

# Asbestos

## **Examining The Value Of Bankruptcy Trust Claims Data In Asbestos Litigation**

*By  
Mary Margaret Gay  
and  
Sarah Beth Jones*

*Gay Jones & Kuhn PLLC  
Jackson, Mississippi*

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# Commentary

## Examining The Value Of Bankruptcy Trust Claims Data In Asbestos Litigation

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**Mary Margaret Gay**  
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**Sarah Beth Jones**

*[Editor's Note: Mary Margaret Gay and Sarah Beth Jones are partners in Gay Jones & Kuhn PLLC in Jackson, Mississippi, practicing in the asbestos, environmental litigation, personal injury, and product liability areas. They have represented defendants in asbestos and other mass tort cases throughout the country. Any commentary or opinions do not reflect the opinions of Gay Jones & Kuhn PLLC, LexisNexis®, or Mealey Publications™. Copyright © 2026 by Mary Margaret Gay and Sarah Beth Jones. Responses are welcome.]*

### Introduction

This case study analyzes available asbestos case data to assess the extent to which asbestos bankruptcy trust claims information may inform litigation strategy, affect asbestos case outcomes, and is necessary for bankruptcy trust administration. The availability and use of asbestos bankruptcy trust claim information became an increasingly significant issue for stakeholders in active asbestos litigation, including defendants, their counsel, insurers, and courts when several asbestos bankruptcy trusts, together with the parties responsible for their administration, moved forward with a rapid plan in early 2025 to destroy asbestos bankruptcy trust claim records. Stakeholders were required to quickly assess the significance and utility of the information to determine its relevance and potential implications.

To provide data driven insight into the role of asbestos bankruptcy trust claims information in asbestos litigation and trust administration, Gay Jones & Kuhn PLLC examined historical asbestos case data

to assess the impact of trust claims information on current and future asbestos litigation.

The data set in this case study was developed through a multi-stage review of asbestos litigation filed between 2020 and 2022 across 10 jurisdictions, consisting of 697 asbestos cases. To ensure consistency and comparability, the data set was narrowed to cases in which mesothelioma was the alleged asbestos-related disease, resulting in a subset of cases filed by 44 plaintiff firms across the same jurisdictions. The data was then further refined based on the availability and completeness of case filings, docket information, and publicly accessible litigation records. This process yielded a final data set of 97 cases filed by 32 plaintiff firms across 9 jurisdictions. This data set formed the basis for the analysis presented here.

The findings of this case study underscore the practical importance of accurate, timely, and complete trust claims information to stakeholders involved in active asbestos litigation and trust administration. As asbestos litigation continues to persist across jurisdictions and evolve in scale and complexity, access to reliable data remains central to informed case evaluation, risk assessment, and the responsible administration of asbestos bankruptcy trusts. This analysis is intended to contribute to an evidence-based understanding of these issues and to inform ongoing discussions regarding transparency, consistency, and long-term sustainability within the asbestos litigation system.

**Part I: 2025 Case Study and Bankruptcy Claims Disclosures**

**A. Case Data and Disclosures**

**1. Data Set**

The data set initially consisted of 697 asbestos cases litigated from 2020-2022 across 10 jurisdictions: California, Illinois, Louisiana, Massachusetts, Minnesota, Missouri, New York, Pennsylvania, South Carolina, and Washington. This initial data set was narrowed to cases where mesothelioma was

the alleged asbestos-related disease at issue, resulting in a data set of 180 cases filed by 44 plaintiff firms across those 10 jurisdictions.

The data was further culled utilizing available case and docket information to a final data set of 97 cases filed by 32 plaintiff firms across 9 jurisdictions: California, Illinois, Louisiana, Massachusetts, Missouri, New York, Pennsylvania, South Carolina, and Washington. Chart 1 shows the breakdown of the final data set by jurisdiction.

**Chart 1.**

Jurisdiction	Case count
California	13
Illinois	32
Louisiana	5
Massachusetts	2
Missouri	1
New York	21
Pennsylvania	15
South Carolina	4
Washington	4
	<b>97</b>

The 5 plaintiff firms shown in Chart 2 had the most cases in the final data set.

**Chart 2.**

Firm Name	Percentage of Cases in Data Set
Weitz & Luxenberg	19.6%
Simmons Hanly Conroy	11.3%
Gori Law Firm	11.3%
Maune Raichle Hartley French & Mudd	9.3%
Golberg Persky & White	5.2%

**2. Trust Claims Availability**

All 97 plaintiffs reviewed in the final data set were entitled to payments from asbestos bankruptcy trusts.<sup>1</sup> In fact, each plaintiff was eligible to make at least 5 asbestos bankruptcy trust claims based on the information provided in the case materials. It is likely additional claims were possible, but information may not have been provided in the case to confirm a site location or years of work, which is necessary for confirming trust claims availability. The plaintiffs in the final data set were eligible to file, on average, 26 asbestos bankruptcy trust claims.

82 of the plaintiffs in the data set were eligible to file more than 20 asbestos bankruptcy trust claims. One plaintiff was eligible to file as many as 53 unique asbestos bankruptcy trust claims for compensation.

For the 97 plaintiffs reviewed, the average total compensation available from asbestos bankruptcy trusts was \$667,750.19.

The highest estimated total compensation available from asbestos bankruptcy trusts for a single plaintiff in the data set was an astounding \$1,709,561.87.

Research further revealed that:

- 69 plaintiffs were entitled to an estimated \$500,000 or more in trust claims payments.
- 38 plaintiffs were entitled to an estimated \$700,000 or more in trust claims payments.
- 11 plaintiffs were entitled to more than \$1 million in estimated trust claim payments.

These estimates follow the findings by Western District of North Carolina Bankruptcy Judge George Hodges who oversaw the landmark bankruptcy of Garlock Sealing Technologies and determined that a typical mesothelioma plaintiff's estimated total recovery was "between \$1 and \$1.5 million, including an average of \$560,000 in tort recoveries and about \$600,000 from 22 Trusts."<sup>2</sup>

### 3. Litigation Disclosure of Asbestos Bankruptcy Trust Claims Information

In more than half of the cases in the data set (51%), plaintiffs' cases did not disclose *any* bankruptcy trust claims information. For those 49 plaintiffs in pending litigation from 2020-2022 across the country, a collective total of \$33,277,550.82 in available asbestos bankruptcy trust compensation was not disclosed in active asbestos litigation.

#### a. Incomplete Trust Claims Disclosures

For the cases where plaintiffs disclosed some asbestos bankruptcy trust claims information, the disclosures were always incomplete. In every single case where plaintiffs disclosed some asbestos trust claims information, additional asbestos bankruptcy trust claims availability was confirmed based on the information available regarding the plaintiff's exposures and worksites.

On average, 16 additional trust claims were identified for plaintiffs who made incomplete disclosures, averaging \$451,147.90 in additional bankruptcy trust compensation. In total, plaintiffs who attempted to disclose partial asbestos trust claims information were entitled to more than \$21,655,099.43 in compensation available from trusts that went undisclosed to the court.

#### b. Asbestos Trust Claims Disclosure Compliance

16 states have enacted legislation addressing disclosure of asbestos bankruptcy trust claims. These statutes

establish mandatory disclosure requirements that apply in active litigation and govern how trust claim information is produced and used in those courts. The enactment of these laws reflects a recognized need for standardized disclosure practices, and their implementation has provided a consistent framework for obtaining trust claim information relevant to case evaluation and judicial administration. Because those statutory disclosure systems are in place and functioning, this data set excludes cases filed in states with enacted asbestos trust transparency laws and instead focuses on jurisdictions without comparable statutory requirements.

The review of cases in our data set showed that plaintiffs who attempted to disclose *some* asbestos bankruptcy trust claims information disclosed information in direct response to court case management requirements in the jurisdiction. Not all plaintiffs in jurisdictions with trust disclosure requirements disclosed information in compliance with applicable court orders. The case data indicates that plaintiff's counsel did not disclose asbestos trust claims information unless counsel or the court took active steps to enforce compliance.

76% of plaintiffs in New York disclosed some asbestos bankruptcy trust claims information in litigation. The reviewed cases show a pattern of partial bankruptcy trust disclosures with more complete information typically obtained only through additional discovery steps. A large majority of the New York cases in the data set were New York City Asbestos Litigation (NY-CAL) cases, which are governed by a case management order with bankruptcy trust claim disclosure requirements. The New York case data confirms that case management orders, when enforced, can be a valuable tool in prompting plaintiffs to be forthcoming with bankruptcy trust claims information.

On the contrary, in cases reviewed in Illinois and Pennsylvania, where case management orders do not address or enforce disclosure of bankruptcy trust claims information, asbestos bankruptcy trust claims information was withheld or only partially disclosed, resulting in an incomplete record of trust recoveries and exposures and reducing the information available to the court and litigants for accurate case valuation and adjudication. Only 41% of Illinois plaintiffs disclosed incomplete, selective bankruptcy trust claims information, and only 20% of Pennsylvania plaintiffs disclosed incomplete, selective bankruptcy trust claims information.

These findings indicate that formal trust claims disclosure requirements play a significant role in ensuring that asbestos bankruptcy trust information is produced in litigation, particularly in jurisdictions without enacted transparency statutes. The data reviewed shows that trust claim information is not consistently disclosed in the absence of statutory or court-ordered requirements. Case management orders that expressly address trust claim disclosure function as an effective procedural tool for standardizing production and improving record completeness.

#### 4. Secondary Exposures

Of the cases reviewed, 32% included allegations of secondary exposure or potential secondary exposures. Incomplete claim disclosures were provided in 15 of these cases with disclosed claims based on secondary exposures in only 3 of those cases. For all the other cases that included secondary exposure allegations or potential secondary exposures, the plaintiffs either failed to disclose trust claims information or withheld information related to secondary exposures in the trust claims filed. These findings suggest that alternate exposures remain largely undeveloped during litigation, and even when the exposures are alleged or developed, they are not included on trust claims, indicating trust claims compensation for secondary exposures is either intentionally withheld or not filed as some litigation strategy.

### Part II: Asbestos Bankruptcy Trust Framework, Governance, & Claims Administration

#### A. Asbestos Bankruptcy Trust Framework and Purpose

Most asbestos bankruptcy trusts are established pursuant to confirmed Chapter 11 plans of reorganization of companies that were defendants in asbestos litigation, in order to implement the channeling injunction authorized by Section 524(g) of the Bankruptcy Code. These plans are intended to provide comprehensive resolution of the debtor companies' present and future asbestos-related liabilities.

In connection with plan confirmation, the bankruptcy court typically conducts estimation proceedings to determine the appropriate amount of assets to be transferred to the trust. These determinations are informed by the value of pending asbestos cases stayed by the bankruptcy filing, as well as projections regarding the number and anticipated value of future claims. Through this process, and through

negotiations among the debtor and other stakeholders, compensation ranges for disease categories and eligibility criteria are established.

Upon confirmation of the plan, the bankruptcy court issues a Section 524(g) channeling injunction directing all asbestos personal injury claims arising from the debtor's products to the newly formed trust. Collectively, these asbestos bankruptcy trusts currently hold approximately \$25 billion in assets designated for payment of asbestos-related claims.

Based on court interpretation and legislative history, the central purpose of an asbestos trust created through the 524(g) process is to equitably compensate present and future asbestos claimants while providing finality and certainty to the reorganized debtor through the channeling of all asbestos liabilities to the trust.

#### B. Trust Governance and Claims Administration

The effectiveness of a § 524(g) asbestos bankruptcy trust in fulfilling its intended purpose is shaped by the governance structures and claims administration processes through which the trust operates. Asbestos trusts are administered by trustees who are typically required to consult with or obtain approval for certain significant decisions from a Trust Advisory Committee ("TAC") and a Future Claims Representative ("FCR"). TAC members are commonly plaintiffs' attorneys who represent claimants in ongoing asbestos tort litigation and who have often served on the official Asbestos Claimants' Committee during the bankruptcy proceedings that established the trust. Trustees are responsible for the administration of trust assets and the oversight of claims processing in accordance with the confirmed plan of reorganization and Trust Distribution Procedures ("TDPs"). Their authority is subject to fiduciary obligations owed to present and future claimants and is limited by the trust's governing documents, court approval requirements, and the advisory roles assigned to the TAC and the FCR. The TAC and FCR serve consultative and oversight roles intended to protect the interests of current and future claimants, respectively, and to ensure that trust administration remains consistent with the purposes and requirements of the confirmed plan.

Most Section 524(g) trusts do not directly process personal injury claims. Instead, they utilize third-party claims processing facilities for claims administration.

Over time, this has resulted in a specialized and economically significant asbestos claims-processing industry, in which a limited number of entities have developed the expertise, infrastructure, and professional relationships necessary to administer trust claims at scale. Because trust processing is performed by a relatively small number of specialized entities operating across multiple trusts, policies, procedures, and administrative practices adopted in one context may be replicated across other trust administrations.

Although the claims processors perform the day-to-day administrative functions necessary to process, liquidate, and pay valid asbestos personal injury claims, they operate according to the TDPs approved by the bankruptcy court as part of the confirmed plan of reorganization. Modifications to TDPs generally require review and consent of the TAC and the FCR consistent with the trust governing documents. Accordingly, claim processors exercise administrative authority subject to oversight and approval by the trustees, TAC, and FCR.

Responsibility for establishing a record retention policy for an asbestos bankruptcy trust rests with the trustees subject to the trust's governing documents and any required consultation with or approval by the TAC and FCR with implementation carried out by third-party administrators under trustee oversight.

### C. Trust Claims Information

Trust claims generally include:

- Claimant personal information;
- Tort litigation history information, if any;
- A medical diagnosis of an asbestos-related disease;
- Supporting medical records;
- Occupational and exposure information, including work histories, jobsite records, and witness statements;
- Product identification evidence and use; and
- Certifications and authorizations identifying counsel, legal parties, and related third party relationships.

Although some of this information may exist in segmented pieces elsewhere, the compilation of information created in the trust claim form, which includes all the information in one place supporting the plaintiff's assertion for a particular claim, is

entirely unique. In addition to claimant submitted materials, the submission and evaluation of trust claims generate additional records and data at both the trust and claims processing facility levels.

Historically, asbestos trusts have preserved this claims data to meet the requirements laid out in the trust's governing documents to ensure that claimants are treated fairly, equitably, and reasonably. Claims data has previously been relied on to fulfill that purpose.

The claims data maintained by the asbestos bankruptcy trusts or the claims processors on behalf of the trusts is essential to their purpose "to provide fair, equitable, and substantially similar treatment for all personal injury trust claims that may presently exist or may arise in the future in substantially the same manner."<sup>33</sup> Historically, the trusts have utilized claims data for (1) internal audits, (2) fraud detection and data integrity, (3) consideration of payment percentage adjustments, (4) claims values validation or adjustment, (5) to identify frequently appearing sites, products, or exposures, and (6) to detect changes in exposure narratives over time. Certainly, the claims data maintained by the trusts or their claims processors is not just for historical record-keeping purposes, it actively shapes claim valuation, claims processing rules and queue management, exposure criteria, and budgeting and forecasting for proper management of trust assets within the framework of the TDP. Further, in the past, asbestos bankruptcy trusts or their claims processors utilized claims data to respond to bankruptcy court inquiries or Department of Justice oversight. Most significantly, historical claims data may be relied on to demonstrate that the trustees, FCR, and/or TAC are complying with their fiduciary duties, acting prudently and consistently.

## Part III: Legal Developments and Policy Changes

### A. Discovery Obligations and Transparency Laws

Courts and state legislatures across the country have repeatedly recognized that asbestos trust claims data is highly relevant to asbestos-related tort litigation and bankruptcy proceedings. The data is routinely found by courts across the country to be discoverable and admissible, particularly with respect to causation, damages, and alternative exposure evidence.

16 states have enacted asbestos trust transparency statutes requiring plaintiffs to disclose trust claims

and supporting documentation. These statutes also expressly preserve defendants' rights to seek discovery directly from asbestos trusts. Legislative history in multiple jurisdictions reflects concern over systemic abuse, including delayed or withheld trust claim filings by plaintiffs' counsel.

### **B. Current State of the Preservation of Asbestos Trust Claims Records**

After more than 30 years of asbestos bankruptcy trust administration and oversight without publicly identified document destruction policies, multiple asbestos bankruptcy trusts adopted policies that, if implemented, would permit the permanent destruction of claims data.

Bankruptcy trust notices dated January 15, 2025, and entitled "Record Destruction Pursuant to Record Retention Policy" were distributed to an undetermined and unidentified group of persons.<sup>4</sup> It remains unclear who received the notice directly and timely. Numerous interested stakeholders, including the media, were alerted to the notices when they were posted at some point after that date on the trusts' websites.

The notices from each of the trusts were nearly identical and generally stated that the trusts were beginning the process of destroying data and documents associated with "Resolved Claims," defined as claims that were paid, withdrawn by counsel, or deemed withdrawn by the trusts. Destruction was set to begin as early as April 15, 2025. The notices were unclear on what exactly would be destroyed. Some notices provided that the trust would destroy data for paid claims more than 10 years old or withdrawn claims more than one year old. Other notices shortened the retention period for paid claims to only one year. The notices further stated that, following destruction, the trusts would retain only releases, records required for trust purposes, or records necessary to comply with applicable law.

Most of these trusts utilize the same trust counsel or claims processors. The records destruction notices issued by these trusts reflect similar language and timeframes. In fact, several of the notices are nearly word-for-word identical. Shared counsel and claims processors, along with the similarities across the notices, indicate that communications were developed using common resources and coordinated processes.

The notices failed to provide any explanation of what specific information would be preserved to comply with existing court orders and state trust transparency statutes. Further, the notices did not disclose what records were paper versus electronic, and which category of records the trust intended to destroy. Also, notably absent from the notices was the action taken by the TAC, FCR, trustees, or claims processors to evaluate and establish the "records retention policies."

Records retention policies for the various trusts were not made publicly accessible prior to or throughout the notice period. A recent search of the trust websites and the bankruptcy trust court docket did not include any records retention policies or historical actions related to records retention.

### **C. Recognition of the Significance of Trust Claims Data**

Asbestos bankruptcy claims data is uniquely probative. No alternative, reliable repository for the claims data has been identified in historical asbestos tort litigation or bankruptcy that is held by any other third party, trust, or claims processing facility. Once destroyed, data would not be available from any other source.

Historical case law, disclosures in past legal proceedings, both civil and criminal, and state transparency statutes expressly recognize the value of trust claims data maintained by the trusts and/or their claims processors. Courts and litigants have further recognized, based on disclosures and testimony in asbestos tort proceedings, that claimants frequently do not retain copies of trust claims submitted on their behalf and that attorneys who previously represented those claimants, particularly where representation has concluded, do not consistently maintain independent archival records of such submissions.

The destruction of trust claims data may limit the information available to courts, trusts, and litigants in evaluating claim accuracy, identifying inconsistencies, and addressing issues related to administration and oversight within the asbestos compensation system. The absence of such data may also affect the ability of defendants to access information relevant to alternative exposure evidence, causation analysis, and case valuation.

The most notable recognition of the value of trust claims information was in the Garlock bankruptcy

litigated in the Western District of North Carolina bankruptcy court. The overseeing judge allowed discovery of information from various bankruptcy trusts to determine if plaintiffs were hiding evidence and inflating case values by failing to disclose information in litigation, which was only available from the operational bankruptcy trusts. The allegations were confirmed when information from those asbestos bankruptcy trusts revealed litigation tactics to hide or delay disclosure of information—the very information which is being contemplated for destruction today by various asbestos bankruptcy trusts.

Courts and legislatures alike recognize that asbestos bankruptcy trust claims data is essential to establishing the universe of asbestos-containing products and entities responsible for a claimant's alleged injuries. Recent trust transparency laws have sought to directly address the problem identified by the bankruptcy court in the landmark *Garlock* case. Eliminating this evidence would likely inflate defendants' exposure in tens of thousands of pending asbestos cases, as well as in future litigation.

#### D. Objections to Destruction of Claims Data

Following the dissemination of the notices, stakeholders, including current asbestos litigants, state legal officers, and companies currently in the bankruptcy process expressed alarm and demanded that implementation of the destruction policies be halted or delayed.

1. On April 11, 2025, South Carolina Attorney General Alan Wilson, on behalf of himself and fourteen (14) other state attorneys general, sent a letter to the trusts expressing "serious concerns" and urging them to immediately halt any plans to destroy claims data. The letter warned that the planned destruction posed significant legal and policy risks and urged reconsideration.
2. Gay Jones & Kuhn PLLC objected on behalf of numerous defendants in ongoing national asbestos litigation, urging the asbestos bankruptcy trusts immediately halt the destruction of records until the trusts provide additional clarification information to all interested parties. The letter explained, "Trust claim records and data are relevant and necessary for the more than

3,000 asbestos cases filed annually throughout the United States by plaintiffs, many of which likely make claims to the trust(s)."

3. Jones Day objected on behalf of defendants in asbestos litigation and current debtors in bankruptcy proceedings seeking to resolve current and future asbestos liabilities through section 524(g) of the Bankruptcy Code. The limited responses received from the asbestos bankruptcy trusts or their counsel provided no additional information regarding the proposed record retention policies, stating only that the policies conformed to applicable laws and served to protect claimants' privacy interests.

#### **Case Summary and Timeline: *DBMP LLC, et al. v. Delaware Claims Processing Facility, LLC, et al.*, C.A. 2025-0404-JTL, Delaware Court of Chancery**

Following the trusts' publication of notices of the new Destruction of Records policy, a group of companies regularly named as defendants in asbestos personal injury actions and a debtor in a bankruptcy proceeding requested that the trusts suspend or abandon the new policy. When the trusts declined to do so, the companies commenced an action in the Delaware Court of Chancery. The complaint sought a declaratory judgment that the trusts are obligated to preserve the claims data, as well as a permanent injunction prohibiting its destruction. The trusts moved to dismiss the action, contending that the court lacked subject matter jurisdiction, that the plaintiffs lacked standing, and that the complaint failed to state a viable claim.

The Court denied the motions to dismiss. It concluded that 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. The Court further determined that the plaintiffs had standing, finding that they faced concrete, 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.

In response, on November 3, 2025, the Defendant trusts filed an Application

for Interlocutory Appeal of the Court’s Order Denying the Motion to Dismiss. The case is currently stayed pending the appeal.

Chart 3 shows a detailed timeline of significant filings in the matter.

**Chart 3.**

Date	Description
4/15/2025	Complaint for Declaratory and Injunctive Relief as well as Motion to Expedite Proceedings filed by Plaintiff companies
4/21/2025	Motion to Dismiss Complaint filed by Defendant trusts
4/22/2025	Motion to Stay Discovery Pending Dispositive Motion as well as Opposition to Plaintiff’s Motion for Expedited Proceedings filed by Defendant trusts
4/23/2025	First Amended Complaint filed by Plaintiffs
4/24/2025	Motion to Dismiss First Amended Complaint filed by Defendants
5/21/2025	Defendants’ Brief in Support of Motion to Dismiss First Amended Complaint
6/18/2025	Plaintiff’s Answering Brief in Opposition to Defendants’ Motion to Dismiss
6/26/2025	Brief of non-party states, South Carolina, Alabama, Georgia, Iowa, Louisiana, Mississippi, Ohio, Texas, Utah, and Virginia in Support of Plaintiffs
8/1/2025	Oral Arguments on Defendants’ Motion to Dismiss
10/24/2025	Opinion and Order Denying Defendants’ Motion to Dismiss
11/3/2025	Defendant Trusts’ Application for Interlocutory Appeal
11/13/2025	Plaintiffs’ Opposition to Defendants’ Application for Certification of an Interlocutory Appeal
11/14/2025	Order Granting Application for Certification of an Interlocutory Appeal
11/18/2025	Order Staying Action Pending Appeal

**E. Trust Governance and the Risk of Inconsistent Record Retention Practices**

Asbestos bankruptcy trusts are governed by trustees and TACs whose members commonly include prominent attorneys with extensive experience representing asbestos claimants in tort litigation. In these governance roles, these attorneys, by nature of their positions as trustees and TAC members, participate in or approve significant administrative decisions, including policies related to records management and retention.

Many of these individuals have longstanding familiarity with asbestos litigation and with judicial and legislative requirements governing the disclosure and use of trust claims data. They are aware and knowledgeable of court orders, case management

orders, and state transparency statutes, which address preservation and production of claims information. Additionally, the trusts themselves are routinely subpoenaed to produce claims data in furtherance of litigation across the country.

Within this context, decisions affecting the retention or destruction of trust claims data may have implications for the trusts’ ability to respond to discovery obligations, statutory requirements, and information requests from courts and litigants. Variations in record-retention practices across trusts, or the elimination of historical claims data, may reduce the availability of information relevant to litigation, administrative oversight, and exposure analysis, and may create inconsistency in how similarly situated claims are evaluated across the asbestos compensation system.

## Part IV: Data Driven Assessment of the Framework and Legal Implications

### A. Findings

The data analyzed in this case study suggests that trust claim information is not consistently disclosed by plaintiffs in ongoing asbestos litigation and, in some instances, may be disclosed only in limited or incomplete form. The analysis further reflects that substantial trust compensation may remain undisclosed in parallel tort proceedings and that claimants frequently do not retain independent records of trust claims submitted on their behalf. As a result, historical trust claims data maintained by asbestos bankruptcy trusts and their claims processors represent a primary source of information relevant to multiple stakeholders.

Asbestos bankruptcy trusts are charged with protecting claimant privacy and administering claims efficiently, while also fulfilling fiduciary obligations to equitably compensate both current and future claimants. The administration of those duties necessarily relies on access to historical claims data to support consistency, oversight, and long-term sustainability. Although record retention practices may involve administrative costs that could affect trust assets, the scope, justification, and evidentiary basis for proposed destruction of historical claims data are not fully documented in the materials reviewed.

### B. Considerations

The historical evidence examined in this study indicates that preservation of asbestos bankruptcy trust claims records bears directly on compliance with existing legal requirements, the equitable functioning of the parallel trust and tort compensation systems, and the ability of courts and parties to evaluate claims and exposures. Further information regarding the categories of records proposed for destruction, the

records that would be retained, and the asserted necessity for destruction would be required to assess the potential effects of such policies and to determine whether they appropriately balance administrative efficiency, asset preservation, claimant interests, and the fiduciary responsibilities governing trust administration. Ultimately, consideration of these issues may warrant review by courts or policymakers to ensure that both stakeholder interests and trust governance obligations are adequately protected.

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### Endnotes

1. "Plaintiff" throughout this document refers to the injured party in the case and does not contemplate claims asserted by others such as family members or estate representatives related to the injured party and named on the face of the complaint. It is possible some persons may have their own claims related directly to the injured party which are recoverable from the trusts and potentially increase the value of the claims information in future litigation.
2. *In re Garlock Sealing Techs.*, 504 B.R. 71, 96 (Bankr. W.D.N.C. 2014).
3. See, e.g., ACandS Asbestos Settlement Trust, "About Us," <https://www.acandsasbestostrust.com/about-us.html>; Babcock & Wilcox Asbestos Personal Injury Settlement Trust, "About," <https://www.bwasbestostrust.com/about/>.
4. See, e.g., "Notice of Record Destruction Pursuant to Record Retention Policy" by Owens Corning/Fibreboard Asbestos Personal Injury Trust, Jan. 15, 2025, <https://www.ocfbasbestostrust.com/wp-content/uploads/2025/01/OCFB.-Notice-of-Data-Retention-Policy-and-Destruction-1.15.25-C1335722x9DB18.pdf>. ■



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*edited by Bryan Redding*

**The Report** is produced twice monthly by



1600 John F. Kennedy Blvd., Suite 1655, Philadelphia, PA 19103, USA

Telephone: 1-800-MEALEYS (1-800-632-5397)

Email: [mealeyinfo@lexisnexis.com](mailto:mealeyinfo@lexisnexis.com)

Web site: [lexisnexis.com/mealeys](http://lexisnexis.com/mealeys)

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