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Preserving The Record: Why Defendants Must Oppose The Destruction Of Asbestos Bankruptcy Claimant Data

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Commentary

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Introduction

For companies that continue to be named in asbestos litigation after more than fifty years, and the lawyers who defend them, a central issue in asbestos litigation remains unchanged: exposure evidence is developed across parallel systems but rarely presented in a unified or complete form in the tort system. That structural gap continues to have real consequences for case valuation and causation analysis, particularly given the latency of asbestos-related disease and the passage of time between exposure and claim. While trust submissions, sworn and often accompanied by work histories, product identification, and medical documentation, remain among the most probative sources

of exposure evidence, access to and preservation of that information is neither uniform nor guaranteed. Although recent court orders and legislative efforts have improved transparency at the margins, significant gaps remain. More concerning, certain trusts are now signaling efforts to limit or eliminate historical data, raising immediate questions about the preservation of uniquely probative evidence. This article does not revisit the well-documented history of these issues but instead focuses on two current developments: emerging threats to trust data retention and the recent case study analysis underscoring the continued evidentiary value of trust claim materials in asbestos and talc litigation.

The recent case study published by Gay Jones & Kuhn, examining asbestos litigation filings and corresponding bankruptcy trust claim eligibility, underscores the unchanged fact in asbestos litigation that the universe of potential exposures for an asbestos plaintiff, and corresponding bankruptcy trust compensation sources, routinely extend well beyond what is developed in the litigation case.

For defense counsel, the takeaway is two-fold. First, it is not the number of claims in the abstract, but that those claims represent a set of alternative exposure pathways that, if not affirmatively developed, remain absent from the plaintiff's exposure picture and, ultimately, the defense in litigation.

Second, the availability of compensation from the trust system materially affects the value of a plaintiff's case. Trust claims are not just likely; trust claims are expected. And where trust claims information is incomplete, delayed, or unavailable, the resulting record risks understating both the breadth of exposure and the context necessary for accurate causation and allocation of fault analysis. This article addresses the attempt of asbestos bankruptcy trusts to quickly destroy records, the resulting litigation in Delaware chancery court, and the value of that bankruptcy trust claims data in current asbestos litigation.

Defense Perspective On the Value of Bankruptcy Trust Data in Recent Asbestos Case Study

The recent asbestos case study, conducted in late 2025 and published in 2026, examined asbestos case data and corresponding asbestos bankruptcy trust claim eligibility and disclosure trends. Drawing from publicly available case data across multiple jurisdictions, the study confirms that plaintiffs in asbestos litigation are broadly eligible for bankruptcy trust compensation across a significant number of distinct trusts. Within the analyzed mesothelioma cases shown in Figure 1, every plaintiff qualified for bankruptcy trust compensation, with a substantial majority eligible to pursue claims against numerous trusts.

Figure 1.

Data Snapshot: Bankruptcy Trust Claim Eligibility

From an initial pool of 697 asbestos cases filed or litigated between 2020 and 2022 across ten jurisdictions, a refined sample of 97 mesothelioma cases spanning more than 30 plaintiff firms was analyzed for bankruptcy trust claim eligibility.

- **100%** of plaintiffs were eligible to file asbestos bankruptcy trust claims.
- Each plaintiff qualified for a **minimum of 5** trust claims.
- **85%** of plaintiffs were eligible to file **20+ trust claims**.

Trust compensation is not merely available, but it is material and substantial. The study indicates that, on average, mesothelioma plaintiffs could receive asbestos bankruptcy trust claims payments exceeding \$667,700. Simply put, mesothelioma plaintiffs could obtain six-figure compensation based on identifying their place of work, the products they recall, and the time periods they worked with a product or at a location. These estimates reflect compensation that may be pursued independently of the tort system without the need to initiate or litigate a civil action.

In several instances, plaintiffs in the study were eligible to receive more than \$1 million in aggregate bankruptcy trust compensation. The plaintiff with the largest trust compensation in the study was estimated to receive more than *\$1.7 million dollars*. These amounts materially impact the valuation of any asbestos-related tort action.

The availability of trust claims is significant beyond additional compensation; it reflects the breadth of exposures identified by the plaintiff, including multiple worksites, products, and time periods that may not otherwise be developed or disclosed in litigation. For defense purposes, this information is indispensable. It informs causation, supports allocation, and provides a factual basis for challenging incomplete exposure narratives. Accordingly, defense counsel should be expected to pursue and obtain trust claims information in every case through targeted discovery, deposition development, and analysis of available trust-related materials to ensure that case valuation is based on the full scope of the plaintiff's exposure history, not a partial or strategically curated presentation of exposures.

Analysis of bankruptcy trust claim disclosures within the data set demonstrated that disclosure by plaintiffs was not dictated by litigation disclosure completeness, but by mandate.¹ In a majority of the cases,

plaintiffs did not disclose *any* bankruptcy trust claims information. When disclosures did occur, it appeared to correlate with jurisdictional court orders requiring disclosure. In fact, in every case where some trust information was produced, an average of 16 *additional undisclosed* trust claims were identified. This represented significant undisclosed compensation averaging over \$400,000.

For defense, the implication is clear: reliance on the plaintiffs to produce information is unrealistic and potentially leaves large numbers of undisclosed claims, their underlying information, and the compensation that accompanies those claims unknown in tort litigation. This information must be independently developed by defense counsel to defend each unique plaintiff case. That necessity, in turn, underscores the importance of preserving trust data. Where trusts limit access to or destroy historical claim information, they eliminate uniquely probative evidence of exposure and compensation that cannot be reliably reconstructed from other sources to the detriment of accurate adjudication in the tort system.

The Battle Over Trust Claims Document Destruction In Delaware Chancery Court

Against the backdrop of substantial trust compensation and the demonstrated gaps in disclosure, recent actions by asbestos bankruptcy trusts raise immediate concerns regarding the availability of critical exposure evidence. In January 2025, multiple asbestos bankruptcy trusts issued notices titled “Record Destruction Pursuant to Record Retention Policy” that signaled an intent to permanently destroy trust claims data.² Most of the notices contemplated beginning destruction of data and records on April 15, 2025, for paid claims more than ten years old (some shortened to only one year) and withdrawn claims more than one year old. While the notices indicated certain materials, such as releases and records required for trust purposes, would be retained, they provided no meaningful detail of what specific information would be preserved or whether it would comply with existing court orders and state trust transparency statutes. In light of the previously discussed reliance on trust data to identify alternative exposures and inform case valuation, the potential loss of this information presents a direct and significant challenge to the development of a complete and accurate defense record.

The proposed destruction policies prompted immediate opposition from attorneys on both sides in asbestos litigation who recognized the value of the claims information. On April 11, 2025, South Carolina Attorney General Alan Wilson, joined by fourteen other state attorneys general, issued a letter expressing “serious concerns” and urging the trusts to halt any planned destruction. The letter warned that the planned destruction posed significant legal and policy risks and urged reconsideration.

Active litigation quickly followed to stop the destruction. A group of companies regularly named as defendants in asbestos personal injury actions filed suit in Delaware Chancery Court, seeking declaratory and injunctive relief requiring the trusts to preserve claims data and prohibiting their destruction.³ The complaint alleges that the proposed destruction policies are designed to avoid production obligations and frustrate transparency requirements. By permanently deleting the evidence, the trusts, largely controlled by asbestos plaintiffs’ attorneys serving as trustees and Trust Advisory Committee members, would remove proof of alternative exposure and causation that routinely reduces the value of claims against solvent defendants.

The trusts moved to dismiss, arguing lack of subject matter jurisdiction, absence of standing, and failure to state a viable claim. The Delaware Chancery Court rejected those arguments and allowed the case to proceed. In doing so, it concluded subject matter jurisdiction existed because the plaintiffs sought equitable relief and because the claims fell within the court’s traditional equitable authority, including its power to grant a bill of discovery to preserve evidence for use in litigation. It further found that the plaintiffs had standing, finding that they faced concrete and imminent harm from the threatened loss of data critical to their defense and contribution rights. Finally, the court held that the plaintiffs had adequately stated a claim for relief, permitting the action to proceed past the pleading stage. The ruling recognizes, at a minimum, that the potential loss of trust data presents a justiciable and immediate concern, not a speculative one.

The trusts have since sought interlocutory review. On November 3, 2025, they filed an application for interlocutory appeal of the denial of their motion to dismiss, and the matter is currently stayed pending

that appeal. Briefing has concluded, and oral argument before the Delaware Supreme Court was May 6, 2026, the court taking the matter under advisement.

Takeaways: Why Defendants Must Advocate For Preservation Of Trust Claims Information

1. Trust Data Is Essential to Every Case.

Despite years of debate over the existence and value of bankruptcy claims data, the evidence shows that the information is available, necessary, and invaluable in every asbestos case litigated. The case study confirms what experienced asbestos defense counsel already understands, virtually every plaintiff in asbestos litigation has or will make claims for compensation across a number of bankruptcy trusts, at levels that materially affect case values. The information a plaintiff submits, as well as the compensation which they may recover, should be sought out and incorporated into the record in time to matter.

Every single plaintiff in the data set had a minimum of 5 claims available. The reality is that most plaintiffs will be eligible for compensation from numerous trusts. The plaintiffs in the case study were, on average, eligible to file claims with 26 different bankruptcy trusts. *This means in every asbestos case there is trust claims data and information that exists or will exist for a plaintiff.*

Defendants cannot rely on the plaintiff's assertions that they will not file trust claims or that disclosures in the litigation are complete. It is simply a matter of when trust claims will be filed, and if they will tell defendants.

Trust recoveries routinely represent substantial compensation, frequently reaching hundreds of thousands of dollars and, in some cases, exceeding seven figures. Defendants, courts, and policymakers should not be fooled by the "pennies on the dollar" statements asserted by plaintiffs' attorneys about bankruptcy trust claim payments. Those figures directly impact settlement posture, mediation strategy, and, where applicable, setoff rights in joint and several liability jurisdictions. They also reflect a broader and more detailed exposure history across multiple worksites, products, and time periods that may not otherwise be developed in the tort case. Simply put, trust claims payments add up. Additionally, claimants can get paid twice by most bankruptcy trusts. First, for an initial

non-malignant disease and, again, for a later developing malignant disease.

Beyond quantification of compensation for a plaintiff, trust claims files contain equally critical information for the exposure record. This can vary from specific product identification and exposures, to timer periods and places of work, family member relationships, and even sworn statements of fact related to an asbestos-related injury. In jurisdictions allowing apportionment, this information is critical in allocating fault accurately, enabling experts to assess and quantify exposures attributable to all entities, and the presentation of a more accurate causation narrative. This data may also include smoking and medical histories to identify inconsistencies in testimony or documents in the tort case. In short, without trust data, neither the value nor the validity of a claim can be fully assessed.

Preservation and disclosure of trust data is non-negotiable. Without trust data defendants are deprived of information necessary to assess exposure, allocate fault, and value claims with any degree of accuracy. Companies and their insurers should expect defense counsel to pursue this information affirmatively and to advocate for its preservation, because without it, case valuation is incomplete.

2. The Trusts Are The Only Reliable Source Of This Valuable Information.

Absent intervention, the trust records retention policies would have already taken effect, with countless numbers of pages of irreplaceable information being destroyed. There would be no "undo" button on that action once taken. The case study confirms that the loss of that information would directly impact asbestos litigation today.

51% of the plaintiffs did not disclose *any* bankruptcy trust claims information. Defendants cannot rely on plaintiffs to disclose complete and accurate trust claims information. Notably, when plaintiffs do disclose trust claims information, their disclosures are incomplete.

Every plaintiff who disclosed trust claims had additional trust claims available to them. Not just a few claims, an average of sixteen (16) additional trust claims were available for an average estimated compensation of more than \$450,000.

As a matter of practice, plaintiffs do not file all available claims and do not provide complete trust claims information. Even accepting, for the sake of argument, that plaintiffs lack complete knowledge of all potential claims or do not possess the full information, the practical reality remains the same: the only reliable source for comprehensive trust claims data is the trusts themselves. There is no alternative, reliable repository for the claims data maintained by the trusts and their claims processing facilities. As a result, defendants must be able to obtain this information directly from the trusts. If trusts destroy claims data or records, the data is not recoverable, and the loss is permanent.

State transparency statutes expressly recognize that claimants may no longer possess copies of claims they previously filed, preserving defendants' rights to seek discovery directly from the trusts. To date, the following sixteen (16) states have enacted laws requiring bankruptcy trust claims disclosures: Alabama, Arizona, Iowa, Kansas, Michigan, Mississippi, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin.⁴ However, even in these states, plaintiffs may not willingly comply on their own with the trust transparency law, and defendants need the ability to validate what plaintiffs produce is complete and accurate by obtaining the information directly from the trusts.

3. Trust Claims Records Have Repeated Relevance Beyond The Asbestos Case At Hand.

The value of trust claims data and records is not confined to the resolution of a single case. The nature of asbestos litigation involves recurring plaintiffs, work-sites, and exposure histories often resurfacing years later through exposed family members or related co-workers asserting claims that rely on their exposures. Most of these cases come after the death of the person for whom secondary exposure occurred. Previously filed trust claims files become the sole source of exposure information. Allowing destruction of claims records and data, despite the demonstrated and continuing relevance, would be careless, undermining the integrity of the litigation process.

The same concern exists for the trusts' own operations. Trusts routinely conduct audits as a mechanism aimed at monitoring bankruptcy trusts for misrepresentations and potential fraud. Destruction of records would make a factual audit impossible. History has

shown that audits of trust records can uncover significant instances of fraud and misrepresentation, conduct that, if left undetected, threatens to deplete trust assets intended for legitimate claimants. Some of the very trusts that proposed the destruction of trust records recently published notices of a cross-trust audit program.⁵

Trust claims information is essential to the trusts' duty to fairly and equitably process claims and preserve compensation for future asbestos victims. Beyond fraud detection and audits, the data informs core trust functions, including payment percentage adjustments, evaluation of claims values, and adjustments to site and product criteria. It also provides critical transparency into whether trustees, future claims representatives, and trust advisory committee members are fulfilling their fiduciary obligations. The information is integral to ongoing claim administration, valuation, processing, as well as budgeting and forecasting.

Conclusion

Bankruptcy trust claims information has long-term value in preventing fraud and ensuring equitable compensation in the bankruptcy trust system and is indispensable to the integrity and fairness of current and future asbestos litigation. Destruction of trust claims could severely undermine the ability of courts, trusts, and litigants to identify and address fraud, mismanagement, or abuse within the asbestos compensation system. It could also materially prejudice defendants by eliminating critical evidence of alternative exposures, evidence that directly affects causation determinations, trial risk, and settlement valuation. Eliminating this evidence would likely inflate defendants' exposure in tens of thousands of pending asbestos cases, as well as in future litigation. Courts and legislatures alike recognize that claims data is crucial to establishing the universe of asbestos-containing products and entities responsible for a plaintiff's alleged injuries. Nevertheless, the bankruptcy trusts contend that preservation of these records is unnecessary because the same information can be obtained from the plaintiffs themselves. This assumption is contradicted by the data. As the case study demonstrates, plaintiffs do not consistently disclose their trust claims, and even when disclosures are made, they are frequently incomplete. Considering these realities, continued preservation of bankruptcy trust claims data is not merely advisable, it is imperative.

Endnotes

1. The data set did not include cases from jurisdictions in states with statutory disclosure requirements for bankruptcy trust claims.
2. *See, e.g.*, Notice of Record Destruction Pursuant to Record Retention Policy, Jan. 15, 2025, available at <https://www.ocfbasbestostrust.com/wp-content/uploads/2025/01/OCFB.-Notice-of-Data-Retention-Policy-and-Destruction-1.15.25-C1335722x-9DB18.pdf>
3. The case is *DBMP LLC, et al. v. Delaware Claims Processing Facility, LLC, et al.*, Case No. 2025-0404-JTL, DE Court of Chancery.
4. *See* ALA. CODE §§ 6-5-690 - 6-5-694 (2019); ARIZ. REV. STAT. §12-782 (2015), IOWA CODE §§ 686A.1-686A.9 (2017); K.S.A. §§ 60-4912 -60-4918 (2018); MICH. COMP. LAWS §§ 600.3010-600.3016 (2018); MISS. CODE ANN. §§ 11-67-1 - 11-67-15 (2017); N.C. GEN. STAT. § 1A-1, RULE 26(b)(2a) (2018); N.D. CENT. CODE §§ 32-46.1-01 - 32-46.1-06 (2017); OHIO REV. CODE ANN. § 2307.951 - 2307.954 (2013); OKLA.STAT. tit. 76, §§ 81-89 (2013); S.D. CODIFIED LAWS §§ 21-66-1 - 21-66-11 (2017); TENN. CODE ANN. §§ 29-34-601 - 29-34- 609 (2016); TEX. CIV. PRAC. & REM. CODE §§ 90.051 - 90.058 (2015); UTAH CODE ANN. §§ 78B-6-2001 - 78B-6-2010 (2016); W. VA. CODE §§ 55-7F-1 - 55-7F-11 (2015); WIS. STAT. § 802.025 (2014).
5. *See, e.g.*, Audit Notice - Cross Trust Audit Program, Dec. 11, 2025, available at: <https://www.armstrongworldasbestostrust.com/wp-content/uploads/2025/12/12.10.25-Audit-Notice-C1379357x9DB18-1-1-4912-9952-8576.1.pdf> ■

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