often handling the trust filings.¹⁶

¹⁶ See http://www.thedavidlawfirm.com/mesothelioma_lawsuits.html (reporting firm's results, in each case with co-counsel); <http://www.sokolovelaw.com/disclaimers>

These firms employ cutting edge marketing techniques to obtain clients, using Internet search engine advertising, techniques for ensuring that they appear high in search results, and networks of websites, Facebook pages, and Twitter handles purporting to provide information to people with disease but actually guiding individuals to the law firm.¹⁷ The Early Lucarelli firm -- involved in many of the cases discussed in the RBH Memo -- is an especially sophisticated player in this field. *Id.* Demonstrating the level of competition in this field, “mesothelioma” and other phrases containing that word are among the most expensive “AdWords” in the Google search engine, and “mesothelioma” may in fact be the very highest priced search word. *Id.*; *see also* Report on the Furthering Asbestos Claims Transparency (FACT) Act of 2012 (Sept. 21, 2012) at 7-8.

72. Once these referral firms refer a case, they often retain the right to file the trust claims for the client, and receive a contingency fee on both the trust recoveries and tort recoveries, while the trial firm, on the other hand, often receives only a contingency fee on the tort recoveries and not on the trust recoveries. *See* Belluck Depo. Tr. 140, 193-94; Cooper Depo. Tr. 100-101; Simon Depo. Tr. 48-51; Shein Depo. Tr. 135-37. The trial firm therefore has an obvious incentive to minimize trust exposures that do not contribute to its contingency fee recovery and that impair the value of the tort case. The referral firm also has an interest in the value of the tort claim being maximized (since they receive a substantial percentage of the trial lawyer’s contingency fee), but they also have an incentive to maximize the trust claims by filing as many claims as possible with

(disclaiming with respect to case results that “[w]hile this firm maintains joint responsibility, most cases of this type are referred to other attorneys for principle [sic] responsibility”); Cooper Depo. Tr. 36-38, 53-54.

¹⁷ *See* New Media Strategies, *The Plaintiffs’ Bar Goes Digital* (January 2012), available at <http://www.instituteforlegalreform.com/doc/the-plaintiffs-bar-goes-digital-0> (last accessed April 18, 2013) (“Plaintiffs’ Bar Goes Digital”).

multiple trusts. As illustrated at *supra* ¶ 70, referral firms may, at the request of the trial firm, delay filing the trust claims to advantage the tort litigation. Cooper Depo. Tr. 44-46; Shein Depo. Tr. 43-44, 135-37. These practices have in the past given rise to pronounced discrepancies between the asbestos exposure alleged to tort defendants and the exposure alleged to trusts. This dynamic was present in the *Kananian*, *Brassfield*, *Barnes & Crisafi*, and *Montgomery* cases discussed *infra* ¶¶ 51, 53(4) & (6), 56. It is also present in important cases Garlock has studied from its past, including *Homa*, *Beltrami*, *Massinger*, *White*, and *Reed* (in each of the latter three, as in *Kananian*, the Early firm was referring counsel). *See Ex. E.*

73. The same incentive to obscure trust exposures has existed even when a referral firm is not involved (and many trial firms also spend massively on advertising and recruitment). *See generally* New Media Strategies, *The Plaintiffs' Bar Goes Digital: An Analysis of the Digital Marketing Efforts of Plaintiffs' Attorneys & Litigation Firms* (Jan. 2012). The *Golini* and *Torres* cases studied by Garlock, *see Ex. E.*, illustrate this well. In the *Golini* case, Shein Law Center failed to disclose Mr. Golini's sworn "regular, frequent, and proximate" exposure to 14 products of bankrupt companies, including pipe insulation, even though Shein Law Center itself interviewed Mr. Golini regarding such exposures and drafted sworn statements before they filed Mr. Golini's tort case. The firm did so, according to Mr. Shein, because his goal is to maximize his client's recovery against "viable defendants," and disclosing the information contained in those affidavits regarding extensive exposures to products of bankrupt companies or ensuring the exposures were revealed at deposition, would prejudice that goal. Shein Depo. Tr. 64:11-65:16. In the *Torres* case, the Williams Kherkher firm failed for more than six months

before trial (and through seven amendments of Torres' interrogatory answers) to disclose a trust claim filed with the Babcock & Wilcox Trust, the day before Mr. Torres' deposition, even though the trial counsel was the direct supervisor of the person who filed the trust claim. Chandler Depo. Tr. 52:9-53:1. To avoid inculpation, these firms erected Chinese walls within their own firms so that the lawyer defending the deposition of the plaintiff or arguing at trial can claim to have been unaware of the numerous trust filings on behalf of the plaintiff, undertaken by another lawyer in the firm, while the plaintiff denies any exposures to the very products that were the subject of multiple trust filings.

V. Conclusion

74. I have been asked to provide an opinion based upon my scholarly research and the materials I have examined in connection with this litigation, whether Garlock's settlements of mesothelioma claims in the period following the bankruptcy wave of 2000-2001 up to Garlock's June 2010 Chapter 11 petition, reflect Garlock's liability under tort law. I note that Mark Peterson on behalf of the Official Committee of Asbestos Personal Injury Claimants and Francine Rabinovitz on behalf of the Future Claims Representative, in their respective reports, both proceed on the assumption that Garlock's settlement value and settlement rates (i.e., the percentage of filed claims for which Garlock paid a settlement) in the five year period prior to the June 2010 petition date, reflect Garlock's legal liability. In this report, I rebut that assumption. I conclude that, contrary to the opinions offered by Drs. Peterson and Rabinovitz, Garlock's settlement history following the bankruptcy wave of 2000-2001 does not provide a

reliable measure of Garlock's liability and therefore cannot be relied on for the purpose of accurately valuing Garlock's liability for pending and future mesothelioma claims.

75. In support of my conclusion, I present evidence of widespread abuse of Garlock's discovery efforts by plaintiffs and their counsel including a systematic suppression of evidence of plaintiffs' exposures to the asbestos-containing products of companies that were removed from the tort system by bankruptcy. In particular, this systematic suppression was directed at preventing Garlock from obtaining evidence of plaintiffs' exposures to the thermal insulation and refractory products of the companies engulfed by the bankruptcy wave -- companies that were often co-defendants with Garlock prior to the bankruptcy wave. These former co-defendants include Owens Corning, Fibreboard, W.R. Grace, Armstrong World Industries, Pittsburgh Corning, Babcock & Wilcox, Federal Mogul, G-I Holdings (GAF) and USG. Their asbestos-containing products were in widespread use, particularly in places where Garlock's gaskets were in use. When these companies and Garlock were co-defendants, Garlock was able to demonstrate to courts and juries that plaintiffs' predominant asbestos exposures were from these companies' products whereas, by contrast, plaintiffs' exposure to asbestos from Garlock's products was insubstantial. As stated by the U.S. Sixth Circuit Court of Appeals in reversing a verdict for the plaintiff in light of the evidence that plaintiff had been exposed to asbestos insulation manufactured by the leading defendants who were taken out of the tort system in the bankruptcy wave, to say that plaintiff's work with Garlock gaskets could have been a substantial cause of his disease "would be akin to saying that one who pours a bucket of water into the ocean has substantially contributed to the ocean's volume." *Moeller*, 660 F. 3d at 955.

76. The strategy of suppressing evidence of plaintiffs' exposures to the bankrupts' products was designed to maximize plaintiffs' and their counsel's recoveries by driving up Garlock's settlement and defense costs and litigation risk, thus compelling Garlock to settle many cases that were lacking in merit -- cases which Garlock would have prevailed in if taken to trial prior to the bankruptcy wave.

77. I have reviewed the elements of this suppression strategy in my report. They include:

(1). Denials by plaintiffs of having been exposed to the products of the bankrupts despite plaintiffs and their counsel, prior to filing tort suits against Garlock, filed trust claims and signed affidavits prepared by counsel attesting to exposure, to be filed with trust claims as soon as the tort suit was concluded.

(2). Plaintiffs' counsel's successfully denied Garlock access to Rule 2019 Statements and ballots filed both before and after suing Garlock in which counsel attested to personal knowledge of the facts including that claimants were injured by asbestos products manufactured, marketed, distributed, sold, or produced by the debtor and therefore have a claim against the debtor for damages caused by asbestos products of the debtor. These verified statements stated exposures that plaintiffs and their counsel denied any knowledge of when suing Garlock. It is only because of Garlock's persistence in seeking access to these Statements and ballots that Garlock has obtained the evidence exposing the false denials.

(3). Plaintiffs' counsel have furthered their strategy of suppressing access to trust claims by adding provisions to trust TDPs declaring that trust filings are confidential and protected by all applicable privileges. Attempts by defendants, including Garlock, to

access trust claims were met with fierce resistance by plaintiffs' counsel and the trusts which are controlled by plaintiffs' counsel. Some trust TDPs *require* the trust to challenge any subpoenas for trust claims filed by tort plaintiffs.

(4). In consonance with the purpose for amending TDPs by including "confidentiality" provisions, plaintiffs' counsel have also amended trusts' TDPs by adding a paragraph that provides that evidence submitted to the trust is for the "sole benefit" of the trust and claimants were not required to list any other exposures in filing a claim except those for which the trust is responsible -- a provision intended to enable plaintiffs and their counsel to limit the exposure evidence they must provide in support of trust claims in case Garlock or other defendants obtained access to the trust claim.

(5). A third TDP provision that has been added to further plaintiffs' counsel's suppression strategy designed to inflate tort values involves the timing of tort claims. This "withdrawal and deferral of trust claims" provision allows a claimant to file a trust claim to meet the applicable statute of limitations and then to withdraw the claim at anytime or defer it and refile or revive the claim at a subsequent time, i.e., after the tort suit has concluded. This provision facilitates plaintiffs' denials of having filed trust claim despite having done so. Notably these TDP provisions and changes were mostly added in the 2006-2010 time period when billions of dollars were beginning to be paid out by trusts.

(6). Garlock's Designated Plaintiff discovery and the depositions it took of six law firms uncovered evidence that the firms with the highest settlement averages from Garlock engaged in discovery abuse and double dipping. This evidence showed startling discrepancies between what plaintiffs and their counsel represented in trust claims, Rule 2019 Statements and ballots and what plaintiffs testified to in pre-trial discovery in their

tort suits against Garlock and what counsel argued to juries in these cases. As noted in *supra* ¶ 67, in the fifteen cases summarized in the RBH Memo, *see* Ex. E, plaintiffs had, on average, 19 product exposures evidenced by trust claims, ballots and 2019 Statements *that had never been identified in discovery*. In eleven of these fifteen cases, 2019 Statements, ballots or trust claims had been filed *before* Garlock resolved the tort suit. The level of duplicity demonstrated by this discovery is simply stunning.

(7). Garlock's discovery reveals and confirms that plaintiffs' counsel engaged in practices designed to prevent Garlock from discovering the discrepancies between what plaintiffs testified to in their tort suits against Garlock and the positions of plaintiffs' counsel in those suits and what plaintiffs and their counsel asserted in trust claims and Rule 2019 Statements and § 524(g) ballots. Some of the firms deposed by Garlock were found to have a practice of delaying filing trust claims until after completion of the tort suit against Garlock. Even firms that denied such a practice were found to have engaged in doing so.

78. Attempts during pre-trial discovery in the Designated Plaintiff cases to gain access to trust claims were successfully resisted by plaintiffs' counsel. But for the discovery allowed Garlock in this bankruptcy proceeding, the practices identified in this report that inflated the value of mesothelioma cases filed against Garlock would never have been brought to light.

79. Suppression of witness testimony with regard to exposure to the products of the bankrupts, pioneered by Baron & Budd in nonmalignant litigation, has become standard in mesothelioma litigation, at least measured by the practices of the firms suing

Garlock and obtaining the highest valued settlements from Garlock in the post-bankruptcy era -- several of which trace their lineage back to Baron & Budd.

80. Judge Ableman called the false denials of exposures to bankrupts' products examples of "dishonesty and disreputableness." She went on to say:

the very foundation and integrity of the judicial process is compromised by withholding of information that is critical to the ultimate goal of all litigation -- a search for, and discovery of, the truth.

Ableman Testimony.

81. Settlements infused with "dishonesty and disreputableness" are not a reliable basis for accurately valuing Garlock's liability for pending and future mesothelioma claims.

Date: April 23, 2013



Lester Brickman

Exhibit A
Materials Considered by Lester Brickman

Materials Considered by Lester Brickman

Bankruptcy Filings – *In re Garlock Sealing Technologies, LLC, et al.*, Case No. 10-31607 (Bankr. W.D.N.C.)

Information Brief of Garlock Sealing Technologies LLC (June 7, 2010).

Affidavit of Paul Grant [Dkt. 541-8] (Sept. 24, 2010).

Transcript (Oct. 14, 2010).

Transcript (Oct. 15, 2010).

Transcript (Oct. 27, 2010).

Transcript (Oct. 28, 2010).

Transcript (Nov. 18, 2010).

Transcript (Mar. 3, 2011).

Motion of Debtors for Order Pursuant To Bankruptcy Rule 2004 Directing Production of Documents from Specified Past Asbestos Claimants [Dkt. 1229] (Mar. 23, 2011).

Motion of the Official Committee of Asbestos Personal Injury Claimants for a Protective Order with Respect To Garlock's Subpoenas To Nine Ballot Agents in Twenty-Seven Bankruptcies [Dkt. 1822] (Jan. 24, 2012).

Debtors' Brief Concerning Scope and Purpose of Estimation of Mesothelioma Claims Pursuant To Bankruptcy Code Section 502(c) [Dkt. 2009] (Mar. 2, 2012).

Order Denying Motion by Official Committee of Asbestos Personal Injury Claimants for Protective Order with Respect To Garlock's Subpoenas To Ballot Agents [Dkt. 2024] (Mar. 13, 2012).

Order for Estimation of Mesothelioma Claims [Dkt. 2102] (Apr. 13, 2012).

Motion of Debtors for Leave To Serve Subpoena on Delaware Claims Processing Facility, LLC [Dkt. 2143] (Apr. 27, 2012).

Order Granting in Part and Overruling in Part Objections To Subpoena by Delaware Claims Processing Facility, LLC and Associated Trusts, Establishing Claimant Objection Procedures, and Governing the Confidentiality of Information Provided in Response To the Subpoena [Dkt. 2430] (Aug. 7, 2012).

Bankruptcy Materials – *In re Garlock Sealing Technologies, LLC, et al.*, Case No. 10-31607 (Bankr. W.D.N.C.)

30(b)(6) Deposition Topic 3: Asbestos Plaintiffs and Plaintiffs' Counsel Misrepresentations or Omissions.

Deposition of Joseph Warren Belluck (Dec. 14, 2012).

Deposition of Troy Damon Chandler (Jan. 11, 2013).

Deposition of Stephen Bradley Cooper (Feb. 1, 2013).

Deposition of Paul Grant (Nov. 1, 2011).

Deposition of Peter A. Kraus (Jan. 14, 2013).

Deposition of Benjamin P. Shein (Jan. 16, 2013).

Deposition of Jeffrey B. Simon (Jan. 4, 2013).

Deposition of Jeffrey B. Simon (Mar. 26, 2013).

Expert Report of Charles E. Bates, PhD (Feb. 15, 2013).

Expert Report of Dr. Francine F. Rabinovitz (Feb. 14, 2013).

Garrison Litigation Management Group, Ltd., Nonmalignant and Unknown Disease Claims Entered by Year, 1978 through June 5, 2010.

Memorandum, from Robinson, Bradshaw & Hinson, P.A., Debtors' Special Corporate and Litigation Counsel, to Bates White LLC, subject Partial Summary of Cases Where Exposure Information Used to Support Trust Claims or Bankruptcy Filings Was Not Disclosed (Feb. 8, 2013).

Memorandum from Robinson, Bradshaw & Hinson, P.A., to Bates White, subject *In re Garlock Sealing Technologies LLC*: Trust Distribution Procedures Summary (Feb. 11, 2013).

Memorandum from Robinson, Bradshaw & Hinson, P.A., to Bates White, subject *In re Garlock Sealing Technologies LLC*: Voting Procedure and Ballot Certifications Summary (Feb. 11, 2013).

Memorandum from Robinson, Bradshaw & Hinson, P.A., to Lester Brickman, subject Summary of Double Dipping and Discovery Abuse in Selected Cases Studied by Garlock in its Bankruptcy Case (Apr. 12, 2013).

Mark A. Peterson, Garlock Sealing Technologies LLC Projected Liabilities for Mesothelioma Claims As of June 2010 (February 2013).

Summary Chart of TDP Confidentiality Provisions and TDP Claim Withdrawal and Deferral Provisions prepared by Robinson, Bradshaw & Hinson, P.A.

Summary Chart of TDP Confidentiality Provisions Over Time prepared by Robinson, Bradshaw & Hinson, P.A.

Summary Chart of TDP Deferral Provisions Over Time prepared by Robinson, Bradshaw & Hinson, P.A.

Summary Chart of TDP Sole Benefit Provisions Over Time prepared by Robinson, Bradshaw & Hinson, P.A.

Supplemental RFA List #1, RFA List #2, and RFA List #1.A To the Debtors' Amended Responses To Requests for Admission Nos. 1 and 2 of the Official Committee of Asbestos Claimants' First Set of Requests for Admission and Supplemental Interrogatory Responses and Document Requests Pursuant To Stipulation (Jan. 16, 2013).

Adversary Proceeding Materials – *Garlock Sealing Technologies LLC v. Chandler et al.*, Case No. 12-03137 (Bankr. W.D.N.C.)

Complaint in Adversary Proceeding (June 4, 2012).

Other Case Filings

Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997).

Barnes v. Ga. Pac., Case Nos. MID-L-5018-08 & MID-L-316-09 (N.J. Super. Ct. App. Div. 2012).

Transcript of Pre-Trial Conference, *Barnes v. Ga. Pac.*, Case Nos. MID-L-5018-08 & MID-L-316-09 (N.J. Super. Ct. App. Div. June 12, 2012).

Brassfield v. Alcoa, Inc., No. 2005-61841 (Tex. 11th Dist. Ct. 2005).

Transcript of Motion for Continuance, *Brassfield v. Alcoa, Inc.*, No. 2005-61841 (Tex. 11th Dist. Ct. Nov. 22, 2006).

CSX Transp., Inc. v. Gilkison, Case No. 5:05CV202, 2013 WL 85253 (N.D.W. Va. Jan. 7, 2013).

Georgine v. Amchem Prods., Inc., 878 F. Supp. 716 (E.D. Pa. 1994).

Georgine v. Amchem Prods., Inc., 83 F.3d 610 (3d Cir. 1996).

G-I Holdings, Inc. v. Baron & Budd, 179 F. Supp. 2d 233 (S.D.N.Y. 2001)

Various Verified Statements Under Bankruptcy Rule 2019

- *In re Armstrong World Indus., Inc.*, Case No. 00-4471 (Bankr. D. Del.)
- *In re Flintkote Co.*, Case No. 04-11300 (Bankr. D. Del.)
- *In re Flintkote Mines Ltd.*, Case No. 04-12440 (Bankr. D. Del.)
- *In re Kaiser Aluminum Corp.*, Case No. 02-10429 (Bankr. D. Del.)
- *In re Owens Corning*, Case No. 00-3837 (Bankr. D. Del.)
- *In re Pittsburgh Corning Corp.*, Case No. 00-22876 (Bankr. W.D. Pa.)
- *In re USG Corp.*, Case No. 01-2094 (Bankr. D. Del.)
- *In re U.S. Mineral Prods. Co.*, Case No. 01-2471 (Bankr. D. Del.)
- *In re W.R. Grace & Co.*, Case No. 01-1139 (Bankr. D. Del.)

Memorandum Opinion, (Bankr. D. Del. & Bankr. W.D. Pa. Oct. 7, 2011)

- *In re ACandS, Inc.*, Case No. 02-12687
- *In re Armstrong World Indus., Inc.*, Case No. 00-4471
- *In re Combustion Eng'g, Inc.*, Case No. 03-10495
- *In re Flintkote Co.*, Case No. 04-11300
- *In re Kaiser Aluminum Corp.*, Case No. 02-10429
- *In re Owens Corning*, Case No. 00-3837
- *In re U.S. Mineral Prods. Co.*, Case No. 01-2471
- *In re USG Corp.*, Case. No. 01-2094
- *In re W.R. Grace & Co.*, Case No. 01-0039
- *In re Pittsburgh Corning Corp.*, Case No. 00-22876
- *In re N. Am. Refractories Co.*, Case No. 02-20198
- *In re Mid-Valley, Inc.*, Case No. 03-35592

Transcript of Hearing, *In re Armstrong World Indus., Inc.*, Case No. 00-CV-4471 (E.D. Pa. May 25, 2006).

Pretrial Hearing Transcript, *Montgomery v. Am. Steel & Wire Corp. (In re Asbestos Litig.)*, Case No. 09C-11-217 ASB (Del. Super. Ct. New Castle Cty. Nov. 7, 2011).

Order, *In re Asbestos Pers. Injury Litig.*, No. 03-C-9600 (W. Va. Cir. Ct. Kanawha Cty. Mar. 3, 2010).

In re Asbestos Prods. Liab. Litig. (No. VI), MDL No. 875 (E.D. Pa.).

Motion for Case Management Order Concerning Mass Litigation Screenings, *In re Asbestos Prods. Liab. Litig. (No. VI)*, MDL No. 875 (E.D. Pa. Oct. 12, 2001).

Memorandum In Support of Motion For Case Management Order Concerning Mass Litigation Screenings, *In re Asbestos Prods. Liab. Litig. (No. VI)*, MDL No. 875 (E.D. Pa. Oct. 12, 2001).

In re E. & S. Dists. Asbestos Litig., 772 F. Supp. 1380, 1398 (E.D.N.Y. 1991)

Order Requiring Compliance with Bankruptcy Rule 2019 and Granting Other Relief, *In re Congoleum Corp.*, Case No. 03-51524 (Bankr. D.N.J. July 26, 2004).

Opinion, *Baron & Budd, P.C. v. Unsecured Asbestos Claimants Committee (In re Congoleum Corp.)*, Case No. 04-5634 [Dkt. 34] (D.N.J. Feb. 25, 2005).

Order, *Baron & Budd, P.C. v. Unsecured Asbestos Claimants Committee (In re Congoleum Corp.)*, Case No. 04-5634 [Dkt. 35] (D.N.J. Feb. 25, 2005).

In re Joint E. & S. Dists. Asbestos Litig., 237 F. Supp. 2d 297 (E.D.N.Y. 2002).

Affirmation Objecting To (1) the Special Master's Recommendation Requiring Production of All Bankruptcy Trust-Related Filings, and (2) ACMO Paragraph XV(E)(2)(1), *Andrucki v. Aluminum Co. of Am. (In re N.Y. City Asbestos Litig.)*, Case No. 40000/88 (N.Y. Sup. Ct. July 7, 2011).

Revised Order Requiring Filing of Statements Pursuant To Fed. R. Bank. P. 2019, *In re Owens Corning*, Case No. 00-3837 [Dkt. 13091] (Bankr. D. Del. Oct. 22, 2004).

In re Silica Prods. Liab. Litig. (MDL 1553), 398 F. Supp. 2d 563 (S.D. Tex. 2005).

Defendants' Motion For Production of Pulmonary Diagnoses And Evaluations, *In re Tex. State Silica Prods. Liab. Litig.*, MDL Case No. 2004-70000 (Tex. 295th Dist. Ct. Apr. 3, 2007).

Exhibit 4 To Exhibit Book: Asbestos PI Trust Distribution Procedures, *In re W.R. Grace & Co., et al.*, Case No. 01-01139 (Bankr. D. Del.).

Phase II Post-Trial Brief of Garlock Sealing Technologies, LLC in Opposition To Confirmation of Plan Proponents' First Amended Joint Plan of Reorganization, *In re W.R. Grace & Co., et al.*, Case No. 01-1139 [Dkt. 23656] (Bankr. D. Del. Nov. 2, 2009).

Appellant Garlock Sealing Technologies LLC's Opening Brief on Appeal, *In re W.R. Grace & Co., et al.*, Case No. 11-199 [Dkt. 26] (D. Del. Apr. 25, 2011).

Order Relating To Garlock, Inc. Motion To Suppress Testimony of Dr. William Longo and Mr. Richard Hatfield with Findings of Fact and Conclusions of Law, *In re Lamar County Asbestos Litigation Cases Filed or To Be Filed by Waters & Kraus in Lamar County, Texas* (6th Dist. Lamar Cty. Tex. July 5, 2001).

Appellants' Brief, *In re Pittsburgh Corning Corp., Mid-Valley, Inc. & North American Refractories Co.*, Case No. 11-1439 [Dkt. 7] (W.D. Pa. Dec. 12, 2011).

Opinion, *In re Motions for Access of Garlock Sealing Technologies LLC*, Case No. 11-1130 [Dkt. 64] (D. Del. Mar. 1, 2013).

Kananian v. Lorillard Tobacco Co., Case No. CV442750 (Ohio Ct. Com. Pl. Cuyahoga Cty. Jan. 18, 2007).

Moeller v. Garlock Sealing Techs., LLC, 660 F.3d 950 (6th Cir. 2011).

Pretrial Hearing Transcript, *Montgomery v. Am. Steel & Wire Corp.*, (*In re Asbestos Litig.*), Case No. 09C-11-217 ASB (Super. Ct. New Castle Cty., Del. Nov. 7. 2011).

Stoeckler v. Am. Oil Co., No. 23,451 (Tex. 159th Dist. Ct. 2004).

Transcript of Trial on Merits, *Stoeckler v. Am. Oil Co.*, No. 23,451 (Tex. 159th Dist. Ct. Jan. 28, 2004).

Other Case Materials

Mark A. Peterson, W.R. Grace Projected Liabilities for Asbestos Personal Injury Claims As of April 2001 (June 2007).

Mark A. Peterson, Preliminary Expert Report on W.R. Grace Trust (March 2009).

ACandS, Inc. Asbestos Settlement Trust Distribution Procedures (Oct. 16, 2007).

ACandS, Inc. Asbestos Settlement Trust Distribution Procedures (Aug. 19, 2008).

In re Armstrong World Industries, Inc., et al., Form of Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust Distribution Procedures, Case No. 00-4471 (Bankr. D. Del. Feb. 21, 2006).

Amended and Restated Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust Distribution Procedures (July 14, 2010).

ASARCO LLC and Certain Related Debtors Asbestos Personal Injury Settlement Trust Distribution Procedures (Aug. 30, 2009).

ASARCO LLC and Certain Related Debtors Asbestos Personal Injury Settlement Trust Distribution Procedures (Sept. 2, 2009).

The Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust Distribution Procedures (Dec. 22, 2005).

The Babcock & Wilcox Company Asbestos PI Settlement Trust Distribution Procedures (Jan. 4, 2008).

In re The Celotex Corporation and Carey Canada Inc., Case Nos. 90-10016-8B1 & 90-10017-8B1, Personal Injury Claims Resolution Procedures (M.D. Fla. Oct. 7, 1996).

Fourth Amended and Restated Asbestos Personal Injury Claims Resolution Procedures for the Celotex Corporation and Carey Canada Inc. (June 16, 2008).

DII Industries, LLC Asbestos PI Trust Distribution Procedures (May 7, 2004).

DII Industries, LLC Asbestos PI Trust Sixth Amended Trust Distribution Procedures (Sept. 2, 2010).

Federal-Mogul Form of Asbestos Personal Injury Trust Distribution Procedures (Feb. 1, 2007).

Federal-Mogul Asbestos Personal Injury Trust Distribution Procedures (Aug. 20, 2010).

Kaiser Aluminum & Chemical Corporation Asbestos Distribution Procedures (approximately Feb. 6, 2006).

Kaiser Aluminum & Chemical Corporation Third Amended Asbestos Trust Distribution Procedures (Nov. 20, 2007).

Manville Personal Injury Settlement Trust, 2002 Trust Distribution Process § D (2002), *available at* <http://www.mantrust.org/FTP/C&DTDP.pdf>.

Claims Resolution Procedures NGC Bodily Injury Trust (Apr. 21, 2003).

Seventh Amended Claims Resolution Procedures NGC Bodily Injury Trust (on or after Apr. 1, 2006).

Owens Corning/Fibreboard Form of Asbestos Personal Injury Trust Distribution Procedures (Mar. 9, 2006).

Owens Corning/Fibreboard Asbestos Personal Injury Trust Distribution Procedures (Feb. 2, 2010).

Waters & Kraus Master Ballot for Accepting or Rejecting Sixth Amended Joint Plan of Reorganization for Owens Corning and Its Affiliated Debtors and Debtors-in-Possession (As Modified) for Holders of Class A7 OC Asbestos Personal Injury Claims that Are PI Trust Claims, *In re Owens Corning*, Case No. 00-03837 (Aug. 3, 2006).

Porter Hayden Company Asbestos Trust Distribution Procedures (June 16, 2006).

Porter Hayden Company Asbestos Trust Distribution Procedures (July 12, 2007).

United States Gypsum Asbestos Personal Injury Settlement Trust Distribution Procedures (Mar. 27, 2006).

United States Gypsum Asbestos Personal Injury Settlement Trust Distribution Procedures (Mar. 29, 2010).

Other Materials

Furthering Asbestos Claim Transparency (FACT) Act of 2013: Hearing on H.R. 982 Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary, 113th Cong. (Mar. 13, 2013) (statement of J. Peggy L. Ableman (ret.), Del. Super. Ct.).

Baron & Budd, "Script Memo" (1997).

Andrew T. Berry, *Asbestos Personal Injury Compensation and the Tort System: Beyond "Fix It 'Cause It's Broke,"* 13 *Cardozo L. Rev.* 1949 (1992).

Asbestos: Mixed Dust and FELA Issues: Hearing Before the S. Comm. on the Judiciary, 109th Cong. (Feb. 2, 2005) (statement of Lester Brickman).

How Fraud and Abuse in the Asbestos Compensation System Affect Victims, Jobs, the Economy and the Legal System: Hearing before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 112th Cong. § VI(A) (Sept. 9, 2011) (written statement of Lester Brickman).

Lester Brickman, *An Analysis of the Financial Impact of S.852: The Fairness In Asbestos Injury Resolution Act of 2005*, 27 *Cardozo L. Rev.* 991 (2005).

Lester Brickman, *The Asbestos Litigation Crisis: Is There a Need for an Administrative Alternative?*, 13 *Cardozo L. Rev.* 1819 (1992).

Lester Brickman, *Disparities Between Asbestosis and Silicosis Claims Generated by Litigation Screenings and Clinical Studies*, 29 *Cardozo L. Rev.* 513 (2007).

Lester Brickman, *Ethical Issues in Asbestos Litigation*, 33 *Hofstra L. Rev.* 833 (2005).

Lester Brickman, *On the Applicability of the Silica MDL Proceeding To Asbestos Litigation*, 12 *Conn. Ins. L.J.* 289 (2006).

Lester Brickman, *On the Theory Class's Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality*, 31 *Pepp. L. Rev.* 33 (2004).

Robert T. Cheng & Henry J. McDermott, *Exposure To Asbestos from Asbestos Gaskets*, 6(7) *Appl. Occup. Environ. Hyg.* 588-591 (July 1991).

7 COLLIER ON BANKRUPTCY ¶ 1102.02(2)(a)(iii)(A) (15th ed. 1996).

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE 184, Rule 2019 Selected Case Comment (Alan N. Resnick and Henry J. Sommer, eds., Collier Pamphlet ed. 2004).

Lloyd Dixon, Geoffrey McGovern & Amy Coombe, RAND Inst. for Civil Justice, *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts* (2010).

Gunnar Hillerdal & Douglas W. Henderson, *Asbestos, Asbestosis, Pleural Plaques and Lung Cancer*, 23:2 Scandinavian J. Work Environ. Health 93 (Apr. 1997).

Elihu Inselbuch, Ann McMillian & Andrew Sackett, *The Effrontery of the Asbestos Trust Transparency Legislative Efforts*, 28:2 Mealey's Litig. Rep. Asbestos (Feb. 20, 2013).

U.S. Gov't Accountability Office, Report To the Chairman, H. Comm. on the Judiciary, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts* (GAO-11-819) (Sept. 2011).

Industrial Hygiene Branch, Occupational and Environmental Health Service, Naval Regional Medical Center, *Asbestos Exposure from Gasket Operations* (May 1978).

Carl Mangold, et al., *An Exposure Study of Bystanders and Workers During the Installation and Removal of Asbestos Gaskets and Packing*, 3 Journal of Occupational and Environmental Hygiene 87-98 (February 2006).

James F. McCarty, *Judge Becomes National Legal Star, Bars Firm from Court over Deceit*, Cleveland Plain Dealer Jan. 25, 2007, at B1.

New Media Strategies, *The Plaintiffs' Bar Goes Digital: An Analysis of the Digital Marketing Efforts of Plaintiffs' Attorneys & Litigation Firms* (Jan. 2012).

Occupational & Environmental Health Consultants Report (June 6, 1991).

Marc C. Scarcella & Peter R. Kelso, *Asbestos Bankruptcy Trusts: A 2012 Overview of Trust Assets, Compensation & Governance*, 11:11 Mealey's Asbestos Bankruptcy Report (June 2012).

Furthering Asbestos Claims Transparency (FACT) Act of 2012: Hearing on H.R. 4369 Before the Subcomm. on Courts, Commercial and Administrative Law of the H. Comm. on the Judiciary, 112th Cong. (May 20, 2012) (written statement of Leigh Ann Schell).

Victor E. Schwartz, *A Letter To the Nation's Trial Judges: Asbestos Litigation, Major Progress Made Over the Past Decade and Hurdles You Can Vault in the Next*, 36 Am. J. Trial Advoc. 1 (Summer 2012).

How Fraud and Abuse in the Asbestos Compensation System Affect Victims, Jobs, the Economy and the Legal System: Hearing before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 112th Cong. (Sept. 9, 2011) (written statement of James L. Stengel).

Kimberly A. Strassel, Opinion, *Trusts Busted*, Wall St. J., Dec. 5, 2006, at A18.

Editorial, *Cuyahoga Comeuppance*, Wall St. J. Jan. 22, 2007, at A14

Editorial, *Peter Angelos's Asbestos Book*, Wall St. J. Apr. 10, 2013, at A12.

Exhibit B
Statement of Qualifications of Lester Brickman

Statement of Qualifications of Lester Brickman

1. I have published nine articles on asbestos litigation: *The Asbestos Litigation Crisis: Is There A Need For An Administrative Alternative?*, 13 CARDOZO L. REV. 1819 (1992); *The Asbestos Claims Management Act of 1991: A Proposal To The United States Congress*, 13 CARDOZO L. REV. 1819 (1992); *Lawyers' Ethics And Fiduciary Obligation In The Brave New World Of Aggregative Litigation*, 26 WM. & MARY ENVTL. L. & POL'Y REV. 243, 272-98 (2001); *On The Theory Class's Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality*, 31 PEPP. L. REV. 33 (2004); *Ethical Issues In Asbestos Litigation*, 33 HOFSTRA L. REV. 31 (2005); *An Analysis of the Financial Impact of S. 852: The Fairness In Asbestos Injury Resolution Act of 2005*, 27 CARDOZO L. REV. 991 (2005); *On The Applicability of The Silica MDL Proceeding To Asbestos Litigation*, 12 CONN. INS. L.J. 35 (2006); *Disparities Between Asbestosis and Silicosis Claims Generated by Litigation Screenings and Clinical Studies*, 29 Cardozo L. Rev. 513 (2007) and *The Use of Litigation Screenings in Mass Torts: A Formula For Fraud?*, 61 SMU L. REV. 1221 (2008). In the first seven of these articles, I discuss: the nature of asbestos-related disease; the history of asbestos litigation, including the rise of an entrepreneurial model and screening enterprises; the use of mass screenings to generate mass filings of unimpaired claims; "diagnoses" of asbestosis by a comparative handful of B Readers and other doctors who are responding to substantial financial incentives rather than engaged in good faith medical practice; the use of witness preparation techniques with regard to product identification as a means of constantly renewing the supply of solvent defendants to replace and supplement those that have declared bankruptcy; the effects of forum selection on claim values; the impact of judicial responses to mass filings including mass consolidations and joinders on

asbestos litigation; the resort to "inventory" and other settlement strategies in response to these aggregations; the role of contingency fees in the claiming process; ethical issues in asbestos litigation with a specific focus on asbestos bankruptcy proceedings; an analysis of the costs that would be incurred for resolution of personal injury asbestos claims as a result of enactment of S.852 (the "FAIR" Act); and the applicability of Judge Janis Jack's report in the silica MDL to asbestos litigation and how that validates the entrepreneurial model that I have described.

2. My eighth article was published in December 2007, and is titled: *Disparities Between Asbestosis and Silicosis Claims Generated by Litigation Screenings and Clinical Studies*, 29 Cardozo L. Rev. 513 (2007). In that article, I review data generated in the course of both the MDL 1553 (silica) and MDL 875 (asbestos) litigations as well as from other sources. I conclude on the basis of this data that a few handfuls of doctors regularly selected by plaintiffs' lawyers in asbestos litigation read 50%-90% of the X-rays generated by litigation screenings as positive for pulmonary fibrosis and provide findings that these readings are consistent with asbestosis. In addition, I provide the data which supports my estimate that these same doctors, as well as a small number of others, diagnose at least 80% of those with positive X-rays as having asbestosis within a degree of medical certainty. Among these litigation doctors, Dr. Ray Harron stands out as having, by far, the highest number of medical reports filed in support of asbestos claims and the highest percentages of positive X-ray readings and diagnoses of asbestosis.

a) To properly understand the significance of this data, I present the results of a review of over 60 clinical studies of the prevalence of fibrosis among workers occupationally exposed to asbestos.

b) I also summarize the results of six clinical studies and equivalents in which X-rays

generated by litigation screenings and read as positive for fibrosis were re-read by independent medical experts. This comparison indicates that the litigation doctors' error rates range from 62% to 97.5%. Dr. Harron's error rate was in the 80-90% range.

c) Another facet of litigation screenings that I examine in the article is the administration of pulmonary function tests to determine the degree of lung impairment and qualify the litigant for increased compensation. I summarize the findings in medical literature and compare that to the outcomes of the pulmonary function tests administered in litigation screenings. Based upon the data presented, I conclude that the substantial majority of lung function tests performed by litigation screening companies are maladministered in order to generate false findings of lung impairment.

d) I also compare the pandemic of nonmalignant asbestos-related disease claims which were filed in the 1990-2004 period in the tort system and asbestos bankruptcy trusts with the number of hospitalizations primarily for asbestosis in that period. The data on hospitalizations is compelling. In the 15 year period, 1990-2004, during which about 475,000 new claimants each filed claims against 25-75 defendants and asbestos bankruptcy trusts alleging asbestosis or other nonmalignant condition caused by asbestos exposure, a study of approximately 4,500,000 randomly selected medical records of persons discharged from hospitals indicated that a total of 57 hospitalizations were primarily due to asbestosis.

3. I began research on asbestos litigation in 1991. On the basis of my expertise in the areas of attorney ethics and lawyers' fees, I was hired by the Keene Corporation, an asbestos defendant, to help devise a system to reduce defense costs by creating a software package to standardize billing by defense counsel. This package was designed to enable Keene to compare the relevant time units devoted by different firms to such tasks as legal research and attending

depositions and to make other relevant comparisons in order to manage its defense costs in a meaningful way. *See* 13 CARDOZO L. REV. 1819, at n.72. I was also asked to offer informal observations and analyses of ethical and legal issues raised by asbestos litigation.

4. As part of my consultancy with Keene, I was provided with access to all corporate files, case files, and data about asbestos claiming that Keene had compiled and was able to attend meetings with Keene's attorneys including quarterly meetings with the dozen or more outside counsel that represented Keene in asbestos litigations around the country. Because Keene was a member of the Center for Claims Resolution, I also had some access to information regarding other leading asbestos defendants.

5. Based on the knowledge and expertise I acquired, in 1991, I was requested by the Administrative Conference of the United States, an agency in the executive branch of the federal government, to draft a proposed administrative alternative to asbestos litigation and to organize a colloquy to consider and debate that proposal. As stated by the Chairman of the Administrative Conference:

[W]e asked Professor Lester Brickman to prepare a paper proposing an administrative claims solution for comment and criticism by the panel, and we look forward to comments by the audience. Let me introduce Professor Brickman, who teaches law at Cardozo Law School, Yeshiva University. He is a leading authority in the area of attorney's fees and has written numerous articles on the subject. Professor Brickman became interested in the subject of asbestos litigation some years ago when he was hired as a consultant by one of the defendants in the asbestos litigation to review contingent fee issues. He has since had the opportunity to extensively review empirical data, case files, and other materials on the subject. Because of his work in this area, we asked Professor Brickman to draft a proposed administrative solution which our panelists have been invited to criticize.

Administrative Conference of the United States, Colloquy: *An Administrative Alternative To Tort Litigation To Resolve Asbestos Claims*, October 31, 1991, Transcript at 4.

To participate in the colloquy, I invited: U.S. District Court Judge Jack Weinstein; Deborah Hensler, a senior social scientist at the Rand Institute for Civil Justice; Ronald Motley, a leading plaintiffs' attorney; Andrew Berry, a leading defendants' attorney; Howard D. Samuel, President, Industrial Union Department of the AFL-CIO; and Judge G. Mervin Bober, Associate Chief Administrative Law Judge, U.S. Department of Labor.

6. On the basis of the expertise I had developed and the work I did for the Administrative Conference, as well as additional research I undertook which included accessing then unpublished data compiled by the Manville Trust and the Rand Foundation, I published two law review articles in 1992, which are the first two articles listed in ¶1. The first one listed is an analysis of asbestos litigation and has been cited by the U.S. Supreme Court, federal courts of appeals, state courts, casebooks and scores of scholarly articles as indicated in my Curriculum Vitae ("CV") which I attach to this Appendix.

7. In the other article generated by the colloquy, I set forth the proposed legislation which I drafted. Under that proposal, all claims of injury due to exposure to asbestos-containing products would be removed from the tort system and channeled to an industry-financed trust fund to pay claims to those injured and impaired by exposure to such products. The proposal included the establishment of an Asbestos Claims Management Board within the Office of Workers Compensation of the U.S. Department of Labor to promulgate medical criteria for eligibility and to create and administer a claims procedure in accordance with the provisions of

the proposed act. In preparing the proposal, I consulted other proposals for setting up an administrative process as an alternative to the tort system. In addition, in the article, I analyzed constitutional and policy questions raised by interposing an administrative agency for payment of claims in place of the tort system.

8. In October 1991, I was also invited to testify before a subcommittee of the Judiciary Committee of the House of Representatives which was holding hearings on the asbestos litigation crisis. My prepared remarks were titled: *Effects Of Asbestos Injury Litigation On Federal And State Courts*. I was not retained for that purpose and received no compensation for my testimony.

9. In a 2001 law review article on aggregative litigation, the third article listed in ¶1 of this Appendix, I devoted approximately 30 pages to a discussion of asbestos litigation. For this article, I conducted extensive research on asbestos claiming behavior and the resulting impact on asbestos trusts. I examined how typical "exposure only" asbestos cases are developed and processed; the origin of the Manville Trust, the first bankruptcy trust, which was created in the aftermath of the bankruptcy of the JohnsManville Corporation; the trust distribution procedures ("TDP") which it adopted and which became a model for subsequent asbestos trusts; the Trust's later attempt to develop and apply an audit program to identify and weed out claims which lacked minimally requisite medical documentation and which reflected extraordinarily high incidences of misdiagnoses by a handful of B Readers; and conflicts of interest created by plaintiff lawyers' contingency fee arrangements.

10. In that same article, I also examined the recent trend towards aggregating litigations, including asbestos litigation; the enormous financial incentives unleashed by such aggregations; and the effect of those financial incentives on litigation behavior, in particular, the coercive effect on defendants and the perverse effects on the generation of claims because of the incentives for lawyers to recruit new claimants to replenish their "inventories" of claims.

11. In 1994, I was retained by the American Tort Reform Association to file an amicus brief on its behalf in *Cimino v. Pittsburgh Corning*, which was then pending in the Fifth Circuit.

12. In April, 2003, I was invited to be one of fifteen panelists to speak at a symposium on *ASBESTOS LITIGATION & TORT LAW: TRENDS, ETHICS, AND SOLUTIONS*, at the Pepperdine Law School. Among the panelists and speakers were the Hon. Alfred Chiantelli, formerly Coordinator of Asbestos Litigation for the San Francisco Superior Court; Professor Roger Cramton of the Cornell Law School; Professor Deborah Hensler of the Stanford Law School, co-author of the RAND Corporation reports on asbestos litigation; Professor Frances McGovern of the Duke University School of Law, Professor George Priest of the Yale Law School, Victor Schwartz, of Shook, Hardy, & Bacon; the Hon. Griffin B. Bell of King & Spalding, and formerly Attorney General of the United States; Steven Kazan of Kazan, McClain, Edises, Abrams, Fernandez, Lyons & Farrise; and Alan Brayton of Brayton Purcell.

13. In the article that I prepared for the symposium, which was published in January 2004, I analyze asbestos litigation including an extensive empirical description and analysis of

attorney-sponsored asbestos screenings and the role that such client recruitment efforts play in the litigation. To do so, I consulted the deposition testimony of approximately forty screening company principals, their key employees and the B Readers and other doctors they retained (including Dr. Ray Harron), as well as numerous other litigation documents. I address, *inter alia*, the fact that attorney sponsored asbestos screenings have no medical purpose and are undertaken for the sole purpose of generating an inventory of clients for the lawyers underwriting the screening. I further address the financial incentives that pervade this mass recruitment process and how those incentives influence and are reflected in: (1) the actions of B Readers, including Dr. Ray Harron and other doctors involved in rendering diagnoses and producing medical evidence in support of the claimants so recruited; and (2) the administration of pulmonary function tests by the screening enterprises to generate further support for the claims that were generated. On the basis of the documentary evidence I consulted, I was able to reach the conclusion that asbestos screening companies routinely failed to adhere to American Thoracic Society standards in administering pulmonary function tests; I also discuss the consequences of their failure to do so. (I have since obtained copies of analyses by leading medical experts of the accuracy of pulmonary function tests administered by screening enterprises which fully corroborate the conclusions I reached). I also consider the efforts of the Manville Trust to amend its Trust Distribution Procedures to implement an audit procedure in response to tens of thousands of asbestos injury claims presented with inadequate medical documentation or with spurious documentation provided by a select few B Readers, whose diagnoses and reports, according to most neutral medical experts and scientists, lack credibility. I also consider how other asbestos trusts have been plagued with similar volumes of abusive claims and why attempts to resolve the inadequacies of the bankruptcy trust distribution procedures have foundered.

14. In June 2003, I was requested by the staff of the U.S. Senate Committee on the Judiciary to allow them to review parts of the draft article in connection with hearings that were being planned on legislation addressing the asbestos litigation crisis. Senator Jon Kyl of Arizona cited the forthcoming article, with approval, in the Report of the U.S. Senate Committee on the Judiciary on S.1125.

15. In researching both asbestos litigation and the formation of asbestos bankruptcy trusts, I have focused on the role of financial incentives in: generating the medical data used in asbestos claiming; determining the structure of the trusts; and the nature of administration of the trusts and their TDPs. I have been aided in this endeavor by my previous teaching and research on the effect of financial incentives, in particular, contingency fees, on the tort system. For most of the past 20 years, I have been teaching a three credit seminar titled: *The Legal Ethics of Legal Fees and Its Effect On the Tort System*. In that seminar, I directly address the effect of fee structures and fee incentives on the tort system, using articles that I have authored and co-authored and other research I have undertaken. To my knowledge, this is the only such course offered in a law school. In addition, I published a book expounding on the impact of contingency fee financing of tort litigation on our civil justice system. See LESTER BRICKMAN, *LAWYER BARONS: WHAT THEIR CONTINGENCY FEES REALLY COST AMERICA* (Cambridge Univ. Press, 2011).

16. In 2003, I was retained as a consultant by counsel for an insurance company to prepare an expert report which was filed in the Western Asbestos Company bankruptcy. *In re Western Asbestos Co., et al., Debtors*, Bankr. N.D. Calif., No. 02-46284 (LT). In that report, I

presented an overview of asbestos litigation, the resort to inventory settlements, an analysis of bankruptcy trusts including extensive discussion of the Manville Trust, the lessons to be drawn from the experiences of the Manville Trust and other asbestos bankruptcy trusts and an analysis of the proposed plan of reorganization with a focus on the trust distribution procedures being proposed. My qualifications as an expert on these matters were challenged by plan proponents in the form of a *Daubert* motion. The bankruptcy court rejected the challenge. *In re Western Asbestos Co., et al.*, Debtors, 2003 Bankr. LEXIS 1894, at *3 (Oct. 31, 2003).¹

17. In May, 2004, I testified before the Committee on Judiciary of the Ohio Senate on Ohio H.B. 292, to reform asbestos litigation, which was subsequently enacted into law. I was paid a fee for studying the bill and preparing my testimony.

18. In July 2004, I testified before the Subcommittee on Commercial And Administrative Law of the U. S. House of Representatives Committee on the Judiciary. I focused my remarks on the process of administering the bankruptcies of former producers and sellers of asbestos containing products. More specifically, I provided the subcommittee with an overview of asbestos litigation and a summary of my research findings. In addition, I addressed the formation and administration of asbestos bankruptcy trusts, the effect of the adoption of §524(g) of the Bankruptcy Code on the development of plans of reorganization, the abuses prevalent in

¹ In her decision rejecting the motion, Judge Leslie Tchaikovsky stated that "I may not testify about the meaning of any provision of the Bankruptcy Code, any other statute, or any provision in an insurance policy. Additionally, . . . [I] may not advise the Court about the holdings of any court decisions published or unpublished, or the substance of legislative history." Memorandum of Decision Re Miscellaneous Pre-Confirmation Motions, *In re Western Asbestos Co., et al.*, No. 02-46284, -85, -86 (Bankr. N.D. Calif.), October 29, 2003, at 2. I had not addressed any of these issues in my expert report. Specifically, I was not offered as an expert on the Bankruptcy Code and did not seek to advise the court as to the meaning of any provision in the Bankruptcy Code. I also did not seek to advise the court on the meaning of any insurance policies. Finally, I did not address in my expert report nor did I seek to advise the court about case holdings or legislative history.

prepackaged bankruptcies, and an analysis of conflicts of interest that had become endemic in asbestos bankruptcy proceedings. I received no compensation for my testimony.

19. In recent years, I have been invited to appear as a panelist or presenter at numerous conferences and programs on asbestos litigation. I have declined most of these invitations because of my teaching schedule and other responsibilities. In 2004, I accepted two invitations. In one, I was a presenting panelist at the HarrisMartin "Conference on Asbestos Allocation: Apportionment Liability In Asbestos Litigation." My topic was "Ethical Issues in Asbestos Litigation." (The article on Ethical Issues in Asbestos Litigation that I list in ¶1 is an outgrowth of that presentation). I also was a presenting panelist at the Mealey's National Asbestos Conference in September 2004, and spoke on the failure of asbestos screenings to adhere to a medical model for screening of an exposed population. In 2005, I was a panelist at a conference on "Asbestos: Anatomy of a Mass Tort," held at the University of Connecticut Law School. My remarks became the basis for publication of the last of the seven articles listed in ¶1, *On The Applicability of the Silica MDL Proceeding to Asbestos Litigation*, which was published in the Connecticut Insurance Law Journal. In 2006, I was a panelist at the ALI-ABA Conference on "Asbestos Litigation in the 21st Century" and spoke on Asbestos Screenings. I was also a panelist at a Mealey's Silica & Asbestos Claims Conference and spoke on "The Mass Screening of Silica & Asbestos Claims: The Fallout from Judge Jack's Decision." Finally, in 2007, I was a presenter at the Mealey's Asbestos Medicine Conference and spoke on "The Ethics of Diagnosis."

20. In January, 2005, I was invited by the President of the United States, George W. Bush, to join him on stage at an event in McComb County, Michigan, to explain to a "town hall" audience the abuses that had developed in asbestos litigation. A transcript of that event is available at www.whitehouse.gov/news/releases/2005/01/20050107-8.html#.

21. In 2004, I was retained by counsel for a group of banks to prepare an expert report which was filed in the Owens Corning bankruptcy. In re *Owens Corning et al., Debtors*, Bankr. D. Del. No. 003837. In that report, I presented an overview of asbestos litigation, the rise of what I termed an entrepreneurial model of asbestos claiming, the components of which include: mass screenings by enterprises hired by attorneys; the use of a comparative handful of B Readers who consistently find very high rates of asbestosis even though neutral medical experts find that only a very small fraction of the X-rays are consistent with asbestosis; the routine maladministration of pulmonary function tests by screening enterprises in order to generate false evidence of impairment; the use of witness preparation techniques to implant false memories; mass filings of claims generated by the screenings; the judicial resort to aggregations in response to the mass filings; leading to the rational but futile resort to "inventory" settlements of claims even though there was often no evidence of actual illness or significant product exposure. I also questioned the accuracy of projections of future numbers of asbestos claimants based upon historical settlement patterns and discussed recent changes in the tort system which have resulted in dramatic decreases in the number of nonmalignant asbestos claims.

22. Once again, my qualifications to testify as an expert on the matters related above were challenged by Plan Proponents in the form of a *Daubert* motion and once again, the court

rejected the challenge. *Owens Corning et al., v. Credit Suisse First Boston, et al.*, Order, Jan. 10, 2005, Bankr. D. Del. No. 0400-905.

23. I also testified in the Owens Corning proceeding before Judge John P. Fullam. Judge Fullam's decision acknowledged a number of the issues that I raised in my expert report and in my testimony. *Owens Corning et al., v. Credit Suisse First Boston, et al.*, Memorandum And Order, at "Litigation History," March 31, 2005, Bankr D. Del. No. 04-00905.

24. In June-July 2005, I provided an expert report and written declaration in lieu of testimony in *In re J.T. Thorpe, et al., Debtors*, Bankr. Cent. Dist. Calif., No. LA-02-14216-BB. My qualifications to testify as an expert were not challenged. In that report and testimony, I provided an overview of asbestos litigation; the rise of the entrepreneurial model including the use of a comparative handful of B Readers and diagnosing doctors to support meritless claims; the substantiation of that analysis and conclusion offered by the silica MDL proceeding presided over by U.S. District court Judge Janis Jack; an overview of asbestos bankruptcy trusts, their failure to adopt trust distribution procedures that would enable the trusts to reject meritless claims, and the conclusions to be drawn from that experience; and an analysis of the trust distribution procedures being proposed in the Thorpe bankruptcy.

25. On February 2, 2005, I testified before the U.S. Senate Judiciary Committee which was holding hearings on the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005. In my testimony, I related how some plaintiff lawyers had recycled thousands of previous claims of asbestosis as silicosis claims even though the four doctors who testified at the hearing stated that they had virtually never encountered someone who had both asbestosis and silicosis. I

included exhibits with my testimony of medical reports prepared by Dr. Ray Harron to support my conclusions. I did not receive any compensation for my testimony. My testimony was the subject of an article on the front page of the Business section of in the New York Times which appeared on the morning of the hearing. See Jonathan D. Glater, *Companies get Weapon in Injury Suits*, NEW YORK TIMES, February 2, 2005, at C1. My testimony also formed the basis for an extensive analysis of the silicosis "epidemic" which appeared in Fortune Magazine in July 2005. Roger Parloff, *Diagnosis For Dollars*, FORTUNE, June 13, 2005, at 97. Both Mr. Parloff and Mr. Glater observed that the real significance of the information generated through the extensive discovery permitted by Judge Jack extended well beyond the conclusion that most of the approximately 10,000 silicosis claims were simply unsupported and likely fraudulent. Rather, the significance was that it cast substantial doubt on the validity of tens of thousands of claims of asbestosis which generated hundreds of millions of dollars in settlement payments -- claims which were recruited by the same screening enterprises and supported by medical evidence generated by the same doctors that Judge Jack excoriated.

26. In 2006, I provided an expert report and testimony in *In The Matter of Armstrong World Industries, Bankr.*, E.D. Pa., No. 00-CV-4471. My qualifications to testify as an expert on: the history of asbestos litigation; the development of an illegitimate entrepreneurial model for nonmalignant asbestos claim generation including the use of litigation screenings; the improper methods of generating medical and product exposure evidence; the effect of judicial aggregations of claims; and the development and operation of asbestos bankruptcy trusts, were challenged in a *Daubert* motion. U.S. District Court Judge Eduardo C. Robreno rejected the challenge, stating:

Dr. Brickman has been shown to be qualified as an expert in the history of asbestos litigation, he has been studying the subject for 15 years, he has published at least seven articles on the subject and has testified three times

before congressional committees on asbestos litigation and asbestos bankruptcy and has been qualified by at least two federal judges as an expert on the history of asbestos litigation and he has supplied a full and complete written expert testimony in a third asbestos bankruptcy proceeding. Therefore, I think that under Rule 702, he is qualified by virtue of skill, education, experience to aid the Court in -- in this case.

Secondly, the opinions rendered in the report appear to be reliable. Dr. Brickman relies on sources and data which are recently relied [on] by experts in his field and others have relied upon. . . his opinion. So, I find his opinion to be reliable. . . .

[P]lacing the issues in this case. . . in the historical context of asbestos litigation and claim settlement, will provide the Court with a greater understanding of the debtor's future liability. A good deal of the testimony in this case has involved a change in the lay of the land in the last few years and how that will affect the debtor's future liability. And . . . I believe that the testimony of Professor will be helpful to the Court and . . . that his testimony fits well with the facts of the case. . . ."

Transcript of Hearing of May 25, 2006 (Judge Eduardo C. Robreno).

27. My ninth article was published in December 2008 and is titled *The Use of Litigation Screenings in Mass Torts: A Formula For Fraud?* In this article, I discuss how mass numbers of claims have been generated in five mass torts: asbestos, silica, silicone breast implants, fen-phen (the diet drugs) and welding fumes. I explain that mass claim generation is done by "litigation screenings" undertaken to sign up potential litigants by the tens of thousands. These "litigation screenings" have no intended medical benefit. Screenings are mostly held in motels, shopping center parking lots, local union offices and lawyers' offices. There, an occupational history is taken by persons with no medical training, a doctor may do a cursory physical exam, and medical technicians administer tests, including X-rays, pulmonary function tests, echocardiograms and blood tests. The sole purpose of screenings is to generate "medical" evidence of the existence of an injury to be attributed to exposure to or ingestion of defendants' products. Usually a handful of doctors ("litigation doctors" including most prominently, Dr. Ray

Harron) have provided the vast majority of the thousands and tens of thousands of medical reports prepared for these litigations.

By my count, approximately 1,500,000 potential litigants have been screened in these five litigations. Litigation doctors found that approximately 1,000,000 of those screened had the requisite condition that could qualify for compensation, such as asbestosis, silicosis, moderate mitral or mild aortic valve regurgitation or a neurological disorder. I further estimate that lawyers have spent at least \$500 million and as much as \$1 billion to conduct these litigation screenings, paying litigation doctors and screening companies well in excess of \$250 million, and obtaining contingency fees well in excess of \$13 billion.

On the basis of the evidence I review in this article, I conclude that the vast majority of the 1,000,000 claims generated were based on “diagnoses” of the type that U.S. District Court Judge Janis Jack found, referring to the work of Dr. Harron and other litigation doctors in the silica MDL, were “manufactured for money.”

Despite the considerable evidence I review that most of the “medical” evidence produced by litigation screenings is at least specious, I find that there is no effective mechanism in the civil justice system for reliably detecting or deterring this claim generation process. Indeed, I demonstrate how the civil justice system erects significant impediments to even exposing the specious claim generation methods used in litigation screenings. I also present evidence that the criminal justice system has effectively conferred immunity on the litigation doctors and the lawyers that hire them, granting them a special dispensation to advance specious claims. Finally, I discuss various strategies that need to be adopted to counter this assault on the integrity of the civil justice system.

28. In a recent litigation, a *Daubert* challenge was raised as to my qualifications to testify about how the practices of a law firm and a litigation doctor it hired to read over 20,000 x-rays were consistent with the entrepreneurial model I presented and constituted a scheme to generate false medical evidence used to defraud the plaintiff. *CSX Transp. v. Robert N. Pierce, Jr. et al.*, U.S.D.C., N.D. W.Va., civil action no. 5:05-cv-202. The challenge was dismissed as moot. *CSX Transp. v. Gilkison, et al.*, 2013 WL 85253 (N.D. W.Va., 1/7/2013). A jury found the law firm principals and the litigation doctor liable for violating the RICO Act by conducting or participating in the conduct of an enterprise's affairs through a pattern of racketeering activity.

29. On September 9, 2011, I testified before the Subcommittee on the Constitution of the U.S. House of Representatives Committee on The Judiciary. The focus of my testimony was: (1) the profitability of litigation screenings in the 1988-2000 period and its effects on claim filings in that period; (2) the disconnect between nonmalignant claim filings with asbestos bankruptcy trusts and in the tort system; and (3) the value of nonmalignant claims being filed with asbestos bankruptcy trusts and the significance of the aggregate value of those filings.

Exhibit C
Curriculum Vitae of Lester Brickman

LESTER BRICKMAN

PERSONAL

Age: 72	Address: Cardozo Law School 55 Fifth Avenue New York, N.Y. 10003
Place of Birth: New York City	Telephone: (212) 790-0327
Family Status: Married, one child	Fax: (212) 790-0205
	E-Mail: brickman@yu.edu
	Web Page: www.lesterbrickman.com
	SSRN Page: http://ssrn.com/author=40172

EDUCATION

Carnegie Tech, B.S. in Chemistry, 1961 (4-year scholarship)
University of Florida, LL.B., 1964 (Law Review, Order of the Coif)
Yale University, LL.M., 1965 (Sterling Fellow)

PROFESSIONAL STATUS

Member of the New York Bar; U.S. Courts of Appeals for the Third and Fifth Circuits

EMPLOYMENT

Sibley, Giblin, King & Levenson: Summer, 1964
Louisiana State University Law School: Summer, 1969
Council on Legal Education: 1969-1970
University of Toledo Law School: 1965-1969, 1970-1976
Cardozo Law School: 1976- Present (Acting Dean 1980-82)
Oxford University, Visiting Fellow, Centre for Socio-Legal Studies, May-June 1997
Fordham Law School, 1999-2000 (Adjunct Faculty)

RANK

Professor of Law; Acting Dean 1980-82

SUBJECTS TAUGHT

Present: Contracts, Professional Responsibility, The Legal Profession, Land Use.

Past: Family Law, Federal Jurisdiction, Jurisprudence, Law & Poverty, Housing Law, Consumer Problems of the Poor, Legal Process, Municipal Corporations, Workmen's Compensation Seminar, Community Land Use Game Seminar, Social Indicators Seminar, Negotiation, and seminars on legal services delivery systems.

LAW SCHOOL COMMITTEES

Appointments and Promotions, Budget, Educational Policy, ABA Accreditation and Self-Study, AALS Accreditation, Placement, Academic Standards, Faculty Rules.

UNIVERSITY COMMITTEES

Faculty Review Committee.

PROFESSIONAL ACTIVITIES

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A. **General**

U.S. Chamber of Commerce Institute For Law Reform 2004 Research Award.
 Professional Responsibility, Legal Ethics & Legal Education Practice Group Executive Committee, The Federalist Society (1997-1998).
 Committee on Professional and Judicial Ethics of the Ass’n of the Bar of the City of NY (1994-1997).
 Association of Professional Responsibility Lawyers (1991-02).
 Committee on Professional Responsibility of the Ass’n of the Bar of the City of NY (1990-93).
 New York State Bar Association Committee on Professional Ethics, 1985-87.
 Law and Economics Institute, summer 1986.
 Mayor’s Committee on the Judiciary (New York City) (1981-82).
 Lecturer on Professional Responsibility of Government Lawyers and Para-professionals, Legal Education Institute of the U.S. Civil Service Commission.
 Proposal Reader - U.S. Office of Education (1978-1990).
 Pre-1980 listings available

B. **Congressional Testimony (Federal and State)**

How Fraud and Abuse in the Asbestos Compensation System Affect Victims, Jobs, The Economy and the Legal System. Testimony before the Subcommittee on the Constitution of the House Judiciary Committee, Sept. 9, 2011 (Statement of Lester Brickman).

Asbestos: Mixed Dust and FELA Issues, testimony on the proposed FAIR Act and the effect of mass filings of silicosis claims, Committee on the Judiciary, U.S. Senate, (Feb. 2, 2005). **Cited In:** 2-9 MEALEY'S TORT REF. UPDATE 16 (Apr. 2005); 20-6 MEALEY'S LITIG. REP. ASB. 17 (Apr. 2005); 3-8 MEALEY'S LITIG. REP. SILICA 11 (Apr. 2005); 3-9 MEALEY'S LITIG. REP. SILICA 11 (May 2005); 20-9 MEALEY'S LITIG. REP. ASB. 26 (June 2005); 12 Conn. Ins. L.J. 477 at 494 (2005-2006); 37 St. Mary's L.J. 283, at 290 (2006); 31 U. Dayton L. Rev. 173 at 194 (2006); 58 Admin. L. Rev. 269 at 344, 350 (2006); 30 Am. J. Trial Advoc. 295 at 300 (2006); 17 J. Bankr. L. & Prac. 2 Art. 3 n.125 (2008).

Oversight Hearing On The Administration of Large Business Bankruptcy Reorganizations: Has Competition For Big Cases Corrupted The Bankruptcy System, testimony on administration of asbestos bankruptcies, Subcommittee on Commercial and Administrative Law of the House Judiciary Committee (108th Cong., July 21, 2004). **Cited In:** 4-1 MEALEY'S ASB. BANKR. REP. 10 (Aug. 2004); 19-13 MEALEY'S LITIG. REP. ASB. 6 (Aug. 2004); 2-6 MEALEY'S INTL. ASB. LIAB. REP. 8 (Aug. 2004); 80 Notre Dame L. Rev. 1187, at 1188, 1196, 1208, 1210 (2005); 14 J. Bankr. L. & Proc. 1 n.43 (2005); 74 U.M.K.C. L. Rev. 585 at 604 (2006); 62 N.Y.U. Ann. Surv. Am. L. 271 at 288, 292, 319 (2006); 6-12 MEALEY'S BANKR. REP. 22 n.29, 30 (July 2007); 3 Env'tl. Ins. Litig. L. & Prac. §27:20 at 503 (2006), §§ 26:39, 26:40 (2009).

Hearings on Ohio H.B. 292 (to reform asbestos litigation), Committee On Judiciary Of The Ohio Senate, May 5, 2004.

Attorney Fees and the Proposed Global Tobacco Settlement before the Subcommittee on Courts and Intellectual Property of the House Committee on the Judiciary, 105th Congress (Dec. 10, 1997) (statement of Lester Brickman.) **Cited In:** 109 Yale L.J. 1496 (2000); 51 De Paul L. Rev. 319 (2001); 44 Wake Forrest L.R. 923, 932 n.58 (2009); 23 Geo. J. Legal Ethics 603 at 612 n.53 (2010).

Product Liability Reform and How the Legal Fee Structure Affects Consumer Compensation Before the Subcommittee On Telecommunications, Trade, and Consumer Protection of the House Comm. on Commerce, 105th Cong. 105-31 (Apr. 30, 1997) (statement of Lester Brickman.) **Cited In:** 11 Geo. J. Legal Ethics 233, at 238 (1998).

Contingency Fee Abuses: Hearing on Examining Certain Contingency Fee Abuses and Their Effect On The Tort System Before the Senate Comm. on the Judiciary, 104th Congress, 1st Sess. (Nov. 7, 1995) (statement of Lester Brickman). **Cited In:** 47 DePaul L. Rev. 268 (1998); 47 DePaul L. Rev. 341 (1998); 11 Geo. S. Legal Ethics 238 (1998).

Effects of Asbestos Injury Litigation on Federal and State Courts Before Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary, 102nd Congress, 1st Sess. (Oct. 24, 1991) (statement of Lester Brickman). **Cited In:** *Lippe v. Bairnco Corp.*, 2002 WL 34342589 at n.31 (SDNY, Feb. 1, 2002); 88 N.W. L. Rev. 527-28 (1994); 24 J. of Environmental Affairs 631 (1997); Schwartz & Lorber, 24 Am. J. Trial Advocacy 251 (2000); 6 Tex. Rev. Law & Pol. 137 at n.158 (2001); 53 So. Car. L. Rev. 815 at 823 (2002); 3-3 MEALEY'S ASB. BANKR. REP. 24 (Oct. 2003); 62 NYU Ann. Surv. Am. L. 223 at 235 (2006); 59 Stan. L. Rev. 1671 at 1729 (2007).

C. Conferences And Other Presentations

- Panelist: Federalist Society National Lawyers Convention, Panel on Attorney Fees in Class Actions, Wash., D.C., Nov. 10, 2011.
- Presenter: New York County Lawyers' Ass'n Joint Committee on Fee Disputes and Conciliation, Training Session for Fee Arbitrators, N.Y., N.Y., November 9, 2010.
- Debate: Columbia Law School, Oct. 12, 2010 with Professor Brian Fitzpatrick of Vanderbilt Law School: "Do Class Action Lawyers Make Too Much Money?"
- Debate: Western New England Law School, Sept. 1, 2010 with Professor Brian Fitzpatrick of Vanderbilt Law School: "Do Class Action Lawyers Make Too Much Money?"

- Panelist: Institute of Advanced Legal Studies Conference on Regulating and Deregulating Lawyers, paper: "The Collaborative Effort of Judges and Rent-Seeking Lawyers in Expanding Tort Liability: A Modest Proposal for Reform," London, June 3-4, 2010.
- Panelist: George Washington University Law School Conference on: Aggregate Litigation: Critical Perspectives, "Anatomy of an Aggregate Settlement: The Triumph of Temptation Over Ethics," Washington, D.C., March 12, 2010.
- Presenter: New York County Lawyers' Ass'n Joint Committee on Fee Disputes and Conciliation, Training Session for Fee Arbitrators, N.Y., N.Y., December 2, 2008.
- Featured Speaker: Medical Grand Rounds, Long Island Jewish Medical Center, "Physician Involvement in Mass Tort Fraud," Long Island, N.Y., Sept. 12, 2008.
- Featured Speaker: American Tort Reform Ass'n Annual Meeting, "What Is the Significance of the Prosecutions of Milberg Weiss and Dickie Scruggs for Civil Justice Reform Prospects?," Washington, D.C., Mar. 11, 2008.
- Presenter: Mealey's Asbestos Medicine Conference, "The Ethics of Diagnosis," Philadelphia, Apr.16, 2007.
- Panelist: AEI-Brookings Judicial Symposium on Civil Justice Issues, "Toxic Torts and Mass Screening," Washington, D.C., December 7, 2006. **Cited In:** 85 Tex. L. Rev. 1465 at n.182 (2007).
- Panelist: ALI-ABA Conference on Asbestos Litigation in the 21st Century, "Asbestos Screenings: Dead or Just Napping," New Orleans, LA, Nov. 30-Dec. 1, 2006.
- Panelist: Mealey's Silica & Asbestos Claims Conference, "The Mass Screening of Silica & Asbestos Claims: The Fallout from Judge Jack's Decision," Philadelphia, PA, Nov. 9, 2006.
- Panelist: U.S. Chamber of Commerce Inst. for Legal Reform, Annual Legal Reform Summit, "Latest Adaptations in the Plaintiffs' Bar Business Model," Washington, D.C., Oct. 26, 2006.
- Presenter: Federalist Society, "Mass Fraud in Mass Torts?," Washington D.C., Oct. 12, 2006.
- Panelist: American Enterprise Inst. for Public Policy Research, "Will The FAIR Act Fix The Asbestos Mess," Washington, D.C., Jan.19, 2006.
- Panelist: Conference on "Asbestos: Anatomy of a Mass Tort", Univ. of Connecticut Law School, Hartford, Ct., Nov. 3, 2005.
- Speaker: Annual Meeting of Ass'n of American Physicians and Surgeons, "The Silica Story And Its Significance," Arlington, Va., Sept. 23, 2005.
- Speaker: Rotary Club of New York, "Silicosis: Son of Asbestosis?," New York, N.Y., August 23, 2005.
- Panelist: Colloquy on Legislation To Resolve Asbestos Litigation – A Conversation with President George Bush, McComb County, Michigan, January 7, 2005.
- Featured Speaker: American Tort Reform Ass'n Annual Legislative Conference, "A Look at Asbestos Litigation," New Orleans, LA., November 16, 2004.
- Presenter: New York County Lawyers' Ass'n Joint Committee on Fee Disputes and Conciliation, Training Session for Fee Arbitrators, N.Y., N.Y., October 20, 2004.
- Discussant: American Enterprise Institute for Public Policy Research, "What Do We Know About Contingency Fees?," Wash. D.C., Sept. 22, 2004. **Cited In:** 85 Tex. L. Rev. 1465 at n.182 (2007).
- Panelist: Mealey's National Asbestos Litigation Conference, "Ethical Issues Related to Screening," Philadelphia, Sept. 20-21, 2004.
- Presenter: Conference On Asbestos Allocation: Apportionment Liability In Asbestos Litigation, "Ethical Issues In Asbestos Litigation," San Francisco, June 17-18, 2004.
- Featured Speaker: Insurance Federation of New York, New York, An Update on Asbestos Litigation, May 13, 2004.
- Featured Speaker: Manhattan Inst. Center For Legal Policy, "On The Theory Class's Theories of Asbestos Litigation: The Disconnect Between Scholarship And Reality," New York, Mar. 10, 2004. **Cited In:** 72 Def. Couns. J. 241, at 242 (2005); 40 The Advoc. (Texas) 80 at n. 8 (2009).
- Moderator: Ass'n of Bar of City of New York, "Litigation Reform & The 9/11 Victim Compensation

- Fund," N.Y., N.Y., Sept. 18, 2003.
- Presenter: New York County Lawyers' Ass'n Joint Committee on Fee Disputes and Conciliation, Training Session for Fee Arbitrators, N.Y., N.Y. May 5, 2003.
- Panelist: Pepperdine Law School, "Asbestos Litigation & Tort Law: Trends, Ethics, and Solutions," Malibu, California, Apr. 4-5, 2003.
- Panelist: Ass'n of the Bar of the City of New York, "Asbestos: What Went Wrong?," New York, N.Y., Oct. 21, 2002.
- Panelist: U.S. Chamber Institute for Legal Reform and Manhattan Institute Center for Legal Policy, "Magnet Courts & Class Actions: The Empirical Evidence," Washington, D.C., June 17, 2002.
- Featured Speaker: Forum of the Center for Legal Policy at the Manhattan Institute, "Asbestos Litigation: Malignancy in the Courts?," New York, N.Y., May 2, 2002.
- Panelist: Univ. of Ill. Law School Conf. on "Ethics 2000 and Beyond: Reform or Professional Responsibility as Usual?" Champaign, Ill., Apr. 5, 2002.
- Panelist: ABA Nat'l Conf. on Professional Responsibility, "The Ethics of Hourly Rate Billing," Miami Beach, Fla., May 31, 2001.
- Keynoter: Minnesota State Bar CLE 2001 Business Law Institute, "The Role of Financial Self-Interest in the Governance and Operation of the Bar," Minneapolis, Apr. 27, 2001.
- Panelist: William & Mary Law School Conf. on Toxic Torts, Panel on Ethical and Settlement Issues in Mass Tort Litigation, Williamsburg, Va., Mar. 23-24, 2001.
- Presenter: New York State Unified Court System, Training Session, Fee Dispute Arbitration in Domestic Relations Cases, N.Y., Jan. 23, 2001.
- Panelist: ABA National Inst. on Class Actions, "Current Ethical Issues in Class Actions," New York, Oct. 13, 2000.
- Testimony: ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000"), New Orleans, LA., June 2, 2000.
- Panelist: Hudson Inst., U.S. Chamber of Commerce, Federalist Soc'y, Conf. On Excessive Legal Fees, "The Scope of the Problem and Responses by the Judiciary and Bar," Washington, D.C., May 25, 2000. **Cited In:** 18 Geo. J. Ethics 1343, at 1356 (2005).
- Presenter: New York State Unified Court System, Training Session, Fee Dispute Arbitration in Domestic Relations Cases, N.Y., May 23, 2000.
- Panelist: Federalist Society Nat'l Lawyers Convention, "Class Action Ethics & Abuse," Washington, D.C., Nov. 11, 1999.
- Panelist: The Federalist Society, Manhattan Inst., and U.S. Chamber Inst. for Legal Reform (joint program), "The New Business of Government-Sponsored Litigation: State Attorneys General & Big City Lawsuits," Washington, D.C., June 22, 1999.
- Debate: NYU Federalist Society, "Tort Reform and Federalism," New York, Apr. 15, 1999.
- Presenter: American Tort Reform Foundation Forum, "Contingency Fee Lawyers and States' Attorneys General: Partnerships For Private Gain or Public Good," Washington D.C., February 25, 1999.
- Presenter: Fordham University School of Law, "The Tobacco Litigation & Attorneys' Fees," New York, Feb. 4, 1999.
- Presenter: Manhattan Inst., "Order in the Court: A Fresh Look at Litigation Reform in America," New York, Jan. 20, 1999.
- Featured Speaker: American Swiss Foundation Forum, "Contingency Fees and Class Actions," New York, Feb. 10, 1998.
- Presenter: Federalist Society Lawyers' Convention, "What Drives Legal Ethics?" Wash., D.C., Oct. 18, 1997. (Broadcast on C-Span).
- Keynoter: American Legislative Exchange Council Civil Justice Task Force meeting, "Tort Reform," Austin, Texas, Apr. 12, 1997.
- Featured Speaker: Manhattan Inst. Center for Judicial Studies luncheon forum, "Civil Justice Reform as Consumer Protection," New York, Mar. 27, 1997. **Cited In:** 71 N.Y.S. Bar Ass'n J. 51 (Apr. 1999).
- Featured Speaker: Invitation-only meeting of ABA leaders and a group of general counsels, "Seeking Common Ground: A Dialogue Between General Counsel and the ABA," Washington,

- D.C., June 26, 1996.
- Featured Speaker: Forbes CEO Forum, on tort reform, Toronto, June 21, 1996.
- Panelist: Ass'n of American Law Schools Professional Responsibility, "Institutional Choices in the Regulation of Lawyers," San Antonio, Tex., Jan. 7, 1996.
- Panelist: ABA Section on Business Law, "Securities Class Actions: Is Legislation Necessary?," Chicago, Aug. 8, 1995.
- Panelist: Ass'n of Bar of the City of New York, "Proposed Contract with America Legislative Changes," New York, June 12, 1995.
- Presenter: American Bar Ass'n 21st Nat'l Conference on Professional Responsibility, plenary session panel on Contingency Fees, San Diego, June 2, 1995.
- Presenter: American Tort Reform Association Annual Meeting of Coalition Leaders, "on the effects of contingency fees on the tort system," Chicago, Ill., Oct 4, 1994.
- Featured Speaker: NYU Institute of Judicial Administration Appellate Judges Seminar luncheon, "a proposal to reform contingency fee abuses," N.Y., June 28, 1994.
- Featured Speaker: NYU Institute of Judicial Administration Board of Directors meeting, "a proposal to reform contingency fee abuses," Washington, D.C., May 17, 1994.
- Presenter: New York Criminal Bar Ass'n, "Legal Fees After the Court of Appeals Recent Decision Prohibiting Non-Refundable Retainers: The Impact of Cooperman on 'Flat,' 'Minimum' and other Non-Hourly Fee Arrangements," N.Y., Apr. 26, 1994.
- Featured Speaker: National Employment Lawyers Association of New York "ethical issues relevant to employment law," N.Y., Dec. 10, 1993.
- Presenter: Cardozo Law Review Symposium on "Scientific Evidence After the Death of Frye," "The Irrelevance of Scientific Evidence: Tort System Outcomes Are Principally Determined by Lawyers' Rates of Return," New York, Oct. 25, 1993.
- Presenter: Ass'n of Professional Responsibility Lawyers, "Nonrefundable Retainers," New York, August 7, 1993.
- Panelist: New York State Association of Disciplinary Attorneys, "Nonrefundable Retainers," Brooklyn, N.Y., May 25, 1993.
- Presenter: Ass'n of the Bar of the City of New York, "New Approaches in Controlling Legal Fees and Contingency Agreements," presentation titled: A Proposal To Bring The Contingency Fee System Into Line With Its Ethical Mandates and Policy Roots. New York, May 18, 1993.
- Presenter: Practicing Law Institute, "The Attorney-Client Relationship After Kaye, Scholer," presentation titled: Has the Office of Thrift Supervision Changed the Relevant Ethical Rules by its Actions in the Kaye, Scholer Matter?, Washington D.C., June 15, 1992.
- Presenter: Symposium on Bankruptcy, South Carolina, Law Review, "attorney fees in bankruptcy," Columbia, S.C., Mar. 20, 1992.
- Presenter: Institute for Continuing Legal Education of Loyola Law School, Conference on the Longshore and Harbor Workers' Compensation Act; presented a proposal for an industry-financed benefits pool for asbestos claimants, New Orleans, Feb. 7, 1992.
- Moderator/Organizer: Colloquy on an Administrative Solution to the Asbestos Litigation Crisis, Administrative Conference of the United States, Washington, D.C., Oct. 31, 1991 (for which I authored the proposal that was the subject of the conference).
- Testimony: Fairness Hearing held in reorganization of Manville Settlement Trust (on attorney fees), U.S.D.C., New York, January 2, 1991. **Cited In:** *In re Joint E.&S. Dists. Asbestos Litigation (Findley v. Blinken)*, 129 B.R. 710, at 863-4 (E. & S.D.N.Y. 1991); 88 N.W. L. Rev. 527 (1994).
- Testimony: ABA Commission on Evaluation of Disciplinary Enforcement hearing, New Orleans, La., June 8, 1990.
- Pre-1990 listings available

D. **Consulting Activities** (Public Institutions)

- (1) Administrative Conference of the United States (to organize a colloquium to evaluate a plan for an administrative alternative to asbestos litigation, 1991); U.S. Office of Education (to evaluate

applications for clinical legal education grants, 1978-88); The Legal Education Institute of the U.S. Civil Service Commission as a lecturer on professional responsibility of government attorneys, 1977-1980); The National Science Foundation (to construct a research agenda for improving the delivery of legal services to middle class consumers, 1975-78); ABA Special Committee on Specialization (1975); Law Enforcement Assistance Administration (to add clinical programs in prosecutors offices, 1974); The Ford Foundation (for which I prepared a year-long field report on legal paraprofessionals, 1970-71); The North Central Association (a regional accrediting agency for which I evaluated a law school for accreditation purposes, 1972); the Housing Committee of the Toledo Model Cities Program (1968-69).

(2) The Council on Legal Education for Professional Responsibility -- activities included evaluation of programs, the organization of workshops on clinical legal education and related areas, and the writing up of these workshops for the CLEPR Newsletter (1970-1980).

(3) I have consulted for a number of law schools on matters of curricular design in the clinical area, e.g., L.S.U., Cleveland State, Temple.

(4) I have been a consultant to Lear Siegler, Volt Technical Services, NLADA, Auerbach Associates, American Technical Assistance Corporation, and the Quincy Corporation to provide evaluations of and technical advice and assistance to OEO Legal Services programs. In the 1968-75 period I evaluated approximately 70 programs.

(5) In 1966-67, I was Deputy Director of, and consultant to, the Student Wave Survey, a \$30,000 research project funded by the Association of American Law Schools for the purpose of (1) ascertaining the demand for legal education through 1985, and (2) ascertaining the needs of society for lawyers through 1985. My own efforts were directed primarily towards the "demands" aspect and particularly the data accumulation phase, over which I had complete charge. In addition, I issued a number of interim reports and published several newsletters.

E. **PUBLICATIONS**

LAWYER BARONS: WHAT THEIR CONTINGENCY FEES REALLY COST AMERICA, Cambridge Univ. Press, Feb. 2011 (584 pages). **Reviewed by:** Judge Dennis Jacobs, N.Y.L.J., Jan. 27, 2011 at p. 6 col. 4; Daniel Fisher, *Contingency Fees, Self-Regulation Make Lawyering Expensive For Us*, FORBES.COM (Feb. 17, 2011, 2:24 PM), accessible at <http://www.forbes.com/sites/danielfisher/2011/02/17/contingency-fees-regulation-make-lawyering-expensive-for-us/>; Margaret Little, *Engage*, vol. 12 issue 1 at 128 (June 2011), accessible at [Peg Little Review in Engage.pdf](http://practiceview.muzeview.com/l+inks/index.php?id=3229702); Andrew Trask, Oct. 20, 2011 accessible at: <http://practiceview.muzeview.com/l+inks/index.php?id=3229702>; Peter Schuck, *Lawyers Behaving Badly*, LITIGATION 2011 (Supplement to The American Lawyer) Fall 2011 at 82; Richard Moorhead, 71 Cambridge L.J. 729 (Nov. 1, 2012). **Cited in:** JOHN T. MOONAN, JR. & RICHARD W. PAINTER, PROFESSIONAL AND PERSONAL RESPONSIBILITIES OF THE LAWYER 93 (3rd ed. 2011); 13 Loy. J. Pub. Int. L. 61 at 106 n.222 (2011); C. Hodges, J. Paysner and A. Nurse, *Litigation Funding: Status And Issues* 114 n.302, 136 nn.343-44 (Jan. 2012); 35 Harv. J.L. & Pub. Pol'y 681 at 707 n.171 (2012); 63 S.C.L. Rev. 637 at 637 n. 17 (2012), 11 IUS Gentium 287 at 290 n. 6, 298 n. 32 (2012); 2012 Colum. Bus. L. Rev. 427 at 429 n.7, 496 (2012); 37 Law & Soc. Inquiry 768 at 769 (2012); Podcast with Prof. Brickman and Prof. Peter Schuck (Yale Law School) at <http://www.fed-soc.org/publications/detail/lawyer-barons-what-their-contingency-fees-really-cost-america-faculty-book-podcast>; 63 South Carolina L. Rev. 637 at 639 n. 17 (2012); 64 Ala. L. Rev. 335 at 344 nn. 26-28 (2012); DEBORAH RHODE, DAVID LUBAN & SCOTT CUMMINGS, LEGAL ETHICS at 801 n. 137 (6th ed. 2013); 91 N.C.L. Rev. 387 at 414 n. 107 (2012); TED FRANK, CLASS ACTIONS, ARBITRATION AND CONSUMER RIGHTS, Manhattan Inst. Legal Policy Report no. 16 Feb. 2013 at nn. 48, 91, 104 (2013); 64 Ala. L. Rev. 335 at 344 nn.26-28 (2012).

Anatomy of an Aggregate Settlement: The Triumph of Temptation Over Ethics, 79 George Wash. L. Rev. 700-716 (2011), accessible at: <http://ssrn.com/abstract=1649509>. **Downloads:** SSRN-284. **Cited In:** 79 Geo. Wash. Rev. 754 at 766-67 (2011); 79 Geo. Wash. L. Rev. 628 at 667 (2011); 80 Fordham L. Rev. 319 at 322, n.14, 325 n.35 (2011); 28 Ariz. J. Int'l. & Comp. L.

569 at 577 n. 48 (2012); 87 N.Y.U.L. Rev. 960, at 993 n. 124, 998 n. 143, 1020 n. 236 (2012).

Unmasking the Powerful Force that Has Mis-Shaped the American Civil Justice System, 4 GLOBAL COMPETITION LITIGATION REVIEW no. 3, 169-173 (2010), accessible at: <http://ssrn.com/abstract=1737893>. **Downloads:** SSRN-235.

The Use of Litigation Screenings in Mass Torts: A Formula for Fraud?, 61 SMU L. Rev. 1221-1354 (2008), accessible at <http://ssrn.com/abstract=1217620>. **Downloads:** SSRN-617, Bepress-178. **Cited In:** 7-2 MEALEY'S LITIG. REP. SILICA 10 (Oct. 2008); 23-17 MEALEY'S LITIG. REP. ASB. 16 (Oct. 2008); 8-3 MEALEY'S ASBESTOS LITIG. REP. 11 (Oct. 2008); 1-9 MEALEY'S DIET DRUG REP. 11 (Oct. 2008); 28 Rev. Litig. 501; 63 Vand. L. Rev. 107 at 163-64 nn.171-174 (2010); 73 Albany L. Rev. 521, 533 at n. 94 (2010); 51 Wm. & Mary L. Rev. 1997 at 2061 n. 280 (2010); 64 Vand. L. Rev. 61 at 63 (2011); 4 TOXIC TORTS LITIG. GUIDE §32:1 (2011), §32:5 (2011); 90 Texas L. Rev. 571 at 634 n.306 (2012); 56 St. Louis U. L.J. 1231 at 1263 n. 207 (2012).

Disparities Between Asbestosis and Silicosis Claims Generated By Litigation Screenings and Clinical Studies, 29 Cardozo L. Rev. 513-622 (2007), accessible at <http://ssrn.com/abstract=970993>. **Downloads:** SSRN-765, Bepress-1461. **Cited In:** 37 Sw. U. L. Rev. 691 at 697 (2008); 37 Sw. U. L. Rev. 671 at 676 (2008); 37 Sw. U. L. Rev. 575 at 587, 588, 590 (2008); 37 Sw. U. L. Rev. 479 at 482 (2008); 37 Sw. U. L. Rev. 459 at 466 (2008); 74 Brook. L. Rev. 51 at 59 n.34 (2008); 2008 Colum. Bus. L. Rev. 841 at n.131 (2008); LINDA MULLINEX, MASS TORT LITIGATION 914 (2d ed. 2008); 28 Rev. Litig. 501 at 518, 520 (2009); 69 Md. L. Rev. 162 at 167 nn. 52-53, 191 n. 238, 192 n. 249 (2009); 26 T.M. Cooley L. Rev. 721 at 749 (2009); 33 Am. J. Trial Adv. 315 at 339 n.13, 340 nn.119-22 (2009); 10 Engage 35 at n.6 (2009); 73 Albany L. Rev. 521, 530 at n.76 (2010); 64 Vand. L. Rev. 61 at 63 (2011); 27-7 Mealey's Litig. Rep. Asb. 28 at n. 11 (2012); 8 J.L. Econ. & Pol'y 701 at 738 n. 66 (2012); 36 Am. J. Trial Adv. 1 at 12 n. 61 (2012).

On The Applicability of the Silica MDL Proceeding To Asbestos Litigation, 12 Conn. Ins. L.J. 35-10 (2006). Accessible at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=916534. **Downloads:** SSRN-638. **Cited In:** 12 Conn. Ins. L.J. 349 at 421, 439 (2005-2006); 2 ENVTL. INS. LIT. L. & PRAC. § 27:1 at n.3 (2006); 30 m. J. Trial Adv. 295 at 299 (2006); 6-7 MEALEY'S ASB. BANKR. REP. 20 (2007); 85 Tex. L. Rev. 1465 at n.157 (2007); 59 Stan. L. Rev. 1671 at 1683, 1709 (2007); 6-12 MEALEY'S ASB. BANKR. REP. at 22 (2007); 17 J. Bankr. L. & Prac. 2 Art. 3 at n.129 (2008); 37 Sw. U. L. Rev. 575 at 587, 590 (2008); 37 Sw. U. L. Rev. 479 at 482 (2008); 37 Sw. U. L. Rev. 459 at 466 (2008); 74 Brook. L. Rev. 51 at 59 n.34 (2008); LINDA MULLINEX, MASS TORT LITIGATION 913 (2d ed 2008); 28 Rev. Litig. 501 at 518, 520 (2009); 69 Md. L. Rev. 162 at 174 n. 104, 176 n.123 (2009); 26 T.M. Cooley L. Rev. 721 at 722 (2009); 33 Am. J. Trial Adv. 315 at 339 n.113 (2009); 73 Albany L. Rev. 521, 530 at n. 76 (2010); 64 Vand. L. Rev. 61 at 63 (2011); 8 Rutgers J.L. & Pub. Pol'y 50 at n.74 (2011); 8 Rutgers J.L. & Pub. Pol'y 50 at note 74 (2011); 13 CONN. PRAC. CONSTRUCTION LAW, APP. A (2011-12); 3 ENVTL. INS. LITIG.: L. & PRAC. App. 26A (2011); 27-7 Mealey's Litig. Rep. Asb. 28 at n. 9 (2012).

An Analysis of the Financial Impact of S.852: The Fairness In Asbestos Injury Resolution Act of 2005, 27 Cardozo L. Rev. 991-1033 (2005). Accessible at: <http://ssrn.com/abstract=796884>. **Downloads:** SSRN-544. **Cited In:** 12 Conn. Ins. L.J. 517 at 543 (2005-2006); 19 Geo J. Legal Ethics 741 at 755 (2006); 62 NYU Ann. Surv. Am. L. 271 at 282-83 (2006); 62 NYU Ann. Surv. Am. L. 223 at 240, 258 (2006); 85 Tex. L. Rev. 1465 at n.160 (2007); 2008 U. Ill. L. Rev. 1101, at 1102, 1106-1110, 1112, 1120-1121 (2008); *Doug Satterfield v. Breeding Insulation Co. et al*, 266 S.W.3d 347 at n.54 (Tenn. Sept. 9, 2008); 37 Sw. U. L. Rev. 691 at 692, 693 (2008); 9 Engage 109 at n.72 (2008); 78 UMKC L. Rev. 1, 4 n.24, 5 nn.26, 32, 85 n. 493 (2009); 69 Md. L. Rev. 162 at 194 n. 262 (2009); 18 J.L. & Pol'y 295 at 361 n.256, 376-77, nn.316-319 (2009); 96 Minn. L. Rev. 28 at 79 n.222 (2011); 81 Ford. L. Rev. 451 at 470 n. 175 (2012); 23 Duke J. Comp. & Int'lL. 1 at *59 n. 184 (2012).

Ethical Issues In Asbestos Litigation, 33 Hofstra L. Rev. 833-912 (2005). Accessible at: <http://ssrn.com/abstract=754188>. **Downloads:** SSRN-828. **Cited In:** 3 Toxic Torts Lit. Guide § 33:18 (2005); 4-3 MEALEY'S LITIG. REP. SILICA 12 (Nov. 2005); 20-19 MEALEY'S LITIG. REP. ASB. 15 (Nov. 2005); 20-22 MEALEY'S LITIG. REP. ASB. 24 (Dec. 2005); 12 Conn. Ins. L.J. 477 at 477 (2005-2006); 31 U. Dayton L. Rev. 173 at 189 (2006); 4-8 MEALEY'S LITIG. REP. SILICA 13 (Apr. 2006); 21-7 MEALEY'S LITIG. REP. ASB. 27 (May 3, 2006); 19 Geo J. Legal Ethics 741 at 754 (2006); 62 NYU Ann. Surv. Am. L. 271 at 286, 289, 292, 326-27 (2006); 62 NYU Ann. Surv. Am. L. 223 at 224, 250, 263 (2006); 7 Nev. L.J. 73 at 76 (2006); 30 Am. J. Trial Advoc. 295 at 297 (2006); 79 Temp. L. Rev. 773 at 775, 787 (2006); 13 Clinic. L. Rev. 659 at 705 (2007); 48 Wm. & Mary L. Rev. 2043 at 2046 (2007); 75 Fordham L. Rev. 855 at 2858 (2007); 85 Tex. L. Rev. 1495 at n.157 (2007); 60 Ark. L. Rev. 437 at 455 (2007); 93 Va. L. Rev. 1389 at 1431 (2007); 106 Mich. L. Rev. 1213 at 1214, 1227 (2008); 17 J. Bankr. L. & Prac. 2 Art. 3 at n.90 (2008); 83 N.Y.U. L. Rev. 501 at 521, 529 (2008); 16 J.L. & Pol'y 589 at 597 (2008); 106 Mich. L. Rev. 1213 at 1214 (2008); 59 Ala. L. Rev. 771 at 774 (2008); 42 U. Mich. J. L. Reform 71 at 90 (2008); 37 Sw. U. L. Rev. 691 at 693 (2008); 37 Sw. U. L. Rev. 511 at 512, 514, 518, 520, 521 (2008); 2008 Colum. Bus. L. Rev. 841 at n.60 (2008); 76 Def. Couns. J. 54 at n.145 (2009); 28 Rev. Litig. 501 at 505 (2009); 9 NORTON BANKR. L.& PRAC. 3d § 179:21 (2008, 2009, 2010, 2011); 40 The Advoc. (Texas) 80 at nn. 6-7 (2009); 33 Am. J. Trial Advoc. 13 at 43 n.152 (2010); 79 Geo. Wash. L. Rev. 506 at 516 (2011); 62 Hastings L.J. 1729 at 1732 n.8 (2011); 72 La. L. Rev. 757 at 781 n.189 (2012); 91 N.C.L. Rev. 387 at 436 n. 190 (2012); Hearn v. Snapka, 2012 WL 7283791 (Tex. App.-Corpus Christi, 12/28/2012).

A Rejoinder to the Rejoinder to 'On the Theory Class's Theories of Asbestos Litigation', 32 Pepp. L. Rev 781-792 (2005). Accessible at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=761845. **Cited In:** 37 Sw. U. L. Rev. 459 at 468 (2008).

On The Theory Class's Theories Of Asbestos Litigation: The Disconnect Between Scholarship And Reality, 31 Pepp. L. Rev. 33-170 (2004). Accessible at: <http://www.ssrn.com/abstract=490682>. **Downloads:** SSRN-1441. **Cited In:**

Law Reviews, Bar Ass'n Opinions and Others: Report of the U.S. Senate Committee of the Judiciary on S.1125 (Statement of Senator Jon Kyl); 12 Am. Bankr. Inst. L. Rev. 441, at 468 (2004); 28 Am. J. Trial Adv. 295 at 310 (2004); 3-7 MEALEY'S ASB. BANKR. REP. 20 (Feb. 2004); 20-2 MEALEY'S LITIG. REP. ASB. 33 (Feb. 2005); 45 Santa Clara L. Rev. 1, at 6 (2005); 2-9 MEALEY'S TORT REF. UPDATE 16 (Apr. 2005); 20-6 MEALEY'S LITIG. REP. ASB. 17 (Apr. 2005); 3-8 MEALEY'S LITIG. REP. SILICA 11 (Apr. 2005); 3-9 MEALEY'S LITIG. REP. SILICA 11 (May 2005); 20-9 MEALEY'S LITIG. REP. ASB. 26 (June 2005); 4-3 MEALEY'S LITIG. REP. SILICA 12 (Nov. 2005); 20-19 MEALEY'S LITIG. REP. ASB. 15 (Nov. 2005); 14 J. Bankr. L. & Prac.1 at nn. 7, 241 (2005); 20-22 MEALEY'S LITIG. REP. ASB. 24 (Dec. 2005); 72 Def. Couns. J. 241, at 242 (2005); 20-5 MEALEY'S LITIG. REP. INS. 10 (Dec. 2005); 16-15 MEALEY'S LITIG. REP. REINSURANCE 10 (Dec. 2005); 12 Conn. Ins. L.J. 477 at 480 (2005-2006); 37 St. Mary's L.J. 283 at 290 (2006); 31 U. Dayton L. Rev. 173 at 189 (2006); 24 Miss. C.L. Rev. 285 at 296 (2006); 20-23 MEALEY'S LITIG. REP. ASB. 19 (January 10, 2006); 3-6 MEALEY'S TORT REF. UPDATE 12 (Jan. 2006); 21-1 MEALEY'S LITIG. REP. ASB. 20 (February 1, 2006); 4-8 MEALEY'S LITIG. REP. SILICA 13 (Apr. 2006); 21-7 MEALEY'S LITIG. REP. ASB. 27 (May 3, 2006); 62 NYU Ann. Surv. Am. L. 271 at 283 (2006); 62 NYU Ann. Surv. Am. L. 223 at 225, 229, 230, 235, 249, 252 (2006); 58 Admin. L. Rev. 269 at 336, 343-44, 346-48 (2006); 30 Ann. J. Trial Advoc. 295 at 311 (2006); 95 Geo. L.J. 693 at 730 (2007); 48 Wm. & Mary L. Rev. 2043 at 2052, 2063 (2007); 62 NYU Ann. Surv. Am. L. 525 at 529, 531, 542, 548 (2007); 75 Fordham L. Rev. 2855 at 2858 (2007); 59 Stan. L. Rev. 1671 at 1683, 1709, 1730 (2007); 26 Miss. C. L. Rev. 253 at 268, nn.13, 82, 87, 122 (2006-2007); 2008 U. Ill. L. Rev. 1101, at 1103 - 1110, 1112 (2008); 12 Tex. Rev. L. & Pol. 477 at 478, 516 (2008); 16 J.L. & Pol'y 589 at 597 (2008); 85 U. Det. Mercy L. Rev. 407 at n.44 (2008); 37 Sw. U. L. Rev. 557 at 574 (2008); 37 Sw. U. L. Rev. 479 at 494, 509 (2008); 2008 Colum. Bus. L. Rev. 841 at n.29 (2008); 28 Rev. Litig. 501 at 504, 527 (2009); 59 Am. U.L. Rev. 49 at 58 (2009); 2 ENVTL. INS. LIT.: L. & PRAC. § 27-1 at n.2, § 27-7 at 492-93 (2006); 69 Md. L. Rev. 162 at 187 n. 212, 193 n. 257 (2009); 26 T.M. Cooley L. Rev. 721 at 721-22, 736 (2009); 59 Duke L.J. 1321, at 1336 n.48 (2010); GEOFFREY HAZARD, SUSAN KONIAK, ROGER CRAMTON, GEORGE COHEN & W. BRADLEY WENDEL, THE LAW AND ETHICS OF LAWYERING 700 (4th ed. 2005), 704 (5th ed. 2010); 33 Am. J. Trial Advoc. 13 at 43

n.152 (2010); 3 *Env'tl. Ins. Litig.: L. & Prac.* § 26:33 (2009, 2011), § 26.25 at n.10 (2010, 2011); Appendix 26A (2011); 38 *Hastings Const. L.Q.* 1007 at 1007 n.6 (2011); 27-7 *Mealey's Litig. Rep. Asb.* 28 nn. 3,10, 13-17 (2012); 22 *Kan. J.L. & Pub. Pol'y* 1 at 3 n. 8 (2012); 36 *Am. J. Trial Advoc.* 1 at n. 5, 6 n. 31, 9 n. 47 (2012).

Cases: *Doug Satterfield v. Breeding Insulation Co. et al*, 266 S.W.3d 347 at n.50 (Tenn. Sept. 9, 2008).

The Market For Contingent Fee-Financed Tort Litigation: Is It Price Competitive?, 25 *Cardozo L. Rev.* 65-128 (2003). Accessible at: <http://www.ssrn.com/abstract=463226>. **Downloads:** SSRN-707. **Cited In:**

Law Reviews, Bar Ass'n Opinions and Others: 28 *J. Legal Prof.* 283 at 285 (2003-04); 39 *Tort Trial & Ins. Prac. L.J.* 869 at 874 (2004); 36 *Ariz. St. L.J.* 551 at 580 (2004); 28 *J. Legal Prof.* 283 at 285 (2004); 30 *Am. J. L. & Med.* 69 at 72 (2004); 58 *Consumer Fin. L.Q.* 347, at 348 (2004); 54 *Duke L.J.* 447, at 467 (2004); 2004 *Wis. L. Rev.* 1161 at 1232 (2004); 39 *Val. L. Rev.* 27 at 46 (2004); 57 *Vand. L. Rev.* 1571 at 1598 (2004); 70 *Mo. L. Rev.* 307 at 326 (2005); 114 *Yale L. J.* 697 at 738-39 (2005); 8 *The Green Bag 2d* 377 at 377-380 (2005); 67 *U. Pitt. L. Rev.* 1 at 57 (2005); 27 *Cardozo L. Rev.* 2433 at 2434 (2006); 8 *Am. L. & Econ. Rev.* 20 at 31 (2006); 91 *Minn. L. Rev.* 265 at 275 (2006), 155 *U. Pa. L. Rev.* 503 at 516 (2006); 56 *DePaul L. Rev.* 293 at 305 (2007); 56 *DePaul L. Rev.* 261 at 290 (2007); 10 *Am. Law & Econ. Rev.* 185 at 239 (2008); 18 *Health Matrix* 373 at n.152 (2008); 17 *Mich. St. J. Int'l L.* 165 at 184, n.135 (2008-09); 18 *Health Matrix* 373, 405 n.152 (2008); 39 *J. Legal Studies* 245 at 246, 251 (2010); 54 *N.Y. L. Sch. L. Rev.* 773 at 800 (2010); 38 *Pepp. L. Rev.* 551 at 566 (2011); 79 *Geo. Wash. L. Rev.* 754 at 767 (2011); 74 *L. & Contemp. Prob.* 1 at 3 n.11, 9 n.26, 10 nn.31,35 (2011); 86 *N.Y.U. L. Rev.* 805 at 849 (2011); 8 *Rutgers J.L. & Pub. Pol'y* 567 at n.14 (2011); 2012 *ABA Prof. Law.* 79 at 88 n.39 (2012); 65 *Vand. L. Rev.* 829 at 838 n.29 (2012); 64 *Okla. L. Rev.* 325 at 331 (2012); 2012 *ABA Prof. Law.* 79 at n. 39 (2012); 39 *Fla. St. U.L. Rev.* 1003 at 1052 n. 128 (2012).

Cases: *Kress v. Food Employers Labor Relations Ass'n*, 391 F.3d 563, at 570 (C/A-4, 2004); *In re Zyprexa Prods. Liab. Lit.*, 424 F. Supp. 2d 488 at 494, 496 (E.D.N.Y. 2006); 2012 *Prof. Law.* 79 at 88 n.39.

Effective Hourly Rates of Contingency Fee Lawyers: Competing Data and Non-Competitive Fees, 81 *Wash. U. L.Q.* 653-736 (2003). Accessible at: <http://www.ssrn.com/abstract=488808>. **Downloads:** SSRN-552. **Cited In:**

Law Reviews, Bar Ass'n Opinions and Others: 2004 *Utah Bar J.* 6, at 8 (2004); 57 *Vand. L. Rev.* 2087, at 2096 (2004); 58 *Consumer Fin. L. Q.* 347, at 347 (2004); 83 *N.C.L. Rev.* 411, at 442 (2005); 54 *Duke L.J.* 447, at 467 (2004); 57 *Vand. L. Rev.* 1975, at 1994 (2004); 64 *Md. L. Rev.* 613, at 683 (2005); 8 *The Green Bag 2d* 377, at 377-380 (2005) 800-01 (5th ed. 2010); 35 *N. Mex. L. Rev.* 260 at 264, 275 (2005); 59 *Vand. L. Rev.* 155, at 156 (2006); 63 *Wash. & Lee L. Rev.* 603 at 627 (2006); 8 *Am. L. & Econ. Rev.* 20, at 31 (2006); 59 *Vand. L. Rev.* 1457 at 1478 (2006); 59 *Vand. L. Rev.* 729 at 768 (2006); 7 *Nev. L. J.* 73 at 104 (2006); 85 *Tex. L. Rev.* 1465 at nn.136, 141, 148, 154, 155 (2007); 32 *Wm. & Mary Env'tl. L. & Pol'y Rev.* 169 at 210-211 (2007); 121 *Harv. L. Rev.* 1465 at 1496 (2008); 41 *U. Mich. J.L. Reform* 813 at 821 n.36 (2008); 49 *B.C. L. Rev.* 913 at 965 n.330 (2008); 17 *Mich. St. J. Int'l L.* 165 at 184, n.135 (2008-09); 93 *Minn. L. Rev.* 1147, 1151 n.20 (2009); 22 *Geo. J. Legal Ethics* 1485, 1528 n.282, 1541 n.340 (2009); 33 *J. Legal Prof.* 301 at 302 nn. 14-16, 305 nn. 33-35, 38 (2009); 63 *Vand. L. Rev.* 55 at 91 n.99 (2010); 39 *J. Legal Studies* 245 at 250 (2010); 54 *N.Y. L. Sch. L. Rev.* 773 at 778 (2010); 104 *Nw. U. L. Rev.* 233 at 245 n.69 (2010); 62 *S. Carolina L. Rev.* 201 at 258 (2010); 74 *L. & Contemp. Prob.* 1 at 4 n.12, 10 n.35 (2011); 34 *Am. J. Trial Advocacy* 377 at 377 n.2 (2011); 64 *Ala. L. Rev.* 335 at 344-45 nn. 29-34 (2012); 66 *Vand. L. Rev.* 257 at 286 n. 156 (2012); 64 *Ala. L. Rev.* 335 at 344-45 nn. 29-34 (2012).

Casebooks, Treatises, Restatements, etc:

RONALD ROTUNDA & JOHN S. DZIENKOWSKI, *PROFESSIONAL RESPONSIBILITY - A STUDENT GUIDE* 145 (2005); RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, *CLIENT-LAWYER RELATIONSHIPS*, *LEGAL ETHICS*, *LAW. DESK BK. PROF. RESP.* § 1.5-1 (2005-06 ed.), § 1.5-1 (2006-07 ed.), § 1.5-1 at n.48 (2007-08 ed.), § 1.5-1 at n.23 (2009-10, 2010-11, 2011-12 eds.); GEOFFREY HAZARD, SUSAN KONIAK, ROGER CRAMTON, GEORGE COHEN & W. BRADLEY WENDEL, *THE LAW AND ETHICS OF LAWYERING* 787-88 (4th ed. 2005), 800-01 (5th ed. 2010).

The Continuing Assault on the Citadel of Fiduciary Protection: Ethics 2000's Revision of Model Rule 1.5, 2003 U. Ill. L. Rev. 1181-1216 (2003). Accessible at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=702021. **Downloads:** SSRN-437. **Cited In:** 44 Ariz. L. Rev. 829, at 865 (2002); 83 N.C.L. Rev. 411, at 418 (2005); 58 Ala. L. Rev. 1041 at n.27 (2007); 49 Wm. & Mary L. Rev 569 at 573, 609 (2007); ABA ANNO. MODEL RULES OF PROF. CONDUCT 81, (6th ed. 2007); 39 McGeorge L. Rev. 737, 737, 738 (2008); 59 Ala. L. Rev. 453, at 493 (2008); 29 Hamline J. Pub. L. & Pol'y 331 at 334, 343 (2008); 39 McGeorge L. Rev. 737 at 737 n.3 (2008); 61 Baylor L. Rev. 174 at 186 n.52 (2009); 53 St. Louis U. L.J. 553, 554 n.3 (2009); 39 J. Legal Studies 245 at 247 (2010); 79 U. Cin. L. Rev. 697 at 714 n.91 (2010); 51 Santa Clara L. Rev. 853 at 876 n.87 (2011); GA. LAW OF TORTS PREP. FOR TRIAL §4:4 (2011 ed.); 26 Geo. J. Legal Ethics 59 at 77 n.62 (2013).

Anatomy of a Madison County (Illinois) Class Action: A Study of Pathology, Civil Justice Report No. 6, Center for Legal Policy at the Manhattan Institute (Aug. 2002). Accessible at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=327001. **Downloads:** SSRN-465. **Cited In:** 91 Ill. B.J. 230, at n.23 (May 2003); 27 N.C. Cent. L.J. 130, at 166 (2005); 55 Emory L.J. 279 at 337 (2006); 45 Tex. Int. L.J. 537, at 567 n.138 (2010); 86 Tulane L. Rev. 1 at 45 n.154 (2011).

Lawyers' Ethics and Fiduciary Obligation in the Brave New World of Aggregative Litigation, 26 Wm. & Mary Envtl. L. & Pol'y Rev. 243-322 (2001). **Cited In:** 54 Baylor L. Rev. 331, at 332 (2002); 69 Def. Couns. J. 539, at 542 (2002); Report of the Committee on the Judiciary, U.S. Senate on S.1125, "The Fairness in Asbestos Injury Resolution Act of 2003," July 30, 2003 at 95-97; 27 Harv. Envtl. L. Rev. 519, at 536 (2003); 25 No. 14 Andrews Asbestos Lit. Rep. 12 (May 22, 2003); 10 No. 5 Andrews Class Action Litig. Rep. 26 (June 2003); 44 S. Tex. L. Rev. 925, at 929 (2003); 27 Harv. Envtl. L. Rev. 519, at 536 (2003); 44 S. Tex. L. Rev. 1013, at 1018 (2003); 1 Geo. J. L. & Pub. Pol. 327, at 331, 335 (2003); 56 Vand. L. Rev. 1949, at 1952, 1966-67 (2003); 31 Pepp. L. Rev. 175, at 177, 181, 183-4, 186 (2004); 31 Pepp. L. Rev. 203, at 226 (2004); 31 Pepp. L. Rev. 271, at 299 (2004); 46 Wm. & Mary L. Rev. 127, at 154 (2004); 54 Duke L.J. 221 at 225 (2004); 46 TEX. PRAC., ENVIRONMENTAL LAW § 28.3 (2d ed. 2004, 2011); 24 Rev. Litig. 253, at 255, 257 (2005); 14 J. Bankr. L. & Prac. 1 at fn 10 (2005); 12 Conn. Ins. L.J. 477 at 479 (2005-2006); 19 Geo. J. Legal Ethics 741 at 743 (2006); *In re Zyprexa Prods. Liab. Lit.*, 424 F. Supp. 2d 488 at 494 (E.D.N.Y. 2006); 20-23 MEALEY'S LITIG. REP. ASB. 19 (January 10, 2006); 3-6 MEALEY'S TORT REF. UPDATE 12 (Jan. 2006); DEBORAH RHODE & GEOFFREY HAZARD, PROFESSIONAL RESPONSIBILITY AND REGULATION 197 (2002) at 216 (2d. ed. 2007); 26 Rev. Litig. 583 at 603 (2007); 16 J.L. & Pol'y 589 at 598 (2008); 1 Penn. St. Envtl. L. Rev. 1 at 22, 24, 26 (2008); LINDA MULLINEX, MASS TORT LITIGATION 476 (2nd ed. 2008); 1 ATLA'S LITIGATING TORT CASES § 3:10, n.3 (2004, 2009, 2011); GEOFFREY HAZARD, SUSAN KONIAK, ROGER CRAMTON, GEORGE COHEN & W. BRADLEY WENDEL, THE LAW AND ETHICS OF LAWYERING 699 (4th ed., 2005), 702 (5th ed. 2010); 43 Akron L. Rev. 1107 at 1114 n.46 (2010); 45 Wake Forest L. Rev. 1157 at 1161 n.25 (2010); 43 Akron L. Rev. 1107, at 1114 n.46 (2010); 36 Am. J. Trial Advoc. 1 at 6 n. 32 (2012).

Mandatory Fee Arbitration Under New York's Matrimonial Rules, 3 Cardozo Online J. of Conflict Resolution 1-45 (2001). Accessible at <http://ssrn.com/abstract=1012084>.

Game Theory and Nonrefundable Retainers: A Response to Professors Croson and Mnookin, 2 Harv. Negotiation L. Rev. 69-86 (1997), co-authored with Lawrence Cunningham. **Cited In:** *Cotton v. Kronenberg*, 111 Wn. App. 258 at 270 (2002); 57 Bus. Lawyer 1421 at 1449 (2002); *Agusta & Ross v. Trancamp Contracting Corp.*, 751 N.Y.S. 2d 155, at 158 (N.Y.C. Civ. Ct. 2002); 10 Harv. Negotiation L. Rev.1 at 8 (2005); JOHN W. HALL, JR., PROFESSIONAL RESPONSIBILITY IN CRIMINAL DEFENSE PRACTICE § 7:9 at n.1 (2005); GEOFFREY HAZARD, SUSAN KONIAK, ROGER CRAMTON, GEORGE COHEN & W. BRADLEY WENDEL, THE LAW AND ETHICS OF LAWYERING 786 (5th ed. 2010).

Contingency Fee Abuses, Ethical Mandates and the Disciplinary System: The Case Against Case-by-Case Enforcement, 53 Wash. & Lee L. Rev. 1339-1379 (1996). **Cited In:** **Law Reviews, Bar Ass'n Opinions and Others:** 47 DePaul L. Rev. 439 (1998); 47 DePaul L. Rev.

371, at 400, 402 (1998); 66 Fordham L. Rev. 1431 (1998); 11 Geo. J. Legal Ethics 238, at 241 (1998); 47 DePaul L. Rev. 373 (1998); 47 DePaul L. Rev. 439 (1998); KANSAS BAR ASS'N ETHICS OP. LEO 98-06 (9/25/98); 41 Boston College L. Rev. 20 (1999); 67 U. Chicago L. Rev. 207 (2000); DEBORAH RHODE, IN THE INTERESTS OF JUSTICE 174 (2000); 87 Iowa L. Rev. 971, at 1022 (2002); 44 Ariz. L. Rev. 829, at 862, 865 (2002); 16 Geo. J.L.E. 767 at 783 (2003); 2003 U. Ill. L. Rev. 1505, at 1517 (2003); 37 Ind. L. Rev. 65, at 135 (2003); 37 Ind. L. Rev. 65, at 135 (2003); 1 Geo. J. L. & Pub. Pol. 327, at 329-30, 335 (2003); 27 J. Legal Prof. 131, at 137 (2003); 27 J. Legal Prof. 131, at 137 (2003); 82 North Carolina L. Rev. 759, at 790 (2004); 37 Creighton L. Rev. 305, 334 (2004); 82 N.C. L. Rev. 759 at 790 (2004); 27 Seattle L. Rev. 805, at 826 (2004); 54 DePaul L. Rev. 233, at 245 (2005); 12 Conn. Ins. L.J. 349 at 421, 439 (2005-2006); 60 Okla. L. Rev. 647 at 697 (2007); ABA ANNO. MODEL RULES OF PROF. CONDUCT 81, (6th ed. 2007); 61 S. Carolina L. Rev. 287 at 330 n.301 (2009); 54 N.Y. L. Sch. L. Rev. 773 at 805, 806 (2010); 39 J. Legal Studies 245 at 247 (2010); 77 Tenn. L. Rev. 653 at 658 nn.54-55, 660 nn.71-73, 79-80, 662 n.98, 666 nn.134-142, 667 nn.146-147, 149-150, 669 nn.170-177 (2010); 74 L. & Contemp. Prob. 1 at 2 n.4, 29 n.81 (2011); 86 N.Y.U. L. Rev. 805 at 855 (2011); 87 N.Y.U. L. Rev. 1273 at 1330 n. 276 (2012).

Casebooks, Treatises, Restatements, etc.: GEOFFREY HAZARD & WILLIAM HODES, THE LAW OF LAWYERING (3d. ed.) 8-69 (2003 Supp.); NATHAN CRYSTAL, PROFESSIONAL RESPONSIBILITY 222 (3d. ed. 2004); MARC A. FRANKLIN, ROBERT L. RABIN & MICHAEL D. GREEN, TORT LAW AND ALTERNATIVES – CASES AND MATERIALS 718 (8th ed. 2006); DEBORAH RHODE & GEOFFREY HAZARD, PROFESSIONAL RESPONSIBILITY AND REGULATION 197 (2002), 216 (2d. ed. 2007); ABA ANNO. MODEL RULES OF PROF. CONDUCT, Rule 1.5 at subsection (c) (6th ed. 2007); GEOFFREY HAZARD, SUSAN KONIAK, ROGER CRAMTON, GEORGE COHEN & W. BRADLEY WENDEL, THE LAW AND ETHICS OF LAWYERING 515 (1999), 770 (4th ed. 2005), 798 (5th ed. 2010); DEBORAH RHODE, DAVID LUBAN & SCOTT CUMMINGS, LEGAL ETHICS 689 (3d. ed. 2001), 805 (4th ed. 2004), 839 (5th ed. 2009), 801 (6th ed. 2013).

Cases: *Schweizer v. Mulvehill*, 93 F. Supp. 376 (S.D.N.Y., 2000); *In re: Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation*, 290 F. Supp.2d 840, at 851 n.13 (N.D. Ohio, 2003).

ABA Regulation of Contingency Fees: Money Talks, Ethics Walks, 65 Fordham L. Rev. 247-335 (1996). **Cited In:**

Law Reviews, Bar Ass'n Opinions and Others: 65 Fordham L. Rev. 39, at 242, 337, 469 (1996); 49 Rutgers L. Rev. 549 (1997); 47 DePaul L. Rev. 439 (1998); 47 DePaul L. Rev. 272 (1998); 47 DePaul L. Rev. 372, at 381, 404-07, 410 (1998); 11 Geo. J. Legal Ethics 239, 242-244 (1998); 47 DePaul L. Rev. 373 (1998); 47 DePaul L. Rev. 439 (1998); 22 Seattle Univ. L. Rev. 83 (1998); Wash. U.L.Q. 1413 (1998); 1 Legal Ethics 70 at 74 (1998); 47 Kan. L. Rev. 822 (1999); 2 J. Inst. Stud. Legal Eth. 255, at 264 (1999); 50 Case W. L. Rev. 9 (1999); 109 Yale L.J. 1444 (2000); 31 Loy. U. Chi. L.J. 613 (2000); 84 Minn. L. Rev. 1127 (2000); 28 BNA Products Safety & Liability Rep., at 917 (Oct. 2, 2000); 74 Tul. L. Rev. 2089, at n.91 (2000); 33 Ariz. St. L.J. 455 (2000); 24 Harv. J. L. & Pub. Pol'y 398 (2001); 64 Law & Contemp. Prob. 175 (2001); 50 Drake L. Rev. 315, at 321 (2002); 49 UCLA L. Rev. 991, at 1043, 1098 (2002); 30 Hofstra L. Rev. 767, at 771 (2002); 80 Texas L. Rev. 1829, at 1830 (2002); 15 Georgetown J. Legal Ethics 759, at n.86 (2002); 81 Texas L. Rev. 405 at 442 (2002); 80 Wash. U.L.Q. 739, 739 n.3, 757 n.60 (2002); 16 Geo. J.L.E. 223 at 247 (2003); 24 Cardozo L. Rev. 1361, at 1382 (2003); 37 U.C. Davis L. Rev. 567, at 591 (2003); 82 North Carolina L. Rev. 759, at 790 (2004); 37 Creighton L. Rev. 305, at 334 (2004); 82 N.C. L. Rev. 759, at 790 (2004); 54 Duke L.J. 447, at 482 (2004); 2005 U. Ill. L. Rev. 903, at 903 (2005); 34 Common Law World Rev. 201, 202 (2005); 57 Rutgers L. Rev. 839, at 866 (2005); 35 Hofstra L. Rev. 437 at 512 (2006); 19 Geo. J. Legal Ethics 111 at 136 (2006); 35 Hofstra L. Rev. 437 at n.395 (2006); 29 Sydney L. Rev. 5 at 34 (2007); 85 Tex. L. Rev. 1465 at n.136 (2007); 86 Or. L. Rev. 533 at 578 (2007); 25 Santa Clara Computer & High Tech. L. J. 159 at 166 n.20 (2008); 25 Santa Clara Computer & High Tech. L.J. 159 at 166 n.20 (2008); 39 J. Legal Studies 245 at 247 (2010); 54 N.Y. L. Sch. L. Rev. 773 at 780, 789, 797 (2010); 158 U. Pa. L. Rev. 2043, at 2045 n.9 (2010); 35 J. Legal Prof. 157 at 166 n.77 (2010); 37 Fla. St. U.L. Rev. 717 at 729 n.75 (2010); 74 L. & Contemp. Prob. 1 at 10, n.35 (2011); 41 Pub. Cont. L.J. 813 at 843, n. 251 (2012); 61 Am. U.L. Rev. 1729 at 1758 n. 169, 1763 n. 198 (2012); 41 Pub. Cont. L.J. 813 at 843 n. 251 (2012); 44 Ariz. St. L.J. 1575 at 1593 n. 125 (2012).

Casebooks, Treatises, Restatements etc.: COCHRAN, JR. & COLLETT, THE RULES OF THE LEGAL PROFESSION 261 (1996); THOMAS MORGAN & RONALD ROTUNDA, PROFESSIONAL RESPONSIBILITY 166 (7th ed. 2000); DEBORAH RHODE, IN THE INTERESTS OF JUSTICE 179 (2000); COCHRAN, JR. & COLLETT, THE LEGAL

PROFESSION 251 (2nd ed. 2003); GEOFFREY HAZARD & WILLIAM HODES, THE LAW OF LAWYERING (3d. ed.) 8-70 (2003 Supp.); NATHAN CRYSTAL, PROFESSIONAL RESPONSIBILITY 222 (3d. ed. 2004); RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, PROFESSIONAL RESPONSIBILITY - A STUDENT GUIDE 156 (2005); ABA ANNO. MODEL RULES OF PROF. CONDUCT 82, (6th ed. 2007); MARGARET RAYMOND, THE LAW AND ETHICS OF LAW PRACTICE 321 (2009); STEPHEN GILLERS, REGULATION OF LAWYERS 181 (6th ed. 2002), 148 (7th ed. 2005), 174 (8th ed. 2009); GEOFFREY HAZARD, SUSAN KONIAK, ROGER CRAMTON, GEORGE COHEN & W. BRADLEY WENDELL, THE LAW AND ETHICS OF LAWYERING 518 (1999), 789 (4th ed. 2005), 802 (5th ed. 2010); RONALD ROTUNDA & JOHN DZIENKOWSKI, LEGAL ETHICS, LAW. DESKbk. PROF. RESP. § 6.33 (2002-03 ed.), § 1.5-3 (2006-07 ed.), § 1.5-3 (2009-2010, 2010-11, 2011-12 eds.).

Cases: *In re: Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation*, 290 F. Supp.2d 840, at 852 n.15 (N.D. Ohio, 2003).

Nonrefundable Retainers: A Response to Critics of the Absolute Ban, 64 U. Cin. L. Rev. 11-70 (1995), co-authored with Lawrence Cunningham. **Cited In:**

Law Reviews, Bar Ass'n Opinions and Others: Ohio Bd. Com. Griev. Disp. Opinion 96-4 (June 14, 1996); 100 Dick. L. Rev. 511 (1996); 47 DePaul L. Rev. 387 (1998); Report and Recommendation, 22 J. Legal Prof. 367-369 (1998); *Levisohn, Lerner, Berger & Langsam v. Medical Taping Systems, Inc.*, 20 F. Supp. 2d 645, at 650, 652, 654 (S.D.N.Y. 1998); 67 Fordham L. Rev. 450 (1998); 12 Geo. J. L.E. 479 (1999); 1 Fla. Coastal L. J. 293, at 296, 297 (1999); 3 MEALEY'S ATTORNEY FEES no. 4, at 22 (Nov. 2000); 33 Vand. J. Transnat'l L. 827 (2000); 57 Bus. Lawyer 1421, at 1449 (2002); ANDREW KAUFMAN & DAVID WILKINS, PROBLEMS IN PROFESSIONAL RESPONSIBILITY FOR A CHANGING PROFESSION 504-05 (4th ed. 2002); Robert Rossi, 1 Attorneys' Fees § 1.3 at n.1; 102 ALR 5th 253 (2002); GEOFFREY HAZARD & WILLIAM HODES, THE LAW OF LAWYERING 8-66 (3d. ed. 2002 Supp.); 43 Am. Bus. L.J. 173 at 195 (2006); JOHN W. HALL, JR., PROFESSIONAL RESPONSIBILITY IN CRIMINAL DEFENSE PRACTICE § 7:9 at n.1 (2005, 2011 eds.); ABA ANNO. MODEL RULES OF PROF. CONDUCT, Rule 1.5 at subsection (b) (6th ed. 2007); STEPHEN GILLERS, REGULATION OF LAWYERS 164-65 (8th ed. 2009); 61 S. Carolina L. Rev. 287 at 319 nn.234-236 (2009); 23 Emory Int'l L. Rev. 469, at 548 n.228 (2009); GEOFFREY HAZARD, SUSAN KONIAK, ROGER CRAMTON, GEORGE COHEN & W. BRADLEY WENDELL, THE LAW AND ETHICS OF LAWYERING 786 (5th ed. 2010); 23 Geo. J. Legal Ethics 701 at 701 n.6, 702 n.15, 703 nn.24-25, 705 nn.42, 45-46, 709 nn.82-83, 714 nn.113-115 (2010).

Cases: *Kelly v. MD Buyline, Inc.*, 2 F. Supp.2d 420 at 445-47, 449-50 (S.D.N.Y. 1998); *In re Dawson*, 8 P.3d 856, at 859 (2000); *Agusta & Ross v. Trancamp Contracting Corp.*, 751 N.Y.S. 2d 155, at 158 (N.Y.C. Civ. Ct. 2002); *Michigan Att'y Discipline Board v. Cooper*, Case No. 06-36-GA at 25, (Sept. 17, 2007); *McQueen, Rains & Tresch LLP v. CITGO Petroleum Corp.*, Case No. 07-CV-0314-CVE-PJC, 2008 WL 199895 at *9 (Jan. 22, 2008).

Living with the Ban on Nonrefundable Retainers: Cooperman's Scope, Meaning and Consequences, 66 N.Y.S. Bar J. 50-54 (1994), co-authored with Lawrence Cunningham. **Cited In:** 17 Cardozo L. Rev. 725 (1996); Report and Recommendation, *Kelly v. MD Buyline, Inc.*, 2 F. Supp. 2d 420, at 449 (1998); 22 J. Legal Prof. 366 (1998); 6 Hawaii Bar J. 6, at n.14 (Mar. 2002); 7 N.Y. JUR. 2D. ATTORNEYS AT LAW §185 at n.61 (2003); 102 ALR 5th 253 (2002).

On The Relevance of the Admissibility of Scientific Evidence: Tort System Outcomes Are Principally Determined by Lawyers' Rates of Return, 15 Cardozo L. Rev. 1755-1797 (1994).

Cited In: 22 Hofstra L. Rev. 627 (1994); *Matter of Rhone-Poulenc Rorer, Inc.*, 51 F. 3d 1293, at 1298 (7th Cir. 1995); 2 Geo. Mason L. Rev. 163 at n.13 (1995); 64 Ford. L. Rev. 2353 (1996); 45 Emory L. Rev. 524, at 527, 533, 546, 569, 571, at 581 (1996); 21 Yale J. Int'l Law 179 (1996); 167 F.R.D. 519 (1996); 91 N.W. U.L. Rev. 1089 (1997); Wisc. Lawyer 11 (Aug. 1997); 47 De Paul L. Rev. 229 (1998); 47 DePaul L. Rev. 268 (1998); 32 Val. L. Rev. 954 (1998); 101 W. Va. L. Rev. 337 (1998); 1998 19 N.W. J. Int. Law & Business 298 (1999); 4 Mich. St. U. J. Med. & L. 1 at 7 n.157 (1999); 1 Nevada L.J. 274 at 318 (2001); 80 Texas L. Rev. 1943, at 1976 (2002); 80 Wash. U.L.Q. 739, 739 n.3 (2002); 71 Geo. Wash. L. Rev. 1, at 65 (2003); ROBERT JOOST, AUTO INSUR. AND NO-FAULT LAW 2d § 3:2 at n.5 (2002); 78 N.Y.U.L. Rev. 1357, at 1411, 1428 (2003); 55 Emory L.J. 279 at 324 (2006); 27 Cardozo L. Rev. 2433 at 2434 (2006); 79 Temp. L. Rev. 773 at 775 (2006); 56 DePaul L. Rev. 293 at 305 (2007); 85 Tex. L. Rev. 1465 at n.136 (2007); SN009 ALI-ABA CLE 2303 at 2375 n.5 (July 2007); 33 Law & Soc. Inquiry 1045 at 1046 (2008); 37 Sw. U. L. Rev. 691 at 696 (2008); 57 Buff. L. Rev. 959 at 1005,

n.240 (2009), 42 Cornell Int'l L.J. 241, 268 n. 265 (2009); 33 J. Legal Prof. 301 at 301 n. 6 (2009); 39 J. Legal Studies 245 at 247 (2010); 96 Minn. L. Rev. 28 at 36 n.47 (2011); 37 Brook J. Int'l L. 751 at 779 n. 160 (2012); 2012 U. Ill. L. Rev. 1787 at 1789 n. 7 (2012).

Rethinking Contingency Fees: A Proposal To Align The Contingency Fee System with its Policy Roots and Ethical Mandates, (1994), monograph co-authored with Michael Horowitz and Jeffery O'Connell: **Cited In:**

Law Reviews, Bar Ass'n Opinions and Others: 88 N.W. L. Rev. 528 (1994); Trial, Apr. 1994 at 7; Best's Review P/C 38 (July 1994); 44 Case West. L. Rev. 713 (1994); 74 B.U. L. Rev. 775 (1994); 854 PLI 447 (1994); 61 Def. Couns. L. Rev. 184 (1994); 68 Tulane L. Rev. 1409, at 1455 (1994); Trial, Oct. 1994, at 9; 80 ABA J. 12 (1994); Testimony of Arthur Levitt, Jr., Chairman SEC, before the Subcommittee on Telecommunications & Finance of the House Committee on Energy and Commerce, July 22, 1994; ABA Formal Op. 94-389, at 8,10; 74 Boston Univ. L. Rev. 150 (1994); 74 B.U.L. Rev. 748 (1994); Army Lawyer 60 (Aug. 1994); 6 S. Carolina Lawyer 8 (1994); PLI No. B4-7070 (Aug. 15-16, 1994); 61 J. Risk & Ins. 732 (1994); 47 Rutgers L. Rev. 1177(1995); C 977 ALI-ABA 170 (1995); 907 PLI/Corp 221, at n.47 (Nov. 1995); 44 Emory L.J. 173, at 193 (1995); 1 Ct. Ins. L.J. 33, at n.58 (1995); 80 Cornell L. Rev. 978, 983 (1995); 71 Chicago-Kent L. Rev. 628, at 631, 651 (1995); 51 Bus. Law. 337, at (1996); 15 Health Affairs 209 (1996); 30 Ga. L. Rev. 678 (1996); 25 J. Legal Stud. 530 (1996); 71 NYU L. Rev. 306, 352 (1996); 49 SMU L. Rev. 1640, 1643, 1660, 1666-68 (1996); 15 Yale L. & Policy L. Rev. 234 (1996); 49 Ark. L. Rev. 722 (1997); 1997 Wisc. L. Rev. 771 (1997); 26 J. Legal Stud. 275 (1997); 23 Wm. Mitchell L. Rev. 48 (1997); 62 Alb. L. Rev. 667 (1998); 52 U. Miami L. Rev. 810 (1998); 32 Val. L. Rev. 943 (1998); 47 DePaul L. Rev. 229 (1998); 47 DePaul L. Rev. 468 (1998); 47 DePaul L. Rev. 426, at 441 (1998); 47 DePaul L. Rev. 268 (1998); 47 DePaul L. Rev. 373, 376, 380, 392, 404, 408 (1998); 71 S. Cal. L. Rev. 1273 (1998); 84 Va. L. Rev. 1029 (1998); 37 Washburn L. Rev. 323 (1998); 11 Geo. J. Legal Ethics 232, at 235 (1998); 1998 Wis. L. Rev. 87 (1998); 16 Yale L. & Pol'y Rev. 276 (1998); 47 DePaul L. Rev. 427, 441 (1998); 101 W. Va. L. Rev. 328, 335, 337, 374, 378, (1998); 71 N.Y.S. Bar Ass'n J. 51, 54 (Apr. 1999); 35 Hous. L. Rev. 1630 (1999); 47 Kan. L. Rev. 822 (1999); 19 N.W. J.Int. Law & Bus. 275, 279, 292, 293, 295, 298, 299 (1999); 2 J. Inst. Stud. Leg. Ethics 223 (1999); 16 Ariz. J. Int. & Comp. L. 389 (1999); 49 DePaul L. Rev. 495 (1999); 33 Law & Soc'y Rev. 751 (1999); 14 Notre Dame J. Law, Ethics & Pub. Pol. 624-26, 628-29, 631, 647 (2000); 109 Yale L.J. 1444, 1472, 1490 (2000); 31 Loy. U.Chi. L.J. 616, at 626 (2000); Ct. Ins. L.J. 425, at 431 (2000); 148 U. Pa. L. Rev. 2123 (2000); 24 Harv. J.L. & Pub. Pol'y 399 (2001); 76 N.Y.U.L. Rev. 689 (2001); 64 Law & Contemp. Prob. 175, at 191-92 (2001); 87 Cornell L. Rev. 122 (2001); 76 Notre Dame L. Rev. 1076 (2001); 50 Drake L. Rev. 315, at 318, 321 (2002); 80 Texas L. Rev. 1829, at 1831 (2002); 80 Texas L. Rev. 1943, at 1976 (2002); 88 Va. L. Rev. 1989, 2007, at n.40 (2002); 80 Wash. U.L.Q. 739, at 739 n.3, 777 n.97 (2002); 81 Texas L. Rev. 405 at 442 (2002); 78 N.Y.U.L. Rev. 1357, at 1430 (2003); 27 Seattle L. Rev. 805, at 820 (2004); 54 Duke L.J. 447, at 467, 482 (2004); 88 Marq. L. Rev. 1013, at 1026 (2005); 6 Sedona Conf. J. 173 (2005); 24 Quinn. L. Rev. 423, at 426 (2006); 19 Geo J. Legal Ethics 111 at 136, 140 (2006); 31 J. Health Pol. Pol'y & L. 531 at 531 (2006); 31 Law & Soc. Inquiry 711 at 713 (2006); 51 N.Y.L.S. L. Rev. 345 at 367 (2006-07); 85 Tex. L. Rev. 1465 at n.136 (2007); 54 N.Y. L. Sch. L. Rev. 773 at 775, 789, 805, 806 (2010); 37 Fla. St. U.L. Rev. 717 at 727 n. 62, 729 n.75 (2010); 99 Geo. L.J. 65, at 84 n.91 (2010); TSUI03 ALI-ABA 43, Nov. 1, 2012 at n. 84 (2012); 85 Temp L. Rev. 185 at 196 n. 117 (2012); 2 J.L.: Periodical Laboratory of Leg. Scholarship 349 at n. 53 (2012).

Casebooks, Treatises, Restatements, etc.: DEBORAH RHODE, PROFESSIONAL RESPONSIBILITY 855 (1994); MARY ANN GLENDON, A NATION UNDER LAWYERS 54 (300) (1994); ROY SIMON & MURRAY SCHWARTZ, LAWYERS AND THE LEGAL PROFESSION 588-89 (1994); JACK B. WEINSTEIN, INDIVIDUAL JUSTICE IN MASS TORT LITIGATION 74 n.142, 80 n.171, 81 nn.174-175, 169 n.22 (1995); C977 ALI-ABA 141 at n.36 (Jan. 12, 1995); ABA/BNA Lawyer's Man. of Prof. Conduct 41:920 (1995); 907 PLI/Corp 221, at 247 (Nov. 1995); NATHAN CRYSTAL, PROFESSIONAL RESPONSIBILITY 268-69 (1996); SCHWARTZ, WYDICK & PERSCHBACHER, PROBLEMS IN LEGAL ETHICS 133, 135 (4th ed. 1997); BELL & O'CONNELL, ACCIDENTAL JUSTICE 216 (1997); PAUL G. HASKELL, WHY LAWYERS BEHAVE AS THEY DO 103 (1998); DEBORAH RHODE, IN THE INTERESTS OF JUSTICE 180 (2000); ROBERT KAGAN, ADVERSARIAL LEGALISM 290 (2001); RICHARD A. ZITRIN & CAROL M. LANGFORD, LEGAL ETHICS IN THE PRACTICE OF LAW 101 (2nd ed. 2001); RICHARD EPSTEIN, CASES AND MATERIALS ON TORTS 300 (6th ed. 1995), 803 (8th ed. 2004); STEVEN SHAVELL, FOUNDATIONS OF

ECONOMIC ANALYSIS OF LAW 437 (2004); RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, PROFESSIONAL RESPONSIBILITY-A STUDENT GUIDE 156 (2005), THOMAS MORGAN & RONALD ROTUNDA, PROFESSIONAL RESPONSIBILITY 115 (6th ed. 1995), 143 (7th ed. 2000), 108 (8th ed. 2003), 111 (9th ed. 2006); DEBORAH RHODE & GEOFFREY HAZARD JR., PROFESSIONAL RESPONSIBILITY AND REGULATION 216, 218 (2d. ed. 2007); STEPHEN C. YEAZELL, CIVIL PROCEDURE 295 (6th ed. 2004), 300 (7th ed. 2008); STEPHEN GILLERS, REGULATION OF LAWYERS 148, 151 (4th ed. 1995), 180-81 (6th ed. 2002), 147-48 (7th ed. 2005), 173 (8th ed. 2009); GEOFFREY HAZARD, SUSAN KONIAK, ROGER CRAMTON, GEORGE COHEN & W. BRADLEY WENDELL, THE LAW AND ETHICS OF LAWYERING 517 (1999), 788 (4th ed. 2005); 801 (5th ed. 2010); RUSSELL PEARCE, DANIEL CAPRA & BRUCE GREEN, PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH 251 (2011); RONALD ROTUNDA & JOHN DZIENKOWSKI, LEGAL ETHICS, LAW. DESKbk. PROF. RESP. § 6-3.3 (2002-03 ed.), § 1.5-3 (2005-06, 2006-07, 2009-2010, 2010-11, 2011-12 eds.); JOHN NOONAN & RICHARD PAINTER, PROFESSIONAL AND PERSONAL RESPONSIBILITIES OF THE LAWYER 70 (2nd ed. 2001), 94-95 (3rd ed. 2011); 2 SUCCESSFUL PARTNERING BETWEEN INSIDE AND OUTSIDE COUNSEL § 43:16 (2011); DEBORAH RHODE, DAVID LUBAN & SCOTT CUMMINGS, LEGAL ETHICS 699, 701, 702 (2d ed. 1995), 689 (3d ed. 2001), 805 (4th ed. 2004), 839 (5th ed. 2009), 801 (6th ed. 2013).

Cases: *In re Joint E. & S. Dist. Asbestos Litigation*, 878 F. Supp. 473, at 558, 559, 561 (1995).

Nonrefundable Retainers Revisited, 72 N.C. L. Rev. 1-54 (1993), co-authored with Lawrence Cunningham. Cited In:

Law Reviews, Bar Ass'n Opinions and Other: 46 Mercer L. Rev. 311, at 320 (1994); *Virginia Legal Ethics Op. 1606* (Nov. 22, 1994); 19 J. Legal Prof. 395, at 399 (1994); 71 Chicago-Kent L. Rev. 666 (1995); 18 UALR L. Rev. 107, at 107-111, 113, 114, 119 (1995); 9 Georgetown J. Legal Ethics 588, 590, 591 (1996); Dist. Col. Bar Op. 264 (Mar. 1996); 17 Cardozo L. Rev. 723-25, 728-29, 731, 735 (1996); 1 Harv. Negotiation L. Rev. 72 (1996); *Ohio Bd. Com. Griev. Disp. Opinion 96-4* (June 14, 1996); 16 No. 2 FairShare 3 (1996); 16 No. 4 FairShare 4 (1996); 22 J. Legal Prof. 365, 368 (1998); 101 W. Va. L. Rev. 376 (1998); 67 Fordham L. Rev. 450 (1998); 35 Hous. L. Rev. 1561 (1999); 19 N.W. J. Int. Law & Bus. 305 (1999); PLI No. H0-003Q (June 1999); 12 Geo J. L.E. 479 (1999); 1 Fla. Coastal L.J. 293-95, 299, 342-43, 358 (1999); 1999 Utah L. Rev. 240 (1999); 3 MEALEY'S ATTORNEY FEES no. 4, at 22 (Nov. 2000); 33 Vand. Transnat'l L. 827 (2000); 25 J. Legal Prof. 196, 198 (2001); 81 Tex. L. Rev. 405, at 515 (2002); 57 Bus. Lawyer 1421, at 1449 (2002); 2008 WL 199895 at *4, *9 (2008); *Okla. Bar Ass'n Ethics Op 317* at n.8 (Dec. 13, 2002); 61 Baylor L. Rev. 174, 186 n.56 (2009); 61 S. Carolina L. Rev. 287 at 318 n.225 (2009); 23 Geo. J. Legal Ethics 701 at 701 n.6, 705 n.42, 706 n.53 (2010); *Meyer et al. v. Vista Maro*, 2011 N.Y. Misc. LEXIS 582 at **7 (Jan. 18, 2011); *Meyer, Suozzi, English & Klein, P.C., v. Vista Maro, LLC*, N.Y. Sup. Ct. Nassau Cnty., Jan. 12, 2011.

Casebooks, Treatises, Restatements, etc.: ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT 45:111 (1993); ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT CURRENT REP. Mar. 23, 1994 at 54; BNA CRIMINAL PRACTICE MANUAL, CURRENT REP. Apr. 13, 1994 at 172, 174; ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT CURRENT REP. June 15, 1994 at 150; THOMAS MORGAN & RONALD ROTUNDA, PROFESSIONAL RESPONSIBILITY 136 (6th ed. 1995), 167 (7th ed. 2000); ALI RESTATEMENT OF THE LAW, THE LAW GOVERNING LAWYERS, Ch. 3, §34, comment e at 254 (2000); DEBORAH RHODE & GEOFFREY HAZARD, PROFESSIONAL RESPONSIBILITY AND REGULATION 196-97 (2002); GEOFFREY HAZARD & WILLIAM HODES, THE LAW OF LAWYERING III (2nd ed. 1993), 8-66 (3d ed., 2002 Supp.); ROBERT ROSSI, ATTORNEYS' FEES § 1.3 at n.1 (2003); 102 ALR 5th 253 (2002); 2A; NORTH CAROLINA INDEX 4th ATTORNEYS AT LAW § 56 at n.64 (2003); NATHAN CRYSTAL, PROFESSIONAL RESPONSIBILITY 277 (1996), 80 (3d. ed. 2004); LISA LERMAN & PHILIP SCHRAG, ETHICAL PROBLEMS IN THE PRACTICE OF LAW 449 (2005); JOHN W. HALL, JR., PROFESSIONAL RESPONSIBILITY IN CRIMINAL DEFENSE PRACTICE § 7:9 at fn 1 (2005, 2011 eds.); ABA ANNO. MODEL RULES OF PROF. CONDUCT 80, (6th ed. 2007); STEPHEN GILLERS, REGULATION OF LAWYERS 134, 137 (4th ed. 1995), 170 (6th ed. 2002), 141 (7th ed. 2005), 164 (8th ed. 2009); GEOFFREY HAZARD, SUSAN KONIAK, ROGER CRAMTON, GEORGE M. COHEN & W. BRADLEY WENDELL, THE LAW AND ETHICS OF LAWYERING 502 (1st ed. 1999), 772 (4th ed. 2005), 786 (5th ed. 2010); JOHN NOONAN & RICHARD PAINTER, PROFESSIONAL AND PERSONAL RESPONSIBILITY OF THE LAWYER 64 (2nd ed. 2001), 90 (3d ed. 2011); DEBORAH RHODE & DAVID LUBAN, LEGAL ETHICS 683 (3d. ed. 2001), 797 (4th ed. 2004), 831 (5th ed. 2009), 792 (6th ed. 2013).

Cases: *Kin Cheung Wong v. Kennedy*, 853 F. Supp. 79, at 80 (1994); *Matter of Cooperman*, 83 NY2d 465, at 472, 476 (N.Y.Ct. App. 1994); *Cohen v. Radio-Elec. Off. Union*, 275 N.J. Super. 241, at 265,

266 (1994); *In re: Gray's Run Technologies*, 217 B.R. 48 at 52, 55 (1997); *Iowa Sup. Ct. Bd. Prof. Ethics & Conduct v. Aplands*, 577 N.W. 2d 50, at 54-57 (1998); Report and Recommendation, *Kelly v. MD Buyline, Inc.*, 2 F. Supp. 2d 420, at 445-451 (S.D.N.Y. 1998); *Levisohn, Lerner, Berger & Langsam v. Medical Taping Systems, Inc.*, 20 F. Supp. 2d 645, at 650-654 (S.D. N.Y. 1998); *In re Miles*, 516 S.E.2d 661, at 664 (S.C. Sup. Ct. 1999); *In re Hayes*, 183 F. 3d 162, at 170 (2d Cir. 1999); *In re Sather*, 3P.3d 403, at 410, 411 (Colo. Sup. Ct. 2000); *Agusta & Ross v. Trancamp Contracting Corp.*, 751 N.Y.S. 2d 155, at 158 (N.Y.C. Civ. Ct. 2002); *Selective Ins. Co. v. Smith et al.*, N.Y.L.J., Mar. 6, 2003 at 22 (Sup. Ct. 1st Dep't., 2003); *Iowa Supreme Court Bd. of Prof. Ethics & Conduct v. Frerichs*, 671 N.W.2d, at 476, 477 (Ia. 2003); *U.S.A v. Parker*, 2006 U.S. App. LEXIS 4092, at *48 (2006); *McQueen, Rains & Tresch, LLP v. CITGO Petroleum Corp.*, 2008 U.S. Dist. LEXIS 4952, at *10, *28 (2008).

Has the Office of Thrift Supervision Changed the Relevant Ethics Rules by its Actions in the Kaye, Scholer Matter?, in *The Attorney-Client Relationship After Kaye, Scholer*, Practicing Law Institute 79-91 (1992). **Cited In:** 66 So. Calif. L. Rev. 1020 (1993); 66 So. Calif. L. Rev. 1014 (1993); 66 So. Calif. L. Rev. 1171, at 1189 (1993); 66 Geo. Wash. L. Rev. 296 (1994); 82 Calif. L. Rev. 716 (1994); 63 Geo. Wash. L. Rev. 221, at 236 (1995); 57 Bus. Law. 1421 at 1430 at (2002).

The Asbestos Claims Management Act of 1991: A Proposal To The United States Congress, 13 Cardozo L. Rev. 1891-1917 (1992). **Cited In:** 2 Legal Malpractice Rep. 17 (1991); 6-20 MEALEY'S LITIG. REP. ASB. 7 (Nov. 1991); 6-21 MEALEY'S LITIG. REP. ASB. 26 (Dec. 1991); 13 Card. L. Rev. 1919 (1992); 13 Card. L. Rev. 1949 (1992); 13 Card. L. Rev. 1958, at 1962, 1964 (1992); 13 Card. L. Rev. 1967, at 1987 (1992); 44 Stanford L. Rev. 817 (1992); 15 Harv. J. Law & Pub. Policy 593 (1992); 59 Bklyn L. Rev. 963 (1993); 31 Col. J. Transnational Law 226 (1993); 15 Card. L. Rev. 2217 (1994); JACK B. WEINSTEIN, INDIVIDUAL JUSTICE IN MASS TORT LITIGATION 164 n.6, 165, 168 n.18, 303 n.7 (1995); LINDA MULLINEX, MASS TORT LITIGATION 1029 (1996); 64 Ford. L. Rev. 2365 (1996); 94 Mich. L. Rev. 978 (1996); 71 N.Y.U. L. Rev. 302 (1996); 85 Geo. L. Rev. 312 (1996); 47 DePaul L. Rev. 433 (1998); 87 Geo. L.J. 2019 (1999); 148 U. Pa. L. Rev. 2192 (2000); 36 Wake Forest L. Rev. 942 (2001); 56 Vand. L. Rev. 1949 at 1976-77 (2003); 72 Fordham L. Rev. 1219, at 1267 (2004); 72 Fordham L. Rev. 1219, at 1267-68 (2004); 62 NYU Ann. Surv. Am. L. 223 at 231 (2006); 2 ENVTL. INS. LIT. L. & PRAC. § 27:8 at 498-500 (2006); 26 Rev. Litig. 583 at 598 (2007); 34 Law & Soc. Inquiry 5 at 5 (2009).

The Asbestos Litigation Crisis: Is There a Need for An Administrative Alternative?, 13 Cardozo L. Rev. 1819-1889 (1992). **Cited In:**

Law Reviews, Bar Ass'n Opinions and Other: 13 Card. L. Rev. 1963 (1992); 44 Stanford L. Rev. 817 (1992); 15 Harv. J. Law & Pub. Policy 541, at 558, 566 (1992); 26 Ga. L. Rev. 652 (1992); 42 Duke L. J. 39 (1992); 61 Ford. L. Rev. 620, at 621 (1992); 31 Col. J. Transnational Law 226 (1993); 68 Tul. L. Rev. 240 (1993); 30 S.D.L. Rev. 279 (1993); 30 Harv. J. Legis. 388, 390, 394, 400 (1993); 52 Md. L. Rev. 1011 (1993); 59 Bklyn L. Rev. 1092 (1993); 88 N.W. L. Rev. 527 (1994); 41 UCLA L. Rev. 1337, 1362, 1396 (1994); 15 Card. L. Rev. 2217 (1994); 20 Am. J. L. & Med. 257 (1994); 104 Yale L.J. 376 (1994); 19 J. Law & Soc. Inquiry 58 (1994); 73 Oregon L. Rev. 506, 528 (1994); 39 Vill. L. Rev. 420, at 421 (1994); 73 Tex. L. Rev. 1633, 1645 (1995); 32 Am. Bus. L. J. 625 (1995); 80 Cornell L.R. 973 (1995); 80 Cornell L.R. 1176, 1212 (1995); 17 Cardozo L. Rev. 586, at 618-19 (1996); 41 N.Y.L.Sch. L. Rev. 526 (1997); 16 Quin. L. Rev. 365 (1997); 97 Colum. L. Rev. 2145 (1997); 31 Loyola L.A. L. Rev. 528 (1998); 1998 Det. C.L. Rev. 15 (1998); 87 Geo. L.J. 2019 (1999); 34 Wake Forrest L. Rev. 1077 (1999); 24 Am. J. Trial Advocacy 252 (2000); 24 Harv. J.L. & Pub. Pol'y 400 (2001); 50 Emory L. Rev. 631, at 641 (2001); 11 Duke J. Comp. & Int'l L. 408 (2001); 33 Tex. Tech. L. Rev. 1, at n.29 (2001); 71 Miss. L.J. 1 at 6 (2001); 87 Cornell L. Rev. 616, at 638 (2002); SH043 ALI-ABA 119, at n.10 (2002); 80 Texas L. Rev. 1943, at 1976 (2002); 22 JNAALJ 195, at n.184 (2002); 76 St. Johns L. Rev. 397, at n.2 (2002); 33 Seton Hall L. Rev. 109, at n.61 (2002); 56 Vand. L. Rev. 1949, at 1952, 1966, 1969, 1972-3, 1993 (2003); 25 No. 14 Andrews Asbestos Litig. Rep. 12 at n.2 (May 22, 2003); 10 No. 5 Andrews Class Action Litig. Rep. 26 at n.2 (June 2003); 31 Pepp. L. Rev. 11 at 12 (2004); 31 Pepp. L. Rev. 175 at 176 (2004); 79 Ind. L. Rev. 567 at 570 (2004); 46 Wm. & Mary L. Rev. 127, at 152 (2004); 15 Ind. Int. & Comp. L. Rev. 583, at 597,600 (2005); 35 N. Mex. L. Rev. 260 at 295 (2005); 70 Mo. L. Rev. 349, at 380 (2005); 33 Pepp. L. Rev. 227, at 260 (2006); 62 NYU Ann. Surv.

Am. L. 223 at 231-32, 245 (2006); 75 U. Cin. L. Rev. 213 at 217 (2006); 7 Nev. L.J. 73 at 77, 90 (2006); 48 Wm. & Mary L. Rev. 2043 at 2052 (2007); 26 Rev. Litig. 583 at 587 (2007); 16 Tul. J. Int'l. & Comp. L. 157 at 162 (2007); 2008 U. Ill. L. Rev. 1101 at 1102, 1108 (2008); 41 U.C. Davis L. Rev. 1613 at 1618-1622, 1629, 1642 (2008); 34 Law & Soc. Inquiry 5 at 25 (2009); 60 Ala. L. Rev. 649, 675 n.104 (2009); 2009 U. Ill. L. Rev. 895 at 896 n.1 (2009); 51 Wm. & Mary L. Rev. 1997 at 2040 n.193 (2010).

Cases: *Abate v. A.C.&S. Inc.*, No. 89236704 slip op. (Md. Cir. Ct. Baltimore City Dec. 9, 1992); *TXO Prod. Corp. v. Alliance Res. Corp.*, 113 S. Ct. 27 (1993); *Dunn v. Hovic*, 1 F.3d 1371, at 1397 (3rd Cir. 1993); *Cimino et al. v. Raymark Industries...*, 151 F.3d. 297, at 336 (5th Cir. 1998); *Abadie v. Metropolitan Life Ins. Co.*, 784 So. 2d 46, at n.34 (2001); *USA v. Weintraub*, 273 F.3d 139, at 150 (2nd Cir. 2001); *Lippe v. Bairnco Corp. et al.*, 2002 WL 34342589 at nn.38, 42, 52-54 (SDNY, Feb. 1, 2002); *Robinson v. Crown Cork & Seal Co.*, 335 S.W. 3d 126 at 185 (Tex. Sup. Ct. 2010).

Casebooks, Treatises, Restatements, etc.: JACK B. WEINSTEIN, *INDIVIDUAL JUSTICE IN MASS TORT LITIGATION* 169 n.22 (1995); LINDA MULLENIX, *MASS TORT LITIGATION* 650 (1996); ROBERT KAGAN, *ADVERSARIAL LEGALISM* 127 (2001); 4 MOD. SCI. EVIDENCE §38-11 (2d. ed., 2003 pocket part); 1 TOXIC TORTS LITIG. GUIDE § 1:4 (2011), 2 TOXIC TORTS LITIG. GUIDE § 14:21 (2011), § 14:22 (2011), § 14.46 (2011).

The Use of Advance Fee Attorney Retainer Agreements in Bankruptcy: Another Special Law for Lawyers?, 43 S.C. L. Rev. 1037-1101 (1992), co-authored with Jonathan Klein. **Cited In:**

Law Reviews, Bar Ass'n Opinions and Other: 70 N.C. L. Rev. 443 (1992); 71 Wash. L.Q. 811, at 832 (1993); 78 Minn. L. Rev. 1082, at 1088, 1089, 1090, 1096, 1098 (1994); 49 The Record (of the Bar Ass'n of the City of N.Y.) 664 (1994); *In re Mills*, 170 B.R. 404, at 407-408 (Bankr. D. Ariz. 1994); 68 Am. Bank. L.J. 425 (1994); 15 Card. L. Rev. 2370 (1994); THOMAS MORGAN & RONALD ROTUNDA, *PROFESSIONAL RESPONSIBILITY* 137 (6th ed. 1995); 18 UALR L. Rev. 119 (1995); 9 Geo. J. Legal Ethics 589 (1996); 22 J. of Legal Prof. 309 (1998); 102 ALR 5th 253, at 257 (2002); 2 SOUTH CAROLINA JUR. ATTORNEY FEES § 83; 18 DCBA Brief 24, at 28, 30 (2006); 61 S. Carolina L. Rev. 287 at 288 n.13 (2009).

Cases: *Raymark Indus. v. Butera, Beausang, Cohen & Brennan*, 1997 U.S. Dist. LEXIS 19070 at *42 (E.D. Pa., Dec. 1, 1997); *In re Datesman*, 1999 WL 608856 (Bankr. E.D. Pa., 1999); *Bethea v. Robert J. Adams & Assoc.* (In re *Bethea*), 275 B.R. 284, at 293 (Bankr. N.D. Ill., 2002).

Setting the Fee when the Client Discharges a Contingent Fee Attorney, 41 Emory L.J. 367-401 (1992). **Cited In:**

Law Reviews, Bar Ass'n Opinions and Other: 19 Vt. Bar J. 15, at n.26 (Aug. 1993); 72 Or L. Rev. 872 (1993); N.Y.L.J. at 3, col. 3 (Sept. 7, 1993); THOMAS MORGAN & RONALD ROTUNDA, *PROFESSIONAL RESPONSIBILITY* 136 (6th ed. 1995); 89 NW. L. Rev. 1449 (1995); 71 Chicago-Kent L. Rev. 655, 674 (1995); *Adams v. Med-Force*, 682 So.2d 323, at 325 (1996). NATHAN CRYSTAL, *PROFESSIONAL RESPONSIBILITY* 286 (1996); 9 Geo J. Legal Ethics 589 (1996); 47 De Paul L. Rev. 386, at 388 (1998); 11 Geo J. Legal Ethics 244 (1998); 67 Fordham L. Rev. 458 (1998); THOMAS MORGAN & RONALD ROTUNDA, *PROFESSIONAL RESPONSIBILITY* 166 (7th ed. 2000); JOHN NOONAN & RICHARD PAINTER, *PROFESSIONAL AND PERSONAL RESPONSIBILITIES OF THE LAWYER* 69 (2nd ed. 2001); GEOFFREY HAZARD & WILLIAM HODES, *THE LAW OF LAWYERING* (3d. ed.) 8-92 (2003 Supp.); 27 U.A.L.R. L. Rev. 169, at 181 (2004); 90 Iowa L. Rev. 475, at 491 (2005); ABA ANNO. MODEL RULES OF PROF. CONDUCT, Rule 1.5 at subsection (c) (6th ed. 2007); 39 St. Mary's L.J. 539, at 545, 548 (2008). **Cases:** *Opert v. Mellios*, 614 N.E.2d 996, at 997 (Mass. 1993); *Reid, Johnson et al. v. Lansberry*, 629 N.E.2d 431, at 436 (Ohio Sup. Ct. 1994); *Robinson v. Nussbaum*, 11 F.2d. 1, at 5 (1997); *Campbell v. Bozeman Investors*, 964 P.2d 41, at 44 (Mt. 1998); *Avery v. Manitowoc Cty. et al.*, 428 F. Supp. 2d 891 at 895 (E.D. Wis. 2006); *Baker v. Shapero*, 203 S.W. 3d 697 at 699 (Ky. 2006); *Bonar v. Waite, Schneider, Bayless & Chesley Co.*, L.P.A., c S.W. 3d, c 2009 Ky-App. LEXIS 201 at *23 (Ky. App. Oct. 16, 2009); 54 N.Y. L. Sch. L. Rev. 773 at 795 (2010); 126 Harv. L. Rev. 486 at 518 n. 138 (2012); *Freeman et al. v. Clarke Cty.*, 2012 WL 6569378 at *9 (U.S.D.C. S.D. Miss.).

Collateral Estoppel As a Basis for Attorney Discipline: The Next Step; 5 Geo. J. Legal Ethics 1-33 (1991), co-authored with J. Bibona. **Cited In:** 61 Tenn. L. Rev. 67 (1993); 35 S. Tex. L. Rev. 642

(1994); 36 S. Tex. L. Rev. 789 (1995) *In Matter of Applicant*, A 3 Cal. St. Bar Ct. Rptr. 318, at 328 (1995); *In Matter of Applicant A*, 3 Cal. St. Bar Ct. Rptr. 318, at 328 (1995); N.Y.L.J., July 27, 1998 at 7; *In re Capoccia*, 709 N.Y.S.2d 640, at 650 (N.Y. App. Div. 3rd Dept., 2000); RESTATEMENT OF THE LAW GOVERNING LAWYERS 3rd, §5, cmt g. (2000); GEOFFREY HAZARD & WILLIAM HODES, THE LAW OF LAWYERING 955 (2d ed. 1993), 8-95 (2003 Supp.); 22 Geo. J. Legal Ethics 949 at 950 n.8 (2009); PROFESSIONAL RESPONSIBILITY IN CRIMINAL DEFENSE PRACTICE 3d § 32.21 (2011 ed.).

A Massachusetts Debacle: Gagnon v. Shoblom, 12 Cardozo L. Rev. 1417 (1991). **Cited In:** *In re Joint E. & S. Dist. Asbestos Litigation (Findley v. Blinken)*, 129 B.R. 710, at 867 (Bank. Ct. E. & S. D.N.Y. 1991); DEBORAH RHODE & DAVID LUBAN, LEGAL ETHICS 774 (1992); LEO LEVIN, PHILLIP SHUCHMAN & CHARLES YABLON, CIVIL PROCEDURE 481 (1992); 49 SMU L. Rev. 1660 (1996); 47 DePaul L. Rev. 402 (1998); 41 Boston College L. Rev. 39 (7th ed. 1999); 31 Loy. U. Chi. L.J. 631 (2000); STEPHEN GILLERS, REGULATION OF LAWYERS 120 (3d. ed. 1992), 184 (6th ed. 2002); RICHARD A. ZITRIN & CAROL M. LANGFORD, LEGAL ETHICS IN THE PRACTICE OF LAW 101 (2nd ed. 2001); GEOFFREY HAZARD & WILLIAM HODES, THE LAW OF LAWYERING 118; LAWYERS 151 (4th ed. 1995), 8-67 (3d. ed. 2003 Supp.); GEOFFREY HAZARD, SUSAN KONIAK, ROGER CRAMTON, GEORGE COHEN, AND W. BRADLEY WENDEL, THE LAW AND ETHICS OF LAWYERING 516 (1999), 784 (4th ed. 2005), 798 (5th ed. 2010).

Attorneys at Law, in WARREN'S WEED NEW YORK REAL PROPERTY vol. 1, pp. 1-99 (Matthew Bender, 1991).

Attorney-Client Fee Arbitration: A Dissenting View, 1990 Utah L. Rev. 277-307 (1990). **Cited In:** 2 Legal Malpractice Rep. 17 (1991); DEBORAH RHODE & DAVID LUBAN, LEGAL ETHICS 764, 766 (1992); 6 Geo. J. of Legal Ethics 11234 (1992); 1992 J. Disp. Res. 341, 346-48, 355 (1992); 13 Card. L. Rev. 2147 (1992); 46 S.M.U. L. Rev. 2031, 2040, 2051, 2052, 2061, 2062 (1993); 49 The Record of the Ass'n of the Bar of the City of N.Y. 292 (1994); 44 Case-West. L. Rev. 680, 714, 736 (1994); 107 Harv. L. Rev. 1605 (1994); 107 Harv. L. Rev. 1666 (1994); THOMAS MORGAN & RONALD ROTUNDA, PROFESSIONAL RESPONSIBILITY; DEBORAH RHODE & DAVID LUBAN, LEGAL ETHICS 693, 695, 696 (2d ed. 1995); The Domestic Relations Fee Arbitration Program: A Report to the Chief Judge and Chief Administrative Judge (N.Y. Unified Court System 2, Nov. 1996); 38 S. Tex. L. Rev. 519, 630, 631, 633 (1997); 1998 J. Disp. Resol. 101 (1998); 77 North Carolina L. Rev. 967, 1027 (1999); 84 Iowa L. Rev. 828, 831-33, 837, 839-840, 843-48, 857 (7th ed. 1999); THOMAS MORGAN & RONALD ROTUNDA, PROFESSIONAL RESPONSIBILITY, 137 (6th ed. 1995), 167 (1999); 84 Iowa L. Rev. 828, at 831-32, 835-40, 844-48 850, 857 (1999); 12 The Professional Lawyer 24 (Spring 2001); 85 Marquette L. Rev. 975, at 980, 988 (2002); 33 St. Mary's L.J. 909 at 957-58 (2002); 80 Texas L. Rev. 1213, at 1253 (2002); GEOFFREY HAZARD & WILLIAM HODES, THE LAW OF LAWYERING 93 (1992 Supp.), 8-95 (2003 Supp.); 72 Fordham L. Rev. 849, at 874 (2004); 19 Geo. J. Legal Ethics 59 at 83 (2006); 35 Hofstra L. Rev. 327 at 336, 341-42 (2006); ABA ANNO. MODEL RULES OF PROF. CONDUCT 80, (6th ed. 2007).

Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?, 37 UCLA L. Rev. 29-137 (1989). **Cited In:**

Law Reviews, Bar Ass'n Opinions and Other: 37 UCLA L. Rev. 949, 953, 954, 956, 980 (1990); 70 Boston U.L. Rev. 628 (1990); 23 Akron L. Rev. 334 (1990); 58 U. Chicago L. Rev. 24 (1991); 44 Rutgers L. Rev. 11 (1991); 1991 U. Ill. L. Rev. 269, at 294, 297 (1991); 54 Law & Contemp. Probs. 101 (1991); 90 Mich. L. Rev. 349 (1991); 43 Stan. L. Rev. 538 (1991); 60 U. Cin. L. Rev. 83 (1991); 82 J. Crim. Law & Criminology 503, 517, 526, 527, 529, 530, 531 (1991); 70 Texas L. Rev. 865, 902, 912, 914 (1992); 15 Harv. J. Law & Pub. Policy 558 (1992); 61 Ford. L. Rev. 620, 621 (1992); 27 Tex. Int. L.J. 755 at n.196 (1992); 93 Columbia L. Rev. 603, 605, 609, 610, 613, 621 (1993); 106 Harv. L. Rev. 1186 (1993); 107 Harv. L. Rev. 459 (1993); 67 St. Johns L. Rev. 877, at n.129 (1993); 42 Am. Univ. L. Rev. 1617, 1636 (1993); 12 Rev. Litig. 301 at 11* (1993); 72 Or. L. Rev. 863, 864, 865, 869, 871, 885, 886, 889, 890 (1993); 59 Bklyn L. Rev. 1087, at 1092 (1993); 88 N.W. L. Rev. 527-28 (1994); C949 ALI-ABA 37 (1994); 29 Land & Water L. Rev. 216, at 217, 225, 226 (1994); 44 Case-West. L. Rev 713-14, 736 (1994); 59 Brooklyn L. Rev. 1694 (1994); 77 Judicature 191 (Jan. Feb. 1994); ABA Formal Op. 94-389 at 2, 14 (1994); 12 N.Y.L. Sch. J. Hum. Rts 2 (1994); C 949 ALI-ABA 57 (Aug. 19, 1994); 72 Tex L. Rev. 1485 (1994); 18 Law & Psychol Rev. 189 at n.68 (1994); 50 The Record of the Ass'n of the Bar of the City of N.Y. 260, 262 (Apr. 1995); 95 Colum. L. Rev 1375-6, 1419

(1995); 166 N. J. Lawyer 32 (1995); 72 U. Det. Mercy L. Rev. 322 (1995); 47 Adminis. L. Rev. 132 (1995); 44 Emory L.J. 173 (1995); 80 Cornell L. Rev. 1167, 1207 (1995); 71 Chicago-Kent L. Rev. 628, 639, 640, 646, 648, 649, 650, 656, 659, 662, 664, 666, 671, 678, 681 (1995); 44 UCLA L. Rev. 84 (1996) 94 Mich. L. Rev. 936 (1996); 31 Wake For. L. Rev. 215 (1996); J. Legal Stud. 530 (1996); 49 SMU L. Rev. 1661, 1663, 1664 (1996); 55 Md. L. Rev. 1223 (1996); 15 Yale L. & Pol'y Rev. 233 (1996); 49 Rutgers L. Rev. 499-500 (1997); 49 Ark. L. Rev. 722 (1997); 73 Ind. L. J. (1997); 58 U. Pitt. L. Rev. 713 (1997); 70 Wisc. Lawyer 11 (1997); 47 DePaul L. Rev. 268, at 280 (1998), 47 DePaul L. Rev. 371, at 372, 378, 394, 403 (1998); 47 DePaul L. Rev. 426, 434 (1998); 47 DePaul L. Rev. 373 (1998); 37 Washburn L. Rev. 323 (1998); 32 Val. L. Rev. 942 (1998); 67 Rev. Jur. U.P.R. 800 (1998); 101 W. Va. L. Rev. 335, 337, 378 (1998); 1 Legal Ethics 70 at 74 (1998); 2 Colum. Bus. L. Rev. 330 (1999); 84 Cornell L. Rev. 1138 (1999); 47 Kan. L. Rev. 822 (1999); N.Y.L.J., Oct. 25, 1999, at 2 (1999); 19 N.W. J. Int. Law & Bus. 275, 279, 292-95, 298, 299 (1999); San Francisco Legal Ethics Committee, Formal Op. (1999-1); 2 J. Inst. Stud. Leg. Eth. 223 (1999); 33 Law & Soc'y Rev. 751 (1999); 41 Boston College L. Rev. 29 (1999); 21 Law & Policy 348 (1999); 13 Geo J. Legal Ethics 291 (2000); 31 Loy. U. Chi. L.J. 631 (2000); ABA FORMAL OP. 00-418 (7/7/00) at 4; 1258 PLI/Corp. 705, at n.9 (2000); 148 U. Pa. L. Rev. 2164 (2000); 15 Quinn. Prof. Law J. 173, at n.223 (2000); 76 N.Y.U.L. Rev. 681, 689 (2001); 64 Law & Contemp. Prob. 177, 184-86, 189 (2001); 87 Cornell L. Rev. 123 (2001); 87 Va. L. Rev. 1915 (2001) 28 S.U. L. Rev. 111 (2001); 13 The Prof. Lawyer 1 (Winter, 2002); 50 Drake L. Rev. 315 at 321 (2002); 102 Colum. L. Rev. 650 at 671-72 (2002); 115 Harv. L. Rev. 2357, at 2363 (2002); 30 Hofstra L. Rev. 767 at 769, 771 (2002); 80 Texas L. Rev. 1829, at 1830-31 (2002); 80 Texas L. Rev. 1943, at 1976, 1979 (2002); 80 Texas L. Rev. 1985, at 1986 (2002); 20 Penn St. Int'l L. Rev. 505, at n.71 (2002); 80 Wash. U.L.Q. 739, 739 n.3 (2002); 15 Loy. Consumer L. Rev. 1, at 48 (2002); 81 Texas L. Rev. 405 at 441 (2002); 16 Geo. J.L.E. 223, at 247 (2003); 34 St. Mary's L.J. 795 at 802, 804 (2003); 17 St. John's J. Legal Com. 313, at 325 (2003); 2004 Utah Bar J. 6, at 8 (2004); 37 Creighton L. Rev. 305, at 334 (2004); 17 Geo. J.L.E. 795, at 797-98, 810 (2004); 27 U.A.L.R.L. Rev. 169 at 174, 177 (2004); 29 J. Legal Prof. 1, at 10 (2004/05); 42 Harv. J. on Legis. 299, at 308 (2005); 15 Ind. Int. & Comp. L. Rev. 583, at 593-94, 599, 612 (2005); 58 Vand L. Rev. 1885, at 1888 (2005); 34 Common Law World Rev. 201, at 204, 215 (2005); 24 Quinn L. Rev. 423, at 427-29 (2005); 33 N. Ky. L. Rev. 115 at 135-36 (2006); 15 Widener L. J. 253, at 262 (2006); 56 Duke L. J. 611 at 624 (2006); 51 N.Y.L.S.L. Rev. 345 at 367 (2006-07); 31 Vt. L. Rev. 615 at 625, 657 (2007); 85 Tex. L. Rev. 1465 at n.136 (2007); 49 Wm. & Mary L. Rev. 569 at 574, 590, 601, 613 (2007); 35911 NBI-CLE 103 at n.1 (2007); 156 U. Penn L. Rev. 229 at 267 (2007); 22 St. John's J. Legal Comment 775 at 767 (2007); 25 Wash. U. J.L. & Pol'y 119 at 138 (2007); 22 St. John's J.L. Comm. 755 at 767 (2008); 39 St. Mary's L.J. 539, at 554 (2008); 62 U. Miami L. Rev. 913 at 924, 925 (2008); 37 Sw. U. L. Rev. 511 at 524 (2008); 50 Wm. & Mary L. Rev 1261 at 1301 (2009); 44 Wake Forrest L. Rev. 923, 932 n.61 (2009); 61 S. Carolina L. Rev. 287 at 309 n.165 (2009); 12 Un. Penn. J. Const't. L. 659, at 726 n.420 (2010); 39 J. Legal Studies 245 at 246, 250-51 (2010); 23 Pac. McGeorge Global Bus. & Dev. L.J. 187 at n.53 (2010); 3 J. Int'l Media & Ent. L. 175 at n.29 (2010); 124 Harv. L. Rev. 350 at 357 n.74 (2010); 79 U. Cin. L. Rev. 697 at 713 n.87 (2010); 38 Pepp. L. Rev. 551 at 565-66 (2011); 79 Ford. L. Rev. 1833 at 1838 n.10 (2011); 74 L. & Contemp. Prob. 1 at 3, n.9 (2011); 12 Fla. Coastal L. Rev. 357, 367 n.74 (2011); 86 N.Y.U. L. Rev. 805 at 865 (2011); 31 Rev. Litig. 209 at nn.6, 61-67, 74, 88-89, 92, 120 (2012); 80 Fordham L. Rev. 2791 at 2835 n. 260; 7 J. Bus. & Tech. L. 387, at 399 n. 150 (2012); 8 J.L. Econ. & Pol'y 613 at 636 n. 89 (2012); 46 U. Mich. J.L. Reform 303 at 326 n. 163 (2012).

Casebooks, Treatises, Restatements, etc.: II ENTERPRISE RESPONSIBILITY FOR PERSONAL INJURY 298, 302 (ALI, Apr. 15, 1991); DEBORAH RHODE & DAVID LUBAN, LEGAL ETHICS 774, 775 (1992); GEOFFREY HAZARD & DEBORAH RHODE, THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION 375 (3d ed. 1994); ABA/BNA LAWYERS' MANUAL OF PROFESSIONAL CONDUCT 41:914 (1994); DEBORAH RHODE, PROFESSIONAL RESPONSIBILITY 855 (1994); JACK B. WEINSTEIN, INDIVIDUAL JUSTICE IN MASS TORT LITIGATION 79 nn.160, 162, 136 n.107, 139 n.139, 155 n.228, 169 n.22 (1995); DEBORAH RHODE & DAVID LUBAN, LEGAL ETHICS 700 (2D ED. 1995); WILLIAM G. ROSS, THE HONEST HOUR 14 (1996); GEOFFREY HAZARD, SUSAN KONIAK & ROGER CRAMTON, THE LAW AND ETHICS OF LAWYERING 513, 517 (1999); LEO LEVIN, PHILLIP SHUCHMAN & CHARLES YABLON, CIVIL PROCEDURE 457-58, 481-82 (1992), 524, 557-58 (4th ed. 2000); THOMAS MORGAN & RONALD ROTUNDA, PROFESSIONAL RESPONSIBILITY 136 (6th ed. 1995), 116 (7th ed. 2000); MARCUS, REDISH & SHERMON, CIVIL PROCEDURE 101 (2nd ed. 1995), 104 (3d. ed. 2000); ALI RESTATEMENT OF THE LAW, THE LAW GOVERNING LAWYERS, Ch. 2, §

18, cmt d, Ch. 3, §35, cmt. c at 262 (2000); DEBORAH RHODE, *IN THE INTERESTS OF JUSTICE* 178 (2000); GEOFFREY HAZARD & WILLIAM HODES, *THE LAW OF LAWYERING* 119 (2nd ed. 1993), 8-68 (3d. ed., 2003 Supp.); RICHARD ZITRIN & CAROL LANGFORD, *LEGAL ETHICS IN THE PRACTICE OF LAW* 86 (2nd ed. 2002); NATHAN CRYSTAL, *PROFESSIONAL RESPONSIBILITY* 268 (1996), 221 (3d. ed. 2004); LISA LERMAN & PHILIP SCHRAG, *ETHICAL PROBLEMS IN THE PRACTICE OF LAW* 443 (2005); LINDA MULLINEX, *MASS TORT LITIGATION* 650, 1029 (1996), 1268 (2d ed. 2008); RONALD A. ROTUNDA & JOHN DZIENKOWSKI, *PROFESSIONAL RESPONSIBILITY - A STUDENT GUIDE* 153, 157 (2005); STEPHEN GILLERS, *REGULATION OF LAWYERS* 119 (3d. ed. 1992), 184 (6th ed. 2002), 149 (7th ed. 2005), 175 (8th ed. 2009); 17 Mich. St. J. Int'l L. 165 at 184, n.135 (2008-09); 39 J. Legal Studies at 246, 250-51, (2010); RONALD ROTUNDA & JOHN DZIENKOWSKI, *LEGAL ETHICS, LAW. DESK BK. PROF. RESP.* § 6-3.3 (2002-03 ed.), § 1.5-3 (2005-06, 2006-07, 2007-08, 2009-10, 2010-11, 2011-12 eds.); JOHN NOONAN & RICHARD PAINTER, *PROFESSIONAL AND PERSONAL RESPONSIBILITIES OF THE LAWYER* 67 (2nd ed. 2001), 92 (3rd ed. 2011); 2 TOXIC TORTS LITIG. GUIDE § 14:8 (2011).

Cases: *In re Oracle Securities Litigation*, 136 F.R.D. 639, at 645 (1991); *In re Joint E. & S. Dist. Asbestos Litigation (Findley v. Blinken)*, 129 B.R. 710, at 865 (Bankr. E. & S.D.N.Y., 1991); *In re Keene Corp.*, 205 B.R. 690, at 701 (Bankr. S.D.N.Y. 1997); *In re Synthroid Marketing Litigation*, 201 F.Supp.2d 861 at 876 (N.D. Ill., 2002); *Schoonmaker et al. v. Brunoli, Inc. et al.*, 828 A. 2d. 64, 106 (Sup. Ct. Conn., 2003); *In re: Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation*, 290 F.Supp.2d 840, at 850 (N.D. Ohio, 2003); *In re: Serzone Products Liability Litigation*, MDL No. 1477, 2004 U.S. Dist.LEXIS28296, at*6-*7(2004); *Hoover Slovacek LLP v. Walton*, 206 S.W. 3d 557 at 561 (Tex. Sup. Ct. 2006).

The Advance Fee Payment Dilemma: Should Payments Be Deposited to the Client Trust Account or to the General Office Account, 10 Card. L. Rev. 647-675 (1988). **Reprinted in:** 5 Banking Law Anthology (1989). **Cited In:**

Law Reviews, Bar Ass'n Opinions and Other: 138 U. Pa. L. Rev. 785, 792 (1990); 15 J. Legal Profession 399 (1990); 19 Cal. Bank. J. 63 (WL) (1991); 1991 Annual Survey of Bankruptcy Law 104-05; *In re Dixon*, 143 B.R. 671, 678 (Bankr. N.D. Tex. 1992); 78 Minn. L. Rev. 1098 (1994); ABA/BNA LAWYERS' MANUAL OF PROFESSIONAL CONDUCT 45:110 (1993); 47 Admin. L. Rev. 132 (1995); 18 UALR L. Rev. 105, 106, 120 (1995); 9 Geo J. Legal Ethics 589 (1996); 1 Fla. Coastal L. J. 294-96, 339, 343, 356 (1999); 74 Mo. L. Rev. 447 at n. 76 (2009), 74 Miss. L. Rev. 447, 457 n. 76, 459 n. 94 (2009); 61 S. Carolina L. Rev. 287 at 317 n.220, 318 n.223 (2009).

Casebooks, Treatises, Restatements, etc.: THOMAS MORGAN & RONALD ROTUNDA, *PROFESSIONAL RESPONSIBILITY* 137 (6th ed. 1995); WYLIICK & PERSCHBACHER, *California Legal Ethics* 155 (2d ed. 1997); ABA/ BNA LAWYERS' MANUAL OF PROFESSIONAL CONDUCT, Current Reports, Oct. 13, 1999 at 490; RONALD MORGAN & THOMAS ROTUNDA, *PROFESSIONAL RESPONSIBILITY* 167 (7th ed. 2000); RESTATEMENT OF THE LAW GOVERNING LAWYERS, Chap. 3, §44, Cmt. f (2000); SCHWARTZ, WYDICK & PERSCHBACHER, *PROBLEMS IN LEGAL ETHICS* 131 (5th ed. 2001); 14 Regent L. Rev. 97, at 139 (2002); JOHN W. HALL, JR., *PROFESSIONAL RESPONSIBILITY IN CRIMINAL DEFENSE PRACTICE* § 7:9 at fns. 1, 3 and 7 (2005, 2011 eds.); *Iowa Prac., Lawyer and Judicial Ethics* § 5:5(f)(3) (2009, 2010, 2011 eds.), 5:5 (f)(4) (2011 ed.), § 5:15(b) (2009 ed., n.2 2010, 2011 eds.); GEOFFREY HAZARD, SUSAN KONIAK, ROGER CRAMTON, GEORGE M. COHEN & W. BRADLEY WENDEL, *THE LAW AND ETHICS OF LAWYERING* 589 (2d ed. 1994) 772 (4th ed. 2005), 786 (5th ed. 2010).

Cases: *In re McDonald Bros. Construction, Inc.*, 114 B.R. 989, 998 n.11, 1001 (Bankr. N.D. Ill., 1990); *In re D.L.I.C., Inc.*, 120 B.R. 348, at 351 (Bankr. S.D.N.Y., 1990); *In re Dixon*, 143 B.R. 671, 678 (Bankr. N.D. Tex. 1992); *People v. Shidler*, 901 P.2d 477, at 479 (Colo. 1995); *People v. Varallo*, 1996 Colo. Lexis 15 at 33 (1996); *In re: Grey's Run Technologies*, 217 B.R. 48 at 53, 56 (1997); *Iowa Sup. Ct. Bd. Prof. Ethics & Conduct v. Apland*, 577 N.W.2d 50 at 54 - 56 (1998); *In re Radulovic*, 2006 WL 6810999 (9th Cir. BAP (Wash. 2006)); *In re King*, ___ B.R. ___, 2008 WL 3822755 at *8 (Bankr. S.D.N.Y., 2008); *Iowa Supreme Court Disciplinary Board v. Piazza*, 756 N.W.2d 690 at 697 (Iowa Oct. 30, 2008); *In re Mance*, 980 A. 2d 1196, at 1203 (D.C. Ct. App., 2009); *In re Pagaduan et al.*, 2010 Bankr. LEXIS 1082, at *25-26 (Bankr. D. Nev., 2009); *In re Pagaduan*, 2010 WL 1453071 (Bkrcty. D. Nev.).

Nonrefundable Retainers: Impermissible Under Fiduciary, Statutory and Contract Law, 57 Fordham L. Rev. 149-190 (1988), co-authored with Lawrence Cunningham. **Cited In:**

Law Reviews, Bar Ass'n Opinions and Others: N.Y. State Bar Ass'n Op. 599 (1989); A. FARNSWORTH, 2 CONTRACTS § 8.14 n.1, p. 427, n.18, p. 431, 3 CONTRACTS, § 12.18, n.36, p.294, p. 573 (1990); 19 Cal. Bank. J. 63 (WL) (1991); 82 J. Crim. Law & Criminology 532, 533, 534 (1991); N.Y.C Bar Ass'n Formal Opinion 1991-3 (1991); 44 Rutgers L. Rev. 10 (1991); 68 Notre Dame L. Rev. 217 (1992); Report of the New York State Committee to Examine Lawyer Conduct in Matrimonial Actions 18 (May 4, 1993); ABA/BNA LAWYER'S MANUAL OF PROFESSIONAL CONDUCT 45:111 (1993); L. CAPLAN, SKADDEN: POWER, MONEY AND THE RISE OF A LEGAL EMPIRE 83-84 (1993); 67 St. Johns L. Rev. 694, 698,700 (1993); BNA CRIMINAL PRACTICE MAN. CURRENT REP., Ap. 13, 1994 at 176; 46 Mercer L. Rev. 311, 320 (1994); 71 Chicago-Kent L. Rev. 640 (1995); 18 UALR L. Rev. 107, 108, 113, 117 (1995); 9 Georgetown J. Legal Ethics 588, 589 (1996); WILLIAM G. ROSS, THE HONEST HOUR 13 (1996); 17 Cardozo L. Rev. 724, 728, 735 (1996); 1 Harv. Negotiation L. Rev. 72 (1996); Report and Recommendation, 22 J. Legal Prof. 368 (1998); 67 Fordham L. Rev. 446, 450-51 (1998); 1999 Utah L. Rev. 240 (1999); 12 Geo J.L.E. 479 (1999); 1 Fla. Coastal L.J. 293, 295 (1999); THOMAS MORGAN & RONALD ROTUNDA, PROFESSIONAL RESPONSIBILITY 137 (6th ed. 1995), 167 (7th ed. 2000); 37 San Diego L. Rev. 406, 414, 483-84 (2000); ALI RESTATEMENT OF THE LAW, THE LAW GOVERNING LAWYERS, ch. 3, §34, cmt e at 254, §38 cmt. g, §39 at 285 (2000); RONALD ROTUNDA, PROFESSIONAL RESPONSIBILITY 108 (6th ed. 2002); 57 Bus. Lawyer 1441 at 1449 (2002); ANDREW KAUFMAN & DAVID WILKINS, PROBLEMS IN PROFESSIONAL RESPONSIBILITY FOR A CHANGING PROFESSION 504 (4th ed. 2002); 81 Tex. L. Rev. 405 at 515 (2002); 72 Fordham L. Rev. 849, at 870 (2004); JOHN W. HALL, JR., PROFESSIONAL RESPONSIBILITY IN CRIMINAL DEFENSE PRACTICE 3d § 7:9 at fns 1,2 and 4 (2005, 2011); 19 Geo. J. Legal Ethics 59 at 87- 88 (2006); 43 Am. Bus. L.J. 173 at 195 (2006); 18 DCBA Brief 24, at 28, 30 (2006); 49 Wm. & Mary L. Rev. 569 at 601, 611 (2007); IOWA PRAC., LAWYER AND JUDICIAL ETHICS § 5:5(f)(4) (2009, 2010, 2011 eds.); 61 S. Carolina L. Rev. 287 at 317 n.219, 319 nn.230-232 (2009); RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, LEGAL ETHICS, LAW. DESK BK. PROF. RESP. § 6-165 (2002-03 ed.), § 1.5-1 (2005-06 ed.), § 1.5-1 (2006-07 ed.), § 1.5-1 at n.22 (2007-08 ed.), § 1.5-1 at n.23 (2009-10, 2010-11, 2011-12 eds.); 23 Geo. J. Legal Ethics 701 at 701 n.6, 705 n.42 (2010); DEBORAH RHODE, DAVID LUBAN & SCOTT CUMMINGS, LEGAL ETHICS 500 (3d. ed. 2001), 599 (6th ed. 2013).

Cases: *Zack v. NCR*, 738 F. Supp. 933, 936 (E.D. Pa. 1990); *AFLAC, Inc. v. Williams*, 264 Ga. 351, at 353 (Ga. Sup. Ct. 1994); *Wright v. Arnold*, 877 P. 2d 616, at 619 (Okla. Ct. App. 1994); *Iowa Sup. Ct. Bd. Prof. Ethics & Conduct v. Apland*, 577 N.W.2d 50, at 57-58 (1998); *Kelly v. MD Buyline, Inc.*, 2 F. Supp. 2d 420 at 445, 451 (S.D.N.Y. 1998); *Agusta & Ross v. Trancamp Contracting Corp.*, 751 N.Y.S. 2d 155, 158 (N.Y.C. Civ. Ct. 2002).

The Education and Licensing of Lawyers: Current Proposals to Improve the Competence of Lawyers, in THE EDUCATION AND LICENSING OF LAWYERS 11-42 (CLEPR, 1976). **Cited In:** 422 F. Supp. 2 (appendix) (1977); PROFESSIONAL RESPONSIBILITY: A GUIDE FOR ATTORNEYS 71 (ABA, 1978); 78 Fed. Rules Dec. 254 (1978).

Special Editor: Learning and The Law, no. 3, no. 2 (summer 1976) dealing with the education and training of lawyers for competency before admission to practice. **Cited In:** PROFESSIONAL RESPONSIBILITY: A GUIDE FOR ATTORNEYS 71, 73 (ABA, 1978).

Transcript of Proceedings: Conference on Determining a Research Agenda for Improving the Delivery of Legal Services, (Co-edited with Richard Lempert), in THE ROLE OF RESEARCH IN THE DELIVERY OF LEGAL SERVICES: WORKING PAPERS AND CONFERENCE PROCEEDINGS (1976); reprinted in 11 Law & Society Rev. 319-386 (1976). **Cited In:** 26 Catholic Law Rev. 685 (1977).

The Role of Research in the Delivery of Legal Services: Working Papers and Conference Proceedings (1976, co-edited with Richard Lempert); reprinted as 11 Law & Soc. Rev. no. 2 (Special Issue 1976) of which I was Guest Co-Editor. **Cited In:** CURRAN, THE LEGAL NEEDS OF THE PUBLIC 275 (ABF, 1977).

Of Arterial Passageways Through the Legal Process: The Right of Universal Access to Courts and Lawyering Services, 48 New York Univ. Law Review 595-668 (1973). **Reprinted in:** "Prepaid Legal Services Plans," Report of the Hearings Before the Subcommittee on Representation of Citizen Interests of the U.S. Senate Committee on the Judiciary, May 14-15, 1974, at pp. 238-312 (1974). **Reprinted in part:** 16 Law Office Econ. & Mgmt. 86-105 (1975). **Cited In:**

Law Reviews, Bar Ass'n Opinions and Others: 65 *The J. Crim. Law & Criminology* 277 (1974); 1974 *Duke L.J.* 538, 558-59, 567; 51 *Chicago-Kent L. Rev.* 46, 48-49 (1974); 5 *U. Tol. L. Rev.* 562 (1974); 17 *Ariz. L. Rev.* 291 (1975); 74 *Mich. L. Rev.* 260 (1975); 27 *Stanford L. Rev.* 335 (1975); 1975 *Utah L. Rev.* 50 (1975); MONROE FREEDMAN, *LAWYERS' ETHICS IN AN ADVERSARY SYSTEM* 265 (Bobbs-Merrill, 1975); Tunney & Frank, "Epilogue: A Congressional Role in Lawyer Reform?" in NADER & GREEN (eds.), *VERDICTS ON LAWYERS* 296 (1976); ROSENBERG, WEINSTEIN, SMIT & KORN, *ELEMENTS OF CIVIL PROCEDURE* 43 (Foundation, 1976); COUNTRYMAN, FINMAN, & SCHNEYER, *THE LAWYER IN MODERN SOCIETY* 568, 576 (Little Brown 2nd ed. 1976); 29 *Okla. L. Rev.* 622, at 18 (1976); 27 *Labor L.J.* 304 (1976); 28 *J. Legal Ed.* 251, 274 (1977); 29 *Stanford L. Rev.* 3 (1976); 66 *Georgetown L.J.* 128 (1977); 41(1) *Law & Contemp. Prob.* 255 (1977); 13 *Gonz. L. Rev.* 919 (1978); 28 *Buffalo L. Rev.* 111, 123 (1979); 34 *Stan. L. Rev.* 1, 71 (1981); 67 *Cornell L. Rev.* 1021, at 1038 (1982); 34 *Stan. L. Rev.* 1183, 1199 (1982); 12 *Stetson L. Rev.* 369 (1983); 45 *Ohio St. L.J.* 9 (1984); 63 *Tex. L. Rev.* 579, 597 (1984); 137 *U. Penn L. Rev.* 1920 (1989); 37 *UCLA L. Rev.* 949, at 975 (1990); 19 *Hofstra L. Rev.* 870 (1990); 24 *U.S.F. L. Rev.* 255 (1990); DEBORAH RHODE & DAVID LUBAN, *LEGAL ETHICS* 813 (1992); 45 *Rutgers L. Rev.* 64 (1992); 67 *Ind. L.J.* 1109-11 (1992); 41 *UCLA L. Rev.* 187, 198 (1993); 12 *N.Y. Law Sch. J. Human Rts.* at n.7 (1994); 50 *The Record of the Ass'n of the Bar of the City of N.Y.* 263 (Apr. 1995); 13 *St. Johns J. Legal Com.* 498-99 (1999); 34 *Gonz. L. Rev.* 343, 355 (1999); 29 *N.M.L. Rev.* 149 (1999); THOMAS MORGAN & RONALD ROTUNDA, *PROFESSIONAL RESPONSIBILITY* at 92 (Foundation, 1976), 618 (7th ed. 2000); 114 *Harv. L. Rev.* 961 at 1168 (2001); 2001 *B.Y.U. L. Rev.* 2 at 52, 69 (2001); 40 *Conn. L. Rev.* 1477 at 1485 n.31 (2008); 56 *St. Louis U. L.J.* 917 at 964 n. 163 (2012).

Cases: *Wilson v. Beame*, 380 F.Supp. 1242 (1974); *Carter v. Univ. of Washington*, 536 P. 2d 622, at 624 (1975); *State Bar v. Cramer*, 249 N.W.2d 1, at 18 (Mich. 1976).

CLEPR and Clinical Education: A Review and Analysis, in *CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING*, pp. 56-93 (1973). **Cited In:** 27 *Vand. L. Rev.* 273 (1974); 50 *Denver L.J.* 417 (1974); GEE & JACKSON, *FOLLOWING THE LEADER? THE UNEXAMINED CONSENSUS IN LAW SCHOOL CURRICULA* 42 (1975), VERNON COUNTRYMAN, TED FINMAN & TED SCHNEYER, *THE LAWYER IN MODERN SOCIETY* 718, 721 (Little Brown 2nd ed. 1976); 1977 *Brigham Young L. Rev.* 883, 890 (1977); Report of the ABA Task Force on Lawyer Competency: *The Role of the Law Schools* 12 (1979); 60 *U. Cin. L. Rev.* 92 (1991); 1 *Clinical L. Rev.* 7 (1994); 4 *J.L. & Pol'y* 446 (1996); 62 *Bklyn L. Rev.* 885 (1996); 75 *Neb. L. Rev.* 874, 888 (1996); 64 *Tenn. L. Rev.* 1108 (1997); 12 *Wm. & Mary Bill Rts. J.* 873, at 876 (2004); 43 *Brandeis L.J.* 325, at 347 (2005).

Legal Delivery Systems-A Bibliography, 4 *U. Tol. L. Rev.* 465-552 (1973). **Cited In:** 15 *Law Office Econ. & Mgmt.* 327 (1974); 51 *Chi.-Kent L. Rev.* 45 (1974); 4 *Hofstra L. Rev.* 4, at 7 (1975); VERNON COUNTRYMAN, TED FINMAN & TED SCHNEYER, *THE LAWYER IN MODERN SOCIETY* 575-6, 606, 625 (Little Brown, 2nd ed. 1976); 44 *G.W. L. Rev.* 765 (1976); Curran, *The Legal Needs of the Public* 275 (ABF, 1977); 26 *Wayne L.R.* 1161 (1980).

Contributions of Clinical Programs to Training for Professionalism, 4 *Connecticut Law Review* 437-446 (1971-72). **Cited In:** 50 *Denver L.J.* 449 (1974); 5 *Cumberland-San. L.R.* 238 (1974-75); 30 *U. Miami L. Rev.* 962, at 970 (1976); 4 *Ohio North. L. Rev.* 800 (1977); 1979 *Wis. L. Rev.* 373, at 403; 69 *Neb. L. Rev.* 556 (1990); 45 *Am. U. L. Rev.* 874 (1996); 3 *Clinical L. Rev.* 247 (1996); 64 *Tenn. L. Rev.* 1017 (1997); 37 *San Diego L. Rev.* 167, at n.130 (2000); 26 *J. Legal Prof.* 149, at n.10 (2002); 13 *Clinical L. Rev.* 231 at 237 (2006).

Legal Paraprofessionalism and Its Implications: A Bibliography, 24 *Vand. L.R.* 1213-1239 (1971). **Cited In:** 24 *Vand. L. Rev.* 1121, 1186 (1971); 62 *Ill. B.J.* 432 (1974); 11 *Am. Bus. L.F.* 107, 110 (1974); 48 *Fla. Bar. J.* 746 (1974); MORAND PAULSEN, *THE AVAILABILITY OF LEGAL SERVICES* 64 (1972); 26 *Wayne L.R.* 1174 (1980).

Expansion of the Lawyering Process through a New Delivery System: The Emergence and State of Legal Paraprofessionalism, 71 *Columbia Law Review* 1153-1255 (1971); reprinted in *The Lawyer's Secretary*, *Practicing Law Institute Course Handbook*, 4th ed. at 489 (1972), 5th ed. at 361 (1974). **Cited In:**

Law Reviews, Bar Ass'n Opinions and Others: 72 Colum. L. Rev. 465 (1972); 7 Real Prop., Probate & Trust J. 738 (1972); 81 Yale L.J. 1206 (1972); 22 Cleve. S.L. Rev. 435 (1973); 58 Mass. L.Q. 260 (1973); 4 U. Tol. L. Rev. 396, 440 (1973); 59 Va. L. Rev. 433 (1973); 11 Harv. J. of Legislation 86 (1973); 11 Am. Bus. L.J. 103, 107 (1974); 3 Capital U. L. Rev. 2 (1974); 3 Anglo-American L. Rev. 18, 23 (1974); 34 Md. L. Rev. 541, 551 (1974); 50 Denver L.J. 415, 417 (1974); 15 Law Office Econ. & Mgmt. 346, 348, 352 (1974); 5 U. Tol. L. Rev. 562 (1974); 49 Fla. Bar J. 151 (1975); 44 G.W. L. Rev. 765 (1976); 24 U.C.L.A. L. Rev. 519 (1977); 62 Cornell L. Rev. 1043 (1977); 1977 ABF Res. J. 827, at 832 (1977); 28 J. Legal Ed. 274 (1977); 2 New Directions in Legal Services 83, 90 (1977); 26 Catholic U. L. Rev. 684 (1977); 27 Buffalo L. Rev. 279 (1978); 53 N.Y.U. L. Rev. 452 (1978); 15 Houston L. Rev. 504 (1978); 30 J. Legal Ed. 57 (1979); 1978 Utah L. Rev. 649, 656; 8 Vt. L. Rev. 1, 26 (1978); 54 N.Y.U. L. Rev. 1049, 1060 (1979); 1979 A.B.F. Res. J. 185; 26 Wayne L. Rev. 1174 (1980); 14 Val. U. L. Rev. 179, 236 (1980); 15 Georgia L. Rev. 632 (1981); 34 Stan. L. Rev. 1, at 79 (1981); 59 Tex. L. Rev. 689, 701 (1981); 67 Cornell L. Rev. 1021, 1037 (1982); 75 Calif. L. Rev. 1125 (1987); 24 U.S.F. L. Rev. 255 (1990); 67 Fordham L. Rev. 2773 (1999).

Casebooks, Treatises, Restatements, etc.: REPORT OF THE A.A.L.S. CURRICULUM STUDY PROJECT COMMITTEE, "TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW: 1971" 154-155 (A.A.L.S. 1971 Proceedings, p. 1, §2); CLARK & STRONG, LAW OFFICE MANAGEMENT 81, 100 (West, 1974); DOROTHY NELSON, JUDICIAL ADMINISTRATION AND THE ADMINISTRATION OF JUSTICE 955 (West, 1974); MONRAD PAULSEN, THE AVAILABILITY OF LEGAL SERVICES 54-56, 64 (1972); PIRSIG & KIRWIN, PROFESSIONAL RESPONSIBILITY 165 (West, 3rd ed., 1976); ELI JARMEL & ROBERT YEGGE (eds.), LEGAL EDUCATION FACES A NEW PROBLEM: NEW SYSTEMS FOR DELIVERY OF LEGAL SERVICES 2 (U. Denver, 1975); ELI JARMEL, LEGAL REPRESENTATION OF THE POOR 3-12 (Matthew Bender, 1975); RONALD MORGAN & THOMAS ROTUNDA, PROFESSIONAL RESPONSIBILITY 132 (Foundation, 1976); PARALEGAL ASSISTANTS, HEARINGS BEFORE U.S. SENATE SUBCOMMITTEE ON THE JUDICIARY 213, 217 (July 23, 1974); A LAWYER AT A PRICE PEOPLE CAN AFFORD 39 (New York Bar Foundation, 1975); VERNON COUNTRYMAN, TED FINMAN & TED SCHNEYER, THE LAWYER IN MODERN SOCIETY 519, 738 (Little, Brown, 2nd ed. 1976).

Cases: *Arif v. McGrath*, 71-C-1388, at 21 (Dec. 8, 1971); *Martinez v. Proconier*, 354 F. Supp. 1092, at 1098 (1973); *City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1390 (1973); *In re Christianson*, 215 N.W.2d 920, at 926 (N.D., 1974); *State Bar v. Cramer*, 249 N.W.2d 1, at 16 (Mich. 1976); *Florida Bar v. Moses*, 330 So.2d 412, at 417 (1980); *Matter of Wilkinson*, 834 P.2d 1356, at 1361 (Kan. 1992).

F. **Short-Length Publications**

Fraud and Abuse in Asbestos Litigation, testimony before the Subcommittee on the Constitution of the House Judiciary Committee, Sept. 9, 2011 Accessible at <http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/brickman-436/TESTIMONY%20SEPT.%209%2C%202011%282%29.pdf>.

Unmasking the Powerful Force that has Mis-Shaped the American Civil Justice System, 3 Global Competition Litigation Review, issue 4 at 169 (2010). Accessible at <http://ssrn.com/abstract=1737893>.

A Response to Stephanie Mencimer. (Apr. 2007). A response to Stephanie Mencimer's remarks about Professor Brickman in BLOCKING THE COURTHOUSE DOOR. Accessible at: <http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/brickman-436/A%20Response%20to%20StephanieMencimerMarch022007.pdf>.

A Response to Bryan O. Blevins, Jr., Provost Umphrey, LLP (Dec. 2006). A response to the presentation of Bryan O. Blevins, Jr. at the AEI-Brookings First Annual Judicial Symposium on Civil Justice Issues, December 7, 2006. Accessible at: <http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/brickman-436/Response%20to%20Bryan%20Blevins%20including%20Appendices%20A%20to%20F.pdf>.

Comments' on NIOSH's Proposed B Reader Code of Ethics, submitted on December 22, 2005. Accessible at: www.ssrn.com/abstract=871965. **Cited In:** 20-24 MEALEY'S LITIG. REP. ASB. 4 (January 24, 2006); 4-5 MEALEY'S LITIG. REP. SILICA 9 (Jan. 2006); 58 Admin. L. Rev. 269 at 351-52 (2006).

Asbestos Kills, NATIONAL REVIEW, Jan. 31, 2005, at 39 (with Harvey D. Shapiro). Accessible at: <http://www.thefreelibrary.com/Asbestos+kills:+and+more+than+just+people:+jobs,+ethics,+and...-a0131003854>.

"Early Offers:" A Proposal To Counter Attorney Fee Gouging By Aligning The Contingent Fee System With Its Policy Roots And Ethical Mandates, Point of Law.Com., Aug. 17, 2004, 11:46 EST, accessible at: www.pointoflaw.com/feature/archives/000434.php. Cited In: 77 Tenn. L. Rev. 653 at 655 n.24, 656 nn.28, 30-31, 34, 657 nn.40-44, 658 n.56, 659 n.63, 660 n.70, 663 nn.102-109, 665 nn.125-128, 667 n.145.

Making Lawyers Compete, REGULATION 30 (Summer 2004). Accessible at: www.ssrn.com/abstract=568304. **Cited In:** 8 The Green Bag 2d 377, at 377, 381 (2005).

Administration Of Asbestos Bankruptcies, testimony before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee, July 21, 2004.

Asbestos Litigation: Malignancy in the Courts?, Civil Justice Forum No. 40., Center For Legal Policy at the Manhattan Institute, Aug. 2002. Accessible at:

<http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/brickman-436/Asbestos%20Litigation%20Malignancy%20in%20the%20Courts.pdf>. **Reprinted in:**

Congressional Record; **Cited In:** Memorandum and Order, *In Re Joint Eastern and Southern Districts Asbestos Litigation (Findley et al. v. Trustees of the Manville Personal Injury Settlement Trust)*, 237 F. Supp. 2d 297, at 302, 309, 332 (E.D.N.Y., Dec. 12, 2002); Report of the Committee on the Judiciary, U.S. Senate, on S. 1125, "The Fairness In Asbestos Injury Resolution Act of 2003," July 30, 2003 at 65; 18-20 MEALEY'S LITIG. REP. ASB. 23 (Nov. 2003); 2-4 MEALEY'S LITIG. REP. SILICA 11 (Dec. 2003); RICHARD EPSTEIN, CASES AND MATERIALS ON TORTS 888 (8th ed. 2004).

Letter (Testimony) to ABA Ethics 2000 Commission Hearing, New Orleans, La., Mar. 23, 2000. **Cited In:** 16 Geo. J.L.E. 767 at 773, 775-6, 783 (2003).

Panel Discussion: The Tobacco Litigation and Attorney's Fees, 67 Fordham L. Rev. 2827-2858 (1999), with other authors. **Cited In:** 113 Harv. L. Rev. 1841 (2000); 109 Yale L.J. 1472 (2000); 34 Univ. Cal. Davis L. Rev. 35 (2000); 50 DePaul L. Rev. 780, 782-83, 785, 787-89, (2000); *Daynard v. Ness Motley*, 188 F. Supp.2d 115, at *117. (USDC, D. Mass., 2002).

Regulation By Litigation: The New Wave Of Government Sponsored Litigation, Remarks at Manhattan Inst. and U.S. Chamber of Commerce conference, (June 22, 1999). **Cited In:** 148 U. Pa. L. Rev. 2188 (2000); 101 Colum. L. Rev. 1998, at 1999 (2001).

Class Action Reform: Beyond Rhone-Poulenc Rorer, Manhattan Institute Research Memorandum, No. 10, Oct. 1995. **Cited In:** BELL & O'CONNELL, ACCIDENTAL JUSTICE 225-228 (1997).

"Should Plaintiff Lawyers in the Tobacco Settlement Receive Billions of Dollars? No: Congress Should Set the Fees for this Unique Case," A.B.A.J. Sept. 1997 at 75.

Limiting Lawyers' Unearned Windfall Fees, N.Y.L.J., August 4, 1994 at 5.

Dedication to Karl Krastin, 14 Nova L. Rev. 3-6 (1989). Accessible at: <http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/brickman-436/Dedication%20to%20Karl%20Krastin.pdf>.

"Legal Specialization: An Overview of Goals and Ethical Considerations," in *Legal Specialization* 5-19, Special Committee on Specialization Monograph No. 2 (ABA, 1976); 45 S. Car. L. Rev. 1056 (1994).

"Advertising: A Business Technique for Lawyers?" 24 Virginia Bar News 15-21 (1975), paper delivered to the 1975 Annual Meeting of the Virginia State Bar Association. **Cited In:** 18 Law Office Econ. & Mgmt. 323 (1977).

"Evaluation: Needs and Techniques" and "An Outline for Evaluation of a Full Time Legal Aid Law Office," in Conference on Legal Aid, Report and Proceedings 65-76 (Canadian Council on Social Development, Mar. 1975).

"Should Lawyers Be Permitted To Advertise? Yes, but...," paper delivered to the National Conference of Bar Presidents and reprinted in part in 1 The Bar Leader 18-19 (May-June, 1975); **Cited In:** 51 Calif. S. B.J. 330 (1976) and 22 The Alumnus of the University of Toledo 12-14 (June-July, 1975).

"Legal Services in the 70's: The Shape of the Future," 4 U. Tol. L. Rev. 361 (1973). **Cited In:** 15 Law Office Econ. & Mgmt. 325 (1974); 14 J. Fam. Law 412 (1975-76). Book Review (Training for the Public Professions of the Law: 1971; A Report to the Association of American Law Schools), 24 U. of Ill. L. Forum 843-54 (1972); 27 Vand. L. Rev. 287 (1974); ELI JARMEL & ROBERT YEGGE (eds.), LEGAL EDUCATION FACES A NEW PROBLEM 38 (1975).

I have authored several issues of the Newsletter of the Council on Legal Education for Professional Responsibility including: no. 2 (Nov. 1969), no. 6 (Jan. 1970), no. 9 (Apr. 1970) and no. 11 (May, 1970) of vol. 1; no. 3 (Nov. 1970) and no. 4 (Jan. 1971) of vol. 3; no. 1 (July, 1971) of vol. 4; no. 8 (Nov. 1974) of vol. 7; and no. 3 (Feb. 1978) of vol. 10. In addition, I authored the following newsletters of the Council that are of "short article" length:

Clinical Education--Polemics and Pragmatics, v. 3, no. 5 (Feb. 1971); **Cited In:** 30 J. Legal Ed. 57 (1979);

Report on Paraprofessional Workshops, v. 4, no. 10 (Mar., 1972);

CLEPR Conference on Clinical Teaching, v. 5, no. 2 (July, 1972);

Clinical Work in the First and Second Year of Law School, v. 6, no. 7 (Dec. 1973);

Clinical Legal Education and Legal Aid--The Canadian Experience (co-authored), no. 6, no. 13 (May, 1974);

Clinical Education: The Student Perspective (co-authored), v. 7, no.1 (July, 1974);

Group Legal Services and Clinical Legal Education, v. 7, no. 6 (Oct.1974);

The Education and Licensing of Lawyers, v. 9, no. 2 (Feb. 1974), reprinted in 46 The Bar Examiner 63 (1977);

Growing Pains in Law School Tax Clinics, v. 10, no. 4 (Mar. 1978), **Cited In:** 35 Vanderbilt Law Review 352 (1982);

Is Law School a Full Time Enterprise?, v. 10, no. 6 (May 1978);

Highlights of Conference on Title XI, no. 10, no. 7 (May 1978).

In 1966-67, as Deputy Director of the AALS-funded Student Wave Survey, I published several newsletters which listed and commented on the interim results of the Survey. In 1967-69, I published a quarterly journal titled Law & Poverty which was a commentary on local socio-legal issues.

G. **Amicus Briefs**

Int'l Precious Metals et al. v. Waters, et al., 120 S. Ct. 2237 (in support of certiorari petition to U.S. Supreme Court, June 5, 2000).

Dunn v. Hovic, 1 F.3d 1371 (3rd Cir. 1993) (on behalf of the American Tort Reform Association).

Matter of Cooperman, 83 N.Y.2d 465 (N.Y. Court of Appeals 1993) (co-authored with L. Cunningham) **Cited In:** *Kelly v. MD Buyline, Inc.*, 2 F. Supp. 2d 420, at 447-48 (S.D.N.Y. 1998).

Cimino v. Pittsburgh Corning, Inc., 151 F.3d 297 (5th Cir. 1998) (filed in 1994 on behalf of the American

Tort Reform Association).

H. **Op-Eds (Accessible on homepage by clicking on the "Op-Eds" hyperlink)**

"No Recession For Tort Lawyers," *Forbes.com*, July 23, 2009 available at <http://www.forbes.com/2009/07/23/tort-lawyers-class-action-opinions-contributors-lester-brickman.html>. **Cited In:** 48 *Duq. L. Rev.* 423, 435 n.67 (2010).

"DOJ's Free Pass For Tort Fraud," *Wall Street Journal*, Dec. 26, 2007 at A11. **Cited In:** 73 *Albany L. Rev.* 521, 537 n. 125 (2010).

"Contingency-Fee Con-Men," *Wall Street Journal*, Sept. 25, 2007 at A18. **Cited In:** SN029 ALI-ABA CLE 841 at *28 (November 2007 – December 2007); *Business Law Today*, May/June 2008 at 30; SP003 ALI-ABA CLE 33 (July 24 – 26, 2008); ALI-ABA Course of Study Materials, *Current Developments in Employment Law Vol. I* (July 2008); SP024 ALI-ABA CLE 1995 (Dec. 4-6, 2008); 63 *Vand. L. Rev.* 107 at 133 n.90 (2010).

"False Witness," *Wall Street Journal*, December 2-3, 2006 at A9. **Cited In:** 85 *Tex. L. Rev.* 1465 at n.159 (2007); 31 *Whittier L. Rev.* 47 at 69 nn.176, 178 (2009).

"What Did Those Asbestos X-Rays Really Show?" *Wall Street Journal*, Nov. 5, 2005, at A9. **Cited In:** *Practicing Law Institute*, PLI Order No. 8412, May 2006; 62 *NYU Ann. Survey, Am. L.* 271 at 283 (2006); 58 *Admin. L. Rev.* 269 at 270 (2006); 31 *Whittier L. Rev.* 47 at 69-70 nn.178-186 (2009).

"The Great Asbestos Swindle," *Wall Street Journal*, Jan. 6, 2003 at A18. **Cited In:** 56 *Vand. L. Rev.* 1949, at 1957, 1980 (2003); 18-20 *MEALEY'S LITIG. REP. ASB.* 23 (Nov. 2003); 2-4 *MEALEY'S LITIG. REP. SILICA* 11 (Dec. 2003); 31 *Pepp. L. Rev.* 1, at 1 (2004); 31 *Pepp. L. Rev.* 175, at 177 (2004).

"Wal-Mart's Outrageous Lawsuit," *Charlotte Observer*, Aug. 5, 2002, at 3E.

"Lawyers Put Profit Above People," *N.Y. Post*, June 27, 2001 at 33.

"The James Gang Robbed Banks. Lawyers Today Have A Better Idea," (on proposed legislation to restrict fees in tobacco litigation to reasonable amounts), *St. Louis Post-Dispatch*, Apr. 27, 2001 at C17.

"Want To Be a Billionaire? Sue a Tobacco Company," *Wall Street Journal*, Dec. 30 1998 at A10. **Cited In:** 29 *Cumb. L. Rev.* 580 (1999); 49 *DePaul L. Rev.* 500 (1999); 23 *Seattle L. Rev.* 282 (1999); 19 *N. Ill. L. Rev.* 333 at 333 (1999); 109 *Yale L.J.* 1472 (2000); 74 *Tul. L. Rev.* 1809 at n.72 (2000); 5 *Yale J. Health Pol'y L. & Ethics* 341 at 348 (2005); 38 *Pepp. L. Rev.* 283 at 286 (2011).

"Will Legal Ethics Go Up in Smoke?," *Wall Street Journal*, June 16, 1998 at A18. **Cited In:** 109 *Yale L.J.* 1472 (2000); DEBORAH RHODE, *IN THE INTERESTS OF JUSTICE* 178 (2000); DEBORAH RHODE & DAVID LUBAN, *LEGAL ETHICS* 691 (3d ed. 2001); DEBORAH RHODE & GEOFFREY HAZARD, *PROFESSIONAL RESPONSIBILITY AND REGULATION* 197 (2002).

Ethics Go Up in Smoke, *Legal Times*, Mar. 9, 1998 at 33. **Cited In:** 2 *J. Inst. Stud. Legal Eth.* 264 (1999).

"When Witnesses Are Told What to Say," *Washington Post*, Jan. 13, 1998 at A15. (co-authored with Ron Rotunda); **Cited In:** 12 *Geo. J.L.E.* 468 (1999); 30 *Tex. Tech. L. Rev.* 1401 (1999); DEBORAH RHODE, *IN THE INTERESTS OF JUSTICE* 97 (2000); 70 *Ford. L. Rev.* 1599 at 1614 (2002); *Lippe v. Bairnco Corp. et al.*, 2002 WL 34342589 at n.45 (SDNY, Feb. 1, 2002); 31 *Pepp. L. Rev.* 175, at 185, 188 (2004); THOMAS MORGAN & RONALD ROTUNDA, *PROFESSIONAL RESPONSIBILITY* 450 (9th ed. 2006); RONALD ROTUNDA & JOHN DZIENKOWSKI, *LEGAL ETHICS, LAW. DESKbk. PROF. RESP.* § 25-3 (2002-03 ed.), § 3.4-3 (2005-06, 2006-07, 2009-2010, 2010-11, 2011-12 eds.); 44 *Akron L. Rev.* 679 at 688 (2011).

"Contingency Fees: a peril to nation's health?" Corpus Christi Caller Times, Aug. 22, 1997.

"Curb Legal Feeding Frenzy," USA Today, Jan. 10, 1996 at p.11A. **Cited In:** 49 SMU L. Rev. 1640, 1655 (1996); 47 DePaul L. Rev. 468 (1998).

"Foster's Papers: What Executive Privilege?" The New York Times, Aug. 2, 1995, p. A19. **Cited In:** 76 Geo. Wash. L. Rev. 197, 199 (2008) (Reprinted in the Baltimore Evening Sun, St. Louis Post-Dispatch, Minnesota Star Tribune, Buffalo News, Sacramento Bee, Houston Chronicle and Raleigh News & Observer).

"Does America Need Tort Reform? Yes, To Curb Lawyers' Greed," N.Y. Daily News, May 5, 1995, p. 33.

"After Asbestos, the Next Tort-Law Fiasco," Wall St. J., Oct. 21, 1992, p. A17, col. 4. Reprinted in 7 Issues of Injury 4 (1993). **Cited In:** 1998 Det. C.L. Rev. 197 (1998).

"Keeping Quiet in the Face of Fraud," Los Angeles Times, Mar. 12, 1992, p. A11. **Cited In:** 25 Ariz. St. L. J. 545 (1993); 20 Ford Urb. L.J. 872 (1993); 72 Wash. L. Rev. 467 (1997).

"Lawyers' Fee Frenzy," The Washington Post, Aug. 16, 1991, p.A29, col. 3. **Cited In:** Hatton v. Asbestos Corp., 1991 U.S. Dist. Lexis 13345, at *4 (N.D. Ill. Sept. 23, 1991); Wells v. Asbestos Corp., 1991 U.S. Dist. Lexis 13388, at *4 (N.D. Ill. Sept. 23, 1991); Auberdene Conway v. Asbestos Corp Ltd., 1991 WL 195800 (N.D. Ill. Sept. 23, 1991).

I. National and Professional Press

I have been cited or quoted in: **ABA/BNA Lawyers' Manual on Professional Conduct, Current Reports**, March 2, 2011 at 128, June 7, 2000 at 278-79, Feb. 18, 1998 at 50, 53, Feb. 4, 1998 at 20-21, June 28, 1995 at 180-81, Feb. 8, 1995 at 14, Feb. 23, 1994 at 31-32; **ABA Journal**, Feb. 2007 at 38, 60, Jan. 2005 at 16, October 2004 at 34, Mar. 2004 at 37, Dec. 1997 at 33, Sept. 1997 at 74-75, Aug. 1997 at 28, Jan. 1997 at 40, May 1996 at 28, Apr. 1994 at 12; Feb. 1994 at 26; **ABA Journal E-Report**, July 15, 2004, Nov. 12, 2004, Oct. 8, 2004; **ABC News** May 12, 2004; **ABC News 20/20**, Mar. 16, 1998, Trans No. 98031603-J11; **AOLNEWS.COM**, July 28, 2010, **The American Lawyer**, Oct. 2005 supp., Aug. 2004 at 146, Sept. 10, 1998 at 1, May 1998 at 50, Oct. 1997 at 34-35; American Lawyer Media, The Recorder, Feb. 16, 1998 at 1, Feb. 9, 1998 at 1; **The American Spectator**, Mar. 2005 at , Mar. 1994 at 61, Sept. 1990 at 18-19; **Associated Press**, March 24, 2010 at 4:00 p.m. PDT, Jan. 7, 2005 at 21:42:06, Nov. 25, 2004 at 01:50:03, Nov. 24, 2004 at 19:00:15, Feb. 4, 2003 at 16:45:00, June 12, 1998 at 10:35:08-0400, June 11, 1998 (1998 WL 6679634), Apr. 10, 1998 (1998 WL 7403502), Jan. 10, 1977 at 18:24:23, Dec. 18, 1996 at 20:08:19, July 14 and 17, 1992, (picked up by several hundred newspapers); **Atlanta Jour. & Constitution**, July 7, 2004 at 6A, June 7, 1998 at 5G; **Baltimore Sun**, Feb. 5, 2003, Oct. 15, 1999 at 1A; **Barron's**, Dec. 2, 1991 at 10; **Bloomberg. Com.**, Apr. 10, 2007; **Bloomberg News**, Apr. 10, 2007, June 20, 2002, Jan. 27, 1995; **BNA Civil Trial Manual, Current Reports**, Feb. 15, 1995 at 40, Feb. 1, 1995 at 24; **BNA Class Action Litigation Report**, v.3, No. 17, 9/13/02; **BNA Criminal Practice Manual, Current Reports**, Ap. 13, 1994 at 172, 176; **Boston Globe**, Nov. 7, 2010 at 10, Aug. 10, 2001 at A1, June 9, 1998 at C4; **Business Week**, Apr. 29, 1996 at 86; **CBS MarketWatch**, Feb. 2, 2005; Jan. 7, 2005; **Chicago Sun-Times**, Apr. 11, 2007 at 59, Nov. 26, 2004 at 50, June 15, 1998 at 26; **Chicago Tribune**, Apr. 11, 2007 at C3, June 23, 2004 at C1, Mar. 8, 2004 at 1, Sept. 24, 2003 at C1, Aug. 16, 2002 at 1, June 5, 1998 at 23; **Chief Executive**, Jan. Feb. 1995 at 60; **Chief Legal Executive**, Winter 2003 at 26; **Christian Science Monitor**, July 24, 2000 at 2, Apr. 13, 1998 at 3; **Cincinnati Enquirer**, June 19, 2011 at A1, Dec. 10, 1998 at B1, June 7, 1998 at E1, Dec. 29, 1997 at B1, Dec. 11, 1997 at A2, Oct. 12, 1997 at A1, May 5, 1996 at F1; **City Journal** (Manhattan Institute), Autumn 2002, p. 74; **Cleveland Plain Dealer**, Jan. 15, 2005 at C1, Mar. 1, 2000 at 8B, Feb. 29, 2000 at 1A, July 15, 1992 at 3E, Feb. 27, 1994 at 1C; **Common Cause Magazine**, Fall 1993 at 14-20; **Congressional Record** -- Senate, 105th Cong., 2d sess., June 16, 1998, S6367, S6374, S6378, June 11, 1998, 144 Cong. Rec. S6149 at 6159, 6160, 6172-

73, May 19, 1998, S5103, S5106, S5108; **Corriere della Serra** (Milan, It.) Nov. 26, 2004; **CQ Researcher**, 3/26/03 at 6, 9; **Crain's Chicago Business**, Feb. 28, 2005 at 35, Jan. 12, 2004; **Crain's New York Business**, Feb. 28, 2005 at 25, Aug. 14, 2000 at 16, Feb. 7, 2000 at 14, May 24, 1999 at 3, Nov. 3, 1997 at 14, July 7, 1997 at 1, June 9, 1997 at 45, June 2, 1997 at 35, Apr. 22, 1996 at 3; **Daily Deal**, Feb. 16, 2006; **Dallas Morning News**, July 20, 2003 at 1A, June 13, 1998 at 2F, Mar. 14, 1998 at 6A, Dec. 11, 1997 at 1D, Oct. 24, 1997 at A1; Feb. 11, 1994 at 6A; **Denver Post**, Apr. 5, 1995 at A2; **Detroit News**, 12/10/00 at B1; **Detroit Free Press**, Jan. 8, 2005 at 3A, Jan. 22, 2004 at 1A; **Dow Jones News Service**, Dec. 17, 2003 (12:33:00); **The Economist**, Jan. 29, 2005, Feb. 13, 1999 at 28; **The Evening Standard** (London), Mar. 31, 1999 at 2; **Fifth Estate** (Canadian Broadcasting Co.), Jan. 22, 2003; **Financial Times** (London), Feb. 5, 2005 at 1, June 24, 2004 at 8, Jan. 20, 2004 at 23, Sept. 9, 2002 at 27, May 14, 2002 at 15, Apr. 6, 2000 at 6,9, 5; July 17, 1998 at 21; **Financial World**, Oct. 10, 1995 at 28; Nov. 3, 1997 at 14; **Forbes**, Jan. 08, 2008 at 36, Sept. 4, 2006 at 136, July 21, 2003 at 64, 67, Apr. 16, 2001 at 62, Oct. 16, 2000 at , May 1, 2000 at 69, July 7, 1997 at 43, Feb. 12, 1996 at 47, Nov. 6, 1995 at 140, Feb. 19, 1990, at 130, Oct. 16, 1989, at 197; **Forbes.com**, July 14, 2010, 3:10 p.m.; **Fortune**, June 13, 2005 at 96, Apr. 18, 2005 at 190, Mar. 3, 2003 at 110, Aug. 26, 1991 at 86; **Fox News**, Stossel show, 6/16/2011, Dec. 15, 1997, Nov. 5, 1997; **The Guardian** (London), Nov. 4, 1997 at 17; **Houston Chronicle**, Oct. 3, 2004 at A1, June 14, 1998 at 2, Mar. 14, 1998 at A29; **Insurance Information Inst. Rep.**, Nov. 1994 (R. Gastel, Ed. "The Liability System"), Aug. 1994; **International Herald Tribune**, Apr. 11, 2007 at 15, Feb. 3, 2005 at 15, Mar. 20, 2003 at 13, Dec. 12, 1997, at 3, Aug. 3, 1995; **Investor's Business Daily**, Jan. 10, 2005 at A18, Jan. 23, 2002 at A18, Sept. 12, 1996, at A1, Mar. 22, 1996 at A2, Mar. 11, 1996 at A1, Aug. 15, 1995 at A1, Oct. 12, 1994 at A1, Feb. 21, 1992 at 2, Mar. 4, 1992 at 10, Oct. 12, 1994 at A1; **Lawyer's Weekly USA**, Aug. 21, 2000 at 19, July 28, 1997 at 19, Mar. 10, 1997 at 1, Aug. 26, 1996 at 9, June 17, 1996 at 17, Nov. 6, 1995 at 22, Oct. 23 1995 at 10, Dec. 19, 1994 at 1,15, Apr. 11, 1994; **Lawyer's Monthly**, Sept. 1990, at 1,7; **The Legal Intelligencer**, Oct. 17, 2005 at 3; **Legal Times**, July 12, 2004 at 54, June 14, 2004 at 1, Mar. 9, 1998 at 33, Mar. 1, 1996 at 21, Jan. 29 1996 at 23, Feb. 13, 1995 at; **London Times**, May 17, 1994; **Los Angeles Daily Journal**, Mar. 20, 1998 at xx, Oct. 23, 1997 at 1, Nov. 2, 1994 at 1, Oct. 4, 1989, at sec. II, p.1; **Los Angeles Times**, Jan. 9, 2005 at A31, Mar. 9, 1999 at C5; Dec. 11, 1997 at D7, Mar. 24, 1996 at B1, Mar. 22, 1996 at A3, Sept. 29, 1995 at A1; **Mealey's Litigation Reports: Asbestos**, Oct. 17, 1997; **Miami Herald**, Jan. 8, 2005 at 5A, June 12, 1998 at 19A, Apr. 19, 1998 at 12A; **NBC Nightly News**, Nov. 10, 1996; **National Law Journal**, Mar. 23, 2009 at 4, Aug. 21, 2006 at 4, July 11, 2005 at 4, Feb. 28, 2005 at 1, July 26, 2004 at 7, May 12, 2003 at 6, Feb. 18, 2002 at A8, Dec. 17, 2001 at A17, Dec. 20, 1999 at A1, Oct. 25, 1999 at A1, July 19, 1999 at A5, Dec. 28, 1998 at A4, Sept. 14, 1998 at A6, May 25, 1998 at A6, Feb. 9, 1998 at A20, Dec. 22, 1997 at A9, May 12, 1997 at 20, June 19, 1995 at A6, Jan. 30, 1995 at A7, Jan. 16, 1995 at A6, Feb. 14, 1994, at 15, June 7, 1993 at 3; **National Journal**, May 17, 2008 at 17, July 10, 2004, Jan. 3, 2004 at 8, July 29, 2000 at 2439, Nov. 13, 1999 at 3292, May 30, 1998 at 1222; Apr. 18, 1998 at 862, Mar. 12, 1994 at 577, 580, Dec. 8, 1990, at 2963; **Nat'l Public Radio**, Jan. 4, 2005 "Marketplace;" Sept. 2001 ("All Things Considered"), July 20, 2000 ("Morning Edition"), July 6, 1999 ("All Things Considered"), June 25, 1997, TR97062502-210, May 21, 1996, Tr.#1872-10, Aug. 6, 1995, TR1135-3; **National Review**, Aug. 29, 2005 at 34, June 14, 2004 at 26, June 22, 1998 at 28, Feb. 24, 1997 at 38; **New Jersey Law Journal**, Feb. 13, 2006 at 1, Oct. 24, 2005 at 17, May 19, 2003, Mar. 23, 1998 at, Aug. 4, 1997 at 4, June 30, 1997 at 6, Jan. 29, 1996 at 29, Dec. 30, 1995 at 5, May 2, 1994 at 15; **Newsweek**, July 20, 1998 at 53, Nov. 13, 1995 at 75; **New York Daily News**, Jan. 16, 2005 at 6, July 10, 2000 at 28; **New York Law Journal**, Mar. 6, 2006 at 23, May 5, 2005 at 1, Sept.13, 2004 at 3, May 7, 2003 at 1, Jan. 17, 2002 at 1, Dec. 3, 2001 at 1, May 24, 2001 at 5, May 19, 2000 at 8, May 15, 2000 at 1, July 6, 1999 at 1, Apr. 15, 1999 at 5, Feb. 2, 1999 at 8, Dec. 28, 1998 at A4, Dec. 11, 1998 at 1, Nov. 30 1998 at 1, June 1, 1998 at 2, July 17, 1997 at 5, Oct. 10, 1996 at 5, June 12, 1996 at 3, June 4, 1996 at 1, Jan. 4, 1996 at 5, Oct. 5, 1995 at 5, Aug. 7, 1995 at 2, June 15, 1995 at 5, Feb. 23, 1995 at 5, Jan. 26, 1995 at 5, Sept. 22, 1994 at 5, June 27, 1994 at 2, Apr. 28, 1994 at 5, Mar. 21, 1994 at 1, Feb. 7, 1994 at 1; **New York Post**, July 8, 2012 at, Feb. 4, 2003 at, Oct. 13, 2002 at ; **New York Sun**, Dec. 7, 2006 at 1, Aug. 8, 2006 at 9, May 31, 2006 at 1, Feb. 24, 2006 at 1, Feb. 8, 2006 at 5, Jan. 18, 2005 at 7; **New York Times**, Nov. 7, 2010 at A1, Feb. 19, 2009 at A15, Mar. 30, 2008 at A23, Aug. 27, 2007 at A10, Feb. 2, 2005 at C1, Jan. 7, 2005 (Nat'l Ed.), Nov. 26, 2004 at A 29, Aug. 28, 2004 at A8, May 18, 2004 at C1, C6, July 4, 2003 at A16, May 26, 2003 at A10, Mar. 19, 2003 at C11, Mar. 27, 2003 at C1, Dec. 31, 2002 at C1, Dec. 15, 2002 at

B4, Nov. 7, 2002 at C1, Nov. 3, 2002 at § 3, p. 1, Aug. 20, 2002 at A2, Aug. 15, 2002 at A14, Apr. 13, 2002 at C1, C14, Apr. 10, 2002 at A1, Aug. 8, 2001 at A12, Sep. 3, 2000 at §3, p. 12, Feb. 14, 1999 at WK5, July 28, 1998 at A1, June 17, 1998 at 1, Dec. 11, 1997 at A19, Oct. 24, 1997 at B1, Oct. 11, 1997, at A8, Sept. 11, 1997 at A27, July 10, 1997 at D2, Nov. 7, 1996 at D1, May 2, 1996 at D2, Feb. 22, 1996 at D2, Jan. 25, 1996 at D2, Mar. 24, 1995 at B6, Mar. 23, 1995 at D2, May 6, 1994 at B18, Mar. 18, 1994 at A22, Feb. 25, 1994 at A28, Feb. 11, 1994 at 1A, Mar. 2, 1993 at B5, Oct. 6, 1989 at B35; **New Zealand Herald**, Nov. 26, 2004 at B3; **PBS**, Nov. 25, 2005 ("Journal Report"); **Philadelphia Inquirer**, Jan. 8, 2005 at A12, Mar. 31, 1999 at ; **Reuters News**, July 18, 2012 at 5:14 a.m., April 2, 2010 (2:06 p.m.), Mar. 8, 2005 (4:29 p.m.), Feb. 2, 2005; **Rocky Mtn News**, Feb. 3, 2006 at 37A, June 10, 2005 at 42A, June 12, 1998 at 42A, June 10, 1998 at 43A, Jan. 29, 1995 at 66A; **Roll Call**, Sept. 26, 1994 (Sen. Mitch McConnell, 'Incremental' Health Reform Must Include Changes to Liability System); **St. Louis Post-Dispatch**, Jan. 26, 2005 at A1, Jan. 8, 2005 at 20, Dec. 12, 2004 at B1, Dec. 6, 2004 at B1, Oct. 18, 2004 at B1, Sept. 10, 2004 at B2, June 23, 2004, Feb. 22, 2004 at C1, Jan. 14, 2004 at B1, Apr. 6, 2003 at E1, Sep. 10, 2000 at C1, July 6, 1998 at A9; **San Diego Union-Trib.**, Sept. 24, 2003 at C1, June 12, 1998 at A8, Dec. 15, 1997 at B6, Mar. 17, 1996 at A3, Oct. 17, 1993 at G-1; **San Francisco Chronicle**, June 17, 1998 at A1; **Seattle Times**, Nov. 25, 2004 at A10, June 23, 2004 at D1, Sept. 24, 2003 at E1, Dec. 11, 1997 at A8, Dec. 19, 1996, Apr. 17, 1995, July 28, 1992 at A3; **Smart Money**, Oct. 1992, p.89; **Suddeutsche Zeitung** (Germany), June 14, 2004 at 19; **Star Tribune** (Minneapolis), Feb. 14, 1999 at 11A; **Taipei Times**, Apr. 14, 2002 at 11; **Texas Lawyer**, July 10, 2006 at 7, July 11, 2005 at 1, Mar. 16, 1998 at 37, Feb. 5, 1996 at 29, Feb. 13, 1995 at 1; **UPI**, Jan. 7, 2005 (5:04 PM EST); **USA Today**, Mar. 8, 2004 at 1A, Dec. 11 1997 at 6A, Dec. 9, 1997 at 14A, Jan. 18, 1996 at 10A, Aug. 9, 1995 at 9A, July 10, 1995 at 11A; **U.S. News & World Report**, Nov. 1, 1999 at 36, Jan. 30, 1995 at 51, 56; **Wall St. Journal**, April 15, 2013 at B5, Oct. 31, 2011 at B1, Nov. 3, 2008 at A5, Apr. 24, 2006 at B1, Feb. 23, 2006 at A8, Feb. 14, 2006 at A22, July 19, 1999 at A15, June 22, 1998 at B7C, June 3, 1998 at A18, Mar. 19, 1998 at A18, Jan. 28, 1998 at B1, Dec. 11, 1997 at A6, Oct. 7, 1997 at A23, Feb. 12, 1997 at B9, Mar. 20, 1996 at A15, Jan. 15, 1996 at B5, Nov. 20, 1995 at B14, Jan. 24, 1995 at A22, July 29, 1994 at B8, Mar. 18, 1994 at B10, Feb. 17, 1994 at A1, Oct. 13, 1993 at B5, Oct. 12, 1993 at B1, Mar. 19, 1993 at B12, Jan. 29, 1993 at B9, Nov. 14, 1990 at A17; **Washington Post**, Jan. 28, 2008 at D1, July 25, 2005 at D1, Jan. 8, 2005 at A4, Aug. 12, 2002, at E1, Aug. 11, 2002 at A4, Apr. 8, 2002 at E1, May 13, 1999 at A21, June 3, 1998 at A23, Dec. 11, 1997 at A6, June 23, 1996 at A10; Apr. 8, 2008 at D01; **Washington Times**, Aug. 8, 2005 at A18, May 13, 1999 at A21, Dec. 12, 1998 at A1, July 20, 1998 at 30, June 7, 1998 at A1, May 28, 1996 at A13; **The Weekly Standard**, Sept. 23, 1996 at 21, Sept. 18, 1995 at 49; **WNBC** (N.Y.) News, June 29, 2001.

J. Popular Press - Other

Akron Beacon Journal, Feb. 3, 2005 at D1, Apr. 16, 1995 at G1; (Albany) Times Union, Jan. 1, 2012 at A1, Aug. 1, 2003 at A1, May 25, 2003 at C1, Oct. 24, 2002 at B1; The (Allentown) Morning Call, Dec. 11, 1997 at A1; American Agent & Broker, Mar. 1997 at 20; American Political Network, Inc. Health Line, Dec. 11, 1997, Oct. 13, 1993; Arkansas Democrat-Gazette, Dec. 19 1999 at 13B, June 5, 1998 at B8; Austin American Statesman, Feb. 7, 1999 at B1, Jan. 9, 1999 at B1, Mar. 14, 1998 at B1; Baton Rouge Advocate, Nov. 21, 2004 at 26, June 12, 1998 at 6A; Bergen Record, Dec. 28, 2003 at A15, Mar. 22, 1998 at A1, Mar. 1, 1998 at A1; Best's Review P/C, July 1994 at 38; BestWire, Jan. 19, 2004; Buffalo News, June 12, 1998 at A7; Business Insurance, Nov. 11, 1991 at 1; Capital Times (Madison, WI.), May 15, 1999 at 2A, June 12, 1998 at 11A; Charleston Daily Mail, Apr. 20, 1998 at 4A; Charleston Gazette, Nov. 25, 2004 at 1A, Dec. 19 1999 at 13B, Apr. 5, 1999 at 4A, June 12, 1998 at 2A, Apr. 17, 1998 at 2C; (Charleston) Post and Courier, Aug. 3, 2003 at 1A, July 12, 2003 at 1A, Aug. 3, 1998 at 12; Charlotte Observer (N.C.), Nov. 25, 2004 at 22A; Chattanooga Free Press, June 12, 1998 at B3; Chattanooga Times, June 23, 2004 at A1, June 12, 1998 at A9; Chicago Daily Herald, Feb. 17, 1999 at 10; Cincinnati Post, Nov. 25, 2004 at A2; Clarion-Ledger (Jackson, MS), Jan. 27, 2008 at 1G, Dec. 15, 2005 at 1B, Mar. 6, 2005 at 1A, July 9, 2003 at 11A; Colorado Springs Gazette, May 7, 2000; Conn. L. Trib., Jan. 29, 1996 at 9; Corpus Christi Caller-Times, July 2, 2005 at A1; Des Moines Register, Mar. 11, 1999 at 13, June 12, 1998 at 7; Fla. Times Union, Nov. 25, 2004 at A7, June 12, 1998 at A9, Dec. 11 1997; Fresno Bee, Feb. 28, 1994 at B6; Grand Rapids Press,

June 12, 1998 at A5; News & Record (Greensboro, N.C.), Mar. 14, 1999 at F1; Sunday Record (Hackensack), Mar. 22, 1998 at A1; Harrisburg Patriot, May 23, 1998 at B1, Apr. 9, 1998 at A1; Hartford Courant, Feb. 2, 2005, Jan. 26, 2003 at D1, Sept., 5, 1997 at A20, Aug. 31, 1997 at A16, Mar. 8, 1994 at B10, July 25, 1994 at D1; Hattiesburg American (MS), Jan. 27, 2008 at editorial; 15 Health Affairs 209 (1996); Honolulu Star, February 23, 1994 at A12; InformationWeek, July 21, 1997; Journal of Commerce, Oct. 24, 1991; Kansas City Star, Nov. 26, 2004 at C2, Nov. 25, 2004 at A10, June 23, 2004 at 1A; Kentucky Inquirer, Dec. 23, 1997 at B1; (Lakeland, FL) The Ledger, Feb. 7, 2003, Feb. 4, 2003; Lancaster New Era (Pa.), Jan. 10, 2000 at A-8; Lexington Herald-Leader (KY), May 10, 2008; (Madison, WI) Capital Times, July 16, 1999 at 12A, May 15, 1999 at 2A; (Mesa, AZ) East Valley Tribune, Nov. 4, 2000; Medical Economics, Nov. 4, 2005 at 71, Aug. 1994 at 10, Sept. 13, 1993 at 92; Medical Tribune, Jan. 25, 1990 at 1; The (Memphis) Commercial Appeal, Mar. 27, 1996 at 4B; Miami Daily Bus. Rev., Apr. 2, 1999 at A5; Milwaukee Journal Sentinel, Jan. 11, 2004 at 4D, June 23, 1999 at 1, May 15, 1999 at 2, Dec. 3, 1998 at 2; Minn. Star Tribune, Feb. 3, 2005, Feb. 14, 1999 at 11A, Jan. 11, 1997 at D1; Mobile Register, Apr. 4, 2004 at 4A, Mar. 28, 2004 at 1A, 4A, 6F; Nashville Tennessean, Feb. 14, 1999; Newark Star-Ledger, May 19, 2004 at 21; New Haven Register, Apr. 2, 1995; New York Post, June 14, 1998 at 75, Aug. 10, 1994 at 18; Okla. City Journal Record, Mar. 25, 1995; Orange Cty Register, Dec. 11, 1997 at A19, Nov. 23, 1997 at , Mar. 27, 1996 at C3; Orlando Sentinel, Apr. 14, 2002 at H10, Sept. 29, 1996 at G1; Palm Beach Post, Apr. 3, 1995 at 3, Nov. 28, 1993 at 1F; Portland Oregonian, June 12, 1998 at 12A; (Quincy, MA) The Patriot Ledger, Feb. 5, 2003 at 6; (Raleigh) News and Observer, June 12, 1998 at A4, Feb. 3, 1996 at A9; Richmond Times-Dispatch, Dec. 11, 1997 at A-25, Oct. 12, 1997 at A3, Apr. 16, 1993 at E-1; Sacramento Bee, June 23, 2004, Mar. 8, 1994 at B6; Salt Lake Tribune, May 25, 2003 at E1, Oct. 13, 1997 at A7; San Antonio Express-News, June 12, 1998 at 7A; San Diego Business J., Nov. 4, 2002 at 55; San Francisco Daily J., Dec. 9, 1997 at , Oct. 22, 1997 at 1; The (San Francisco) Reporter, Jan. 14, 1992, at 10; St. Paul Pioneer, Nov. 28, 2004 at 14A; St. Petersburg Times, June 5, 1995 at E11; Salt Lake Tribune, Oct. 13, 1997 at A7, Apr. 5, 1995 at B8; Selma Times-Journal, Mar. 13, 1996; Star-Ledger (Newark), Mar. 28, 1999 at 1, June 12, 1998 at 5; Sun Sentinel, (Ft. Lauderdale), Mar. 1, 1999 at 19A, June 12, 1998 at 3A; Tacoma (Wash.) Morning News, Apr. 5, 1995 at E6; Telegraph-Herald, June 13, 1998 at 1; Toledo Blade, Oct. 29, 2006 at F 1, Oct. 29, 2000 at 1A, July 2, 2000 at A1, Dec. 16, 1998 at 1, Apr. 2, 1995 at E1; Tulsa World, Nov. 25, 2004 at A25, June 12, 1998 at 6; Tucson Citizen, June 12, 1998 at 2A; Press Journal (Vero Beach, FL), Oct. 17, 1998 at A9; Virginia Lawyers Weekly, Apr. 13, 2009; Washington Examiner (Va. ed.), Sept. 20, 2005 (editorial); Waterbury Republican-American, Sept. 17, 2002; Waukesha (WI) Freeman, Nov. 7, 2002; Wichita Eagle, Apr. 23, 1995 at 2E; (Wilmington) News Journal, Mar. 24, 1998 at B1; Wisconsin State Journal, July 13, 1999 at 1A, Mar. 21, 1999 at 1A; Forbes, Jan. 7, 2008 at 181.

Exhibit D
List of Cases where Lester Brickman Testified
at Trial or in Deposition in the Past Four Years

List of Cases where Lester Brickman Testified
at Trial or in Deposition in the Past Four years

CSX Transportation, Inc. v. Robert N. Peirce, Jr., Louis A. Raimond and Ray A. Harron,
M.D., Civil Action No. 5:05CV202 (N.D. W. Va.), Deposition of May 14, 2009,
Deposition of Sept. 11, 2012.

Fernandez v. K-M Industries Holding Co., Case No. C-06-07339 (N.D. Cal.), Deposition
of Oct. 9, 2009.

Exhibit E
RBH Memo

Memorandum

TO: Lester Brickman

FROM: Robinson, Bradshaw & Hinson, P.A.

DATE: April 12, 2013

RE: Summary of Double Dipping and Discovery Abuse in Selected Cases Studied by Garlock in its Bankruptcy Case

At your request, we have prepared this summary of evidence Garlock has obtained through its bankruptcy case pertaining to discovery abuse in past cases brought by mesothelioma plaintiffs against Garlock, including the practice of "double dipping." Garlock's review and study of these cases is ongoing. This memorandum reflects Garlock's best current understanding of the facts of these cases. Garlock reserves the right to continue refining its understanding of these facts until the time of trial, and will apprise you of any material changes in its understanding of the facts of these cases.

A. Plaintiffs Studied

As you are aware, Garlock in its bankruptcy case has received full discovery concerning Trust claims, ballots, and 2019s with respect to only seventeen Designated Plaintiffs (there are many other plaintiffs where discovery abuse and double dipping appear to have occurred, but for which Garlock did not receive full document discovery). The document requests pertaining to these plaintiffs were made in connection with Rule 30(b)(6) depositions of six law firms: Waters & Kraus, Simon Greenstone Panatier & Bartlett (f/k/a Simon Eddins & Greenstone, or "Simon Eddins"), Belluck & Fox, The David Firm, Williams Kherkher Hart & Boundas ("Williams Kherkher"), and the Shein Law Center. The sixteen resolved cases were included in the document requests to these law firms because

- (a) Each plaintiff appeared not to have identified during discovery exposures to products manufactured by companies for which they cast ballots or filed Trust claims (as revealed by ballots Garlock received pursuant to subpoena in this case and by data received from its limited subpoena to the Delaware Claims Processing Facility);
- (b) Sixteen cases, with no more than five per law firm deposed, were a manageable number of cases where documents could be obtained in the time permitted;
- (c) The sixteen cases generally were among the highest settlements ever obtained from Garlock by the targeted law firms, which themselves had above average settlement averages;
- (d) The sixteen cases all came from jurisdictions where Garlock traditionally paid the most to settle cases (Los Angeles, San Francisco, Philadelphia, New York City, and Texas); and
- (e) The sixteen cases included cases important in Garlock's litigation history, including the largest adverse verdict ever obtained against Garlock (*Treggett*), the only significant mesothelioma verdict against Garlock after 2005 that has not yet been reversed on appeal (*Torres*), and the largest pre-verdict settlement a plaintiff ever obtained from Garlock (*Phillips*).¹

¹ The Bankruptcy Court granted a motion to quash the subpoena insofar as it related to Mr. Phillips, because that case is the subject of a fraud claim Garlock has brought against the law firm and lawyers who prosecuted that case.

To put the significance of these cases in perspective, Garlock between 2004 and 2010 resolved only 209 cases for \$250,000 or more.² The Designated Plaintiff cases include 12 of those 209 cases, with six of the cases among the very highest settlements Garlock ever paid to resolve a mesothelioma claim (*Treggett, Massinger, Phillips, Williams, Steckler, and Taylor*). Equally important, the law firms that represented these claimants in tort litigation are among the most prominent mesothelioma plaintiff's law firms in the United States, and had some of the highest mesothelioma settlement averages with Garlock. These firms include Waters & Kraus, Simon Eddins, Belluck & Fox, and the Shein Law Center, which represented 14 of the 17 Designated Plaintiffs.

The one plaintiff with a pending claim—John Grabowski, represented by Shein Law Center—was included because he filed a motion in Garlock's bankruptcy case seeking relief from the automatic stay and leave to continue pursuing his claim against Garlock in the tort system, on the ground that his only known exposure to asbestos was from Garlock gaskets. But when Garlock independently discovered that Mr. Grabowski had already voted in the Pittsburgh Corning bankruptcy case, with his attorney certifying under penalty of perjury that he had exposure to a Pittsburgh Corning product, Mr. Grabowski withdrew his motion.

The descriptions below briefly summarize fifteen of the sixteen resolved Designated Plaintiff cases. Garlock learned in discovery that, contrary to Garlock's belief, Williams Kherkher did not handle the sixteenth case (the *Weikel* case). Because Garlock did not have the opportunity to depose the law firm that did handle the case in the tort system, it does not intend to focus on that case at trial.

Finally, in Section C, we describe three cases where Garlock obtained an order from a court requiring the plaintiff (over the plaintiff's objection) to disclose Trust claims evidencing previously undisclosed exposures before trial, then used the claim forms at trial to obtain a defense verdict.

B. Summaries of Cases

1. Robert Treggett—Waters & Kraus (Ron Eddins)—Los Angeles, California

Mr. Treggett obtained the largest verdict against Garlock in its history: \$9 million compensatory damages and \$15 million punitive damages (Garlock settled for compensatory damages during the appeal).³ In response to standard interrogatories asking Mr. Treggett to identify all his asbestos exposures, he and his attorneys identified only two products from bankrupt companies: Flexitallic (a gasket) and Worthington pumps.⁴ At his deposition, Mr. Treggett identified no additional bankrupt products, claiming (for example) that he did not remember the manufacturer of the asbestos insulation he encountered during his time aboard the nuclear submarine USS John Marshall.⁵

The role of amosite insulation in causing Mr. Treggett's mesothelioma was a major issue at trial. Mr. Treggett generally minimized his insulation exposure. For example, at trial, Mr. Treggett claimed he spent 70 percent of his time aboard the nuclear submarine removing gaskets and, at most, 3 percent of his time removing insulation around the flange, most of which was in the form of chrysotile blankets, not amosite pipe covering.⁶ Mr. Treggett also downplayed any asbestos exposure he experienced in shipyards (where insulation exposures were common), claiming for example that at the Mare Island Shipyard in

Garlock has obtained much of the evidence discussed in this memorandum relating to Phillips through the litigation in that adversary proceeding, but has not yet received full document discovery in that case or had the opportunity to take depositions relating to that case.

² See Report of Charles E. Bates, PhD (Feb. 15, 2013) at 28.

³ 10/15/04 Trial Tr. at 6902-13 (GST-EST-0328503).

⁴ Plaintiff's Responses to General Order Standard Interrogatories Propounded by Defendants at 14-16, Ex. A (Feb. 6, 2004) (Waters 06307).

⁵ Treggett Dep. Tr. 536-37 (Waters 06524).

⁶ 9/15/04 Trial Tr. 751, 811-13 (Testimony of Mr. Treggett) (GST-EST-0328506); 10/6/04 Trial Tr. 5213 (Plaintiff's Closing Argument) (GST-EST-0328500).

California from 1965 to 1966 he only did classroom work, did not board ships, and saw ship construction and overhaul only from a distance.⁷

At trial, Garlock attempted to prove Mr. Treggett's exposure to bankrupt products, including amosite insulation, through expert testimony and ship records.⁸ But Mr. Treggett's attorneys cross-examined Garlock's experts regarding their basis for this conclusion.⁹ Then, at the charge conference, Mr. Eddins (later a founding partner of the Simon Eddins firm) successfully opposed inclusion of any bankrupt companies on the verdict form, including Pittsburgh Corning (responsible for the notoriously dangerous insulation Unibestos, which was more than 60% amosite asbestos), stating, "[T]here is not a single piece of evidence that puts Unibestos aboard the boat."¹⁰ Ultimately, although California permits allocation of fault to bankrupt companies for the purpose of apportioning noneconomic damages, no bankrupt companies appeared on the jury form.

In closing argument, Mr. Eddins focused on Garlock's inability to prove Mr. Treggett was exposed to Unibestos and cast doubt on whether amosite insulation contributed to Mr. Treggett's mesothelioma: "There isn't Unibestos [on the jury form] because they didn't bring proof that there was Unibestos on that ship. They couldn't, it's not true. . . . They thought we'll try to prove this amosite thing and say it's all that amosite, and they didn't do it, and they couldn't do it, because it's not true. . . ."¹¹ The jury assigned 40 percent of the fault for Mr. Treggett's injury to Garlock, and no fault at all to any amosite insulation companies.¹²

In fact, months before the trial and Mr. Eddins' statements about Unibestos in closing argument, Mr. Treggett's attorneys at Waters & Kraus had cast a ballot for him in the Pittsburgh Corning bankruptcy case, certifying under penalty of perjury that Mr. Treggett was exposed to Unibestos.¹³ This ballot was never provided to Garlock and the exposure was never disclosed. Then, starting just a couple months after the trial, Mr. Treggett's attorneys filed 14 Trust claims and 8 more ballots on the basis of exposures never identified in his tort case.¹⁴ Waters & Kraus placed Mr. Treggett on 2019 statements in eleven bankruptcy cases, beginning only two months after trial in December 2004, certifying that Mr. Treggett had been injured by asbestos-containing products made, distributed, or sold by the debtor companies.¹⁵ In his tort

⁷ Treggett Dep. Tr. 261-63 (ACC-EST-0035835); 9/16/04 Trial Tr. 1242-43 (Testimony of Mr. Treggett) (GST-EST-0328507).

⁸ 9/28/04 Trial Tr. 3323-24 (Testimony of Robert Sawyer, M.D.) (GST-EST-0328513).

⁹ 9/28/04 Trial Tr. at 3379-3382, 3617-18 (GST-EST-0328513).

¹⁰ 10/6/04 Trial Tr. at 5177, 5184-86 (GST-EST-0328500).

¹¹ 10/6/04 Trial Tr. at 5208-13 (GST-EST-0328500); 10/8/04 Trial Tr. at 5742-44 (GST-EST-0328503).

¹² 10/15/04 Trial Tr. at 6907 (GST-EST-0328503).

¹³ Treggett 2004 PCC Ballot at [Bates Number to be assigned]; Kraus Depo. Tr. 92-93. The short form citations for ballots, Trust claims, and 2019 statements are located at page 27 *infra*.

¹⁴ Treggett Lummus Trust Claim at Waters 02342; Treggett AC&S Trust Claim at Waters 02369; Treggett AWI Trust Claim at Waters 02418; Treggett B&W Trust Claim at Waters 02486; Treggett Thurston Trust Claim at Waters 02511; Treggett Combustion Trust Claim at Waters 02514; Treggett EPI Trust Claim at Waters 02539; Treggett FB Trust Claim at Waters 02552; Treggett Keene Trust Claim at Waters 02655; Treggett OC Trust Claim at Waters 02676; Treggett PH Trust Claim at Waters 02708; Treggett Raybestos Trust Claim at Waters 02753; Treggett USG Trust Claim at Waters 02764; Treggett Western Trust Claim at Waters 02812; Treggett AC&S Ballot at Waters 02226; Treggett 2009 Flintkote Ballot at Waters 02254; Treggett 2008 Flintkote Ballot [Bates Number to be assigned]; Treggett Kaiser Ballot at Waters 02293; Treggett NARCO Ballot at Waters 02298; Treggett OC Ballot at Waters 02247; Treggett USM Ballot at Waters 02320; Treggett WRG Ballot at Waters 02328; Treggett GAF Ballot at Waters 02284.

¹⁵ AC&S 2019 of Waters & Kraus at Waters 10540-10542; Combustion 2019 of Waters & Kraus at Waters 10585-10587; GAF 2019 of Waters & Kraus at Waters 02171-02173; GIT 2019 of Waters & Kraus at Waters 10732-10734; Kaiser 2019 of Waters & Kraus at Waters 10610-10612; NARCO 2019 of Waters & Kraus at Waters 10768-10770; Amended OC 2019 of Waters & Kraus at Waters 10878-10880; PCC 2019 of Waters & Kraus at Waters 10919-10921; Amended USM 2019 of Waters & Kraus at Waters 11096-11098; Amended USG 2019 of Waters & Kraus at Waters 11065-11067; 2nd Amended WRG 2019 of Waters & Kraus at Waters 02220-02224.

case, Mr. Treggett identified none of the exposures underlying those certifications under penalty of perjury in the 2019 statements. In all, the Trust claims, ballots, and 2019 statements evidence 22 exposures not identified in discovery.

Six of the Trust claims were based upon Mr. Treggett's work at the Mare Island shipyard, where he claimed during the tort case he was in a classroom and never went on board a ship—including claims against Trusts responsible for amosite insulation such as AWI, Fibreboard, Owens Corning, and Western Asbestos (the Western claim filed only shortly after Mr. Treggett's trial against Garlock).¹⁶ The claim forms painted a starkly different picture of his exposure history, claiming that at Mare Island he worked in the "shipyard repair/construction industry" and "altered, repaired or otherwise worked with an asbestos-containing product such that [he] was exposed on a regular basis to asbestos fibers," and "was employed in an industry or occupation such that [he] worked on a regular basis in close proximity to workers" manipulating asbestos products.¹⁷ One of the claims based on Mare Island was filed just a couple months after the trial against Garlock ended.¹⁸

At his deposition in this bankruptcy case, Mr. Peter Kraus admitted that it is his firm's practice to delay filing Trust claims until after the conclusion of tort litigation in order to avoid bankrupt entities being placed on the verdict form and allocated fault in several or proportional liability jurisdictions (such as California, where the Treggett case was tried).¹⁹

2. Oscar Torres—Williams Kherkher—Texas

Mr. Torres obtained the only significant mesothelioma verdict against Garlock between 2006 and its bankruptcy petition in 2010 that has not yet been reversed on appeal: 45% of a \$3 million compensatory damages verdict, or \$1.35 million.²⁰ In response to Texas standard interrogatories that he amended seven times before trial, Mr. Torres identified no bankrupt products, including in response to the specific Texas question about bankrupt exposures.²¹ He also did not identify any Trust claims in response to the standard Texas interrogatory asking about any Trust claim that "was or will be made," and did not produce any Trust claim forms in response to the standard request for production requiring production of such claim forms, claiming the question was "not applicable" to him and that there were no Trust claims at that time.²² Mr. Torres throughout his case claimed that the only asbestos-containing products he handled directly were Garlock crocidolite gaskets.²³ He also denied knowledge of the name "Babcock & Wilcox."²⁴

At trial, Garlock attempted to prove that Mr. Torres' mesothelioma was caused not by Garlock gaskets but by insulation products, including Kaylo pipe covering manufactured by Owens Corning.²⁵ In the absence of identification of insulation products by Mr. Torres or his attorneys, Garlock attempted to prove that through expert testimony. Mr. Torres' attorneys cross-examined Garlock's experts on the basis for their opinion that he was exposed to Kaylo and other bankrupt products. Over the objection of Mr.

¹⁶ Treggett Lummus Trust Claim at Waters 02350; Treggett AWI Trust Claim at Waters 02423; Treggett Combustion Trust Claim at Waters 2520; Treggett FB Trust Claim at Waters 02561; Treggett OC Trust Claim at Waters 02685; Treggett Western Trust Claim at Waters 02826.

¹⁷ Treggett OC Trust Claim at Waters 02685-02687.

¹⁸ Treggett Western Trust Claim at Waters 02812.

¹⁹ Kraus Dep. Tr. 41:13-42:24.

²⁰ 3/5/10 Trial Tr. at 8 (GST-EST-0528955).

²¹ Plaintiffs' Seventh Supplemental Responses to Master Interrogatories, Requests for Production and Disclosures at 9-10, 13-14, 21-23 (Feb. 15, 2010) (GST-EST-0536281).

²² *Id.* at 13-14, 48-49.

²³ 2/17/10 Trial Tr. at 45 (plaintiff opening) ("The only asbestos product Oscar actually worked with himself was the Garlock gaskets."); 3/4/10 Trial Tr. at 69-70 ("The reason why Garlock is more of a cause is because the only product that Oscar used hands-on was Garlock . . .") (GST-EST-0528804).

²⁴ Torres Dep. Tr. 91:5-7 (GST-EST-0450175).

²⁵ *See, e.g.*, 3/4/10 Trial Tr. at 105, 109, 113, 120, 128 (closing argument) (GST-EST-0528804).

Torres' attorneys, the court permitted Owens Corning and Johns-Manville to be placed on the verdict form.²⁶ Then, in closing arguments, Mr. Torres' attorneys vigorously denied he was exposed to Owens Corning insulation.²⁷ The jury assigned no fault to Owens Corning or Johns-Manville.²⁸

In fact, the day before Mr. Torres' deposition where he denied knowledge of "Babcock & Wilcox," Mr. Torres filed a claim against the Babcock & Wilcox Trust, which was eventually paid.²⁹ This claim was never disclosed to Garlock, in violation of Texas discovery rules.³⁰ Mr. Torres' trial attorney, at his deposition in this bankruptcy case, claimed he did not know about the Babcock & Wilcox claim during the tort case, but he admitted that the attorney who filed the claim reported directly to him.³¹ Also, after the trial concluded, Mr. Torres filed a claim with the Owens Corning Trust despite his attorney's representation during trial that he was not exposed to Owens Corning products and despite his attorney's cross-examination of Garlock's experts in an attempt to show they could not prove Mr. Torres was exposed to Owens Corning Kaylo (this claim too was eventually paid).³²

Most surprising of all, in both the Babcock & Wilcox Trust claim and the Owens Corning Trust claim, Mr. Torres represented that he "handled raw asbestos fibers on a regular basis" and "fabricated asbestos-containing products such that [he] in the fabrication process was exposed on a regular basis to raw asbestos fibers."³³ No handling of raw asbestos was disclosed in the tort case.³⁴ To the contrary, Mr. Torres and his attorneys claimed repeatedly that the only asbestos products Mr. Torres ever handled were Garlock crocidolite gaskets, a finished product that did not involve "raw asbestos fibers."

3. Peter Homa—Belluck & Fox, David Firm—New York, New York

Garlock settled Mr. Homa's mesothelioma claim for \$250,000—along with a large group of other cases—after 18 days of trial in New York City that pitted Mr. Homa against Garlock as sole remaining defendant. In response to standard NYC interrogatories asking Mr. Homa to identify all sources of exposure, including his exposure to the products of bankrupt companies, he and his attorneys identified no bankrupt companies.³⁵ In his deposition, Mr. Homa identified Babcock & Wilcox (a bankrupt boiler manufacturer) and Flexitallic (a bankrupt gasket manufacturer), but he identified no other bankrupt companies, despite being specifically asked about over a dozen such manufacturers.³⁶ New York City requires exigent mesothelioma plaintiffs such as Mr. Homa to file all Trust claims they intend to file at

²⁶ 3/3/10 Trial Tr. at 253-54 (GST-EST-0528544); 3/4/10 Trial Tr. at 21-22 (GST-EST-0528804).

²⁷ 3/4/10 Trial Tr. at 56, 58 (GST-EST-0528804).

²⁸ 3/5/10 Trial Tr. at 8 (GST-EST-0528955).

²⁹ Torres B&W Trust Claim at WK0001-0009.

³⁰ Chandler Depo. Tr. 52:9-53:1.

³¹ *Id.*

³² Torres OC Trust Claim at WK0086-0095.

³³ Torres B&W Trust Claim at WK0006; Torres OC Trust Claim at WK0092.

³⁴ When confronted with these statements in the Trust claims, Mr. Torres' attorney claimed that the "raw asbestos fibers" referred to asbestos from Garlock's gaskets—a finished product. Chandler Depo Tr. 63:3-64:2.

³⁵ Plaintiffs' Response to Defendants' Fourth Amended Interrogatories and Request for Production of Documents at 10, 11, Chart A (May 29, 2008) (GST-EST-0513831).

³⁶ 6/17/08 Homa Depo. Tr. 57-58 (Babcock & Wilcox) (GST-EST-0165407); 6/18/08 Homa Depo. Tr. 260, 288-89 (disclaiming knowledge of Eagle Picher, Johns-Manville, Keene, Owens Corning, Philip Carey, Pittsburgh Corning, Raybestos, Raymark, USG, National Gypsum, Combustion Engineering) (B&F0000642); 10/2/08 Homa Depo. Tr. 50-51 (Flexitallic) (GST-EST-0165406); 5/7/09 Trial Tr. 961-63, 969-70 (read into evidence Homa deposition disclaiming knowledge of Eagle Picher, Johns-Manville, Keene, Owens Corning, Philip Carey, Pittsburgh Corning, Raybestos, Raymark, USG, National Gypsum, Combustion Engineering) (GST-EST-0178744).

least 90 days before trial, and disclose the Trust claim forms.³⁷ Mr. Homa and his attorneys disclosed no Trust claims that they had filed or intended to file before trial or the eventual settlement.³⁸

At trial, Garlock attempted to prove Mr. Homa's exposure to insulation and other dangerous amphibole products manufactured by companies such as Pittsburgh Corning, Johns-Manville, Eagle Picher, and Keene through expert testimony and ship records showing product specifications for the ships where Mr. Homa worked.³⁹ But Mr. Homa's attorneys crossed Garlock's experts and attempted to cast doubt on this use of ship records, calling into question whether the products reflected in the documents were on the ship when Mr. Homa was there.⁴⁰

Mr. Homa eventually filed 22 Trust claims, three ballots and five 2019 statements never disclosed to Garlock, with a total of 26 unidentified exposures (from 20 of the Trust claims, 3 of the ballots and 3 of the 2019 statements).⁴¹ Many of the Trust claims relied on exposures to specific insulation products never disclosed in discovery, such as GAF #115 Insulating Cement, Kaiser Hard Top Insulating Cement, and Pilsulate Insulating Cement #101.⁴²

The David Law Firm, which filed Mr. Homa's Trust claims, testified that shortly after he retained the firm, it interviewed Mr. Homa and identified Trust claims he had and that they intended to file and could have filed for Mr. Homa long before his trial in compliance with the New York rule requiring filing and disclosure of such claims.⁴³ But instead, Belluck & Fox (according to the David Firm) instructed the David Firm not to file Trust claims before Mr. Homa's case was concluded, in violation of the New York requirement.⁴⁴ This testimony from the David Firm contradicted the Belluck firm's testimony that they had no input into the timing of Trust claims for Mr. Homa.⁴⁵

At least eight of the Trust claims were filed *the day after* Garlock settled the case at trial—according to the David Firm, they filed the claims as soon as Belluck & Fox told them the case had been resolved.⁴⁶ At least one of the Trust claims (with the Manville Trust) was filed months before trial and

³⁷ See Decision and Order, *In re New York City Asbestos Litig.*, No. 40000/88 (N.Y. Sup. Ct. Nov. 15, 2012) (Heitler, J.) (citing, explaining, and refusing to vacate section XV(E)(2)(f) of the NYCAL CMO, which the court noted has been in the CMO since 2003).

³⁸ Belluck Depo. Tr. at 151:7-152:8, 152:20-153:7.

³⁹ 4/27/09 Trial Tr. 90, 100 (GST-EST-0178738); 5/6/09 Trial Tr. 740 et seq. (GST-EST-0178743); 5/13/09 Trial Tr. 1381 (direct by Garlock) (GST-EST-0178747).

⁴⁰ 5/4/09 Trial Tr. 628-29 (GST-EST-0178742); 5/13/09 Trial Tr. 1398-99, 1409, 1452, 1454 (GST-EST-0178747).

⁴¹ Homa AWI Trust Claim at David 00354; Homa B&W Trust Claim at David 00368; Homa Celotex Trust Claim at David 00532; Homa Combustion Trust Claim at David 00408; Homa EPI Trust Claim at David 00553; Homa FM Trust Claim at David 00592; Homa FB Trust Claim at David 00573; Homa GAF Trust Claim at David 00804; Homa HKP Trust Claim at David 01064; Homa HAL Trust Claim at David 00927; Homa HW Trust Claim at David 01083; Homa Kaiser Trust Claim at David 01211; Homa Keene Trust Claim at David 01334; Homa Manville Trust Claim at David 01205; Homa NGC Trust Claim at David 01337; Homa OC Trust Claim at David 01456; Homa Pacor Trust Claim at David 01480; Homa Plibrico Trust Claim at David 01586; Homa Raybestos Trust Claim at David 01709; Homa Shook & Fletcher Trust Claim at David 01716; Homa UNR Trust Claim at David 01722; Homa USG Trust Claim at David 01725; Homa 2009 ASARCO Ballot at [Bates Number to be assigned]; Homa 2008 Flintkote Ballot at [Bates Number to be assigned]; Amended Flintkote 2019 of David at David 00040-00041; Amended GIT 2019 of David at David 00043-00044; Amended NARCO 2019 of David at David 00046-00047; Amended PCC 2019 of David at David 00049-00050; Amended WRG 2019 of David at David 00037-00038.

⁴² Homa GAF Trust Claim at David 00809-00810; Homa Kaiser Trust Claim at David 01217-01218; Homa Plibrico Trust Claim at David 01592-01593.

⁴³ Cooper Depo. Tr. 72:11-18, 73:15-22.

⁴⁴ *Id.* at 75:1-17.

⁴⁵ Belluck Depo. Tr. 187:4-189:1.

⁴⁶ Homa AWI Trust Claim at David 00354; Homa B&W Trust Claim at 00368; Homa Celotex Trust Claim at David 00532; Homa FB Trust Claim at David 00573; Homa HAL Trust Claim at David 00927; Homa Keene Trust Claim at David 01211; Homa OC Trust Claim at David 01456; Homa USG Trust Claim at David 01725; Cooper Depo. Tr. 75:1-17.

never disclosed, also in clear violation of NYC discovery rules, as was a ballot in the Flintkote case.⁴⁷ Finally, twelve of the Trust claims were based on asbestos exposure at seven sites where Mr. Homa had testified he was never exposed to asbestos at all, including a site where he alleged, in his tort case against Garlock, that he only drove a truck, as well as a site where he alleged, in his tort case against Garlock, that he only worked as a police officer.⁴⁸

4. Bernard Massinger—Shein Law Center—Philadelphia, Pennsylvania

Garlock settled Mr. Massinger's mesothelioma claim for \$700,000 after ten days of trial in Philadelphia, along with a group of other claims brought by Shein Law Center. Mr. Massinger was young (in his 50s), and thus had a compelling damages case.⁴⁹ During discovery, Mr. Massinger claimed his mesothelioma was caused by asbestos brought home on his father's clothes, including asbestos from Garlock gaskets.⁵⁰ At his deposition, he denied he was ever directly exposed to asbestos, including during his Air Force service from 1978 to 1980 at the Air Force bases in Lackland, Texas, and Dover, Delaware. He claimed that the Air Force "for the time I was in there was very proactive as far as asbestos abatement and things like that."⁵¹

In fact, in May 2009, months before trial began, and before another deposition of Mr. Massinger taken in the case,⁵² Mr. Massinger signed an affidavit in support of Trust claims, attesting to "personal knowledge" that he "was exposed to asbestos containing products" at the Lackland, Texas, Shepherd, Texas, and Dover, Delaware bases.⁵³ He attested that at those bases he "worked with and in the vicinity [of] other tradesmen who used asbestos containing products during my job of maintaining and testing the backup power equipment. Use of those products created dust which I inhaled."⁵⁴ This direct exposure, which completely changed the nature of Mr. Massinger's exposure to asbestos, was never disclosed to Garlock and was contradicted by Mr. Massinger at his deposition.

The firm that referred the case to Shein Law Center—Early Lucarelli—filed Mr. Massinger's Trust claims.⁵⁵ Mr. Shein testified that he had an understanding with the Early firm that they would not file Trust claims before Mr. Massinger's trial was concluded.⁵⁶ Shein testified that his firm has a practice of delaying Trust claims until after trial in order to prevent Trusts from being added to the verdict form.⁵⁷ But contrary to the understanding with Mr. Shein, the Early firm filed two Trust claims, with the

⁴⁷ Homa Manville Trust Claim at David 01205; Homa 2008 Flintkote Ballot at [Bates Number to be assigned].

⁴⁸ See Plaintiffs' Response to Defendants' Fourth Amended Interrogatories and Request for Production of Documents at 10, 11, Chart A (May 29, 2008) (listing sites where exposure alleged in tort case) (GST-EST-0513831); 6/17/08 Homa Depo. Tr. 74-76 (no asbestos exposure at Newport Naval Hospital), 86 (no asbestos exposure at Naval Technical Training Center in Jacksonville, FL), 88-93 (no exposure on USS Pensacola, USS Albany, Norfolk Naval Sea Systems Command, Norfolk Naval Shipyard (1979-85), USS Raleigh) (GST-EST-0165407); Belluck Depo. Tr. 246-55; Homa AWI Trust Claim at David 00362-00364; Homa B&W Trust Claim at 00371-00396; Homa Combustion Trust Claim at David 00419-00422; Homa FB Trust Claim at David 00587-00589; Homa GAF Trust Claim at David 00809-00810; Homa HAL Trust Claim at David 00943-00950; Homa Keene Trust Claim at David 01335; Homa OC Trust Claim at David 01466-01474; Homa Plibrico Trust Claim at David 01592-01593; Homa Raybestos Trust Claim at David 01713-01715; Homa Shook & Fletcher Trust Claim at David 01720.

⁴⁹ Shein Depo. Tr. 133:23-134:16.

⁵⁰ *Id.*

⁵¹ 7/2/08 Massinger Depo. (*de bene esse*) Tr. 13-16, 26-27 (GST-EST-0543740); 7/2/08 Massinger Depo. (discovery) Tr. 23-27 (GST-EST-0543738).

⁵² See 6/5/09 Massinger Depo. (GST-EST-0543739).

⁵³ Affidavit of Bernard F. Massinger (May 28, 2009), at Shein 01357 (Shook & Fletcher Trust Claim); Affidavit of Bernard F. Massinger (May 28, 2009), at Shein 007887 (Fibreboard Trust Claim).

⁵⁴ *Id.*

⁵⁵ Shein Depo. Tr. 34.

⁵⁶ *Id.* at 137:2-9.

⁵⁷ *Id.* at 43:20-44:23.

Fibreboard and USG Trusts—the Fibreboard claim supported by the affidavit attesting to Air Force exposure—before the trial against Garlock.⁵⁸ Later the Early firm withdrew those claims—the claim with the USG Trust *after* the Trust had already approved and agreed to pay Mr. Massinger’s claim.⁵⁹ The exposures evidenced by the USG and Fibreboard Trust claims were never disclosed to Garlock in the tort litigation, in violation of Philadelphia discovery rules.

Overall, Mr. Massinger’s attorneys filed seven Trust claims and four ballots based on exposures not identified to Garlock during discovery, for a total of 11 unidentified exposures, including refileing the Fibreboard and USG Trust claims withdrawn during the tort litigation.⁶⁰ Overall, six Trust claims and ballots based on exposures not identified in tort discovery were filed *before* Garlock settled the case.

5. John Phillips—Williams Kherkher—Texas

Mr. Phillips was represented by the same law firm that represented Mr. Torres, and he obtained the largest pre-verdict settlement from Garlock in its history: \$2.5 million. He claimed that his only exposure to asbestos occurred as a young man during three summers working as a gasket cutter, where he only cut Garlock crocidolite gaskets as well as Johns-Manville gaskets.⁶¹ He and his attorney disclosed no other exposures to asbestos during his tort case, including no other exposures to bankrupt products, and they claimed that the standard Texas interrogatory regarding Trust claims “made or anticipated to be made” was “Not applicable.”⁶²

Before Garlock settled the case, however, Mr. Phillips’ attorneys filed a ballot for him in the ASARCO bankruptcy, indicating, among other things, that he had exposure for which Capco, an asbestos cement pipe manufacturer, was responsible.⁶³ In addition, after Garlock settled, Mr. Phillips and his attorneys asserted 14 Trust claims for which exposures were never identified (in addition to a Manville claim).⁶⁴ In four of those claims, Mr. Phillips requested Individual Review, an indication that his attorneys believed he had a particularly strong claim.⁶⁵ Exposure to any of these products was not consistent in any way with the exposure story Mr. Phillips told Garlock in the tort system.

6. Vincent Golini—Shein Law Center—Philadelphia, Pennsylvania

Garlock settled Mr. Golini’s mesothelioma claim for \$250,000 in 2010, at the same time as the *Massinger* settlement. In response to standard interrogatories requiring him to identify all products to

⁵⁸ See Data concerning Mr. Massinger received from Delaware Claims Processing Facility, LLC pursuant to Court-ordered subpoena.

⁵⁹ See *id.*

⁶⁰ Massinger EPI Trust Claim at Shein 00673; Massinger FB Trust Claim at Shein 00770; Massinger HAL Trust Claim at Shein 00602; Massinger OC Trust Claim at Shein 01089; Massinger Raybestos Trust Claim at Shein 01338; Massinger Shook & Fletcher Trust Claim at Shein 01351; Massinger USG Trust Claim at Shein 01417; Massinger 2009 ASARCO Ballot at [Bates Number to be assigned]; Massinger 2009 PCC Ballot at [Bates Number to be assigned]; Massinger 2006 Quigley Ballot at [Bates Number to be assigned]; Massinger WRG Ballot at [Bates Number to be assigned].

⁶¹ Plaintiffs’ Thirteenth Supplemental Responses to Master Interrogatories, Requests for Production and Requests for Disclosure at 11-12 (Feb. 19, 2009) (GST-EST-0511242).

⁶² See, e.g., *id.* at 14, 21-24, 48-49.

⁶³ Phillips 2008 ASARCO Ballot at [Bates Number to be assigned]; Phillips 2009 ASARCO Ballot at [Bates Number to be assigned].

⁶⁴ See Affidavit of Charles D. Finley, *Garlock Sealing Technologies LLC et al. v. Chandler et al. (In re Garlock Sealing Technologies LLC, et al.)*, No. 12-03137 (Bankr. W.D.N.C. Dec. 5, 2012) (Docket No. 42), Ex. E. (containing claim forms against ARTRA, Armstrong World Industries, Babcock & Wilcox, Combustion Engineering, Congoleum, Fibreboard, Halliburton, Kaiser Aluminum, Keene, Owens Corning, Plibrico, US Minerals, USG, and ASARCO Trusts).

⁶⁵ See *id.* (Halliburton, Kaiser Aluminum, Plibrico, USG claims).

which he was exposed, Mr. Golini and his attorneys identified no bankrupt companies.⁶⁶ At Mr. Golini's deposition, his attorney asked him about the condition of the pipe covering on ships where he worked, and he testified that "The condition on ships was always wonderful. There was a cast and everything was painted." When asked "Did you ever observe these miles of pipe covering to be dusty or flaky?" he testified "No."⁶⁷ The only bankrupt company he remembered at his deposition was Johns-Manville, but in response to his attorney's question about whether he associated that name with any particular product, he said "no."⁶⁸ Under questioning by defendants' lawyers, Mr. Golini testified he either never saw or never encountered at the shipyard where he worked products manufactured by Owens Corning (Kaylo), Fibreboard, Armstrong, and Eagle Picher.⁶⁹ He also testified that he had never heard of Worthington pumps.⁷⁰

In fact, before filing suit against Garlock—and months before his deposition—Mr. Golini had already signed fourteen sworn statements attesting "subject to the penalties of perjury" that during his employment he "frequently and regularly worked in close proximity" to workers manipulating various asbestos-containing products for which bankrupts are responsible, which created asbestos dust that he breathed.⁷¹ Five of the sworn statements attested to frequent, regular, and proximate exposure to particular products manufactured by Fibreboard (Pabco pipe covering), Armstrong (pipe covering), Owens Corning (Kaylo pipe covering), Eagle Picher (Super 66 and One-Cote cement), and Worthington (pumps), contradicting Mr. Golini's later deposition testimony that he lacked any knowledge about those products.⁷² And despite Mr. Golini's testimony about the "wonderful" condition of the pipecovering he saw on ships, several of the products to which Mr. Golini was regularly, frequently, and proximately exposed were pipe covering, including Pabco, Kaylo, and Philip Carey pipe covering.⁷³ The sworn statements attested to his exposure to other friable products as well, including cement and block.

⁶⁶ Plaintiffs' Answers to Asbestos Claims Facility Defendants' General Interrogatories—Sets I and II, at 3 (July 29, 2009) (requiring Mr. Golini to, among other things, "List, by type, brand and/or trade name, and manufacturer, every asbestos-containing product to which you believe you were exposed.") (GST-EST-0517885).

⁶⁷ 8/12/09 Golini Depo. Tr. at 148-49 (GST-EST-0135286); *see also* 8/12/09 Golini Depo. Tr. at 386-87 (GST-EST-0543744).

⁶⁸ 8/12/09 Golini Depo. Tr. at 148-49 (GST-EST-0135286).

⁶⁹ 8/10/09 Golini Depo. Tr. at 32-35 (GST-EST-0135315).

⁷⁰ 8/11/09 Golini Depo. Tr. at 249 (GST-EST-0135185).

⁷¹ Affidavit of Vincent Golini (May 19, 2009), at Shein 01887 (ARTRA Triple Duty Joint Compound); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 01901 (AWI Asbestos-Containing Products); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 01923 (B&W Boilers); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 01936 (Philip Carey Pipecovering (Celotex)); Affidavit of Vincent Golini (May 19, 2009), at Shein 01955 (Combustion Asbestos Products); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 01981 (Worthington Pumps (HAL)); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 01986 (EPI Super 66 and One-Cote Asbestos Cement); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 02088 (Kaiser Asbestos Refractories Products); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 02091 (NGC Asbestos Joint Compound and Plaster); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 02120 (Pabco Asbestos Pipecovering (FB)); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 02149 (Kaylo Pipecovering (OC)); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 02203 (Plibrico Asbestos Refractories); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 02231 (Harbison Walker Asbestos Refractories); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 02259 (USG Asbestos Joint Compound).

⁷² Sworn Statement of Vincent Golini (May 16, 2009), at Shein 01901 (AWI Asbestos-Containing Products); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 01981 (Worthington Pumps (HAL)); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 01986 (EPI Super 66 and One-Cote Asbestos Cement); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 02120 (Pabco Asbestos Pipecovering (FB)); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 02149 (Kaylo Pipecovering (OC)).

⁷³ Sworn Statement of Vincent Golini (May 16, 2009), at Shein 02120 (Pabco Asbestos Pipecovering (FB)); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 02149 (Kaylo Pipecovering (OC)); Sworn Statement of Vincent Golini (May 16, 2009), at Shein 01936 (Philip Carey Pipecovering (Celotex)).

Mr. Shein testified that he would not have expected these sworn statements to have been shared with the attorney who prepared Mr. Golini for deposition, presented him, and questioned him about his exposures there, because “our goal is to maximize a client’s recovery . . . and in order to do that, what we focus on for the deposition is the viable, non-bankrupt companies. That’s our job, okay. Our goal is to do our job on behalf of our clients, okay, not to do the defendants’ job for them.”⁷⁴ After identifying no exposures to bankrupt products during discovery, Mr. Golini’s attorneys eventually filed 20 Trust claims and four ballots on his behalf, for a total of 24 unidentified exposures.⁷⁵

7. Charles White—Simon Eddins—Texas

Garlock settled Mr. White’s mesothelioma claim for \$250,000 in 2006, one month before trial was set to begin and after extensive discovery. In response to Texas standard interrogatories requiring Mr. White to list all products to which he was exposed, including products manufactured by bankrupts, Mr. White and his attorneys identified no bankrupts represented by 524(g) Trusts.⁷⁶ At his deposition, Mr. White identified only one product for which a 524(g) Trust was responsible (Worthington pumps).⁷⁷ Mr. White testified that he spent his time at the shipyard in a machine shop where he was brought equipment from which he removed gaskets,⁷⁸ and testified he never went aboard ships or saw asbestos insulation being installed or removed.⁷⁹ He also testified that he was not exposed to asbestos during his year of Coast Guard service.⁸⁰

After Garlock settled the case, the Early firm, which referred the case to Simon Eddins, filed 22 Trust claims, and a third law firm filed two additional Trust claims. None of the exposures underlying 22 of the 24 claims had been identified in discovery.⁸¹ Four of the claims with unidentified exposures were

⁷⁴ Shein Depo. Tr. 64:11-65:16.

⁷⁵ Golini AWI Trust Claim at Shein 01888; Golini ARTRA Trust Claim at Shein 00036; Golini B&W Trust Claim at Shein 01902; Golini Celotex Trust Claim at Shein 00104; Golini Combustion Trust Claim at Shein 00162; Golini EPI Trust Claim at Shein 00668; Golini FM (Flex) Trust Claim at Shein 00702; Golini FM (T&N) Trust Claim at Shein 00736; Golini FB Trust Claim at Shein 01135; Golini HKP Trust Claim at Shein 01037; Golini HAL Trust Claim at Shein 00628; Golini HW Trust Claim at Shein 02206; Golini Kaiser Trust Claim at Shein 01060; Golini Manville Trust Claim at Shein 01084; Golini NGC Trust Claim at Shein 01086; Golini OC Trust Claim at Shein 01164; Golini Pacor Trust Claim at Shein 01195; Golini Plibrico Trust Claim at Shein 01314; Golini Raybestos Trust Claim at Shein 01347; Golini USG Trust Claim at Shein 01437; Golini Hercules Ballot at [Bates Number to be assigned]; Golini 2009 PCC Ballot at [Bates Number to be assigned]; Golini 2012 Quigley Ballot at [Bates Number to be assigned]; Golini WRG Ballot at [Bates Number to be assigned].

⁷⁶ Plaintiff’s Answers to Master Discovery Requests to All Defendants in All Asbestos-Related Personal Injury and Death Cases Filed in Harris County and Responses to All Defendants’ Rule 194 Requests for Disclosure at 5-7, 8-9, 14-16 (July 31, 2006) (GST-EST-0521405).

⁷⁷ See, e.g., 8/11/06 White Depo. Tr. at 29:3-21 (GST-EST-0180601).

⁷⁸ *Id.* at 24:23-25:12, 26:1-11.

⁷⁹ *Id.* at 112:7-113:6.

⁸⁰ *Id.* at 168:3-7.

⁸¹ White Lummus Trust Claim at Simon 27429; White ARTRA Trust Claim at Simon 27445; White AWI Trust Claim at Simon 27481; White B&W Trust Claim at Simon 27493; White Thurston Trust Claim at Simon 28037; White Celotex Trust Claim at Simon 27957; White Bartells Trust Claim at Simon 27969; White EPI Trust Claim at Simon 27979; White Lummus Trust Claim at Simon 27545; White FB Trust Claim at Simon 27523; White GAF Trust Claim at Simon 27561; White HKP Trust Claim at Simon 27580; White Thorpe Trust Claim at Simon 27728; White Keene Trust Claim at Simon 27995; White Manville Trust Claim at Simon 27993; White NGC Trust Claim at Simon 27999; White OC Trust Claim at Simon 28013; White PH Trust Claim at Simon 27594; White Raybestos Trust Claim at Simon 27953; White THAN Trust Claim at Simon 27610; White USG Trust Claim at Simon 27628; White Western Trust Claim at Simon 27829.

supported by sworn statements from Mr. White attesting to his personal knowledge of exposures to specific asbestos-containing products manufactured by bankrupts, which created dust that he inhaled.⁸²

Some of the claims were based on sworn statements from Mr. White attesting to his extensive asbestos exposure in the Coast Guard, directly contradicting his deposition testimony that he was not exposed to asbestos while in the Coast Guard. In the affidavit supporting the Trust claims, he swore, "As a Fire Control/Radar Officer aboard these ships, I was exposed to asbestos containing materials such as, but not limited to, fireproofing, boilers, pipecovering, block, cement, gaskets, insulation and refractory, while working with and in the vicinity of insulators, repairmen and other tradesmen."⁸³

Most remarkable of all were two claims supported by declarations from Mr. White's wife after his death. Directly contradicting Mr. White's testimony that he never worked on ships at the shipyard, she attested under penalty of perjury that he had worked for extended periods of time on two ships (the USS Mountrail and USS Sea Lion).⁸⁴ On the Mountrail, according to his wife's personal knowledge "from extensive discussions with my husband about his work," he "observed shipboard activities with and around insulation materials, including but not limited to pipe insulation" and was with and around tradesmen who were "installing and tearing out asbestos-containing products, including but not limited to pipe insulation."⁸⁵ His wife attested that when Mr. White was diagnosed, he "indicated to me that he believed that his exposure to pipe insulation while on the USS Mountrail APA-213 while it was at the Norfolk Naval Shipyard in Norfolk, VA was contributory to his Mesothelioma."⁸⁶ She also attested that on the Sea Lion, Mr. White worked near boilers during "mixing, installation and chipping of refractory products, scraping of gaskets and handling and cleaning of other asbestos-containing boiler materials," and was also frequently around boilermakers who "always had dirty and dusty work clothes."⁸⁷ Here too she indicated that "I believe Decedent Charles C. White's exposure to asbestos while working on the USS Sea Lion at Norfolk Naval Shipyard in the boiler room was contributory to his Mesothelioma."⁸⁸ None of these exposures were disclosed to Garlock in his tort case.

8. Howard Ornstein—Simon Eddins—Los Angeles, California

Garlock settled Mr. Ornstein's mesothelioma claim for \$400,000 in 2008 according to Garlock's database. Mr. Ornstein alleged he was exposed to Garlock gaskets while working as an electrician aboard Navy ships, where he mostly performed maintenance work. In response to standard discovery requiring Mr. Ornstein to disclose all his exposures to asbestos, Mr. Ornstein and his attorneys disclosed no exposures to products manufactured by bankrupt entities.⁸⁹ At his deposition, Mr. Ornstein claimed he never saw anyone installing or removing pipe insulation during the overhaul of the USS Estes⁹⁰ and that

⁸² Affidavit of Charles C. White (Sept. 25, 2007), at Simon 27492 (AWI); Affidavit of Charles C. White (Sept. 25, 2007), at Simon 27639 (USG); Affidavit of Charles C. White (Sept. 25, 2007), at Simon 28012 (NGC); Affidavit of Charles White (Oct. 27, 2008), at Simon 27627 (THAN).

⁸³ Affidavit of Charles C. White (Aug., 12, 2008), at Simon 27505 (B&W); Affidavit of Charles C. White (Aug., 12, 2008), at Simon 27977 (Bartells).

⁸⁴ Declaration of Barbara Lorton (Apr. 1, 2010), at Simon 27923 (Western); Declaration of Barbara Lorton (June 18, 2009), at Simon 27822 (Thorpe).

⁸⁵ Declaration of Barbara Lorton (Apr. 1, 2010), at Simon 27923 (Western).

⁸⁶ *Id.*

⁸⁷ Declaration of Barbara Lorton (June 18, 2009), at Simon 27822 (Thorpe).

⁸⁸ *Id.*

⁸⁹ Plaintiffs' Responses to General Order Standard Interrogatories Propounded by Defendants at 10-13, Ex. A (May 23, 2008) (GST-EST-0512262).

⁹⁰ 6/3/08 Ornstein Depo. Tr. at 228-30, 237 (Simon 22226); 6/5/08 Ornstein Depo. Tr. at 525-27 (Simon 22751).

he never saw a boiler while he was in the Navy.⁹¹ When asked whether he ever saw anything on the USS Estes manufactured by a company called Worthington, he testified, “No. I don’t recall that name.”⁹²

After Garlock settled the case, Mr. Ornstein and his attorneys at Simon Eddins filed 11 Trust claims, all based on exposures not identified in his tort case.⁹³ Seven of the claims were based on declarations executed by Mr. Ornstein under penalty of perjury attesting to his personal knowledge of exposures to specific products, including numerous insulation products such as Armstrong 85% Magnesia Pipe Covering and Block, Eagle Picher 85% Magnesia Pipe Covering, Keene Pipe Covering, Pabco 85% Magnesia Pipe Covering, and Kaylo Pipe Covering.⁹⁴ Mr. Ornstein swore, under penalty of perjury and upon personal knowledge, that on board the ships he “would remove and replace insulation,” including pipe insulation such as Armstrong 85% Magnesia Pipe Covering and Block and Armstrong Hi-Temp pipe covering.⁹⁵ This statement directly contradicted his testimony in the tort case that he had never even *seen* anyone install or remove pipe insulation, much less install and remove it himself as he swore in this declaration.

9. Robert Reed—Simon Eddins—Los Angeles, California

Garlock settled Mr. Reed’s mesothelioma claim for \$400,000 in 2008. Mr. Reed and his attorneys identified no bankrupt companies in response to standard interrogatories requiring him to identify all his exposures to asbestos.⁹⁶ He identified only solvent manufacturers, such as Garlock.⁹⁷

After Garlock settled, Mr. Reed and his attorneys filed Trust claims and ballots based on 14 exposures not identified to Garlock.⁹⁸ Several of the claims were based on affidavits executed by Mr. Reed’s wife, son, and attorney, attesting to his exposure to particular asbestos-containing products that were never identified in discovery, despite the fact that the son verified interrogatories submitted after Mr. Reed passed away.⁹⁹

⁹¹ 6/2/08 Ornstein Depo. Tr. at 39, 101 (Simon 22006); 6/3/08 Ornstein Depo. Tr. at 107, 152 (Simon 22226); 6/4/08 Ornstein Depo. Tr. 321-22, 363-64 (Simon 22751); 6/5/08 Ornstein Depo. Tr. at 527 (Simon 22751).

⁹² 6/4/08 Ornstein Depo. Tr. 299 (Simon 22751).

⁹³ Ornstein AC&S Trust Claim at Simon 28039; Ornstein Amatex Trust Claim at Simon 28084; Ornstein AWI Trust Claim at Simon 28125; Ornstein Combustion Trust Claim at Simon 28208; Ornstein EPI Trust Claim at Simon 28485; Ornstein FB Trust Claim at Simon 28573; Ornstein HKP Trust Claim at Simon 28659; Ornstein HAL Trust Claim at Simon 28355; Ornstein Keene Trust Claim at Simon 28765; Ornstein OC Trust Claim at Simon 28842; Ornstein Thorpe Trust Claim at Simon 28865.

⁹⁴ Declaration of Howard Ornstein (June 18, 2009), at Simon 28055 (Armstrong 85% Magnesia Pipe Covering and Block and Armstrong Hi-Temp Pipe Covering); Declaration of Howard Ornstein (Mar. 12, 2009), at Simon 28140 (same); Declaration of Howard Ornstein (Mar. 12, 2009), at Simon 28226 (Combustion Boilers); Declaration of Howard Ornstein (Mar. 12, 2009), at Simon 28372 (Worthington Pumps); Declaration of Howard Ornstein (Mar. 12, 2009), at Simon 28488 (Eagle Picher 85% Magnesia Pipe Covering); Declaration of Howard Ornstein (Mar. 12, 2009), at Simon 28674 (HKP Asbestos Cloth); Declaration of Howard Ornstein (Mar. 12, 2009), at Simon 28767 (Keene Pipe Covering); Declaration of Howard Ornstein (Mar. 12, 2009), at Simon 28863 (Pabco 85% Magnesia Pipe Covering and Kaylo Pipe Covering).

⁹⁵ Declaration of Howard Ornstein (June 18, 2009), at Simon 28055.

⁹⁶ Plaintiff Robert G. Reed’s Amended Responses to General Order Standard Interrogatories Propounded by Defendants at 11-14, Ex. A (Feb. 1, 2007) (GST-EST-0175703).

⁹⁷ *See id.*

⁹⁸ Reed ARTRA Trust Claim at Simon 27274; Reed B&W Trust Claim at Simon 27292; Reed Celotex Trust Claim at Simon 27931; Reed Combustion Trust Claim at Simon 27307; Reed Congoleum Trust Claim at Simon 27330; Reed HAL Trust Claim at Simon 27380; Reed EPI Trust Claim at Simon 27938; Reed FM Trust Claim at Simon 27350; Reed GAF Trust Claim at Simon 27363; Reed Manville Trust Claim at Simon 27946; Reed OC Trust Claim at Simon 27399; Reed Raybestos Trust Claim at Simon 27947; Reed USG Trust Claim at Simon 27417; Reed Western Trust Claim at Simon 27660.

⁹⁹ Plaintiff Robert Reed II’s Response to General Order Standard Interrogatories—Wrongful Death at 54 (Feb. 5, 2008) (GST-EST-0175864); Affidavit of Mathilde Reed (Apr. 27, 2011), at Simon 27291 (ARTRA); Affidavit of

10. John Brennan—Shein Law Center—Philadelphia, Pennsylvania

Garlock settled Mr. Brennan's mesothelioma claim for \$250,000 in 2010. Mr. Brennan and his attorneys filed Trust claims and ballots based on 20 exposures not identified to Garlock: 14 Trust claims and six ballots.¹⁰⁰ At least five of the ballots were filed before Garlock settled the case, and the exposures were never identified to Garlock.¹⁰¹

11. Robert Flynn—Belluck & Fox—New York, New York

Garlock settled Mr. Flynn's mesothelioma claim for \$150,000 in 2005—the first six figure settlement that the Belluck & Fox firm obtained from Garlock. Mr. Flynn and his attorneys filed Trust claims, ballots, and 2019 statements based on 23 exposures not identified to Garlock, evidenced by 14 Trust claims, seven ballots, and eight 2019 statements.¹⁰²

12. Raymond Beltrami—Belluck & Fox—New York, New York

Garlock settled Mr. Beltrami's mesothelioma claim for \$250,000 in 2009, as part of the group of cases settled with *Homa* (*Beltrami* was the next case in the Belluck & Fox trial queue). Mr. Beltrami and his attorneys filed Trust claims and ballots based on 24 exposures not identified to Garlock, including 17

Mathilde Reed (June 11, 2012), at Simon 27349 (Congoleum); Affidavit of Robert Reed II (Sept. 18, 2012), at Simon 27362 (FM-Ferodo); Affidavit of Robert Reed II (Mar. 7, 2011), at Simon 27379 (GAF); Affidavit of Mathilde Reed (Oct. 14, 2008), at Simon 27428 (USG); Declaration of Mathilde Reed (Aug. 20, 2009), at Simon 27725 (Western).

¹⁰⁰ See Plaintiffs' Answers to Asbestos Claims Facility Defendants' General Interrogatories – Sets I and II at 13-14, Ex. A (Sept. 11, 2008) (GST-EST-0515477); Brennan AWI Trust Claim at Shein 02260; Brennan B&W Trust Claim at Shein 02271; Brennan Celotex Trust Claim at Shein 02282; Brennan Combustion Trust Claim at Shein 02294; Brennan EPI Trust Claim at Shein 02309; Brennan FB Trust Claim at Shein 02327; Brennan HAL Trust Claim at Shein 02383; Brennan HW Trust Claim at Shein 02400; Brennan Manville Trust Claim at Shein 02312; Brennan NGC Trust Claim at Shein 02313; Brennan OC Trust Claim at Shein 02314; Brennan Pacor Trust Claim at Shein 02341; Brennan Raybestos Trust Claim at Shein 02381; Brennan USG Trust Claim at Shein 02416; Brennan 2009 ASARCO Ballot at Shein 01482; Brennan GAF Ballot at Shein 01500; Brennan Hercules Ballot at Shein 01510; Brennan 2009 PCC Ballot at Shein 01517; Brennan 2012 Quigley Ballot at Shein 01526; Brennan WRG Ballot at [Bates Number to be assigned].

¹⁰¹ For timing of claims, see Appendix.

¹⁰² See Plaintiffs' Response to Defendants' Interrogatories and Request for Production of Documents at 12-13, Chart A (Oct. 21, 2004) (GST-EST-0514179); Flynn Lummus Trust Claim at Waters 00263; Flynn AWI Trust Claim at Waters 00272; Flynn Celotex Trust Claim at Waters 00318; Flynn Combustion Trust Claim at Waters 00352; Flynn HAL Trust Claim at Waters 00402-00416; Flynn EPI Trust Claim at Waters 00361; Flynn FB Trust Claim at Waters 00380; Flynn Kaiser Trust Claim at Waters 00455; Flynn Keene Trust Claim at Waters 00487; Flynn Manville Trust Claim at Waters 00505; Flynn OC Trust Claim at Waters 00509; Flynn PH Trust Claim at Waters 00529; Flynn Raybestos Trust Claim at Waters 00560; Flynn UNR Trust Claim at Waters 00570; Flynn Fairchild Ballot at Waters 00047-00048; Flynn FB Ballot at Waters 00078; Flynn 2009 Flintkote Ballot at Waters 00053; Flynn GAF Ballot at Waters 00069-00071; Flynn 2009 PCC Ballot at Waters 00086-00089; Flynn 2012 Quigley Ballot at Waters 00092-00096; Flynn WRG Ballot at Waters 00106-00111; 2nd Amended Combustion 2019 of Waters & Kraus at Waters 10597-10599; GAF 2019 of Waters & Kraus at Waters 00127-00129; 5th Amended GIT 2019 of Waters & Kraus at Waters 10639-10641; 5th Amended NARCO 2019 of Waters & Kraus at Waters 10793-10795; 5th Amended OC 2019 of Waters & Kraus at Waters 10903-10905; 5th Amended PCC 2019 of Waters & Kraus at Waters 10952-10954; 5th Amended USG 2019 of Waters & Kraus at Waters 11089-11091; 2nd Amended WRG 2019 of Waters & Kraus at Waters 00042-00044.

Trust claims, four ballots, and five 2019 statements.¹⁰³ *Beltrami* was subject to the same NYC CMO provision requiring filing and disclosure of all Trust claims long before trial. Nine of the Trust claims and ballots were filed before Garlock settled the case, and neither they nor the underlying exposures were ever identified to Garlock.¹⁰⁴

13. Tommie Williams—Waters & Kraus—Los Angeles, California

Garlock settled Mr. Williams's mesothelioma claim for \$475,000 during jury selection. Mr. Williams and his attorneys filed 17 Trust claims, ten ballots, and ten 2019 statements based on unidentified exposures, for a total of 25 unidentified exposures.¹⁰⁵ Five of the exposures are evidenced by 2019 statements or ballots filed before Garlock settled the case, showing that Waters & Kraus knew about the exposures and failed to disclose them to Garlock while his case was being litigated.¹⁰⁶

14. Michael Steckler—Waters & Kraus—San Francisco, California

¹⁰³ See Plaintiffs' Response to Defendants' Fourth Amended Interrogatories and Request for Production of Documents at 11-13, Chart A (Apr. 3, 2008) (GST-EST-0514123); Beltrami AWI Trust Claim at David 01736; Beltrami B&W Trust Claim at David 01748; Beltrami Celotex Trust Claim at David 01845; Beltrami Combustion Trust Claim at David 01769-01778; Beltrami EPI Trust Claim at David 01857; Beltrami FB Trust Claim at David 01806; Beltrami HKP Trust Claim at David 01873; Beltrami HAL Trust Claim at David 01860; Beltrami HW Trust Claim at David 01892; Beltrami Kaiser Trust Claim at David 01912-01927; Beltrami Keene Trust Claim at David 01930; Beltrami NGC Trust Claim at David 01779; Beltrami OC Trust Claim at David 01784; Beltrami Kaiser Trust Claim at David 01932-01947; Beltrami Raybestos Trust Claim at David 01950; Beltrami UNR Trust Claim at David 01952; Beltrami USG Trust Claim at David 01828; Beltrami AC&S Ballot at [Bates Number to be assigned]; Beltrami 2009 ASARCO Ballot at [Bates Number to be assigned]; Beltrami 2008 Flintkote Ballot at [Bates Number to be assigned]; Beltrami 2009 PCC Ballot at [Bates Number to be assigned]; Amended Flintkote 2019 of David at David 00040-00041; Amended GIT 2019 of David at David 00043-00044; Amended NARCO 2019 of David at David 00046-00047; Amended PCC 2019 of David at David 00049-00050; Amended WRG 2019 of David at David 00037-00038.

¹⁰⁴ For timing, see Appendix.

¹⁰⁵ See Plaintiffs' Responses to General Order Standard Interrogatories Propounded by Defendants at 12-15, Ex. A (Apr. 29, 2004) (GST-EST-0512078); Plaintiffs' Amended Responses to General Order Standard Interrogatories Propounded by Defendants at I (Dec. 4, 2004) (GST-EST-0512039); Amended Work History Sheet (Sept. 27, 2004) (GST-EST-0511802); Williams Lummus Trust Claim at Waters 03456; Williams AC&S Trust Claim at Waters 03461; Williams AWI Trust Claim at Waters 03488; Williams ARTRA Trust Claim at Waters 04128; Williams ASARCO Trust Claim at Waters 03533; Williams Burns & Roe Trust Claim at Waters 03636; Williams Celotex Trust Claim at Waters 03662; Williams Combustion Trust Claim at Waters 03676; Williams HAL Trust Claim at Waters 03813; Williams HW Trust Claim at Waters 03857; Williams EPI Trust Claim at Waters 03770; Williams FB Trust Claim at Waters 03788; Williams HKP Trust Claim at Waters 03895; Williams Kaiser Trust Claim at Waters 04016; Williams Keene Trust Claim at Waters 04050; Williams NGC Trust Claim at Waters 04072; Williams Raybestos Trust Claim at Waters 04113; Williams AC&S Ballot at Waters 03292-03294; Williams 2009 ASARCO Ballot at Waters 03303-03307; Williams FM Ballot at Waters 03314-03321; Williams FB Ballot at Waters 03324-03328; Williams 2009 Flintkote Ballot at Waters 03331-03337; Williams GAF Ballot at Waters 03361-03363; Williams Kaiser Ballot at Waters 03375-03377; Williams 2009 PCC Ballot at Waters 03388-03391; Williams USM Ballot at Waters 03419-03423; Williams WRG Ballot at Waters 03427-03432; Williams AC&S 2019 at Waters 10540-10542; Combustion 2019 of Waters & Kraus at Waters 10585-10587; GAF 2019 of Waters & Kraus at Waters 03225-03227; GIT 2019 of Waters & Kraus at Waters 10610-10612; Kaiser 2019 of Waters & Kraus at Waters 10732-10734; NARCO 2019 of Waters & Kraus at Waters 10768-10770; PCC 2019 of Waters & Kraus at Waters 10919-10921; Amended USM 2019 of Waters & Kraus at Waters 11098-11096; 2nd Amended WRG 2019 of Waters & Kraus at Waters 03286-03288.

¹⁰⁶ For timing, see Appendix.

Garlock settled Mr. Steckler's mesothelioma claim for \$850,000 in 2006. Mr. Steckler and his attorneys filed 18 Trust claims, seven ballots, and eight 2019 statements based on unidentified exposures, for a total of 24 exposures not identified to Garlock.¹⁰⁷ Five of the exposures are evidenced by 2019 statements filed before Garlock settled the case (the US Minerals statement before Steckler submitted his answers to standard interrogatories), showing that Waters & Kraus knew about the exposures and failed to disclose them to Garlock while his case was being litigated.¹⁰⁸

15. Reginald Taylor—Waters & Kraus—San Francisco, California

Garlock settled Mr. Taylor's mesothelioma claim for \$500,000 in 2006. Mr. Taylor and his attorneys filed 20 Trust claims, two ballots, and six 2019 statements based on unidentified exposures, for a total of 22 unidentified exposures.¹⁰⁹ Five of those exposures are evidenced by 2019 statements filed before Garlock settled the case (the US Minerals statement before Mr. Taylor submitted his answers to standard interrogatories), showing that Waters & Kraus knew about the exposures and failed to disclose them to Garlock while his case was being litigated.¹¹⁰

C. Cases Where Garlock Used Trust Claims to Obtain a Defense Verdict

¹⁰⁷ See Plaintiff's Answers to Defendants' Standard Interrogatories—Set II at 1-3, Ex. A (Apr. 22, 2005) (GST-EST-0513270); Steckler Lummus Trust Claim at Waters 00714; Steckler AC&S Trust Claim at Waters 00734; Steckler AWI Trust Claim at Waters 00753; Steckler ARTRA Trust Claim at Waters 01207; Steckler Celotex Trust Claim at Waters 00834; Steckler Combustion Trust Claim at Waters 00860; Steckler HAL Trust Claim at Waters 00985; Steckler HW Trust Claim at Waters 01015; Steckler Bartells Trust Claim at Waters 00898; Steckler EPI Trust Claim at Waters 00880; Steckler FB Trust Claim at Waters 00910; Steckler Thorpe Trust Claim at Waters 01068; Steckler Kaiser Trust Claim at Waters 01111; Steckler Keene Trust Claim at Waters 01161; Steckler OC Trust Claim at Waters 01167; Steckler Raybestos Trust Claim at Waters 01202; Steckler Thorpe Ins. Trust Claim at Waters 01246; Steckler USG Trust Claim at Waters 01308; Steckler FB Ballot at Waters 00628-00633; Steckler 2009 Flintkote Ballot at Waters 00635-00641; Steckler GAF Ballot at Waters 00665-00667; Steckler OC Ballot at Waters 00674-00676; Steckler 2009 PCC Ballot at Waters 00682-00685; Steckler Thorpe Ins. Ballot at Waters 00688-00692; Steckler WRG Ballot at Waters 00700-00705; GAF 2019 of Waters & Kraus at Waters 00573-00575; 2nd Amended GIT 2019 of Waters & Kraus at Waters 10621-10623; 2nd Amended Kaiser 2019 of Waters & Kraus at Waters 10743-10745; 2nd Amended OC 2019 of Waters & Kraus at Waters 10884-10886; 2nd Amended PCC 2019 of Waters & Kraus at Waters 10931-10933; Thorpe Ins. 2019 of Waters & Kraus at Waters 00608-00610; Amended USM 2019 of Waters & Kraus at Waters 11096-11098; 2nd Amended WRG 2019 of Waters & Kraus at Waters 00622-00624.

¹⁰⁸ For timing, see Appendix.

¹⁰⁹ See Plaintiffs' Amended Answers to Defendants' Standard Interrogatories—Set II at 1-4, Ex. A (Apr. 6, 2005) (GST-EST-0513427); Taylor AC&S Trust Claim at Waters 01384; Taylor AWI Trust Claim at Waters 01438; Taylor B&W Trust Claim at Waters 01458; Taylor Celotex Trust Claim at Waters 01475; Taylor Combustion Trust Claim at Waters 01510; Taylor HW Trust Claim at Waters 01668; Taylor EPI Trust Claim at Waters 01532; Taylor FM Trust Claim at Waters 01591; Taylor FB Trust Claim at Waters 01567; Taylor HKP Trust Claim at Waters 01731; Taylor Kaiser Trust Claim at Waters 01756; Taylor Keene Trust Claim at Waters 01802; Taylor Manville Trust Claim at Waters 01839; Taylor OC Trust Claim at Waters 01842; Taylor Plant Ins. Trust Claim at Waters 01866; Taylor Raybestos Trust Claim at Waters 01914; Taylor Thorpe Ins. Trust Claim at Waters 01945; Taylor USG Trust Claim at Waters 02083; Taylor USM Trust Claim at Waters 02076; Taylor Western Trust Claim at Waters 02102; 2nd Amended GIT 2019 of Waters & Kraus at Waters 10621-10623; 2nd Amended Kaiser 2019 of Waters & Kraus at Waters 10743-10745; 2nd Amended OC 2019 of Waters & Kraus at Waters 10884-10886; 2nd Amended PCC 2019 of Waters & Kraus at Waters 10991-10993; Thorpe Ins. 2019 of Waters & Kraus at Waters 01351-01353; Amended USM 2019 of Waters & Kraus at Waters 11096-11098; Taylor Thorpe Ins. Ballot at Waters 01373-01377.

¹¹⁰ For timing, see Appendix.

There are at least three cases where Garlock obtained Trust claim forms, over the objection of the plaintiff, evidencing previously undisclosed asbestos exposures on the eve of trial, and used those claim forms to win a defense verdict.

1. Victor Davis—Mundy Singley—Texas

Mr. Davis and his counsel, in response to discovery sought by Garlock, failed to acknowledge or admit exposures to products for which Trusts were responsible.¹¹¹ Mr. Davis also refused to produce Trust claim forms evidencing such exposures. The Court compelled Mr. Davis to produce the claim forms, which revealed claims against the Manville, Celotex, H.K. Porter, UNR, and Eagle Picher Trusts.¹¹² The Trust claim forms were admitted into evidence and Garlock obtained a full defense verdict in the case.¹¹³

2. Eugene Dougherty, Michael Messinger—Angelos Firm—Philadelphia, Pennsylvania

These cases were tried together. In pretrial discovery, both Mr. Dougherty and Mr. Messinger provided non-responsive answers and objections to interrogatories seeking all their exposures to asbestos, including exposures for which Trusts were responsible.¹¹⁴ At Mr. Dougherty's deposition, defendants sought information from him about filings against Trusts, and his counsel objected and instructed him not to answer.¹¹⁵ Garlock moved to compel production of Trust claim forms filed by both Mr. Dougherty and Mr. Messinger and the Court granted the motion, requiring production days before trial. Both Mr. Dougherty and Mr. Messinger had filed Trust claims on the basis of exposures they had not disclosed: Mr. Dougherty with the Armstrong, USG, Babcock & Wilcox, Combustion Engineering, Halliburton, Harbison Walker, Celotex, Eagle Picher, Owens Corning, Fibreboard, Keene, UNR, and National Gypsum Trusts,¹¹⁶ and Mr. Messinger with the H.K. Porter, Harbison Walker, Halliburton and UNR Trusts.¹¹⁷ The Trust claims for both men were admitted into evidence and Garlock obtained a full defense verdict in both cases.¹¹⁸

¹¹¹ Plaintiffs' Responses to Master Discovery Requests at 11-15 (Jun. 14, 2002) (GST-EST-0143808).

¹¹² Plaintiffs' Production of Trust Claim Forms (Jan. 5, 2004) (GST-EST-0144557).

¹¹³ See Final Judgment, *Davis v. Garlock Sealing Technologies LLC*, No. 2002-28497 (Tex. Dist. Ct. May 17, 2004) (GST-EST-0144453).

¹¹⁴ Plaintiff's Answers to Defendants' Joint Interrogatories at 7-10 (Feb. 11, 2008) (Dougherty) (GST-EST-0249296); Plaintiff's Answers to Defendants' Joint Interrogatories at 7-10 (Feb. 11, 2008) (Messinger) (GST-EST-0214330).

¹¹⁵ 5/14/07 Dougherty Depo. Tr. at 92:9-19 (GST-EST-0328279).

¹¹⁶ Dougherty's Production of Trust Claims (Aug. 7, 2008) (GST-EST-0464157).

¹¹⁷ Messinger's Production of Trust Claims (Aug. 7, 2008) (GST-EST-0464148).

¹¹⁸ See Verdict, *Dougherty v. Allied Signal, Inc.*, No. C-48-AB-2007-027 (Pa. Ct. C.P.) (GST-EST-0467227).

Appendix: Trust Claims, Ballots, and 2019 Statements of Fifteen Plaintiffs

Note: Date document was filed, when known, is in parentheses.

- = Exposure not disclosed during discovery
 = Exposure disclosed during discovery
 = Exposure not disclosed during discovery, and claim, ballot, or 2019 statement filed before Garlock resolved case (or claim contains affidavit of exposure dated before Garlock resolved case)

1. Treggett

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
ABB Lummus	Yes (3/14/07) ¹		
ACandS	Yes ²	Yes (3/20/08) ³	Yes (9/21/06) ⁴
Armstrong World Industries	Yes (10/9/07) ⁵		
Babcock & Wilcox	Yes (1/10/07) ⁶		
C.E. Thurston	Yes ⁷		
Combustion Engineering	Yes ⁸		Yes (10/3/05) ⁹
DII (Halliburton)	Yes (1/23/07) ¹⁰		
Eagle Picher	Yes (8/21/09) ¹¹		
Federal Mogul	Yes (7/28/11) ¹²	Yes (11/2/04) ¹³	
Fibreboard	Yes (2/21/11) ¹⁴		
Flintkote		Yes (12/12/08) ¹⁵ , 9/16/09 ¹⁶	
G-I Holdings (GAF)		Yes (1/7/09) ¹⁷	Yes (1/21/09) ¹⁸
GIT			Yes (12/9/04) ¹⁹
Kaiser Aluminum		Yes (11/9/05) ²⁰	Yes (12/9/04) ²¹
Keene	Yes (10/27/09) ²²		
NARCO		Yes (3/9/06) ²³	Yes (12/9/04) ²⁴
Owens Corning	Yes (2/23/11) ²⁵	Yes (8/15/06) ²⁶	Yes (3/15/05) ²⁷
Pittsburgh Corning		Yes (2/23/04) ²⁸ , 11/10/09 ²⁹	Yes (12/9/04) ³⁰
Porter Hayden	Yes ³¹		
Raybestos	Yes (6/17/10) ³²		
US Minerals		Yes (10/26/05) ³³	Yes (3/15/05) ³⁴
USG	Yes (10/27/09) ³⁵		Yes (3/15/05) ³⁶
W.R. Grace		Yes (5/19/09) ³⁷	Yes (5/14/09) ³⁸
Western Asbestos	Yes (12/28/04) ³⁹		

2. *Torres*

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
AMF	Yes (4/1/11) ⁴⁰		
Babcock & Wilcox	Yes (7/15/09) ⁴¹		
DII (Halliburton)	Yes (5/18/11) ⁴²		
Owens Corning	Yes (5/18/11) ⁴³		

3. *Homa*

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
Armstrong World Industries	Yes (5/15/09) ⁴⁴		
ASARCO		Yes (8/4/09) ⁴⁵	
Babcock & Wilcox	Yes (5/15/09) ⁴⁶		
Celotex	Yes (5/15/09) ⁴⁷		
Combustion Engineering	Yes ⁴⁸		
Eagle Picher	Yes ⁴⁹		
Federal Mogul	Yes (11/22/10) ⁵⁰		
Fibreboard	Yes (5/15/09) ⁵¹		
Flintkote		Yes (12/16/08) ⁵²	Yes (10/2/12)
GIT			Yes (10/2/12) ⁵⁴
G-I Holdings (GAF)	Yes ⁵⁵		
H.K. Porter	Yes ⁵⁶		
Halliburton	Yes (5/15/09) ⁵⁷		
Harbison Walker	Yes (3/16/10) ⁵⁸		
Kaiser Aluminum	Yes ⁵⁹		
Keene	Yes (5/15/09) ⁶⁰		
Manville	Yes (11/17/08) ⁶¹		
National Gypsum	Yes ⁶²		
NARCO			Yes (10/2/12) ⁶³
Owens Corning	Yes (5/15/09) ⁶⁴		
Pacor	Yes (5/20/09) ⁶⁵		
Pittsburgh Corning		Yes (11/12/09) ⁶⁶	Yes (10/2/12) ⁶⁷
Plibrico	Yes ⁶⁸		
Raymark	Yes (3/16/10) ⁶⁹		
Shook & Fletcher	Yes ⁷⁰		
UNR	Yes ⁷¹		
USG	Yes (5/15/09) ⁷²		
W.R. Grace			Yes (10/2/12) ⁷³

4. Massinger

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
ASARCO		Yes (7/27/09) ⁷⁴	
Babcock & Wilcox	Yes (1/7/10) ⁷⁵		
Combustion Engineering	Yes ⁷⁶		
Eagle Picher	Yes (10/5/11) ⁷⁷		
Federal Mogul (Flexitallic)	Yes (11/3/11) ⁷⁸		
Fibreboard	Yes (6/17/09) ¹¹⁹ 1/11/10 ⁷⁹		
Halliburton	Yes (1/7/10) ⁸⁰		
Manville	Yes (2/16/11) ⁸¹		
Owens Corning	Yes (1/15/10) ⁸²		
Pacor	Yes (2/16/11) ⁸³		
Pittsburgh Corning		Yes (10/6/09) ⁸⁴	
Quigley		Yes (6/9/06) ⁸⁵	
Raybestos	Yes (1/10/11) ⁸⁶		
Shook & Fletcher	Yes ⁸⁷		
USG	Yes (6/11/09) ¹²⁰ , 1/7/10 ⁸⁸		
W.R. Grace		Yes (5/19/09) ⁸⁹	

5. Phillips⁹⁰

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
Armstrong World Industries	Yes (5/21/10)		
ARTRA	Yes (7/7/10)		
ASARCO	Yes (9/5/12)	Yes (2008 ⁹¹ , 2009 ⁹²)	
Babcock & Wilcox	Yes (7/3/09)		
Combustion Engineering	Yes (2/26/10)		
Congoleum	Yes (9/28/11)		
Fibreboard	Yes (5/27/10)		
Halliburton	Yes (6/2/10)		
Kaiser Aluminum	Yes (6/8/10)		
Keene	Yes (2/15/11)		
Manville	Yes (8/11/09)		
Owens Corning	Yes (6/1/10)		

¹¹⁹ See Data concerning Mr. Massinger received from Delaware Claims Processing Facility, LLC pursuant to Court-ordered subpoena.

¹²⁰ See Data concerning Mr. Massinger received from Delaware Claims Processing Facility, LLC pursuant to Court-ordered subpoena

Plibrico	Yes (2/1/10)		
US Minerals	Yes (12/15/11)		
USG	Yes (6/3/10)		

6. Golini

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
Armstrong World Industries	Yes (6/14/10) ¹²¹ , 3/21/12 ⁹³)		
ARTRA	Yes ⁹⁴		
Babcock & Wilcox	Yes (6/14/10) ⁹⁵		
Celotex	Yes ⁹⁶		
Combustion Engineering	Yes ⁹⁷		
DII (Halliburton)	Yes (6/14/10) ⁹⁸		
DII (Harbison Walker)	Yes (6/14/10) ⁹⁹		
Eagle Picher	Yes (6/15/10) ¹⁰⁰		
Federal Mogul (Flexitallic)	Yes (11/12/10) ¹⁰¹		
Federal Mogul (T&N)	Yes (11/12/10) ¹⁰²		
Fibreboard	Yes (6/14/10) ¹⁰³		
H.K. Porter	Yes ¹⁰⁴		
Hercules		Yes (11/6/09) ¹⁰⁵	
Kaiser	Yes ¹⁰⁶		
Manville	Yes (11/29/11) ¹⁰⁷		
National Gypsum	Yes (6/15/10) ¹⁰⁸		
Owens Corning	Yes (6/14/10) ¹⁰⁹		
Pacor	Yes (6/14/10) ¹¹⁰		
Pittsburgh Corning		Yes (10/6/09) ¹¹¹	
Plibrico	Yes ¹¹²		
Quigley		Yes (10/25/12) ¹¹³	
Raybestos	Yes (12/3/10) ¹¹⁴		
USG	Yes (6/14/10) ¹¹⁵		
W.R. Grace		Yes (5/19/09) ¹¹⁶	

7. White

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
ABB Lummus	Yes ¹¹⁷		
Armstrong World Industries	Yes (10/4/07) ¹¹⁸		

¹²¹ See Data concerning Mr. Golini received from Delaware Claims Processing Facility, LLC pursuant to Court-ordered subpoena

ARTRA	Yes ¹¹⁹		
ASARCO	Yes ¹²⁰		
Babcock & Wilcox	Yes (8/20/08) ¹²¹		
C.E. Thurston	Yes (1/22/08) ¹²²		
Celotex	Yes ¹²³		
DII (Halliburton)	Yes (5/11/07) ¹²⁴		
E.J. Bartells	Yes ¹²⁵		
Eagle Picher	Yes ¹²⁶		
Federal Mogul (Flexitallic)	Yes (8/17/12) ¹²⁷		
Fibreboard	Yes (9/20/07) ¹²⁸		
G-I Holdings (GAF)	Yes ¹²⁹		
H.K. Porter	Yes ¹³⁰		
J.T. Thorpe	Yes ¹³¹		
Keene	Yes (11/19/08) ¹³²		
Manville	Yes (5/8/07) ¹³³		
National Gypsum	Yes (10/1/07) ¹³⁴		
Owens Corning	Yes (8/29/07) ¹³⁵		
Porter Hayden	Yes ¹³⁶		
Raybestos	Yes (12/7/10) ¹³⁷		
THAN	Yes ¹³⁸		
USG	Yes (10/4/07) ¹³⁹		
Western Asbestos	Yes ¹⁴⁰		

8. Ornstein

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
ACandS	Yes ¹⁴¹		
Amatex	Yes ¹⁴²		
Armstrong World Industries	Yes (3/26/09) ¹⁴³		
Combustion Engineering	Yes ¹⁴⁴		
DII	Yes (3/26/09) ¹⁴⁵		
Eagle Picher	Yes (3/26/09) ¹⁴⁶		
Fibreboard	Yes (3/26/09) ¹⁴⁷		
H.K. Porter	Yes ¹⁴⁸		
Keene	Yes (3/26/09) ¹⁴⁹		
Owens Corning	Yes (1/16/09) ¹⁵⁰		
Thorpe Insulation	Yes ¹⁵¹		

9. Reed

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
ARTRA	Yes ¹⁵²		

ASARCO	Yes ¹⁵³		
Babcock & Wilcox	Yes (10/9/09) ¹⁵⁴		
Celotex	Yes ¹⁵⁵		
Combustion Engineering	Yes ¹⁵⁶		
Congoleum	Yes ¹⁵⁷		
DII (Halliburton)	Yes (6/23/08) ¹⁵⁸		
Eagle Picher	Yes (6/18/08) ¹⁵⁹		
Federal Mogul (Ferodo)	Yes (10/11/12) ¹⁶⁰		
G-I Holdings (GAF)	Yes ¹⁶¹		
Manville	Yes (6/18/08) ¹⁶²		
Owens Corning	Yes (6/23/08) ¹⁶³		
Raybestos	Yes (1/15/11) ¹⁶⁴		
USG	Yes (10/24/08) ¹⁶⁵		
Western Asbestos	Yes (8/26/09) ¹⁶⁶		

10. Brennan

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
Armstrong World Industries	Yes (2/12/10) ¹⁶⁷		
ASARCO		Yes (7/27/09) ¹⁶⁸	
Babcock & Wilcox	Yes (6/10/10) ¹⁶⁹		
Celotex	Yes ¹⁷⁰		
Combustion Engineering	Yes ¹⁷¹		
Eagle Picher	Yes (6/11/10) ¹⁷²		
Fibreboard	Yes (6/10/10) ¹⁷³		
G-I Holdings (GAF)		Yes (1/9/09) ¹⁷⁴	
Halliburton	Yes (6/10/10) ¹⁷⁵		
Harbison Walker	Yes (6/10/10) ¹⁷⁶		
Hercules Chemical		Yes (11/6/09) ¹⁷⁷	
Manville	Yes (4/12/10) ¹⁷⁸		
National Gypsum	Yes (6/11/10) ¹⁷⁹		
Owens Corning	Yes (6/10/10) ¹⁸⁰		
Pacor	Yes (4/12/10) ¹⁸¹		
Pittsburgh Corning		Yes (10/6/09) ¹⁸²	
Quigley		Yes (10/25/12) ¹⁸³	
Raybestos	Yes (12/6/10) ¹⁸⁴		
USG	Yes (6/10/10) ¹⁸⁵		
W.R. Grace		Yes (5/19/09) ¹⁸⁶	

11. Flynn

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
ABB Lummus	Yes (5/17/07) ¹⁸⁷		
Armstrong World Industries	Yes (12/23/10) ¹⁸⁸		
Babcock & Wilcox	Yes (1/12/07) ¹⁸⁹		
Celotex	Yes ¹⁹⁰		
Combustion Engineering	Yes (9/21/06) ¹⁹¹		Yes (3/6/06) ¹⁹²
DII (Halliburton)	Yes (9/3/07) ¹⁹³		
Eagle Picher	Yes ¹⁹⁴		
Fairchild Corp.		Yes (12/2/09) ¹⁹⁵	
Fibreboard	Yes (2/23/11) ¹⁹⁶	Yes (2006) ¹⁹⁷	
Flintkote		Yes (2009) ¹⁹⁸	
G-I Holdings (GAF)		Yes (1/7/09) ¹⁹⁹	Yes (1/21/09) ²⁰⁰
GIT			Yes (3/6/06) ²⁰¹
Kaiser Aluminum	Yes (5/25/07) ²⁰²		
Keene	Yes ²⁰³		
Manville	Yes ²⁰⁴		
NARCO			Yes (3/6/06) ²⁰⁵
Owens Corning	Yes (2/23/11) ²⁰⁶		Yes (3/6/06) ²⁰⁷
Pittsburgh Corning		Yes (11/10/09) ²⁰⁸	Yes (3/6/06) ²⁰⁹
Porter Hayden	Yes ²¹⁰		
Quigley		Yes (11/12/12) ²¹¹	
Raybestos	Yes (12/13/10) ²¹²		
UNR	Yes ²¹³		
USG			Yes (3/6/06) ²¹⁴
W.R. Grace		Yes (5/18/09) ²¹⁵	Yes (5/14/09) ²¹⁶

12. Beltrami

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
ACandS		Yes (3/20/08) ²¹⁷	
Armstrong World Industries	Yes (2/20/09) ²¹⁸		
ASARCO		Yes (8/5/09) ²¹⁹	
Babcock & Wilcox	Yes (1/23/09) ²²⁰		
Celotex	Yes (6/24/10) ²²¹		
Combustion Engineering	Yes (7/30/08) ²²²		
Eagle Picher	Yes (2/16/07) ²²³		
Fibreboard	Yes (1/23/09) ²²⁴		
Flintkote		Yes (12/16/08) ²²⁵	Yes (10/2/12) ²²⁶
GIT			Yes (10/2/12) ²²⁷

H.K. Porter	Yes ²²⁸		
Halliburton	Yes (5/20/10) ²²⁹		
Harbison Walker	Yes (8/24/10) ²³⁰		
Kaiser Aluminum	Yes (7/30/08) ²³¹		
Keene	Yes (6/24/10) ²³²		
Manville	Yes (8/9/11) ²³³		
National Gypsum	Yes (6/24/11) ²³⁴		
NARCO			Yes (10/2/12) ²³⁵
Owens Corning	Yes (1/23/09) ²³⁶		
Pittsburgh Corning		Yes (11/12/09) ²³⁷	Yes (10/2/12) ²³⁸
Plibrico	Yes (7/30/08) ²³⁹		
Raybestos	Yes (8/24/10) ²⁴⁰		
UNR	Yes (3/18/08) ²⁴¹		
USG	Yes (1/23/09) ²⁴²		
W.R. Grace			Yes (10/2/12) ²⁴³

13. *Williams*

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
ABB Lummus	Yes (3/14/07) ²⁴⁴		
ACandS	Yes ²⁴⁵	Yes (3/19/08) ²⁴⁶	Yes (9/21/06) ²⁴⁷
Armstrong World Industries	Yes (10/2/07) ²⁴⁸		
ARTRA	Yes ²⁴⁹		
ASARCO	Yes ²⁵⁰	Yes (7/23/09) ²⁵¹	
Babcock & Wilcox	Yes (1/12/07) ²⁵²		
Burns and Roe	Yes ²⁵³		
Celotex	Yes ²⁵⁴		
Combustion Engineering	Yes ²⁵⁵		Yes (10/3/05) ²⁵⁶
DII (Halliburton)	Yes (1/24/07) ²⁵⁷		
DII (Harbison-Walker)	Yes (1/24/07) ²⁵⁸		
Eagle Picher	Yes ²⁵⁹		
Federal Mogul		Yes (10/29/04) ²⁶⁰	
Fibreboard	Yes (12/3/07) ²⁶¹	Yes (8/15/06) ²⁶²	
Flintkote		Yes (2009) ²⁶³	
G-I Holdings (GAF)		Yes (1/7/09) ²⁶⁴	Yes (1/21/09) ²⁶⁵
GIT			Yes (12/9/04) ²⁶⁶
H.K. Porter	Yes ²⁶⁷		
J.T. Thorpe	Yes (3/21/07) ²⁶⁸	Yes (5/9/05) ²⁶⁹	Yes (6/05) ²⁷⁰
Kaiser Aluminum	Yes ²⁷¹	Yes (11/9/05) ²⁷²	Yes (12/9/04) ²⁷³
Keene	Yes (10/3/08) ²⁷⁴		
Manville	Yes ²⁷⁵		

NARCO			Yes (12/9/04) ²⁷⁶
National Gypsum	Yes ²⁷⁷		
Owens Corning	Yes (12/3/07) ²⁷⁸	Yes (8/15/06) ²⁷⁹	Yes (3/15/05) ²⁸⁰
Pittsburgh Corning		Yes (11/10/09) ²⁸¹	Yes (12/9/04) ²⁸²
Quigley		Yes (11/12/12) ²⁸³	
Raybestos	Yes (5/14/10) ²⁸⁴		
Thorpe Insulation	Yes (10/19/10) ²⁸⁵	Yes (10/13/08) ²⁸⁶	Yes (10/14/08) ²⁸⁷
US Minerals		Yes (10/26/05) ²⁸⁸	Yes (3/15/05) ²⁸⁹
USG	Yes (7/23/10) ²⁹⁰		Yes (3/15/05) ²⁹¹
W.R. Grace		Yes (5/18/09) ²⁹²	Yes (5/14/09) ²⁹³

14. Steckler

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
ABB Lummus	Yes ²⁹⁴		
ACandS	Yes ²⁹⁵		
Armstrong World Industries	Yes (10/9/07) ²⁹⁶		
ARTRA	Yes ²⁹⁷		
Babcock & Wilcox	Yes (1/10/07) ²⁹⁸		
Celotex	Yes ²⁹⁹		
Combustion Engineering	Yes ³⁰⁰		
DII (Halliburton)	Yes (1/24/07) ³⁰¹		
DII (Harbison Walker)	Yes (11/10/08) ³⁰²		
E.J. Bartells	Yes ³⁰³		
Eagle Picher	Yes ³⁰⁴		
Federal Mogul (Flexitallic)	Yes (3/17/11) ³⁰⁵		
Fibreboard	Yes (12/3/07) ³⁰⁶	Yes (8/15/06) ³⁰⁷	
Flintkote		Yes (2009) ³⁰⁸	
G-I Holdings (GAF)		Yes (1/7/09) ³⁰⁹	Yes (1/21/09) ³¹⁰
GIT			Yes (6/8/05) ³¹¹
J.T. Thorpe	Yes (10/11/07) ³¹²		
Kaiser Aluminum	Yes ³¹³		Yes (6/8/05) ³¹⁴
Keene	Yes (3/17/09) ³¹⁵		
Owens Corning	Yes (12/3/07) ³¹⁶	Yes (8/15/06) ³¹⁷	Yes (6/8/05) ³¹⁸
Pittsburgh Corning		Yes (11/10/09) ³¹⁹	Yes (6/8/05) ³²⁰
Raybestos	Yes (5/19/10) ³²¹		
Thorpe Insulation	Yes (10/19/10) ³²²	Yes (10/18/08) ³²³	Yes (10/14/08) ³²⁴
US Minerals			Yes (3/15/05) ³²⁵
USG	Yes (3/23/10) ³²⁶		
W.R. Grace		Yes (5/18/09) ³²⁷	Yes (5/14/09) ³²⁸

15. Taylor

Bankrupt	Trust Claim?	Ballot?	2019 Statement?
ACandS	Yes ³²⁹		
Armstrong World Industries	Yes (2/14/11) ³³⁰		
ASARCO	Yes ³³¹		
Babcock & Wilcox	Yes (1/10/07) ³³²		
Celotex	Yes ³³³		
Combustion Engineering	Yes ³³⁴		
DII (Halliburton)	Yes (1/10/08) ³³⁵		
DII (Harbison Walker)	Yes (1/10/08) ³³⁶		
Eagle Picher	Yes ³³⁷		
Federal Mogul (Flexitallic)	Yes (1/18/11) ³³⁸		
Fibreboard	Yes (2/14/08) ³³⁹		
GIT			Yes (6/8/05) ³⁴⁰
H.K. Porter	Yes (8/20/07) ³⁴¹		
Kaiser Aluminum	Yes ³⁴²		Yes (6/8/05) ³⁴³
Keene	Yes ³⁴⁴		
Leslie Controls	Yes ³⁴⁵	Yes (9/20/10) ³⁴⁶	
Manville	Yes ³⁴⁷		
Owens Corning	Yes (2/14/08) ³⁴⁸		Yes (6/8/05) ³⁴⁹
Pittsburgh Corning			Yes (6/8/05) ³⁵⁰
Plant Insulation	Yes ³⁵¹		
Raybestos	Yes (12/22/10) ³⁵²		
Thorpe Insulation	Yes (10/19/10) ³⁵³	Yes (10/13/08) ³⁵⁴	Yes (10/14/08) ³⁵⁵
US Minerals	Yes ³⁵⁶		Yes (3/15/05) ³⁵⁷
USG	Yes (7/23/10) ³⁵⁸		
Western	Yes ³⁵⁹		

Short Form Citations for Trust Claims, Ballots and 2019 Statements

Document Name	Shortened Name
Asbestos Trust Claims	
ABB Lummus 524(g) Asbestos PI Trust Claim Form	Lummus Trust Claim
AC&S Asbestos Settlement Trust Claim Form	AC&S Trust Claim
Amatex Asbestos-Related Personal Injury Proof of Claim Form	Amatex Trust Claim
AMF Incorporated Proof of Claim Form	AMF Trust Claim
Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust Proof of Claim Form	AWI Trust Claim
ARTRA Asbestos Trust Claim Form	ARTRA Trust Claim
ASARCO Asbestos Personal Injury Settlement Trust Claim Form	ASARCO Trust Claim
Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust Proof of Claim Form	B&W Trust Claim
Burns and Roe Personal Injury Settlement Trust Claim Form	Burns & Roe Trust Claim
C.E. Thurston & Son's, Inc. Asbestos Trust Claim Form	Thurston Trust Claim
Celotex Asbestos Settlement Trust Claim Form	Celotex Trust Claim
Combustion Engineering Trust Claim Form	Combustion Trust Claim
Congoleum Plan Trust Claim Form	Congoleum Trust Claim
DII Industries, LLC Asbestos PI Trust Proof of Claim Form	HAL Trust Claim or HW Trust Claim (as applicable)
Eagle-Picher Industries, Inc. Asbestos Trust Claim Form	EPI Trust Claim
E.J. Bartells Asbestos Settlement Trust Proof of Claim Form	Bartells Trust Claim
Federal Mogul Asbestos Personal Injury Trust Proof of Claim Form	FM Trust Claim (or FM (Ferodo), FM (Flex), or FM (T&N), as applicable)
G-I Holdings Inc. Asbestos Personal Injury Settlement Trust Claim Form	GAF Trust Claim
H.K. Porter Asbestos Trust Claim Form	HKP Trust Claim
J.T. Thorpe Settlement Trust Claim Form	Thorpe Trust Claim
KACC Asbestos PI Trust Claim Form	Kaiser Trust Claim
Keene Creditors Trust Claim Form	Keene Trust Claim
Leslie Controls Inc. Asbestos Trust Claim Form	Leslie Trust Claim
Manville Personal Injury Settlement Trust Claim Form	Manville Trust Claim
NGC Bodily Injury Trust Claim Form	NGC Trust Claim
Owens Corning/Fibreboard Asbestos Personal Injury Settlement Trust Proof of Claim Form	OC Trust Claim or FB Trust Claim (as applicable)
Pacor Settlement Trust Claim Form	Pacor Trust Claim
Plant Insulation Company Asbestos Claim Form	Plant Ins. Trust Claim
Plibrico Asbestos Trust Claim Form	Plibrico Trust Claim
Porter Hayden Company Asbestos Trust Claim Form	PH Trust Claim
Raybestos Asbestos Trust Claim Form	Raybestos Trust Claim
Shook & Fletcher Asbestos Settlement Trust Claim Form	Shook & Fletcher Trust Claim
T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust	THAN Trust Claim

Claim Form	
Thorpe Insulation Settlement Trust Claim Form	Thorpe Ins. Trust Claim
UNR Asbestos-Disease Claims Trust Proof of Claim Form	UNR Trust Claim
USG Asbestos Personal Injury Settlement Trust Proof of Claim Form	USG Trust Claim
U.S. Mineral Asbestos Trust Claim Form	USM Trust Claim
Western Asbestos Settlement Trust Claim Form	Western Trust Claim
Bankruptcy Ballots	
Master Ballot & Schedule for Accepting or Rejecting the Second Plan of Reorganization of ACandS, Inc.'s under Chapter 11 of the Bankruptcy Code for Individual Holders of Class 3e Asbestos Unsecured Personal Injury Claims (2008)	AC&S Ballot
[ASARCO] Master Ballot for Attorneys Voting Asbestos Personal Injury Claims (2008)	2008 ASARCO Ballot
[ASARCO] Master Ballot for Attorneys Voting Asbestos Personal Injury Claims (2009)	2009 ASARCO Ballot
[Fairchild] Master Ballot for Class 5—General Unsecured Claims (2009)	Fairchild Ballot
[Federal Mogul] Master Joint Ballot and Proxy Form for (1) Accepting or Rejecting Third Amended Joint Plan of Reorganization, (2) Making the Demand, (3) Giving the Confirmation and (4) Providing a Proxy to Vote in Relation to the Resolutions for Holders of Individual Asbestos Personal Injury Claims (2004)	FM Ballot
Master Ballot for Accepting or Rejecting Amended Joint Plan of Reorganization (as Modified) for Individual Holders of Class 7 Asbestos Personal Injury Claims Against the Flintkote Company (2009)	2009 Flintkote Ballot
Master Ballot for Accepting or Rejecting Amended Joint Plan of Reorganization for Individual Holders of Class 7 & Class 8 Asbestos Personal Injury Claims Against the Flintkote Company and Flintkote Mines Limited (2008)	2008 Flintkote Ballot
Master Ballot for Accepting or Rejecting Second Amended Joint Plan of Reorganization of G-I Holdings Inc. and ACI Inc. Pursuant to Chapter 11 of the Bankruptcy Code (2009)	GAF Ballot
Master Ballot for Accepting or Rejecting First Amended Chapter 11 Plan of Reorganization for Hercules Chemical Company, Inc. for Class 4 Asbestos Claims and Demands (2009)	Hercules Ballot
Master Ballot for Accepting or Rejecting the Second Amended Joint Plan of Reorganization of Kaiser Aluminum Corporation, Kaiser Aluminum & Chemical Corporation and Certain of Their Debtor Affiliates (2005)	Kaiser Ballot
Master Ballot for Voting to Accept or Reject First Amended Plan of Reorganization of Leslie Controls, Inc., for Holders of Class 4 Asbestos PI Claims (2010)	Leslie Ballot
Master Ballot for Accepting or Rejecting Third Amended Plan of Reorganization for NARCO Class 4-A (NARCO Asbestos Trust Claims) (2006)	NARCO Ballot
Master Ballot for Accepting or Rejecting Sixth Amended Joint Plan of Reorganization for Owens Corning and Its Affiliated Debtors and Debtors-in-Possession (as Modified) for Holders of Class A7 OC	OC Ballot or FB Ballot (as applicable)

Asbestos Personal Injury Claims That Are PI Trust Claims (2006)	
[Pittsburgh Corning] Master Ballot for Accepting or Rejecting Second Amended Plan of Reorganization for Class 5A, 5B and 5C Asbestos Personal Injury Claims (2004)	2004 PCC Ballot
[Pittsburgh Corning] Master Ballot for Accepting or Rejecting Modified Third Amended Plan of Reorganization for Class 5 Channeled Asbestos PI Trust Claims (2009)	2009 PCC Ballot
Master Ballot for Accepting or Rejecting Quigley Company, Inc.'s Fourth Amended and Restated Plan of Reorganization for Holders of Class 4 Asbestos PI Claims (2006)	2006 Quigley Ballot
Master Ballot for Accepting or Rejecting Quigley Company, Inc.'s Fifth Amended and Restated Plan of Reorganization for Holders of Class 4A Pre-September 2010 Settled Claims (2012)	2012 Quigley Ballot
Ballot Regarding J.T. Thorpe, Inc., a California corporation, J.T. Thorpe, Inc., a dissolved California corporation, Thorpe Technologies, Inc., a California corporation and Thorpe Holding Company, a California corporation concerning only Asbestos Related Personal Injury (Class 4) Claims (2005)	Thorpe Ballot
[Thorpe Insulation] Master Ballot for Accepting or Rejecting First Amended Joint Plan of Reorganization for Individual Holders of Class 5 Asbestos Injury Claims (2008)	Thorpe Ins. Ballot
Special Ballot for Accepting or Rejecting the Fifth Amended Plan Jointly Proposed by the Chapter 11 Trustee and the Official Committee of Asbestos Bodily Injury and Property Damage Claimants for United States Mineral Products Company (2005)	USM Ballot
[W.R. Grace] Voting Instructions and Master Ballot for Holders of Class 6 Asbestos PI Claims (2009)	WRG Ballot
2019 Statements	
Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (AC&S) (Sept. 21, 2006)	AC&S 2019 of Waters & Kraus
Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (Combustion) (Oct. 3, 2005)	Combustion 2019 of Waters & Kraus
Second Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (Combustion) (Mar. 6, 2006)	2nd Amended Combustion 2019 of Waters & Kraus
Amended and Restated Verified Statement in Connection with the Representation of Creditors as Required by F.R.B.P. Rule 2019 (Flintkote) (Oct. 2, 2012)	Amended Flintkote 2019 of David
Verified Statement in Connection with Representation of Creditors Pursuant to Bankruptcy Rule 2019 (GAF) (Jan. 21, 2009)	GAF 2019 of Waters & Kraus
Amended and Restated Verified Statement in Connection with the Representation of Creditors as Required by F.R.B.P. Rule 2019 (GIT) (Oct. 2, 2012)	Amended GIT 2019 of David
Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (GIT) (Dec. 9, 2004)	GIT 2019 of Waters & Kraus
Second Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (GIT) (June 8, 2005)	2nd Amended GIT 2019 of Waters & Kraus
Fifth Amended Verified Statement of Waters & Kraus, LLP Pursuant	5th Amended GIT 2019 of

to Federal Rule of Bankruptcy Procedure 2019 (GIT) (Mar. 6, 2006)	Waters & Kraus
Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (Kaiser) (Dec. 9, 2004)	Kaiser 2019 of Waters & Kraus
Second Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (Kaiser) (June 8, 2005)	2nd Amended Kaiser 2019 of Waters & Kraus
Amended and Restated Verified Statement in Connection with the Representation of Creditors as Required by F.R.B.P. Rule 2019 (NARCO) (Oct. 2, 2012)	Amended NARCO 2019 of David
Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (NARCO) (Dec. 9, 2004)	NARCO 2019 of Waters & Kraus
Fifth Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (NARCO) (Mar. 6, 2006)	5th Amended NARCO 2019 of Waters & Kraus
Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (OC) (Mar. 15, 2005)	Amended OC 2019 of Waters & Kraus
Second Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (OC) (June 8, 2005)	2nd Amended OC 2019 of Waters & Kraus
Fifth Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (OC) (Mar. 6, 2006)	5th Amended OC 2019 of Waters & Kraus
Amended and Restated Verified Statement in Connection with the Representation of Creditors as Required by F.R.B.P. Rule 2019 (PCC) (Oct. 2, 2012)	Amended PCC 2019 of David
Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (PCC) (Dec. 9, 2004)	PCC 2019 of Waters & Kraus
Second Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (PCC) (June 8, 2005)	2nd Amended PCC 2019 of Waters & Kraus
Fifth Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (PCC) (Mar. 6, 2006)	5th Amended PCC 2019 of Waters & Kraus
Federal Rule of Bankruptcy Procedure 2019 Statement by Waters & Kraus L.L.P. (Thorpe) (Jun. 2005)	Thorpe 2019 of Waters & Kraus
Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (Thorpe Ins.) (Oct. 14, 2008)	Thorpe Ins. 2019 of Waters & Kraus
Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (USG) (Mar. 15, 2005)	Amended USG 2019 of Waters & Kraus
Fifth Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (USG) (Mar. 6, 2006)	5th Amended USG 2019 of Waters & Kraus
Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (USM) (Mar. 15, 2005)	Amended USM 2019 of Waters & Kraus
Amended and Restated Verified Statement in Connection with the Representation of Creditors as Required by F.R.B.P. Rule 2019 (WRG) (Oct. 2, 2012)	Amended WRG 2019 of David
Second Amended Verified Statement of Waters & Kraus, LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019 (WRG) (May 14, 2009)	2nd Amended WRG 2019 of Waters & Kraus

Appendix Endnotes

- ¹ Treggett Lummus Trust Claim at Waters 02358.
- ² Treggett AC&S Trust Claim at Waters 02369.
- ³ Treggett AC&S Ballot at Waters 02228.
- ⁴ AC&S 2019 of Waters & Kraus at Waters 10540-10542.
- ⁵ Treggett AWI Trust Claim at Waters 02434.
- ⁶ Treggett B&W Trust Claim at Waters 02500.
- ⁷ Treggett Thurston Trust Claim at Waters 02511.
- ⁸ Treggett Combustion Trust Claim at Waters 02514.
- ⁹ Combustion 2019 of Waters & Kraus at Waters 10585-10587.
- ¹⁰ Treggett HAL Trust Claim at Waters 02610.
- ¹¹ Treggett EPI Trust Claim at Waters 02539.
- ¹² Treggett FM Trust Claim at Waters 02597.
- ¹³ Treggett FM Ballot at Waters 02245.
- ¹⁴ Treggett FB Trust Claim at Waters 02552.
- ¹⁵ Treggett 2008 Flintkote Ballot at [Bates Number to be assigned].
- ¹⁶ Treggett 2009 Flintkote Ballot at Waters 02254.
- ¹⁷ Treggett GAF Ballot at Waters 02286.
- ¹⁸ GAF 2019 of Waters & Kraus at Waters 02171-02173.
- ¹⁹ Kaiser 2019 of Waters & Kraus at Waters 10610-10612.
- ²⁰ Treggett Kaiser Ballot at Waters 02295.
- ²¹ GIT 2019 of Waters & Kraus at Waters 10732-10734.
- ²² Treggett Keene Trust Claim at Waters 02655.
- ²³ Treggett NARCO Ballot at Waters 02300.
- ²⁴ NARCO 2019 of Waters & Kraus at Waters 10768-10770.
- ²⁵ Treggett OC Trust Claim at Waters 02676.
- ²⁶ Treggett OC Ballot at Waters 02308.
- ²⁷ Amended OC 2019 of Waters & Kraus at Waters 10878-10880.
- ²⁸ Treggett 2004 PCC Ballot, at [Bates Number to be assigned].
- ²⁹ Treggett 2009 PCC Ballot at Waters 02317.
- ³⁰ PCC 2019 of Waters & Kraus at Waters 10919-10921.
- ³¹ Treggett PH Trust Claim at Waters 02751.
- ³² Treggett Raybestos Trust Claim at Waters 02753.
- ³³ Treggett USM Ballot at Waters 02324.
- ³⁴ Amended USM 2019 of Waters & Kraus at Waters 11096-11098.
- ³⁵ Treggett USG Trust Claim at Waters 02764.
- ³⁶ Amended USG 2019 of Waters & Kraus at Waters 11065-11067.
- ³⁷ Treggett WRG Ballot at Waters 02333.
- ³⁸ 2nd Amended WRG 2019 of Waters & Kraus at Waters 02220-02224.
- ³⁹ Treggett Western Trust Claim at 02831.
- ⁴⁰ Torres AMF Trust Claim at WK 0128.
- ⁴¹ Torres B&W Trust Claim at WK 0001.
- ⁴² Torres HAL Trust Claim at WK 0041.
- ⁴³ Torres OC Trust Claim at WK 0086.
- ⁴⁴ Homa AWI Trust Claim at David 00354.
- ⁴⁵ Homa 2009 ASARCO Ballot at [Bates Number to be assigned].
- ⁴⁶ Homa B&W Trust Claim at David 00368.
- ⁴⁷ Homa Celotex Trust Claim at David 00532.
- ⁴⁸ Homa Combustion Trust Claim at David 00408.
- ⁴⁹ Homa EPI Trust Claim at David 00553.
- ⁵⁰ Homa FM Trust Claim at David 00592.
- ⁵¹ Homa FB Trust Claim at David 00573.
- ⁵² Homa 2008 Flintkote Ballot at [Bates Number to be assigned].
- ⁵³ Amended Flintkote 2019 of David at David 00040-00041.

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- ⁵⁴ Amended GIT 2019 of David at David 00043-00044.
⁵⁵ Homa GAF Trust Claim at David 00804.
⁵⁶ Homa HKP Trust Claim at David 01064.
⁵⁷ Homa HAL Trust Claim at David 00927.
⁵⁸ Homa HW Trust Claim at David 01083
⁵⁹ Homa Kaiser Trust Claim at David 01211.
⁶⁰ Homa Keene Trust Claim at David 01334.
⁶¹ Homa Manville Trust Claim at David 01205.
⁶² Homa NGC Trust Claim at 01337.
⁶³ Amended NARCO 2019 of David at David 00046-00047.
⁶⁴ Homa OC Trust Claim at David 01456.
⁶⁵ Homa Pacor Trust Claim at David 01480.
⁶⁶ Homa 2009 PCC Ballot at [Bates Number to be assigned].
⁶⁷ Amended PCC 2019 of David at David 00049-00050.
⁶⁸ Homa Plibrico Trust Claim at David 01586.
⁶⁹ Homa Raybestos Trust Claim at David 01709.
⁷⁰ Homa Shook & Fletcher Trust Claim at David 01716.
⁷¹ Homa UNR Trust Claim at David 01722.
⁷² Homa USG Trust Claim at David 01725.
⁷³ Amended WRG 2019 of David at David 00037-00038.
⁷⁴ Massinger 2009 ASARCO Ballot at [Bates Number to be assigned].
⁷⁵ Massinger B&W Trust Claim at Shein 00075.
⁷⁶ Massinger Combustion Trust Claim at Shein 00129.
⁷⁷ Massinger EPI Trust Claim at Shein 00673.
⁷⁸ Massinger FM Trust Claim at Shein 00683.
⁷⁹ Massinger FB Trust Claim at Shein 00770.
⁸⁰ Massinger HAL Trust Claim at Shein 00602.
⁸¹ Massinger Manville Trust Claim at Shein 01080.
⁸² Massinger OC Trust Claim at Shein 01089.
⁸³ Massinger Pacor Trust Claim at Shein 01193.
⁸⁴ Massinger 2009 PCC Ballot at [Bates Number to be assigned].
⁸⁵ Massinger 2006 Quigley Ballot at [Bates Number to be assigned].
⁸⁶ Massinger Raybestos Trust Claim at Shein 01338.
⁸⁷ Massinger Shook & Fletcher Trust Claim at Shein 01351.
⁸⁸ Massinger USG Trust Claim at Shein 01417.
⁸⁹ Massinger WRG Ballot at [Bates Number to be assigned].
⁹⁰ For Phillips Trust claims, see Affidavit of Charles D. Finley, *Garlock Sealing Technologies LLC et al. v. Chandler et al.* (In re *Garlock Sealing Technologies LLC, et al.*), No. 12-03137 (Bankr. W.D.N.C. Dec. 5, 2012) (Docket No. 42), Ex. E. (containing claim forms against ARTRA, Armstrong World Industries, Babcock & Wilcox, Combustion Engineering, Congoleum, Fibreboard, Halliburton, Kaiser Aluminum, Keene, Owens Corning, Plibrico, US Minerals, USG, and ASARCO Trusts); Supplemental Affidavit of Charles D. Finley, *Garlock Sealing Technologies LLC et al. v. Chandler et al.* (In re *Garlock Sealing Technologies LLC, et al.*), No. 12-03137 (Bankr. W.D.N.C. Jan. 21, 2013) (Docket No. 54) (attaching Manville and ASARCO Trust claim forms).
⁹¹ Phillips 2008 ASARCO Ballot at [Bates Number to be assigned].
⁹² Phillips 2009 ASARCO Ballot at [Bates Number to be assigned].
⁹³ Golini AWI Trust Claim at Shein 01888.
⁹⁴ Golini ARTRA Trust Claim at Shein 00036.
⁹⁵ Golini B&W Trust Claim at Shein 01902.
⁹⁶ Golini Celotex Trust Claim at Shein 00104.
⁹⁷ Golini Combustion Trust Claim at Shein 00162.
⁹⁸ Golini HAL Trust Claim at Shein 00628.
⁹⁹ Golini HW Trust Claim at Shein 02206.
¹⁰⁰ Golini EPI Trust Claim at Shein 00668.
¹⁰¹ Golini FM (Flex) Trust Claim at Shein 00702.

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- ¹⁰² Golini FM (T&N) Trust Claim at Shein 00736.
¹⁰³ Golini FB Trust Claim at Shein 01135.
¹⁰⁴ Golini HKP Trust Claim at Shein 01037.
¹⁰⁵ Golini Hercules Ballot at [Bates Number to be assigned].
¹⁰⁶ Golini Kaiser Trust Claim at Shein 01060.
¹⁰⁷ Golini Manville Trust Claim at Shein 01084.
¹⁰⁸ Golini NGC Trust Claim at Shein 01086.
¹⁰⁹ Golini OC Trust Claim at Shein 01164.
¹¹⁰ Golini Pacor Trust Claim at Shein 01195.
¹¹¹ Golini 2009 PCC Ballot at [Bates Number to be assigned].
¹¹² Golini Plibrico Trust Claim at Shein 01314.
¹¹³ Golini 2012 Quigley Ballot at [Bates Number to be assigned].
¹¹⁴ Golini Raybestos Trust Claim at Shein 01347.
¹¹⁵ Golini USG Trust Claim at Shein 01437.
¹¹⁶ Golini WRG Ballot at [Bates Number to be assigned].
¹¹⁷ White Lummus Trust Claim at Simon 27429.
¹¹⁸ White AWI Trust Claim at Simon 27481.
¹¹⁹ White ARTRA Trust Claim at Simon 27445.
¹²⁰ White ASARCO Trust Claim at Simon 27461.
¹²¹ White B&W Trust Claim at Simon 27493.
¹²² White Thurston Trust Claim at Simon 28037.
¹²³ White Celotex Trust Claim at Simon 27957.
¹²⁴ White HAL Trust Claim at Simon 27506.
¹²⁵ White Bartells Trust Claim at Simon 27969.
¹²⁶ White EPI Trust Claim at Simon 27979.
¹²⁷ White Lummus Trust Claim at Simon 27545.
¹²⁸ White FB Trust Claim at Simon 27523.
¹²⁹ White GAF Trust Claim at Simon 27561.
¹³⁰ White HKP Trust Claim at Simon 27580.
¹³¹ White Thorpe Trust Claim at Simon 27728.
¹³² White Keene Trust Claim at Simon 27995.
¹³³ White Manville Trust Claim at Simon 27993.
¹³⁴ White NGC Trust Claim at Simon 27999.
¹³⁵ White OC Trust Claim at Simon 28013.
¹³⁶ White PH Trust Claim at Simon 27594.
¹³⁷ White Raybestos Trust Claim at Simon 27953.
¹³⁸ White THAN Trust Claim at Simon 27610.
¹³⁹ White USG Trust Claim at Simon 27628.
¹⁴⁰ White Western Trust Claim at Simon 27829.
¹⁴¹ Ornstein AC&S Trust Claim at Simon 28039.
¹⁴² Ornstein Amatex Trust Claim at Simon 28084.
¹⁴³ Ornstein AWI Trust Claim at Simon 28125.
¹⁴⁴ Ornstein Combustion Trust Claim at Simon 28208.
¹⁴⁵ Ornstein HAL Trust Claim at Simon 28355.
¹⁴⁶ Ornstein EPI Trust Claim at Simon 28485.
¹⁴⁷ Ornstein FB Trust Claim at Simon 28573.
¹⁴⁸ Ornstein HKP Trust Claim at Simon 28659.
¹⁴⁹ Ornstein Keene Trust Claim at Simon 28765.
¹⁵⁰ Ornstein OC Trust Claim at Simon 28842.
¹⁵¹ Ornstein Thorpe Ins. Trust Claim at Simon 28865.
¹⁵² Reed ARTRA Trust Claim at Simon 27274.
¹⁵³ Reed ASARCO Trust Claim at Simon 27253.
¹⁵⁴ Reed B&W Trust Claim at Simon 27292.
¹⁵⁵ Reed Celotex Trust Claim at Simon 27931.

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- 156 Reed Combustion Trust Claim at Simon 27307.
157 Reed Congoleum Trust Claim at Simon 27330
158 Reed HAL Trust Claim at Simon 27380.
159 Reed EPI Trust Claim at Simon 27938.
160 Reed FM (Ferodo) Trust Claim at Simon 27350.
161 Reed GAF Trust Claim at Simon 27363.
162 Reed Manville Trust Claim at Simon 27946.
163 Reed OC Trust Claim at Simon 27399.
164 Reed Raybestos Trust Claim at Simon 27947.
165 Reed USG Trust Claim at Simon 27417.
166 Reed Western Trust Claim at Simon 27660.
167 Brennan AWI Trust Claim at Shein 02260.
168 Brennan 2009 ASARCO Ballot at Shein 01482.
169 Brennan B&W Trust Claim at Shein 02271.
170 Brennan Celotex Trust Claim at Shein 02282.
171 Brennan Combustion Trust Claim at Shein 02294.
172 Brennan EPI Trust Claim at Shein 02309.
173 Brennan FB Trust Claim at Shein 02327.
174 Brennan GAF Ballot at Shein 01500.
175 Brennan HAL Trust Claim at Shein 02383.
176 Brennan HW Trust Claim at Shein 02400.
177 Brennan Hercules Ballot at Shein 01510.
178 Brennan Manville Trust Claim at Shein 02312.
179 Brennan NGC Trust Claim at Shein 02313.
180 Brennan OC Trust Claim at Shein 02314.
181 Brennan Pacor Trust Claim at Shein 02341.
182 Brennan 2009 PCC Ballot at Shein 01517.
183 Brennan 2012 Quigley Ballot at Shein 01526.
184 Brennan Raybestos Trust Claim at Shein 02381.
185 Brennan USG Trust Claim at Shein 02416.
186 Brennan WRG Ballot at [Bates Number to be assigned].
187 Flynn Lummus Trust Claim at Waters 00263.
188 Flynn AWI Trust Claim at Waters 00272.
189 Flynn B&W Trust Claim at Waters 00304.
190 Flynn Celotex Trust Claim at Waters 00318.
191 Flynn Combustion Trust Claim at Waters 00352.
192 2nd Amended Combustion 2019 of Waters & Kraus at Waters 10597-10599.
193 Flynn HAL Trust Claim at Waters 00402-00416.
194 Flynn EPI Trust Claim at Waters 00361.
195 Flynn Fairchild Ballot at Waters 00047-00048.
196 Flynn FB Trust Claim at Waters 00380.
197 Flynn FB Ballot at Waters 00078.
198 Flynn 2009 Flintkote Ballot at Waters 00053.
199 Flynn GAF Ballot at Waters 00069-00071.
200 GAF 2019 of Waters & Kraus at Waters 00127-00129.
201 5th Amended GIT 2019 of Waters & Kraus at Waters 10639-10641.
202 Flynn Kaiser Trust Claim at Waters 00455.
203 Flynn Keene Trust Claim at Waters 00487.
204 Flynn Manville Trust Claim at Waters 00505.
205 5th Amended NARCO 2019 of Waters & Kraus at Waters 10793-10795.
206 Flynn OC Trust Claim at Waters 00509.
207 5th Amended OC 2019 of Waters & Kraus at Waters 10903-10905.
208 Flynn 2009 PCC Ballot at Waters 00086-00089.
209 5th Amended PCC 2019 of Waters & Kraus at Waters 10952-10954.

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- ²¹⁰ Flynn PH Trust Claim at Waters 00529.
²¹¹ Flynn 2012 Quigley Ballot at Waters 00092-00096.
²¹² Flynn Raybestos Trust Claim at Waters 00560.
²¹³ Flynn UNR Trust Claim at Waters 00570.
²¹⁴ 5th Amended USG 2019 of Waters & Kraus at Waters 11089-11091.
²¹⁵ Flynn WRG Ballot at Waters 00106-00111.
²¹⁶ 2nd Amended WRG 2019 of Waters & Kraus at Waters 00042-00044.
²¹⁷ Beltrami AC&S Ballot at [Bates Number to be assigned].
²¹⁸ Beltrami AWI Trust Claim at David 01736.
²¹⁹ Beltrami 2009 ASARCO Ballot at [Bates Number to be assigned].
²²⁰ Beltrami B&W Trust Claim at David 01748.
²²¹ Beltrami Celotex Trust Claim at David 01845.
²²² Beltrami Combustion Trust Claim at David 01769-01778.
²²³ Beltrami EPI Trust Claim at David 01857.
²²⁴ Beltrami FB Trust Claim at David 01806.
²²⁵ Beltrami 2008 Flintkote Ballot at [Bates Number to be assigned].
²²⁶ Amended Flintkote 2019 of David at David 00040-00041.
²²⁷ Amended GIT 2019 of David at David 00043-00044.
²²⁸ Beltrami HKP Trust Claim at David 01873.
²²⁹ Beltrami HAL Trust Claim at David 01860.
²³⁰ Beltrami HW Trust Claim at David 01892.
²³¹ Beltrami Kaiser Trust Claim at David 01912-01927.
²³² Beltrami Keene Trust Claim at David 01930.
²³³ Beltrami Manville Trust Claim at David 01839-01842.
²³⁴ Beltrami NGC Trust Claim at David 01779.
²³⁵ Amended NARCO 2019 of David at David 00046-00047.
²³⁶ Beltrami OC Trust Claim at David 01784.
²³⁷ Beltrami 2009 PCC Ballot at [Bates Number to be assigned].
²³⁸ Amended PCC 2019 of David at David 00049-00050.
²³⁹ Beltrami Kaiser Trust Claim at David 01932-01947.
²⁴⁰ Beltrami Raybestos Trust Claim at David 01950.
²⁴¹ Beltrami UNR Trust Claim at David 01952.
²⁴² Beltrami USG Trust Claim at David 01828.
²⁴³ Amended WRG 2019 of David at David 00037-00038.
²⁴⁴ Williams Lummus Trust Claim at Waters 03456.
²⁴⁵ Williams AC&S Trust Claim at Waters 03461.
²⁴⁶ Williams AC&S Ballot at Waters 03292-03294.
²⁴⁷ AC&S 2019 of Waters & Kraus at Waters 10540-10542.
²⁴⁸ Williams AWI Trust Claim at Waters 03488.
²⁴⁹ Williams ARTRA Trust Claim at Waters 04128.
²⁵⁰ Williams ASARCO Trust Claim at Waters 03533.
²⁵¹ Williams 2009 ASARCO Ballot at Waters 03303-03307.
²⁵² Williams B&W Trust Claim at Waters 03548.
²⁵³ Williams Burns & Roe Trust Claim at Waters 03636.
²⁵⁴ Williams Celotex Trust Claim at Waters 03662.
²⁵⁵ Williams Combustion Trust Claim at Waters 03676.
²⁵⁶ Combustion 2019 of Waters & Kraus at Waters 10585-10587.
²⁵⁷ Williams HAL Trust Claim at Waters 03813.
²⁵⁸ Williams HW Trust Claim at Waters 03857.
²⁵⁹ Williams EPI Trust Claim at Waters 03770.
²⁶⁰ Williams FM Ballot at Waters 03314-03321.
²⁶¹ Williams FB Trust Claim at Waters 03788.
²⁶² Williams FB Ballot at Waters 03324-03328.
²⁶³ Williams 2009 Flintkote Ballot at Waters 03331-03337.

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- 264 Williams GAF Ballot at Waters 03361-03363.
265 GAF 2019 of Waters & Kraus at Waters 03225-03227.
266 GIT 2019 of Waters & Kraus at Waters 10610-10612.
267 Williams HKP Trust Claim at Waters 03895.
268 Williams Thorpe Trust Claim at Waters 03939.
269 Williams Thorpe Ballot at Waters 03370-03373.
270 Thorpe 2019 of Waters & Kraus at Waters 03236-03241.
271 Williams Kaiser Trust Claim at Waters 04016.
272 Williams Kaiser Ballot at Waters 03375-03377.
273 Kaiser 2019 of Waters & Kraus at Waters 10732-10734.
274 Williams Keene Trust Claim at Waters 04050.
275 Williams Manville Trust Claim at Waters 04065.
276 NARCO 2019 of Waters & Kraus at Waters 10768-10770.
277 Williams NGC Trust Claim at Waters 04072.
278 Williams OC Trust Claim at Waters 04083.
279 Williams OC Ballot at Waters 03380-03382.
280 Amended OC 2019 of Waters & Kraus at Waters 10878-10880.
281 Williams 2009 PCC Ballot at Waters 03388-03391.
282 PCC 2019 of Waters & Kraus at Waters 10919-10921.
283 Williams 2012 Quigley Ballot at Waters 03394-03398.
284 Williams Raybestos Trust Claim at Waters 04113.
285 Williams Thorpe Ins. Trust Claim at Waters 04178.
286 Williams Thorpe Ins. Ballot at Waters 03407-03411.
287 Thorpe Ins. 2019 of Waters & Kraus at Waters 03266-03268.
288 Williams USM Ballot at Waters 03419-03423.
289 Amended USM 2019 of Waters & Kraus at Waters 11098-11096.
290 Williams USG Trust Claim at Waters 04266.
291 Amended USG 2019 of Waters & Kraus at Waters 11065-11067.
292 Williams WRG Ballot at Waters 03427-03432.
293 2nd Amended WRG 2019 of Waters & Kraus at Waters 03286-03288.
294 Steckler Lummus Trust Claim at Waters 00714.
295 Steckler AC&S Trust Claim at Waters 00734.
296 Steckler AWI Trust Claim at Waters 00753.
297 Steckler ARTRA Trust Claim at Waters 01207.
298 Steckler B&W Trust Claim at Waters 00802.
299 Steckler Celotex Trust Claim at Waters 00834.
300 Steckler Combustion Trust Claim at Waters 00860.
301 Steckler HAL Trust Claim at Waters 00985.
302 Steckler HW Trust Claim at Waters 01015.
303 Steckler Bartells Trust Claim at Waters 00898.
304 Steckler EPI Trust Claim at Waters 00880.
305 Steckler FMTrust Claim at Waters 00945.
306 Steckler FB Trust Claim at Waters 00910.
307 Steckler FB Ballot at Waters 00628-00633.
308 Steckler 2009 Flintkote Ballot at Waters 00635-00641.
309 Steckler GAF Ballot at Waters 00665-00667.
310 GAF 2019 of Waters & Kraus at Waters 00573-00575.
311 2nd Amended GIT 2019 of Waters & Kraus at Waters 10621-10623.
312 Steckler Thorpe Trust Claim at Waters 01068.
313 Steckler Kaiser Trust Claim at Waters 01111.
314 2nd Amended Kaiser 2019 of Waters & Kraus at Waters 10743-10745.
315 Steckler Keene Trust Claim at Waters 01161.
316 Steckler OC Trust Claim at Waters 01167.
317 Steckler OC Ballot at Waters 00674-00676.

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- ³¹⁸ 2nd Amended OC 2019 of Waters & Kraus at Waters 10884-10886.
³¹⁹ Steckler 2009 PCC Ballot at Waters 00682-00685.
³²⁰ 2nd Amended PCC 2019 of Waters & Kraus at Waters 10931-10933.
³²¹ Steckler Raybestos Trust Claim at Waters 01202.
³²² Steckler Thorpe Ins. Trust Claim at Waters 01246.
³²³ Steckler Thorpe Ins. Ballot at Waters 00688-00692.
³²⁴ Thorpe Ins. 2019 of Waters & Kraus at Waters 00608-00610.
³²⁵ Amended USM 2019 of Waters & Kraus at Waters 11096-11098.
³²⁶ Steckler USG Trust Claim at Waters 01308.
³²⁷ Steckler WRG Ballot at Waters 00700-00705.
³²⁸ 2nd Amended WRG 2019 of Waters & Kraus at Waters 00622-00624.
³²⁹ Taylor AC&S Trust Claim at Waters 01384.
³³⁰ Taylor AWI Trust Claim at Waters 01438.
³³¹ Taylor ASARCO Trust Claim at Waters 01410.
³³² Taylor B&W Trust Claim at Waters 01458.
³³³ Taylor Celotex Trust Claim at Waters 01475.
³³⁴ Taylor Combustion Trust Claim at Waters 01510.
³³⁵ Taylor HAL Trust Claim at Waters 01631.
³³⁶ Taylor HW Trust Claim at Waters 01668.
³³⁷ Taylor EPI Trust Claim at Waters 01532.
³³⁸ Taylor FM Trust Claim at Waters 01591.
³³⁹ Taylor FB Trust Claim at Waters 01567.
³⁴⁰ 2nd Amended GIT 2019 of Waters & Kraus at Waters 10621-10623.
³⁴¹ Taylor HKP Trust Claim at Waters 01731.
³⁴² Taylor Kaiser Trust Claim at Waters 01756.
³⁴³ 2nd Amended Kaiser 2019 of Waters & Kraus at Waters 10743-10745.
³⁴⁴ Taylor Keene Trust Claim at Waters 01802.
³⁴⁵ Taylor Leslie Trust Claim at Waters 01828.
³⁴⁶ Taylor Leslie Ballot at Waters 01365-01368.
³⁴⁷ Taylor Manville Trust Claim at Waters 01839.
³⁴⁸ Taylor OC Trust Claim at Waters 01842.
³⁴⁹ 2nd Amended OC 2019 of Waters & Kraus at Waters 10884-10886.
³⁵⁰ 2nd Amended PCC 2019 of Waters & Kraus at Waters 10991-10993.
³⁵¹ Taylor Plant Ins. Trust Claim at Waters 01866.
³⁵² Taylor Raybestos Trust Claim at Waters 01914.
³⁵³ Taylor Thorpe Ins. Trust Claim at Waters 01945.
³⁵⁴ Taylor Thorpe Ins. Ballot at Waters 01373-01377.
³⁵⁵ Thorpe Ins. 2019 of Waters & Kraus at Waters 01351-01353.
³⁵⁶ Taylor USM Trust Claim at Waters 02076.
³⁵⁷ Amended USM 2019 of Waters & Kraus at Waters 11096-11098.
³⁵⁸ Taylor USG Trust Claim at Waters 02083.
³⁵⁹ Taylor Western Trust Claim at Waters 02102.

