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Hearing: February 4th, 2015
H.R. 526, the "Furthering Asbestos Claim Transparency (FACT) Act of 2015"

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW

I would like to thank Subcommittee Chairman Marino, Ranking Member Johnson and the members of this Subcommittee for the opportunity to testify on H.R. 526, the "Furthering Asbestos Claim Transparency (FACT) Act of 2015." My name is Elihu Inselbuch. I am a member of the firm of Caplin & Drysdale, Chartered in New York, and much of my work over the last 25 years has involved representing victims' rights in asbestos bankruptcy proceedings. Specifically, and most relevant for purposes of this hearing, I was first retained to act for the asbestos claimants' committee in the Manville reorganization. Since then I've represented the interests of claimants in a number of large asbestos-related bankruptcies and class actions, including, for example, Jim Walter Corp., Fibreboard, Raytech Corporation, Babcock & Wilcox, Pittsburgh Corning, Armstrong World Industries, G-I Holdings, and W.R. Grace. In addition, I serve as counsel to a number of the Trust Advisory Committees appointed under plans of reorganization in asbestos-driven bankruptcies to serve as fiduciaries to the trusts created by the plans.

As a result of this work, I've become intimately familiar with the horrors of the asbestos-disease epidemic, this country's systematic attempts to grapple with how to compensate such large numbers of victims over decades of disease, and the operations of the asbestos trusts.

I. Summary

H.R. 526, the FACT Act of 2015, is the latest, but not the first, attempt by asbestos defendants to minimize and ultimately extinguish their liability in the tort system. These defendants — which are the only beneficiaries of this bill—are the same asbestos companies who for decades have been determined liable for recklessly and willfully exposing unknowing workers and their families to the companies' deadly products. Had these companies shared the information they knew about the dangers of asbestos, or at the very least, provided adequate safety gear, countless lives would have been saved, and you would not be sitting here today.

What many people do not realize is that the asbestos-disease epidemic is the longest-running public health epidemic in our history. Asbestos exposure kills thousands of Americans every year and because asbestos has yet to be banned in this country, will continue to do so for many decades to come. For more than eighty years, corporations that produced and distributed asbestos-containing products — and their insurance companies — have attempted to avoid responsibility for the deaths and injuries of millions of American workers and consumers caused by those products. Since before 1930, these corporations have hidden the dangers of asbestos and lied about their knowledge of those dangers, lobbied to make it harder for workers to sue for their injuries, fought to weaken protective legislation, and to this day denied responsibility.

The FACT Act is yet another example of their tactics, designed only to delay payments to victims and deny accountability. The bill is predicated on a fundamental misunderstanding of why the asbestos trust mechanism was created, how it works, and the false belief that there is significant fraud in the asbestos trust system.

II. Asbestos Disease and Litigation

a. General Background

Asbestos is a naturally occurring mineral that was widely used during the twentieth century for industrial, commercial, and residential purposes.[1] Because of its tensile strength, flexibility, durability, and acid- and fire-resistant capacities, asbestos was used extensively in industrial settings and in a wide range of manufactured goods.[2] Diseases caused by exposure to asbestos kill thousands of Americans every year because asbestos is inherently dangerous. Whenever materials containing asbestos are damaged or disturbed, microscopic fibers become airborne, and can be inhaled into the lungs and cause disease.[3] The most serious asbestos-related disease is mesothelioma, a virulent cancer of the lining of the chest cavity that can be caused by even a short period of exposure, and is inevitably painfully fatal, often within months of diagnosis.[4] Other illnesses caused by asbestos include lung cancer, asbestosis, and pleural diseases.[5] The bulk of asbestos liabilities are for mesothelioma and other asbestos-related cancers.

Tens of millions of American workers have been exposed to asbestos; more than 27 million people were occupationally exposed between 1940 and 1979.[6] Millions of those exposed have fallen ill, or will fall ill in the future; many have died and many more will die as a result of their exposure. Manufacturers — but not workers — were for decades well aware of the significant health hazards posed by asbestos, but production and distribution of new asbestos-containing products continued virtually unabated until the 1970s,[7] and in some cases until 2000.[8] Asbestos diseases have long latency periods; a person exposed while working may not fall ill for forty years or fifty years, or even longer.[9] Thus, even though asbestos production and use has declined, the epidemic of asbestos-related illnesses is expected to continue for decades into the future.

By the early 1900s, medical scientists and researchers had uncovered "persuasive evidence of the health hazards associated with asbestos."[10] Manufacturers and insurers knew this, and even as evidence mounted they continued to hide these findings and deny responsibility. In 1918, a Prudential Insurance Company report revealed excess deaths from pulmonary disease among asbestos workers, and noted that life insurance companies generally declined to cover asbestos workers because of the "assumed health-injurious conditions of the industry."[11] For decades, asbestos manufacturers were well aware of the dangers of asbestos, and deliberately did not protect their workers or the end-users of their products. In a thorough discussion of the history of asbestos use and litigation in the United States, District Judge Jack Weinstein noted:

> Reports concerning the occupational risks of asbestos, including the incidence of asbestosis and lung cancer among exposed workers, have been substantial in number and publicly available in medical, engineering, legal and general information publications since the early 1930s. There is compelling evidence that asbestos manufacturers and distributors who were aware of the growing knowledge of the dangers of asbestos sought to conceal this information from workers and the general public.[12]

As workers and others who had been exposed to asbestos began to get sick in large numbers, litigation began in the 1960s. Of particular importance was evidence uncovered by plaintiffs'

attorneys — "[t]hrough persistence, vigorous discovery and creative efforts" — establishing that "manufacturers . . . knew that asbestos posed potentially life-threatening hazards and [chose] to keep that information from workers and others who might be exposed."[13] Angered by evidence that information about the dangers of asbestos had been suppressed, juries began awarding large punitive damages.[14]

b. Evolution of Filings in The Tort System

Asbestos personal injury litigation began in earnest in 1973 after the Fifth Circuit's decision in the benchmark case of *Borel v. Fibreboard Paper Products Corp*.[15] *Borel* established that manufacturers and distributors of asbestos products are liable to persons injured as a result of using their products because of their failure to warn regarding the danger of those products.[16] Recognizing that because of the very nature of their employment many persons have been exposed to a variety of asbestos products made by a large number of manufacturers, under circumstances that make it impossible to ascribe resulting disease to one particular product or exposure, the *Borel* court found that each and every exposure to asbestos could constitute a substantial contributing factor in causing asbestos diseases, and that each and every defendant who contributed to the plaintiff's aggregate asbestos exposure is legally responsible for the plaintiff's asbestos-related injuries.[17] The overwhelming majority of courts throughout the country have accepted the legal principles set out in *Borel*.[18]

With this development in the law, the thousands of people killed and maimed by exposure to asbestos and asbestos-containing products began to sue the manufacturers and distributors of those products. So many people had been injured or killed by asbestos that twenty-five thousand lawsuits were commenced in the next decade.[19]

III. The Creation of The Asbestos Trust System

Epidemiology makes clear that thousands of people each year for decades to come will fall ill and die as a result of asbestos exposure. The overwhelming numbers of people who asbestos manufacturers made sick and who are dead or dying from exposure to their asbestos-containing products and the large numbers of future claims have required many asbestos manufacturers to resort to bankruptcy to deal with these claims. Private asbestos trusts were created during these bankruptcies to ensure that the tens of thousands of people who are currently sick and dying and the tens of thousands more who science tells us will sicken and die in the future as a result of their asbestos exposure can receive some compensation for their injuries. Asbestos corporations are required to fund asbestos trusts in order to pay victims before they can emerge from bankruptcy free and clear of all asbestos liability.

a. Manville

The Johns-Manville Corporation was the largest manufacturer and distributor of asbestos products in the United States in the twentieth century. Manville officers and directors knew of the dangers of asbestos since at least 1934, and in concert with other industry members kept this knowledge secret to prevent workers from learning that their exposure to asbestos could kill them. As evidence of Manville's responsibility became known, it was faced with tens of

thousands of lawsuits, and, to deal with this liability, filed its Chapter 11 petition for reorganization in August of 1982.[20] To solve the problem of future claims, the Manville plan of reorganization pioneered the use of a trust dedicated to the resolution and payment of asbestos claims. The Manville Trust assumed the debtors' present and future asbestos liabilities, and all asbestos claims against the debtors (including those in the future) were directed to the Trust by an injunction — a "cornerstone" of the plan[21] — channeling all asbestos claims from the reorganized Manville Corporation to the Manville Trust. The channeling injunction was issued pursuant to the bankruptcy court's general equitable powers.[22]

b. Congress Acts

A substantial portion of the assets conveyed to the Manville Trust from which it would pay claims were equity and debt interests in the reorganized Manville Corporation, which, shorn of its asbestos liabilities, was a profitable forest products and industrial company. The public markets were skeptical about the validity of the channeling injunction, depressing the value of the Trust's holdings. To alleviate concerns about the *Manville* injunction, and to foster reorganization of asbestos debtors, in 1994 Congress enacted Bankruptcy Code Section 524(g), which statutorily validates the trust and channeling injunction mechanisms pioneered in the *Manville* case.[23] As Senator Brown then explained, "[w]ithout a clear statement in the code of a court's authority to issue such injunctions, the financial markets tend to discount the securities of the reorganized debtor. This in turn diminishes the trust's assets and its resources to pay victims."[24]

Section 524(g) satisfies due process concerns with respect to future claimants by providing for appointment of a legal representative to protect their interests.[25] The statute gives a debtor the right to propose and have confirmed a plan that will create a trust to which all of the debtor's present and future asbestos personal injury liabilities will be transferred, or channeled, for post-confirmation claims evaluation and resolution.[26] The debtor is freed of asbestos claims, in return for funding the trust, and present and future asbestos claimants have recourse to the assets of the trust.

There were not many other asbestos-driven bankruptcies of note in the 1990s — the largest was likely the bankruptcy of the Celotex Corporation and Carey Canada Incorporated (a subsidiary that had been engaged in the mining, milling, and processing of asbestos fiber), which filed for bankruptcy protection in 1990. The Celotex Asbestos Settlement Trust was formed in 1998.

This changed in the next decade, however. In 2000, there were sixteen asbestos personal injury trusts; by 2011, there were nearly sixty, with trusts formed by many large asbestos defendants, including Armstrong World Industries Inc., the Babcock & Wilcox Company, Halliburton (Dresser Industries), Owens Corning Corporation, and United States Gypsum.[27]

IV. Asbestos Trusts and Victim Compensation Today

According to the GAO, as of 2011, there were sixty private asbestos trusts.[28] Most of these trusts work the same way. Pursuant to the mandate of 11 U.S.C. § 524(g), an asbestos trust must treat all similar claimants in substantially the same manner.[29] When it is formed, therefore, a trust will

project the number of claims it expects to receive and determine the historic settlement value of those claims — what its predecessor would have paid to settle the claims had they been brought in the tort system.[30] The trust has fixed assets that will be insufficient to pay the full historic settlement value of all claims; it therefore sets a payment percentage, and each present and future claimant is paid a liquidated settlement value for his or her claim discounted by the payment percentage.[31] The functioning of the trusts approximates the process through which lawsuits in the tort system are settled.

An asbestos trust is a private trust; there are no government monies involved. Each private trust is governed by its trust agreement and the trust agreement exhibits, which include a document containing a series of trust distribution procedures ("TDP"), approved by the bankruptcy court when confirming a plan of reorganization providing for creation of the trust.[32] The TDP sets forth procedures for the administration of the trust and establishes a process for assessing and paying valid claims. The TDP also includes the settlement amounts that the trust will offer a claimant with an asbestos-related disease who meets the exposure and medical criteria set out in the TDP, and thus can presumptively establish the trust's liability.[33] The Trust Agreements and TDPs are publicly available information.

Claimants who believe that they are entitled to a larger payment from a trust because, for example, they have higher than normal damages, or manifested illness at an early age, can reject the standard settlement and seek "individual review" of their claims, which may or may not result in a higher settlement.[34] In either case, the trust is designed to value claims at the tort-system settlement share of its debtor — not the joint and several total value of the claim against all responsible parties that would be fixed by a jury. In other words, each private asbestos trust is responsible only for its debtor's portion of the harm caused; trust payments do not take into account harm caused by any other wrongdoer.

For a claimant to recover from an asbestos trust, he or she must provide all of the information required by that trust. This typically includes medical evidence demonstrating that the claimant has an asbestos-related disease, and evidence satisfactory to the trust that it has responsibility for the claimant's injuries.[35] The evidence required depends on the nature of the claimant's disease. A claimant with mesothelioma, for example, must provide a diagnosis of that disease by a physician who physically examined the claimant, or a diagnosis by a board-certified pathologist or a pathology report prepared at or on behalf of an accredited hospital, as well as appropriate evidence of product identification as noted above.[36]

These criteria are combined with audit programs to ensure that the trusts do not pay fraudulent claims.[37] The trusts do not pay every claim that is filed, but routinely reject those that are deficient.[38] Indeed, in my experience, nearly half of the claims filed with trusts go unpaid. And while there is no guaranteed method to completely prevent attempts to abuse the trust system, there is simply no evidence that such practices are widespread. Moreover, the simple fact that a claimant sues an asbestos defendant in the state tort system while filing claims against (and potentially receiving payment from) multiple trusts is not abusive; indeed, it is fully appropriate and the only route through which the claimant can be fairly compensated. As the Fifth Circuit reflected in the *Borel* case many years ago, most asbestos victims were exposed to asbestos-containing products from multiple defendants and, unless there is an adjudication of liability and

award and payment of damages, each defendant or trust remains responsible for its portion of the harm caused.

The private asbestos trusts replace asbestos defendants after those defendants go through the 524(g) process, and are a settlement vehicle. The trusts are not tort defendants; rather, they settle claims created by the liability of their predecessors. Unlike solvent defendants, a trust does not contest liability when a plaintiff proves exposure to products for which the trust is responsible.

Given the fact that the trusts pay a percentage of the settlement value of a claim, the amounts being paid to claimants vary widely from trust to trust, but are invariably a small fraction of the tort system recoveries. The GAO survey found the median payment percentage across trusts is 25%.[39] The scheduled values for a claim, which reflect each defendant's historical settlement averages, vary widely as well, reflecting the share of total settlements paid by each defendant in the tort system. The following table illustrates some of this data. This information is publicly available.

Sample Trust Recoveries[40]

Trust	Payment %	Scheduled Value — Mesothelioma	Paid to Claimant
AWI	35%	$110,000	$38,500
Burns & Roe	25%	$60,000	$15,000
B&W	7.5%	$90,000	$6,750
Fibreboard	7.6%	$135,000	$10,260
Kaiser	35%	$70,000	$24,500
Manville	6.25%	$350,000	$21,875
OC	8.8%	$215,000	$18,920
USG	20%	$155,000	$31,000

As shown, none of these major trusts have the funds to pay the full scheduled value to all present and future claimants. Indeed, most recoveries are quite small. For example, recovering from all of the trusts listed above would yield a claimant roughly $167,000.

V. Myths and Facts About Asbestos: What Asbestos Companies Want You to Believe

a. The Myths

Most recently, these asbestos defendants have created a myth of victim wrongdoing — which they call "double-dipping" — as a pretext for so-called settlement trust "transparency" legislation. This is not what it pretends to be — an effort to make the tort system more responsive — but merely their latest affirmative effort to evade responsibility for their own malfeasance.

To fix this non-problem, front organizations for asbestos defendants have proposed "transparency" laws and regulations at both the federal and state levels. One such law has been adopted in Ohio, Oklahoma, and Wisconsin. While these proposals masquerade as mechanisms

designed to advance evenhanded justice, they are, in fact, obvious efforts by asbestos defendants to do an end-run around uniform rules of discovery in the tort system, reverse principles of tort law established hundreds of years ago, and delay and deny fair compensation to victims and their families.

These front organizations include the American Legislative Exchange Council ("ALEC") and the U.S. Chamber of Commerce Institute for Legal Reform. ALEC is funded by a variety of corporations, including those facing liability for injuries and deaths caused by their asbestos-containing products. ALEC is also busy advancing the interests of the tobacco industry, health insurance companies, and private prisons — the latter particularly through legislation requiring expanded incarceration of immigrants. While ALEC purports to be a nonprofit, it is little more than a group of corporate lobbyists who write model legislation and then fund free trips for state legislators to luxury resorts, seeking to have them introduce model anti-civil justice legislation in their home legislatures.[41] Outrageously, ALEC is funded as a tax-exempt charity, although the IRS has received formal complaints challenging the group's nonprofit tax status on the basis that ALEC's primary purpose is to provide a vehicle for its corporate members to lobby state legislators and to deduct the costs of such efforts as charitable contributions.[42] In addition, ALEC has coordinated the state effort through introduction of the "Asbestos Claims Transparency Act," which seeks to further limit the ability of victims to recover.[43]

b. The Facts

First, there is nothing inappropriate or illegal with an asbestos victim filing a claim against multiple asbestos corporations as it is almost always the case that a victim's disease was caused by exposure to a number of different asbestos corporations' products. This is no different than if a victim is mugged by five criminals; each of those criminals would be prosecuted for the crime because each is responsible for causing harm. But by an asbestos corporation's logic, so long as one criminal can be prosecuted for the group mugging, the remaining four criminals should be allowed to go free.

Second, it is a fundamental principle of American tort law that an injured person can recover damages from every entity that has harmed him. This is especially necessary in asbestos cases because it is scientifically impossible to look at a picture of a person's lungs and identify which asbestos product ultimately led to a person's death; rather, science tells us that it is the cumulative exposure to all asbestos products over the course of a person's life that leads to disease.

Once a victim files a claim against the group of asbestos corporations responsible for causing harm, and litigation progresses, a victim can settle his claim against one or another of the wrongdoers as both parties may agree. His compensation for his injury is, then, the sum of all the settlements reached. Only in the very rare case that goes to verdict, judgment, and payment (where the payment amount is reduced to account for payments by settling co-defendants or bankruptcy trusts), is the victim's claim fully satisfied.

Out of the millions of trust claims filed and considered by trusts since 1988, defendants have identified just one case where a trust claim was filed by a victim after judgment and paid by a

trust. In that case the judgment was on appeal and had not yet been paid when the trust claim was filed, and the situation was remedied by the state court. Thus, despite asbestos companies' claims, there is no "double-dipping" problem that needs to be fixed. Indeed, in the rare case where a judgment is paid, the defendant who paid the judgment succeeds by law to any rights of claims remaining to the plaintiff, including claims against trusts.

i. There Is No "Double Dipping"

Supporters of these recent proposals claim that "transparency" is necessary to prevent "double-dipping" on the part of victims — that is, fraudulent multiple recoveries for the same injury, through lawsuits against remaining solvent defendants and trust claims. This assertion is deliberately misleading. Because of the ubiquitous presence of asbestos in industry, multiple companies are almost always at fault for asbestos-related diseases and deaths. Think of the shipyard worker, for example, assisting in the repair of countless U.S. Navy warships. The asbestos-containing products which were causes of his injury included boilers, pipe and thermal insulation, gaskets, and many others. A person so injured can legally recover from every company responsible, including both those he sues in the tort system and the trusts that stand in the shoes of bankrupt defendants. Strikingly, while "transparency" is sought here for settlements victims reach with private asbestos trusts, no "transparency" is sought by asbestos corporations for settlements victims reach in the tort system with defendants. Surely, if the goal were to truly identify the sum of settlements received by any one victim, the tort system settlements which these same defendants demand be held confidential would have to be included.

ii. Asbestos Defendants Can Already Receive Relevant Information From The Trusts

It is important to note that asbestos trusts are created under state law as private trusts as part of the resolution of a bankruptcy. Their funding reflects an overall settlement among the debtor, the debtor's other creditors and shareholders, and the asbestos claimants of the debtor's present and future asbestos liabilities, negotiated and sometimes litigated pursuant to the rules of Chapter 11. The trusts are funded entirely with private funds provided by the relevant debtor and, in many cases, the debtor's insurers; no government funds are involved.

Following a private trust's formation, it operates in the same manner as a company that is reorganized as part of a bankruptcy. The trusts are governed by applicable state law and their trust agreements, which are public documents approved by a federal bankruptcy judge. Asbestos defendants remaining in the tort system are currently able to learn all information relevant to a claim against them, including information about a victim's myriad asbestos exposures and trust claims, under state discovery rules.

The pretextual nature of these bills is particularly clear when one considers that the information that "transparency" legislation seeks to make public is already available to defendants who need it. Asbestos cases have been going on for more than thirty years. Many of the same lawyers are still involved; those that represent defendants have witnessed all the discovery that victims — hundreds of thousands of victims — have produced, and have been at the trials. It is highly likely that there are very few job sites for which defendants do not have a library of data demonstrating

which other defendants' products were present.

Often, this information does not come from victims. An individual victim often does not know what corporations provided the asbestos products present at a site where he worked decades earlier. He is usually a sick or dying worker, or the widow of such a person, and he (or his widow) will only know where he worked and the kinds of materials he worked with, though not necessarily the materials his co-workers worked with. Proof of the identity of the supplier of the asbestos at those locations usually comes through discovery of suppliers and sales records, and depositions of co-workers, not the victims' memories. And the evidence is widely available.
For defendants to claim that having access to victims' individualized, personal trust claim information would solve a problem, therefore, is false. Should a defendant wish to lay off liability on an asbestos trust or other asbestos corporation, the tort system allows it to do so. In addition to their institutional knowledge, the remaining defendants in the tort system have the same discovery devices available to them as victims do, and can prove the fault of the absent asbestos corporation as easily as plaintiffs originally could. Defendants can obtain, for example, the victims' work histories, employer records, and depositions of the victims and co-workers to determine the asbestos-containing products to which the victims were exposed. Defendants can also consult the trusts' websites, which generally contain searchable lists of sites where the products for which the trusts have responsibility were concededly used, and which are easily compared to a victim's work history.[44]

iii. Asbestos Defendants Are Not Made to Pay More Than Their Fair Share

States have different rules about how and when multiple wrongdoers are held accountable, a situation not caused by or related to the existence of asbestos trusts. The principal difference between so-called several-only and joint-and-several jurisdictions is whether the victim or defendant bears the risk of another responsible defendant's inability to pay. An individual defendant's share of the liability for an injury is its "several" liability. In states that apply several-only liability rules, when a responsible defendant cannot pay, the victim cannot recover that defendant's liability share from co-defendants; the victim bears the loss.[45] With joint-and-several liability, each defendant the jury finds at fault can be required to pay the entire judgment and then seek contribution from others jointly responsible, whether another tort system defendant or a trust, bearing the risk that one or more of those jointly responsible cannot pay. The nature of each state's regime is a public policy choice of its legislature.

Underlying all of these systems is the fact that each defendant is assigned a share of liability. When verdicts are molded, courts typically reduce the verdict amount before entering judgment in order to reflect settlement payments a victim has recovered from other tort system defendants and trusts.[46]

VI. H.R. 526, The "FACT Act": A Solution In Search of A Problem

The FACT Act's provisions have no intended consequences other than to grant asbestos defendants new rights and advantages to be used against asbestos victims in state court and to add new time-consuming burdens to the trusts. Further, the bill is intended to help defendants

skirt state laws regarding rules of discovery and joint and several liability. And it would accomplish all of these objectives by needlessly forcing the public disclosure of victims' personal information. H.R. 526 would require each trust to publically disclose the fact of each settlement it reaches together with 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 personal, 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 the information reported pursuant to this provision were not enough 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.

The bill would slow down the trust process such that many victims could die before receiving compensation since victims of mesothelioma typically only live for 8 to 18 months after their diagnosis.[47] The bill's new burdens will require the trusts to spend time and resources complying with these requirements, causing trust recoveries to be delayed.

Indeed, counsel for four substantial trusts – the Babcock & Wilcox Company Asbestos Personal Injury Trust, the Federal-Mogul Asbestos Personal Injury Trust, the Owens Corning/Fibreboard Asbestos Personal Injury Trust, and the United States Gypsum Asbestos Personal Injury Settlement Trust – submitted a letter to the Committee on the Judiciary and this subcommittee on January 30, 2015 addressing the burden the Act would place on the trusts.[48] The four trusts estimated that each trust like one of them receiving 10,000 claims per quarter and paying 5,000 of the claims over time would require experienced managers and claim reviewers to spend an aggregate of 20,000 hours per year on that trust's compliance with the Act[49] – the equivalent of ten new full-time employees. The trusts explain that the data for "exposure history" and "basis for payment" required by the Act cannot be collected using pre-set data or information from a claim form, but must be extracted from a review of the supporting documentation submitted by the claimant.[50] In the aggregate this will reduce trust funds available to compensate victims by millions of dollars.

The quarterly reporting requirement alone would place this significant burden on the trusts. Moreover, the language requiring trusts to provide information on historical claims on a demand-by-demand and victim-by-victim basis is so broad as to make the impact in terms of cost and time potentially vast and yet unquantifiable.[51]

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 from the victim according to the rules of a state court. What a defendant cannot do, and what this bill would allow, is engage in fishing expeditions for irrelevant information that 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 with respect to 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 the defendant paid. Trust payments represent settlements of former asbestos defendants. The remaining asbestos defendants now want the trusts to disclose specific settlement amounts and other information that they themselves do not provide and that the bankrupt asbestos defendants who created the trusts did not provide when they were defendants in the tort system. At the same time, the bill threatens the privacy of asbestos victims, many of whom are elderly veterans, by placing information about their confidential settlements on the public record.

Furthermore, the bill seemingly ignores the fact that much 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 for that trust. Trusts also file annual reports with the bankruptcy courts and often publish lists of the products for which they have assumed responsibility. Ironically, then, the trusts are already far more "transparent" than the solvent defendants who now seek to transform the trusts into discovery clearinghouses for the benefit of those defendants.

Lastly, the bill also ignores the fact that despite trying to find instances of widespread fraud and abuse, there is none. Chairman Goodlatte praised its introduction on the grounds that there is "fraud in the asbestos trust system"[52] However, there is no evidence of such fraud. Former Committee on the Judiciary Chairman Lamar Smith asked the U.S. Government Accountability Office (the "GAO") to examine asbestos trusts set up pursuant to § 524(g), and the GAO published a report in 2011. The GAO did not find any trusts that indicated their audits had identified cases of fraud.[53] Had the GAO suspected that nonetheless there was reason to suspect systemic fraud, surely it would so have advised the Committee.

VII. The *Garlock* Decision Does Not Demonstrate Fraud in Trust Claims

In the same Committee press release announcing introduction of this bill, Subcommittee Vice-Chairman Farenthold is quoted to say that "[t]he revelations in the [*Garlock*] case show the ongoing troubles with asbestos claims and the need for the FACT Act."[54] While this is not the forum for review of the *Garlock* interlocutory estimation decision, the Committee should note that the *Garlock* case is wholly irrelevant to the issue of whether the FACT Act is sound policy. The *Garlock* case is about how much money an asbestos corporation should set aside to compensate its victims; the FACT Act is about putting additional burdens on private asbestos trusts. One has little to do with the other.

Second, the Committee should not assume the *Garlock* case was correctly decided. It was based upon a presentation of skewed and misleading accounts of fifteen "Designated Cases" which Garlock cherry-picked from more than 10,000 mesothelioma claims it paid in the ten years before filing bankruptcy. From this, Garlock invented a story of "disappearing evidence." It accused plaintiffs' law firms of suppressing the evidence of their clients' exposures to additional asbestos from products for which bankrupt companies were liable. Garlock contends this evidence was not readily available to it and as a result Garlock's perceived trial risk was increased and Garlock was forced to settle for higher amounts.[55] Of course, in all fifteen Designated Cases, the actual victims – the men who died from mesothelioma – proved substantial exposures to asbestos from Garlock products. Regrettably, the Bankruptcy Court permitted Garlock to withhold as privileged from the Asbestos Claimants Committee (which my firm and I represent as counsel) almost all of the files that reveal Garlock in fact had contemporary knowledge of the additional asbestos exposures and expose Garlock's actual bases for settlement of those cases. Instead, the court accepted the self-serving testimony of Garlock lawyers.

Where, after the decision, the Committee has been able to piece evidence together about Garlock's actual knowledge and behavior, I believe that evidence contradicts the Bankruptcy Court's conclusions and shows that Garlock's depiction of its 15 "Designated Cases" is tainted by convenient recharacterizations.

For example, in 2004 a jury awarded one of these victims[56] the largest verdict ever against Garlock, including $15 million in punitive damages, and a 40% share of more than $18 million in compensatory damages.[57] Although the Bankruptcy Court found that this plaintiff "did not admit to any exposure from amphibole insulation, did not identify any specific insulation product and claimed that 100% of his work was on gaskets"[58] this finding is directly contradicted by the trial record in the underlying case, where the plaintiff testified at length about his exposure to products other than gaskets,[59] that he breathed the dust from, *inter alia*, pipe insulation that was torn off or removed in his presence,[60] and specifically identified Asbeston insulating blankets.[61] Examination of the Bankruptcy Court's treatment of the other "Designated Cases" reveals similar errors.

Even Garlock doesn't believe the estimation decision will control the resolution of its bankruptcy. Recently it filed a proposed plan of reorganization which proposes to pay out almost three times what the Bankruptcy Court estimated as Garlock's liability,[62] an amount which nonetheless remains wholly inadequate to fairly compensate the victims Garlock killed and injured.

VIII. Asbestos Trust Transparency Legislation Efforts Around the Country — Unnecessary and Unfair

Asbestos defendants and insurance companies, under the guise of creating increased "transparency," are introducing proposed legislation in state legislatures to grant asbestos defendants new rights and advantages to be used against asbestos victims in court. Some of these bills would also burden the asbestos trusts with unnecessary reporting requirements, slowing their ability to pay claims, and further draining them of the resources needed to make their already diminished payments. In general, the bills are an attempt to change the rules of the tort

system to delay fair compensation until victims pass away by providing defendants with an advantage, using the existence of the trusts and claims of a lack of "transparency" as a subterfuge. These bills have been enacted in Ohio, Oklahoma, and Wisconsin[63]and have been introduced in a number of additional states.

In Ohio, H.B. 380 (originally drafted by ALEC) was enacted in 2012. The law shifts control of key elements of a victim's case to asbestos defendants while simultaneously shifting significant burdens to the victim. This new Ohio law requires victims to identify all trust claims and material pertaining to those claims, and update those identifications when new claims are made.[64] Defendants can delay trial indefinitely and force victims to make claims against other trusts.[65] Then, trust claims are presumed to be relevant and discoverable and can be introduced to prove causation and allocate responsibility.[66]

With a law like Ohio's H.B. 380, defendants shift their burden — to prove fault on the part of other entities — to victims, while simultaneously lessening victims' control of their own claims. The victim now has to make claims at a defendant's demand, and then produce those claims forms and supporting materials to that defendant, who may be able to use them against the victims. The bill has nothing to do with reducing fraud; instead, it is a gift to the asbestos industry, which continues to try and avoid accountability and decrease compensation to the victims of its past wrongs — wrongs that it successfully hid for decades, causing years of unwitting worker exposure.

Whether a defendant found liable for a victim's injuries is liable for the shares of other wrongdoers is a question of public policy. If a state's legislature wants to have open debate and change a fundamental rule of public policy, it can, of course, do so. Trust "transparency" subverts that process. Rather than making an informed decision, these legislatures have changed public policy under the guise of so-called transparency, on the basis of largely anecdotal and unproven allegations, in favor of asbestos defendants. It is an effort to facilitate the defense against asbestos claims by forcing victims to assist in the defendant's efforts to shift responsibility to other entities.

IX. Conclusions

Under the rubric of arguing that "transparency" is necessary to prevent supposed fraud, asbestos companies continue their efforts to change the laws at a state and federal level to receive whatever benefits they can from the existence of private asbestos trusts. These laws that force claims, regulate timing of trust claims, and put additional burdens on these trusts, such as the FACT Act, are unjust and unfair to asbestos victims. These legislative proposals were never designed — nor intended — to address any purported fraud in the trust system. Indeed, there is not a scintilla of evidence of any such problem. The real purpose of these laws is to allow asbestos defendants to take advantage of the bankruptcies of their co-wrongdoers by shifting to victims the burdens of the shortfalls caused by the bankruptcies, as well as the burdens of discovery and proof of the bankrupt wrongdoers' responsibility. These proposals are simply the latest stratagem by corporations that produced and distributed asbestos-containing products to avoid responsibility for the deaths and injuries of millions of Americans caused by those products. Legislators should not allow asbestos corporations to evade accountability by shifting

blame to the victims of asbestos exposure, and Congress should be vigilant to protect the rights of injured workers and their families.

Endnotes

[1]U.S. Government Accountability Office, GAO-11-819, Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts 6 (Sept. 23, 2011) ("GAO Report").

[2]Agency for Toxic Substances & Disease Registry, U.S. Department of Health & Human Services, Asbestos Fact Sheet 1 (2001).

[3]EPA, *Learn About Asbestos*, http://www.epa.gov/asbestos (last visited Jan. 31, 2015).

[4]National Cancer Institute, NIH, *Malignant Mesothelioma*, http://www.cancer.gov/cancertopics/types/malignantmesothelioma (last visited Jan. 31, 2015).

[5]*See* Antti Tossavainen et al., *Consensus Report: Asbestos, asbestosis, and cancer: the Helsinki criteria for diagnosis and attribution*, 23 Scandinavian Journal of Work Environment & Health 313 (1997) ("All 4 major histological types [of lung cancer] (squamous, adeno-, large-cell and small-cell carcinoma) can be related to asbestos."); World Health Organization, Elimination of Asbestos-Related Diseases 1-2 (2006) ("All types of asbestos cause cancer in humans . . . . No threshold has been identified for the carcinogenic risk of chrysotile."). *See also* American Thoracic Society, *Diagnosis and Initial Management of Nonmalignant Disease Related to Asbestos*, 170 American Journal of Respiratory and Critical Care Medicine 692, 697 (2004).

[6]*See* William J. Nicholson et al., *Occupational Exposure to Asbestos: Population at Risk and Projected Mortality — 1980-2030*, 3 American Journal of Industrial Medicine 259, 259 (1982); *see also* American Thoracic Society, *The Diagnosis of Nonmalignant Diseases Related to Asbestos*, 134 American Review of Respiratory Disease 363, 363 (1986).

[7]*See In re Joint E. & S. Dist. Asbestos Litig.*, 129 B.R. 710, 737-38 (E. & S.D.N.Y. 1991), *vacated*, 982 F.2d 721 (2d Cir. 1992), *modified*, 993 F.2d 7 (2d Cir. 1993) ("Manville I").

[8]*See* Enpro Industries Inc. Form 10-K (Mar. 3, 2009) at 84.

[9]Muriel L. Newhouse & Hilda Thompson, *Mesothelioma of Pleura and Peritoneum Following Exposure to Asbestos in the London Area*, 22 British Journal of Industrial Medicine 261, 265 (1965) (latency period can be as long as 55 years); C. Bianchi et al., *Latency Periods In Asbestos-Related Mesothelioma of the Pleura*, 6 European Journal of Cancer Prevention 162, 162 (1997) (the latency period in one case was 72 years).

[10]*Manville I*, 129 B.R. at 737.

[11]Barry I. Castleman, *Asbestos: Medical and Legal Aspects* 5-6 (Aspen Pub. 5th ed. 2005). *See also Manville I*, 129 B.R. at 737 (internal citation omitted).

[12]*Manville I*, 129 B.R. at 737-38 (internal citation omitted). *See also id.* at 739 (noting that reports of mesothelioma among asbestos workers had emerged in journals of industrial medicine and hygiene in the late-1940s).

[13]*Id.* at 743 (citing Paul Brodeur, *Outrageous Misconduct: The Asbestos Industry on Trial* (1985) ("Brodeur").

[14]*Id.* at 745-46.

[15]*Borel v. Fibreboard Paper Prods. Corp*, 493 F.2d 1076 (5th Cir. 1973).

[16]*See id.* at 1089.

[17]*See id.* at 1095.

[18]*See, e.g., Rutherford v. Owens-Illinois, Inc.*, 941 P.2d 1203, 1214 (Cal. 1997) (plaintiff may meet the burden of proving exposure to defendant's product caused lung cancer by showing that in reasonable medical probability it was a substantial factor contributing to the plaintiff's or decedent's risk of developing cancer); *Jones v. John Crane, Inc.*, 350 Cal. Rptr. 3d 144, 151 (Ct. App. 2005) ("The testimony of the experts provided substantial evidence that Jones's lung cancer was caused by cumulative exposure, with each of many separate exposures having constituted substantial factors contributing to his risk of injury."); *John Crane, Inc. v. Linkus*, 988 A.2d 511, 531 (Md. Ct. Spec. App. 2010) ("We conclude that lay testimony describing the amount of dust created by handling the products in question, coupled with expert testimony describing the dose response relationship and the lack of a safe threshold of exposure (above ambient air levels), was sufficient to create a jury question [as to whether the plaintiff's mesothelioma was caused by defendant's asbestos-containing products]."); *John Crane, Inc. v. Wommack*, 489 S.E.2d 527, 532 (Ga. Ct. App. 1997) ("Expert testimony showed that it is universally agreed that asbestos fibers are intrinsically dangerous and that the respiration of each fiber is cumulatively harmful . . . ."); *Blancha v. Keene Corp.*, Civ. A. No. 87-6443, 1991 WL 224573, at *6 (E.D. Pa. Oct. 24, 1991) (*every* occupational exposure to asbestos "is a substantial factor in bringing about mesothelioma"); *Held v. Avondale Indus., Inc.*, 672 So. 2d 1106, 1109 (La. Ct. App. 1996) (medical evidence showed "no known level of asbestos [exposure] which would be considered safe . . . any [asbestos] exposure, even slight exposures, to asbestos . . . [found to be] a significant contributing cause of the [decedent's] malignant pleural mesothelioma"); *Mavroudis v. Pittsburgh-Corning Corp.*, 935 P.2d 684 (Wash. Ct. App. 1997) (any exposure to asbestos above background contributes to development of mesothelioma); *Kurak v. A.P. Green Refractories Co.*, 689 A.2d 757, 766 (N.J. Super. Ct. App. Div. 1997) ("Where there is competent evidence that one or a *de minimis* number of asbestos fibers can cause injury, a jury may conclude the fibers were a substantial factor in causing a plaintiff's injury."); *ACandS, Inc. v. Abate*, 710 A.2d 944, 989 (Md. Ct. Spec. App. 1998), *abrogated by, John Crane, Inc. v. Scribner*, 800 A.2d 727 (Md. 2002) (expert medical witness testified that "each and every [asbestos] exposure that [the decedent] had was a substantial contributing factor in the causation of his disease"); *Caruolo v. ACandS, Inc.*, No. 93 Civ. 3752 9RWS, 1999 WL 147740, at *9 (S.D.N.Y. Mar. 18, 1999) *aff'd in part, vacated in part*, 226 F.3d 46 (2d Cir. 2000) (expert medical witness testimony that "[T]here is no way one can say [each asbestos exposure] didn't contribute. To the contrary. All of his exposures contributed to his mesothelioma, including this one.").

[19]Brodeur at 73.

[20]*See In re Johns-Manville Corp.*, 68 B.R. 618, 620 (Bankr. S.D.N.Y. 1986), *aff'd*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd*, 843 F.2d 636 (2d Cir. 1988).

[21]*See id.* at 624.

[22]*See id.*

[23]*See, e.g., In re Combustion Eng'g, Inc.*, 391 F.3d 190, 235 n.47 (3d. Cir. 2004). *See also* H.R. Rep. No. 103-835 at 3 (1994) (explaining that Section 524(g) is intended to emulate the "creative solution to help protect the future asbestos claimants, in the form of a trust into which would be placed stock of the emerging debtor company and a portion of future profits, along with contributions from [the debtor's] insurers" devised in the *Manville* case). Section 524(h), which was enacted at the same time, makes clear that the channeling injunction in *Manville* is deemed retroactively to comply with Section 524(g), and thus is valid.

[24]Bankruptcy Amendments Act of 1993, Amendment No. 1633, 140th Cong. (2d Sess. 1994) (*amending* 11 U.S.C. § 524).

[25]*See* 11 U.S.C. § 524(g)(4)(B)(i).

[26]*See id.*

[27]GAO Report at 3.

[28]GAO Report at 3. This number may not be accurate, as some trusts are dormant and other bankruptcy cases which were expected to lead to new trusts are still active.

[29]*See* 11 U.S.C. § 524(g)(2)(B)(i)(III).

[30]*See, e.g.*, *Owens Corning v. Credit Suisse First Boston*, 322 B.R. 719, 722 (D. Del. 2005); *see also* United States Gypsum Asbestos Personal Injury Settlement Trust, Trust Distribution Procedures §§ 2.3, 4.2 (revised Mar. 29, 2010), http://www.usgasbestostrust.com/wp-content/uploads/2014/04/USGTDP.pdf ("USG TDP").

[31]*See* USG TDP §§ 2.3 and 4.2; see also *In re Armstrong World Indus., Inc.*, 348 B.R. 111, 114, 136 (D. Del. 2006).

[32]*See, e.g.*, *In re Burns & Roe Enters., Inc.*, 08-4191(GEB), 2009 WL 438694, at *32, *37 (D.N.J. Feb. 23, 2009).

[33]*See, e.g.*, USG TDP § 5.3(a).

[34]*See, e.g.*, *id.* § 5.3(b).

[35]*See, e.g.*, *id.* §§ 5.3(a)(3); 5.7(a), (b).

[36]*See, e.g.*, *id*.

[37]GAO Report at 29.

[38]GAO Report at 19.

[39]GAO Report at 21.

[40]*See* Manville Personal Injury Settlement Trust, *2002 Trust Distribution Process* § D (Jan. 2012 Revision), http://www.claimsres.com/documents/MT/2002%20TDPJanuary%202012%20Revision.pdf; Manville Personal Injury Settlement Trust, *FAQs* § A.2 (Mar. 2012), http://www.claimsres.com/documents/MT/FAQS.pdf; *Amended and Restated Armstrong World Industries, Inc. Asbestos Personal Industry Settlement Trust Distribution Procedures* § 5.3(b)(4), armstrongworldasbestostrust.com (updated Mar. 20, 2013), http://www.armstrongworldasbestostrust.com/wp-content/uploads/2014/02/Conformed-Copy-of-AWI-TDP-as-of-March-20-2013.pdf; *Frequently Asked Questions*, armstrongworldasbestostrust.com, http://www.claimsres.com/documents/MT/FAQS.pdf (last visited Jan. 31, 2015); *Asbestos PI Settlement Trust Distribution Procedures* § 5.3(b)(3), bwasbestostrust.com (revised Dec. 3, 2013), http://www.bwasbestostrust.com/wp-content/uploads/2014/02/B-W-TDP-DEC-2013-POST-TO-WEBSITE-P0325875.pdf; *Frequently Asked Questions*, bwasbestostrust.com, http://www.bwasbestostrust.com/resources/ (last visited Jan. 31, 2015); *Third Amended Trust Distribution Procedures* § 5.3(b)(3), kaiserasbestostrust.com (Nov. 20, 2007), http://www.kaiser asbestostrust.com/Files/Third%20Amended%20Trust%20Distribution%20Procedures%2000013238.pdf; *Notice of Payment Percentage Adjustment*, kaiserasbestostrust.com (May 13, 2011), http://www.kaiserasbestostrust.com /Files/20110513_KACC_Payment_Percentage_Notice.pdf; *Trust*

Distribution Procedures §§ 2.3, 5.3(b)(4), burnsandroetrust.com (Nov. 10, 2008), http://www.burnsandroetrust.com/Files/ 20081110_BurnsAndRoe_TDP.PDF; *Owens Corning/Fibreboard Asbestos Personal Injury Trust Distribution Procedures* (Revised Feb. 2, 2010) § 5.3(b)(4), http://www.ocfbasbestostrust.com/wp-content/uploads/2014/07/Revised-OCFB-TDP-dated-February_2_-2010_final1.pdf (last visited Jan. 31, 2015); *United States Gypsum Asbestos Personal Injury Settlement Trust Distribution Procedures* (Revised Mar. 29, 2010) § 5.3(b)(3), http://www.usgasbestostrust.com/wp-content/uploads/2014/04/USGTDP.pdf (last visited Jan. 31, 2015)

[41]Am. Ass'n for Justice, *ALEC: Ghostwriting the Law for Corporate America* (May 2010), https://www.justice.org/sites/default/files/file-uploads/ALEC_Report.pdf.

[42]Letter from Marcus S. Owens, Clergy VOICE, to Douglas Shulman, Comm'r. of the IRS, Regarding Violations of the Internal Revenue Laws by the Am. Legis. Exch. Council (EIN: 52-0140979), (June 18, 2012), http://www.scribd.com/doc/98828514/ALEC-IRS-Complaint; Submission to the Internal Revenue Service Under the Tax Whistleblower Act, 26 U.S.C. § 7623(b) Regarding Underreporting of Lobbying and Operation in Furtherance of Private Corporate Interests in Contravention of 26 U.S.C. § 501(c)(3) Tax-Exempt Charitable Status, Common Cause (Apr. 20, 2012), http://www.commoncause.org/research-reports/National_042012_Submission_to_IRS_ALEC_Lobbying-pdf.pdf.

[43]The Asbestos Claims Transparency Act has been introduced at various times over the last four years in Illinois, Indiana, Louisiana, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, West Virginia, and Wisconsin. *See, e.g.*, H.B. 0153, 99th Sess. (Ill. 1013); H.B. 1400, 119th Sess. (Ind. 2015); H.B. 477, 2012 Leg., 38th Reg. Sess. (La. 2012); Amended Substitute H.B. 380, 129th Gen. Assem., 2012 Sess. (Ohio 2012); S.B. 1792, 53d Leg., 2d Reg. Sess. (Okla. 2011); H.B. 1150, Sess. 2013-2014 (Pa. 2013); S. 281, Sess. 121, 2015-2016 (S.C. 2015); H.B. 2034, 82d Leg. (Tex. 2011); S.B. 1202, 82d Leg. (Tex. 2011); 2013 A.B. 19, 2013-2014 Leg. Sess. (Wisc. 2014); S.B. 43 & 56, 80th Leg., Reg. Sess. (W.Va. 2011). The Ohio, Oklahoma, and Wisconsin bills are the only ones to have been enacted to date and are discussed below.

[44]*See, e.g.*, *USG Approved Site List*, usgasbestostrust.com (updated Jan.12, 2015), http://www.usgasbestostrust.com/?s=%22usg+approved+site+list%22.

[45]*See Bondex Int'l v. Ott*, 774 N.E.2d 82, 86-87 (Ind. Ct. App. 2002); *State Farm Ins. Cos. v. Premier Manufactured Sys., Inc.*, 172 P.3d 410, 413 (Ariz. 2007).

[46]*See* Paul D. Kheingold, *Litigating Mass Tort Cases* § 10:65 (2012).

[47] Mesothelioma Applied Research Foundation, *Mesothelioma Statistics, Mesothelioma Facts, Meso Foundation, available at* http://www.curemeso.org/site/c.duIWJfNQKiL8G/b.8578843/k.AF18/Mesothelioma_Statistics__Mesothelioma_Facts__Meso_Foundation.htm.

[48] *See* Letter from Douglas A. Campbell, Campbell & Levine, LLC, to Rep. Bob Goodlatte, Chairman, H. Comm. on the Judiciary, Rep. John Conyers, Jr., Ranking Member, H. Comm. on the Judiciary, Rep. Tom Marino, Chairman, H. Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary, and Rep. Hank Johnson, Ranking Member, H. Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary (Jan. 30, 2015) ("January 30, 2015 Campbell Letter").

[49] January 30, 2015 Campbell Letter, at 3.

[50] January 30, 2015 Campbell Letter, at 2-3.

[51] January 30, 2015 Campbell Letter, at 3.

[52] Press Release, H.R. Judiciary Committee, *Bill Introduced to Increase Relief for Victims of Asbestos* (Jan. 26, 2015); *available at* http://judiciary.house.gov/index.cfm/2015/1/bill-introduced-to-increase-relief-for-victims-of-asbestos (last visited January 31, 2015). Mr. Goodlatte also referred to "duplicitous or conflicting claims" – a misleading concept I address in Section V.a above.

[53] GAO Report at 23.

[54] Press Release, Jan. 26, 2015.

[55]*See, e.g.*, Estimation Hr'g Tr. at 15:02-10, *In re Garlock Sealing Techs., LLC*, No. 10-31607 (Bankr. W.D.N.C. July 22, 2013) (Cassada Opening Statement).

[56]This case is discussed in detail in the Post-Hearing Brief of the Official Committee of Asbestos Personal Injury Claimants ("ACC") for Estimation of Pending and Future Mesothelioma Claims [Filed Under Seal] at 14-16, 32, 39, and Appendix II to the Post-Hearing Brief at 2-10, *In re Garlock Sealing Techs., LLC*, No. 10-31607 (Bankr. W.D.N.C. Nov. 1, 2013), ECF Nos. 3198, 3200; Mem. in Supp. of Motion to Reopen the Record of the Estimation Proceeding [Filed Under Seal] at 8-23, Nov. 7, 2014, ECF No. 4201; Reply in Support of ACC's Motion to Reopen the Estimation Proceeding [Redacted] at 4-20, Nov. 7, 2014, ECF No. 4205; and Response of the ACC to Debtors' Surreply to the Motion to Reopen the Record of the Estimation Proceeding at 8-23, Nov. 24, 2014, ECF No. 4239.

[57]*See* J. on Special Verdicts at 5, *Treggett v. Alfa Laval Inc.*, No. BC 307058 (Cal. Super. Ct. Jan. 3, 2005).

[58]*In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 84-85 (Bankr. W.D.N.C. 2014).

[59] *Treggett v. Alfa Laval Inc.*, No. BC 307058 (Cal. Super. Ct. Sept. 14, 2004), ("Trial Tr.") at 731:18-733:23, 1035:22-1036:2; Trial Tr. at 1213:15-25, 1219:2-26, 1226:8-20, 1227:7-22, 1232:7-1233:17, 1248:16-20 (Sept. 16, 2004).

[60] Trial Tr. at 1226:8-20 (Sept. 16, 2004).

[61] Trial Tr. at 719:19-23; 720:8-27; 736:19-21 (Sept. 14, 2004). *See also* Janice Robinson Pennington, *A Look at the Record in Garlock's Celebrated Estimation Order*, Mealey's Asbestos Bankruptcy Report (July 2014).

[62] Debtors' Second Am. Plan of Reorganization, *In re Garlock Sealing Techs., LLC*, No. 10-31607 (Bankr. W.D.N.C. Jan. 14, 2015), ECF No. 4306.

[63] Ohio Rev. Code Ann. § 2307.91 et seq.; Okla. Stat. § 76-94 et seq.; 2013 Wisc. Act 154, enacted Mar. 27, 2014 (Wisc. Stat. § 802.025).

[64]Amended Substitute H.B. 380 § 1 (amending § 2307.952(A)(1)(a)).

[65]*Id.* (amending § 2307.953(A)).

[66]*Id.* (amending § 2307.954(B)).