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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**

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’

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 plan²¹ — 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

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 Recoveries⁴⁰

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

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

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 Act⁴⁹ – 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

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 victims⁵⁶ 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

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

Endnotes

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

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

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

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

⁵See 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).

⁶See 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).

⁷See *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”).

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

⁹Muriel 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.

¹¹Barry 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).

¹⁶See *id.* at 1089.

¹⁷See *id.* at 1095.

¹⁸See, 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.").

¹⁹Brodeur at 73.

²⁰See *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).

²¹See *id.* at 624.

²²See *id.*

²³See, 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.

²⁴Bankruptcy 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.*

²⁷GAO Report at 3.

²⁸GAO 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.*

³⁷GAO Report at 29.

³⁸GAO Report at 19.

³⁹GAO 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](http://www.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.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](http://www.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), <http://www.bwasbestostrust.com/resources/> (last visited Jan. 31, 2015); *Third Amended Trust Distribution Procedures* § 5.3(b)(3), [kaiserasbestostrust.com](http://www.kaiserasbestostrust.com) (Nov. 20, 2007), <http://www.kaiserasbestostrust.com/Files/Third%20Amended%20Trust%20Distribution%20Procedures%20000013238.pdf>; *Notice of Payment Percentage Adjustment*, [kaiserasbestostrust.com](http://www.kaiserasbestostrust.com) (May 13, 2011), http://www.kaiserasbestostrust.com/Files/20110513_KACC_Payment_Percentage_Notice.pdf; *Trust*

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 “duplicious 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)).