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The Billion Dollar Difference: The Value Of Trust Transparency

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Commentary

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[Editor's Note: Mary Margaret Gay and Sarah Beth Jones are attorneys at Forman Perry Watkins Krutz & Tardy LLP, practicing in the asbestos, environmental litigation, personal injury, and product liability areas. They have represented defendants in asbestos and other mass tort cases and are devoted to the defense of individual cases and mass tort litigation involving asbestos in Mississippi and throughout the country. The views expressed herein are the authors' own, not necessarily those of their firm or their clients. *Responses are welcome.]*

Introduction

A January 2014 decision by a North Carolina federal bankruptcy judge has attracted national attention for lifting the veil between tort and bankruptcy asbestos recovery and exposing several asbestos plaintiff personal injury law firms' efforts to "game" the asbestos recovery system through widespread "suppression of evidence".[1] After substantial discovery and a lengthy trial to estimate the current and future liability of gasket manufacturer Garlock Sealing Technologies, Inc. for mesothelioma claims, the court documented numerous instances of plaintiffs' firms withholding key exposure evidence in tort cases against Garlock. Although this was not the first time that a court has estimated asbestos liabilities in bankruptcy, Judge George Hodges found that "[t]he withholding of exposure evidence by plaintiffs and their lawyers was significant and had the effect of unfairly inflating the recoveries against Garlock,"[2] which rendered those prior settlements useless in estimating Garlock's actual liability. The opinion made national headlines and immediately impacted the asbestos litigation landscape, as it provides long-suspected, but previously inaccessible, real world proof that bankruptcy transparency in the tort system is essential to the defense of each and every case.[3]

Over the years, defendants have argued some asbestos personal injury lawyers were gaming the system to prevent full and fair disclosure of plaintiff exposure histories that could reveal inconsistencies and allow juries to make more informed decisions as to the cause of an injury. Plaintiffs' attorneys and their representatives countered defendants lacked proof of wrongdoing and that, in any event, plaintiffs' attorneys are merely zealously representing their clients.[4] The *Garlock* opinion clears the fog and documents what appears to be a pattern of self-dealing and double-dipping in both the civil tort system and bankruptcy trust resources for recovery by some asbestos plaintiffs' firms. The court's findings are likely the tip of the iceberg since the judge could have sampled cases from any number of asbestos plaintiffs' firms and found the same abuses occurring against other defendants.

How seismic the impact of the *Garlock* decision will be rests on the shoulders of defendants, insurers, and defense counsel. If the decision proves anything, it is that greater transparency is needed between asbestos bankruptcy trusts and the civil tort system. Defendants are now charged with using this opinion to affect every level of trust transparency in litigation.

Courts and legislatures should adopt reforms to address the abuses described by Judge Hodges and restore integrity to the asbestos compensation system; as such reforms would benefit both individuals and defendants. This commentary provides defendants with the resources to apply *Garlock* into every defense.

The Garlock Bankruptcy Difference

Although the bankruptcy system was created to provide a transparent look into a debtor's assets, asbestos bankruptcies have evolved into a much different system, with plaintiffs' attorneys shrouding them in secrecy under the guise of claimant confidentiality.[5] This secrecy has extended to even basic claimant statements, which are almost always public record in any non-asbestos bankruptcy. Despite defendants' efforts to access this information, plaintiffs' attorneys and their representatives have guarded this information by arguing defendants had no evidence of the abuses they suspected, and that, in any event, plaintiffs' attorneys were merely zealously representing their clients in both the bankruptcy system and tort system.[6] The *Garlock* opinion marks the first time a court has recognized on a broad scale how the asbestos bankruptcy trust system, and its plaintiffs' attorneys counterparts, are rife with self-dealing and double-dipping at the expense of defendants in the asbestos tort system.

As exhibited by the voluminous docket and hearing transcripts, Judge Hodges took a profound interest in the historical context of asbestos litigation, its application to the bankruptcy process, and the estimation of liability. Judge Hodges allowed six days of education testimony on the general nature of asbestos litigation, as well as Garlock's role in the tort system, followed by a seventeen day estimation hearing.[7]

It was clear from the outset Judge Hodges was taking a careful, rigorous review of the evidence rather than adopting the estimation approach which had been applied in nearly all previous asbestos bankruptcy cases. In other bankruptcies, a "settlement approach" was applied to estimate present and future asbestos liabilities for a §524(g) trust. The settlement approach estimates future liability by extrapolating a debtor's history of resolving claims in the tort system. Garlock argued the settlement approach was unreliable in its situation, and instead promoted a "legal liability approach" to estimation, which considers the merits of claims in the aggregate by applying an econometric analysis of the projected number of claimants and their probability of success. Judge Hodges was receptive stating, "I think that we should allow evidence on both of those approaches and see at the end of the day which one appears to be the most probative of what the aggregate liability is."[8] He confirmed this in his subsequent opinion noting, "[t]his Court, however, is not the first to attempt a global estimation of asbestos liability and has the benefit of the collected experience of the courts that have previously conducted estimations. None of these cases is controlling here; and none of them deal with the fact pattern presented here."[9] Judge Hodges' decision is a thoughtful and timely assessment, not only of Garlock's role in the tort system, but also of the overall state of asbestos litigation.

Judge Hodges rejected the traditional estimation model based on settlement history, finding that Garlock's historical settlement "values are not reliable because those values are infected with the impropriety of some law firms and inflated by the cost of defense."[10] Instead, Judge Hodges adopted the legal liability approach.[11] The result estimated that $125 million was sufficient to "satisfy Garlock's legitimate present and future mesothelioma claims against it."[12] This amount is a far cry from the $1.3 billion estimated and recommended by the Asbestos Claimants Committee.[13] Notably, the $125 million estimate also stands in stark contrast to the $1.17 billion estimation entered months earlier in the Bondex International, Inc. where a far less rigorous review was performed by Judge Judith Fitzgerald in the Delaware Bankruptcy Court.[14]

Judge Hodges' most scathing remarks were targeted at the lack of transparency between the bankruptcy and tort systems. In his opinion, Judge Hodges recounted the maneuvering by the parties in asbestos litigation, including "the effort by some plaintiffs and their lawyers to withhold evidence of exposure to other asbestos products and to delay filing claims against bankrupt defendants' asbestos trusts until after obtaining recoveries from Garlock (and other viable defendants)."[15] As part of the estimation process, the court allowed the parties to conduct "wide ranging" discovery, which included claimant questionnaires, experts to assist with data compilation and projections, as well as discovery directed at other asbestos trusts.[16] Of the fifteen cases in which full discovery

was permitted, "Garlock demonstrated that exposure evidence was withheld in each and every one of them."[17] The opinion provides details from a number of those cases, revealing several different asbestos plaintiffs' firms in different courts across the country over time all withheld exposure evidence to maximize recoveries for their clients.

Utilizing *Garlock* in Tort Litigation

Understanding the specifics of the *Garlock* opinion and its breadth is essential, and all attorneys, judges, defendants and insurers involved in asbestos litigation should be well-versed in Judge Hodges' opinion. As retired Delaware Superior Court Judge Peggy Ableman has recognized, "there is no question that the *Garlock* decision, together with the startling findings recounted therein, should be required reading for all judges who preside over asbestos personal injury cases."[18] Judge Hodges' opinion details the events which have impacted asbestos litigation, observing how "[t]he asbestos tort litigation system has evolved through thirty-plus years of moves and counter-moves as circumstances changed and plaintiffs' lawyers sought to increase recoveries for their clients and defendants' lawyers sought to limit their clients' losses."[19] His conclusions, along with his commentary on the problems which Garlock and other defendants face in the asbestos tort system, bring to light the real problems which have plagued the litigation.[20]

The Garlock bankruptcy has been an ongoing fight between the debtor and the plaintiffs' attorneys, who control the creditor committees, which began long before the estimation hearing. Even as a defendant in the litigation, Garlock recognized the importance of bankruptcy discovery and built a record in the tort system by seeking discovery of trust filings by plaintiffs and evidence of exposure to bankrupt companies. Then upon filing bankruptcy, unlike numerous past asbestos bankruptcies, Garlock as debtor took an adversarial role in the bankruptcy estimation, including their insistence on the need for full discovery of the claimants, which yielded a plethora of information related to the bankruptcy system never before reviewed by any single court.

Defense counsel is charged with providing clients and the court all of the information available and necessary to help defend and value cases at every stage of the litigation process. Historically, arguing the value of trust information in asbestos cases has been a challenge for defendants, with no single source of available trust information to quantify suspected, widespread problems. The *Garlock* decision is now standalone proof of the problems caused by the lack of transparency in the trust system. Judge Hodges' opinion rebukes the plaintiffs' bar's prior defense of the value of the trust claims in the tort system and the accompanying allegations that the systematic fraud is just a myth perpetrated by defendants. Formerly, trust representatives routinely spoke out with statements like "there is not a scintilla of evidence of any such problem."[21] Judge Hodges' opinion nullifies these sham statements and provides the evidence needed to support greater asbestos bankruptcy trust claim transparency.[22]

Asking the Right Questions

The challenge now for defense counsel is to apply the lessons learned in *Garlock* to their day-to-day defense litigation. First, the *Garlock* discovery and subsequent opinion in its bankruptcy case would have never been possible had its tort system counsel not built their case. They asked the right questions in discovery, at hearings, at pre-trial conferences, at trial, and even post-trial to build the record which would later be used as the foundation for Judge Hodges' opinion. All defendants should now work to flesh out plaintiffs' claims and counter any potential juxtapositions of conduct in the tort and bankruptcy system.

Asking the right questions is only the beginning; utilizing the available information is key to the long-term impact of trust transparency on asbestos litigation. Eliciting bankruptcy trust discovery and claim submissions in a case forces plaintiffs' counsel to expend more resources in the discovery process and opens the door for discovery of information, which can bring to light the inner workings of the firms' asbestos practice. For defendants still in the asbestos tort system, transparency of bankruptcy information forces plaintiffs to play by the rules and disclose the exposures and recoveries of every plaintiff.

Guides are already in place to obtain this information. In 2011, MDL 875, the federal asbestos court, acknowledged the need for trust transparency.[23] In one of its most detailed orders to date, the court sanctioned bankruptcy discovery, including form discovery questions, as well as a standard authorization for

records requests directly from the trusts.[24] Those same standard discovery requests and form authorizations are now being utilized in courts around the country. Defendants should ensure they are asking for all available information about a trust claim, which may include past claims, current claims, deferred claims, and even notice of intent to file a future claim. In cases where plaintiffs' refuse to provide trust information and authorizations for the release of trust records, the *Garlock* opinion equips defense counsel to counter that refusal in court. The need for bankruptcy discovery is undergirded by Judge Hodges' opinion, and it will now be hard for judges to turn a deaf ear to defendants' requests for critical case information from plaintiffs' bankruptcy trust claims.

Surprisingly, in those jurisdictions where bankruptcy discovery is already allowed, it is routinely not demanded. In three jurisdictions, Oklahoma, Ohio and Wisconsin, statutory law requires plaintiffs to provide trust claims information at points throughout the litigation.[25] For those jurisdictions where case management orders or scheduling orders are in place, defense counsel should be evaluating whether trust discovery is being provided, whether the case management orders go far enough in light of the *Garlock* Order, and whether defendants are demanding the information. If plaintiffs routinely fail to comply with these case management orders, these deficiencies should be addressed promptly and regularly.

Occasionally, courts choose to update or amend their standard case management orders, and defense counsel should seize the opportunity to educate the court on *Garlock*, bankruptcy discovery, and how revisions to existing provisions will improve trust transparency. It is imperative that defense counsel push for disclosure of bankruptcy trust claims prior to any trial setting, mediation, or settlement conference in the litigation. Many defendants find that plaintiffs' counsel are delaying or deferring filing of claims with the bankruptcy trusts until after the case in the tort system resolves, thereby preventing transparency and possibly continuing the inconsistencies in exposures claimed in the tort and trust systems. This is no reason not to continue to seek the information. Without legislation to the contrary in place, these tactics are likely to continue; however, building a record now through discovery will provide the needed proof for the future. In light of the *Garlock* order, defense counsel has no excuse to not push for trust discovery.

Using the Information

Once defense counsel has the trust claim information in hand, their job is to utilize the claim information to hold plaintiffs and their attorneys accountable for previous exposure allegations and statements. Every trust claim is different, but the trust data and documents can provide plaintiff's exposures, worksites, years of work, years of exposure, military service, trade, job title, specific product references, smoking history, diagnosis date, diagnosing doctor, screening company connections, previous counsel representing the plaintiff, past addresses, relatives, personal representative, death certificates and numerous other fields of information. Documents, including previously filed complaints, discovery and medicals, are also available from some of the trusts. This information is provided to the trusts by the plaintiff and/or their counsel and sworn to under penalty of perjury.

All of this is relevant information which should be used in the tort system to depict the entire exposure, medical, causation and liability picture of each plaintiff. Examples of use may include challenging a plaintiff's memory, providing alternate exposures, identifying additional worksites, and showing alternative causations to name a few. The use of this information is limited only by the innovative skills and creativity of the defense lawyer. Defense counsel should be challenged to review the trust information available and bring to light issues which may reduce a defendant's liability or prove that the injury was not in fact caused by the defendant being sued. Defense counsel should analyze trust claim information for relevant exposure information and compare such with the exposure information plaintiff has provided in the tort case for any inconsistencies, for which defense counsel can then hold plaintiffs accountable.

In addition to attacking the plaintiff's case, trust information should be used, when possible, to educate the court on available recovery from trusts. Many times, counsel assumes the court knows the real money which is available for plaintiffs from the trust system. But most defense counsel do not know how to ascertain what is really available to a plaintiff. Although publically available in trust distribution procedures, the information itself is byzantine. Recent numbers

provided by Bates White suggest asbestos plaintiffs are able to apply for recovery from billions in trust funds.[26] "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."[27] The article goes on to report an additional estimated $15 billion in funding possible from pending trusts.[28] Those numbers will grow as additional companies are forced into bankruptcy. Those numbers are astounding on their own, but are all the more compelling when shown alongside what a plaintiff has recovered or is estimated to recover. Using this information when discussing settlement of a case or beyond in proving set-offs or responsible shares can be vital to the successful defense of a case.

Utilizing the trust information does not have to be expensive. Presumably many defendants have routinely requested bankruptcy trust claims information for years. In that case, there should be no added costs, but possibly a reduction if cost-sharing could be implemented. Every defendant pending in a case should work together to get trust claims information. Much like previous mandates to litigation, most recently Medicare, defendants should look to key counsel to educate them and their counsel on the trust issues and assist them in creating standard processes to obtain and collect the information. Counsel should be charged with creating cost-sharing opportunities among all the other defendants in the case who need the same information.

As with other joint defense efforts, this will need to work from the top down. Without a mandate from clients and carriers to obtain the information and find cost-sharing opportunities, the defense will not focus their energy on this task. The single largest shockwave which defendants have the ability to create from the *Garlock* opinion would be a joint defense effort spanning every state, every jurisdiction, and every courtroom demanding the trusts claims information, sharing the costs and resources for doing so, and collecting the information to build a legislative case for trust transparency. This global demand for information will be the chilling factor which deters plaintiffs from gaming the two systems.

Plus, in addition to the evidence it provides to build a case for trust discovery and transparency, the *Garlock* opinion provides defendants with other useful tools and references. Judge Hodges draws conclusions about the opinions of common litigation experts and common defense strategies, including low dose and one fiber defenses, as well as provides historical context for asbestos litigation.

To truly capitalize on the information brought to light in the *Garlock* opinion and to succeed in gaining trust transparency reform, defendants have to present a unified and consistent effort. This will mean education and, most importantly, communication among counsel, carriers, and defendants. For years, Plaintiffs have unified on plans and issues which affect the litigation. In the past, defendants have argued that differing defenses and a defendant's visibility in the litigation have prevented unification. Every defendant should demand trust transparency. The challenge now becomes creating the flow of information, sharing of ideas and mandating transparency at all levels of litigation management.

Defendants Should Stay Tuned

It is still too early to tell the extent of the information, beyond the opinion itself, which will become available to defendants and the public as a result of the Garlock bankruptcy, in light of the fact that the estimation proceeding was sealed. Following the estimation trial, a number of third parties, including tort system defendants, bankrupt entities, insurance companies, and even medical insurance providers, sought access to the sealed transcripts and evidence used during the estimation proceedings, as well as the 2019 statements filed on behalf of individuals who allege claims against Garlock.[29]

Judge Hodges has granted a number of the requests for *Garlock* 2019 statements,[30] but to date, none of the information has been released pending the Official Committee of Asbestos Personal Injury Claimants' ongoing fight to prevent its dissemination.[31] This 2019 information, whether from Garlock or from other bankruptcy proceedings, could provide insight to civil defendants battling in the tort system about a plaintiff's potential trust claims, even before a claim is filed with the trust. This in turn could prevent attempts by plaintiffs and their counsel to withhold trust claim filing until after the tort system case resolution.

Additionally, the District Court entered a Memorandum of Decision and Order regarding appeals

from the bankruptcy court related to access to the Garlock estimation proceedings and filings reversing Judge Hodges' order to seal the estimation hearing[32] and accompanying evidence finding "although done with the best judicial intentions of providing for the efficient administration of justice," was improper because the bankruptcy court failed to articulate its reasons for sealing.[33] Considering the discovery Judge Hodges allowed during the estimation process, as well as evidence revealed in his opinion, it is clear the depth of the information is impressive and unmatched by any other single source of asbestos bankruptcy information. It is too soon to tell if, when, and what information will be available to defendants with respect to the pending remand, however in light of a recent decision by the United States Court of Appeals for the Fourth Circuit, the argument for public access to the sealed *Garlock* information is certainly bolstered.[34] As a recent *Forbes* article noted, "[a] new day is dawning, and—if the Court of Appeals acts consistently with its stated policy favoring public access in *Company Doe*—it just might prove to be the Day of Reckoning for fraudulent asbestos plaintiffs and their trial lawyer accomplices."[35]

Legal and business spectators around the world are also tuned-in to see what will come of the adversary complaints filed in the same bankruptcy court in North Carolina alleging conspiracy, fraud, and civil Racketeer Influenced and Corrupt Organizations Act (RICO) claims against several law firms and attorneys.[36] The targeted attorneys account for a large piece of high profile asbestos litigation, and the outcome of these cases could affect asbestos litigation globally. Recently CSX Transportation, Inc. won a racketeering lawsuit in federal court in West Virginia against two plaintiffs' lawyers from the Peirce Raymond & Coulter PC firm who allegedly filed fraudulently screened asbestos cases.[37] The case resulted in a jury award of more than $400,000, which when trebled, was increased to $1.3 million.[38] Because the RICO claims are not core-bankruptcy claims, the Western District of North Carolina severed the claims from the bankruptcy, and those cases will now proceed in the district court independently of the bankruptcy.

Conclusion

Change in asbestos litigation can be marked by a number of factors – evolution of claims against solvent defendants, legislative efforts to make broad-sweeping change, individual rulings by judges exposing bad conduct in the litigation, and the identification of new sources of claims. The question becomes how parties react to these changes. Historically, the *Garlock* order will fall in line with other events that have altered the litigation ranging from the Johns-Manville bankruptcy, the creation and dissolution of the Asbestos Claims Facility and Center for Claims Resolution, legislation creating 524(g) bankruptcy channeling provisions, the creation and resolution of MDL 875, FAIR Act introduction, utilization of screenings to identify plaintiffs, the fraud exposed in the silica MDL 1553, the rise and fall of non-malignancy filings and numerous asbestos bankruptcies to name a few. What defines the impact of an event on the litigation is the coordinated and strategic response from both sides. The impact of the *Garlock* decision is no different. Plaintiffs' attorneys continue to defend their position that trusts submissions are not on their face relevant to the tort system. The *Garlock* opinion is proof that transparency is essential to the litigation and without transparency a case cannot be properly adjudicated or resolved. Defendants are equipped, unlike ever before in the litigation, to advocate for trust transparency, argue for access to trust documents, and work together towards a single goal of transparency between the bankruptcy trust and tort systems.

Endnotes

1. *See In re Garlock Sealing Techs., LLC*, 504 B.R. 71 (Bankr. W.D.N.C. 2014); *see also* Peggy L. Ableman, *A Case Study From a Judicial Perspective: How Fairness and Integrity in Asbestos Tort Litigation Can Be Undermined by Lack of Access to Bankruptcy Trust Claims*, 88 TUL. L. REV. 1185 (2014); Lester Brickman, Fraud and Abuse in Mesothelioma Litigation, 88 TUL. L. REV. 1071 (2014); 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 No. 4 J. BANKR. L. & PRAC. NL Art. 2 (Aug. 2014); William P. Shelley et al., *The Need for Further Transparency Between the Tort System and Section 524(g) Asbestos Trusts, 2014*

Update – Judicial and Legislative Developments and Other Changes in the Landscape Since 2008, 23 WIDENER L.J. 675 (2014); Mark Behrens & Cary Silverman, *The Garlock Bankruptcy Order and What it Means for Defense Counsel*, 56 No. 5 DRI FOR THE DEF. 10 (May 2014).

2. *In re Garlock Sealing Techs.*, 504 B.R. at 86.

3. *See, e.g.* Daniel Fisher, *Judge Slashes Asbestos Liability in Garlock Bankruptcy to $125 Million*, FORBES, Jan. 10, 2014, *available at* http://www.forbes.com/sites/danielfisher/2014/01/10/judge-slashes-asbestos-liability-in-garlock-bankruptcy-to-125-million/; Daniel Fisher, *The Judge Won't Call Asbestos-Lawyer Shenanigans Fraud, But It Sure Smells Like It*, FORBES, Jan. 11, 2014, *available at* http://www.forbes.com/sites/danielfisher/2014/01/11/the-judge-wont-call-asbestos-lawyer-shenanigans-fraud-but-it-sure-smells-like-it/; Michael Gordon, *Judge Sides With Company in Asbestos Fight, Cuts Liability by More Than $1 billion*, CHARLOTTE OBSERVER, *available at* http://www.charlotteobserver.com/2014/01/13/4608904_judge-sides-with-company-in-asbestos.html#.U6REuZ0o7cs.

4. *See, e.g.*, Elihu Inselbuch et al., *The Effrontery of the Asbestos Trust Transparency Legislation Efforts*, 28 MEALEY'S LITIGATION REPORT: ASBESTOS 33 (Feb. 20, 2013) ("There is no 'double-dipping' problem that needs to be fixed.").

5. *See* Todd Brown, *Bankruptcy Trusts, Transparency and the Future of Asbestos* Compensation, 23 Widener L.J. 299, 314 (2013) ("Transparency may be the norm in most Chapter 11 cases, but these rules rarely apply in asbestos cases."); *see also* Gregory M. Gordon and Mark G. Douglas, Jones Day, Public Right to Full Disclosure in Bankruptcy Extends to Rule 2019 Statements (May/June 2013), *available at* http://www.jonesday/files/Publication/f78d48f6-d440-4dcb-b05a-f3b6f4724227/Presentation/PublicationAttachment/30110103-158c-41f0-a0bd-f820a325b527/Rule%20219%20Disclosure%20BRR%20May_June%202013.pdf.

6. *See, e.g.*, Elihu Inselbuch et al., *The Effrontery of the Asbestos Trust Transparency Legislation Efforts*, 28 MEALEY'S LITIGATION REPORT: ASBESTOS 33 (Feb. 20, 2013) ("There is no 'double-dipping' problem that needs to be fixed.").

7. *In re Garlock Sealing Techs.*, 504 B.R. at 74-75. Recently, in response to the negative press that has been generated against the plaintiffs' bar post-*Garlock* and the momentum building for reforms to address the abuses documented by Judge Hodges, asbestos plaintiffs' firms and their advocates have desperately tried to undermine the court's decision and findings. *See* Motion of the Official Committee of Asbestos Personal Injury Claimants to Reopen the Record of the Estimation Proceeding at ¶ 6, *In re Garlock Sealing Techs., LLC*, No. 10-31607 (Bankr. W.D.N.C. June 4, 2014) (arguing that "the Court has been subjected to a misleading account of Garlock's litigation and settlement history, distorted by Garlock's sharp practice. The impact has been material, leaving a deep stain on the estimation record on which this Court based its estimation order."); Janice Robinson Pennington, *A Look at The Record in Garlock's Celebrated Estimation Order*, 13 MEALEY'S ASBESTOS BANKR. REP. 34 (July 2014); Joanne Doroshow & Pamela Gilbert, *The Implausible Garlock Asbestos Decision*, Ctr. For Justice & Democracy (Apr. 2014).

8. Transcript of Proceedings at 176, *In re Garlock Sealing Techs., LLC*, No. 10-31607 (Bankr. W.D.N.C. Mar. 29, 2012).

9. *In re Garlock Sealing Techs.*, 504 B.R. at 87.

10. *Id.* at 73.

11. *Id.*

12. *Id.*

13. *Id.* at 74.

14. *See In re Specialty Prods. Holding Corp.*, 2013 Bankr. LEXIS 2051, 2013 WL 2177694, No. 10-11779-JKF (Bankr. D. Del. May 20, 2013). On July 28, 2014, RPM International Inc. announced an agreement in principle with the official representatives of current and future asbestos claimants to resolve all present and future asbestos personal injury claims related to Bondex International, Inc., Specialty Products Holding Corp., and other related entities. News Release: RPM International Inc. Announces Agreement in Principle to Resolve Asbestos Personal Injury Claims (July 28, 2014), *available at*

http://www.rpminc.com/news-releases/news-release/?reqid=1951853. Per the agreement, a 524(g) trust will be established and funded over the years with contributions totaling $797.5 million. *Id.* The trust will initially be funded with $450 million in cash upon the plan becoming effective. *Id.* "On or before the second anniversary of the effective date of the plan, an additional $102.5 million in cash, RPM stock or a combination thereof (at the discretion of RPM in this and all subsequent cases) will be deposited into the trust; On or before the third anniversary of the effective date of the plan, an additional $120 million in cash, RPM stock or a combination thereof will be deposited into the trust; and On or before the fourth anniversary of the effective date of the plan, a final payment of $125 million in cash, RPM stock or a combination thereof will be deposited into the trust." *Id.*

15. *In re Garlock Sealing Techs.*, 504 B.R. at 84.

16. *Id.* at 74.

17. *Id.* at 84.

18. *See* Peggy L. Ableman, *The* Garlock *Decision Should Be Required Reading for All Trial Court Judges in Asbestos Cases*, 37 AM. J. TRIAL ADVOC. 479, 486, 488 (2014) ("Notwithstanding the uncertain impact of the *Garlock* case, judges should view the decision as a wake-up call to acknowledge the very real possibility that asbestos lawsuits on their own dockets may be similarly comprised by the withholding of the same information in the court cases that is used to gain recoveries from the trusts."). Additionally, Judge Ableman recognizes the significance of the *Garlock* opinion for defense counsel noting the opinion "should provide new and powerful support for the defense bar's crusade for greater openness." *Id.* at 484.

19. *In re Garlock Sealing Techs.*, 504 B.R. at 83.

20. *Id.* at 82-87.

21. *See* Inselbuch, *supra* note 12 at 41.

22. Indeed, "Until recently, the defense bar pointed to only a smattering of reported instances of th[is] type of deception. . . . The Garlock opinion represents a stunning expose' [sic] of the breadth of the practice of withholding exposure evidence concerning the products of bankrupt entities." Peggy L. Ableman, *The* Garlock *Decision Should Be Required Reading for All Trial Court Judges in Asbestos Cases*, 37 AM. J. TRIAL ADVOC. 479, 483 (2014).

23. *See* Pretrial Order: Rules and Procedures Relating to the Authorization for Release of Bankruptcy Records Relating to Plaintiffs in the Asbestos Products Liability Litigation, *In re: Asbestos Prods. Liab. Litig. (No. VI)*, No. 2:01-md-00875-ER (Dec. 14, 2011).

24. *See id.*

25. *See* OKLA. STAT. tit. 76, §§ 81-89 (2013); OHIO REV. CODE §§ 2307.951-.954 (2013); WIS. STAT. § 802.025 (2014).

26. Marc C. Scarcella et al., *The Philadelphia Story: Asbestos Litigation, Bankruptcy Trusts and Changes in Exposure Allegations from 1991-2010*, MEALEY'S ASBESTOS BANKR. REP., Oct. 2012, at 1, *available at* http://www.bateswhite.com/media/publication/11_media.617.pdf.

27. *Id.* at 3.

28. *Id.*

29. *See, e.g.*, Matthew Daneman, *Garlock's Asbestos Fight Spreading*, DEMOCRAT & CHRONICLE, Apr. 4, 2014, *available at* http://www.democratandchronicle.com/story/money/business/2014/04/04/garlock-asbestos-documents/7305085/; Matthew Daneman, *More Companies Seek Garlock Asbestos Evidence*, DEMOCRAT & CHRONICLE, May 12, 2014, available at http://www.democratandchronicle.com/story/money/business/2014/05/12/garlock-asbestos-evidence-released/9011333/; Daniel Fisher, *Ford Seeks Garlock Bankruptcy Information to Fight Its Own Asbestos Suits*, FORBES, Mar. 17, 2014, *available at* http://www.forbes.com/sites/danielfisher/2014/03/17/ford-seeks-garlock-bankruptcy-information-to-fight-its-own-asbestos-suits/; Daniel Fisher, *Manufacturers' Lonely Quest to Open Asbestos Claims Files Gains Strength*, FORBES, Mar. 27, 2014, available at http://www.forbes.com/sites/danielfisher/2014/03/27/plaintiff-lawyers-fight-manufacturers-lonely-quest-to-open-asbestos-claims-files/; John O'Brien,

Insurer, Bondex Want to Used Sealed Evidence of Asbestos Attorneys' Misrepresentations, LEGAL NEWSLINE, Apr. 11, 2014, available at http://legalnewsline.com/issues/asbestos/248527-A insurer-bondex-want-to-use-sealed-evidence-of-asbestos-attorneys-misrepresentations.

30. *See* Order Granting Motion for Access to Rule 2019 Statements and Exhibits, *In re Garlock Sealing Techs., LLC*, No. 10-31607 (Bankr. W.D.N.C. Apr. 14, 2014); Order Granting Ford Motor Company's Motion for Access to Rule 2019 Filings, *In re Garlock Sealing Techs., LLC*, No. 10-31607 (Bankr. W.D.N.C. May 6, 2014); *see also* Daniel Fisher, *Secrecy Crumbling As Judge Gives Ford, Insurers Access to Asbestos Files*, FORBES, May 6, 2014, *available at* http://www.forbes.com/sites/danielfisher/2014/05/06/secrecy-crumbling-as-judge-gives-ford-insurers-access-to-asbestos-files/.

31. A 2019 statement is a short, verified statement that must be filed with the bankruptcy court when a party represents multiple creditors, or in the case of asbestos bankruptcies, multiple personal injury claimants. At the urging of the plaintiffs' attorneys, these filings are often sealed by the court in asbestos bankruptcies.

32. *See* Order Regarding Use of Confidential Material at the Estimation Hearing, *In re Garlock Sealing Techs., LLC*, No. 10-31607 (Bankr. W.D.N.C. July 23, 2013).

33. *Legal Newsline v. Garlock Sealing Techs. LLC*, No. 3:13-cv-00464-MOC, 2014 WL 3696576 (W.D.N.C. July 23, 2014). In turn, Judge Hodges entered an Order Establishing Protocols for Public Access to Sealed Materials in Record of Estimation Proceeding on August 1, 2014. Order Establishing Protocols for Public Access to Sealed Materials in Record of Estimation Proceeding, *In re Garlock Sealing Techs., LLC*, No. 10-31607 (Bankr. W.D.N.C. Aug. 1, 2014). The Order outlines the procedures for motions to keep documents or other materials previously sealed by the bankruptcy court in connection with the estimation hearing sealed. *Id.* Pursuant to the Order, materials which are not the subject of a motion to seal will be made available to the public sometime in early October 2014. *Id.*

34. *Company Doe v. Public Citizen*, 2014 U.S. App. LEXIS 7113, No. 12-2209 (4th Cir. April 16, 2014).

35. Mark Chenoweth, *Will Fourth Circuit Decision to Unseal A CPSC Case Be a Boon to Asbestos Defendants?*, FORBES, May 1, 2014, *available at* http://www.forbes.com/sites/wlf/2014/05/01/will-fourth-circuit-decision-to-unseal-a-cpsc-case-be-a-boon-to-asbestos-defendants/.

36. Daniel Fisher, *Embattled Gasket Maker Sues Asbestos Lawyers for Fraud*, FORBES, Jan. 10, 2014, *available at* http://www.forbes.com/sites/danielfisher/2014/01/10/embattled-gasket-maker-sues-asbestos-lawyers-for-fraud/.

37. Greg Ryan, *CSX Triple Damages in Asbestos Fraud Suit Against Attys*, LAW360, Sept. 26, 2013, *available at* http://www.law360.com/articles/475937/csx-nets-triple-damages-in-asbestos-fraud-suit-against-attys; Martha Neil, *2 Plaintiffs Lawyers Lose Civil RICO Case re CSX Asbestos Claims; Federal Jury Awards $429K*, ABA JOURNAL, Jan. 3, 2013, *available at* http://www.abajournal.com/news/article/2_plaintiffs_lawyers_lose_civil_rico_case_re_csx_asbestos_filings_federalju/.

38. *See supra* note 45. ■

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