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H.R. 4369, the “Furthering Asbestos Claim
Transparency (FACT) Act of 2012”

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COURTS,
COMMERCIAL AND ADMINISTRATIVE
LAW

I would like to thank the Subcommittee for the opportunity to testify on H.R. 4369, the “Furthering Asbestos Claim Transparency (FACT) Act of 2012”. My name is Charles Siegel. I live in Dallas and I am a lifelong resident of Texas. I am a partner in the firm of Waters and Kraus, and for 25 years I have had the privilege of representing persons seriously injured by exposure to asbestos, or their survivors.

The asbestos industry has for decades waged a campaign to minimize their asbestos liability in every way possible, with the ultimate goal of avoiding accountability and decreasing compensation to victims. HR 4369, the so-called “Furthering Asbestos Claim Transparency (FACT) Act of 2012,” is just the latest effort in this campaign and must be opposed.

The bill represents a new attempt by the asbestos industry to delay and deny compensation to asbestos victims and to cripple the operation of the asbestos trusts that have been established for the sole purpose of compensating victims and their families. The bill is premised on the notion that a lack of transparency in the trust system permits victims to obtain more compensation than they should receive. This is completely incorrect. First, the trust system is already transparent. The claim values for each disease are publicly available and the trusts publicly report the value of the claims paid on an annual basis. Second, a fundamental principle of American law is that a person can recover from every defendant who substantially contributed to their injury. Thus, when an asbestos victim recovers from each defendant whose product contributed to his disease, that victim is in no way “double-dipping;” rather he is recovering a portion of his damages from each of the corporations that harmed him. In the case of asbestos litigation, some of those defendants will be responsible through the tort system and others will be responsible through the operation of their trust. Third, it is important to distinguish between the openness of the jury system and the confidentiality of settlements. Asbestos defendants in the tort system typically demand confidentiality of settlements because they don’t want other victims to learn how much they’ve paid, yet these same defendants are now trying to force disclosure of a victim’s settlement information with the trusts. Further, defendants are currently able to learn about all information relevant to a claim against it, including information about a victim’s trust claims, under state rules of discovery.

The real problem with asbestos is that nearly 10,000 people are still dying every year of asbestos disease and the product is still legal in the United States. I respectfully request that Congress focus on solving the public health crisis caused by asbestos exposure rather than spending limited Congressional resources looking at problems that don’t actually exist and that are being proposed by asbestos companies, the very industry that caused the crisis.

The Tragedy of Asbestos Disease

I am proud to represent people such as Evelyn Mattox, Patricia Mattox and Sonya Mattox, the widow and daughters of William Mattox. Evelyn Mattox lives in Lincolnton, North Carolina, just outside Chairman Coble’s district. Mr. Mattox proudly served in the U.S. Navy and was an electrician by trade and regularly used to help out his neighbors with everything from electrical work to money to simply helping them cut their lawns. He was a quiet man in general but very large in stature until his asbestos cancer took hold. Mr. Mattox died at 59 of

mesothelioma. He was exposed to asbestos during his time in the Navy and then later working at Duke Power. When my law partner went to visit the family, Mrs. Mattox surprised him with a home-cooked meal. His daughters said that was the first time their mother had prepared a meal since her husband passed. He died in his home surrounded by his wife and children. Unable to breathe, he simply held on to his youngest daughter's hand and whispered "keep an eye on the family for me."

Another client we were proud to represent was Mark Smith, from Chairman Lamar Smith's district. Mr. Smith lived in San Antonio. He was exposed to asbestos through his father, who worked as a contactor installing siding and roofing materials that contained asbestos. Mr. Smith's father would come home with asbestos on his clothes that young Mark would breathe. Mark Smith died at the age of 50, leaving a wife and a twelve-year-old son.

Our firm also represented Terry McCann. Terry was a gold medalist in wrestling at the Rome Olympics in 1960. He served on the boards of numerous charities and sports clubs, and belonged to five Halls of Fame. He was an Executive Director of Toastmasters International. He died at age 72 of mesothelioma.

Tommie Williams was another of our clients. He grew up the son of a Mississippi sharecropper. He lost the use of one hand as a child; after an accident, his parents couldn't afford to take him to a doctor. Nonetheless, he moved to Los Angeles and worked for decades in the shipyards there despite only having the use of one hand. He died of mesothelioma at the age of 62.

Barbara Navarro died of mesothelioma at 55. She was exposed to asbestos as a child, while volunteering at church projects.

Richard Ontiveros died of mesothelioma at 32. His only exposure was through his father, who would come home with asbestos dust on his work clothes; as a baby, Ontiveros breathed in this dust.

Yet another of our clients, Katherine Lopez, is dying of mesothelioma at the age of 49. She has a few months left to live.

These stories are very poignant, but they are merely a few of many hundreds of thousands of similar stories. Asbestos is widely agreed to be the greatest public health disaster of the 20th century, and it continues unabated in the 21st century. Hundreds of thousands, perhaps millions, of persons have died of asbestosis, lung cancer and mesothelioma in the last several decades. Even today, seven or eight persons continue to die of mesothelioma every day in the United States, and these deaths are projected to continue at a slowly decreasing rate for 40 to 50 more years. Professor Lester Brickman, a paid consultant for asbestos companies, has described mesothelioma as a "particularly virulent cancer, which is gruesome to behold and always results in death." Many other victims also continue to die and will continue to die of lung cancer and other cancers.

According to the National Institute for Occupational Safety and Health, the leading

occupations for deaths due to asbestos exposures are plumbers, pipefitters and steamfitters.¹ Many were exposed while serving in the U.S. military. Others were exposed as a result of working in an industry in which asbestos was utilized. Examples of such industries are construction, shipbuilding, asbestos mining and processing, chemical manufacturing and metalworking. Because the latency period between the first exposure to asbestos and clinical disease is typically 20 to 40 years, many are not yet identified.

There is an international consensus that asbestos causes mesothelioma (a cancer of the lining of the lung), lung cancer, and asbestosis, and is associated with an increased risk of other cancers, including stomach, colon, and esophageal cancer.² Victims of mesothelioma typically only live for 4 to 18 months after their diagnosis.³ The Occupational Safety and Health Administration (“OSHA”) first regulated asbestos exposures in 1972.⁴ EPA adopted a regulation, later overturned in Court, banning asbestos use. Almost two decades ago, OSHA observed that “it was aware of no instance in which exposure to a toxic substance has more clearly demonstrated detrimental health effects on humans than has asbestos exposure.” 51 Fed. Reg. 22,615 (1986).

The states with the highest number of mesothelioma cancer victims (> 500) between 1999-2005 are: California, Pennsylvania, Florida, New Jersey, New York, Texas, Illinois, Virginia, Ohio, Massachusetts, Washington, and Michigan.⁵ During 1999-2005 the national rate of mesothelioma deaths was about 11.5 per million population per year, but more than half the states had higher rates. The states with the highest rate of mesothelioma deaths are: Maine, New Hampshire, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, Virginia, West Virginia, Pennsylvania, Ohio, Michigan, Indiana, Illinois, Louisiana, Wisconsin, Minnesota, Utah, Wyoming, Montana, Idaho, Alaska, Washington, and Oregon.⁶ In addition, asbestosis was a contributing cause in over 1400 deaths between 2000-2005, a sharp rise from the rate of death in 1998.⁷

The Asbestos Tragedy was Caused by Corporate Misconduct

We are here because these deaths have a cause. The courts and Congress have wrestled with asbestos litigation for decades because litigation was necessary, and litigation was necessary because there was fault. Juries and judges hearing these cases in state courts around the country for the last 40 years have consistently heard evidence of corporate concealment of the dangers of asbestos exposure. A corporate official for Bendix Co., for example, wrote to Johns-Manville in 1966 that “if you have enjoyed a good life while working with asbestos products why not die from it? There’s got to be some cause.”

Another example is provided by the conduct of Union Carbide Corporation. Union Carbide actually mined and marketed raw asbestos. It touted its own asbestos as being safe while questioning the safety of other forms of the mineral.

This corporate conduct, and the vast legacy of death and disease that resulted, have led to decades of litigation. The overwhelming majority of this litigation has occurred in state courts, and continues to occur there. As we move further away in time from the years of the heaviest

asbestos exposure, the number of cases is fortunately slowly decreasing. At the beginning of this year, the Judicial Panel on Multidistrict Litigation concluded that the federal centralized asbestos court had largely achieved its mission, and so dissolved that court for most purposes. As of this year, then, the federal system is largely finished with asbestos litigation.

As a result, all except a handful of cases will be heard in state court. This continues a trend that has prevailed for the last 20 years, in which the vast majority of asbestos cases have been resolved in state court, under state substantive law and state procedural rules.

The substantial majority of these state-court cases involve mesothelioma and lung cancer. Victims were exposed in a variety of ways, but each case typically involves claims against companies that made asbestos-containing products or machinery, or premises owners or contractors responsible for a worker's exposure. State law provides that a claimant may recover from each party found by the jury to have been responsible for exposure, and to have behaved negligently or to have supplied an unreasonably dangerous product. In New York, Pennsylvania, for the most part in Texas and California, and in nearly all the jurisdictions with any significant number of cases, there is no joint and several liability, and so the jury simply assigns a percentage of responsibility to each company it finds to be liable.

The Asbestos Bankruptcy Trust System

In addition to claims made against defendants in state courts, plaintiffs also can make claims against asbestos bankruptcy trusts. These trusts have been set up to pay claims against companies that declared bankruptcy at some point in the past and many companies have used this device to avoid defending asbestos lawsuits.

In 1994, Congress amended the Bankruptcy Code to create Section 524(g) to specifically address asbestos-related bankruptcies. Among other things, the provision allows a bankruptcy court to bind future asbestos injury claimants to a plan of reorganization through the appointment of a future representative to represent their interest in the negotiation of the plan. Because of the long latency period between exposure to asbestos and manifestation of a disease, Congress recognized that provisions must be made for the compensation of future asbestos victims and determined that a trust would be the best vehicle for handling claims against a bankrupt defendant. Section 524(g) basically codified the approach to dealing with asbestos claims that the court had approved in the Johns-Manville bankruptcy.

A trust that is created pursuant to Section 524(g) assumes the asbestos-related liabilities of the debtor company and must use all of its assets and income to pay qualifying asbestos claims. The trust must treat future claimants substantially the same as present claimants, and at least 75 percent of present asbestos claimants must vote to accept the plan. If all of the requirements of Section 524(g) are met, the bankruptcy courts will issue a channeling injunction directing that asbestos claims may be brought only against the trust. In addition to creating Section 524(g), Congress also amended the Bankruptcy Code to add section 524(h), a provision that allows certain injunctions that existed on the date of the enactment of Section 524(g) to be treated as Section 524(g) injunctions.

When a company files for bankruptcy protection, there is a popular perception that the factories and company offices are closed, the plants are padlocked and all the employees lose their jobs. This is not true in the asbestos context. Almost every company that has sought bankruptcy protection due to asbestos liabilities has been able to recover their economic health while also compensating victims of asbestos disease.⁸ The asbestos trust system acts to preserve the assets of the company, compensates present and future claimants, and allows the company to resume economic activity free of all future asbestos liability.

Halliburton is a prime example of how 524(g) works in the context of a bankruptcy. According to Halliburton's own statement: "European bankruptcy laws, as in many countries, are very different from the laws in the U.S. Chapter 11 has been created so that a filing company can restructure its debt (or in our case resolve its asbestos and silica liability) and remain in business. It is not liquidation; it is reorganization. Halliburton and all of its subsidiaries, including DII Industries and KBR, will continue in business and will continue to provide all the excellent services our customers expect from us. The Chapter 11 petitions have been filed for the sole purpose of facilitating a settlement of Halliburton's personal injury asbestos and silica litigation claims. In other words, outside of the asbestos and silica settlement, it will be business as usual." (Environmental Working Group: <http://www.ewg.org/sites/asbestos/facts/fact2.php>, quoting Halliburton: www.halliburton.com/ir/asbestos_faqs.jsp.)

524(g) of the Bankruptcy Code exists precisely so that companies facing substantial asbestos claims can compensate victims while continuing normal operations. The trusts are set up by the companies after a period of negotiation and, if necessary, litigation of certain issues in bankruptcy courts. They are approved by federal bankruptcy judges, with a right of appeal by any interested party. Interested parties may include solvent co-defendants, insurers, victims, and other commercial and financial creditors.

Trusts are governed by one or more independent trustees, many of whom are retired judges. These trustees have the authority, and the responsibility, to manage the trusts in accordance with the terms of the trust documents. These documents were, of course, approved during the course of the bankruptcy case by the bankruptcy courts and federal district and appellate courts. Plaintiffs' lawyers have no involvement in the trusts' determinations of whether to pay any particular claim, nor do they have any control over trustees' decisions. If plaintiffs' lawyers are opposed to a particular decision by trustees, the question may be submitted to arbitrators, and eventually to the federal court which oversaw the particular bankruptcy proceeding. It is ultimately that court which resolves any disputes between trustees and claimants' lawyers.

Asbestos Victims are not Fully Compensated by Asbestos Trusts

Now defendants have started arguing that asbestos lawsuits and claims against the trusts constitute "double dipping," since claimants may potentially recover both from defendants in the state court system and from bankruptcy trusts. The claim is false and reflects a basic, fundamental misunderstanding of the way both the bankruptcy system and state court lawsuits operate. If any court anywhere—any state or federal, trial or appellate court hearing asbestos

cases, or any bankruptcy court—had found any merit in this contention, it might have credibility, but no court ever has.

The assertion is that large amounts of money are recoverable from bankruptcy trusts, and that plaintiffs routinely game the system so that they receive a full recovery in the bankruptcy system, and then a second, “double” recovery in the tort system. Neither premise is correct: there is no windfall of money available to claimants, and plaintiffs cannot and do not “game the system” such that solvent tort defendants pay the liability shares of bankrupt companies.

The proponents of this assertion describe an imaginary asbestos bankruptcy trust system awash in cash, in which mesothelioma victims need only file a few forms to recover large sums of money. This is entirely false; trusts are only able to pay a fraction of the scheduled value of a claim. A “scheduled value” of a particular disease claim is what the approved trust documents provide for as the sum available to a plaintiff who meets the trust criteria; a “payment percentage” is what the plaintiff actually receives. So, for example, while a certain trust may officially “value” a mesothelioma claim at, say, \$100,000, the payment percentage may be 15%, resulting in an actual payment of only \$15,000. An asbestos industry funded study by The RAND Institute for Civil Justice finds that “[m]ost trusts do not have sufficient funds to pay every claim in full and, thus, set a payment percentage that is used to determine the actual payment a claimant will be offered.” The median payment percentage is 25%, but some trusts pay as low as 1.1 percent of the value of a claim.^{9[i]}

It must also be borne in mind that no claimant would ever qualify for payment from all, or even close to all, of the trusts. For example, a Navy seaman might well have worked around a Babcock & Wilcox boiler, but would not have worked with U.S. Gypsum joint compound. A plasterer, conversely, would have used joint compound but would not have worked on marine boilers. It is certainly true that a number of bankruptcy trusts exist, and that a typical qualifying claimant might receive significant compensation from them. But the description of the bankruptcy system as simply churning out bags of money to claimants is an outright lie.

The Existence of Asbestos Bankruptcy Trusts does not Disadvantage Solvent Defendants

A related argument is that in asbestos trials today, defendants are paying an unfair share of the damages awarded to plaintiffs. This is supposedly because solvent defendants are prevented from learning the true facts about a plaintiff’s asbestos exposure, since plaintiffs are also filing bankruptcy claims, but in secret. This argument betrays a hopeless lack of awareness about how asbestos cases are actually litigated.

First, of course, there is no “fair share” for a defendant in asbestos litigation; there is only whatever percentage of causal responsibility is assigned by a jury in any particular case, and each case turns on its own facts. Moreover, the fact that other parties may share responsibility for causing injury is not a ground for avoiding liability. To quote a California case, “[E]ach tortfeasor whose negligence is a proximate cause of an indivisible injury remains individually liable for all compensable damages attributable to that injury.” *American Motorcycle Ass’n v. Superior Court* (1978) 20 Cal.3d 578, 582. The fact that others may also have been negligent or at fault for the injury, is no defense. “A tortfeasor may not escape this responsibility simply

because another act, either an ‘innocent’ occurrence such as an ‘act of God’ or other negligent conduct, may also have been a cause of the injury.” (*Id.* at 586.) It is further immaterial that others that may have contributed to causing the injury are bankrupt or immune from suit. “When independent negligent actions or a number of tortfeasors are each a proximate cause of a single injury, each tortfeasor is thus personally liable for the damage sustained, and the injured person may sue one or all of the tortfeasors to obtain a single recovery for his injuries; the fact that one of the tortfeasors is impecunious or otherwise immune from suit does not relieve another tortfeasor of his liability for damage which he himself has proximately caused.” (*Id.* at 587.). This is a California case, but the same rule holds in all 50 states.

Defendants routinely and vigorously assert their rights to place other responsible parties on the verdict form that is filled out by jury, including bankrupt entities. The critics of state courts’ handling of asbestos cases are apparently unaware that defendants in civil lawsuits can conduct discovery to vindicate these rights. Such discovery includes interrogatories and requests for production of documents and admissions to the plaintiff, and depositions of the plaintiff, his family members and any co-workers. Materials submitted by plaintiffs to bankruptcy trusts are discoverable. See e.g. *Volkswagen of America, Inc. v. Superior Court* (2006) 139 Cal.App.4th 1481. Defendants obviously conduct their own unilateral investigation into plaintiffs’ claims as well.

Does this discovery work, or have plaintiffs so gamed the system that the solvent asbestos defendants are routinely paying the bankrupt companies’ “fair share”? In jurisdictions with several liability, defendants are liable only for the proportional harm they caused. The results in trials show that solvent defendants are not being disadvantaged by the asbestos trusts. Less than two months ago, in a case tried by our firm, a jury allocated 5% responsibility to the trial defendant, and a total of 34% to four different bankruptcy companies.¹⁰ In another, a recent case tried to verdict by our firm, the jury evaluated the alleged fault of the trial defendant, Kaiser Gypsum, as well as 32 other entities, and five additional generic categories of products (e.g. “pipe covering” or “asbestos felt”). Of the 32 entities, at least 20 had bankruptcy trusts at the time of trial, and of these 20 entities, the jury determined that 18 of them were at fault. These 17 entities were assigned percentages of responsibility ranging from 1.5% to 8%. The trial defendant itself was assigned a 4% share, with the trust entities cumulatively receiving 61%.¹¹

In another recent trial, the jury was presented with evidence to evaluate the liability of several entities and assessed a .5% share to Crane, an 85% share to the Navy, a .5% share to the bankrupt entity Babcock & Wilcox, and a 10% share to “Insulation Manufacturers,” which includes trust entities such as Johns-Manville. In other words, presented with evidence of all of the plaintiff’s exposures, the jury allotted 21 times the responsibility to trust entities as it did to the trial defendant Crane Co.¹²

In another California case that went to verdict in July 2006, the jury was also able to evaluate evidence against trial defendants and numerous third-party entities, assigning 8% responsibility to each of the two trial defendants, 8% responsibility to the bankrupt entity USG, 8% responsibility to the bankrupt entity National Gypsum Company, and 44% responsibility to Johns-Manville Corporation. Again, each of the trial defendants was assessed 8% of the

liability, while the bankrupt entities were assessed more than seven times that amount—60% of the liability.¹³

A pair of recent trials in Wisconsin demonstrate the same thing. In a case tried last year in Milwaukee, 72% of the responsibility was allocated to bankrupt entities. In another case tried in Milwaukee in 2006, 66% of the responsibility was allocated to bankruptcy companies.¹⁴ It is thus absurd to suggest that defendants are somehow handcuffed in defending themselves in these cases, or that the results unfairly burden them.

Nor do plaintiffs in states with joint and several liability obtain a “double recovery” when they are compensated both in the tort system and from the trusts. Under the “one satisfaction” rule, a plaintiff is entitled to only one recovery for a particular injury. Thus, after a verdict is entered, the non-settling defendants are entitled to discover the amount of settlements after the verdict is entered, and will be given a set-off equal to the settlements – including any settlements with trusts. Further, if the plaintiff did not obtain a settlement from the defendant’s co-tortfeasor, the defendant can seek contribution directly from that co-tortfeasor or the asbestos trust that has assumed its responsibilities. In a pure several liability jurisdiction, of course, neither set-offs nor contributions are necessary, as the verdict will reflect only the defendant’s portion of the liability.

H.R. 4369: A Solution in Search of a Problem

The bill’s provisions have no other intended consequences than to grant solvent asbestos defendants new rights and advantages to be used against asbestos victims in state court and to add new burdens to the trusts, such that their ability to operate and pay claims is severely crippled. Further, the bill is intended to help defendants skirt state laws regarding rules of discovery and joint and several liability. HR 4369 would require the trusts to publicly disclose extensive, individual and personal claim information, including information about a victim’s exposure and work history, and would allow asbestos defendants to demand any additional information from the trusts at any time and for virtually any reason.

Under Section 2 of the bill, Sections 8(A) and 8(B) operate together to put burdensome and unnecessary reporting requirements on the trusts, giving asbestos defendants informational advantages while also slowing down the ability of trusts to pay claims. Section 8(A) of the bill would force trusts to publicly report highly personalized, individual claimant data. According to the bill, this would include “the name and exposure history of, a claimant and the basis for any payment from the trust made to such claimant.” And, if this provision weren’t enough information for asbestos defendants to use to deny liability, section 8(B) requires the trusts to “provide in a timely manner *any* information related to payment from, and demands for payment from, such a trust, subject to appropriate protective orders, to *any party to any action* in law or equity if the subject of such action concerns liability for asbestos exposure.” (Emphasis added.) Section 3 of the bill makes the bill’s provisions retroactive and would force every trust to look at and report on every claim it ever paid.

First, the bill would slow down or stop the trust process such that many victims would die before receiving compensation since victims of mesothelioma typically only live for 4 to 18

months after their diagnosis.¹⁵ The bill's new burdens will require the trusts to spend time and resources complying with these requirements, causing trust recoveries to decrease and be delayed.

In addition, the bill overrides state law regarding discovery/disclosure of information. State discovery rules currently govern disclosure of a trust claimant's work and exposure history. If such information is relevant to a state law claim, a defendant can seek and get that information according to the rules of a state court. What a defendant cannot do, and what this bill would allow, is for a defendant to engage in fishing expeditions for irrelevant information which has no use other than to delay a claim for as long as possible.

It is also important to note that the bill only changes what the trust must report on an asbestos victim; the bill says nothing of the right of asbestos defendants to demand confidentiality. A typical asbestos defendant who settles a case in the tort system demands confidentiality as a condition of settlement in order to ensure that other victims do not learn how much they paid. Trust payments represent settlements of former asbestos defendants. These same defendants now want the trusts to disclose specific settlement amounts that they do not themselves provide nor would have provided before the trusts were created.

Furthermore, the bill seemingly ignores the fact that trust information is already public. Trusts already disclose far more information than solvent defendants do about their settlement practices and amounts – the settlement criteria used by a trust and the offer the trust will make if the criteria are met are publicly available in the Trust Distribution Procedures (“TDP”) for that trust. Trusts also file annual reports with the Bankruptcy courts and publish lists of the products for which they have assumed responsibility.

Lastly, the bill also ignores the fact that despite trying to find instances of widespread fraud and abuse, there is none. Defendants have no evidence to support their assertions of fraud by plaintiffs. The *Kanian* case, on which they so heavily rely, was an isolated incident, remedied by a state court, involving inconsistent trust claims by a single claimant, of the millions who have asserted claims to asbestos trusts.

Conclusion

Almost two decades ago, OSHA observed that “it was aware of no instance in which exposure to a toxic substance has more clearly demonstrated detrimental health effects on humans than has asbestos exposure.” 51 Fed. Reg. 22,615 (1986). Asbestos was a preventable tragedy that poisoned hundreds of thousands of workers and their families. Many were poisoned while serving our country in the military. They have suffered painful, debilitating injuries and deaths, their families have suffered grievous losses. State law provides a remedy to these families and asbestos victims should not have to apologize for seeking compensation for their injuries.

Ever since the asbestos tragedy first came to light, the companies that are responsible for this tragedy have tried to avoid paying for the harm they caused and have tried to shift blame to other parties and to the victims and their families. The complaints about the lack of transparency

in the system are, in reality, just the latest tactic in a decades-long effort to delay and avoid compensating victims of asbestos disease.

¹ National Institute for Occupational Safety and Health, Division of Respiratory Disease Studies, *Work-Related Lung Disease Surveillance Report 2002*, page 9 (May 2003); Available at: <http://www.cdc.gov/niosh/docs/2003-111/pdfs/2003-111.pdf>.

² National Institute of Occupational Safety and Health, Division of Standards Development and Technology Transfer, *Occupational Health and Safety Guideline for Asbestos: Potential Human Carcinogen* (1988); available at <http://www.cdc.gov/niosh/docs/81-123/pdfs/0041.pdf>

³ Mesothelioma Applied Research Foundation, *Mesothelioma Information: Disease Development and Progression*, available at: http://www.curemeso.org/site/c.kkLUJ7MPKtH/b.4023387/k.643A/Mesothelioma_Information.htm#whattimesothelioma

⁴ *Building and Construction Trades Dept. v. Brock*, 838 F.2d 1258, 1262 (D.C. Cir. 1988)

⁵ National Institute of Occupational Safety and Health, Work-Related Lung Disease (WoRLD) Surveillance System *Table 7-4. Malignant mesothelioma: Number of deaths by state, U.S. residents age 15 and over, 1999-2005*, (March 2009); available at <http://www2a.cdc.gov/drds/WorldReportData/FigureTableDetails.asp?FigureTableID=894&GroupRefNumber=T07-04>.

⁶ National Institute of Occupational Safety and Health, Work-Related Lung Disease (WoRLD) Surveillance System *Table 7-5. Malignant mesothelioma: Number of deaths, death rates (per million population), and years of potential life lost (YPLL) by state, U.S. residents age 15 and over, 1999-2005* (March 2009); charts available at: <http://www2a.cdc.gov/drds/WorldReportData/FigureTableDetails.asp?FigureTableID=895&GroupRefNumber=T07-05>.

⁷ National Institute of Occupational Safety and Health, Work-Related Lung Disease (WoRLD) Surveillance System *Table 1-4. Asbestosis: Number of deaths by state, U.S. residents age 15 and over, 1996-2005* (March 2009) available at: <http://www2a.cdc.gov/drds/WorldReportData/FigureTableDetails.asp?FigureTableID=493&GroupRefNumber=T01-04>.

⁸ These include Johns-Manville, United States Gypsum, Owens-Corning Fiberglas, Pittsburgh-Corning, W. R. Grace, Halliburton, Armstrong World Industries, Federal Mogul Corp., McDermott Industries (Babcock & Wilcox), and National Gypsum.

⁹ *Supra*, Dixon, RAND INSTITUTE FOR CIVIL JUSTICE at page xv (2010).

¹⁰ See verdict form in *Mansir v. Air & Liquid Systems Corp., et al*, No. 37-2010-00104112-CU-AS-CTL (San Diego County, Superior Court), exhibit 1.

¹¹ See attached excerpts from the verdict form in *Silvestro v. AC&S, Inc., et al.* (Aug. 3, 2010) Case No. BC 253974, Los Angeles County Superior Court, exhibit 2.

¹² See attached excerpts from the verdict form in *Woodard v. Crane Co. and Sepco Corporation* (Feb. 2, 2009) Case No. BC 387774, Los Angeles County Superior Court, exhibit 3.

¹³ See attached excerpts from the verdict form in *Hall v. Bondex Int'l, Inc.* (Jul. 10, 2006) Case No. BC 340466, Los Angeles County Superior Court, exhibit 4.

¹⁴ See verdict forms in *Gosz v. Building Service Industrial Sales Co.*, No. 05-CV-9218 (Milwaukee County Circuit Court) and *Eske v. Fleming Materials Co.*, No. 07-CV-10206 (Milwaukee County Circuit Court, attached as exhibit 5.

¹⁵ Mesothelioma Applied Research Foundation, *Mesothelioma Information: Disease Development and Progression*, available at: http://www.curemeso.org/site/c.kkLUJ7MPkH/b.4023387/k.643A/Mesothelioma_Information.htm#whatismesothelioma