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Asbestos Litigation And The Bankruptcy Trust System: Mastering A Plaintiff's Game

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Commentary

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Introduction

In re Garlock Sealing Technologies, LLC cast nationwide attention on the need for greater transparency between the asbestos bankruptcy trust and civil tort systems.¹ As asbestos litigation attorneys are well aware, following a trial that lasted several weeks, the federal bankruptcy court found that gasket and packing manufacturer Garlock Sealing Technologies, LLC's settlements of mesothelioma claims in the tort system were "infected by the manipulation of exposure evidence by plaintiffs and their lawyers." The judge said 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."

Garlock has served as a catalyst for legislative and judicial reforms to improve asbestos bankruptcy trust claim transparency in the tort system.² There have been some improvements, but in most jurisdictions defendants are

still routinely deprived of complete trust information that is necessary to properly value and defend their cases. Plaintiffs' counsel are major players in the creation and ongoing management of the trust system, allowing them to write the rules of the game.³ Plaintiff's attorneys are also well-versed in the rules, procedures, and strategy in the tort system *and* the bankruptcy system. Their participation in the bankruptcy process grants them access to confidential trust information and an unfair advantage over defendants in the tort system. Without a consistent, proactive plan by defense counsel to shine light on the "game," plaintiff's counsel will continue to elude the defense and control access to trust information. It is imperative that defense counsel know and understand how the trust system operates, where trust strategy has been successful, and how to obtain and utilize information in the defense of claims to properly value and defend asbestos cases.

Trust Transparency Overview: Who Are the Players?

"Like any other class of creditors, asbestos tort creditors are entitled to vote for or against any plan of reorganization that impairs their claims."⁴ Those persons who have a claim against a company for asbestos-related injury are given creditor status, which is subsequently controlled by their counsel — the plaintiff's attorneys in asbestos litigation. "The same baker's dozen or so law firms that represent the large majority of asbestos claimants also represent the majority of claimants in asbestos-related bankruptcy proceedings. In most

cases, these leading asbestos law firms largely control the asbestos bankruptcy process and the operation of the trusts created under § 524(g).⁵ As a result, plaintiffs' firms have input on the preparation of the bankruptcy trust distribution procedures, which contain guidelines for the trust's exposure requirements, medical and diagnosing evidence requirements, scheduled payment values, and the initial payment percentage. Accordingly, "the leading plaintiffs' counsel establish the criteria for the payment of the very claims that they are and will be asserting on behalf of their clients."⁶ In addition to setting key medical and exposure requirements, provisions in the trust distribution procedures also demonstrate the plaintiffs' firms desire to keep trust claims information out of the hands of tort defendants. Provisions include procedures for obtaining trust information, appointment of gatekeepers to maintain trust information, and various provisions to limit the use and disclosure of trust information.⁷

Following confirmation of the plan of reorganization and trust creation, a Trust Advisory Committee (commonly referred to as the "TAC") is formed. The TAC is tasked with representing the interests of current trust claim holders in the administration of the trust.⁸ Once again, this advisory committee is composed of asbestos tort plaintiffs' attorneys.⁹ The TAC controls the amendment of the trust distribution procedures and assists with selecting the trustee, claims administrator, and future claims representative for the Trust.¹⁰ "Often, the TAC includes representatives of the plaintiffs' law firms with the largest number of claimants. Service as a TAC member for one trust does not preclude concurrent service to other trusts."¹¹ As a result, a handful of firms, usually the largest national plaintiffs' firms, receive positions on the TACs for the trusts.¹²

In addition to the TACs, asbestos trusts have trustees who serve as executive officers of the trust and manage the trust.¹³ Additionally, while the TAC represents the current asbestos claimants, future claimants' interests are represented by the Future Claims Representative ("FCR").¹⁴ "To ensure that both current and future claimants' interests are adequately protected, the role of the claimants' representative and the related fiduciary duty was split between the TAC and the FCR."¹⁵ Consent of both the TAC and FCR is required for significant trust activities, including amendments to the trust distribution procedures.¹⁶

Trust claims administrators (selected by the trustee and the TAC) manage the day-to-day processing of asbestos bankruptcy trust claims. Claims administrators are responsible for reviewing and evaluating claims, processing claimant data, identifying and notifying plaintiffs and their counsel of deficiencies of the claim, and eventually paying or rejecting claims. Many claims administrators maintain trust information on a website, with claims filing instructions, claims forms, notices from the trustees, approved worksite information, information pertaining to the bankrupt entity and/or its products, payment percentages, trust distribution procedures, and governing trust documents. There are more than seventy asbestos bankruptcy trusts in existence today, managed by only about eleven claims administrators.

As one can see, there are many players in the asbestos bankruptcy process and trust system; however, defense counsel are not among them. Plaintiffs' counsel, on the other hand, play a significant role from the beginning of the bankruptcy case through confirmation of the reorganization plan and creation and management of the bankruptcy trust. These consistent roles in the asbestos bankruptcy forum give plaintiffs' counsel insider information which in turn may be utilized to maximize recovery in the tort system.

Post *Garlock* Success to Increase Transparency

The *Garlock* decision provides defendants with tangible evidence of the problems caused by the lack of transparency between the asbestos bankruptcy trust and tort systems. The asbestos defense bar has seen some nationwide change since Judge Hodges' landmark decision through new trust legislation, modification of CMOs, and orders and opinions handed down by judges across the country.¹⁷

Legislation has been enacted in several states requiring trust claims disclosure during the course of litigation.¹⁸ Three states—West Virginia, Arizona and Texas—enacted legislation this year.¹⁹ Other states are following suit. Legislation is one of the best ways to combat the present lack of transparency between the asbestos bankruptcy trust and civil tort systems and hold the plaintiffs' bar in a jurisdiction accountable for incomplete or inconsistent exposure history information.

Case management orders have also been entered or amended in several jurisdictions to open trust transparency.

Most notably, in the spring of 2015, the Los Angeles County Superior Court managing all Southern California asbestos cases (Los Angeles, Orange, and San Diego Counties) amended its Case Management Order to require execution of bankruptcy trust authorizations and production of all documents relating to bankruptcy trust claims, including ballots, correspondence, declarations and/or affidavits and other supporting documentation.²⁰ The court found that facts and information relating to a plaintiff's asbestos exposures are not privileged and therefore discoverable.

Additionally, Judge Jim Hughey in Alabama, overseeing a number of cases pending in Birmingham, has reaffirmed that court's intent to allow trust discovery including the utilization of standard bankruptcy trust records authorization. As Judge Hughey explained, "the chronology of somebody's exposure can become very important and any piece of information that may help the sides with that can be helpful to both sides."²¹ Judges who are provided the background materials on the value of trust transparency in cases are continuing to mandate changes in their courts.

In various other courts, still without a standard CMO, judges recognize the value of trust information and are giving defendants access to the information by granting defendants' motions to compel and upholding defendants' subpoenas to bankruptcy trusts. For instance, in *Willis v. Buffalo Pumps, Inc.*, the United States District Court for the Southern District of California, in upholding in part plaintiff's motion to quash defendant John Crane's subpoena to certain bankruptcy trusts, held that "all documents Plaintiff submitted to the bankruptcy trusts, including claim forms, supporting documentation, and supplemental information is discoverable."²² Similarly, in *Twisselman v. Borg Warner Morse Tech.*, a Missouri circuit court granted defendant Eutectic Corporation's motion to compel settlement information from bankruptcy trusts after finding such information was relevant to determine offsets and to capture complete exposure history.²³

There have been several other decisions similarly recognizing the importance and relevance of trust claims information to asbestos litigation.²⁴ Most recently, a court declared a mistrial in a Kentucky case due to plaintiff's discovery violations regarding bankruptcy trust claims and the resulting prejudice to defendants.²⁵ Similarly,

in an Oregon case tried to verdict in December 2014 where a jury awarded \$3.96 million to the surviving family members of a former insulation worker, the court recently ruled from the bench and granted a new trial based on its finding of misconduct on the part of plaintiffs in failing to produce a number of exposure affidavits submitted in support of bankruptcy trust claim submissions.²⁶ During the discovery phase, defendants requested bankruptcy trust documentation from plaintiffs, and they produced seemingly complete trust claim documents and an exposure affidavit. Plaintiffs represented there were no additional bankruptcy trust claim documents.²⁷ During the post-trial period, upon defendants' motion, the court ordered plaintiffs to sign authorizations, so that defendants could collect the settlement amounts plaintiffs received and the complete claim files directly from the trusts, in order to calculate the accurate total settlements received by the trusts and evaluate the reasonableness of those amounts.²⁸ Once the trust claim files were received, defendants discovered multiple affidavits that had not been produced previously by plaintiffs' counsel.²⁹ Defendants proceeded with a motion for a new trial based on plaintiffs' misconduct.³⁰ The judge determined the plaintiffs' counsel's failure to produce the documents constituted misconduct, and that if defendants had been in possession of the information at trial, there would likely have been a different outcome.³¹

Trust transparency in asbestos litigation is a real ongoing problem for defendants trying to properly value cases. The decisions in these cases demonstrate, however, that a growing number of courts appreciate the value of trust claims information and will not tolerate incomplete disclosures.

Leveling the Playing Field

Defendants and their insurers must continue to invest in the education of their counsel and revise their defense strategies regarding the bankruptcy trust system. Defense counsel should develop questions to ask regarding bankruptcy claims and be ready to handle plaintiffs' responses to same.

Defendants must be proactive during discovery. Defendants should, in every case, request that plaintiff sign an authorization form for use and disclosure of bankruptcy information. The use of an authorization for the release of bankruptcy trust records is the single

most effective and efficient way to obtain trust information in a case. An authorization signed by the plaintiff or the plaintiff's personal representative allows defendants to request and obtain the complete claim files directly from the bankruptcy trusts and avoids the unnecessary costs associated with subpoenas for records. All parties involved are entitled to and in need of complete and accurate information regarding all of plaintiffs' bankruptcy trust claims.

The quest for bankruptcy trust claims information does not end with the authorization. Defendants should press for detailed trust information in their discovery requests and at deposition. Discovery propounded to plaintiffs should require plaintiffs to identify any bankrupt entities to which a claim has been made, the date of filing, the claim number (or docket, file, or petition number), nature and basis of the claim, the amount paid or agreed to be paid, the current status of the claim, whether a claim to a bankrupt entity has been withdrawn, and whether a claim to a bankrupt entity has been deferred or a request has been made for claim deferral. Defense counsel should ask and follow-up on questions about any claims through thorough discovery. It is important to mention that the words counsel use in requests may limit the response they receive. By way of example, one trust may reference a "deferral claim" while another trust references a "deferral." Simply asking "have you made any deferral claims" may not yield a positive response. Counsel should also inquire about plaintiff's involvement or settlement with a prepackaged bankruptcy, 2019 filings in a past or ongoing bankruptcy, or any other participation in an asbestos bankruptcy proceeding. Defense counsel should request all documents or correspondence pertaining to any and all claims made to a bankrupt entity, prepared in support of a claim submitted to a bankrupt entity, claims that have been deferred or withdrawn, correspondence with any bankrupt entity, documents or correspondence pertaining to any prepackaged bankruptcy participation, any 2019 filings, and any activity in other asbestos bankruptcies.

Counsel should thoroughly examine the plaintiff regarding his or her bankruptcy trust claims disclosures (or lack thereof) made during discovery. Those questions fall in line with the information previously outlined in this article on discovery requests. Those questions are more often than not left unanswered on written discovery or objected to with little or no follow up. If a plaintiff has not provided those responses in discovery about past trust claims, future trust

claims and even potential trust claims, a deposition is the time to get concrete answers to those questions. Additionally, even if the trust claims information is provided, asking these questions confirms a defendant has received full information. This extends to the push for the actual claims information. Defense counsel should demand disclosure of bankruptcy trust claims prior to any trial setting, mediation, or settlement conference in the litigation.

For those jurisdictions where case management orders or scheduling orders are in place, defense counsel should be critically evaluating whether trust discovery is being provided, and whether the case management orders are sufficient in light of the *Garlock* opinion. 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*, the importance of bankruptcy discovery, and how revisions to existing provisions will improve trust transparency. On the heels of the *Garlock* decision, defendants should be asking courts to create standing rules to require plaintiffs to disclose trust claims and avoid issues associated with plaintiffs' counsel's refusal to comply with the rules. Former Delaware Superior Court Judge, Peggy Ableman, for instance, has proposed the implementation of a Uniform Case Management Order, wherein plaintiffs would be required to do the following ***before a trial date can be set***: file all bankruptcy trust claims within thirty days of filing their complaint; file with the court a sworn statement signed by plaintiffs and plaintiffs' counsel stating that all claims have been filed; indicate whether there has been a request made to defer any trust claims; provide the "disposition" of each trust claim; and disclose all trust claims materials.³² Such action would have a powerful effect on the asbestos plaintiffs' bar and help to solve the problem of plaintiffs concealing exposures and waiting until after the litigation concludes to file bankruptcy trust claims.

Surprisingly, in those jurisdictions where bankruptcy discovery is already allowed, it is routinely not demanded. In jurisdictions fortunate enough to have bankruptcy trust transparency legislation in place, defense counsel should be well-versed with legislative requirements and prepared to demand plaintiff's compliance, if necessary. In Texas, for instance, plaintiffs are required to make trust claims not later than 150 days before trial, unless otherwise specified by the

court.³³ And within 120 days of trial, plaintiffs are required to provide a notice identifying each trust claim made, the amount of payment, the date of the claim and type of review, whether there was a request for deferral or tolling of the claim, along with the trust claims materials, including all “documentation that a claimant submits or provides to an asbestos or silica trust for the purpose of demonstrating asbestos or silica exposure, the existence of an asbestos-or silica-related injury, or the validity of a trust claim” along with the claim forms and any other required materials.³⁴ Defense counsel have the right to move to stay the proceedings in the event plaintiff fails to identify claims filed, provide the necessary documentation, or otherwise comply with such legislative requirements, and should be prepared to do so as necessary.³⁵

Every trust claim is unique, but the trust data and documents can provide information regarding 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 submitted to the trusts by the plaintiff and/or their counsel and sworn to under penalty of perjury.

This bankruptcy trust information is relevant and essential to the defense of a case. It should be used to develop and reveal the complete exposure, medical, causation and liability picture of each plaintiff. Examples 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 those exposures with the exposures disclosed by plaintiff in the tort case for inconsistencies,

for which defense counsel can then hold plaintiffs accountable.

Accountability is key once defense counsel has the trust claim information, counsel must utilize the claim information to hold plaintiffs and their attorneys accountable for previous exposure allegations and statements.

Plaintiffs' filed trust claims (if known), product identification, and work history should also be utilized to estimate trust payment values. Many bankruptcy trusts have published to their websites trust distribution procedures, which typically include a schedule of trust payment values. Several trusts also publish approved worksite lists, allowing for recovery based on a plaintiff's presence at a worksite during a certain period of time as approved by the trust. Thus, a plaintiff's work history and product exposure information should be compared to these trusts' worksites lists to identify additional potential claims a plaintiff could make to a trust. All of this publicly available information makes it possible to estimate what a plaintiff has received from a trust or what they may be entitled to receive based on their work history and product exposure. This information continues to be a game-changer in the litigation providing defendants leverage throughout the litigation to value cases and seek more specific discovery. Plaintiffs' counsel cannot object to information which is publicly available from the trusts making the trust value estimation invaluable.

Hiding the Ball: When Plaintiffs' Fail to Disclose Trust Information

As more and more trust information is disclosed, a pattern of dual representation by plaintiffs' attorneys is being exposed. As the RICO complaints filed by Garlock against numerous plaintiffs' firms across the country illustrated, the plaintiff's attorney in the tort case is oftentimes not the same attorney representing the plaintiff for purposes of submission of bankruptcy trust claims.³⁶ This separation of information, referred to by Garlock as the “co-counsel” model, allows plaintiffs' counsel in the tort case to allege exposure to an asbestos-containing product manufactured by non-bankrupt defendants, while bankruptcy trust counsel alleges that plaintiff was exposed to similar asbestos products produced by bankrupt manufacturers. Not only does this lead to improperly inflated settlement values through the “double dipping” of plaintiffs' counsel, it also raises the question of “who

is in possession of plaintiff's trust claims information?" Plaintiff's counsel in the tort case may attempt to fully respond to discovery requests, but this "co-counsel" representation model allows plausible deniability about what trust counsel knows or has recovered on behalf of the plaintiff. All of this is to the detriment of defendants in the tort system. Defense counsel should be aware of and specifically seek information during discovery and at deposition to obtain full information about who represents plaintiff in the trust system and has information about their claims and/or potential bankruptcy trust claims.

In addition to receiving trust proof of claim form information from plaintiffs, it is equally important for defendants to collect this information directly from the trusts, and to compare this information to that received from plaintiffs' counsel. Typically, when required to provide bankruptcy trust proof of claim forms to defendants, plaintiffs' attorneys provide to defendants "screenshots" or printouts of the proof of claim forms. These screenshots do not provide the entire claim submission or the changes plaintiffs may make to exposures or other information. Oftentimes, the screenshot claim forms that are provided are redacted or otherwise manipulated to omit information pertaining to products and locations of exposure. Although claim forms, in most cases, provide varying levels of information pertaining to plaintiff's employment, exposures and medical history, they do not describe or disclose the accompanying information provided in support of the plaintiff's claim, which is typically required by the trust distribution procedures. This information is kept in the full claim file maintained by the trust.

To illustrate the disparity of information created when defendants merely receive the screenshot claim form, in a 2012 New York Superior Court Case, plaintiff's attorneys provided certain defendants two total pages of claims information, which was represented as the complete claims information submitted to the trust. Defense counsel received an authorization executed by the plaintiff and submitted this authorization with a request for the claim file from each of these trusts. Defendants received fifty pages in the full claim file, including four pages of claim documents, a claim detail report with claim settlement information, and forty-six pages of medical records, lab reports, and radiology reports submitted by plaintiff in support of his claim. From this information, defendants

obtained pertinent information regarding plaintiff's smoking history, claim value, adjusted value liquidated value, the payment percentage applied, and total paid for claim.

Similarly, in a 2006 case filed in the United States District Court for the Central District of Illinois, plaintiffs' attorneys provided to certain defendants approximately thirty-eight pages of claims information, and defendants then were able to collect 128 pages of claims information directly from the trust, including claim forms, deficiency notices from the trust, exposure affidavits, plaintiff's verified work history, medical records, including a physician's report, pathology reports, and a b-read report, plaintiff's death certificate, and the surviving spouse's history of losses questionnaire, describing the effect of the decedent's illness and the spouse's loss of income as a result of his illness and death. Thus, not only does the claim file provide a more accurate picture of plaintiff's medical history, diagnosing pathology, product identification and exposure information, it provides much needed payment information that can be used by tort defendants for settlement negotiations or for allocating liability shares and determining offsets against any judgment rendered.

Clearly, the proof of claim forms in plaintiffs' possession do not contain all the information submitted to the trust. Therefore, even the plaintiffs' attorney with the best of intentions cannot provide full claims files without a certification from the trusts themselves. Regardless, a plaintiff's claim forms, in conjunction with plaintiff's submissions in support of his or her claims, allow defense counsel access to plaintiff's factual representations, product identification and exposures, work history, medical history, admissions of fact, and causation evidence—all of which is necessary for defense counsel to mount a complete and thorough defense of the case.

Conclusion

Defendants must pursue plaintiffs' bankruptcy trust information to call plaintiffs' fouls and level the playing field. Legislation, CMOs, and favorable decisions and orders are available to defendants and should equip them for the game, so that they are up for the task of tackling the trust transparency problems in their asbestos cases.

Endnotes

1. 504 B.R. 71, 96 (W.D.N.C. Bankr. 2014); *see also* *Mt. McKinley Ins. Co. v. Pittsburgh Corning Corp.*, 2015 WL 4773425, at *5 (W.D. Pa. Aug. 12, 2015) (“The evidence uncovered in the *Garlock* case arguably demonstrates that asbestos plaintiffs’ law firms acted fraudulently or at least unethically in pursuing asbestos claims in the tort system and the asbestos trust system.”); *see generally* Peggy L. Ableman, *The Garlock Decision Should Be Required Reading for All Trial Court Judges in Asbestos Cases*, 37 AM. J. TRIAL ADVOC. 479 (2014); 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); 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); Mark A. 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. *See* Peggy L. Ableman, *The Time has Come for Courts to Respond to the Manipulation of Exposure Evidence in Asbestos Cases: A Call for the Adoption of Uniform Case Management Orders Across the Country*, 30:5 MEALEY’S LITIG. REP.: ASBESTOS 1 (Apr. 8, 2015); Daniel J. Ryan & John J. Hare, *Uncloaking Bankruptcy Trust Filings in Asbestos Litigation: A Survey of Solutions to the Types of Conduct Exposed in Garlock’s Bankruptcy*, 15:1 MEALEY’S ASBESTOS BANKR. REP. 1 (Aug. 2015).
3. *See* Lloyd Dixon et al., *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts* (Rand Corp. 2010).
4. S. Todd Brown, *Section 524(g) Without Compromise: Voting Rights and the Asbestos Bankruptcy Paradox*, 2008 COLUM. BUS. L. REV. 841, 856 (2008).
5. Lester Brickman, *Fraud and Abuse in Mesothelioma Litigation*, 88 TUL. L. REV. 1071, 1097 (2014).
6. *Id.* at 1098.
7. “The plaintiffs’ counsel who have effective control over the creation and administration of asbestos bankruptcy trusts have used that power to include, amend, or add provisions to TDPs designed to limit, if not preclude, defendants’ ability to use discovery to access evidence that a tort plaintiff has filed one or more trust claims.” *Id.* at 1099.
8. *See* Dixon et al., *supra* note 3.
9. *Id.* at 13-14.
10. *See* Brickman, *supra* note 5, at 1098.
11. Dixon et al., *supra* note 3 at 14.
12. *Id.* at 43.
13. *Id.* at 12.
14. *Id.* at 13.
15. *Id.*
16. *Id.* at 13-14; Brickman, *supra* note 5, at 1099.
17. *See* 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).
18. *See, e.g.*, OKLA. STAT. tit. 76, §§ 81-89 (2013) (requiring disclosure of “all documents and information relevant or related to a pending or potential claim against a personal injury trust”); OHIO REV. CODE §§ 2307.951 to -.954 (2013) (requiring disclosure of bankruptcy trust claims and allowing stay of actions pending disclosure of trust claims); WIS. STAT. § 802.025 (2014) (requiring disclosure of “all trust documents” and information regarding claims against anticipated trusts; W. Va. Code §§ 55-7F-1 to .011) (2015) (“designed to “[p]rovide transparency for claims made in the asbestos bankruptcy trust claim system and for claims made in civil asbestos litigation” and to “reduce the opportunity for fraud or suppression of evidence in asbestos actions”); Ariz. Rev. Stat. § 12-782 (2015); H.B. 1492, 84th Legislature (Tex. 2015) (to be codified at Tex Civ. Prac. & Rem. Code § 90.051 to -.058).

19. *See id.*
20. *See In re LAOSD Asbestos Cases*, No. JCCP 4674 (Cal. Super. Ct. Los Angeles Cnty. May 27, 2015) (Case Management Order Requiring Disclosure of Bankruptcy Trust Claims, Claims-Related Materials, and Asbestos Exposure Facts), *available at* http://www.polsinelli.com/-/media/Intelligence%20Documents/62021189_52715CASEMANAGEMENTORDERREQUIRINGDISCLOSUREOFBANKRUPTCYTRUSTCLAIMS.PDF.
21. Hearing Transcript at 36, *Barger v. A.W. Chesterton, Inc.*, No. CV-2013-901295 (Ala. Cir. Ct. Jefferson Cnty. Aug. 11, 2015); *Elrod v. A.W. Chesterton, Inc.*, No. CV-2012-903006 (Ala. Cir. Ct. Jefferson Cnty. Aug. 11, 2015); *Osborne v. A.W. Chesterton, Inc.*, No. CV-2013-903071 (Ala. Cir. Ct. Jefferson Cnty. Aug. 11, 2015).
22. *Willis v. Buffalo Pumps, Inc.*, No. 3:12-cv-00744-BTM-DHB (S.D. Cal. June 2, 2014).
23. *Twisselman v. Borg Warner Morse Tech.*, Cause No. 1322-CC01232 (Mo. Cir. Ct. 22nd Jud. Dist. July 23, 2014) (Decision & Order).
24. *See, e.g., Oddo v. Asbestos Corp., Ltd.*, No. 2012-C-0415 (La. Ct. App. July 16, 2015) (Grant of Supervisory Writ) (holding that subpoenaed bankruptcy trust claim documents are discoverable and nonproduction of the documents would unfairly prejudice defendant); *Carmody v. Amchem Prods.*, No. 190060/13 (N.Y. Sup. Ct. N.Y. Cnty. July 10, 2014) (Decision and Order) (denying motion to quash subpoena to Manville Trust); *Sweredoski v. Alfa Laval, Inc.*, No. PC-2011-1544 (R.I. Super. Ct. Jan. 30, 2014) (Decision) (holding that bankruptcy trust claim documents are discoverable for limited evidentiary purposes).
25. *Cummings v. Gen. Elec. Co.*, No. 13-CI-6374 (Ky. Cir. Ct., Jefferson Cnty. July 27, 2015) (Order); John O'Brien, *Ky. Judge: Asbestos Firm Should Have Turned Over Trust Claim Evidence to Defendants*, LEGAL NEWSLINE, Aug. 5, 2010, *available at* <http://legalnewsline.com/stories/510631736-ky-judge-asbestos-firm-should-have-turned-over-trust-claim-evidence-to-defendants>.
26. Order, *Golik v. CBS Corp.*, No. 1308-11192 (Or. Cir. Ct. Multnomah Cnty. Aug. 14, 2015); Hearing Transcript, *Golik v. CBS Corp.*, No. 1308-11192 (Or. Cir. Ct. Multnomah Cnty. Aug. 14, 2015); *see also Ore. State Court Orders New Trial in Asbestos Case, Cites Failure to Disclose Trust Claims*, HARRISMARTIN PUBLISHING, Sept. 3, 2015, *available at* <http://harrismartin.com/article/19879/ore-state-court-orders-new-trial-in-asbestos-case-cites-failure-to-disclose-trust-claims/>.
27. Defendant Weyerhaeuser Company's Motion for Judgement Notwithstanding the Verdict and Alternative Motion for New Trial at 30-33, *Golik v. CBS Corp.*, No. 1308-11192 (Or. Cir. Ct. Multnomah Cnty. July 13, 2015).
28. *Id.*
29. *Id.*
30. *See, e.g., id.* at 30-42.
31. Order, *Golik v. CBS Corp.*, No. 1308-11192 (Or. Cir. Ct. Multnomah Cnty. Aug. 14, 2015); Hearing Transcript at 109-110, *Golik v. CBS Corp.*, No. 1308-11192 (Or. Cir. Ct. Multnomah Cnty. Aug. 14, 2015).
32. *See Ableman, supra* note 2 (emphasis added).
33. *See* H.B. 1492, 84th Legislature (Tex. 2015) (to be codified at Tex Civ. Prac. & Rem. Code § 90.051 to -.058).
34. *Id.*
35. *Id.*
36. *See Garlock Sealing Techs. LLC v. Belluck & Fox, LLP*, Adversary Proceeding No. 14-AP-3036 (Bankr. W.D.N.C 2014); *Garlock Sealing Techs. LLC v. Shein Law Center*, Adversary Proceeding No. 14-AP-3035 (Bankr. W.D.N.C 2014); *Garlock Sealing Techs. LLC v. Simon Greenstone Panatier Bartlett*, Adversary Proceeding No. 14-AP-3037 (Bankr. W.D.N.C 2014); *Garlock Sealing Techs. LLC v. Waters & Kraus, LLP*, Adversary Proceeding No. 14-AP-3038 (Bankr. W.D.N.C 2014). ■

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