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Asbestos

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A commentary article reprinted from the February 22, 2023 issue of Mealey's Litigation Report: Asbestos

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Commentary

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St. Louis is perennially among the top filing jurisdictions for asbestos cases in the United States. The city ranks second in the nation for lung cancer filings and fifth nationally for all asbestos-related disease lawsuits[1]—despite being the seventieth largest city in the United States.[2] The city's attractiveness to asbestos plaintiffs, such as a history of nuclear verdicts,[3] has landed it on the American Tort Reform Foundation's Judicial Hellholes® list each year since 2015.[4]

Given the importance of St. Louis to the national asbestos litigation environment and abuses occurring in the Show-Me State, Missouri should enact asbestos bankruptcy trust claim transparency reform and require exposure history disclosures to curb the indiscriminate naming of defendants in asbestos cases—a practice known as "over-naming." Both of these reforms enjoy strong and growing support across the country.

Asbestos Trust Transparency

Originally and for many years, asbestos lawsuits involved "dusty trades" workers alleging personal injuries caused by the major asbestos producers, such as Johns Manville. Hundreds of thousands of lawsuits forced many of these companies into bankruptcy by the early 2000s. These bankruptcies fundamentally changed the asbestos litigation environment in ways that continue to affect the litigation today.[5]

Emergence of Trust System

The Bankruptcy Wave of the early 2000s and earlier bankruptcies by top-tier asbestos defendants resulted in a massive compensation system for asbestos claimants that exits wholly outside the civil justice system.[6] Pursuant to Section 524(g) of the federal bankruptcy code, companies that file bankruptcy due to asbestos-related liabilities are able to reorganize, channel their current and future asbestos-related liabilities into trusts, and emerge from bankruptcy with immunity.[7] The trusts assume the debtor companies' asbestos-related liabilities while significant assets of the debtors are transferred to the trusts for investment and management, including payment to claimants through an expedited process that operates outside the courts.

So far, over 140 companies have filed bankruptcy due at least in part to asbestos-related liabilities, and the number continues to grow.[8] At least ten companies filed asbestos-related bankruptcies from 2020 through 2022. Plaintiff law firms typically advertise that over $30 billion exists in the trust system to compensate individuals diagnosed with asbestos-related diseases.[9]

Asbestos trusts "compensate claimants expeditiously and at a minimal cost."[10] A plaintiff firm that specializes in trust claim filings tells potential clients, "The trust claims process is very easy for our clients and it does not require the client to sit for a deposition or to be cross-examined in court…."[11] Another website explains, "Filing an asbestos trust claim is typically easier than filing other claims, like personal injury

lawsuits."[12] One commentator likens the trusts to "a 'piggy bank' which asbestos attorneys can dip into at will."[13]

To obtain payment from a trust, a claimant simply has to complete a short claim form and provide "information sufficient to establish asbestos exposure attributable to the trust's predecessor,"[14] such as the "claimant's work history, Social Security records, invoices, employer records, or deposition testimony."[15] In addition, the claimant must submit "medical reports or records sufficient to support a diagnosis for the specific disease being claimed or, if applicable, a copy of a death certificate."[16]

If a claim meets the trust's criteria for payment—criteria which are far less rigorous than the tort system[17]—the trust will make an offer based on a percentage of the "scheduled value" for the alleged injury. The Manville Trust's general counsel has testified that offers are made within days of a submission.[18] After an offer is accepted, "payments tend to be made quickly."[19]

Virtually all trust claims (97-98%) are processed on this expedited basis, according to the U.S. Government Accountability Office.[20] It is common for claimants to "electronically file bulk claim submissions against multiple trusts."[21] In a significant case several years ago, a typical mesothelioma plaintiff's total recovery was estimated to be $1-1.5 million, "including an average of $560,000 in tort recoveries and about $600,000 from 22 trusts."[22]

Changes in Claiming Behavior

Plaintiff claiming behavior changed significantly in the wake of the Bankruptcy Wave. The Bankruptcy Wave "removed from the tort system the source of most of the compensation plaintiffs had heretofore been receiving."[23] In response, plaintiffs' lawyers began to target "peripheral defendants" to replace "top-tier defendants that had produced thermal insulation and refractory products."[24] The asbestos litigation "spread from the asbestos makers to companies far removed from the scene of any putative wrongdoing."[25] The litigation evolved into an "endless search for a solvent bystander," according to one plaintiffs' lawyer.[26]

To date, over 11,000 companies have been named as asbestos defendants.[27] More than twenty-five defendants "each month see their first ever asbestos case"[28]—which is astonishing given that the litigation has been ongoing for fifty years.

Manipulation and Suppression

The emergence of the trust system alongside but separate from civil litigation against still-solvent, increasingly remote defendants provides plaintiffs with two paths to obtain compensation for asbestos-related diseases. Plaintiffs do not have to pick one system or the other; they can recover from both in most instances. As one commentator explains,

> Claimants today typically file claims with numerous trusts created during bankruptcy proceedings to pay for harms caused by the former asbestos producers' products. Billions of dollars are available in the asbestos trust system to pay claimants. The same claimants also typically file lawsuits against scores of solvent companies which in reality bear little or no responsibility for causing their injuries.[29]

The disconnect that exits between these dual compensation systems incentivizes plaintiff firms to engage in manipulation and abuse.

For example, there has been a dramatic increase in the asbestos-related payments made by companies that remain in the tort system because of their new position as targets of asbestos litigation.[30] In the post-Bankruptcy Wave environment, defendants have struggled to muster evidence necessary to show that exposures to former manufacturers' products were entirely, or at least partially, responsible for plaintiffs' injuries. With the removal of the primary historical defendants from the tort system, it is no longer in the strategic interest of plaintiffs' firms to refresh their clients' recollections as to exposures to those companies' products. Plaintiffs' firms appreciate that such testimony provides a basis for apportioning liability to nonparties at trial. In fact, studies have shown that soon after a company declares bankruptcy, plaintiffs often stop identifying those companies as potential sources of exposure to asbestos.[31]

Furthermore, many plaintiff firms have stopped filing trust claims until their clients' tort cases are resolved. Plaintiff firms know that defendants will seek

discovery of trust claim submissions to learn about a plaintiff's exposures to former asbestos producers' products.[32] It is also well known that civil courts will compel the production of those materials (with their admissions of other exposures).[33]

Trust claim submissions allow defendants to overcome the persistence of plaintiff "I don't recall" testimony and serve as a powerful admission by the plaintiff about other exposures to asbestos[34]—except when plaintiffs' firms manipulate the timing of these filings to prevent their disclosure. By intentionally delaying the filing of asbestos trust claims until a tort case is resolved, plaintiff lawyers can suppress evidence of trust-related exposures that defendants could use to impeach plaintiffs, apportion fault to bankrupt nonparties, offset a verdict, or prove that bankrupt entities were the sole cause of a plaintiff's harm.

Further, "[i]n cases where defendants have been able to overcome the attempts to suppress evidence of other exposures, it has become apparent that the product exposures set forth in multiple trust claims differ markedly from, and are inconsistent with, the exposures being asserted by plaintiffs in the tort system."[35]

Case Studies of Asbestos Claim Fraud or Abuse

These trends were described in a landmark case involving gasket and packing manufacturer Garlock Sealing Technologies. A federal bankruptcy court judge described how Garlock became a "focus of plaintiffs' attention" after the major asbestos producers filed bankruptcy.[36] In this new environment, evidence that Garlock needed to attribute plaintiffs' injuries to bankrupt companies "disappeared."[37] The judge said this was the result of an effort by plaintiffs and their lawyers to "withhold evidence of exposure to other asbestos products and to delay filing claims against bankrupt defendants' asbestos trusts until after obtaining recoveries from Garlock (and other viable defendants)."[38] The missing evidence "had the effect of unfairly inflating" recoveries against Garlock.[39]

For example, in a case that resulted in a $9 million verdict against Garlock, the plaintiff "did not admit to any exposure from amphibole insulation . . . and claimed that 100% of his work was on gaskets."[40] Discovery in the bankruptcy case revealed that the plaintiff's lawyers had filed fourteen trust claims after verdict, including several against insulation manufacturers. "And most important," the court said, "the same lawyers who represented to the jury that there was no Unibestos insulation exposure had, seven months earlier, filed a ballot in the Pittsburgh Corning bankruptcy that certified under 'penalty of perjury' that the plaintiff had been exposed to Unibestos insulation."[41] In total, the plaintiff's lawyers failed to disclose the plaintiff's exposure to twenty-two other asbestos products.[42] The court gave several other examples of such shenanigans and said it appeared "certain that more extensive discovery would show more extensive abuses."[43]

Since the *Garlock* decision, it has become clear that the abuses described by the court are typical.[44] For instance, an examination of over 1,800 mesothelioma lawsuits resolved by Crane Co. from 2007-2011 revealed that "80% of [trust] claim forms or related exposures were not disclosed by plaintiffs or their law firms to Crane in the underlying tort proceedings."[45]

A study of 100 asbestos cases in Illinois found that only eight plaintiffs disclosed that they had filed trust claims, even though the average plaintiff in the sample could have made sixteen trust claims and thirty-seven of the plaintiffs could have made more than twenty trust claims. The study provides further proof that "the failure by plaintiffs and their counsel to produce trust-related exposure evidence in a timely fashion in asbestos cases . . . appears to be systemic."[46]

A bankruptcy filing by Bestwall LLC, an affiliate of Georgia-Pacific, LLC, described instances where "asbestos plaintiffs, at a minimum, inconsistently and selectively disclosed exposure evidence to support or strengthen their cases against non-bankrupt companies."[47] For example, one plaintiff "identified no exposures to amphibole products" and "testified that he had no occupational exposure to asbestos whatsoever."[48] The plaintiff's asbestos trust and bankruptcy filings "told an entirely different story."[49] He filed at least seventeen trust claims based on exposures not disclosed in his tort case, including claims against trusts responsible for amphibole insulation.

The United States summarized the need for greater transparency between the asbestos trust and tort systems in 2020:

> [B]oth courts and commentators have observed that a significant number of asbestos claimants in the tort system and in

> Chapter 11 proceedings have provided conflicting and/or inaccurate information regarding the asbestos products to which they were exposed. Some claimants improperly have claimed exposure to one set of products in one case while claiming exposure to a different set of products in a subsequent case. In addition, some claimants have delayed filing subsequent claims in order to conceal the fact that they intend to make inconsistent allegations regarding product exposure in a subsequent case.[50]

The government added: "[P]roblems that have been identified with respect to the compensation of asbestos claims" have led one-third of the states "to increase transparency" and close the gap between exposure histories given by plaintiffs to the trusts and in civil cases.[51]

Reform is Simple: Change the Timing of Trust Filings

Missouri should join the many states that have enacted asbestos bankruptcy trust claim transparency reform. Under these laws, asbestos trust claims now routinely submitted by plaintiffs after trial must be filed before trial and disclosed. If a defendant believes a plaintiff has not satisfied this requirement, the defendant may file a motion with the court to enforce compliance with the statute. If the court finds the plaintiff is out of compliance, it may not set the asbestos case for trial until the plaintiff files and produces the missing trust claims. Trust claims materials are admissible at trial. Wrongdoers remain accountable for any harm they cause.

This reform is important because juries in asbestos cases today are being misled. They may find that a defendant in court was responsible for all or most of the plaintiff's harm because they did not hear about all of a plaintiff's exposures to asbestos. For example, the jury may not know that a plaintiff was routinely exposed to potent thermal insulation at work. Defendants pay inflated values as a result of the suppression of such evidence. Excessive liability is unfair and, as the *Garlock* case demonstrates, it can lead to bankruptcy.

Greater transparency with respect to asbestos bankruptcy trust claims would benefit future claimants by helping courts and defendants identify inconsistencies that may signal an improper or erroneous claim—preserving trust assets for those who are truly deserving.

A *Wall Street Journal* analysis of roughly 850,000 persons who filed claims against the Manville Trust found "numerous apparent anomalies: More than 2,000 applicants to the Manville trust said they were exposed to asbestos working in industrial jobs before they were 12 years old. Hundreds of others claimed to have the most-severe form of asbestos-related cancer in paperwork filed to Manville but said they had lesser cancers to other trusts or in court cases."[52] The study also identified a trust claim that was filed against the trust by someone who did not exist.[53]

Further, by accelerating the timing of trust claim filings, claimants will obtain trust payments more quickly, rather than waiting years for a tort claim to settle or go to trial. Plaintiffs also avoid the risk that waiting to file a trust claim could lead to a smaller trust payment because of a reduction in the trust's payment percentage. In addition, disclosures may make asbestos litigation more efficient and foster earlier settlements.

Plaintiffs have not experienced undue burdens or delays in any states with trust transparency laws.[54] In fact, "there are delays today with regard to plaintiff compensation because plaintiffs' attorneys routinely delay the filing of trust claims while tort cases are pending."[55] In states such as Texas, where plaintiff attorneys testified that trust transparency would result in victims being denied access to justice, the lawyers "now readily admit that those problems have not happened."[56] A partner at one firm with a substantial asbestos plaintiffs' practice even stated, "It doesn't really bother me that the act exists."[57]

Over-Naming

Missouri should also ensure that plaintiffs are suing defendants with an actual connection to the plaintiff.[58]

Large Number of Defendants

There has been a dramatic rise in the number of defendants named in asbestos personal injury lawsuits. The first asbestos lawsuit filed over a generation ago named less than a dozen defendant manufacturers of asbestos-containing insulation products. This changed following the Bankruptcy Wave in the early

2000s. Since that time, the number of companies named in asbestos lawsuits has grown exponentially. At least 830 companies were named in asbestos cases filed in Missouri from 2016-2020, according to a January 2020 sample of fifty cases.[59]

The sample also revealed that, between 2016-2020, the average asbestos complaint in Missouri named eighty-three defendants. Defendant lists can run many pages. The defendant lists on the largest asbestos complaints are shocking, even for asbestos litigation. The companies named are varied and include a large number of Missouri-based small and mid-sized businesses.

2023 data shows that additional defendants are named as cases progress. Here are a few examples:

- The *Scott Miller* case filed in 2016 named 219 defendants. A Fifth Amended Complaint has been filed, resulting in 380 defendants named as of this writing.

- The *Danny Corzine* case filed in 2018 named 199 defendants. A Fifth Amended Complaint has been filed, resulting in 237 defendants named as of this writing.

- The *Michael Huff* case filed in 2020 named 172 defendants. In 2022, a Third Amended Complaint was filed. 174 defendants have been named as of this writing.

It must be remembered that defendant lists do not include the over 140 companies that have filed bankruptcy at least partly due to asbestos-related liabilities and are the most likely cause of plaintiff exposures and disease. Immune companies include the "big dusties" that comprised the "asbestos industry." Defendant lists also do not include companies that have struck deals with plaintiff firms to resolve claims without being formally named in lawsuits.

Proof of Exposure Lacking; Dismissals Common

Many of the defendants named in asbestos complaints today have no connection or liability for plaintiffs' injuries. Consulting firm KCIC has said, "many defendants are named frequently with no proof of exposure."[60]

Plaintiff lawyers cast a wide net to capture solvent defendants, ensnaring many innocent companies in the process. Some companies find themselves named in nearly every asbestos case without regard to the plaintiff's actual work history or exposure.

Over-naming of companies in Missouri is a big problem, especially when one considers the large number of asbestos-related lawsuits that are filed. Approximately 200 asbestos cases were filed in St. Louis in 2021—more than Los Angeles (64 filings), San Francisco (61 filings), and Alameda (Oakland) (52 filings) combined.[61]

As one might expect, when companies are named in lawsuits without proof of a connection to the plaintiff, they are typically dismissed at some point, often without any payment to the plaintiff. According to one insurer, "Very many defendants get dismissed 85-95% of the time from these lawsuits for zero dollars."[62] Consulting firm KCIC's founder and president has said, "It is common for us to see mesothelioma dismissal rates above 90%."[63]

For example, with respect to the cases identified above:

- In the *Scott Miller* case, 178 of the defendants have been dismissed without prejudice and another thirty-three dismissed with prejudice. 169 defendants remain in the case.

- In the *Danny Corzine* case, 122 of the defendants have been dismissed without prejudice and another sixteen have been dismissed with prejudice. Ninety-nine defendants remain.

- In the *Michael Huff* case, seventeen of the defendants have been dismissed without prejudice and another two dismissed with prejudice. 155 defendants remain.

The dismissal rates in Missouri show a high rate of dismissals three to five years after a case is filed. In the sample of Missouri asbestos cases filed from 2016-2020, seventy-four percent of the defendants named in asbestos cases filed in 2016, and fifty-nine percent of the defendants named in asbestos cases filed in

2017, were dismissed without payment or liability by January 2020.

It is not uncommon for dismissal rates in Missouri asbestos cases to be as high as ninety-six percent. In the *James Lewis* and *Jerry Malady* cases filed in 2016, over ninety-six percent of all defendants named (some 190 of 197 defendants) were dismissed without payment or a finding of liability.

201 companies in the sample of Missouri asbestos cases filed from 2016-2020 were dismissed in *every* case in which they were named.

Resources Wasted in Defense Costs

Over-named defendants are forced to waste resources in the form of defense costs for each one of the dismissed cases. These costs start on day one and may continue for years until dismissal. Defendant companies can spend many thousands of dollars in defense costs and loss of productivity to be released from cases in which there was never proof of exposure. A commentator has explained:

> To expand this point and state the obvious, every defendant that has been named on a complaint from which they are eventually dismissed still has to accept service of the complaint, have local and national counsel open files and defend the case, attend depositions, respond to discovery, etc. Even though they pay nothing in indemnity in such cases, they incur very real defense expenses. This is the tort system gone mad.[64]

In situations where defense costs are paid throughout insurance, there is potential erosion of policies that may be needed to pay future plaintiffs with legitimate claims.

Further, the cost associated with improper naming of asbestos defendants has contributed to force some defendants into bankruptcy.[65]

For example, in the January 2020 bankruptcy filing of DBMP LLC, the holding company for the legacy asbestos liabilities of CertainTeed, DBMP notes that more than half of "claims filed against [CertainTeed] after 2001 were dismissed—usually because the plaintiff could provide no evidence of exposure to a [CertainTeed] asbestos containing product."[66] The "dismissal rate demonstrates the lack of any good-faith basis for much of the litigation filed against the company."[67] (Certainteed has a large roofing shingle plant in Jonesburg, Missouri).

According to ON Marine, another company that filed bankruptcy related to asbestos liabilities in 2020, ninety-five percent of the over 182,000 asbestos personal injury claims filed against it since 1983 were dismissed without payment to a plaintiff.[68]

In another recent bankruptcy, Aldrich Pump (a manufacturer of pumps and compressors) and Murray Boiler (a manufacturer of heating and cooling equipment) said that following the primary historical asbestos defendants' exit from the tort system in the early 2000s, the companies began to be named in "the vast majority of all mesothelioma claims asserted across the country, a percentage that could not plausibly be warranted given the nature of [their products]…."[69] The filings equated to "a new claim asserted against the [companies] essentially every working hour of every weekday, every week of the year."[70] Typically, complaints "indiscriminately named the [companies] alongside scores of other defendants, without any pleading of specific facts alleging exposure to any defendant's products."[71]

Aldrich and Murray successfully obtained dismissals in about two-thirds of their post-Bankruptcy Wave cases—"due, largely, to plaintiff naming practices with no basis in reality"—but the aggregate cost of the process was "substantial."[72]

Reform: Disclose Exposure Histories

To address the over-naming problem, Iowa passed a first-of-its-kind law in 2020 to help ensure that there is an evidentiary basis for each claim against each defendant named in an asbestos tort action.[73] The law requires asbestos plaintiffs to provide a sworn information form with the initial complaint providing detailed information as to the plaintiff's exposures and their connection to each defendant with supporting documentation. The court must dismiss the action without prejudice as to any defendant whose product or premises is not identified in the required disclosures. Several other states have since enacted similar legislation.[74]

Missouri should likewise require asbestos plaintiffs to disclose the basis for each claim against each defendant and produce supporting documentation.

Conclusion

Missouri should enact asbestos trust transparency legislation to fix the disconnect that exists between the tort and asbestos bankruptcy trust systems. This would allow asbestos plaintiffs to quickly obtain asbestos trust fund recoveries. Juries would be fully informed about all of a plaintiff's exposures to asbestos so that they can properly apportion liability and hold culpable parties responsible. Opponent claims that requiring plaintiffs to file trust claims at the outset of a tort case will cause undue burdens or delays have been proven false. Transparency laws simply change the timing of when trust claims are made. This results in less delay for plaintiffs and faster trust claim recoveries.

Missouri also must ensure that there is an evidentiary basis for each claim against each defendant named in an asbestos action. This would cut down on unnecessary litigation and wasted defense costs, facilitate settlements, and focus judicial resources on claims with evidentiary support.

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31. In re Garlock Sealing Techs., 504 B.R. at 73; Lloyd Dixon & Geoffrey McGovern, Bankruptcy's Effect on Product Identification in Asbestos Personal Injury Cases (Rand Corp. 2015) (finding that bankruptcy reduces the likelihood that interrogatories and depositions in subsequent tort cases will identify exposure to the asbestos-containing product of the bankrupt entity), available at http://www.rand.org/pubs/research_reports/RR907.html; Marc C. Scarcella et al., The Philadelphia Story: Asbestos Litigation, Bankruptcy Trusts And Changes in Exposure Allegations From 1991-2010, 27 MEALEY'S LITIG. REP.: ASBESTOS (Nov. 7, 2012) ("The results from the study of the Philadelphia asbestos cases 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 the claims filed prior to the Bankruptcy Wave that had comparable (or even identical) exposure histories.").

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33. Volkswagen of Am., Inc. v. Superior Court of San Francisco, 43 Cal. Rptr.3d 723 (Ct. App. 2006); Willis v. Buffalo Pumps, Inc., 2014 U.S. Dist. LEXIS 74954, 2014 WL 2458247, at *1 (S.D. Cal. June 2, 2014) ("Federal and state courts have routinely held that claims submitted to asbestos bankruptcy trusts are discoverable….").

34. Mark D. Plevin, The Garlock Estimation Decision: Why Allowing Debtors and Defendants Broad Access to Claimant Materials Could Help Promote the Integrity of the Civil Justice System, 23 J. BANKR. L. & PRAC. 458 (2014) ("Because they require sworn statements that the claimant was exposed to a particular debtor's asbestos, the trust submissions may be the most important documents for a defendant attempting to undermine the credibility of a plaintiff's tort system assertions."); Ableman, supra note 30, at 1209 ("[A]s plaintiffs reach out to more fringe levels of defendants, it becomes increasingly difficult to know what other exposures have taken place. It is the trust submissions that will provide an efficient means of identifying these other exposures.").

35. Lester Brickman, Fraud and Abuse in Mesothelioma Litigation, 88 TUL. L. REV. 1071, 1088 (2014); see also Editorial, The Double-Dipping Legal Scam, WALL ST. J., Dec. 26, 2014, at A12 ("Court documents show the ugly specifics of 'double-dipping'—in which lawyers sue a company and claim its prod-

ucts caused their clients' disease, even as they file claims with asbestos trusts blaming other products for the harm.").

36. In re Garlock Sealing Tech., 504 B.R. at 73.

37. Id.

38. Id. at 84.

39. Id. at 86.

40. Id. at 84.

41. Id.

42. Id.

43. Id. at 86.

44. Mt. McKinley Ins. Co. v. Pittsburgh Corning Corp., 2015 U.S. Dist. LEXIS 105890, 2015 WL 4773425, at *5 (W.D. Pa. Aug. 12, 2015) ("The evidence uncovered in the Garlock case arguably demonstrates that asbestos plaintiffs' law firms acted fraudulently or at least unethically in pursuing asbestos claims in the tort system and the asbestos trust system."); In re The Fairbanks Co., 601 B.R. 831, 843 (N.D. Ga. Bankr. 2019) ("anecdotal evidence that indicates that fraud and abuse in the system does exist…."); Peggy L. Ableman, The Garlock Decision Should Be Required Reading for All Trial Court Judges in Asbestos Cases, 37 AM. J. TRIAL. ADVOC. 479, 488 (2014) ("We are now past the time when [the case examples in Garlock] can be referred to as mere anomalies.").

45. Peggy Ableman, et al., A Look Behind the Curtain: Public Release of Garlock Bankruptcy Discovery Confirms Widespread Pattern of Evidentiary Abuse Against Crane Co., 30 MEALEY'S LITIG. REP.: ASBESTOS (Nov. 4, 2015).

46. Mark A. Behrens, et al., Ill. Civil Justice League, Illinois Asbestos Trust Transparency: The Need to Integrate Asbestos Trust Disclosures with the Illinois Tort System 3 (2017).

47. Informational Brief of Bestwall LLC, In re Bestwall LLC, 2017 WL 4988527 (Bankr. W.D.N.C. Nov. 2, 2017).

48. Id.

49. Id.

50. Statement of Interest on Behalf of the United States of America Regarding Estimation of Asbestos Claims, In re Bestwall LLC, No. 17-31795, at 1-2 (Bankr. W.D.N.C. Dec. 28, 2020).

51. Id. at 10. Asbestos bankruptcy trust transparency laws have been enacted in Alabama, Arizona, Iowa, Kansas, Michigan, Mississippi, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin.

52. Searcey & Barry, supra note 10.

53. See id.

54. Eric D. Carlson, et al., Wisconsin Asbestos Bankruptcy Trust Legislation, Int'l Ass'n of Def. Counsel Newsl., Oct. 2018; Jon B. Orndorff, et al., A Three Year Retrospection on West Virginia's 2015 Asbestos Litigation Reform, Int'l Ass'n of Def. Counsel Newsl., Sept. 2018; Edward Slaughter, et al., Two Years of Trust Transparency in Texas, Int'l Ass'n of Def. Counsel Newsl., Feb. 2018.

55. Davis, supra note 29.

56. Id.

57. Id.

58. Mark Behrens & Christopher Appel, Over-Naming of Asbestos Defendants: A Pervasive Problem in Need of Reform, 36 MEALEY'S LITIG. REP.: ASBESTOS (Mar. 24, 2021).

59. Testimony of Mark Behrens before the Missouri Senate Comm. on the Judiciary and Civil and Criminal Jurisprudence, on behalf of the U.S. Chamber Institute for Legal Reform, in support of S.B. 331, Mar. 8, 2021.

60. Lauren Osterndorf, Looking at Asbestos Litigation Complaint Naming Patterns, KCIC (Feb. 26, 2018), available at https://www.kcic.com/trending/feed/looking-at-asbestos-litigation-complaint-naming-patterns/.

61. KCIC, supra note 1, at 5.

62. Jonathan Terrell, The Most Interesting Panel at Perrin's Asbestos Litigation Conference, KCIC, Sept. 13, 2019, available at https://www.kcic.com/trending/feed/the-most-interesting-panel-at-perrins-asbestos-litigation-conference/ (summarizing remarks of Resolute's Tom Ryan).

63. Id.

64. Id.; see also Jessica Karmasek, W.V. Firm Blames Almost 300 Companies In Each Asbestos Lawsuit, FORBES.COM, June 28, 2016, available at https://www.forbes.com/sites/legalnewsline/2016/06/28/wv-firm-blames-almost-300-companies-in-each-asbestos-lawsuit/?sh=6d5f53324fe0 (quoting RiverStone Resources LLC's Nina Caroselli, "From a defense perspective, there's a cost to retain counsel, respond to discovery, sometimes participate in depositions, file motions to dismiss, etc. All of it has a cost…. You're not just talking about the attorneys' time, but the filing fees in various courts, the money paid to experts, court reporters…. All of these costs are incurred in order to get a defendant dismissed from these cases.").

65. Data submitted in Garlock's bankruptcy showed the company was sued in more than 700,000 asbestos personal injury cases—and "was dismissed in 150,000 claims without payment, while another 75,000 claims were abandoned." James Lowery, The Scourge of Over-Naming in Asbestos Litigation: The Costs to Litigants and the Impact on Justice, 32 MEALEY'S LITIG. REP.: ASBESTOS (Jan. 24, 2018). Garlock "resolved another 445,000 cases for an average of less than $3,000 per case." Id.

66. See Informational Brief of DBMP LLC, In re DBMP LLC, No. 20-30080, at 1-2 (Bankr. W.D. N.C. Jan. 23, 2020), available at https://document.epiq11.com/document/getdocumenstbydocket/?docketId=754333&projectCode=DBM.

67. Id. at 2.

68. See Declaration of Kevin J. Whyte in Support of Chapter 11 Petition of Marine Service Company LLC, In re ON Marine Servs. Co. LLC, No. 20-20007, at 5 (Bankr. W.D. Pa. Jan. 2, 2020).

69. Informational Brief of Aldrich Pump LLC and Murray Boiler LLC, In re Aldrich Pump LLC, No. 20-30608, at 5 (Bankr. W.D. N.C. June 18, 2020), available at https://www.kccllc.net/aldrich/document/20306082006170000000000006.

70. Id.

71. Id.

72. Id. at 21.

73. Iowa Code § 686B.3.

74. Asbestos exposure history disclosure laws have been enacted in Arizona, Iowa, North Dakota, Tennessee, and West Virginia. ■

MEALEY'S LITIGATION REPORT: ASBESTOS
edited by Bryan Redding
The Report is produced twice monthly by

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Email: mealeyinfo@lexisnexis.com
Web site: http://www.lexisnexis.com/mealeys
ISSN 1089-2397