

STATE OF WISCONSIN

Assembly

PUBLIC HEARING

Committee on Judiciary

Assembly Bill 19

TORT AND PERSONAL INJURY TRUSTS

Testimony of Marc Scarcella

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Thursday, April 4, 2013

Introduction

My name is Marc Scarcella, and I want to thank the committee for holding today's hearing on Assembly Bill 19, and allowing me the opportunity to provide testimony in support of the proposed legislation. As an economist that has consulted on a variety of issues related to mass tort litigation, I believe the transparency between non-litigious, personal injury compensation trusts and related lawsuits in the civil tort system is critical for the proper allocation of fault and adjudication of cases. To support this conclusion, my testimony will focus on the current asbestos litigation environment, which represents a stark example of why trust and tort transparency is needed when compensating personal injury victims.

I currently work in the Environmental and Product Liability practice of Bates White, LLC where I consult on a variety of issues relating to mass tort litigation, including the estimation of litigation risk and economic damages associated with asbestos claims. My current clients include defendants and insurers actively litigating cases in the asbestos civil tort, but prior to joining Bates White in 2009 I spent nearly a decade as a consultant to asbestos claimant representatives in 524(g) bankruptcy proceedings, trustee boards of some of the largest asbestos bankruptcy trusts, and as an in-house statistician for the Johns-Manville Personal Injury Settlement Trust.¹ It is from this balanced experience of seeing the world from both the tort and trust systems, and working for both defendants and claimants, that I've gained a great deal of knowledge and unique perspective about how these two compensation systems interact with one another, or in many instances, fail to interact with one another.

The issue of asbestos bankruptcy trust transparency that sits at the heart of Assembly Bill 19 has been the focus of academic, judicial, and legislative debates across the country in recent years. Even though asbestos bankruptcies and resulting bankruptcy trusts have been around for decades, it's only been in the past few years that the trust system as a whole has become a substantial, alternative source of compensation to what plaintiffs are already receiving in the tort system. As a result, tort defendants, state

¹ See Exhibit A: Professional Background of Marc Scarcella

courts and legislators have been faced with the challenge of finding effective and efficient methods of integrating these dual compensation systems into one.

My testimony in support of the proposed legislation will focus on four key points;

- (i) The current trust system distributes billions of dollars in claim payments each year on behalf of the litigation's most culpable, primary defendants, and does so with little or no transparency with the civil tort, creating dual compensation systems.
- (ii) Given the lengthy statute of limitation provisions adopted by most asbestos trusts, there is little to no economic incentive for plaintiff counsel to actively pursue trust claims while the tort case is still pending, making the current trust discovery procedures in Wisconsin courts ineffective for promoting the necessary transparency between the dual compensation systems.
- (iii) As written, Assembly Bill 19 would help provide this necessary transparency by allowing defendants to assume the burden of proving cases against Reorganized Defendants, and based on such evidence, courts can choose to compel plaintiff counsel to file and disclose related trust claims in a timely manner.
- (iv) As written, Assembly Bill 19 would further promote the filing of trust claims without posing an undue burden on plaintiff counsel, resulting in expedited payments to asbestos victims well in advance of tort case resolution.

The dual compensation system

The “Bankruptcy Wave” that began in 2000 and ended with dozens of primary asbestos defendants filing for bankruptcy reorganization (“Reorganized Defendants”), marked a significant shift in the asbestos litigation.² Many of these Reorganized Defendants engaged in the manufacturing,

² The companies that filed for Chapter 11 protection during the Bankruptcy Wave included AC&S, Armstrong World Industries, USG, Owens Corning/Fibreboard, Federal-Mogul, G-I Holdings, Combustion Engineering, etc... For a detailed list of all the Bankruptcy Wave debtors see Mark D. Plevin et al., *Where Are They Now, Part Four: A Continuing History of the Companies That Have Sought Bankruptcy Protection Due to Asbestos Claims*, 6:4 Mealey’s Asbestos Bankr. Rep. (Feb. 2007).

distribution, and installation of thermal insulation products, which most scientific literature concludes to have contributed the greatest risk to exposed workers.³ Prior to the Bankruptcy Wave, asbestos lawsuits were largely predicated on alleged exposures to thermal insulation products and those responsible defendants. However, following the bankruptcies of those frontline defendants during the Bankruptcy Wave, plaintiff attorneys shifted their litigation strategy away from the traditional thermal insulation defendants and towards peripheral and new defendants associated with the manufacturing and distribution of alternative asbestos-containing products such as gaskets, pumps, automotive friction products, and residential construction products.

As a result, these peripheral and new defendants experienced a dramatic increase in both the number of lawsuits in which they were named, the frequency in which their products and operations were identified as sources of asbestos exposure, and the overall settlement demands that plaintiff attorneys were seeking. Conversely, the Reorganized Defendants all but disappeared from the litigation and are rarely identified in cases today, even though a majority of plaintiffs still have exposures to traditional industrial settings where thermal insulation products were present.

In effect, two very distinct compensation systems have emerged. The current tort system is funded mainly by secondary or peripheral defendants that science would suggest are far less culpable than the dozens of primary thermal insulation defendants that have since filed for bankruptcy protection. Alternatively, the current trust system distributes billions of dollars in claim payments each year on behalf of the litigation's most culpable, Reorganized Defendants that have since emerged from bankruptcy and established asbestos compensation trusts.⁴ The lack of integration and allocation of liability between these two compensation systems is at the core of why trust transparency legislation, such as Assembly

³ U.S. Environmental Protection Agency, <http://www.epa.gov/iris/subst/0371.htm>

⁴ See Exhibit B: Scarcella, Marc C. and Peter R. Kelso. "Asbestos Bankruptcy Trusts: A 2012 Overview of Trust Assets, Compensation & Governance." Mealey's Asbestos Bankruptcy Report 11, no. 11 (2012).

The asbestos trusts established through 524(g) bankruptcy reorganization are intended to assume the legal responsibility of all current and future liabilities associated with asbestos-related products and operations of the debtor.

Bill 19, has been introduced in Wisconsin and other states. In fact, legislation similar to Assembly Bill 19 was passed in Ohio late last year.⁵

The need for trust transparency

It is rare to find an asbestos victim whose injuries have been caused by the actions of just one defendant. Rather most asbestos lawsuits pursue compensation from dozens of defendants.⁶ This places a great deal of importance on the allocation of fault and compensation shares across culpable parties, including those that have reorganized through bankruptcy. Over the past few years I have spent a considerable amount of time reviewing plaintiff deposition testimony and interrogatory responses for hundreds of mesothelioma lawsuits, and I have analyzed trends in plaintiff exposure allegations over time.⁷ I found that in an overwhelming majority of recent cases, very few allegations of exposure to Reorganized Defendant products or operations are identified in lawsuit testimony, and the existence of trust claims are rarely disclosed in a timely manner, if at all.⁸ In fact, it seems that trust claims are rarely, if ever filed in conjunction with the tort claim.⁹

To understand how or why this can occur, it's important to first understand the process in which defendant product and operations are generally identified in lawsuits. Many exposed workers may never have known what companies manufactured the asbestos products they were working with on a regular basis. For example, a pipefitter that had to cut down thermal pipe insulation in order to conduct his work

⁵ Ohio Rev. Code § 2307.95, December 20, 2012.

⁶ Bates, Charles E., Charles H. Mullin, and A. Rachel Grinberg. "The Naming Game." Mealey's Litigation Report: Asbestos 24, no. 15 (September 2, 2009).

⁷ See Exhibit C: Scarcella, Marc C., Peter R. Kelso, and Joseph Cagnoli, Jr. "The Philadelphia Story: Asbestos Litigation, Bankruptcy Trusts and Changes in Exposure Allegations from 1991-2010." Mealey's Asbestos Litigation Report 27, no. 19 (2012).

⁸ Testimony of Judge Peggy L. Ableman (ret.), Hearing testimony on H.R. 982, the "Furthering Asbestos Claim Transparency (FACT) Act of 2013", U.S. House Judiciary Committee's Subcommittee on Courts, Commercial and Administrative Law, March 2013

⁹ Testimony of Richard D. Shuster, Hearing testimony on House Bill 380, Ohio State Senate Judiciary Committee, March 2012

may not know what company supplied the insulation. In other instances, exposed workers may not be able remember the product manufacturers considering that mesothelioma is a latent disease that takes decades to manifest after exposure. In practice, most product identification comes from the resources and experience of plaintiff law firms that include asbestos product databases, local construction records, invoices from major exposure sites, and decades of prior testimony by product identification witnesses.¹⁰ This provides plaintiff attorneys with a great deal of strategic discretion as to when and which defendants they will pursue compensation.

Currently, there is little economic incentive for plaintiff attorneys to build tort cases against Reorganized Defendants because compensation from the related exposures are not litigated and settled through lawsuits. Following bankruptcy confirmation, the legal responsibility of indemnifying victims for asbestos claims against Reorganized Defendants is channeled to asbestos compensation trusts. Filing a claim and receiving payment from these trusts does not require litigation, so claims can be made and money can be received without being integrated into any corresponding lawsuit in the tort system. Furthermore, lengthy statute of limitation provisions adopted by most asbestos trusts allow claims to be filed up to three years after the date the victim was diagnosed with an asbestos-related disease. As a result, plaintiff attorneys have very little economic incentive to pursue trust claims until after the lawsuit in the civil tort has been resolved. This renders basic discovery procedures in Wisconsin courts ineffective, because plaintiff attorneys can not disclose trust claim forms that have not been made yet.

Strategically, plaintiff attorneys will choose to focus their clients on the products and operations of current tort defendants during the pendency of the civil lawsuit, and reserve their right to pursue trust claims once tort settlements have been reached.¹¹ I believe this practice ultimately creates an information asymmetry in the tort system, that withholds from defendants and the court, significant sources of plaintiff exposure and potential fault associated with Reorganized Defendants. This places defendants at

¹⁰ See Exhibit D, web site of Cascino Vaughn Law Offices, LTD

¹¹ Baron & Budd, P.C. *Preparing for Your Deposition*. Dallas: Baron & Budd, P.C.

a significant disadvantage when negotiating appropriate settlements in the tort system. If trust claims are not pursued in a timely manner, it conceals critical information regarding both sources of potential plaintiff compensation, as well as alternative exposures to the litigation's most culpable defendants that are no longer being named and identified in lawsuits because of their bankruptcies. As a result, the defendants and the court do not have the full information regarding the plaintiff's "true" exposure history to properly defend the case and correctly allocate liability, respectively.

Defense and plaintiff attorneys negotiate settlements based on litigation risk factors. For defendants, knowing if claims are being pursued against alternative sources of compensation based on exposures to other company products and operations greatly influences their assessment of what they will likely have to pay if the case goes to trial. In the absence of this information, defendants are put in a position of agreeing to higher than appropriate settlements because the uncertainty surrounding potential trust claims naturally increases their litigation risk. Cases that do reach verdict similarly put the court and jury in an uncertain position. Because information regarding exposure to bankruptcy products has been withheld or concealed from the court, a jury cannot properly allocate liability against those culpable parties.

Legislation that compels the filing of trust claims in a timely manner could go a long way towards creating a system where courts can properly allocate liability based on a plaintiff's full exposure and defendants pay closer to their fair share for an asbestos-related injury. Trust and tort transparency is not about determining how much money a victim of an asbestos-related injury should receive, it's about determining the appropriate amount that each culpable party should pay, including the bankruptcy trusts. As an economist I believe that by and large, more transparency regarding the exposure to the products of Reorganized Defendants will result in more appropriate and just outcomes. As written, I believe that legislative solutions such as Assembly Bill 19 would help provide the necessary transparency to allow cases in Wisconsin courts to be properly adjudicated based on the complete set of evidence.

Assembly Bill 19 will not present and undue burden on plaintiff counsel

The primary purpose of asbestos bankruptcy trusts confirmed under 524(g) is to efficiently process and pay qualifying claims for individuals who suffer from asbestos related diseases. Trusts are designed to pay claims expeditiously and with minimal administrative and transactional costs. To accomplish this, most trusts have established presumptive medical and exposure criteria to quickly determine if a claim qualifies for payment. The resolution procedures developed to govern this process are often standardized across trusts allowing plaintiff attorneys to utilize the same claims material for multiple trust submissions, thus minimizing their filing costs per claim. To further expedite the process of filing claims, many trusts and claim facilities have utilized electronic filing and processing systems that provide claimant law firms that ability to file thousands of claims *en masse*.¹²

The efficient manner in which trusts are able to receive, process, and pay claims has produced over \$14 billion in payments to hundreds of thousands of claimants between 2006 and 2011.¹³ Not surprisingly, this level of compensation has incentivized some plaintiff law firms to hire attorneys and non-attorney professionals whose primary job duties are to file and pursue trust claims.¹⁴ As a result, the resources plaintiff law firms may use to file trust claims are independent of the attorneys and professionals that are actively pursuing the related tort claim. In effect, requiring plaintiff counsel to proactively pursue trust claims in conjunction with the tort case should in no way detract from the quality of representation that the plaintiff receives.

It is also worth noting that for living mesothelioma plaintiffs, this administrative process of filing and resolving a trust claim can occur even faster. Many trusts offer an “Exigent Claim” status for living mesothelioma cases that find themselves in immediate need of financial assistance for expenses or loss of income as a result of their asbestos-related disease. This Exigent Claim status can accelerate the trust review and payment process. Given that many mesothelioma plaintiffs are living at the time their

¹² See for example: Sample Excel file for Electronic Filing offered by Verus
<http://www.kaiserasbestostrust.com/Files/KACC%20Sample%20Excel%20Files.zip>

¹³ *Supra* 4.

¹⁴ See Exhibit E: web site of Goldberg Persky White, P.C.

attorney files a lawsuit in the tort system, any trust claims that are actively pursued would likely yield payment well before trial, even in jurisdictions that have *extremis mesothelioma* dockets.

This point illustrates that the trust filing and resolution process can provide compensation more quickly and efficiently than lawsuits in the civil tort system, and because the process is largely administrative these trust claims can be pursued without posing an undue burden on plaintiff law firms. In short, asbestos bankruptcy trust claims can easily be made concurrently with a pending tort case, and often provide plaintiffs with needed compensation while the tort claim is still being resolved. These payments can be critical for paying a plaintiff's medical bills and other potential financial strains stemming from any loss of income.

Part of the reason why trust and tort claims can be made concurrently with a great deal of efficiency is because there is overlap between the supporting evidence required in both processes. Much like the tort system, a mesothelioma trust claim can be supported by a physical exam or pathology report. The payment criteria for a mesothelioma trust claim typically require meaningful and credible exposure to asbestos-containing products and operations of the reorganized debtor.¹⁵ This can be demonstrated by specific product identification or alleged exposure to operations supported by plaintiff testimony in the form of an affidavit or deposition. In the event that the plaintiff is no longer living, the supporting exposure testimony can be provided by family member or co-worker.

To further limit the discovery burden for plaintiff counsel, many trusts maintain Approved Site Lists compiled through corporate records and plaintiff testimony that include locations where the Reorganized Defendants' products or operations were present for a specified period of time.¹⁶ The purpose of these Approved Site Lists is to expedite the review process by allowing plaintiff attorneys to easily leverage the institutional knowledge and testimony compiled over decades of litigation. Plaintiffs

¹⁵ *See for example* The Babcock & Wilcox Company Asbestos PI Settlement Trust Distribution Procedures, Section 5.7(b)(3), revised January 4, 2008

¹⁶ *See for example* The United States Mineral Products Company Asbestos Personal Injury Settlement Trust, Protocol for Adding a Site to the Trust's List of Qualified USM Worksites <http://www.claimsres.com/documents/USM/USM%20Protocol%20for%20Adding%20a%20Site%20to%20the%20Trust%27s%20List%20of%20Qualified%20USM%20Worksites%20022510.pdf>

can establish product exposure by being at one of these locations at a time when the bankrupt entity's asbestos-containing products or operations were also believed to be present. As noted above, many experienced plaintiff law firms maintain and leverage similar site, product, testimony lists, and resources when developing cases against defendants in the tort system.¹⁷

The final step in trust claim resolution is the determination of the payment amount. Unlike settlements made with defendants in the tort system, this is not a negotiated or compromising process. Trusts typically provide a schedule of payment amounts for each asbestos-related injury, as well as an individual review and valuation procedure that values claims based on specific claimant characteristics. These valuation models are designed to yield payment amounts that mimic the reorganized company's settlement history prior to bankruptcy. Trusts that are unable to pay claimants 100% of the specified amount will establish a "Payment Percentage" that uniformly reduces the amounts by a fixed percentage. Thus, the actual payment received by each claimant is equal to the determined amount, multiplied by the Payment Percentage.

Trust Payment Percentages are subject to change over time based on projections of future claim obligations. If future liability expectations increase, then trusts will likely decrease individual claim payments in an attempt to maintain assets far enough into the future to be in a position to pay all claims in an equitable manner. Conversely, if future liability expectations decrease, then trusts will likely increase individual claim payments. Again, this is done in an attempt to maximize claim payments while ensuring that trust assets will be sufficient to pay all future claimants. For many trusts, when payments increase, prior claimants are given retroactive, or "True-Up" payments equal to the difference between what they previously received from the trust and what the trust is currently paying similarly situated claimants. As a result, there is no downside risk to pursuing payment from a trust as quickly as possible. Rather, there is only downside risk of waiting to pursue a trust claim as values may decrease over time. As written, I

¹⁷ *Supra* 10.

believe that legislative solutions such as Assembly Bill 19 would further promote the expeditious filing of trust claims, which in my view, is in the best interests of the plaintiffs.

Conclusion

As an economist who has been studying trends in asbestos claim filings and compensation for over ten years, I believe that transparency between the asbestos civil tort and bankruptcy trust systems is critical for the proper allocation of claimant compensation. As written, Assembly Bill 19 would help provide this necessary transparency by allowing defendants to assume the burden of proving cases against Reorganized Defendants, and based on such evidence, courts can choose to compel plaintiff counsel to file and disclose related trust claims in a timely manner. As a result, Assembly Bill 19 would further promote the filing of trust claims without posing an undue burden on plaintiff counsel, resulting in expedited payments to asbestos victims well in advance of tort case resolution.

EXHIBIT A
PROFESSIONAL BACKGROUND OF MARC SCARCELLA

Background

Currently, I am an economic consultant with the Environmental and Product Liability practice of Bates White, LLC. I've been with Bates White for nearly four years, and during that time I have been retained by defendants and insurers as an expert on the governance, procedures, processing systems, and compensation criteria of asbestos personal injury trusts established under section 524(g) of the U.S. Bankruptcy Code. Prior to joining Bates White, I spent seven years with Analysis Research Planning Corporation ("ARPC") as an asbestos liability estimation consultant for legal representatives and trustee boards associated with high profile 524(g) bankruptcy reorganizations and resulting bankruptcy trusts. Prior to that time, I was the data analyst and statistician for Claims Resolution Management Corporation ("CRMC"), a wholly owned subsidiary of the Manville Personal Injury Settlement Trust ("Manville") established to process and resolve asbestos claims against the trust.

Experience specific to asbestos bankruptcy trusts and claim processing systems¹

During my time with CRMC, the facility was in the process of developing an electronic claim filing system ("E-ClaimsTM") to allow claim filers to not only submit individual claim forms electronically, but also to upload thousands of claim forms at one time. Similar technology has since been adopted by other claim processing facilities.² These technologies have been designed to be compatible with the electronic claim databases that claimant law firms may have developed for internal

¹ The information in my testimony is based on: (i) publically available information and general experience gained during my employment at both Claims Resolution Management Corporation ("CRMC") and ARPC; and (ii) general industry knowledge with respect to the construction and functionality of electronic claim databases, and the ability to query and extract subsets of those databases. Information about the claims management and processing services provided by ARPC can be found at <http://arpc.com/solutions/product-liability-and-environmental-consulting/claims-management-processing>

² *See for example:* DCPF Requirements and Instructions for Bulk Upload Tool <http://www.armstrongworldasbestostrust.com/files/Trust%20Online%20Bulk%20Upload%20Tool.pdf>
See for example: Verus Asbestos PI Trust Online Filing User's Guide http://www.cetrust.org/docs/Online_Filing_User_Guide.pdf
See for example: Western Asbestos Settlement Trust Claim Filing Instructions and Electronic Claim Template <http://wastrust.com/claims-packet>

use, thus minimizing the administrative cost and burden of transferring claim and claimant data to the facility.³

The system used by CRMC, as well as other similar systems are designed to not only receive and maintain an electronic database of claim and claimant information, but to also allow for the ability to efficiently extract and analyze data as needed. For example, during my time with the CRMC, I maintained a monthly data extract of individual claim filing, processing, and settlement data that was produced for internal analytical and claim management tasks. Additionally, upon third party requests for data, CRMC would provide a similar extract for minimal cost, including expansive medical and exposure data extracts.⁴

During my tenure with ARPC the firm was retained as advisor to a number of future claim representatives or trustee boards of asbestos personal injury and property damage trusts (“Trusts”), including all of the trusts currently processing and resolving claims at the Delaware Claims Processing Facility (“DCPF”) and its predecessor, the Celotex Asbestos Settlement Trust (“Celotex”), as well as certain Trusts currently processing and resolving claims at Verus Claims Services (“Verus”), the Claims Processing Facility, Inc. (“CPF”), Trust Services, Inc. (“TSI”), MFR Claims Processing (“MFR”), and the Western Asbestos Settlement Trust (“WAST”) facility.⁵ In addition to the firm’s role as advisor to Trusts

³ See for example: Sample Excel file for Electronic Filing offered by Verus
<http://www.kaiserasbestostrust.com/Files/KACC%20Sample%20Excel%20Files.zip>

⁴ Such an extract is still available today on a limited basis
Reference: Distribution of Manville Trust Data for Use Solely by Other Trusts
<http://www.claimsres.com/documents/MT/DataPolicy.pdf>
Reference: Manville Trust Single Use Data License Agreement
<http://www.claimsres.com/documents/MT/DataAgreement.pdf>

⁵ In most cases, to the extent that any of these engagements were performed during the pending bankruptcy confirmation of a trust, any time records detailing the work performed by myself or other employees of ARPC would be publically available as fee applications in the bankruptcy case docket, along with any formal retention applications filed with the court.

In most cases, to the extent that any of these engagements were performed following the bankruptcy confirmation of a trust, the retention of ARPC and the general nature of the retention (e.g. Executive Director to the trust, claims administration consultant, liability estimation consultant, etc.) is disclosed in trust annual reports filed with the bankruptcy court and publically available on the case docket.

and future claim representatives, ARPC was also retained by Celotex, DCPF, CPF, and the WAST facilities to help develop new, or enhance existing, electronic claim processing systems.⁶

To the extent that a particular client cited in my testimony is not publically disclosed in any of the above mentioned sources, each of the ARPC clients referenced in my testimony are also referenced in the “Application For Order Authorizing The Proposed Future Claimants' Representative To Retain And Employ Analysis, Research, And Planning Corporation As Claims Evaluation Consultants” filed on October 11, 2010 in re: Specialty Products Holding Corp., et al In The United States Bankruptcy Court For The District Of Delaware (case no. 10-11780). This document is available for public download from the bankruptcy court docket.

⁶ See for example: First Annual Report And Accounting Of Western Asbestos Settlement Trust, filed May 16, 2005 with the United States Bankruptcy Court Northern District Of California Oakland Division (Case No. 02-46284-T), pg. 12, line 10:
“Analysis Research Planning Corporation (“ARPC”): Consulting firm hired to help the Trust to develop a claims manual and claims processing procedures. Also hired to create a system to process claims after it was discovered that no existing vendor would be able to meet the requirements of the Matrix and TDP in a timely manner. Also offer ongoing advice concerning improvements to the system.”

Marc Scarcella, MA

Manager

Summary of experience

Marc Scarcella has more than ten years of experience as an economic consultant for mass tort litigation, specializing in quantitative methods and their applications in dispute resolution and strategic litigation management. He has extensive experience estimating litigation risk and economic damages associated with latent personal injury claims due to environmental and product liability.

Mr. Scarcella has developed forecasting models used to evaluate the impact of litigation and legacy liability on corporate financial management, transactions, and restructuring. His work has been leveraged in corporate financial disclosures for SEC reporting, bankruptcy reorganization, and structured financial transactions. Mr. Scarcella has acted as consulting expert on a number of complex insurance coverage cases and has developed economic models for estimating potential insurance recoveries due to environmental and product liability claims. He has applied his expertise in forecasting future loss and litigation risk to the areas of asbestos, silica, pharmaceutical, water contamination, and tobacco litigation.

Prior to joining Bates White, Mr. Scarcella was Managing Director at Analysis Research Planning Corporation (ARPC), where he provided economic analyses and consultative services in 524(g) Chapter 11 bankruptcy reorganization in the areas of asbestos liability estimation and insurance allocation. This experience has made Mr. Scarcella a recognized expert on claim processing management and valuation for 524(g) asbestos personal injury and property damages bankruptcy trusts, and he has testified on matters of trust transparency and potential plaintiff recoveries at both the state and federal level. Mr. Scarcella has also consulted on issues of process and policy management for other Qualified Settlement Funds (QSF) established from non-asbestos product liability litigation.

Areas of expertise

- 524(g) asbestos claims valuation and trusts administration
- Applied Econometrics
- Financial analysis and risk modeling
- Liability estimation and forecasting
- Insurance allocation and valuation

- Litigation risk analysis
- Claim process management and system design

Selected experience

Expert testimony

Mr. Scarcella has testified on matters of 524(g) asbestos bankruptcy trust transparency and potential plaintiff recoveries at both the state and federal level.

- Hearing testimony on H.R. 4369, the "Furthering Asbestos Claim Transparency (FACT) Act of 2012", U.S. House Judiciary Committee's Subcommittee on Courts, Commercial and Administrative Law, May 2012
- Hearing testimony on H.B. 380, Ohio Senate Judiciary Committee, March 2012
- Hearing testimony on H.B. 380, Ohio House Judiciary and Ethics Committee, November 2011
- Hearing testimony on H.B. 2034, Texas House Judiciary and Civil Jurisprudence Committee, March 2011
- Deposition testimony in *James Andrews and Mary Andrews v. A.W. Chesterton, Inc., et al.*, Third Judicial Circuit Court of Madison County, IL, September 2011
- Deposition testimony in *Phillip Christopher and Nancy Christopher v Armstrong International Inc., et al.*, Circuit Court of Limestone County, AL, April 2011
- Deposition testimony in *Sherrie Moore v. A.W. Chesterton, Inc., et al.*, Third Judicial Circuit Court of Madison County, IL, April 2010

Liability estimation and insurance allocation analysis

- Estimated and simulated future asbestos-related expenses for both SEC financial reporting disclosures and bankruptcy reorganization
- Estimated insurance allocation of asbestos-related losses in coverage disputes, coverage-in-place negotiations, excess policy buy-outs, SEC financial reporting disclosures, and bankruptcy reorganization
- Long-term discounted cash flow modeling to measure liquidity and solvency risk for distressed companies and asbestos bankruptcy trusts
- Strategic analysis of litigation tactics and associated costs relating to mass torts
- Litigation budget analysis and defense cost projections relating to mass torts
- SEC financial reporting disclosures of asbestos litigation reserves

- Insurance recovery modeling
- Interest rate and discount rate risk analysis
- Contingent liability forecasting for environmental damages

Claims processing and settlement of 524(g) personal injury trusts

- Procedures and policy development
- Reporting system development
- Claims valuation model development and analysis
- Exposure site list management
- Property damages claims administration
- Quality control management, including the development of a system of standards and auditing procedures

Professional experience

Mr. Scarcella first began evaluating environmental and product liability claims in 2001 as the statistician and quantitative data analyst for the claims processing facility of the Johns-Manville Personal Injury Settlement Trust. Following his time with Manville, he joined ARPC, an economic consulting firm specializing in asbestos liability estimation for bankruptcy reorganization and qualified settlement funds. During his tenure with ARPC, Mr. Scarcella had the opportunity to estimate current and future asbestos liability and associated insurance recoveries in asbestos bankruptcy proceedings for multiple companies including, but not limited to, Armstrong World Industries, Babcock and Wilcox, Federal-Mogul Corporation, Halliburton Co., Honeywell International Inc., Owens Corning, and United States Gypsum.

- Bates White Economic Consulting, Washington, DC
 - Manager (June 2009 to present)
- Analysis Research Planning Corporation (ARPC), Washington, DC
 - Managing Director (January 2009–June 2009), Director (January 2005–December 2008), Sr. Consultant (January 2004–December 2004), Consultant (July 2002–December 2003)
- Claims Resolution Management Corporation (CRMC), Fairfax, VA
 - Quantitative Data Analyst (July 2001–June 2002)

Education

- MA, Financial Economics, American University
- BA, Economics, American University
- BA, Public Affairs, American University

Publications

- Scarcella, Marc C., Peter R. Kelso, and Joseph Cagnoli, Jr. “The Philadelphia Story: Asbestos Litigation, Bankruptcy Trusts and Changes in Exposure Allegations from 1991-2010.” *Mealey’s Asbestos Litigation Report* 27, no. 19 (2012)
- Scarcella, Marc C. and Peter R. Kelso. “Asbestos Bankruptcy Trusts: A 2012 Overview of Trust Assets, Compensation & Governance.” *Mealey’s Asbestos Bankruptcy Report* 11, no. 11 (2012).
- Hartley, Kirk T., David C. Christian II, Marc C. Scarcella, and Peter R. Kelso. “Pre-Packaged Plan of Inequity: the financial abuse of future claimants in the T H Agriculture & Nutrition 524(g) asbestos bankruptcy.” *Mealey’s Asbestos Bankruptcy Report* 11, no. 4 (2011).
- Bates, Charles E., Charles H. Mullin, and Marc Scarcella. “The Claiming Game.” *Mealey’s Litigation Report: Asbestos* 25, no. 1 (2010).

EXHIBIT B

Scarcella, Marc C. and Peter R. Kelso. “Asbestos Bankruptcy Trusts: A 2012 Overview of Trust Assets, Compensation & Governance.” Mealey’s Asbestos Bankruptcy Report 11, no. 11 (2012).

MEALEY'S™

Asbestos Bankruptcy Report

Asbestos Bankruptcy Trusts: A 2012 Overview of Trust Assets, Compensation & Governance

by
Marc C. Scarcella
and
Peter R. Kelso

Bates White Economic Consulting
Washington, DC

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Commentary

Asbestos Bankruptcy Trusts: A 2012 Overview of Trust Assets, Compensation & Governance

By
Marc C. Scarcella
and
Peter R. Kelso

[Editor's Note: Marc C. Scarcella and Peter R. Kelso, Managers at the Washington, DC office of Bates White Economic Consulting. The views of the authors do not reflect the opinions of their respective firms, their clients, or Mealey's Publications. © 2012 by Marc C. Scarcella and Peter R. Kelso. Responses are welcome.]

Introduction

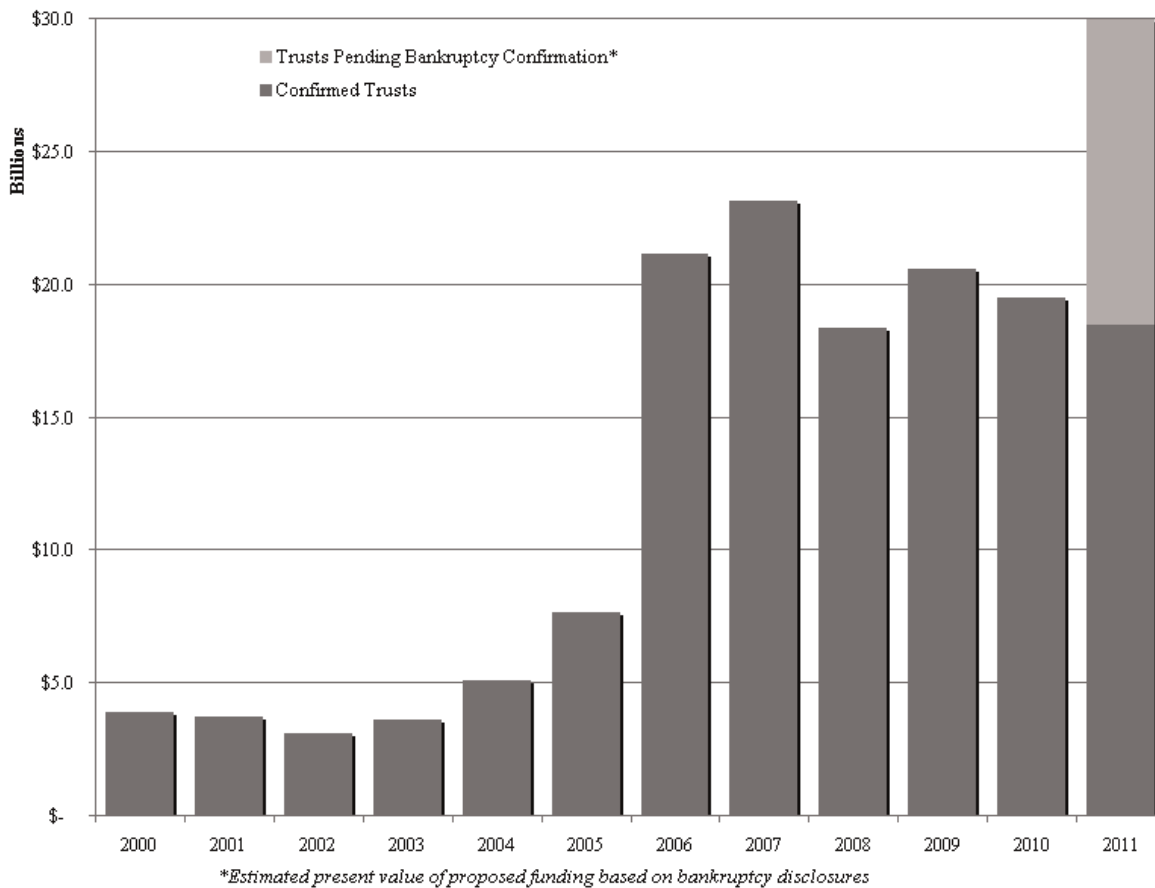
In the three decades since Johns Manville and UNR Industries filed the first asbestos bankruptcy cases, nearly 100 companies have filed for bankruptcy protection due, in part, to asbestos litigation.¹ The vast majority of these companies utilized section 524(g) of the U.S. bankruptcy code to reorganize and establish a bankruptcy trust to pay current and future asbestos claimants and channel claims away from the reorganized company. Today, many of these companies have emerged from the 524(g) bankruptcy process leaving in their place dozens of trusts funded with tens of billions in assets to pay claims. Since 2006 nearly 30 trusts have been created through bankruptcy reorganization, funding the trust system with an additional \$20 billion in assets. From 2007 through 2011 the entire trust system has paid out over \$13.5 billion to asbestos claimants, with remaining assets as of yearend totaling over \$18 billion.² In addition, there is \$11 to \$12 billion in proposed funding from bankruptcies still pending confirmation.³

With that amount of money at stake, it is not surprising that there has been recent state and federal

legislative efforts as well as growing interest from academic researchers and the press aimed at examining the transparency of asbestos bankruptcy trusts and what is currently known about 524(g) bankruptcies. Courts in the civil justice system have recently echoed similar interest in asbestos trust transparency as those entities strive to properly allocate liability in the underlying tort litigation between both culpable solvent companies and bankruptcy trusts.

While detailed information about individual claims made to and payments made from asbestos trusts is limited, this paper intends to serve as a resource by providing a general overview of the information that is currently disclosed by the 524(g) asbestos trust compensation system. The paper will include an update on the latest financial and claim information provided by the trusts through their 2011 annual reports. It will also highlight the current governance of the asbestos trusts, changes in trust payments made to current and future asbestos claimants, the ratio of payments to malignant and non-malignant claimants, and amendments that have been approved and instituted into trust documents by the leadership of the trusts following confirmation of the plan by the bankruptcy and district courts.

Statistics and other information in this paper are derived from the publicly available documentation produced by various asbestos bankruptcy trusts established pursuant to Section 524(g) and the publicly

Exhibit 1: Trust Yearend Assets

available documentation produced during various Section 524(g) bankruptcy reorganizations.

Bankruptcy trust assets

Asbestos bankruptcy plans formed under section 524(g) of the U.S. Bankruptcy Code involve the creation of trusts designed to compensate similarly situated current and future asbestos plaintiffs in an equitable manner.⁴ The trusts are often funded with cash, reorganized debtor stock, insurance, and other assets provided by the debtor company (or parent), and exist to expeditiously pay current and future claims. Beginning with the codification of section 524(g) in 1994 and predominantly during the years 2000-2003, nearly 70 companies filed for bankruptcy protection.⁵ Today, over \$18 billion in assets currently reside in the trust system. Another \$11 to \$12 billion in additional assets is designated for trusts pending completion of the 524(g) bankruptcy reorganization process.⁶ Exhibit 1 shows the growth of the trust system over time and the assets

earmarked for pending but not yet confirmed 524(g) reorganization plans.

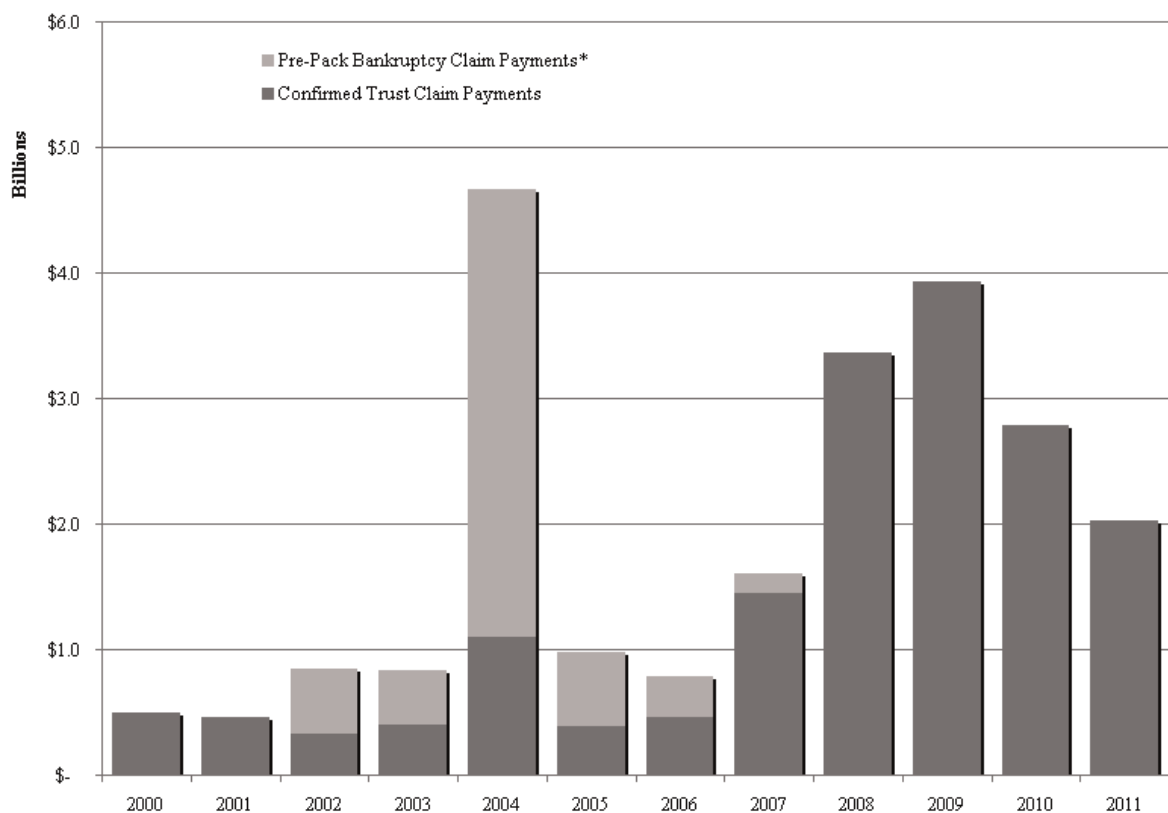
Exhibit 2 shows how rapidly the trust compensation system has grown in recent years. As of yearend 2005, the entire trust system only had \$8 billion in assets. From 2006 through 2011, asbestos trusts were funded with an additional \$20 billion in assets.

Bankruptcy trust payments

As the bankruptcy trusts assets have grown over time, so have payments to asbestos claimants. Beginning in 2006, dozens of trusts came "online" and distributed over \$14 billion in claim payments through 2011. This dramatic increase in claim payments was due, in part, to the resolution of substantial claim inventories that built up during the lengthy bankruptcy process, some of which dated back to the late 1990s and included tens of thousands of non-malignant claims. In the twelve years since the bankruptcy

Exhibit 2: Confirmed Trust Annual Financial Activity (dollars in millions)

Balance	2006	2007	2008	2009	2010	2011 ⁷	Total
Beginning Assets	\$7,641	\$21,216	\$23,117	\$18,660	\$19,907	\$18,810	
Funding Received	\$12,081	\$2,944	\$1,055	\$3,078	\$640	\$535	\$20,333
Investment Gains/Income	\$897	\$670	(\$2,137)	\$2,363	\$1,306	\$763	\$3,861
Other Additions	\$1,223	(\$16)	\$97	\$25	(\$58)	(\$88)	\$1,183
Claim Payments	(\$463)	(\$1,450)	(\$3,360)	(\$3,927)	(\$2,779)	(\$2,036)	(\$14,015)
Trust Expenses	(\$95)	(\$132)	(\$156)	(\$147)	(\$180)	(\$173)	(\$883)
Taxes/Other Deductions	(\$68)	(\$115)	\$44	(\$145)	(\$26)	(\$78)	(\$388)
Ending Assets	\$21,216	\$23,117	\$18,660	\$19,907	\$18,810	\$17,731	
						Deferred funding and settlements ⁸	\$740
						Current Confirmed Trust Assets	\$18,467

Exhibit 3: Trust and Bankruptcy Pre-Pack Claim Payments

*Pre-pack settlement amounts for Combustion Engineering, NARCO, DII (Halliburton), Congoleum and Pfizer (Quigley). These amounts paid or committed outside of the 524(g) Trust funds total between \$5 and \$6 billion.

wave began, the trust system has paid out over \$17 billion to claimants with an additional \$5 to \$6 billion paid by certain debtors prior to confirmation as part of bankruptcy pre-packaged ("Pre-Pack") settlement negotiations. These Pre-Pack payments were not made through an operating trust. The largest contributor to Pre-Pack payments was Halliburton, which committed \$2.7 billion in Pre-Pack funds around 2004. It is more common today for Pre-Pack payments to be negotiated pre-confirmation but the assets sufficient to cover the cost of these settlements are funded to the trust post-confirmation for

immediate distribution. In these instances the Pre-Pack payments are reported on trust annual reports and accounted for in Exhibit 3 as part of Confirmed Trust Claim Payments.

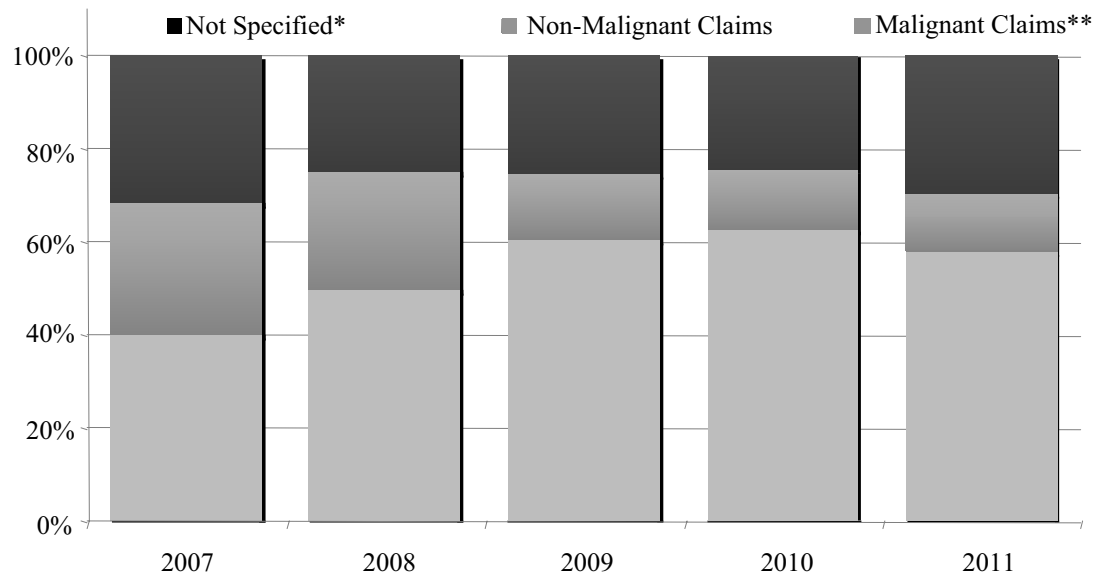
Trust payments to malignant and non-malignant claims

Of the \$18 billion in current confirmed trust assets, nearly \$16 billion is associated with twenty trusts that govern annual aggregate claim payments to malignant and non-malignant claim groups through the application of a Claims Payment Ratio. The Claims Payment

Exhibit 4: Summary of Trust Claim Payment Ratios (dollars in millions)

Trust	2011 YE Assets	Category A	Category B
AC&S Asbestos Settlement Trust	\$270	82.9%	17.1%
Armstrong World Industries Asbestos PI Settlement Trust	\$2,279	65.0%	35.0%
ARTRA 524(g) Asbestos Trust	\$26	65.0%	35.0%
ASARCO LLC Asbestos PI Settlement Trust	\$992	90.0%	10.0%
Babcock & Wilcox Company Asbestos PI Settlement Trust	\$683	62.0%	38.0%
Burns and Roe Asbestos PI Settlement Trust	\$170	60.0%	40.0%
Combustion Engineering 524(g) Asbestos PI Trust	\$1,025	87.0%	13.0%
DII Industries, LLC Asbestos PI Trust	\$2,094	60.0%	40.0%
Federal Mogul U.S. Asbestos PI Trust ¹⁰	\$770*	62.8%	37.2%
G-I Asbestos Settlement Trust	\$746	85.0%	15.0%
J.T. Thorpe Settlement Trust	\$155	90.0%	10.0%
Kaiser Asbestos PI Trust	\$844	70.0%	30.0%
Leslie Controls, Inc. Asbestos PI Trust	\$78	80.0%	20.0%
Lummus 524(g) Asbestos PI Trust	\$30	80.0%	20.0%
Owens Corning Fibreboard Asbestos PI Trust	\$1,636	65.0%	35.0%
Plibrico Asbestos Trust	\$119	65.0%	35.0%
T H Agriculture & Nutrition Industries Asbestos PI Trust	\$524	80.0%	20.0%
Thorpe Insulation Company Asbestos PI Settlement Trust ¹¹	\$556*	84.0%	16.0%
U.S. Gypsum Asbestos PI Settlement Trust	\$2,008	85.0%	15.0%
Western MacArthur-Western Asbestos Trust ¹²	\$793	82.5%	17.5%
Total / Dollar Weighted Average	\$15,796	73.5%	26.5%
	Category A and B Funding	\$11,610	\$4,187

*Asset totals include deferred or outstanding payment commitments not currently included as part of net claimant equity on trust audited financials. See endnotes for more details.

Exhibit 5: Trust Claim Payments by Disease Group as a Percent of Total Claim Payments¹³

*Pre-petition and Pre-confirmation settled claims are typically not reported by trusts at the disease category level.

**Malignant claim category may include severely disabled asbestosis claims for certain Trusts.

Ratio mandates that a percentage of annual claim payments are made to either Category A or Category B claims as defined in the Trust Distribution Procedures.⁹ In all cases, Category A claims include malignant disease categories, and in most cases also include severely disabling asbestosis claims. Conversely, Category B claims typically include less impaired or unimpaired non-malignant claims. For the group of twenty trusts, the Category A Claim Payment Ratio ranges from as low as 60% to as high as 90% with average of 73.5% when weighted by 2011 year end trust asset balances. At a minimum, this means that over \$4 billion in confirmed trust assets are earmarked for less impaired non-malignant asbestosis and pleural claims.

Exhibit 5 summarizes trust claim payments by disease groupings since 2007. Many trusts choose not to disclose disease or disease groups for claim payments made to pre-petition or Pre-Pack settlements that are distributed through the trust. As a result there are significant payments made to claims with no disease or disease group classification and are denoted as "Not Specified" in Exhibit 5. Absent payments made to the Not Specified group, Exhibit 5 suggests that at minimum \$2.5 billion in payments have been made since 2007 to non-malignant claims. Assuming that

the payments made to the Not Specified group were distributed at the same ratio as the malignant and non-malignant groups (-75%/25%) then the total amount paid to non-malignant claims during the period would be nearly \$3.5 billion. This number appears to be decreasing or steadying as inventory claims pending litigation prior to and during bankruptcy reorganization continue to be paid down.

Payment percentages

Trusts that are unable to pay claimants 100% of the specified claim amount as prescribed in their Trust Distribution Procedures ("TDP") will establish a "Payment Percentage" that uniformly reduces the actual payment by a fixed percentage. Exhibit 6 summarizes the changes in Payment Percentages since 2008.

To quantify the impact these changes in Payment Percentages can have on net claim payments, Exhibit 7 summarizes the net claim payment for 6 large trusts (8 potential payments) that were processing and paying claims at the Delaware Claims Processing Facility ("DCPF") as of 2008. Significant decreases in Payment Percentages result in a decline of over 30% in net claim payments to a claimant collecting all 8 potential payments across the 6 trusts.

Exhibit 6: Summary of Payment Percentage Changes as of Yearend

Trust	Initial Pay%	12/31 2008	12/31 2009	12/31 2010	12/31 2011	6/15 2012
A-Best Asbestos Settlement Trust	3.6%	3.6%	17.4%	17.4%	17.4%	17.4%
API, Inc. Asbestos Settlement Trust	13.5%	13.5%	55.0%	55.0%	30.0%	30.0%
ARTRA 524(g) Asbestos Trust	7.5%	7.5%	7.5%	7.5%	0.5%	0.5%
Babcock & Wilcox Company Asbestos PI Settlement Trust	34.0%	34.0%	15.0%	15.0%	11.9%	11.9%
C. E. Thurston & Sons Asbestos Trust	40.0%	40.0%	40.0%	40.0%	80.0%	25.0%
Celotex Asbestos Settlement Trust ¹⁴	12.0%	14.1%*	14.1%	9.4%	9.4%	9.4%
DII Industries, LLC Asbestos PI Trust ¹⁵	100%	100%	52.5%*	52.5%	52.5%	52.5%
Eagle-Picher Industries PI Settlement Trust	31.9%	38.0%	38.0%	38.0%	31.0%	31.0%
G-I Asbestos Settlement Trust	8.6%	--	8.6%	8.6%	7.4%	7.4%
H. K. Porter Asbestos Trust	4.6%	4.6%	6.3%	6.3%	6.3%	6.3%
J.T. Thorpe Settlement Trust	50.0%	40.0%	40.0%	45.0%	45.0%	45.0%
JT Thorpe Company Successor Trust	18.5%	38.0%	57.0%	57.0%	57.0%	57.0%
Kaiser Asbestos PI Trust	39.5%	39.5%	39.5%	39.5%	35.0%	35.0%
Keene Creditors Trust	1.1%	1.1%	1.1%	0.8%	0.8%	0.8%
Lummus 524(g) Asbestos PI Trust	100%	100%	100%	100%	10.0%	10.0%
Manville PI Settlement Trust	10%	7.5%	7.5%	7.5%	7.5%	7.5%
NGC Bodily Injury Trust ¹⁶	55.6%	55.6%	55.6%	55.6%	18.0%	18.0%
Owens Corning Fibreboard Asbestos PI Trust - FB Subfund	25.0%	25.0%	11.0%	11.0%	9.5%	9.5%
Owens Corning Fibreboard Asbestos PI Trust - OC Subfund	40.0%	40.0%	10.0%	10.0%	10.0%	10.0%
Plibrico Asbestos Trust	1.1%	8.5%	8.5%	8.5%	1.2%	1.2%
Raytech Corporation Asbestos PI Settlement Trust	2.0%	2.0%	2.0%	2.0%	0.8%	0.8%
Shook & Fletcher Asbestos Settlement Trust	65.0%	100%	100%	100%	100%	70.0%
T H Agriculture & Nutrition Industries Asbestos PI Trust	100%	--	100%	100%	30.0%	30.0%
U.S. Gypsum Asbestos PI Settlement Trust ¹⁷	45.0%	45.0%	45.0%	30.0%	30.0%	30.0%
UNR Asbestos-Disease Claims Trust	18.6%	1.1%	1.1%	1.2%	0.8%	0.8%
Western MacArthur-Western Asbestos Trust	31.5%	40.0%	40.0%	44.0%	44.0%	44.0%

**Amendments to TDP increasing gross payment values in conjunction with, or in lieu of a Payment Percentage change. See endnote for more detail.*

Claims processing facilities

Bankruptcy trusts under 524(g) are designed to compensate claimants expeditiously and at a minimal cost. Many trusts seek to accomplish this at an administrative

level by contracting with existing asbestos claim facilities such as Verus, LLC ("Verus"), or by partnering with one another to establish a multiple trust processing facility like the DCPF. These facilities reduce administrative

Exhibit 7: Net Mesothelioma Claim Payments from DCPF trusts (dollars in thousands)

Trust	12/31 2008	12/31 2009	12/31 2010	12/31 2011
Armstrong World Industries Asbestos PI Settlement Trust	\$26	\$26	\$26	\$26
Babcock & Wilcox Company Asbestos PI Settlement Trust	\$41	\$18	\$18	\$14
Celotex Asbestos Settlement Trust	\$18	\$18	\$12	\$12
DII Industries, LLC Asbestos PI Trust - Halliburton	\$29	\$40	\$40	\$40
DII Industries, LLC Asbestos PI Trust - Harbison-Walker	\$68	\$96	\$96	\$96
Owens Corning Fibreboard Asbestos PI Trust - FB Subfund	\$45	\$20	\$20	\$17
Owens Corning Fibreboard Asbestos PI Trust - OC Subfund	\$108	\$27	\$27	\$27
United States Gypsum Asbestos PI Settlement Trust	\$101	\$101	\$68	\$68
Total Net Payment	\$437	\$346	\$306	\$300

and processing expenses by leveraging overhead and other fixed costs across multiple trusts. In doing so, these facilities create a “one-stop shop” allowing plaintiff attorneys to electronically file bulk claim submissions against multiple trusts. Verus and DCPF represent the two largest facilities both on number of trusts and total assets. In fact, as of year end 2011, of the \$18.3 billion in confirmed trust assets, \$14.7 billion is associated with one of these two facilities. The two facilities were responsible for over 80% of all trust claim payments in 2011. Exhibit 8 provides a summary of these figures.

Trust expenses and claim review

To further expedite the processing of claims, most trusts have established presumptive medical and exposure criteria to quickly determine if a claim qualifies for payment. The resolution procedures developed to govern this process are often standardized across Trusts allowing plaintiff attorneys to utilize the same claims material for multiple trust submissions, thus minimizing their filing costs per claim. This is not a negotiated or compromising process. Our review of these procedures has shown that for

Exhibit 8: Trust Assets and Claim Payments by Claims Administrator (dollars in millions)

Claims Processing Administrator	No. of Trusts	2011 YE Assets	2011 Claim Payments
Delaware Claims Processing Facility	7	\$9,960	\$1,350
Verus Claims Services ¹⁸	13	\$4,780	\$320
Western Asbestos Settlement Trust	3	\$1,500	\$60
Claims Resolution Management Corp. ¹⁹	3	\$920	\$160
Claims Processing Facility ²⁰	4	\$470	\$40
Trust Services Inc.	3	\$330	\$80
MFR Claims Processing, Inc.	4	\$340	\$10
Other ²¹	8	\$40	<\$5
Total*	45	\$18,340	\$2,020

*Totals for 2011 YE Assets and Claim Payments are undervalued as a result of a few Trusts that have not made 2011 annual reports available. See endnotes 18-21 for list of Trusts and endnote 7 that provides detail on how estimates for these missing annual reports have been applied to figures in **Exhibit 2** above.

Exhibit 9: Trust expenses category as a percent of total Trust expenses²²

Trust Expenses Category	2006	2007	2008	2009	2010	2011
Trustee Fees and Expenses	9.7%	8.7%	7.6%	8.1%	7.1%	7.6%
TAC Fees and Expenses	3.0%	1.8%	1.6%	1.4%	1.7%	1.4%
FCR Fees and Expenses	1.8%	1.7%	1.3%	1.1%	2.0%	1.6%
Legal and Professional Fees	30.9%	26.7%	25.2%	26.9%	34.9%	30.2%
Investment Fees	8.1%	19.0%	19.0%	16.3%	16.5%	18.2%
Insurance Expense	6.4%	3.5%	2.5%	2.5%	2.2%	2.4%
General Administration Expense	14.5%	10.3%	9.3%	9.5%	7.3%	7.3%
Claim Processing Costs	21.1%	28.5%	33.9%	34.7%	27.0%	31.1%
Other Expenses ²³	4.6%	-0.1%	-0.4%	-0.5%	1.3%	0.1%
Total	100%	100%	100%	100%	100%	100%

mesothelioma claims the minimum medical and exposure criteria are virtually the same across many Trusts. As a result, trusts spend little on claim processing costs relative to claim payments. Exhibit 2 above shows that just under \$800 million has been spent since 2008 on trust expenses. The figures in Exhibit 9 below suggests that over this same period, approximately 31% of trust expenses were associated with claim processing costs, or roughly \$250 million. When compared to the \$13.5 billion in claim payments made over that same span, it suggests that the trusts are spending approximately 2 cents to review, process, and pay \$1.00 in claim payments.

Trust governance

The formation of a reorganization plan and resultant trust under section 524(g) involves negotiations with representatives of asbestos personal-injury claimants, the debtor, the FCR and other creditor constituencies

with standing in the bankruptcy. Subsequent to the establishment of the trust following plan confirmation, it is often the representatives of asbestos claimants who assume the leadership roles in advising the management of trust assets and distribution of claim payments over time. These representatives make up the Trust Advisory Committee ("TAC"). Exhibit 10 summarizes the law firms that have attorneys as TAC members on the highest frequency of trusts and the recent assets held and claim payments made collectively across those trusts.

The administration of the bankruptcy trust once it becomes operational is split between the trustees, the Trust Advisory Committee ("TAC") and the representative for future claimants (FCR). The trustees are the primary trust fiduciaries and handle reporting requirements, meeting with trust investment managers, and establish, supervise and administer the trust under the

Exhibit 10: Summary of Trust Assets and Claim Payments by TAC Firm (dollars in millions)²⁴

TAC Member Firm / Affiliation	No. of Trusts	2011 YE Assets	2011 Claim Payments
Kazan, McClain, Lyons, Greenwood & Harley	17	\$13,530	\$1,700
Baron & Budd, P.C.	15	\$11,670	\$1,580
Motley Rice, LLC	10	\$11,400	\$1,540
Cooney & Conway	12	\$11,240	\$1,450
Weitz & Luxenburg	13	\$10,980	\$1,460

provisions of the TDP.²⁵ The trustees must receive the consent of the TAC and FCR to change the payment ratio, change the medical/exposure criteria, or change the payment percentage of the trust, among other things. The TAC members represent the fiduciary interest of current asbestos claimants and the FCR represents the interests of future demand holders.²⁶

Post-confirmation amendments to trust documents

As typically outlined in the Trust Agreements that are confirmed as part of the bankruptcy Plan of Reorganization, the trustees, TAC and FCR have the ability to amend trust operating procedures and policies post-confirmation.²⁷

In recent years several trusts have amended their TDPs post-confirmation to include a “Confidentiality” provision and a “Sole Benefit” clause. The Confidentiality provision mandates that a claimant’s submission to a respective trust and all associated information is to be treated in the course of settlement negotiations and is afforded all the applicable confidentiality privileges and protections. The Sole Benefit

clause states that evidence submitted to a respective trust to establish proof of claim is for the sole benefit of the respective trust, not third parties or defendants in the tort system.

Example of a Confidentiality provision:

“Confidentiality of Claimants’ Submissions. All submissions to the Asbestos PI Trust by a holder of an Asbestos PI Claim or 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 Asbestos 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 Asbestos PI Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only (a) with the permission of the holder, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) and/or section 105 of the Bankruptcy Code or other applicable law, (b) to such other persons as authorized by the holder, (c) in response to a valid subpoena of such materials issued by the Bankruptcy Court, (d) as provided in Section 2.2(c) above and (e) as provided in Section 1.4(f) of the Asbestos PI Trust

Exhibit 11: Summary of certain post-confirmation TDP amendments

Trust	Bankruptcy Confirmation Year	Confidentiality language was originally included	Confidentiality language amended	Sole benefit language was originally included	Sole benefit language was amended
DII Industries, LLC Asbestos PI Trust	2004		YES		YES
Armstrong World Industries Asbestos PI Settlement Trust	2006		YES		YES
Babcock & Wilcox Company Asbestos PI Settlement Trust	2006	YES	YES		YES
Kaiser Asbestos PI Trust	2006		YES		YES
Owens Corning Fibreboard Asbestos PI Trust	2006	YES	YES		YES
Porter Hayden Bodily Injury Trust	2006		YES		YES
U.S. Gypsum Asbestos PI Settlement Trust	2006	YES	YES		YES
Federal Mogul U.S. Asbestos PI Trust	2007	YES	YES	YES	
AC&S Asbestos Settlement Trust	2008	YES	YES	YES	
ASARCO LLC Asbestos PI Settlement Trust	2009	YES		YES	

*Agreement. Furthermore, the Asbestos PI Trust shall provide counsel for the holder a copy of any subpoena referred to in (c) immediately upon being served. The Asbestos PI Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privilege before the Bankruptcy Court and before those courts having appellate jurisdiction related thereto.*²⁸

Example of a Sole Benefit clause:

*"Evidence submitted to establish proof of exposure to Kaiser products is for the sole benefit of the Asbestos PI Trust, not third parties or defendants in the tort system. The Asbestos PI Trust has no need for, and therefore claimants are not required to furnish the Asbestos PI Trust with evidence of exposure to specific asbestos products other than those for which Kaiser has legal responsibility, except to the extent such evidence is required elsewhere in the Asbestos TDP. Similarly, failure to identify Kaiser products in the claimant's underlying tort action, or to other bankruptcy trusts, does not preclude the claimant from recovering from the Asbestos PI Trust, provided the claimant otherwise satisfies the medical and exposure requirements of the Asbestos TDP."*²⁹

Exhibit 11 shows that for the sample of trusts reviewed, the more recent trusts are including the Confidentiality provision and Sole Benefit clause in the pre-confirmation TDPs, while earlier trusts are amending the TDPs post-confirmation.

Conclusion

It has been 30 years since Johns Manville filed for bankruptcy and 25 years since its trust began paying claimants. More than 800,000 claims later, the Manville trust continues to compensate asbestos victims and has been joined by dozens of other trusts who collectively hold over \$18 billion in current assets with an additional \$11 to \$12 billion pending bankruptcy confirmation. Efforts have been made recently by public-policy makers and other parties to integrate those trust assets into the overall asbestos compensation system and make available more detailed, "transparent" information about trust claiming and payments.

As the trust transparency issue continues to evolve and legislatures, courts, academics and other interested parties strive to learn more about the trust disclosures, we plan to update this paper going forward to provide the most current snapshot as possible of what is known about the asbestos bankruptcy trust compensation system.

Endnotes

1. "Where are They Now, Part Six: An Update on Developments in Asbestos-Related Bankruptcy Cases," Mealey's Asbestos Bankruptcy Report, Vol. 11, No. 7 (February 2012).
2. Figures based on information gathered from Section 524(g) trust annual reports.
3. Estimated present value of proposed funding based on bankruptcy disclosures from W.R. Grace, Pittsburgh Corning, North American Refractories, Flintkote, Congoleum, Quigley, Plant Insulation, AP Green, and Durabla. There are other pending 524(g) bankruptcy reorganizations currently active but no estimates of proposed trust funding has been disclosed in publically available bankruptcy documents that we were able to find.
4. 11 U.S.C. Section 524(g)(2)(B)(i)(1); 11 U.S.C. Section 524(g)(2)(B)(ii)(V).
5. "Where are They Now, Part Six: An Update on Developments in Asbestos-Related Bankruptcy Cases," Mealey's Asbestos Bankruptcy Report, Vol. 11, No. 7 (February 2012).
6. *Supra* 3.
7. 2011 annual reports were not available for H.K. Porter, Keene, U.S. Mineral, Rutland Fire, and M.H. Detrick Trusts. In order to estimate the aggregate balances for 2011 we applied the asset and liability flows from 2010 for these specific Trusts.
8. Deferred note payments and insurance settlements that are not included as part of net claimant equity on trust financials but are due in the future. For example, the Federal Mogul U.S. Asbestos Personal Injury Trust, T&N sub-fund has outstanding note payment due totaling \$340M that are reported in the notes of the trust annual report financial statements, but are not included in the trust accounting of Net Claimant Equity.
9. United States Gypsum Asbestos Personal Injury Settlement Trust Distribution Procedures, Section 2.5.
10. 2011 YE balance of \$430M, plus the outstanding principle on the Thornwood promissory note

- totaling \$340M as of 12/31/2011 per Note 3 of the 2011 of the trust audited financials. As of 12/31/2011, the portion of the \$430M from insurance settlements was approximately \$112M. Assuming these settlements represent the portion of trust funds associated with the FMP (Wagner) liability, then the asset weighted average Claim Payment Ratio for the T&N(60%) and FMP(79%) is 62.8% for Category A Claims and 37.2% for Category B Claims.
11. Page 10 of the Court of Appeals opinion by Judge Gould suggests that \$600M in insurance had been settled to fund the trust plus an additional \$1.75M in funding. To date, the trust has received \$198M, so for purposes of this paper we have added the difference of \$404M to the 2011 ending balance of \$152M to represent the current total of committed trust funding.
 12. Section 2.5 of the TDP allocates annual claim payments of 88.35% to Western Asbestos/Western MacArthur (CA) claims and the remaining balance for MacArthur claims from either MN or ND. The Category A Claims Payment Ratio for CA claims is 84%, and for MN and ND claims it is 71.5%, which when weighted by the 88.35%/11.65% split yields an average Category A Claims Payment Ratio for the entire trust of 82.5% with the balance of 17.5% for Category B Claims.
 13. Claim payments by disease category are sometimes reported by trusts on a payment basis as opposed to an accrual basis that is typically used in the trust financials. As a result, the claim payment commitments reported in Exhibit 2 and 3 from the trust financials may differ from claim summary level in Exhibit 4.
 14. In June 2008 the Celotex Trust increased its TDP values in lieu of increasing the Payment Percentage from 14.1% to 18.3%. Notice available on Celotex Trust website.
 15. In October 2009 the DII Trust increased its TDP values by more than double (e.g. Harbison-Walker Mesothelioma average value increased from \$68K to \$182K), prior to decreasing the Payment Percentage from 100% to 52.5%.
 16. NGC trust decreased its Payment Percentage twice in 2011 (First to 41% in July and then to 18% in November).
 17. United States Gypsum trust decreased its Payment Percentage twice in 2010 (First to 35% in April and then to 30% in November).
 18. The 2011 annual report for the H.K. Porter Asbestos Trust was not available for download. As a result the YE 2011 asset and claim payment balances in this table are underestimates.
 19. The 2011 annual report for the U.S. Mineral Products Trust was not available for download. As a result the YE 2011 asset and claim payment balances in this table are underestimates.
 20. The 2011 annual report for the Keene Creditors Trust was not available for download. As a result the YE 2011 asset and claim payment balances in this table are underestimates.
 21. The 2011 annual report for the M.H. Detrick and Rutland Fire Trusts were not available for download. As a result the YE 2011 asset and claim payment balances in this table are underestimates.
 22. Percentages based on approximately 40 Trusts that provided sufficient expense detail as part of the annual report.
 23. Other expenses may include refunds and other similar accounting entries that may create negative balances.
 24. *Supra* 18-21.
 25. United States Gypsum and Armstrong World Industries 2011 trust annual reports.
 26. *Ibid.*
 27. *See for example* Section 7.3 of the Armstrong World Industries, Inc. Asbestos PI Settlement Trust Agreement.
 28. *See for example* Section 6.5 of the Kaiser Aluminum & Chemical Corporation 3rd Amended Asbestos Distribution Procedures.
 29. *See for example* Section 5.7(b)(3) of the Kaiser Aluminum & Chemical Corporation 3rd Amended Asbestos Distribution Procedures. ■

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EXHIBIT C

Scarcella, Marc C., Peter R. Kelso, and Joseph Cagnoli, Jr. "The Philadelphia Story: Asbestos Litigation, Bankruptcy Trusts and Changes in Exposure Allegations from 1991-2010." Mealey's Asbestos Litigation Report 27, no. 19 (2012).

Asbestos

The Philadelphia Story: Asbestos Litigation, Bankruptcy Trusts And Changes In Exposure Allegations From 1991-2010

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and
Peter R. Kelso,
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Report: Asbestos**



Commentary

The Philadelphia Story: Asbestos Litigation, Bankruptcy Trusts And Changes In Exposure Allegations From 1991-2010

By

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[Editor's Note: Marc C. Scarcella and Peter R. Kelso, Managers at the Washington, DC office of Bates White Economic Consulting. Joseph Cagnoli, Jr., Shareholder in the Philadelphia office of Segal McCambridge Singer & Mahoney, Ltd. The views of the authors do not reflect the opinions of their respective firms, their clients, or Mealey's Publications. © 2012 by Marc C. Scarcella, Peter R. Kelso and Joseph Cagnoli, Jr. Responses are welcome.]

Introduction

Over the past two decades, asbestos litigation has undergone a succession of pivotal changes. Each change led to new claiming and settlement patterns that altered the legal and financial circumstances of asbestos plaintiffs and defendants. One of the most significant changes was the "Bankruptcy Wave" that began in 2000 and ended with dozens of primary asbestos defendants filing for bankruptcy reorganization ("Reorganized Defendants").¹ Since asbestos lawsuits are stayed during the reorganization process, a substantial source of plaintiff compensation associated with these primary defendants exited the tort system.² This marked a significant shift in asbestos litigation as plaintiff attorneys were faced with having to fill the void in compensation left behind by these Reorganized Defendants.

Prior to the Bankruptcy Wave, asbestos lawsuits were centered on the thermal insulation products and industrial settings that most scientific literature considered to present the highest excess exposure risk.³ In turn, defendants responsible for the manufacturing and

distribution of such products were considered the most culpable sources of plaintiff compensation. Even after the largest manufacturer of asbestos-containing thermal insulation products, Johns-Manville, filed for bankruptcy protection in 1982, dozens of other thermal insulation defendants such as Owens-Corning, Fibreboard, and Pittsburgh Corning remained and continued to be primary sources of compensation.⁴ However, following the bankruptcies of those front-line defendants during the Bankruptcy Wave, plaintiff attorneys shifted their litigation strategy away from the traditional thermal insulation defendants and towards peripheral and new defendants associated with the manufacturing and distribution of alternative asbestos-containing products such as gaskets, pumps, automotive friction products, and residential construction products.

As a result, these peripheral and new defendants experienced a dramatic increase in both the number of lawsuits in which they were named, the frequency in which their products and operations were identified as sources of asbestos exposure, and the overall settlement demands that plaintiff attorneys were seeking. Conversely, the primary thermal insulation defendants that filed for bankruptcy reorganization all but disappeared from the litigation and rarely are identified in cases today. To study the extent of this shift in allegations from traditional defendants to peripheral defendants, we examined the Philadelphia Court of Common Pleas asbestos docket through a sample of mesothelioma cases from 1991 to 2010.⁵

Replacing Primary Defendants With Peripheral And New Defendants

The Bankruptcy Wave had a dramatic impact on the claiming behavior in asbestos lawsuits. Prior to the Bankruptcy Wave, the naming patterns, exposure allegations and compensation to plaintiffs were relatively consistent with defendant manufacturing and distribution market share of asbestos-containing products. After the Bankruptcy Wave, however, plaintiff attorneys refocused their litigation strategy on defendants who previously had only been peripheral sources of plaintiff compensation, in addition to developing exposure cases against a new group of defendants who were rarely, if ever, named prior to 2000. Typically, one would think that when a majority of defendants in a tort exit the litigation through bankruptcy reorganization the defendant pool is reduced and the number of defendants named in future lawsuits decreases. However following the Bankruptcy Wave in asbestos litigation, the opposite was true.

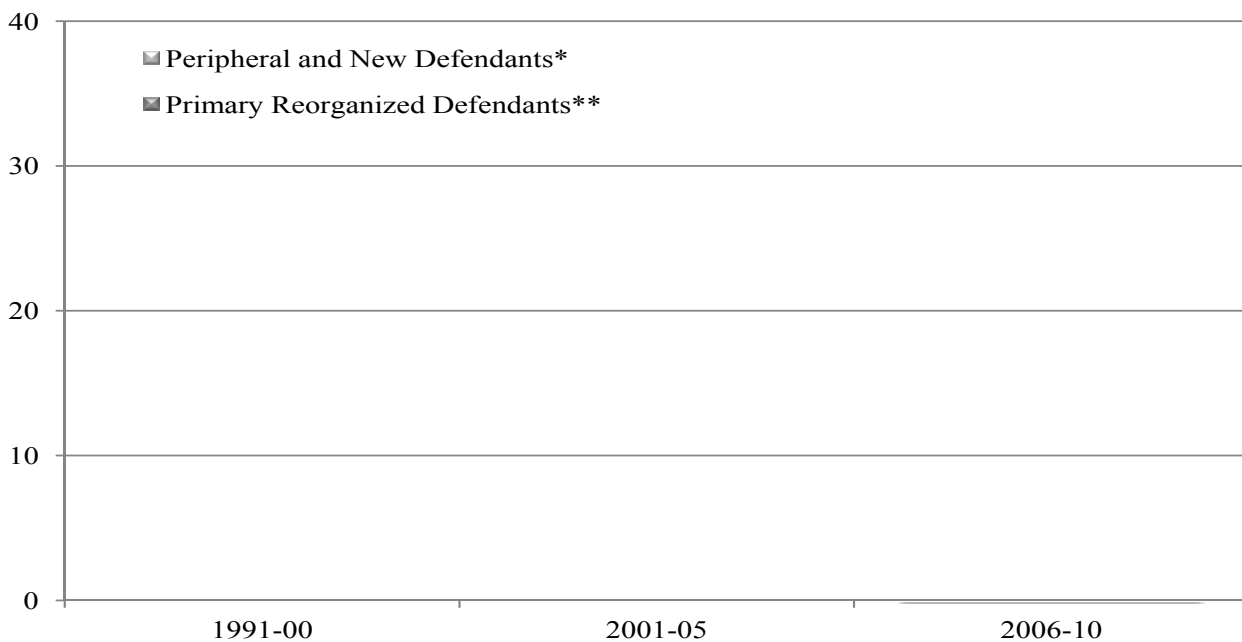
Exhibit 1 summarizes the naming patterns from our sample. On average, 25 defendants were named on a mesothelioma lawsuit filed between 1991 and 2000, 10 of which eventually filed for bankruptcy reorganization by 2004. Between 2006 and 2010, the average number

of defendants named on a complaint rose to nearly 40, with virtually no Reorganized Defendants being named. This suggests that plaintiff attorneys are pursuing cases against 2.5 peripheral or new defendants for every Reorganized Defendant they previously named.

The fact that plaintiff attorneys are no longer naming Reorganized Defendants on asbestos lawsuits is not surprising. When an asbestos defendant files for bankruptcy protection, they typically reorganize under section 524(g) of the bankruptcy code. In addition to placing a stay on claims against the defendant during the pendency of the reorganization process, all current and future asbestos claims are eventually channeled to a personal-injury trust following bankruptcy confirmation.⁶ These trusts assume the legal responsibility of the Reorganized Defendant's asbestos-related liability and, in turn, are funded with assets intended to pay compensable claims.

Unlike the tort system, asbestos trusts are designed to process, qualify, and pay claims through an administrative process that does not require litigation. As a result, even the asbestos trusts that now stand in the shoes of those Reorganized Defendants will rarely, if ever, be named in a lawsuit. Effectively, the bankruptcy

Exhibit 1: Lawsuit naming patterns



*Includes peripheral defendants that eventually filed for bankruptcy after 2004

**Includes defendants that filed for bankruptcy reorganization by 2004

reorganization process has created a dual compensation system where plaintiffs may be independently compensated by both administrative trust payments and by tort-based settlements.

The Dual Compensation System

The discussion surrounding the asbestos trust compensation system and its lack of transparency to the tort system has been the focus of academic, judicial, and legislative debates across the country in recent years.⁷ Even though asbestos bankruptcy reorganizations and resulting trust funds have been around for decades, it has only been in the past few years that the trust system as a whole has become a substantial source of plaintiff compensation. That is because the bankruptcy reorganization process itself can take several years to reach confirmation. Furthermore, establishing an operational trust to begin processing, reviewing, and paying claims has taken from six months to multiple years following confirmation. As a result, many trusts established to stand in the shoes of Reorganized Defendants did not start compensating claimants until the late 2000s. Exhibit 2 shows the growth of the trust system over time and the assets earmarked for pending but not yet confirmed 524(g) reorganization plans.

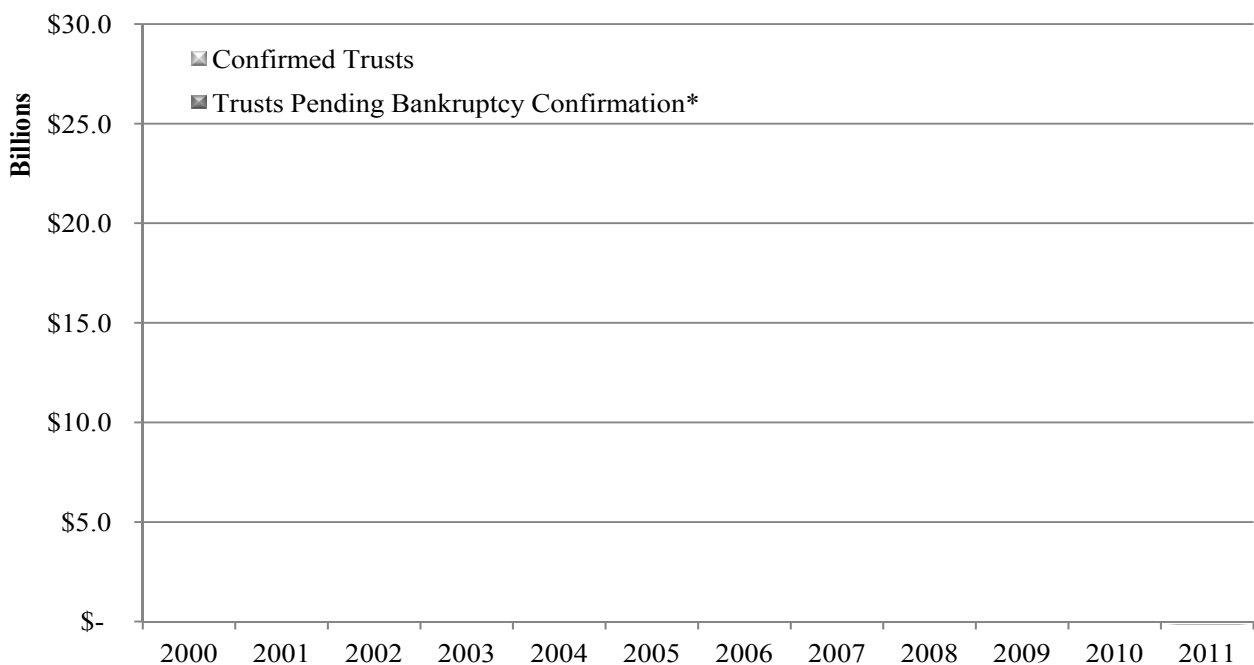
As asbestos trust assets have grown over time, so have payments to asbestos claimants. Between 2006 and 2011, the trust system distributed over \$14 billion in claim payments. As these trust payments have increased, so have questions regarding the lack of transparency between the trust and tort compensation systems.

1. At what rate are plaintiffs filing asbestos trust claims in addition to their tort claim?
2. For those trust claims that are being filed, are the exposure allegations and evidence submitted in support of the trust claims consistent with the allegations and disclosures in the tort claim?
3. Are the characteristics of a claimants' exposure profile predicated on the defendants that are currently in the tort system?

Industrial Exposure Patterns

To assess if the exposure profiles of plaintiffs today are similar to plaintiffs in the pre-Bankruptcy Wave period of the 1990s, we first looked to see what percentage of plaintiffs within our sample could allege exposures at

Exhibit 2: Trust yearend assets⁸



**Estimated present value of proposed funding based on bankruptcy disclosures*

Exhibit 3: Percent of plaintiffs with industrial exposures

Potential exposures	1991-00	2001-05	2006-10
Total plaintiffs with potential exposures to industrial sites	77%	72%	72%
- in high exposure occupations	46%	34%	51%
- in other occupations	31%	38%	21%

industrial work sites where thermal insulation products were likely to be present. The types of sites we considered include shipyards, ships, refineries, steel mills, and power plants. The sample data suggest that prior to the Bankruptcy Wave roughly 77% of all plaintiffs had some potential exposures linked to an industrial work site. Since the Bankruptcy Wave, this percentage has only dropped slightly to approximately 72% of plaintiffs.

Moreover, a majority of the plaintiffs that once worked at these industrial sites did so in a high-exposure occupation. In fact, the sample data between 2006 and 2010 suggest that the level of plaintiffs working in high-exposure occupations in industrial settings has actually increased slightly from the pre-Bankruptcy Wave period. The types of occupations we considered include insulators, boiler/firemen, pipefitters, machinists, iron workers, or general asbestos workers. Exhibit 3 summarizes these findings.

In addition to analyzing the location and nature of potential exposures to thermal insulation products, we also looked to see if the years of potential exposure have changed with more recent filings. Exhibit 4 shows that even as the plaintiff population has aged over time with an increasing level of exposure in the 1970s, a majority of exposures at these industrial sites still occur during the 1950s and 1960s. Prior to the Bankruptcy Wave, roughly 59% of the industrial exposures occurred between 1950 and 1969. More recently, for cases filed between 2006 and 2010, the percent of industrial exposures that occurred between 1950 and 1969 decreased only marginally to approximately 57%.

These findings are consistent with the epidemiological literature that commenced with the seminal work of Dr. William J. Nicholson in 1982.⁹ Dr. Nicholson's epidemiological studies demonstrate that the exposure history of individuals diagnosed with mesothelioma will

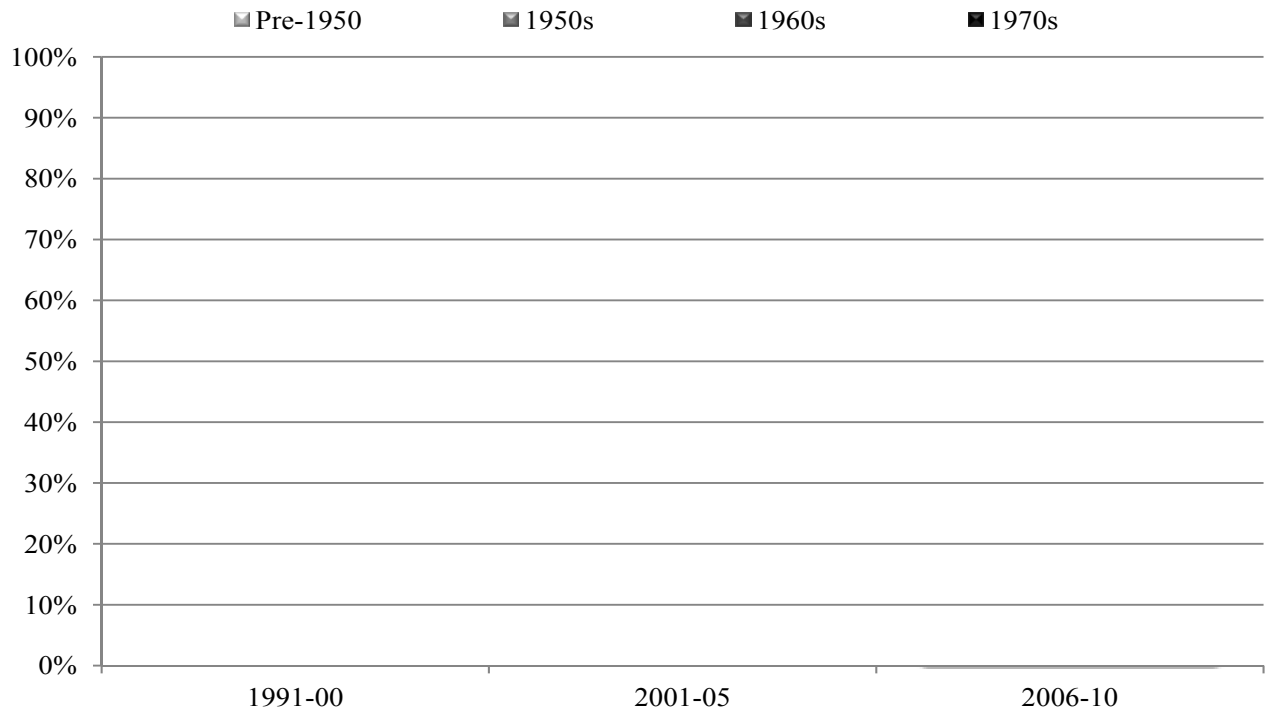
change, but that those changes will occur slowly over decades and remain strongly linked to industrial exposure. In essence, the asbestos exposure that workers received in the 1940s through the 1960s caused almost all occupationally induced mesothelioma. Conditional on their exposure history, if and when individual workers develop mesothelioma is a matter of chance. As a result, epidemiology demonstrates that the exposure history of individuals with occupationally induced mesothelioma today is essentially the same as the exposure history of individuals with occupationally induced mesothelioma in the 1990s.

Shift In Alleged Product Exposure

As primary thermal insulation defendants exited the tort system, the economic incentive for plaintiff attorneys and their clients to discuss them in lawsuits diminished. Our sample analysis indicates that the number of peripheral and new defendants positively identified during plaintiff deposition has increased significantly while the number of Reorganized Defendants identified has declined. Prior to the Bankruptcy Wave, deponents identified approximately 15 defendants on average, of which over 50% were primary thermal insulation or refractory defendants that eventually filed for bankruptcy reorganization. After the Bankruptcy Wave, deponents identified about 25 defendants of which only 15% are primary Reorganized Defendants. This suggests that three peripheral or new defendants are identified in deposition testimony today for every primary Reorganized Defendant identified prior to the Bankruptcy Wave. Exhibit 5 summarizes these trends.

This shift away from Reorganized Defendants has resulted in a dramatic decline in the number of times thermal insulation products are identified in deposition testimony or other case documents. Exhibit 6 shows how the identification of thermal insulation and refractory products has declined since the 1990s as the

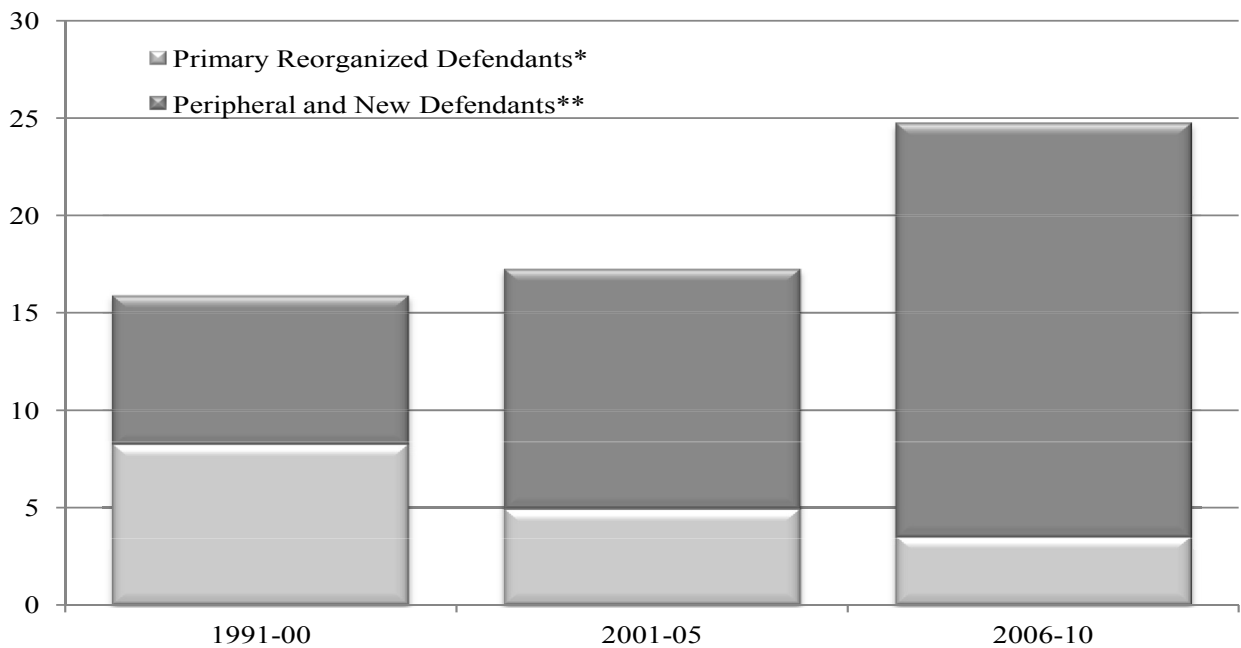
Exhibit 4: Years of exposure from industrial work sites



defendants responsible for a majority of the manufacturing and distribution of those products have filed for

bankruptcy.¹⁰ This is despite the fact that the plaintiff population has not experienced a decline in potential

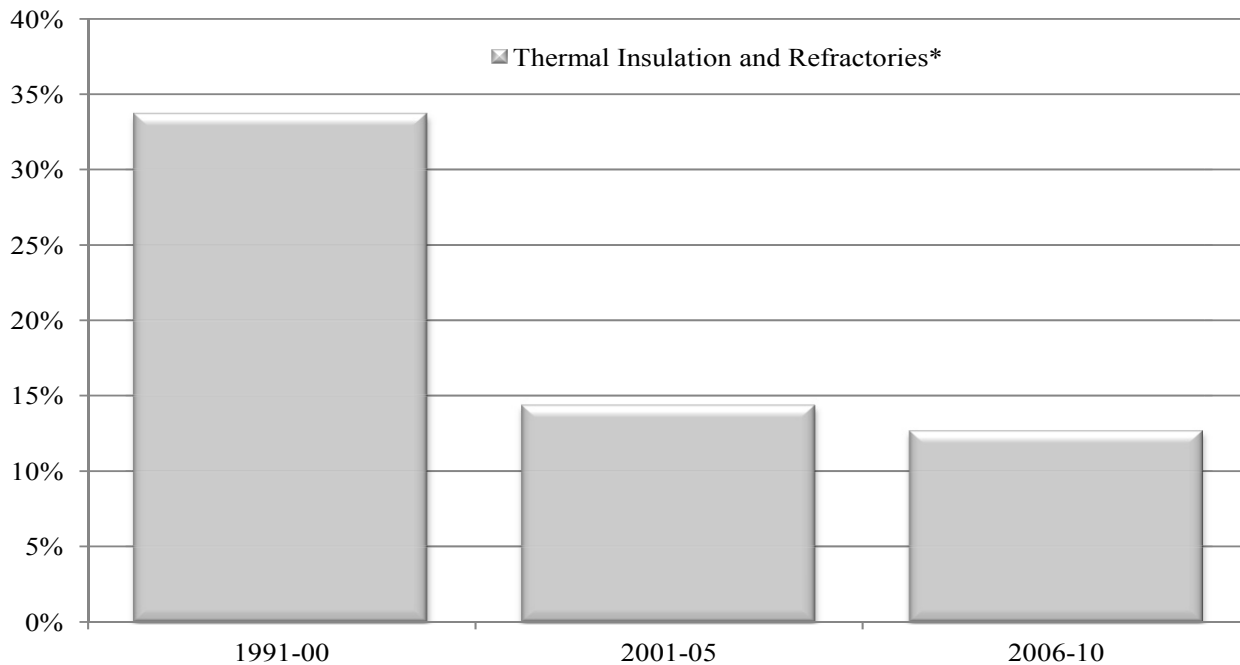
Exhibit 5: Product manufacturers and distributors identified in deposition testimony



*Includes defendants filing for bankruptcy reorganization by 2004

**Includes peripheral defendants that filed for bankruptcy after 2004

Exhibit 6: Alleged exposure to thermal insulation and refractory products



**Pipe, block, and spray insulation, brick, etc.*

exposures in industrial settings where these products were present. Prior to the Bankruptcy Wave, over one-third of all products identified were thermal insulation or refractory products. That fell to less than 15% between 2006 and 2010.

The Rise Of Alternative Alleged Exposures

It is clear from the data that the identification of thermal insulation defendants declined substantially since the Bankruptcy Wave. As such, the litigation shifted away from the thermal insulation defendants and towards exposures related to the products of the peripheral and new defendants, even though the exposure history of the majority of plaintiffs in this later period was unchanged relative to earlier plaintiffs; they still worked at sites (frequently the same sites during the same time periods as earlier plaintiffs) where thermal insulation products were present.

A case study on a Philadelphia plaintiff who filed a non-malignant claim in 1981 and subsequently filed a malignant mesothelioma case in 2010 is a prime example of this overall shift in identification patterns. In 1981, the plaintiff alleged exposure to asbestos through his work as an insulator for 30 years at a

Philadelphia oil refinery and named 9 defendants in the complaint. Six of those defendants manufactured thermal insulation products and eventually filed for bankruptcy reorganization. The other three defendants were distributors who supplied insulation materials to the plaintiff's job site.¹¹ In addition to the thermal insulation defendants named in the complaint, the plaintiff also identified over 50 thermal insulation products manufactured by the now Reorganized Defendants and another 40 products that were distributed to the refinery by the insulation supplier defendants. In this case, the plaintiff clearly alleged that his three decades working with insulation products at the refinery caused his asbestos-related disease.

However, the 2010 case complaint and allegations of exposure look much different. In the new complaint, the plaintiff now names over 40 defendants and none of the original defendants on the 1981 complaint. The complaint and deposition testimony acknowledge the plaintiff's previous insulation work yet, despite no new alleged exposures since the original complaint was filed in 1981, the focus of the 2010 case now concentrated on the plaintiff's weekend automotive work and potential exposure to asbestos from home construction

products. In addition to the new defendants named, the new exposure allegations introduced no less than 12 products not previously identified and alleged exposure to an array of new, non-thermal insulation products such as brakes, gaskets, pumps, roofing, caulk and other construction products.

The sample data show that this particular example is more likely the rule rather than the exception. We found that plaintiff depositions today focus less on thermal insulation and more on alternative products such as pumps, valves, and gaskets that also would have been encountered in traditional industrial settings. In addition, alleged exposure has increased in the construction and automotive trades, as well as residential do-it-yourself ("DIY") home repair, remodeling, and shade-tree automotive maintenance. Exhibit 7 shows this increasing trend towards non-industrial alleged exposures that implicate a new group of defendants.

Much like the case study, a majority of these plaintiffs alleging an increased level of alternative exposures still worked in the same industrial setting during the same time periods as earlier plaintiffs. For example, Exhibit 8 summarizes the percent of plaintiffs in our sample that i) have potential industrial exposures, ii) allege

alternative residential DIY or shade tree automotive repair, or iii) allege both.

The sample analysis suggests that the mesothelioma plaintiff population in the Philadelphia Court of Common Pleas has maintained a consistent level of potential industrial exposures. However, the affirmative identification of thermal insulation products and those manufacturers and distributors associated with such products has declined significantly, as the focus of the litigation shifted to alternative exposures and defendants. For most plaintiff attorneys and their clients, there is little economic incentive to build cases against primary thermal insulation defendants since almost all of them have undergone bankruptcy reorganizations. Given the high rate of industrial exposures, however, it is likely that plaintiffs still collect significant payments from the asbestos trusts that have replaced these Reorganized Defendants.

Industrial Exposures And Trust Claims

Asbestos trusts are designed to pay claims expeditiously and with minimal administrative and transactional costs. To accomplish this, most trusts have established presumptive medical and exposure criteria to quickly

Exhibit 7: Alleged alternative exposures

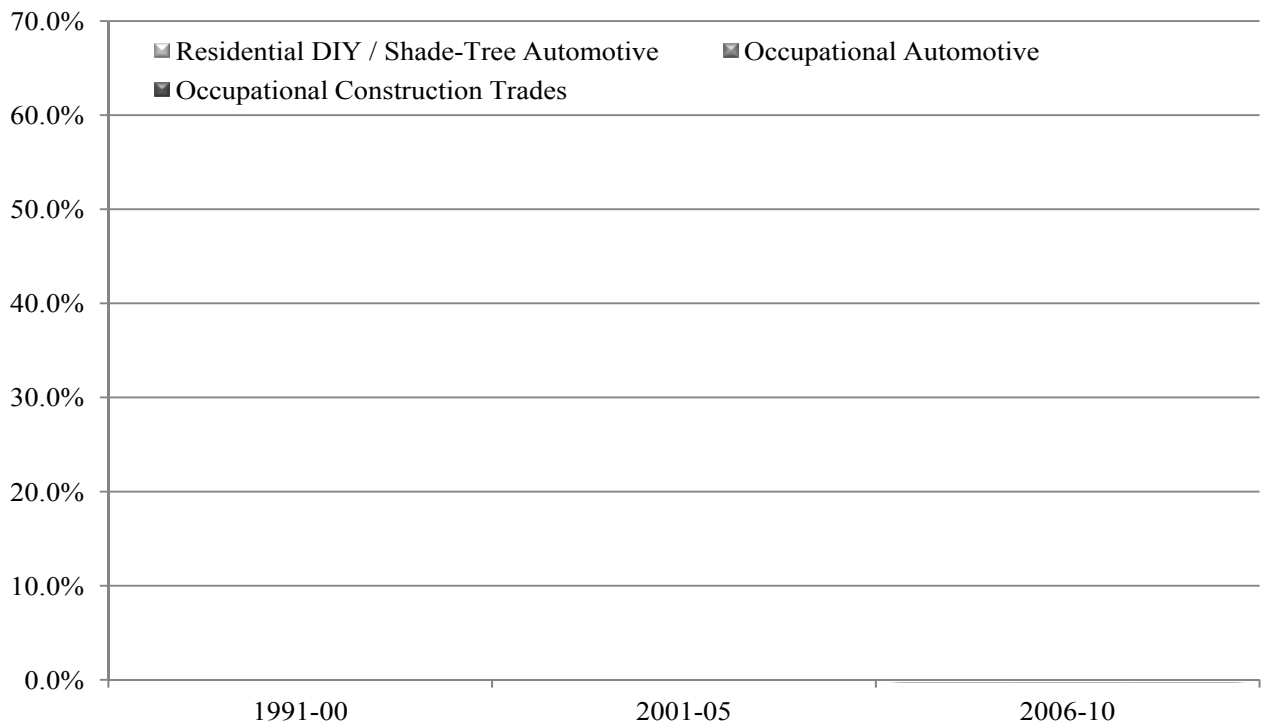


Exhibit 8: Percent of plaintiffs with industrial and non-occupational residential exposures

Potential exposures	1991-00	2001-05	2006-10
Industrial sites	77%	72%	72%
Residential DIY / shade tree auto	3%	52%	49%
Both Industrial and residential DIY/ shade tree auto	3%	31%	35%

determine if a claim qualifies for payment. According to trust documents, claimants must demonstrate meaningful and credible exposure to asbestos-containing products manufactured, produced, distributed, sold, fabricated, installed, released, maintained, repaired, replaced, removed, or handled by the Reorganized Defendant. The trusts generally deem specific product identification through testimony by the plaintiff, plaintiff's family members, or plaintiff's co-workers sufficient to satisfy this requirement.

For many trusts, claimants can also support exposure allegations by working at a job site that appears on an Approved Site List. These Approved Site Lists are compiled through corporate records and plaintiff testimony and include locations where the Reorganized Defendant's products or operations were allegedly present for a specified period of time. In effect, these Approved Site Lists act as a proxy for co-worker testimony to further expedite the review process.

Plaintiffs can establish product exposure by being at one of these locations at a time when the predecessor company's asbestos-containing products or operations were also allegedly present. Not all trusts have Approved Site Lists, and those Approved Site Lists that do exist can have sites appended periodically. In addition to Approved Site Lists, certain trusts also provide an Approved Industry List of approved occupations and/or industries where the Reorganized Defendants' products or operations were presumed to be present.

To supplement the alleged product exposures in our sample, we compared the work histories of each plaintiff with a case filed after 2000 to the Approved Site Lists or Approved Industry Lists for those trusts that have one. Exhibit 9 summarizes the impact supplemental matches to trust Approved Sites and Industries can have on raising the profile of Reorganized Defendants in the absence of affirmative product identification in the tort case disclosures.

Exhibit 9: Percent of 2006-2010 sample cases with links to select Reorganized Defendants

Bankrupt Defendant	Percent of 2006-10 sample cases	
	With affirmative Product ID	Supplemented with Trust Approved Site / Industry Matches
Babcock & Wilcox	16%	72%
Fibreboard	5%	67%
Owens Corning	33%	65%
United States Gypsum	12%	60%
Armstrong World Industries	33%	53%
G-I	23%	53%
Combustion Engineering	5%	44%
Average	18%	59%

Exhibit 10 shows how consistent the results of the supplemental trust claim analysis are with pre-Bankruptcy Wave product identification patterns. Prior to the Bankruptcy Wave, the cases in our sample identified, on average, over eight thermal insulation or refractory defendants that eventually filed for bankruptcy reorganization by 2004. This number dropped between 2001 and 2005 to an average of five, and then to less than four between 2006 and 2010. However, when supplemented with Approved Site and Industry List matches, the plaintiffs in the cases filed post-2000 would qualify for compensation from 10 trusts on average.

The Asbestos Trust Waiting Game

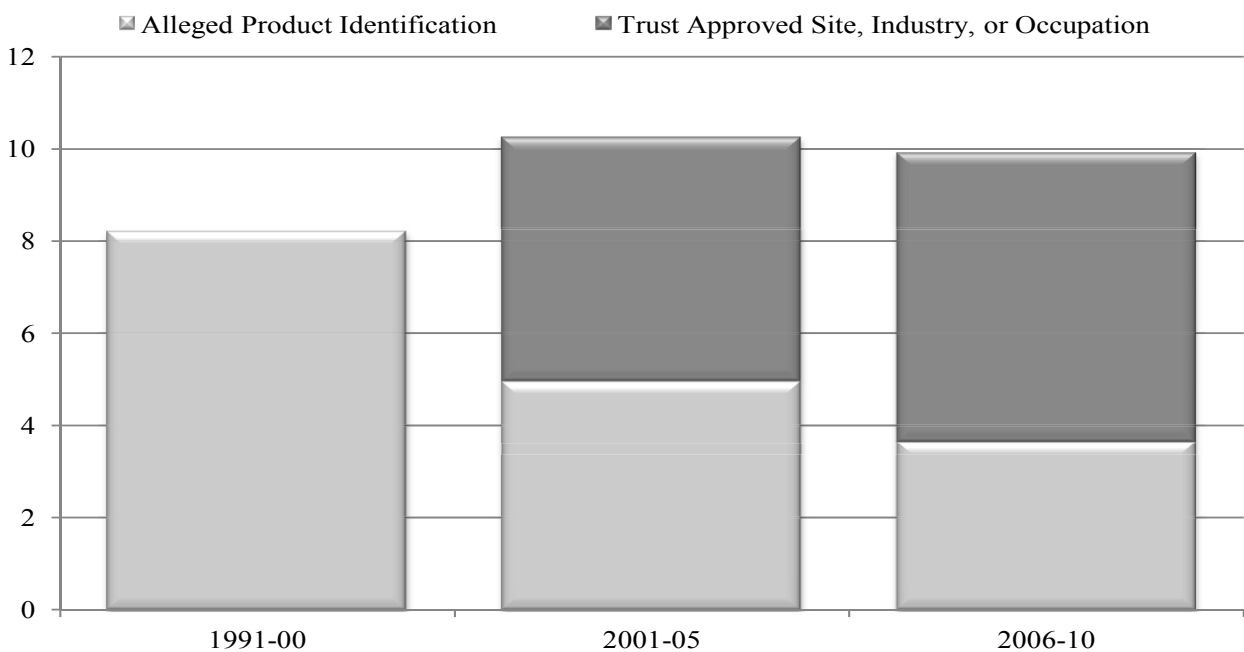
As evidenced in the sample data, there is a systemic shift away from Reorganized Defendant product identification. It is no longer in a plaintiff attorney's economic interest to build or concentrate a case against those Reorganized Defendants in the tort system. Rather, it is in the plaintiff attorney's economic interest to build a case in state court against the peripheral and new defendants and subsequently seek asbestos trust claim payments once they have reached settlement with a

number of tort defendants. The timing and lack of transparency in this dual claim and compensation system can affect the way liability is allocated among the remaining defendants. If exposures to Reorganized Defendant products are not being disclosed in the tort case, then the relative liability risk increases for peripheral and new defendants.

To date, traditional discovery has been difficult for defendants in Philadelphia to use as an effective tool to ascertain asbestos trust claim forms and allegations of exposure to those Reorganized Defendant products. This is due, in part, because most asbestos trusts have a three year statute of limitations from diagnosis to trust claim filing that allows a window for tort recovery prior to trust claim filing. So when discovery is conducted by defendants requesting disclosure of trust claim forms and the corresponding exposure allegations, no such evidence exists.

Exhibit 11 summarizes our findings from two cases in the sample where asbestos claim forms were produced that serve as prime examples of the delay that is occurring between tort filing and trust claim disclosures.

Exhibit 10: Reorganized Defendant product ID when supplemented with Trust Approved Sites, Industries, and Occupations*



*Only includes those defendants that filed for bankruptcy prior to 2005

Case Study 1

The first case study represents a plaintiff with significant occupational exposure in industrial settings during years of heavy thermal insulation use. Consistent with our findings across the 2006-2010 sample, the case documents only identified two Reorganized Defendants even though the plaintiff worked in an occupational setting where thermal insulation product exposure would be expected. In this particular case, while exposures against Reorganized Defendants were not the focus of the product identification and exposure allegations, one could easily bridge the information gap and build a case to allocate liability to those parties through the use of trust Approved Sites and Industries. In fact, the exposure sites for the plaintiff would qualify for compensation from 20 trusts based upon Approved Site and Industry matches alone.

Eventually, evidence of asbestos trust claims were disclosed two-and-a-half years after the lawsuit was filed, and nearly a year-and-a-half after the claims were actually filed with the trusts. And when the trust filings were disclosed they included claim forms for only 6 of the 20 trusts for which the plaintiff was eligible. This supports the theory that the plaintiff attorney may have had little

economic incentive to actively pursue qualifying trust payments during the pendency of the lawsuit. If pursuing trust compensation was a priority, then 20 claims would have been pursued instead of just 6, and the plaintiff could have received over \$500,000 in trust payments.¹²

Case Study 2

The second case study represents a different and less common type of plaintiff, with only a mix of occupational and non-occupational residential construction and remodeling exposures that didn’t begin until the mid to late 1970s, when many asbestos-containing products had already been phased out of the market. In this instance, the case documents did disclose the use of products from six Reorganized Defendants such as flooring, wallboards, and compounds. Despite not having any industrial exposures, it was eventually disclosed that 11 trust claim forms had been filed on behalf of the plaintiff.

Given the non-industrial nature of the exposures, none of the trust claim forms in the second case could be supported by matches to Approved Sites or Industries. Rather, the alleged exposures in these trust claim forms

Exhibit 11: Case studies on trust filing lags

Findings	Case Study 1	Case Study 2
Lawsuit filing date	February 2008	January 2009
Trial group	November 2010	November 2010
# of named defendants	54	39
General exposure history	Laborer and machine operator for 30 years (1950s-70s) at industrial sites (<i>refineries, steel mills, power plants, shipyards</i>)	Residential construction / repair on personal and investment properties beginning in the mid to late 1970s
# of Bankrupt defendants identified*	2	6
# of Trust claims disclosed in discovery	6	11
Date trust claims were filed**	May - June 2009	October 2009 – March 2010
Date trust claims were disclosed	September 2010	September 2010
Lag from lawsuit to trust claim filing	15-16 months	10-15 months
Lag from lawsuit to trust claim disclosure	31 months	21 months
# of Potential trust claims not disclosed***	14	1

* Defendants bankrupt by lawsuit filing date

** Two of the six trust claim forms did not disclose the trust filing date for Case Study 1

*** Based on product ID testimony and matches to trust Approved Site and Industry Lists

were predicated on specific product identification that was not otherwise disclosed in earlier interrogatories or depositions. Prior to these trust claims being disclosed only two months before trial, the active defendants in the case had no way of assuming or establishing the potential exposures to these 11 Reorganized Defendants.

The significant delay in disclosing asbestos trust claim filings and corresponding exposure allegations until just before trial is an issue at the heart of a number of current state and federal legislative proposals aimed at increasing transparency between the trust and tort systems.¹³ When trust claims are not pursued or disclosed until late in the tort proceedings, if at all, it creates an information asymmetry that places active defendants at a significant disadvantage when negotiating settlements in the tort system. If trust claims are not pursued in a timely manner, it conceals critical information regarding both sources of potential plaintiff compensation, as well as exposures to the products of the Reorganized Defendants that are no longer being named on the lawsuits because of their bankruptcies. As a result, the defendants and the court do not have the full information regarding the plaintiff's complete and unbiased exposure history, making it impossible to properly defend the case and allocate liability, respectively.

Establishing Liability To Reorganized Defendants In Philadelphia

Defense and plaintiff attorneys negotiate settlements based on litigation risk factors. For defendants, knowing if claims are being pursued against alternative sources of compensation based on exposures to other company products and operations greatly influences their assessment of what they will likely have to pay if the case goes to trial. In the absence of this information, defendants are put in a position of agreeing to higher than appropriate settlements because the uncertainty surrounding potential trust claims naturally increases their litigation risk. Cases that do reach verdict similarly put the court and jury in an uncertain position. If information regarding exposure to Reorganized Defendant products has been withheld or concealed from the court, a jury cannot properly allocate liability against those culpable parties.

New legislation in Pennsylvania and changes to procedural rules in the Philadelphia Court has increased the economic incentive for current defendants to identify

the liability share of Reorganized Defendants. The elimination of involuntary bifurcation earlier this year and the passage of the Fair Share Act in 2011 changed the paradigm of how liability is allocated in Philadelphia asbestos cases.¹⁴ The Fair Share Act transitions the state's traditional joint and several liability rules to a system more in line with proportional liability and raises the threshold to 60 %the amount of liability for any one defendant to be jointly and severally responsible for the full judgment.

Even with the current rules in place, however, defendants in Philadelphia still face challenges assigning liability to bankruptcy trusts and getting a plaintiff's exposure to Reorganized Defendants' products considered by a jury. While providing evidence of exposure to Reorganized Defendants' products under the Fair Share Act should limit the risk of active tort defendants being held jointly and several liable, those defendants are still absent the corresponding mechanism that would allow the jury to allocate liability to bankruptcy trusts.¹⁵ In order for the jury to consider and allocate liability among the full complement of potentially responsible parties, the court would need to establish procedures to ensure that trust claim forms and corresponding exposure evidence are disclosed early in tort proceedings and have the ability to place the bankruptcy trusts of the Reorganized Defendants on the verdict form.¹⁶ The sample data suggests that until such rules are instituted, the allocation of liability in the Philadelphia Court will be influenced by the disclosure, or lack thereof, of trust claim forms and the associated allegations of exposure to Reorganized Defendants.

Conclusion

The results from the study of the Philadelphia asbestos docket indicate that while exposures to thermal insulation products remain prevalent among today's plaintiff population, the identification of exposure to those products is greatly diminished compared to claims filed prior to the Bankruptcy Wave that had comparable (or even identical) exposure histories. Despite tens of billions of dollars in asbestos trusts currently available to pay the several shares of liability for Reorganized Defendants, including \$14 billion in payments that have been made between 2006-2011, the current bankruptcy rules and lack of transparency in the asbestos trust system have prevented current defendants from discovering the extent of exposure plaintiffs received from

the products of Reorganized Defendants. As a result of this incomplete disclosure, current tort defendants overpay on numerous cases.

The dramatic decline of identification to the products of Reorganized Defendants since the Bankruptcy Wave is likely not unique to the Philadelphia Court. Given the widespread distribution of products by many of the Reorganized Defendants and the national scope of the current litigation, the economic incentives for plaintiff attorneys to concentrate on alternative asbestos products is the same in Philadelphia as it is in New York, Baltimore, San Francisco or any other docket that manages a substantial number of asbestos claims. It may fluctuate between jurisdictions but it would not be surprising if the decline in identification to Reorganized Defendants found in Philadelphia is just as pronounced or possibly even more dramatic in other asbestos dockets around the country.

The enormity of the recent asbestos liability transfer from traditional to peripheral defendant in a joint and several tort is unprecedented. As a result, the longest running mass tort in U.S. history has left an enormous legal and economic burden in its wake for many of the once-peripheral and new defendants that continue to litigate asbestos claims in the tort system. Recent state and federal legislative and judicial reforms have sought to create more transparency in the asbestos trust system so state courts such as the Philadelphia Court of Common Pleas will have the knowledge about a plaintiff's full exposure history during the pendency of the tort case and can allocate liability responsibly between tort and Reorganized Defendants.

Endnotes

1. The companies that filed for Chapter 11 protection during the Bankruptcy Wave included AC&S, Armstrong World Industries, USG, Owens Corning/Fibreboard, Federal-Mogul, G-I Holdings, Combustion Engineering, etc. . . For a detailed list of all the Bankruptcy Wave debtors see Mark D. Plevin et al., *Where Are They Now, Part Four: A Continuing History of the Companies That Have Sought Bankruptcy Protection Due to Asbestos Claims*, 6:4 Mealey's Asbestos Bankr. Rep. (Feb. 2007).
2. William P. Shelley et al., *The Need for Transparency Between the Tort System and Section 524(g) Asbestos Trusts*, 17 Norton J. Bankr. L. & Prac. 257 (2008); Expert testimony of Dr. Mark Peterson, November 13, 2003 in the matter *In re: Western Asbestos Company; Western MacArthur Company; and Mac Arthur Company*, Chapter 11 Bankruptcy No. 02-46284 through 02-46286 (United States Bankruptcy Court for the Northern District of California Oakland Division): pg. 745 ln. 11 – pg. 745 ln. 20.
3. U.S. Environmental Protection Agency, <http://www.epa.gov/iris/subst/0371.htm>.
4. <http://www.asbestos.com/products/construction/insulation.php>.
5. We collected information on nearly 250 mesothelioma cases filed in the Philadelphia Court of Common Pleas between 1991 and 2010. We limited the analysis sample to the 107 cases with deposition testimony, and product identification of at least 5 asbestos-containing products. This effectively removed from our analysis sample any cases where the only depositions available were for medical professionals or family members lacking extensive knowledge of the diagnosed party's product exposure history.
6. 11 U.S.C. Section 524(g)(2)(B)(i)(1); 11 U.S.C. Section 524(g)(2)(B)(ii)(V).
7. Furthering Asbestos Claim Transparency (FACT) Act of 2012, H.R. 4369, 112th Cong. § 2 (2012), Managers Package, September 21, 2012.
8. Scarcella, Marc C. and Peter R. Kelso. "Asbestos Bankruptcy Trusts: A 2012 Overview of Trust Assets, Compensation & Governance." Mealey's Asbestos Bankruptcy Report 11, no. 11 (2012), Exhibit 1.
9. Nicholson, William J., Perkel, George, Selikoff, Irving J. "Occupational exposure to asbestos: Population at risk and projected mortality – 1980-2030," *American Journal of Medicine*, Vol. 3, Issue 3, 1982.
10. Exhibit 7 only includes product identification that is accompanied by a product manufacturer distributor, or contractor.
11. In a cross-complaint by Johns-Manville, 3 other now-bankrupt thermal insulation defendants were brought into the suit.

12. Potential recoveries based on published trust average values or equivalent when available. If not available, the Scheduled Value or equivalent was used instead.
13. Ohio House Bill 380, 127th General Assembly; Supra 7.
14. The Pennsylvania legislature passed the Fair Share Act (Pa.C.S. § 7102) on June 28, 2011 — applies to asbestos cases filed after its enactment; Hon. John W. Herron issued General Court Regulation No. 2012-01 on Feb. 15, 2012.
15. Mark A. Behrens. "Pennsylvania Moves Forward with Considering Asbestos Trust Recoveries when Calculating Tort System Awards." Mealeys Asbestos Litigation Report, Vol. 26, Issue 15, Sept. 7, 2011.
16. The Montgomery County, Pennsylvania Court of Common Pleas and the Kanawha County Circuit Court in West Virginia passed Case Management Orders in 2010 mandating the disclosure of trust claim forms at least 120 days before trial; Rose A. Thibeault, et al. v. Allis Chalmers Corp. Product Liability Trust, No. 07-27545, (Pa. Comm. Pls., Montgomery Co.), Feb. 26, 2010; In re Asbestos Personal Injury Litigation, Civil Action No. 03-C-9600 (Cir. Ct. Kanawha County, W.V.), May 14, 2010. ■

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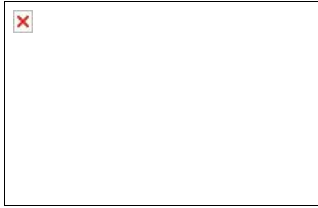
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Twenty two years of asbestos litigation experience in Illinois, Indiana, and Wisconsin.

Cascino Vaughan Law Offices, Ltd. has six attorneys and over forty support staff. From our twenty-two years of experience in asbestos litigation, we have a familiarity with local judges, defendants, contractors and suppliers that will strengthen your case. We have also developed a wealth of resources that will help your case. They include:

- Asbestos product databases
- Local construction records
- Witnesses for major jobsites
- Invoices from major jobsites



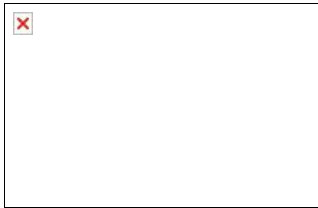
Testimony establishing product identification

We will handle your case from start to finish and will make every effort to handle your claim with minimal inconvenience to you.

Once you retain our services, we will meet with you at your home. We will obtain your medical records and determine which companies may be responsible for your asbestos exposure. We will prepare a lawsuit as well as submit bankruptcy claims on your behalf. It is our experience that defendants often settle cases before trial.

We will do our best to make sure that this lawsuit is not a worry for you.

Disclaimer of legal advice: Nothing on this website should be construed as legal advice. Past performance does not necessarily guarantee similar results.



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ASBESTOS

Although the manufacturing industry knew of the dangers of asbestos exposure as early as the 1920's, they kept this secret from the public in the name of the bottom line. As a result millions of people have faced life-changing, often fatal conditions including

mesothelioma, lung cancer, colon cancer and asbestosis.

Many people were placed at risk by raw asbestos fibers, but many more workers were exposed through contact with the hundreds of manufactured products that contained asbestos. The fibers were mixed into floor and ceiling tiles, pipe coverings, paper, paint, bricks, cements and insulation. Those who worked on or in the vicinity of boilers, turbines, heating and steam pipes were also placed at risk of developing asbestos-related cancers. [Scroll down](#) to view a list of manufacturers of products that contained asbestos.

Malignant Mesothelioma

Workers who have had prolonged exposure to airborne asbestos fibers are at risk of developing malignant mesothelioma. The disease usually starts in the lining of the lungs, heart or abdomen, and frequently spreads to other areas of the body. Asbestos exposure is far and away the leading cause of the disease. In some cases mesothelioma develops years after exposure, making diagnosis difficult.

Lung Cancer

Although lung cancer has many causes, exposure to asbestos increases the percentage of people who suffer from the disease. Smokers who were exposed to raw asbestos or asbestos-containing products suffer an increased likelihood of developing lung cancer. As with mesothelioma, lung cancer may develop years after the exposure to asbestos.

Other Diseases

Asbestos is a known cause of digestive tract cancers such as laryngeal, stomach and colon cancer. Asbestosis, a progressive scarring of the lungs, is also caused by exposure to asbestos fibers.

The Present State of Asbestos Litigation

After years of facing justice in America's courts, many of the most prominent manufacturers and contractors who mined or manufactured asbestos products filed for Chapter 11 bankruptcy. While this process did not relieve these defendants of their liabilities, it did allow them to postpone compensation. Presently, however, many of these companies have emerged from bankruptcy and begun the process of accepting claims. With years of experience and expertise in the complex field of asbestos litigation, we will fight to ensure that you get the highest compensation possible from the Trusts.

These are just some of the defendants that we are currently working on claims against:

- | | |
|------------------------|----------------------|
| ABB Lummus | Fibreboard (Pabco) |
| AP Green | Flexitallic |
| Armstrong | Halliburton |
| Babcock & Willcox | Harbison Walker |
| Combustion Engineering | Kaiser |
| Dresser Industries | Owens Corning |
| Federal Mogul | United States Gypsum |

If you worked at any of the following sites you are at risk of developing an asbestos-

related disease. Call us today at (800) 783-0081 to learn about your rights.

Alcan – Terre Haute, IN
AO Smith – Milwaukee, WI
Appleton Paper Mill – Appleton, WI
Bethlehem Steel – Burns Harbor, IN
Blatz Brewery – Milwaukee, WI
Braidwood Nuclear Power Station – Braidwood, IL
Breed Power Station – Fairbanks,
Briggs & Stratton – Milwaukee, WI
Caterpillar – Joliet, IL
Caterpillar – Peoria, IL
Cayuga Power Station – Cayuga, IL
Chrysler Corporation – Kokomo, IN
Consolidated Paper – Wisconsin Rapids, WI
Dresden Nuclear Power Station – Morris, IL
Eli Lilly – Clinton, IN
Eli Lilly – Indianapolis, IN
Eli Lilly – Lafayette, IN
Gary Works/US Steel – Gary, IN
Havana Power Station – Havana,
Indian Refinery/Texaco – Lawrenceville, IL
Indianapolis Light & Power – Indianapolis, IN
Inland Steel – East Chicago, IN
J&L Steel – East Chicago, IN
Joliet 9 Power Station – Joliet, IL
LaSalle Nuclear Power Station – Seneca, IL
Lauhoff Grain – Danville, IL
Marathon Refinery – Robinson, IL
Miller Brewery – Milwaukee, WI
Milwaukee Valley Power Station – Milwaukee, WI
Mobil Oil Refinery – Joliet, IL
Nicolet Paper – DePere, WI
Oak Creek Power Station – Oak Creek, WI
Pabst Brewery – Milwaukee, WI
Point Beach Nuclear Power Station – Kewanee, WI
Port Washington Power Station – Port Washington, WI
Powerton Power Station – Pekin, IL
Schlitz Brewery – Milwaukee, WI
South Works/US Steel – Chicago, IL
St. Luke's Hospital – Milwaukee, WI
Thilmany Pulp Mill – Kaukauna, WI
University of Illinois – Champaign, IL
University of Wisconsin – Madison, WI
Wabash River Power Station – West Terre Haute, IN
Weyerhaeuser – Marshfield, WI
Whiting Refinery (AMOCO), Whiting, IN
Youngstown Sheet & Tube – East Chicago, IN

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Information on mesothelioma and other asbestos diseases for patients and families

Nursing Home Abuse

Protect your loved ones from nursing home abuse and neglect

Medical Malpractice

Have you sustained injuries as a result of inadequate care from a medical professional?

[\[site map\]](#)

Asbestos Bankruptcy Trusts

Some of the companies responsible for exposing workers to asbestos have filed for bankruptcy under Chapter 11 of the US Bankruptcy Code. This is a different kind of bankruptcy than is commonly thought of in the rest of the world; it is not a liquidation of assets where the company goes out of business, but is a reorganization of debts so that the company continues on in a modified form.

This is sometimes referred to as a reorganization bankruptcy. As required under Chapter 11, companies must submit plans outlining their reorganization to creditors and the courts; as part of this plan, most companies set up trusts to benefit asbestos victims harmed by their processes or products.

Asbestos Bankruptcy Claims

These trusts are designed to provide payments for all present and future asbestos injury claims. Payments usually equal only a small portion of their true value. Because of our knowledge and experience, GPW's asbestos attorneys are able to efficiently and effectively establish the rights of our clients to the money that has been put into asbestos trusts for victims of [mesothelioma](#) and other asbestos related diseases. We fight for every dollar owed our clients by the asbestos trusts.

We are able to so effectively process asbestos bankruptcy claims because of our specialized knowledge and dedicated staff. Many of our [asbestos lawyers](#) volunteer on the committees that help manage these trusts, so we know exactly what needs to be done to maximize the payments to our clients. Assisting our attorneys is our large, dedicated asbestos bankruptcy department of more than 10 experienced staff members. As a result of our size, we can quickly and efficiently complete and file claims against the many companies that have filed for bankruptcy.

When will my asbestos bankruptcy claims be paid?

The time it takes companies to plan, establish, and begin asbestos payouts from their trusts can be anywhere from several months to several years. While no firm can avoid these delays to payments, the hard work and experience of our dedicated asbestos attorneys and bankruptcy staff means that our clients receive their settlements as fast as possible.

Having filed **over 75,000 individual bankruptcy claims with twelve different bankruptcy trusts** means our staff is intimately familiar with the differing processes, requirements, and formats required by each trust. Our experience allows us to cut out delays caused by missing or incomplete information, delays not uncommon among others with less familiarity with asbestos bankruptcy trust procedures or lacking a dedicated asbestos bankruptcy department.

Questions?

If you have questions regarding asbestos bankruptcy, asbestos injuries, or bankruptcy trust payments, please [contact us](#) today.

Do you qualify?

[Contact us and find out.](#) If you have lung cancer, mesothelioma, or another asbestos-related injury, [contact us](#) and we can quickly determine if you are eligible for compensation from asbestos bankruptcy trust funds. There is no obligation or fee to find out. Don't delay, [contact us today!](#)

Companies & Trusts Paying Claims

These asbestos companies and/or Bankruptcy Trusts are currently receiving and paying claims:

- Celotex,
- Eagle Picher,
- HK Porter,
- Babcock & Wilcox,
- Plibrico,
- Keene,
- Combustion Engineering,
- Kaiser,
- Harbison Walker,
- Halliburton,
- United States Gypsum,
- Armstrong World Industries,
- Fibreboard,
- Manville,
- Owens Corning Fiberglas, and
- National Gypsum

No Trust Established

The following asbestos companies are presently "bankrupt" and Bankruptcy Trusts to pay claims have **not yet been created**:

- AC&S,
- W.R. Grace,
- Pittsburgh Corning Corporation,
- Federal Mogul,
- NARCO,
- AP Green Industries,
- Pfizer,
- Quigley,
- GAF,
- Hercules,
- and a few others.

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