



U.S. CHAMBER  
Institute for Legal Reform

# The Waiting Game

*Delay and Non-Disclosure  
of Asbestos Trust Claims*

.....  
DECEMBER 2015





**U.S. CHAMBER**  
**Institute for Legal Reform**

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# Introduction

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Since 2006 the asbestos bankruptcy personal injury trust system has paid out more than \$18 billion in claim payments, representing a substantial source of alternative compensation for plaintiffs concurrently pursuing lawsuits against solvent companies in the tort system.<sup>1</sup>

However, much of these trust claims and payments have been made with an insufficient level of transparency and coordination with the tort system. This in turn has raised concerns from defendant companies over the intentional delay of trust filings and alleged suppression of trust disclosures by plaintiffs and their counsel in the underlying tort proceedings.<sup>2</sup> Defendants have argued that the non-disclosure of trust claims and related predecessor company exposures conceal significant liability shares from the purview of the courts, resulting in increased levels of both their trial risks and litigation costs, and forcing settlement premiums that far exceed their legal liability.

The most glaring evidence of such intentional delay and suppression of trust-related disclosures and the inequitable impact on tort defendants came in January 2014 when North Carolina federal bankruptcy judge George Hodges issued an estimation ruling in the bankruptcy reorganization of Garlock Sealing Technologies LLC (Garlock).<sup>3</sup> In his ruling, Judge Hodges found that Garlock's pre-bankruptcy litigation history was "infected by the manipulation of exposure evidence by plaintiffs and their lawyers."<sup>4</sup> Judge Hodges determined that Garlock had repeatedly settled cases in which it had little to no legal liability; due in part to the increased trial risk and litigation costs Garlock faced when such significant trust

*“ Judge Hodges determined that Garlock had repeatedly settled cases in which it had little to no legal liability; this was due in part to the increased trial risk and litigation costs Garlock faced when such significant trust disclosures were concealed. ”*

disclosures were concealed. Based on these findings, Judge Hodges ruled in favor of Garlock, whose expert estimated Garlock’s present and future legal liability to be no more than \$125 million; an amount that was over a billion dollars less than the estimates asserted by experts retained by current and future asbestos claimants.<sup>5</sup>

In briefs following Judge Hodges’s ruling, the Asbestos Claimants Committee, which represents the interests of pending asbestos creditors in the Garlock bankruptcy, criticized the judge’s findings with assertions that his conclusions were based on a limited sample of “cherry-picked” cases.<sup>6</sup> The facts, however, tell a much different story. While Judge Hodges’s ruling details 15 of Garlock’s most egregious examples (referred to as “Exemplar Cases”) of plaintiff law firm misconduct and concealment of exposure evidence and trust-related disclosures,<sup>7</sup> the broader data underlying his findings include detailed discovery on thousands of Garlock’s historical cases. In fact, Judge Hodges reached his conclusion with the benefit of robust data compiled in the Garlock bankruptcy through historical case files, plaintiff law firm disclosures, asbestos trust discovery, and prior bankruptcy voting ballots (Garlock Data).

Most recently, these data were made available to the public thanks in large part to efforts by the media publication Legal Newsline.<sup>8</sup> The following commentary examines the public Garlock Data, both through aggregate statistics and specific case examples that further highlight the concealment of trust-related disclosures in the tort system.

# Garlock's Pre-Bankruptcy Efforts to Expose Alleged Suppression of Evidence

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Even in the months prior to filing for bankruptcy in June 2010, Garlock and its counsel attempted to demonstrate the systemic nature of exposure concealment to bankrupt company products by comparing its own case history to voting ballots from the Pittsburgh Corning Corporation (PCC) bankruptcy reorganization.<sup>9</sup>

Prior to its bankruptcy filing in 2000, PCC was a primary defendant responsible for claims alleging exposure to Unibestos asbestos-containing thermal insulation products. As such, PCC and Unibestos exposure were routinely identified in lawsuits in the 1990s, but as Garlock contended, these assertions disappeared from plaintiff disclosures in the 2000s once PCC filed for bankruptcy.

To test this contention, Garlock obtained access to approximately 100,000 PCC bankruptcy voting ballots. They then drew a random sample of 255 recent tort cases in which the plaintiffs were asked in discovery to identify all their exposures to asbestos-

containing products. In 236 of the 255 cases (92.5%), the plaintiff and plaintiff counsel failed to identify or disclose any potential exposures to PCC products, even though they eventually voted as a creditor in the pending PCC bankruptcy. Plaintiff attorneys and their representatives have argued that bankruptcy ballots are not an allegation of exposure, but rather a reservation of voting rights.<sup>10</sup> However, the PCC ballot clearly requires plaintiffs' counsel to certify that they are "authorized by each holder of a Channeled Asbestos PI Trust Claim listed on the Master Ballot Exhibit accompanying this Master Ballot to represent the required exposure for each such Claimant."<sup>11</sup>

*“ In 236 of the 255 cases (92.5%), the plaintiff and plaintiff counsel failed to identify or disclose any potential exposures to PCC products, even though they eventually voted as a creditor in the pending PCC bankruptcy.”*

To illustrate this inconsistent claiming behavior, Garlock detailed the experience of 2 of the 236 cases in its own bankruptcy Informational Brief:

One of these plaintiffs had been asked by his own counsel in deposition, ‘Have you ever been exposed to Unibestos insulation?’ The plaintiff testified, ‘No.’ Three months later, Garlock paid this plaintiff \$400,000 to settle his mesothelioma claim. Nine months after the payment, the law firm cast a ballot on his behalf, certifying under penalty of perjury that he had indeed been exposed to PCC’s asbestos-containing products.

Another plaintiff had insisted repeatedly in his deposition that he had never been exposed to pipe insulation (such

as Unibestos), despite some objective evidence to the contrary. Garlock paid this individual \$450,000 to settle his claim in January 2010, before obtaining access to the PCC ballots. Two months before Garlock paid him—and only eight months after his deposition—his attorney certified under penalty of perjury that he had been exposed to PCC products and was therefore entitled to vote in the bankruptcy.<sup>12</sup>

Based on the experiences illustrated in the PCC sample analysis, Garlock initiated a set of discovery motions in its own bankruptcy reorganization in an attempt to obtain the reasonable level of transparency that it was deprived of in the tort system.

# Garlock's Bankruptcy Discovery and the Public Garlock Data

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The Garlock Data consist of the company's own pre-bankruptcy claim and settlement data, supplemented by an extraordinary level of discovery. Ultimately, Garlock was granted court-ordered access to a robust level of data, which included: (1) Personal Information Questionnaires (PIQs) submitted by plaintiff law firms on behalf of mesothelioma plaintiffs with pending lawsuits against Garlock at the time of the bankruptcy filing; (2) a PIQ Supplemental Settlement Payment Questionnaire; (3) claim-level filing and payment data from certain asbestos bankruptcy trusts; and (4) voting ballots from a number of confirmed and pending bankruptcy reorganizations.<sup>13</sup>

The amount of data granted through discovery was unprecedented for an asbestos bankruptcy reorganization. As outlined in the public report of the debtor's database expert, Dr. Jorge Gallardo-Garcia of Bates White, the discovery provided data on thousands of pending and resolved mesothelioma cases against Garlock.<sup>14</sup> As Judge Hodges described in his estimation order, "the result was the most extensive database about asbestos claims and claimants that has been produced to date. It is the most current data available and is the only data that accurately reflects the

pool of claims against Garlock. It represents a reasonable and representative sample of claims against Garlock."<sup>15</sup>

The level of transparency that the Garlock Data allow across thousands of cases exposes a systematic strategy by plaintiff tort counsel to intentionally withhold relevant exposure assertions related to reorganized companies and their successor trusts. The Garlock Data, supported by expert analysis and testimony from economists, medical experts, and legal scholars, provided the support for



Judge Hodges’s landmark findings in his estimation order. Now public, the Garlock Data reveal the following:

- According to thousands of PIQ submissions, Garlock claimants, on average, filed claims with 17 trusts and voted in an additional 4 bankruptcy cases.<sup>16</sup>
- The subset of 850 PIQs that submitted a Supplemental Settlement Payment Questionnaire disclosed an average of 22 trust claim filings.<sup>17</sup>
- The total trust recovery for an individual claimant based on the Supplemental Settlement Payment Questionnaire was estimated to be about \$600,000.<sup>18</sup>
- On average, Garlock paid nearly double what it otherwise would have when trust filings were delayed until after the plaintiff settled with Garlock.<sup>19</sup>

To highlight these overall trends observed across thousands of cases, Garlock presented 15 Exemplar Cases to Judge Hodges during the estimation hearing.<sup>20</sup>

## 15 EXEMPLAR CASES

EXEMPLAR CASE	PLAINTIFF LAW FIRM	TRUST CLAIMS DISCLOSED IN TORT SYSTEM	TRUST CLAIMS NOT DISCLOSED IN TORT SYSTEM
TREGGETT	WATERS KRAUS & PAUL	2	22
WILLIAMS	WATERS KRAUS & PAUL	7	25
STECKLER	WATERS KRAUS & PAUL	3	23
TAYLOR	WATERS KRAUS & PAUL	6	19
WHITE	SIMON GREENSTONE PANATIER BARTLETT	2	22
REED	SIMON GREENSTONE PANATIER BARTLETT	1	14
ORNSTEIN	SIMON GREENSTONE PANATIER BARTLETT	0	11
MASSINGER	SHEIN LAW CENTER	5	11
GOLINI	SHEIN LAW CENTER	0	25
BRENNAN	SHEIN LAW CENTER	0	20
FLYNN	BELLUCK & FOX	1	23
HOMA	BELLUCK & FOX	3	26
BELTRAMI	BELLUCK & FOX	1	25
PHILIPS	WILLIAMS KHERKER	1	14
TORRES	WILLIAMS KHERKER	0	4
	AVERAGE	2	19

These 15 cases were all settled by Garlock for large sums, and in each case the Garlock Data revealed critical evidence of trust claims and information regarding trust predecessor companies that was previously withheld from Garlock during the resolution of the tort lawsuit. For instance, on average, each claimant eventually filed 21 trust claims, but only 2 of the claims or related exposure allegations were disclosed to Garlock in the tort system.<sup>21</sup> The table summarizes the suppression<sup>22</sup> of trust disclosures to Garlock in the tort system.

The 15 Exemplar Cases crystallize the suppression of evidence alleged by Garlock and characterized by Judge Hodges. However, as outlined in the aggregate statistics, calculated across thousands of cases, it is clear that the publically available Garlock Data contain far more than 15 examples of significant inconsistencies between tort and trust disclosures. Moreover, the Garlock Data show that the systemic practice was not isolated to Garlock and likely prejudiced any defendant who settled or paid a judgment in an asbestos case when trust exposure evidence was concealed.

*“ [I]t is clear that the publically available Garlock Data contain far more than 15 examples of significant inconsistencies between tort and trust disclosures. Moreover, the Garlock Data show that the systemic practice was not isolated to Garlock and likely prejudiced any defendant who settled or paid a judgment in an asbestos case when trust exposure evidence was concealed. ”*

# Additional Evidence of Non-Disclosure and Inconsistent Claiming

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*A recent commentary, [A Look Behind the Curtain: Public Release of Garlock Bankruptcy Discovery Confirms Widespread Pattern of Evidentiary Abuse Against Crane Co.](#), examined the level of evidence suppression<sup>23</sup> by plaintiff law firms against current asbestos defendant Crane Co.<sup>24</sup>*

Based on an examination of the Garlock Data and underlying case documents, the commentary found that 80% of the trust-related claims and exposures were not disclosed to Crane Co. during the underlying tort proceedings, and 50% of the trust claims were filed after Crane Co. had resolved the tort action. The commentary also detailed case examples that further illustrate the stark contradiction between exposure evidence presented by plaintiff attorneys to tort system defendants and evidence supporting claims made against asbestos bankruptcy trusts. The following section details additional case examples from the Garlock Data that further expose the inconsistent claiming behavior and allegations between the tort and trust systems.<sup>25</sup>

*“ [T]he commentary found that 80% of the trust-related claims and exposures were not disclosed to Crane Co. during the underlying tort proceedings, and 50% of the trust claims were filed after Crane Co. had resolved the tort action. ”*

## *Robert Wood v. John Crane*

The case of *Robert Wood v. John Crane* was filed on January 18, 2010, in Kanawha County, West Virginia state court against over 100 defendants.<sup>26</sup> The plaintiff was represented by attorneys from The Lanier Law Firm P.C. and Motley Rice LLC.<sup>27</sup> According to tort disclosures, Wood's alleged asbestos exposures stemmed from:

- Four years of U.S. naval service aboard a destroyer at the Boston Naval Shipyard;<sup>28</sup>
- Nearly four decades as a union pipefitter and plumber working at power houses, chemical plants, and multiple other industrial sites located across Ohio, Pennsylvania, and West Virginia;<sup>29</sup> and
- Shade-tree mechanic work on several automobiles.<sup>30</sup>

During deposition testimony, Wood could not recall the names or manufacturers of the asbestos-containing thermal insulation products to which he alleged exposure.<sup>31</sup> Conversely, Wood was able to recall the products of more than a dozen other non-insulation defendants.<sup>32</sup>

At trial, the remaining tort defendant, a gasket manufacturer, argued that Wood's injuries were caused by exposure to amosite asbestos fibers from the thermal insulation products.<sup>33</sup> The defense's argument was supported by scientific expert testimony from industrial hygienists, toxicologists, and pathologists. Despite the defendant's arguments, however, the case resulted in a plaintiff verdict. Absent any identification of

alternative exposures to thermal insulation products, the jury found that the defendant failed to warn Wood about the dangers of asbestos, the defendant's gaskets were defective, and therefore, the defendant's asbestos product was a substantial contributing factor to Wood's asbestos-related disease.<sup>34</sup>

However, inconsistent with the lack of plaintiff disclosures in the tort system regarding specific thermal insulation companies potentially responsible for Wood's injuries, the Garlock Data show that Wood's counsel eventually filed claims against 20 trusts, a majority of which represent predecessor companies that once engaged in the manufacturing, distribution, or installation of asbestos-containing thermal insulation products. The defense's argument that amosite exposures from thermal asbestos insulation products were the primary cause of Wood's injury may have been more impactful had the 20 trust claims been filed and disclosed prior to trial. Furthermore, the 53 defendants that settled with Wood prior to trial may have done so at a more equitable amount had the trust claims not been delayed and their intended filing concealed in the underlying tort case. In fact, according to an analysis by Dr. Charles Bates, the estimation expert for Garlock in its bankruptcy case:

On average, claimants who filed with the trust before resolving their Garlock claims settled with Garlock for just over half the amount that Garlock paid claimants who resolved their Garlock claims before their trust filings.<sup>35</sup>

The following table summarizes Wood’s trust-related disclosures extracted directly from the Garlock Data. Note that as of the

PIQ submission date,<sup>36</sup> The Lanier Law Firm had already received payment or approval for payment on 11 of the trust claims.

## GARLOCK DATA—WOOD’S TRUST DISCLOSURES

TRUST PREDECESSOR COMPANY	DISCLOSED TRUST FILING DATE	DISCLOSED TRUST STATUS
A&I	NOT DISCLOSED	PAID/APPROVED/SETTLED
AC&S	NOT DISCLOSED	NOT DISCLOSED
ARMSTRONG WORLD INDUSTRIES	NOT DISCLOSED	PAID/APPROVED/SETTLED
ARTRA	NOT DISCLOSED	NOT DISCLOSED
ASARCO	NOT DISCLOSED	NOT DISCLOSED
BABCOCK & WILCOX	NOT DISCLOSED	PAID/APPROVED/SETTLED
CELOTEX	NOT DISCLOSED	PAID/APPROVED/SETTLED
COMBUSTION ENGINEERING	NOT DISCLOSED	NOT DISCLOSED
CONGOLEUM	NOT DISCLOSED	NOT DISCLOSED
EAGLE PICHER	JANUARY 27, 2012	NOT DISCLOSED
FIBREBOARD	NOT DISCLOSED	PAID/APPROVED/SETTLED
HALLIBURTON	NOT DISCLOSED	NOT DISCLOSED
HARBISON WALKER	NOT DISCLOSED	NOT DISCLOSED
KAISER ALUMINUM & CHEMICAL	NOT DISCLOSED	PAID/APPROVED/SETTLED
MANVILLE	NOT DISCLOSED	PAID/APPROVED/SETTLED
NATIONAL GYPSUM	NOT DISCLOSED	PAID/APPROVED/SETTLED
OWENS CORNING	NOT DISCLOSED	PAID/APPROVED/SETTLED
PLIBRICO	NOT DISCLOSED	PAID/APPROVED/SETTLED
RAYMARK INDUSTRIES	JANUARY 14, 2011	NOT DISCLOSED
US GYPSUM	NOT DISCLOSED	PAID/APPROVED/SETTLED

Another questionable aspect of the *Wood* case in regard to the lack of trust claim disclosures is the case management order (CMO) in Kanawha County regarding bankruptcy trust submissions. The CMO mandates that for cases filed in Kanawha County, plaintiff counsel must timely file a disclosure statement of any and all existing and anticipated bankruptcy trust claim and payment information 120 days prior to the

date set for trial.<sup>37</sup> Moreover, the CMO requires the accompanying submission of an affidavit by the plaintiff and plaintiff counsel that “the statement is based on a good-faith investigation of all potential claims against asbestos trusts.” Though the CMO was enacted on March 3, 2010, during the pendency of the *Wood* case, and did not apply to cases in the October 2010 trial group (including *Wood*), the plaintiff

law firms in *Wood* were aware of the new bankruptcy trust stipulation, as an attorney from Motley Rice was liaison counsel to the court during the CMO negotiations.<sup>38</sup> Furthermore, the CMO was negotiated and passed before the same judge presiding over *Wood*,<sup>39</sup> and its passage occurred 13 days before *Wood*'s deposition and over 7 months before trial.

### *James Ginter v. Anderson Vreeland et al.*

Another example of inconsistent claiming behavior by plaintiff law firms gleaned from the Garlock Data is the New York case of *James Ginter v. Anderson Vreeland et al.* The *Ginter* case was filed on April 19, 2010, by plaintiff law firm Lipsitz & Ponterio against 24 tort defendants.<sup>40</sup> Unlike *Wood*, this case involved a plaintiff who claimed *de minimus* exposure to thermal insulation products.<sup>41</sup> According to tort disclosures, Ginter's alleged asbestos exposures stemmed from:

- Working as a chemist, primarily at Durez Plastics in Tonawanda, N.Y., from 1979-2003;<sup>42</sup>
- Operating a Friction Assessment Screening Test (FAST) machine;<sup>43</sup> and
- Home-improvement and repair activities.<sup>44</sup>

Ginter further disclosed that he may have been exposed to asbestos in 1968 as a bystander while watching workers remove and install thermal pipe insulation during a three-month stint as a laboratory analyst at Allied Chemical Corp. in Buffalo, N.Y.<sup>45</sup>

At trial, Ginter's attorneys focused the case on his alleged exposures at the Durez Plastics facility, particularly his exposure to asbestos friction products tested on the FAST machine, as well as instruments and other products used during a phenolic molding process. In the trial's opening statements the plaintiffs' counsel even took an opportunity to diminish the relevancy of Ginter's alleged bystander exposure to thermal insulation products by pointing out how truly limited those exposures were in terms of frequency and duration.

Another topic you will hear is fiber potency. Okay. Defendant's position is that amosite is more potent than chrysotile in causing cancer. That's their position. Even if that's true, even if that's true, the evidence in this case is going to show that Mr. Ginter's exposure to amosite was limited, very limited. And that's where this slide takes us. The only plausible exposure to amosite asbestos in this case was in 1968 when Jim [Ginter] worked at Allied Chemical for three months. During that three month period he was out in the plant and he saw people working with insulation. He didn't do it himself. He was standing there. He saw them. He stopped to check it out. The evidence is going to show that happened between two and three times in that three month period where they were actually working with the insulation and cutting it. He also testified it would be between a couple minutes and fifteen minutes maximum. So what I did is I took the maximum, three times by fifteen minutes, that's forty-five minutes of exposure. Forty-five minutes. Point seven five hours.<sup>46</sup>

However, the Garlock Data appear to contradict the plaintiff counsel’s trial characterization of insignificant levels of amosite exposure. According to the Garlock Data, Ginter’s counsel eventually filed 11 trust claims, many of which indemnify predecessor companies that once engaged in the manufacturing, distribution, or installation of thermal insulation products. Furthermore, the Garlock Data disclose the filing date for 7 of the 11 trust claims, and in each instance the trust claim was filed in October 2011, just three months after the trial.<sup>47</sup> The following table summarizes Ginter’s trust-related disclosures extracted directly from the PIQ submission in the public Garlock Data.

A majority of Ginter’s trust claims and related assertions of exposure were supported by his work history at a trust Approved Site.<sup>48</sup> Many trusts provide Approved Site lists to serve as an equivalent to evidentiary support for alleged exposures. These Approved Sites are based on credible information that the predecessor company’s products or operations were present at a given location for a specified period of time.<sup>49</sup> These Approved Site lists are often compiled through historical corporate records and prior plaintiff testimony,<sup>50</sup> which the trust has determined establishes enough evidence to presume that any individual in the direct proximity was likely exposed to the predecessor company’s products or operations.<sup>51</sup>

## GARLOCK DATA—GINTER’S TRUST DISCLOSURES

TRUST PREDECESSOR COMPANY	DISCLOSED TRUST FILING DATE	DISCLOSED TRUST STATUS
ARMSTRONG WORLD INDUSTRIES	OCTOBER 5, 2011	NOT DISCLOSED
BABCOCK & WILCOX	OCTOBER 5, 2011	NOT DISCLOSED
CELOTEX	NOT DISCLOSED	NOT DISCLOSED
COMBUSTION ENGINEERING	NOT DISCLOSED	NOT DISCLOSED
EAGLE PICHER	OCTOBER 11, 2011	NOT DISCLOSED
FIBREBOARD	OCTOBER 5, 2011	NOT DISCLOSED
HALLIBURTON	OCTOBER 5, 2011	NOT DISCLOSED
HARBISON WALKER	OCTOBER 13, 2011	NOT DISCLOSED
HK PORTER	NOT DISCLOSED	NOT DISCLOSED
MANVILLE	NOT DISCLOSED	AWAITING OFFER RESPONSE
OWENS CORNING	OCTOBER 5, 2011	NOT DISCLOSED

However, in Ginter’s case, the Approved Sites identified in the trust claim forms are for his tenure at the Durez Plastics facility. This contradicts the plaintiff counsel’s assertions at trial that Allied Chemical was the *only* place where Ginter could have possibly been exposed to amosite asbestos and any type of thermal insulation products, and such exposure levels would be very limited at best.<sup>52</sup> Moreover, disclosures in the Celotex, Owens Corning, and Eagle Picher trust claim forms assert exposures to specific products of the predecessor companies, products and allegations that do not appear to have been disclosed during the underlying court proceedings or at trial.

This apparent contradiction between the exposure allegations made in the tort proceedings versus those either explicitly alleged or implied through the trust filings may be indicative of the type of “Institutionalized Fraud” former plaintiff

attorney Thomas Wilson describes in his 2013 Mealey’s commentary.<sup>53</sup> In the commentary, Wilson describes the “loopholes” in trust processing and qualification procedures that fail to protect the finite trust assets from specious or tenuous claiming behavior on the part of plaintiff attorneys—the same plaintiff attorneys that participated in the design and implementation of the trust procedures.<sup>54</sup> For example, the sole benefit provision present in most Trust Distribution Procedures (TDP) states the following:

...failure to identify [Predecessor Company] products in the claimant’s underlying tort action, or to other bankruptcy trusts, does not preclude the claimant from recovering from the Asbestos PI Trust, provided the claimant otherwise satisfies the medical and exposure requirements of the Asbestos TDP.<sup>55</sup>

*“ [I]n Ginter’s case, the Approved Sites identified in the trust claim forms are for his tenure at the Durez Plastics facility. This contradicts the plaintiff counsel’s assertions at trial that Allied Chemical was the only place where Ginter could have possibly been exposed to amosite asbestos and any type of thermal insulation products, and such exposure levels would be very limited at best. ”*



In the case of *Ginter*, the plaintiff's counsel was adamant at trial that any potential bystander exposures to thermal insulation products at Allied Chemical were insignificant. However, the Garlock Data reveal that Ginter's attorneys ultimately filed claims against several thermal insulation trusts. In fact, as previously noted, the Owens Corning trust claim form included the specific identification of Kaylo exposures, which is a product line of thermal insulation pipe coverings and insulating block. Without appropriate integration between the trust and tort systems, the inconsistent assertions made to each cannot be revealed; it is only now through the public release of the Garlock Data that we know the trust claims ultimately made on behalf of Ginter.

### *John Koeberle v. Alfa Laval et al.*

The case of *John Koeberle v. Alfa Laval et al.* also serves as an example of inconsistent claiming across the tort and trust systems. In this instance, plaintiff's counsel filed a series of trust claims seeking compensation for plaintiff John Koeberle, even though Koeberle explicitly testified under oath that he was not exposed to the products of the particular trust predecessor companies.

In 2009, plaintiff law firms Waters & Kraus and The Shein Law Center filed a complaint

in the Philadelphia Court of Common Pleas on behalf of Koeberle seeking compensation from over 20 solvent asbestos defendants for causing Koeberle's asbestos-related, mesothelioma.<sup>56</sup> In the lawsuit, Koeberle alleged asbestos exposure to gasket, valve, and packing products during his service as a fireman and engineman in the U.S. Navy from 1948-1957, and exposure to home-improvement products used during a house construction project in the 1960s.<sup>57</sup>

Koeberle testified in his deposition that during his career servicing diesel engines aboard several naval vessels, as well as time spent on shore duty at the Norfolk Naval shipyard, he was not required to remove, repair, or come in contact with any insulation as part of his duties.<sup>58</sup> Similarly, Koeberle stated that his duties did not take him near the boilers on any of the ships he was aboard during his service.<sup>59</sup> Koeberle also testified in his deposition that he could not recall the names of any bankrupt companies that manufactured drywall or insulation products he may have come in contact with during a home renovation in 1962.<sup>60</sup>

In fact, during his September 9, 2009, deposition, Koeberle answered "no" when asked if he was exposed to specific products and companies (now bankrupt) who manufactured or distributed thermal insulation, boilers, and construction products.

## DEPOSITION OF JOHN KOEBERLE - SEPTEMBER 9, 2009

**Q:** *How about, have you ever heard of Kaylo?*

**A:** *No.*

**Q:** *Any kind of pipes or pipe covering?*

**A:** *No.*

**Q:** *Eagle Picher, did you ever hear of that?*

**A:** *I heard the name but I didn't know what to associate it to.*

**Q:** *Like a cement, have you ever heard of an Eagle Picher cement?*

**A:** *No.*

**Q:** *Armstrong?*

**A:** *Oh yeah.*

**Q:** *Did you ever work with any Armstrong products?*

**A:** *No.*

**Q:** *You're just familiar with their name?*

**A:** *That's tile, right?*

**Q:** *That's one thing, yes. Did you ever work with or around —?*

**A:** *No.*

**Q:** *— Philip Carey or Celotex, does the name ring a bell to you at all?*

**A:** *No.*

**Q:** *Unibestos, a kind of pipe covering, did you ever hear of that?*

**A:** *No.*

**Q:** *Do you have any knowledge whether you ever worked around any kind of sprays, spray insulation?*

**A:** *No.*

**Q:** *Did you ever work with or around any products made by National Gypsum or U.S. Gypsum or Gold Bond?*

**A:** *I've heard of them, but no.<sup>61</sup>*

On June 10, 2010, the Philadelphia Common Pleas court confirmed a \$4.5 million jury award to Koeberle based on the evidence of his stated exposure to asbestos gaskets, valves, and packing.<sup>62</sup> However, despite zero allegations of exposure by Koeberle to the products of trust predecessor companies, and in direct contradiction to Koeberle's own testimony, the Garlock Data

show that bankruptcy trust claims were filed on Koeberle's behalf less than three months after the verdict against trusts that indemnify Armstrong World Industries, Babcock & Wilcox, Fibreboard, and Owens Corning. The law firm later filed trust claims against Harbison-Walker, Halliburton, and U.S. Gypsum. Moreover, the Garlock Data show that prior to trial, a bankruptcy voting

“ *The seven trust claims filed on behalf of Koeberle and revealed in the Garlock Data likely represent just a fraction of the number of trust claims that were ultimately filed on Koeberle’s behalf.* ”

ballot was filed by Koeberle’s attorneys in the pending Chapter 11 reorganization of Pittsburgh Corning, despite Koeberle’s own sworn testimony that he was not exposed to Pittsburgh Corning’s insulation product Unibestos.<sup>63</sup>

The seven trust claims filed on behalf of Koeberle and revealed in the Garlock Data likely represent just a fraction of the number of trust claims that were ultimately filed on Koeberle’s behalf. The information on Koeberle’s seven trust claims was obtained through Garlock’s discovery on trust data from the Delaware Claims Processing Facility (DCPF), which processes claims for only 10 of the more than 40 operational asbestos bankruptcy trusts.<sup>64</sup> In a reverse-bifurcated trial in the Philadelphia Court of Common Pleas, *Koeberle* was consolidated for trial proceedings with the case of *Vincent Golini v. Alfa Laval Inc. et al.*, due in part to similarities between the two plaintiffs’ naval exposures. *Golini* was one

of the 15 Exemplar Cases highlighted by Garlock in its bankruptcy, and the Garlock Data include a PIQ filed on Golini’s behalf. Unlike the DCPF data discovery, the PIQ submissions were not limited to a subset of operational trusts, and as such, the *Golini* PIQ disclosed 25 trust claim filings, many of which indemnify predecessor companies that manufactured, distributed, or installed thermal insulation products. Similar to *Koeberle*, plaintiff’s counsel failed to disclose any trust claims or related exposures to bankrupt products during the pendency of the *Golini* proceedings.

### *David Kelemen v. Buffalo Pumps Inc. et al.*

In the case *David Kelemen v. Buffalo Pumps Inc. et al.*, plaintiff law firm Simon Eddins Greenstone LLP filed a complaint on January 24, 2008, in the Los Angeles, California, Superior Court against over 40 defendants alleging David Kelemen’s mesothelioma was caused primarily due to asbestos exposure while serving in the U.S. Navy as a fireman and machinist mate.<sup>65</sup> Specifically, Kelemen alleged asbestos exposure during his time aboard nuclear submarines and at shipyards while in the U.S. Navy from 1967-1975 and automotive brake work he performed on his vehicles.<sup>66</sup>

In deposition and answers to interrogatories, Kelemen positively identified over 35 defendants whose products comprised of turbines, purifiers, pumps, valves, steamtraps, gaskets, packing, and other component-part products.<sup>67</sup> Conversely, while Kelemen acknowledged that he often worked with and around thermal insulation products

in “dusty, filthy” conditions,<sup>68</sup> he could not positively identify a single insulation product or manufacturer.

However, even though Kelemen could not recall such insulation product companies, the DCPF disclosures as part of the Garlock Data reveal that his attorneys filed nine trust claims, many of which indemnify predecessor companies that manufactured insulation or refractory products.

Furthermore, the Garlock Data reveal that Kelemen’s attorneys filed claims against Armstrong, Fibreboard, Owens Corning, and U.S. Gypsum *before* the October 2009 trial, yet failed to reveal the claim filings leading up to and following verdict. The claims against Armstrong, Fibreboard, and U.S. Gypsum were filed in the months leading up to trial, while the claim against Owens

Corning was made in March 2009, nearly six months prior to trial. Moreover, the trust claims against U.S. Gypsum and Fibreboard were approved for payment by those trusts in September 2009, again prior to trial. All four of these pre-trial trust claim filings were paid by the respective bankruptcy trusts after verdict.

In addition, Kelemen’s attorneys filed three more trust claims against Flexitallic, Halliburton, and Harbison-Walker in the two months immediately following the verdict and made subsequent trust claims against Ferodo and Turner & Newall. The level of concealment in this case, in which claim forms were actually made prior to trial and not acknowledged during testimony, cuts to the core of the transparency argument and shows the ineffectiveness of current

“ [T]he Garlock Data reveal that Kelemen’s attorneys filed claims against Armstrong World Industries, Fibreboard, Owens Corning, and U.S. Gypsum before the October 2009 trial, yet failed to reveal the claim filings leading up to and following verdict. The claims against Armstrong, Fibreboard, and U.S. Gypsum were filed in the months leading up to trial, while the claim against Owens Corning was made in March 2009, nearly six months prior to trial. All four of these claims were paid by the respective bankruptcy trusts after verdict. ”

discovery rules even in cases in which bankruptcy trust claims are made before trial.

At trial, defendant John Crane put forth scientific experts who testified regarding the higher potency of amosite asbestos fibers from thermal insulation products relative to the *de minimus* exposure levels of chrysotile asbestos fibers emanating from an array of largely encapsulated component-part products, including John Crane's gaskets and packing.<sup>69</sup> John Crane additionally argued that the frequency and proximity of exposure to the more dangerous amosite insulation fibers during Kelemen's career was the substantial contributing factor causing his mesothelioma. In fact, Kelemen's own scientific experts agreed that he had substantial asbestos exposure to the more

dangerous amosite asbestos insulation and that studies have shown that amosite is 100 more times likely to cause mesothelioma than chrysotile asbestos.<sup>70</sup>

However, on October 22, 2009, a Los Angeles County jury rendered a verdict for Kelemen for \$35.3 million, and apportioned 70% of the liability to John Crane and the remaining 30% to all others.<sup>71</sup> This outcome and the disproportionate allocation of liability to John Crane raises questions regarding the jury's potential assignment of liability to bankrupt entities, as is applicable in the Los Angeles County court, had there been positive identification of predecessor company product exposures and the disclosure of the four trust claim filings that had been made by Kelemen's attorneys prior to trial.

# Conclusion

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The *Kelemen* proceedings and many of the other case examples demonstrate that it is often the plaintiff law firm, not the plaintiff, that is the most informed in terms of identifying product manufacturers and likely exposures at specific worksites. For example, a pipefitter may recall having to cut away portions of pipe insulation in order to repair gaskets or valves, but may not know the name of the company that manufactured the pipe insulation; such was the case in *Wood*.

Therefore, in order to properly identify manufacturers of such products, plaintiff law firms will often rely on prior discovery from reliable product identification witnesses who were able to place certain products at specific sites.<sup>72</sup> Many plaintiff firms will highlight such a library of historical discovery, knowledge, and experience when marketing to prospective clients.<sup>73</sup> However, while such a wealth of information can provide alleged support for a plaintiff's claims of exposure, it can also provide plaintiff law firms with a great deal of

strategic discretion as to if and when they will pursue compensation from specific defendants, solvent or bankrupt, as well as if and when such pursuits are disclosed.<sup>74</sup>

In *Garlock*, Judge Hodges found that such strategic discretion resulted in a "manipulation" of exposure allegations between the tort and trust systems. Absent a greater level of consistent trust and tort transparency, integration, and oversight, it is likely that such practices will persist.<sup>75</sup>

# Endnotes

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- 1 The statistics derived from the publicly available documentation produced by various asbestos bankruptcy trusts established pursuant to Section 524(g) of the U.S. bankruptcy code and the publicly available documentation produced during the proceedings of various Section 524(g) bankruptcy reorganizations.
- 2 “We file trust claims after the completion of the tort litigation,” Video deposition of Benjamin P. Shein, Jan. 16, 2013, at chap. 11, pp. 43–44.
- 3 Decision *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bankr. WDNC. January 10, 2014), pp 36-37: “But, most important, while it is not suppression of evidence for a plaintiff to be unable to identify exposures, it is suppression of evidence for a plaintiff to be unable to identify exposure in the tort case, but then later (and in some cases previously) to be able to identify it in Trust claims. It is that practice that prejudiced Garlock in the tort system – and makes its settlement history an unreliable predictor of its true liability.”
- 4 Decision *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bankr. WDNC. January 10, 2014).
- 5 Decision *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bankr. WDNC. January 10, 2014).
- 6 *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bankr. WDNC., June 4, 2014), Brief /Memorandum In Support of Motion of the Official Committee of Asbestos Personal Injury Claimants to Reopen the Record of the Estimation Proceeding; <http://wfae.org/post/charlotte-judge-describes-asbestos-litigation-infected-impropriety-some-law-firms>.
- 7 Decision *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bankr. WDNC. January 10, 2014), pp. 31-35. With respect to these fifteen examples, Judge Hodge noted that “each and every one of them contains such demonstrable misrepresentation.” *Id.* at 35 (emphasis in original).
- 8 The public disclosures of Garlock Data and underlying source files were released in two tranches in February and May of 2015.
- 9 *In re Pittsburgh Corning Corporation*, No. 00-22876 (Bankr. W.D. Pa.).
- 10 See Expert Report of James L. Patton Jr., *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bankr. WDNC. June 7, 2014), filed April 23, 2013; The validity of the voting record in PCC’s bankruptcy case is currently pending appeal before the U.S. Court of Appeals for the Third Circuit.
- 11 Master Ballot for Accepting or Rejecting Modified Third Amended Plan of Reorganization for Class 5 Channeled Asbestos PI Trust Claims.
- 12 Information Brief of Garlock Sealing Technologies LLC, *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bankr. WDNC. June 7, 2010), pg. 54-55.
- 13 Decision *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bankr. WDNC. Jan. 10, 2014), Pg. 59-60.
- 14 Dr. Jorge Gallardo-Garcia’s Expert Report, Estimation Trial Exhibit GST-8004, *In re Garlock Sealing Technologies*, No. 10-31607 (Bankr. W.D.N.C., Feb. 15, 2013). According to Dr. Gallardo-Garcia’s report, the discovery included 4,200 PIQs submissions, 850 PIQ Supplemental Settlement Payment

- Questionnaires, trust data from the Delaware Claims Processing Facility for 9,600 mesothelioma claims previously resolved by Garlock prior to bankruptcy, and voting ballots from 23 bankruptcy reorganizations, which implicated thousands of Garlock pre-bankruptcy plaintiffs.
- 15 Decision *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bankr. WDNC. Jan. 10, 2014), Pg. 59-60.
  - 16 Dr. Charles Bates's Expert Report, Estimation Trial Exhibit GST-0996, *In re Garlock Sealing Technologies, LLC*, No. 10-31607 (Bankr. W.D.N.C., Feb. 15, 2013), Para 157.
  - 17 Garlock Public Data.
  - 18 Decision *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bankr. WDNC. Jan. 10, 2014), Pg. 61-62.
  - 19 Dr. Charles Bates's Expert Rebuttal Report, Estimation Trial Exhibit GST-0997, *In re Garlock Sealing Technologies, LLC*, No. 10-31607 (Bankr. W.D.N.C., Feb. 15, 2013). Para 148, Exhibit 53.
  - 20 *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bankr. WDNC., July 23, 2013), Trial Exhibit GST-8027, Opening Statement, Pgs. 20-22.
  - 21 Decision *In re Garlock Sealing Technologies*, No. 10-31607, 2014 Bankr. LEXIS 157 (Bankr. WDNC. Jan. 10, 2014), Pg. 31.
  - 22 As characterized by Judge Hodges in his Estimation Order.
  - 23 As characterized by Judge Hodges in his Estimation Order.
  - 24 Mealey's Litigation Report, Asbestos, Vol. 30, Issue, #19, *A Look Behind the Curtain: Public Release of Garlock Bankruptcy Discovery Confirms Widespread Pattern of Evidentiary Abuse Against Crane Co.*, Nov. 4, 2015; <http://www.bateswhite.com/insight-146.html>.
  - 25 The descriptions of the exemplar cases are based on facts extracted from the public Garlock Data and available public documents from the underlying tort proceedings.
  - 26 *Robert L. Wood et al. v. 3M Company*, No. 10-C-91, West Virginia Circuit Ct., Kanawha Co., Complaint, Jan. 25, 2010.
  - 27 *Robert L. Wood et al. v. 3M Company*, No. 10-C-91, West Virginia Circuit Ct., Kanawha Co., Complaint, Jan. 25, 2010.
  - 28 *Robert L. Wood et al. v. 3M Company*, No. 10-C-91, West Virginia Circuit Ct., Kanawha Co., Deposition of Robert L. Wood, Vol. 1, March 16, 2010, Pg. 32; 1st Amended Short Form Complaint, Feb. 24, 2010.
  - 29 *Robert L. Wood et al. v. 3M Company*, No. 10-C-91, West Virginia Circuit Ct., Kanawha Co., Deposition of Robert L. Wood, Vol. 1, March 16, 2010, Pg. 36; 1st Amended Short Form Complaint, Feb. 24, 2010.
  - 30 *Robert L. Wood et al. v. 3M Company*, No. 10-C-91, West Virginia Circuit Ct., Kanawha Co., Deposition of Robert L. Wood, Vol. 1, March 16, 2010, Pg. 170; 1st Amended Short Form Complaint, Feb. 24, 2010.
  - 31 *Robert L. Wood et al. v. 3M Company*, No. 10-C-91, West Virginia Circuit Ct., Kanawha Co., Deposition of Robert L. Wood, Vol. 1, March 16, 2010, Pgs. 35, 58, 75, 80, 86; Volume II, Pg. 12.
  - 32 *Robert L. Wood et al. v. 3M Company*, No. 10-C-91, West Virginia Circuit Ct., Kanawha Co., Deposition of Robert L. Wood, Vol. 1, March 16, 2010, Pgs. 34, 116; Volume I, Pg. 133.
  - 33 *Robert L. Wood et al. v. 3M Company*, No. 10-C-91, West Virginia Circuit Ct., Kanawha Co., Trial Transcript, Volume VI, Nov. 3, 2010, Pgs. 117, 125.
  - 34 *Robert L. Wood et al. v. 3M Company*, No. 10-C-91, West Virginia Circuit Ct., Kanawha Co. Verdict Sheet; Mealey's Litigation Report: Asbestos, Vol. 25, Issue 20, "West Virginia Jury Finds John Crane Liable for Man's Mesothelioma."
  - 35 Dr. Charles Bates's Expert Rebuttal Report, Estimation Trial Exhibit GST-0997, *In re Garlock Sealing Technologies, LLC*, No. 10-31607 (Bankr. W.D.N.C., Feb. 15, 2013). Para 148, Exhibit 53.



- 36 Trust claims were disclosed as part of the Wood PIQ submission, and supplemented with trust disclosures obtained by Garlock through the PIQ Trust Authorization.
- 37 *In re Asbestos Personal Injury Litigation*, West Virginia Circuit Ct., Kanawha Co., 02-C-9600, March 3, 2010.
- 38 *In re Asbestos Personal Injury Litigation*, West Virginia Circuit Ct., Kanawha Co., 02-C-9600, March 3, 2010.
- 39 Kanawha County Circuit Court Judge Ronald Wilson.
- 40 *James W. Ginter v. Anderson Vreeland Inc., et al.*, No. 2010-4061, New York Supreme Ct., Erie Co., Complaint.
- 41 *James W. Ginter v. Anderson Vreeland Inc., et al.*, No. 2010-4061, New York Supreme Ct., Erie Co., Opening Statements, June 24, 2011, Pgs. 63-64.
- 42 *James W. Ginter v. Anderson Vreeland Inc., et al.*, No. 2010-4061, New York Supreme Ct., Erie Co.; Deposition Volume I, May 10, 2010, Pgs. 131-132.
- 43 *James W. Ginter v. Anderson Vreeland Inc., et al.*, No. 2010-4061, New York Supreme Ct., Erie Co., Deposition Volume I, May 10, 2010, Pgs. 200-206.
- 44 *James W. Ginter v. Anderson Vreeland Inc., et al.*, No. 2010-4061, New York Supreme Ct., Erie Co., Deposition Volume I, May 10, 2010, Pgs. 34, 46.
- 45 *James W. Ginter v. Anderson Vreeland Inc., et al.*, No. 2010-4061, New York Supreme Ct., Erie Co., Deposition Volume I, May 10, 2010, Pgs. 77, 80.
- 46 *James W. Ginter v. Anderson Vreeland Inc., et al.*, No. 2010-4061, New York Supreme Ct., Erie Co., Opening Statements, June 24, 2011, Pgs. 63-64.
- 47 On July 13, 2011 an Erie County, New York Supreme Court jury awarded Ginter \$2.5 million.
- 48 Garlock Data: Ginter disclosed trust claim forms.
- 49 In addition to Approved Site lists, certain trusts also provide an Approved Industry/Occupation list of approved occupations and/or industries where the predecessor company's products or operations were presumed to be present.
- 50 *See, for example*, The United States Mineral Products Company Asbestos Personal Injury Settlement Trust, Protocol for Adding a Site to the Trust's List of Qualified USM Worksites *available at* <http://www.claimsres.com/documents/USM/USM%20Protocol%20for%20Adding%20a%20Site%20to%20the%20Trust%27s%20List%20of%20Qualified%20USM%20Worksites%20022510.pdf>.
- 51 Armstrong World Industries Asbestos Personal Injury Settlement Trust Proof of Claim Form, Part 3.
- 52 *James W. Ginter v. Anderson Vreeland Inc., et al.*, No. 2010-4061, New York Supreme Ct., Erie Co., Opening Statements, June 24, 2011, Pgs. 63-64.
- 53 Wilson, Thomas M., "Institutionalized Fraud in Asbestos Bankruptcy Trusts," Mealey's Litigation Report: Asbestos, Volume 29, Issue #7.
- 54 Steve Baron, Baron & Budd, Texas Legislative Hearing on RTPs, October 16, 2008.
- 55 *See, for example*, Section 5.7(b)(3) of the Kaiser Aluminum & Chemical Corporation 3rd Amended Asbestos Distribution Procedures.
- 56 *John H. Koeberle v. Alfa Laval, et al.*, No. 2009-0887, Philadelphia Common Pls., Complaint.
- 57 *John H. Koeberle v. Alfa Laval, et al.*, No. 2009-0887, Philadelphia Common Pls., Videotaped Deposition, Sept. 10, 2009, Pgs. 13-14.
- 58 *John H. Koeberle v. Alfa Laval, et al.*, No. 2009-0887, Philadelphia Common Pls., Jury Verdict Sheet, Discovery Deposition Volume II, Sept. 11, 2009, Pg. 79; Discovery Deposition Volume I, Sept. 10, 2009, Pgs. 26, 70-73.

- 59 *John H. Koeberle v. Alfa Laval, et al.*, No. 2009-0887, Philadelphia Common Pls., Jury Verdict Sheet, Discovery Deposition Volume II, Sept. 11, 2009, Pg. 80-81.
- 60 *John H. Koeberle v. Alfa Laval, et al.*, No. 2009-0887, Philadelphia Common Pls., Jury Verdict Sheet, Discovery Deposition Volume II, Sept. 11, 2009, Pg. 89-93.
- 61 *John H. Koeberle v. Alfa Laval, et al.*, No. 2009-0887, Philadelphia Common Pls., Jury Verdict Sheet, Discovery Deposition Volume II, Sept. 11, 2009, Pg. 85-87.
- 62 *John H. Koeberle v. Alfa Laval, et al.*, No. 2009-0887, Philadelphia Common Pls., Jury Verdict Sheet, June 3, 2010.
- 63 *John H. Koeberle v. Alfa Laval, et al.*, No. 2009-0887, Philadelphia Common Pls., Jury Verdict Sheet, Discovery Deposition Volume II, Sept. 11, 2009, Pg. 85-87.
- 64 Koeberle's law firm Waters & Kraus refused to fill out a PIQ in Garlock's bankruptcy case stating that Koeberle's cause of action against Garlock was not pending at the time Garlock filed for bankruptcy protection on June 5, 2010.
- 65 *David Kelemen v. Alfa Laval Inc., et al.*, No. BC 384281, California Superior Ct., Los Angeles, Co., Complaint, Jan. 24, 2008.
- 66 *David Kelemen v. Alfa Laval Inc., et al.*, No. BC 384281, California Superior Ct., Los Angeles, Co., Deposition Volume I, May 13, 2008, Pg. 46.
- 67 *David Kelemen v. Alfa Laval Inc., et al.*, No. BC 384281, California Superior Ct., Los Angeles, Co., Plaintiff's Responses to Interrogatories, April 3, 2008, Exhibit A.
- 68 *David Kelemen v. Alfa Laval Inc., et al.*, No. BC 384281, California Superior Ct., Los Angeles, Co., Deposition Volume I, May 13, 2008, Pg. 124-125; Deposition Volume VII, May 29, 2008, Pgs. 753-754; Kelemen testified that "virtually everything" was insulated while he was on board the Rayburn and the ship had "temporary or permanent insulation on 90% of everything in the sub."
- 69 *David Kelemen v. Alfa Laval Inc., et al.*, No. B221778, California App., 2nd Dist., Div. 2, Appellant's Brief, Aug. 4, 2010, Pgs. 5-10.
- 70 *Id.*
- 71 *David Kelemen v. Alfa Laval Inc., et al.*, No. BC 384281, California Superior Ct., Los Angeles, Co., Reading of the Verdict, Oct. 20, 2009; \$18.3 million of the verdict comprises punitive damages.
- 72 *See for example* <http://www.weitzlux.com/resources/asbestos-frequently-asked-questions/>. "Weitz & Luxenberg has decades of experience in obtaining large verdicts and settlements on behalf of thousands of plaintiffs. In that time, we developed a state-of-the-art Asbestos Exposure Database. Your memory doesn't have to be perfect. Our Exposure Database stores information taken from thousands of witnesses about job sites, the working conditions at those sites, names and locations of buildings (including new construction, renovation and demolition sites), co-workers at job sites, the companies that made or distributed asbestos products and the brand and trade names of asbestos products."
- 73 *See for example* <http://www.dairylandasbestos.com/#>. Under the FAQs section: "Does it matter if I don't recall the specific asbestos products I worked around? No, Cascino Vaughan Law Offices has represented thousands of people and have gathered many thousands of documents that will help us prove your exposure."
- 74 Baron & Budd, P.C. *Preparing for Your Deposition*. Dallas: Baron & Budd, P.C.
- 75 *Montgomery v. A.W. Chesterton Co.*, No. 096-11-217, Del. Super.; *Warfield v. AC&S Inc.*, No.'24X06000460, Consolidated Case No. 24X09000163, Md. Cir. Ct., Baltimore City; *Edwards v. John Crane-Houdaille, Inc.*, No.'24X06000460, Md. Cir. Ct., Baltimore City; *Golik v. CBS Corp.*, No. 1308-11192, Ore. Cir., Multnomah Co.; *David Cummings, Executor of the Estate of William Gale Cummings v. General Electric Co., et al.*, No. 13-CI-6374, Ky. Cir., Jefferson Co., Division Nine.





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