



Asbestos Trust Transparency

I. A BRIEF HISTORY OF ASBESTOS LITIGATION AND ASBESTOS BANKRUPTCIES

Early asbestos personal-injury litigation focused primarily on the so-called “big dusties,” such as Johns Manville Corporation, Owens-Corning Fiberglass Company, Celotex Corporation, Eagle Picher Industries, Pittsburgh Corning, Turner & Newell, Armstrong World Industries, and W.R. Grace. *See In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 83 (Bankr. W.D.N.C. 2014). These were companies that produced the most dangerous types of asbestos products, such as thermal insulation and raw asbestos fibers, and had large market shares.

For example, Johns Manville was “the world’s largest miner, processor, manufacturer and supplier of asbestos and asbestos-containing products.” *GAF Corp. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 26 B.R. 405, 407 (Bankr. S.D.N.Y. 1983). Its products “were used pervasively in a variety of industries for several decades throughout the United States.” *Manville Corp. v. Equity Sec. Holders Comm. (In re Johns-Manville Corp.)*, 66 B.R. 517, 521 (Bankr. S.D.N.Y. 1986). Manville “had—by far—the largest share of the United States asbestos market as a manufacturer of asbestos insulation along with other end-use asbestos products and asbestos materials used for manufacture by others.” *In re Garlock*, 504 B.R. at 83. Furthermore, many of the products manufactured by Manville and other big dusties contained the most dangerous forms of asbestos, known as amphiboles.

As a result of its prominent role in asbestos production, Manville was a leading defendant in early asbestos litigation. Manville “was the primary defendant in virtually every asbestos tort complaint and generally drove the defense of the litigation.” *In re Garlock*, 504 B.R. at 83. When it filed a petition for bankruptcy protection in 1982, Manville informed the court that it was a “defendant or co-defendant in the asbestos litigation brought by more than 15,550 plaintiffs throughout the country,” with “[a]n average of 425 new asbestos lawsuits per month” being filed against it. *GAF Corp.*, 26 B.R. at 407. Other bankruptcies followed later in the 1980s, and this trend continued over the course of the following decades. In the 1990s, several defendants named in asbestos litigation filed petitions for bankruptcy protection, including insulation product manufacturers such as Celotex Corporation, Eagle Picher, and Keane Corporation. From 2000 to 2005, a “bankruptcy wave” occurred as a number of major asbestos defendants filed bankruptcy petitions, including Owens Corning, Pittsburgh Corning, U.S. Gypsum, Babcock & Wilcox, Turner & Newell, Armstrong World Industries, and W.R. Grace. *See In re Garlock*, 504 B.R. at 83.

As more and more asbestos defendants entered bankruptcy and disappeared from the tort system, plaintiffs’ attorneys extended asbestos litigation’s reach to encompass increasingly peripheral defendants. At the same time, plaintiffs’ memories of working with the products of bankrupt companies vanished from court cases along with the bankrupt companies themselves. After an asbestos defendant entered bankruptcy, plaintiff identifications of that company’s asbestos-containing products in cases in the regular tort system suddenly and suspiciously began to decline. This phenomenon has been recognized by some courts, including the bankruptcy court that oversaw Garlock Sealing Technologies’ bankruptcy case. *See In re Garlock*, 504 B.R. at 73 (“Beginning in early 2000s, the remaining large thermal insulation defendants filed bankruptcy cases and were no longer participants in the tort system. As the focus of plaintiffs’ attention turned

more to Garlock as a remaining solvent defendant, evidence of plaintiffs' exposure to other asbestos products often disappeared.") Plaintiffs commonly fail to identify the products of bankrupt companies as sources of exposure at deposition or in written discovery responses.

As discussed below, however, this does not mean that plaintiffs do not have claims against Manville and other bankrupt companies. On the contrary, plaintiffs file claims with asbestos bankruptcy trusts even when they fail to identify the products covered by the trusts in discovery. The exposure histories plaintiffs allege in support of these trust claims are often far different from the exposure histories they allege in court.

II. ASBESTOS DEFENDANTS NEED INFORMATION AND DOCUMENTS REGARDING ASBESTOS BANKRUPTCY TRUST CLAIMS TO PROVE APPORTIONMENT OF LIABILITY

Under Florida's Comparative Fault Statute, Fla. Stat. § 768.81(3)(a), tort defendants have the right to seek allocation of fault—also known as apportionment of fault—to nonparties responsible for a plaintiff's injuries, including bankrupt companies. *Fabre v. Marin*, 623 So.2d 1182, 1186 (Fla. 1993) (ruling that the Comparative Fault Statute allows allocation of fault to tortfeasors who are insolvent or cannot be joined as parties to a lawsuit), *receded from in part on other grounds*, *Wells v. Tallahassee Mem'l Reg'l Med. Ctr.*, 659 So.2d 249 (Fla. 1995). The statute, however, requires defendants to plead the nonparties' fault and to prove it at trial: A defendant seeking apportionment against a nonparty must plead the nonparty's fault in an affirmative defense and "identify the nonparty, if known, or describe the nonparty as specifically as practicable." Fla. Stat. § 768.81(3)(a)1. At trial, moreover, the defendant has the burden of proving the nonparty's fault by a preponderance of the evidence. Fla. Stat. § 768.81(3)(a)2. Therefore, defendants sued in an asbestos case need to obtain discovery regarding the plaintiff's exposure to asbestos-containing products of companies not named in the lawsuit, including the products of bankrupt companies.

As indicated above, however, plaintiff identifications of an asbestos defendant's products in the regular tort system suspiciously decline after the company enters bankruptcy. Plaintiffs commonly fail to identify the products of bankrupt companies as sources of exposure at deposition or in written discovery responses. When defendants who remain viable in the tort system can obtain discovery regarding claims that plaintiffs have filed with the bankruptcy trusts of these former asbestos defendants, however, they often find that plaintiffs are filing claims with trusts for bankrupt companies whose products they did not identify in discovery.

Defendants sued in Florida asbestos cases have both the need and the right to obtain information and documents regarding plaintiffs' bankruptcy trust claims. The plaintiffs and their attorneys are the best—and, in many cases, the only—source of information regarding plaintiffs' exposures. When plaintiffs withhold evidence regarding exposures to the products of bankrupt companies, it deprives defendants of their right to seek apportionment, distorts the tort system, and defeats the purposes of the Comparative Fault Statute.

III. PROBLEMS IN OBTAINING DISCOVERY REGARDING PLAINTIFFS' BANKRUPTCY TRUST CLAIMS

As discussed above, identifications of an asbestos defendant's products tend to decline in asbestos lawsuits in the regular court system after that defendant enters bankruptcy proceedings, and exposures to the products of defendants still viable in the regular court system tend to be accentuated. When defendants seek to learn the truth by pursuing discovery of plaintiffs' asbestos trust claims, moreover, they encounter numerous roadblocks.

Defendants use various tools to try to learn of claims that plaintiffs have filed with asbestos bankruptcy trusts, including written discovery (interrogatories, requests to produce, and requests to admit), depositions of plaintiffs, subpoenas served on the bankruptcy trusts, and collateral source reports required by Section 774.207(2) of Florida's Asbestos and Silica Compensation Fairness Act. As demonstrated below, however, defendants have encountered problems in trying

to utilize these tools, largely as a result of misrepresentations and obstructionist tactics by plaintiffs and their counsel. The plaintiffs provide false discovery responses, make false statements in their collateral source reports, make specious assertions of privilege to obstruct discovery, and delay the filing of claims until their court cases are resolved. Even when defendants overcome plaintiffs' efforts to obstruct discovery from trusts, moreover, they face unreasonable and unnecessary expenses and delays in obtaining the discovery. Furthermore, collateral source reports have proved to be of little use in identifying trust claims even when they are truthful.

A. False Discovery Responses

The plaintiffs' pleadings and sworn statements in Florida asbestos lawsuits frequently tell a story completely different from that represented by the same plaintiffs in documents they have submitted to asbestos bankruptcy trusts. All too often, the work and exposure histories they have presented in the bankruptcy trust claim documents do not match the information provided to defendants in pleadings and discovery in the lawsuits.

We have found numerous instances in which a plaintiff has responded to interrogatories and document requests regarding trust claims by denying that he or she has filed any such claims—when, as we later learn, they have indeed filed such claims. In addition, plaintiffs may deny knowledge of the existence of such claims at depositions. The bankruptcy court that oversaw Garlock Sealing Technologies' bankruptcy case found instances in which plaintiffs and their lawyers had falsely denied filing bankruptcy claims. *See In re Garlock*, 504 B.R. at 84-85. In a project our firm conducted a few years ago, moreover, we reviewed seventy-six (76) asbestos cases filed in Florida since January 1, 2006, in which we had obtained claim records from at least one bankruptcy trust during pretrial workup. In forty-four percent (44%) of the cases (34 of 76 cases), we found contradictions and inconsistencies between the trust records and plaintiffs' collateral source reports, responses to written discovery, and deposition testimony. In those cases, the plaintiffs and their counsel denied that they had filed claims with bankruptcy trusts, but our

investigation revealed that those denials were false: the plaintiffs and their counsel had in fact previously filed trust claims, and thus their denials were false when made.

Below are several examples of cases in which we found misrepresentations regarding trust claims and exposures to the products of bankrupt companies. The first five examples are individual cases spanning from 2010 to 2017, and they are discussed in chronological order. The sixth example actually concerns eleven cases filed in Dade County in 2003 and 2004 in which the plaintiffs provided the same false or frivolous responses to interrogatories, and is included here to demonstrate that the problem of plaintiffs concealing trust claims is longstanding.

1. Example No. 1: 2010 Case from Hillsborough County (Herman Roberts)

We found that the plaintiff in this 2010 Hillsborough County lawsuit had previously submitted a claim to the Manville Personal Injury Settlement Trust on October 29, 2009. He accepted a settlement offer from the Manville Trust on November 6, 2009, and received payment from the trust on November 19, 2009. In support of his claim, the plaintiff submitted a sworn Affidavit of Significant Occupational Exposure.

The plaintiff filed his asbestos lawsuit in Hillsborough County on March 19, 2010, and subsequently submitted a sworn information form that included a collateral source report. In the sworn information form, which was signed on April 15, 2010, the plaintiff denied that he had received any collateral source payments: “Pursuant to Florida Statute § 774.207(2), Plaintiff states that he has not received any *Collateral Source Payments and/or Settlements* related to his asbestos related claims.” This denial directly contradicted the information we discovered in the documents received from the Manville Trust.

The plaintiff served his responses to the defendants’ standard interrogatories on March 28, 2011, and verified those responses on March 30, 2011. The plaintiff responded “No” to Standard Interrogatory No. 11, which asks whether “there has been any settlement with any person or party of any claim or part of a claim being asserted herein by which any money or other benefit was

received.” Again, this answer directly contradicted the information we discovered in the documents received from the Manville Trust. The plaintiff was likewise untruthful in his response to Standard Interrogatory No. 29, which asks whether the plaintiff “worked with or around asbestos containing products manufactured by companies not named as Defendants in this suit.” He responded that he did not recall, despite the fact that he had previously claimed exposure to the products of nonparty Johns-Manville.

2. Example No. 2: 2013 Case from Broward County (James Taylor)

We found that the plaintiff in this Broward County lawsuit had previously submitted a claim to the Manville Trust and received payment. The plaintiff submitted his claim to the Manville Trust on March 15, 2013, and accepted an offer from the Trust the same day. The Trust paid the plaintiff on March 21, 2013. In his claim documents, the plaintiff alleged exposure to Johns-Manville products from January 1965 to December 1967.

The plaintiff initiated his lawsuit in Broward County on March 28, 2013, and filed a First Amended Complaint on April 4, 2013. With the Amended Complaint, the plaintiff filed a signed “Claimant Information Form” that included the following collateral source report: “Pursuant to 774.205(2) [*sic*], Plaintiff states that there have been no collateral source payments at this time is not applicable at this time [*sic*] other than some treatment that may have been paid for by his insurance.” This report omitted the payment by the Manville Trust and was thus false.

In his May 28, 2013, responses to the defendants’ standard interrogatories, the plaintiff refused to answer Interrogatories No. 11 and No. 29. In response to Interrogatory No. 11 (regarding settlement payments), the plaintiff objected on the grounds that the interrogatory exceeded the scope of permissible discovery and sought disclosure of confidential settlement communications. In response to Interrogatory No. 29 (regarding exposure to products of nonparties), the plaintiff frivolously objected on the grounds that the interrogatory was “overly

broad and would require plaintiff to ascertain the manufacturer of each product to which he was exposed.”

At his June 6, 2013, deposition, the plaintiff testified that he did not know the name “Johns-Manville” as a manufacturer of any products that he may have worked with or around during his career. He further testified that he had not made any claims, filled out any forms, or signed any forms related to his asbestos-related condition other than in his lawsuit. He also testified that he had not received any settlement money as a result of his asbestos-related injury.

3. Example No. 3: 2013 Case from Broward County (James O’Neal)

We found that the plaintiff in this Broward County lawsuit had previously submitted claims to the Manville Trust and the Combustion Engineering 524(g) Asbestos PI Trust (“CE Trust”). The plaintiff submitted his Manville Trust claim on March 30, 2011, alleging that he had been exposed to Johns-Manville products while working as a “Boiler Worker, Repair” from January 1950 to December 1980, *i.e.*, approximately 31 years. The plaintiff accepted an offer from the Manville Trust on April 15, 2011, and received payment from the Trust on May 5, 2011. The plaintiff executed an Affidavit of Exposure in Support of Claim of Exposure to Combustion Engineering Asbestos Related Products on August 24, 2011, and received payment from the CE Trust on March 26, 2012. In his Affidavit of Exposure, the plaintiff attested that that he had worked with or around one or more specifically identified Combustion Engineering products during his career for a period of more than six months.

The plaintiff filed his lawsuit in Broward County on May 3, 2013, and subsequently executed a sworn information form on May 31, 2013. The plaintiff’s sworn information form included the following collateral source report: “Pursuant to Florida Statute 774.207(2), Plaintiff states that he has not received and does not know what if any collateral sources payment he will receive in the future.” This statement is false. As discussed above, the plaintiff had received

payments from at least two asbestos bankruptcy trusts more than a year before he signed the sworn information form.

The plaintiff also provided false answers in his responses to the defendants' standard interrogatories, which were verified by the plaintiff on July 26, 2013. The plaintiff responded "No" to Standard Interrogatory No. 11, which asks whether "there has been any settlement with any person or party of any claim or part of a claim being asserted herein by which any money or other benefit was received." Again, this answer directly contradicts the information we discovered in the documents received from the Manville Trust and the CE Trust. The plaintiff was also untruthful in his response to Standard Interrogatory No. 29, which asks whether the plaintiff "worked with or around asbestos containing products manufactured by companies not named as Defendants in this suit." He responded that he was not aware of working with or around the products of nonparties, even though he had previously claimed exposure to the products of nonparties Johns-Manville and Combustion Engineering when he filed claims with the Manville Trust and the CE Trust.

At his November 2013 deposition, the plaintiff testified that he could not recall working with or around Johns Manville and Combustion Engineering products, despite what he had earlier claimed in his filings with the Manville Trust and the CE Trust. The plaintiff also testified that he did not remember whether he made a claim with the Manville trust because he had "made a claim on a lot of them." He then testified that he had "worked on all this stuff that my lawyer said that I worked on here."

4. Example No. 4: 2015 Case from Broward County (Andrew Phillips)

This Broward County case illustrates that a plaintiff may be untruthful even when he admits exposure to a nonparty's products. The plaintiff filed his lawsuit in Broward County on July 20, 2015, and also filed a claim with the Manville Trust sometime during that same July. The Exposure Sheets filed with the Complaint in the Broward County lawsuit allege that the plaintiff

was exposed to CertainTeed and Johns-Manville asbestos cement pipe during one summer, but do not allege exposure to any other Johns-Manville product, including Manville automotive products. The plaintiff's standard interrogatory responses, served on September 4, 2015, and verified on September 23, 2015, likewise fail to disclose exposure to any Johns-Manville product other than asbestos cement pipe. In response to Standard Interrogatory No. 29, regarding exposures to the products of nonparties, the plaintiff identifies only Manville asbestos cement pipe: "Plaintiff believes he worked with or around Johns Manville cement and transite pipe. Discovery is ongoing and Plaintiff reserves the right to supplement this response."

That response is inconsistent, however, with the information the plaintiff provided in the proof of claim he filed with the Manville Trust more than a month earlier. In that proof of claim, the plaintiff alleges exposures to Johns-Manville products in two different industries: (1) exposure in Industry 107 (Construction) during the summer of 1977; and (2) exposure in Industry 104 (Automotive Dealers, Repairs Services, and Stations) from 1975 to 2000. Thus, the plaintiff's Manville proof of claim alleges 25 years of exposure to Johns-Manville automotive products in addition to one summer of exposure to Johns-Manville asbestos cement pipe. Again, the interrogatory responses identify only the latter Johns-Manville exposure.

The plaintiff's inconsistencies continued at his October 2015 deposition. He testified that he did not recall using brakes manufactured by Johns Manville, contradicting the Exposure Information in the Manville Trust claim he had submitted only a few months earlier. Furthermore, he also denied making any submissions to an asbestos trust, despite the Manville claim he had filed only a few months earlier.

**5. Example No. 5: 2017 Case in U.S. District Court for the Middle District of Florida
(Susan Stevenson, as PR of Judith I. Minneci)**

In this case in the U.S. District Court for the Middle District of Florida, defendants served discovery asking whether the plaintiff had filed claims with bankruptcy trusts or in bankruptcy

proceedings. The plaintiff responded that she had no knowledge of such claims. In addition, the plaintiff's discovery responses asserted that the decedent had only been exposed to "asbestos contaminated talcum powder." The defendants later learned, however, that the plaintiff's counsel had filed claims in the Garlock and Coltec bankruptcy proceedings. When the defendants raised the issue of the plaintiff's false responses, moreover, plaintiff's counsel admitted to also filing a claim with the asbestos bankruptcy trust for TH Agriculture & Nutrition.

At a 2018 hearing on the defendants' motion for sanctions, plaintiff's counsel represented that the failure to disclose bankruptcy claims was inadvertent. The court, however, found counsel's handling of matter troubling even assuming inadvertence. The court was especially troubled by counsel's sworn statement in the bankruptcy proceedings that the decedent had been exposed to asbestos-containing gaskets or packing from Garlock or Coltec, which contradicted allegations in the court case. The court indicated that it was likely to impose sanctions, but the case settled before the court issued a decision.

6. Example No. 6: 2003 and 2004 Cases from Miami-Dade County

In each of the eleven cases from 2003 and 2004 discussed below, the plaintiff filed one or more bankruptcy trust claims and received payment on the claim. In subsequent interrogatory responses served in their asbestos lawsuits in Miami-Dade County, however, plaintiffs refused to reveal their trust claims based on frivolous objections and provided false answers that contradicted their trust claims. Specifically, they provided frivolous and false responses to the following two questions in the defendants' court-approved standard interrogatories to plaintiffs:

Interrogatory No. 11: "State whether there has been any settlement with any person or party of any claim or part of a claim being asserted herein by which any money or other benefit was received, and if so, set forth the details thereof, including the claim made, the identity of the person against whom the claim is made, the identity of the person who settled the claim, the amount of the settlement and date thereof."

Interrogatory No. 29: "Have you worked with or around asbestos containing products manufactured by companies not named as Defendants in this suit? If so, state the company(s)."

As demonstrated below, the plaintiffs failed to reveal their paid bankruptcy trust claims and falsely denied exposure to the asbestos-containing products of nonparties, including products to which they alleged exposure in their trust claims:

Plaintiff and Case Number	Answer to Interrogatory No. 11	Answer to Interrogatory No. 29	Date of Interrog. Answers	Manville Trust Claim
Leo F. King Case No. 03-23093	<p>“Settlement discussions are in progress. This answer will only be supplemented following the consummation of any such settlement negotiations, pursuant to applicable laws. Plaintiff objects as to any settlements reached as of this time as same would be confidential. Furthermore, evidence of any settlements is inadmissible at trial, and may, under certain circumstances, only be relevant to any post trial motions for set off, if applicable under Florida law.”</p>	<p>“Plaintiff states that discovery is ongoing and reserves the right to amend his answer to this Interrogatory. However, at this time, Plaintiff is not aware of working around any asbestos containing products manufactured by other companies not named as Defendants in this lawsuit.”</p>	March 16, 2005	<p>Plaintiff’s counsel filed a claim with the Manville Trust on Oct. 30, 2002, and the trust paid the claim on Dec. 18, 2002.</p>

Plaintiff and Case Number	Answer to Interrogatory No. 11	Answer to Interrogatory No. 29	Date of Interrog. Answers	Manville Trust Claim
<p>Charles E. McClendon</p> <p>Case No. 03-23209</p>	<p>“Settlement discussions are in progress. This answer will only be supplemented following the consummation of any such settlement negotiations, pursuant to applicable laws. Plaintiff objects as to any settlements reached as of this time as same would be confidential. Furthermore, evidence of any settlements is inadmissible at trial, and may, under certain circumstances, only be relevant to any post trial motions for set off, if applicable under Florida law.”</p>	<p>“Plaintiff states that discovery is ongoing and reserves the right to amend his answer to this Interrogatory. However, at this time, Plaintiff is not aware of working around any asbestos containing products manufactured by other companies not named as Defendants in this lawsuit.”</p>	<p>Sept. 24, 2004</p>	<p>Plaintiff’s counsel filed a claim with the Manville Trust on Nov. 6, 2002, and the trust paid the claim on Jan. 08, 2003.</p>
<p>George F. Feltman</p> <p>Case No. 03-23224</p>	<p>“Settlement discussions are in progress. This answer will only be supplemented following the consummation of any such settlement negotiations, pursuant to applicable laws. Plaintiff objects as to any settlements reached as of this time as same would be confidential. Furthermore, evidence of any settlements is inadmissible at trial, and may, under certain circumstances, only be relevant to any post trial motions for set off, if applicable under Florida law.”</p>	<p>“Plaintiff states that discovery is ongoing and reserves the right to amend his answer to this Interrogatory. However, at this time, Plaintiff is not aware of working around any asbestos containing products manufactured by other companies not named as Defendants in this lawsuit.”</p>	<p>Sept. 24, 2004</p>	<p>Plaintiff’s counsel filed a claim with the Manville Trust on Oct. 11, 2002, and the trust paid the claim on Nov. 14, 2002.</p>

Plaintiff and Case Number	Answer to Interrogatory No. 11	Answer to Interrogatory No. 29	Date of Interrog. Answers	Manville Trust Claim
Gene E. Tumlin Case No. 03-23225	“Settlement discussions are in progress. This answer will only be supplemented following the consummation of any such settlement negotiations, pursuant to applicable laws. Plaintiff objects as to any settlements reached as of this time as same would be confidential. Furthermore, evidence of any settlements is inadmissible at trial, and may, under certain circumstances, only be relevant to any post trial motions for set off, if applicable under Florida law.”	“Plaintiff states that discovery is ongoing and reserves the right to amend his answer to this Interrogatory. However, at this time, Plaintiff is not aware of working around any asbestos containing products manufactured by other companies not named as Defendants in this lawsuit.”	Sept. 24, 2004	Plaintiff’s counsel filed a claim with the Manville Trust on Jan. 7, 2003, and the trust paid the claim on June 25, 2003.
Conrad R. Umentum Case No. 03-23235	“Settlement discussions are in progress. This answer will only be supplemented following the consummation of any such settlement negotiations, pursuant to applicable laws. Plaintiff objects as to any settlements reached as of this time as same would be confidential. Furthermore, evidence of any settlements is inadmissible at trial, and may, under certain circumstances, only be relevant to any post trial motions for set off, if applicable under Florida law.”	“Plaintiff states that discovery is ongoing and reserves the right to amend his answer to this Interrogatory. However, at this time, Plaintiff is not aware of working around any asbestos containing products manufactured by other companies not named as Defendants in this lawsuit.”	Sept. 24, 2004	Plaintiff’s counsel filed a claim with the Manville Trust on Jan. 7, 2003, and the trust paid the claim on April 16, 2003.

Plaintiff and Case Number	Answer to Interrogatory No. 11	Answer to Interrogatory No. 29	Date of Interrog. Answers	Manville Trust Claim
Charles R. Wright Case No. 03-23243	“Settlement discussions are in progress. This answer will only be supplemented following the consummation of any such settlement negotiations, pursuant to applicable laws. Plaintiff objects as to any settlements reached as of this time as same would be confidential. Furthermore, evidence of any settlements is inadmissible at trial, and may, under certain circumstances, only be relevant to any post trial motions for set off, if applicable under Florida law.”	“Plaintiff states that discovery is ongoing and reserves the right to amend his answer to this Interrogatory. However, at this time, Plaintiff is not aware of working around any asbestos containing products manufactured by other companies not named as Defendants in this lawsuit.”	Sept. 24, 2004	Plaintiff’s counsel filed a claim with the Manville Trust on June 3, 2002, and the trust paid the claim on March 19, 2003.
Burdis H. Cummings Case No. 03-24299	“Settlement discussions are in progress. This answer will only be supplemented following the consummation of any such settlement negotiations, pursuant to applicable laws. Plaintiff objects as to any settlements reached as of this time as same would be confidential. Furthermore, evidence of any settlements is inadmissible at trial, and may, under certain circumstances, only be relevant to any post trial motions for set off, if applicable under Florida law.”	“Plaintiff states that discovery is ongoing and reserves the right to amend his answer to this Interrogatory. However, at this time, Plaintiff is not aware of working around any asbestos containing products manufactured by other companies not named as Defendants in this lawsuit.”	Sept. 24, 2004	Plaintiff’s counsel filed a claim with the Manville Trust on July 3, 2002, and the trust paid the claim on Sept. 19, 2002.

Plaintiff and Case Number	Answer to Interrogatory No. 11	Answer to Interrogatory No. 29	Date of Interrog. Answers	Manville Trust Claim
Philip D. Kilpatrick Case No. 03-24302	“Settlement discussions are in progress. This answer will only be supplemented following the consummation of any such settlement negotiations, pursuant to applicable laws. Plaintiff objects as to any settlements reached as of this time as same would be confidential. Furthermore, evidence of any settlements is inadmissible at trial, and may, under certain circumstances, only be relevant to any post trial motions for set off, if applicable under Florida law.”	“Plaintiff states that discovery is ongoing and reserves the right to amend his answer to this Interrogatory. However, at this time, Plaintiff is not aware of working around any asbestos containing products manufactured by other companies not named as Defendants in this lawsuit.”	Sept. 24, 2004	Plaintiff’s counsel filed a claim with the Manville Trust on Oct. 30, 2002, and the trust paid the claim on Dec. 18, 2002.
Gurstle L. Sloan Case No. 03-24308	“Settlement discussions are in progress. This answer will only be supplemented following the consummation of any such settlement negotiations, pursuant to applicable laws. Plaintiff objects as to any settlements reached as of this time as same would be confidential. Furthermore, evidence of any settlements is inadmissible at trial, and may, under certain circumstances, only be relevant to any post trial motions for set off, if applicable under Florida law.”	“Plaintiff states that discovery is ongoing and reserves the right to amend his answer to this Interrogatory. However, at this time, Plaintiff is not aware of working around any asbestos containing products manufactured by other companies not named as Defendants in this lawsuit.”	Sept. 24, 2004	Plaintiff’s counsel filed a claim with the Manville Trust on Dec. 18, 2002, and the trust paid the claim on June 10, 2003.

Plaintiff and Case Number	Answer to Interrogatory No. 11	Answer to Interrogatory No. 29	Date of Interrog. Answers	Manville Trust Claim
Lewis C. Smallwood Case No. 03-24311	“Settlement discussions are in progress. This answer will only be supplemented following the consummation of any such settlement negotiations, pursuant to applicable laws. Plaintiff objects as to any settlements reached as of this time as same would be confidential. Furthermore, evidence of any settlements is inadmissible at trial, and may, under certain circumstances, only be relevant to any post trial motions for set off, if applicable under Florida law.”	“Plaintiff states that discovery is ongoing and reserves the right to amend his answer to this Interrogatory. However, at this time, Plaintiff is not aware of working around any asbestos containing products manufactured by other companies not named as Defendants in this lawsuit.”	Nov. 11, 2004	Plaintiff’s counsel filed a claim with the Manville Trust on Dec. 18, 2002, and the trust paid the claim on May 28, 2003.
William E. Marini Case No. 04-15341	“Settlement discussions are in progress. This answer will only be supplemented following the consummation of any such settlement negotiations, pursuant to applicable laws. Plaintiff objects as to any settlements reached as of this time as same would be confidential. Furthermore, evidence of any settlements is inadmissible at trial, and may, under certain circumstances, only be relevant to any post trial motions for set off, if applicable under Florida law.”	“Plaintiff states that discovery is ongoing and reserves the right to amend his answer to this Interrogatory. However, at this time, Plaintiff is not aware of working around any asbestos containing products manufactured by other companies not named as Defendants in this lawsuit.”	Feb. 4, 2005	Plaintiff’s counsel filed a claim with the Manville Trust on Jan. 6, 2005, and the trust paid the claim on Jan. 24, 2005.

B. Specious Assertions of Privilege

In the past, plaintiffs’ attorneys have refused to answer discovery regarding trust claims and attempted to block defense efforts to obtain discovery directly from trusts by asserting that information and documents regarding bankruptcy trust claims are privileged and protected against discovery by Florida Evidence Code § 90.408, which generally precludes the admission of evidence concerning a compromise or offer to compromise a disputed claim: “Evidence of an offer

to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value.”

Section 90.408 is a rule regarding relevance, however, not privilege. Nothing in the statute purports to create a privilege. Furthermore, it is grouped with the relevance rules (Fla. Evid. Code §§ 90.401 through 90.410) rather than the privilege rules (Fla. Evid. Code §§ 90.501 through 90.510). As discussed below in Section IV, moreover, Section 90.408 is inapplicable to bankruptcy trust claims anyway because claims filed with trusts do not qualify as offers to compromise.

C. Delaying the Filing of Claims

We have witnessed an increasing trend of plaintiffs and their counsel waiting until their court cases are concluded to file claims with asbestos bankruptcy trusts. This tactic allows plaintiffs and their attorneys to deny the filing of bankruptcy claims in their discovery responses in the court cases and also prevents defendants from obtaining information and documents regarding such claims directly from the trusts. The bankruptcy court that oversaw Garlock Sealing Technologies’ bankruptcy case found several instances in which plaintiffs and their lawyers had waited until the conclusion of their lawsuits in the tort system to file bankruptcy claims. *See In re Garlock*, 504 B.R. at 84-85. In the project our firm conducted a few years ago, moreover, we reviewed a sample group of thirteen cases in which plaintiffs had not filed claims with the Manville Trust before trial. In nine of those thirteen cases, we found that the plaintiffs had file claims with the Manville Trust after the completion of their court cases.

D. Unnecessary Expense and Delay

Obtaining claim documents from a trust requires that the defense domesticate a subpoena in the trust’s home state (commonly Delaware). This costs approximately \$500 per trust per case. Furthermore, all trusts except the Manville Trust refuse to even disclose whether a claim has been

filed unless served with a subpoena. With twenty to twenty-five (20 to 25) trusts or more operating, the cost of simply inquiring with the trusts to learn whether a plaintiff has filed trust claims could exceed \$10,000 per case. Furthermore, all trusts demand payment for providing claim documents in response to subpoenas. The cost is typically around \$200 per trust per case. Plaintiffs already have the documents, however, or can obtain them for free. Thus, requiring defendants to obtain documents from trusts rather than from plaintiffs in discovery imposes an unnecessary expense on defendants. In addition, it significantly adds to the time needed to obtain the documents.

E. Section 774.207 Collateral Source Reports Are of Little Use

Subsection 774.207(2) of Florida's Asbestos & Silica Compensation Fairness Act requires an asbestos plaintiff to file "a verified written report with the court which discloses the total amount of any collateral source payments received, including payments that the plaintiff will receive in the future, as a result of settlements or judgments based upon the same claim." Plaintiffs' attorneys construe this provision narrowly to simply require them to report the aggregate dollar amount of all trust payments and settlements with defendants, without disclosing any information such as which trusts have paid their claims. Knowing the total amount of these "collateral source payments" was of some limited use for purposes of set-off when joint and several liability was still partially in effect. After the legislature abolished joint and several liability in favor of pure apportionment in the 2006 amendment to the Comparative Fault Statute, however, set-off was eliminated because it is only available in cases where joint and several liability applies. *See Port Charlotte HMZ, LLC v. Suarez*, 210 So.3d 187, 190-91 (Fla. 2d DCA 2016); *see also West v. Poindexter*, No. 2:18-CV-14155, 2019 U.S. Dist. LEXIS 67148, at *2-3 (S.D. Fla. Apr. 18, 2019); *Schippers v. United States*, Case No. 5:11-CV-163-OC-37TBS, 2011 U.S. Dist. LEXIS 141356, at *5, 2011 WL 6112354 (M.D. Fla. Dec. 8, 2011). Thus, Section 774.207 is of little benefit now.

IV. PROBLEMS IN INTRODUCING EVIDENCE OF PLAINTIFFS' BANKRUPTCY TRUST CLAIMS AT TRIAL

When defendants try to introduce plaintiffs' trust claims at trial, plaintiffs and their attorneys argue that the claims are inadmissible under Florida Evidence Code § 90.408 because they are settlement documents. A claim filed with a bankruptcy trust is not, however, an offer to compromise. Section 90.408's reference to "compromise" presumes that a party has an enforceable legal claim against another party and is offering to forego his legal remedy if the second party agrees to the terms specified in the offer. In contrast, plaintiffs' sole legal remedy for their claims against bankrupt defendants is to submit their claims to the administrative processes of the bankruptcy trusts. Plaintiffs do not submit their claims to the trusts as an alternative to existing legal rights to file suits against the bankrupt defendants. They have no choice but to submit their claims to the trusts' administrative processes and to follow the trusts' procedures for pursuing their claims.

Furthermore, the courts have found Section 90.408 to be inapplicable in situations in which the statute's two underlying rationales are not implicated:

(1) The evidence is irrelevant, since "such an offer does not ordinarily proceed from and imply a belief that the adversary's claim is well founded, but rather that the further prosecution of the claim, whether well founded or not, would in any event cause such an annoyance as is preferably avoided by the payment of the sum offered." (2) "The public policy of this state favors amicable settlement of disputes and the avoidance of litigation."

Johnson v. State, 625 So.2d 1297, 1299 (Fla. 1st DCA 1993) (quoting revision notes to § 90.408).

Section 90.408's underlying rationales do not justify treating bankruptcy trust claims as offers to compromise. Asbestos bankruptcy trusts are established to satisfy as many claims as possible from the limited funds available, not to avoid the annoyance of litigation. Because a trust's administrative claims process provides the only available remedy for a claimant alleging injury from the products covered by the trust, moreover, allowing the use of evidence from the trust's

administrative process does not serve to discourage “amicable settlement of disputes and the avoidance of litigation.” *Johnson*, 625 So.2d at 1299.

V. HOW THE PROPOSED BILL WOULD ADDRESS THE ABOVE PROBLEMS

The proposed Section 774.300 would help to address the above problems and enable defendants to obtain evidence that more accurately represents an asbestos plaintiff’s true asbestos exposures and to present this evidence at trial:

774.300 Asbestos Trust Claim Disclosures.

(1) Within 30 days of filing an asbestos claim as defined in s. 774.203(3), a plaintiff shall:

(a) Provide all parties with a sworn statement indicating that an investigation of all asbestos trust claims has been conducted and that all asbestos trust claims that can be made by the plaintiff have been filed; and

(b) Identify all asbestos trust claims made by the plaintiff and provide all parties with all materials submitted to or received from an asbestos trust.

(2) A plaintiff shall supplement the information and materials required under subsection (1) within 30 days after the plaintiff files an additional asbestos trust claim, supplements an existing asbestos trust claim, or receives additional information or materials related to an asbestos trust claim.

(3)(a) Not less than 60 days before trial of an asbestos claim, if a defendant believes the plaintiff has not filed all asbestos trust claims as required by subsections (1) and (2), the defendant may move the court for an order to require the plaintiff to file additional asbestos trust claims the defendant believes the plaintiff is eligible to file.

(b) If the court determines there is a sufficient basis for the plaintiff to file an asbestos trust claim identified by the defendant, the court shall stay the asbestos claim until the plaintiff files the trust claim and produces all related trust claims materials. An asbestos action may not proceed to trial until at least 60 days after the plaintiff complies with the court’s order.

(4) A defendant in an asbestos claim may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release the information and materials sought by the defendant.

(5) Asbestos trust claims materials and trust governance documents are presumed to be relevant and authentic, and are admissible in evidence. No claim of privilege shall apply to asbestos trust claims materials or trust governance documents.

(6) If a plaintiff files an asbestos trust claim after the plaintiff obtains a judgment in an asbestos claim and the asbestos trust was in existence at the time of the judgment, the trial court upon motion by a defendant shall adjust the judgment by the amount of any subsequent asbestos trust payments obtained by the plaintiff.

(7) Definitions. As used in this section, the term:

(a) “Asbestos trust” means a government-approved or court-approved trust, qualified settlement fund, compensation fund or claims facility that is created as a result of an administrative or legal action, a court-approved bankruptcy, or under 11 U.S.C. 524(g), 11 U.S.C. 1121(a) or other applicable provision of law, and is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos.

(b) “Trust claims materials” means any final executed proof of claim and any other document or information submitted to or received from an asbestos trust, including a claim form or supplementary material, affidavit, deposition or trial testimony, work history, exposure allegation, medical or health record, document reflecting the status of a claim against an asbestos trust and, if the trust claim has settled, any document relating to the settlement of the trust claim.

(c) “Trust governance documents” means any document that relates to eligibility and payment levels, including a claims payment matrix, trust distribution procedure or plan for reorganization for an asbestos trust.

(See Appendix 1.)

Subsections (1) and (2) of the proposed statute would require plaintiffs to reveal their asbestos trust claims and provide defendants copies of documents related to their trust claims. These subsections would serve to eliminate disputes over the discovery of trust claims and expedite litigation by obviating the necessity of defendants serving discovery on plaintiffs and bankruptcy trusts to learn of plaintiffs’ trust claims. Furthermore, Subsections (1) and (2) would help to reduce the costs of litigation by requiring plaintiffs to produce their trust claim documents—which are already in their possession—rather than forcing defendants to go through the significant cost and delay of obtaining them from the trusts.

Subsection (1) would also require plaintiffs to certify that they have investigated which trust claims are available to them and filed such claims where they have a basis to do so, which would help to address the problem of plaintiffs waiting until resolution of their court cases to file trust claims so that they have no claim to reveal in discovery. Subsection (3) would likewise help to address the problem of plaintiffs waiting to file claims by establishing a procedure for the defendants and the court to require a plaintiff to file trust claims that the plaintiff has failed to file even though he or she has a basis to do so. In addition, Subsection (6) provides defendants a

remedy where they discover that a plaintiff waited until the resolution of his or her court case to file a claim with a trust.

When defendants need to obtain discovery directly from trusts, Subsection (4) would prevent plaintiffs from frivolously interfering with such discovery. This subsection expressly recognizes the right of defendants to seek discovery from an asbestos bankruptcy trust, and bars plaintiff from attempting to interfere with such discovery by asserting claims of privilege or confidentiality. In addition, Subsection (4) requires a plaintiff to provide a defendant a consent or other expression of permission required by an asbestos trust for the release the information and documents relating to a plaintiff's trust claim. This provision may help to reduce costs by relieving defendants of the substantial costs and burdens involved in domesticating and serving subpoenas from Florida courts on out-of-state bankruptcy trusts.

Finally, Subsection (5) will assist defendants in introducing evidence of trust claims at trial in support of their efforts to prove apportionment of liability. It expressly provides that asbestos trust claims materials and trust governance documents are admissible in evidence, are presumed to be relevant and authentic, and are not subject to claims of privilege.

VI. SIXTEEN OTHER STATES HAVE ENACTED SIMILAR LAWS

At least sixteen other states have enacted laws requiring asbestos plaintiffs to disclose asbestos bankruptcy trust claims that they have filed or anticipate filing. These laws require plaintiffs in asbestos lawsuits to identify their claims against asbestos trusts and to provide defendants the documents related to the claims. In addition, most of the laws address other issues such as discovery from trusts, the admissibility of trust claim materials into evidence at trial, and the problem of plaintiffs waiting to file claims until after resolution of their court cases. The key provisions from each state's law are summarized below, and full copies of the laws are included in an appendix to this paper.

ARIZONA

Statute: Ariz. Rev. Stat. Ann. § 12-782

Summary of Statute's Provisions:

- Within forty-five days after the filing of a defense answer, the plaintiff must provide all parties a sworn statement identifying each trust claim the plaintiff has filed or reasonably anticipates filing.
- Within sixty days after the filing of a defense answer, the plaintiff must produce a copy of the proof of claim and various related documents, along with a list of additional trust claims that the plaintiff reasonably anticipates filing.
- The plaintiff must make supplemental disclosures within thirty days after filing an additional trust claim or receiving additional information or documents related to a trust claim.
- The court may not schedule trial until at least one hundred eighty days after the plaintiff makes the required disclosures.
- If the plaintiff has an anticipated claim, the proceedings shall be stayed until the plaintiff files the claim and produces to the court and all parties the proof of claim and other claims materials.
- If a defendant reasonably believes that the plaintiff can file a claim with an additional trust, the defendant may move the court to order the plaintiff to file the claim. If the court grants the motion, the action is stayed until the plaintiff files the trust claim and provides the court and all parties the proof of claim and related documents. The court must set a deadline for the filing of these defense motions.
- Defendants may seek discovery from asbestos trusts. The plaintiff may not claim privilege or confidentiality to bar such discovery and shall provide any consents required by a trust to release information and materials to the defendant.

- Trust claims materials and trust governance documents are admissible to the extent permitted by court rule, and no claims of privilege apply to them.
- Trust claim submissions may be considered by the fact finder to determine liability and apportion fault, and shall be sufficient to support findings of exposure to the products covered by the trust and substantial factor causation due to such exposure.
- A trust claim resolved after trial shall be credited against any judgment entered against a defendant to the extent that the compensation paid by the trust exceeds the fault apportioned to the trust by the fact finder.

GEORGIA

Statute: Ga. Code Ann. § 51-14-7(a)(9)

Summary of Statute's Provisions:

- The plaintiff must include with the complaint a sworn information form that, *inter alia*, identifies any asbestos bankruptcy trust to which the plaintiff has submitted a claim.
- The plaintiff must produce any claim form or other information submitted to the trust.
- The plaintiff must also identify any bankruptcy trust that the plaintiff believes is or may be liable for all or part of the injury at issue, even if the plaintiff has not yet submitted a claim to that trust.

IOWA

Statute: Iowa Code §§ 686A.1 through 686A.9

Summary of Statute's Provisions:

- Within ninety days after filing an asbestos lawsuit, the plaintiff must produce a sworn statement that the plaintiff has investigated all asbestos trust claims and has filed all trust claims that can be made. The plaintiff must also produce a copy of each filed trust claim and related documents.

- An asbestos action shall not be set for trial until at least 180 days after the plaintiff has made the required disclosures.
- The plaintiff must provide a supplemental disclosure within thirty days of supplementing an existing trust claim, receiving additional information or materials related to a trust claim, or filing an additional trust claim.
- If a defendant obtains information supporting an additional trust claim the plaintiff can file, the defendant may move to stay the proceedings on or before the later of the sixtieth day before the trial date or the fifteenth day after the defendant first obtains the information.
- Within ten days of receiving the defendant's motion, the plaintiff shall file the additional claim identified, file a written response showing there is insufficient evidence to file the claim, or request that the court determine that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery from the trust.
- If the court determines that the plaintiff has a sufficient basis to file the identified trust claim, the court shall stay the action until the plaintiff files the claim and provides a copy of the claim and related documents. If the court determines that the cost of preparing and filing a claim would exceed the reasonably anticipated recovery, the court shall stay the action until the plaintiff produces a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the identified trust. The court may not set the action for trial until at least 60 days after the plaintiff meets these requirements.
- Trust claims materials and trust governance documents are admissible are presumed to be relevant and authentic and are admissible. No claim of privilege applies to such materials.
- A defendant may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar such discovery and shall provide any consents required by a trust to release information and materials to the defendant.

- Trust claims materials sufficient to support payment of the trust claim may be sufficient to support jury finding findings of plaintiff's exposure to products covered by the trust and substantial factor causation. If a trust claim remains unresolved at the time of trial, there is a rebuttable presumption that the plaintiff is entitled to the compensation specified in the trust governance documents.
- If the plaintiff files an additional trust claim after obtaining a judgment and the trust was in existence at time of the judgment, the court upon motion may adjust the judgment by the amount of the trust payment obtained. The defendant must file the motion within a reasonable time and not more than one year after the judgment.

KANSAS

Statute: Kan. Stat. Ann. §§ 60-4912 through 60-4918.

Summary of Statute's Provisions:

- No later than thirty days before the end of fact discovery, the plaintiff must provide the court and the parties a sworn statement that the plaintiff has investigated all trust claims and has filed all claims that can be made. The plaintiff must also provide all parties copies of the trust claim materials.
- The plaintiff must file a supplemental disclosure within thirty days after supplementing an existing trust claim, receiving additional information or materials related to a trust claim, or filing an additional asbestos trust claim.
- No later than the close of discovery, a defendant may file a motion identifying an additional trust claim the defendant believes that the plaintiff can file.
- Within ten days of receiving the motion, the plaintiff shall file the additional claim identified, file a written response showing there is insufficient evidence to file the claim,

or file request that the court determine that cost of preparing and filing the claim would exceed the reasonably anticipated recovery from the trust.

- If the court determines that the plaintiff has a sufficient basis to file the identified trust claim, the court shall stay the proceedings until the plaintiff files the claim and produces all related claim materials.
- If the court determines that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery, the plaintiff has thirty days to produce a verified statement of the plaintiff's history of exposure, usage, or other connection to the asbestos covered by the trust.
- A defendant may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar such discovery and shall provide any consents required by a trust to release information and materials to the defendant.
- Trust claim materials and trust governance documents are presumed to be relevant and authentic, and are admissible. No claim of privilege applies to any trust claim materials or trust governance documents.
- If the plaintiff files an additional trust claim after obtaining a judgment and the trust was in existence at time of judgment, the court upon motion may adjust the judgment by the amount of the trust payment obtained. The defendant must file the motion within a reasonable time and not more than one year after the judgment.

MICHIGAN

Statute: Mich. Comp. Laws §§ 600.3010 through 600.3016

Summary of Statute's Provisions:

- Not later than 180 days before the initial date set for the trial, the plaintiff must provide the court and all parties a sworn statement that the plaintiff has investigated all trust claims and

has filed all claims that can be made. The plaintiff must also provide all parties copies of all trust claim materials.

- The plaintiff must file a supplemental disclosure within thirty days after supplementing an existing trust claim, receiving additional information or materials related to a trust claim, or filing an additional asbestos trust claim.
- Not less than sixty days before trial, a defendant shall confer with the plaintiff if the defendant believes that the plaintiff has not filed all required trust claims. After conferring, the defendant may move the court to order the plaintiff to file additional trust claims.
- Within ten days of receiving the motion, the plaintiff shall file any additional claim identified, file a written response showing that there is insufficient evidence to file the claim, or request that the court determine that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery from the trust.
- Within ten days of the plaintiff's response, the court shall determine whether the plaintiff has a sufficient basis to file the identified trust claim. If the court determines that the claim does have a basis, the court shall stay the proceedings until the plaintiff files the claim and produces copies of all related trust claim materials. If the court determines that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery, the court shall stay the action until the plaintiff produces a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the identified trust. The court may not schedule the action for trial sooner than sixty days after the plaintiff meets the foregoing requirements.
- A defendant may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar such discovery and shall provide any consents required by a trust to release information and materials to the defendant.

- Trust claim materials and trust governance documents are presumed to be relevant and authentic, and are admissible. No claim of privilege applies to any trust claim materials or trust governance documents.
- Trust claims materials may be used to prove an alternative source for the cause of the plaintiff's alleged harm and may serve as a basis to allocate liability.
- If the plaintiff files an additional trust claim after obtaining a judgment and the trust was in existence at time of judgment, the court upon motion may adjust the judgment by the amount of the trust payment obtained. The defendant must file the motion within a reasonable time and not more than one year after the judgment.

MISSISSIPPI

Statute: Miss. Code Ann. §§ 11-67-1 through 11-67-1.15

Summary of Statute's Provisions:

- Within thirty days of filing an asbestos action, the plaintiff must provide the court and all parties a sworn statement that the plaintiff has investigated all trust claims and has filed all claims that can be made. The plaintiff must also provide the parties all trust claim materials. In addition, the plaintiff must provide the court and all parties a list identifying any trust claim that the plaintiff declined to file on the ground that the cost of submitting the claim would exceed the plaintiff's reasonably anticipated recovery.
- An action may not be set for trial until at least 180 days after the above disclosure requirements are met.
- The plaintiff must file a supplemental disclosure within thirty days after supplementing an existing trust claim, receiving additional information or materials related to a trust claim, or filing an additional asbestos trust claim.

- No later than sixty days before trial (or at a later time with a good faith basis), the defendant may move to stay the proceedings if the defendant believes that the plaintiff can file an additional trust claim.
- Within ten days of receiving the motion, the plaintiff shall file the additional claim identified or request that the court determine that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery from the trust.
- If the court determines that the plaintiff has a sufficient basis to file the identified trust claim, the court shall stay the proceedings until the plaintiff files the claim and produces all related trust claims materials. If the court determines that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery, the court shall stay the action until the plaintiff produces a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the identified trust. The court may not set the action for trial until at least sixty days after the plaintiff meets the foregoing requirements.
- A defendant may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar such discovery and shall provide any authorization required by a trust to release information and materials to the defendant.
- Trust claim materials and trust governance documents are presumed to be relevant and authentic, and are admissible. No claim of privilege applies to any trust claim materials or trust governance documents.
- Trust claims materials sufficient to support payment of a trust claim are sufficient to support jury findings of the plaintiff's exposure to products covered by the trust and substantial factor causation due to such exposure.
- If the plaintiff files an additional trust claim after obtaining a judgment and the trust was in existence at the time of judgment, the court upon motion may adjust the judgment.

Motion subject to one-year limit. The defendant must file the motion within a reasonable time and not more than one year after the judgment.

NORTH CAROLINA

Rules: N.C. Gen. Stat. § 1A-1, Rule of Civil Procedure 26(b)(2a)

N.C. Gen. Stat. § 8C-1, Rule of Evidence 415

Summary of Rules' Provisions:

- Within thirty days of filing an asbestos action, the plaintiff must provide all parties a sworn statement that the plaintiff has investigated all trust claims and has filed all claims that can be made.
- The plaintiff must provide the parties with the identity of all trust claims made and all materials submitted to or received from a trust.
- The plaintiff must file a supplemental disclosure within thirty days after filing an additional trust claim, supplementing an existing trust claim, or receiving additional information or materials related to any trust claim.
- If a defendant has a reasonable belief that the plaintiff can file an additional trust claim, the defendant may move to stay the action until the plaintiff files the trust claim.
- A defendant may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar such discovery and shall provide any consent required by a trust to release information and materials to the defendant.
- Rule of Evidence 415 establishes a rebuttable presumption that asbestos bankruptcy trust claims materials are relevant, authentic, and admissible.

NORTH DAKOTA

Statute: N.D. Cent. Code §§ 32-46.1-01 through 32-46.1-05

Summary of Statute's Provisions:

- Within thirty days of filing an asbestos action, the plaintiff must provide the court and all parties a sworn statement that the plaintiff has investigated all trust claims and has filed all claims that can be made. The plaintiff must also provide the parties all trust claims materials.
- The plaintiff must file a supplemental disclosure within thirty days after supplementing an existing trust claim, receiving additional information or materials related to a trust claim, or filing an additional asbestos trust claim.
- An asbestos action may not proceed to trial until at least 180 days after the above disclosure requirements have been met.
- If a defendant believes that the plaintiff can file another trust claim, the defendant may move to stay the proceedings by the later of the seventy-fifth day before trial or the fifteenth day after obtaining the information supporting the additional trust claim. Before filing the motion, the defendant shall confer with the plaintiff regarding the additional claim.
- Within ten days of receiving motion, the plaintiff shall file the additional claim identified, file a written response showing that there is insufficient evidence to file claim, or request that the court determine that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery from the trust.
- If the court determines that the plaintiff has a sufficient basis to file the identified trust claim, the court shall stay the proceedings until the plaintiff files the claim and produces all related trust claim materials. If the court determines that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery, the court shall stay the action until the plaintiff produces a verified statement of the plaintiff's history of exposure, usage,

or other connection to asbestos covered by the identified trust. The court may not schedule a trial until at least 60 days after the plaintiff meets the foregoing requirements.

- A defendant may seek discovery from an asbestos trust. The plaintiff may not claim privilege to bar such discovery and shall provide any consent required by a trust to release information and materials to the defendant.
- Trust claim materials and trust governance documents are presumed to be relevant and authentic, and are admissible. No claim of privilege applies to any trust claim materials or trust governance documents.
- Trust claims materials sufficient to support payment of a trust claim may be sufficient to support jury findings of the plaintiff's exposure to products covered by the trust and substantial factor causation due to such exposure.
- If the plaintiff files an additional trust claim after obtaining a judgment and the trust was in existence at the time of the judgment, the court upon motion may adjust the judgment by the amount of the trust payment obtained. The defendant may file the motion within one year after the final judgment.

OHIO

Statute: Ohio Rev. Code Ann. §§ 2307.951 through 2307.954

Summary of Statute's Provisions:

- Within thirty days after the commencement of discovery in an asbestos action, the plaintiff shall provide all parties a sworn statement identifying all asbestos trust claims filed and produce all trust claims materials pertaining to each claim.
- The plaintiff must provide all parties a supplemental disclosure within thirty days after filing an additional asbestos trust claim, and must provide all parties all trust claims material pertaining to each additional trust claim.

- Not less than seventy-five days before trial, a defendant may move to stay the proceedings if the defendant identifies additional asbestos trust claims that the defendant in good faith believes that the plaintiff can file. Alternatively, the defendant may file a motion to stay within seven days of receiving from the plaintiff additional asbestos exposure information that supports the filing of an additional trust claim.
- Within fourteen days of receiving the motion to stay, the plaintiff shall file the identified additional trust claim, ask the court to determine that there is insufficient information to file the additional trust claim or that the information supporting the additional trust claim should be modified prior to filing the claim, or ask the court to determine that the cost to prepare and file the additional claim would exceed the reasonably anticipated recovery from the trust.
- If the court determines that there is a good faith basis for filing the additional trust claim, the court shall stay the proceedings until the claimant files the claim and discloses the filing to the parties.
- If the court determines that the cost of preparing and filing the additional trust claim would exceed the reasonably anticipated recovery, the court shall order the plaintiff to file a verified statement of the plaintiff's history of exposure to the products covered by the trust.
- If the plaintiff in an asbestos cancer lawsuit previously filed a noncancer asbestos trust claim, the plaintiff must disclose the noncancer trust claim in addition to any cancer trust claim.
- Asbestos trust claims and trust claims materials are presumed to be authentic, relevant to, and discoverable in an asbestos action, and are presumed to not be privileged.
- A defendant in an asbestos action may also seek discovery of the plaintiff's asbestos trust claims directly from the asbestos trusts.

- At trial, the parties may introduce any trust claims material to prove alternative causation for the claimed injury, to prove a basis to allocate liability, and to prove issues relevant to an adjudication of the asbestos claim, unless the exclusion of the trust claims material is otherwise required by the rules of evidence.
- If the plaintiff files an additional trust claim after obtaining a judgment and the trust was in existence at the time of the judgment, the court upon motion may adjust the judgment by the amount of the trust payment obtained. The defendant must file the motion within a reasonable time and not more than one year after the judgment.

OKLAHOMA

Statute: Okla. Stat. tit. 76, §§ 81 through 89

Summary of Statute's Provisions:

- Within 90 days of filing an asbestos action, the plaintiff must provide all parties a statement identifying each trust claim the plaintiff has filed or reasonably anticipates filing. The statement must include a sworn attestation that the statement is complete and is based on a good-faith investigation of all potential trust claims.
- The plaintiff must also produce to all parties the proof of claim for each trust claim and all other trust claims materials relevant to each claim.
- The trial date shall be no earlier than 180 days after the plaintiff makes the above disclosures.
- If the plaintiff's disclosure statement identifies an anticipated trust claim that has not yet been filed, all proceedings shall be stayed until the plaintiff files the claim and provides all parties the proof of claim and all other trust claims materials relevant to the claim.

- The plaintiff must provide a supplemental disclosure within thirty days after filing an additional trust claim, supplementing an existing claim, or receiving additional information or materials.
- Not later than ninety days before trial, the defendant may file a motion to stay that identifies other trust claims that the defendant in good faith believes the plaintiff can file. Alternatively, the defendant may file a motion to stay within seven days of receiving from the plaintiff additional asbestos exposure information that supports the filing of an additional trust claim.
- Within ten days, the plaintiff shall file the additional claim identified, file a written response showing that there is insufficient evidence to file the claim, or request that the court determine that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery from the trust.
- If the court determines that the plaintiff has a sufficient basis to file the identified trust claim, the court shall stay the proceedings until the plaintiff files the claim and provides all parties the proof of claim and all other trust claims materials relevant to the claim. If the court determines that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery, the court shall stay the action until the plaintiff produces a statement of the plaintiff's history of exposure, usage, or other connection, as relevant, to the products, services, or events covered by the trust. Not less than thirty days after the plaintiff provides the required documentation, the court may schedule the action for trial.
- A defendant may seek discovery from the trusts. The plaintiff may not claim privilege or confidentiality to bar such discovery and shall provide any consent required by a trust to release information and materials to the defendant.

- Trust claims materials are presumed to be relevant and authentic, subject to the Rules of Evidence governing admissibility. No claims of privilege apply to trust claims materials or trust governance documents.
- Any party may present trust claims materials to prove alternative causation or allocation of liability for the plaintiff's injuries. If the plaintiff proceeds to trial before a trust claim has been paid, there is a rebuttable presumption that the plaintiff is entitled to the liquidated value specified in the applicable trust governance document.

SOUTH DAKOTA

Statute: S.D. Codified Laws §§ 21-66-1 through 21-66-11

Summary of Statute's Provisions:

- Not more than 120 days before trial, the plaintiff in an asbestos action shall provide each party with a sworn statement identifying any asbestos trust claim that plaintiff has filed or potentially could file. The plaintiff must include trust claims both for the disease that is the subject of the lawsuit and for other asbestos-related conditions.
- The plaintiff shall make available to each party any trust claims material for each trust claim. The plaintiff must make a supplemental disclosure of information and trust claim materials within ninety days of filing an additional trust claim, supplementing an existing trust claim, or receiving additional information or material related to any trust claim or potential claim.
- If a plaintiff's disclosure identifies a potential asbestos trust claim that the plaintiff has not yet filed, the court may stay the action until the plaintiff files the claim and provides all parties the trust claims material for the claim.
- No later than ninety days before trial, a defendant who has identified an additional trust claim that the defendant reasonably believes the plaintiff may file shall confer with the

plaintiff regarding the additional claim. Thereafter, the defendant may move the court to order the plaintiff to file the additional trust claim.

- Within ten days of receiving the defendant's motion, the plaintiff shall file the additional claim identified, file a written response showing that there is insufficient evidence to make the claim, or request that the court determine that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery from the trust.
- If the court determines that the plaintiff has a sufficient basis to file the identified trust claim, the court shall order the plaintiff to file the claim and shall stay the action until the plaintiff files the claim and provides all parties with any trust claims material within thirty days before the trial date. If the court determines that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery, the court shall stay the action until the plaintiff files a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the identified trust.
- A defendant may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar such discovery and shall provide any consent required by a trust to release information and materials to the defendant.
- Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible. No claims of privilege apply to trust claims materials or trust governance documents.
- If the plaintiff proceeds to trial before a trust claim is resolved, the filing of the claim may be considered relevant and admissible evidence.

TENNESSEE

Statute: Tenn. Code Ann. §§ 29-34-601 through 29-34-609

Summary of Statute's Provisions:

- At least 120 days before trial, the plaintiff shall provide all parties a sworn statement identifying each trust claim that the plaintiff has filed or could potentially file. The plaintiff must include trust claims both for the disease that is the subject of the lawsuit and for other asbestos-related conditions.
- The plaintiff shall make available to each party any trust claims material for each trust claim. The plaintiff must make a supplemental disclosure of information and trust claim materials within ninety days of filing an additional trust claim, supplementing an existing trust claim, or receiving additional information or material related to any trust claim or potential claim.
- If a plaintiff's disclosure identifies a potential asbestos trust claim that the plaintiff has not yet filed, the court may stay the action until the plaintiff files the claim and provides all parties the trust claims material for the claim.
- No later than ninety days before trial, a defendant who has identified an additional trust claim that the defendant reasonably believes the plaintiff may file shall confer with the plaintiff regarding the additional claim. Thereafter, the defendant may move the court to order the plaintiff to file the additional trust claim.
- Within ten days of receiving the defendant's motion, the plaintiff shall file the additional claim identified, file a written response showing that there is insufficient evidence to make the claim, or request that the court determine that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery from the trust.
- If the court determines that the plaintiff has a sufficient basis to file the identified trust claim, the court shall order the plaintiff to file the claim and shall stay the action until the plaintiff files the claim and provides all parties with any trust claims material no later than thirty days before the trial date. If the court determines that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery, the court shall stay the action

until the plaintiff files a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the identified trust.

- A defendant may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar such discovery and shall provide any consent required by a trust to release information and materials to the defendant.
- Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible. No claims of privilege apply to any trust claims materials or trust governance documents.
- If the plaintiff proceeds to trial before a trust claim is resolved, the filing of the claim may be considered relevant and admissible evidence.
- Trust claims materials sufficient to support payment of a trust claim may be sufficient to support jury findings of the plaintiff's exposure to products covered by the trust and substantial factor causation due to such exposure.

TEXAS

Statute: Tex. Civ. Prac. & Rem. Code Ann. §§ 90.051 through 90.058

Summary of Statute's Provisions:

- At least 150 days before trial, the plaintiff in an asbestos action shall file claims against all asbestos trusts that the plaintiff believes may owe him compensation for the injury underlying the action.
- If the plaintiff believes that the cost of preparing and filing a trust claim would exceed the reasonably anticipated recovery from a particular trust, the plaintiff may move for relief from the filing requirement with respect to that trust.
- If the court grants the motion, the plaintiff is not required to make the trust claim but shall file a verified statement of his exposure history to the asbestos covered by the trust.

- At least 120 days before trial, the plaintiff shall serve on all parties a notice of the trust claims filed and copies of the trust claim materials for each claim.
- If the plaintiff makes a trust claim after the 150-day deadline but before trial, the plaintiff shall serve on all parties a notice of the claim and copies of the trust claim materials no later than the date trial commences or fifteen days after the claim is made, whichever is earlier.
- A plaintiff must serve a supplemental disclosure within fifteen days of learning that the plaintiff's previously served trust claim disclosure was incomplete or incorrect at the time of service or that the disclosure is no longer complete and correct.
- An MDL pretrial court may not remand an action to a trial court and a trial court may not commence trial in the action unless the plaintiff has filed all required trust claims and served the required notice of claims and trust claims materials on all parties.
- At least sixty days before trial or fifteen days after learning of an additional trust claim the plaintiff could file, whichever is later, the defendant may move to stay the action until the plaintiff files the identified additional trust claim.
- No later than fourteen days after the motion to stay is filed, the plaintiff may either: (1) file a response stating that the plaintiff has filed the identified additional claim and served the required notice and trust claim materials on all parties; or (2) request that the court determine that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery from the trust.
- The court shall stay the proceedings if the court determines that the defendant's motion was timely filed and that the plaintiff is likely to receive compensation from the identified trust. The stay shall continue until the plaintiff provides proof that the plaintiff has made the claim and served on all parties a notice of the claim and the trust claim material relating to the claim.

- If the court finds that the cost of filing would exceed the reasonably anticipated recovery, the plaintiff is not required to make the claim and the court shall not stay the proceedings. The plaintiff is, however, required to file a verified statement of the plaintiff's exposure history to the asbestos covered by the trust.
- Trust claims materials are presumed to be authentic, relevant, and discoverable. Trust claims materials are presumed to not be privileged.

UTAH

Statute: Utah Code Ann. §§ 78B-6-2001 to 78B-6-2010

Summary of Statute's Provisions:

- No later than 120 days before trial, the plaintiff in an asbestos action shall provide all parties a sworn statement identifying each trust claim that the plaintiff has filed or could potentially file. The plaintiff must include trust claims both for the disease that is the subject of the lawsuit and for other asbestos-related conditions. The statement must include an attestation that the statement is complete and based on a good faith investigation of all potential trust claims.
- The plaintiff shall make available to each party any trust claim materials for each claim. The plaintiff must make a supplemental disclosure of information and trust claim materials within ninety days of filing an additional trust claim, supplementing an existing trust claim, or receiving additional information or material related to any trust claim or potential claim.
- If a plaintiff's disclosure identifies a potential asbestos trust claim that the plaintiff has not yet filed, the court may stay the action until the plaintiff files the claim and provides all parties the trust claims material for the claim.
- No later than ninety days before trial, a defendant who has identified an additional trust claim that the defendant reasonably believes the plaintiff may file shall confer with the

plaintiff regarding the additional claim. Thereafter, the defendant may move the court to order the plaintiff to file the additional trust claim.

- Within ten days of receiving the motion, the plaintiff shall file the additional claim identified, file a written response showing that there is insufficient evidence to make the claim, or request that the court determine that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery from the trust.
- If the court determines that the plaintiff has a sufficient basis to file the identified trust claim, the court shall order the plaintiff to file the claim and shall stay the action until the plaintiff files the claim and provides all parties with any trust claim materials no later than thirty days before the trial date. If the court determines that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery, the court shall stay the action until the plaintiff files a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the identified trust.
- A defendant may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar such discovery and shall provide any consent required by a trust to release information and materials to the defendant.
- Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible. No claims of privilege apply to any trust claims materials or trust governance documents.
- If the plaintiff proceeds to trial before a trust claim is resolved, the filing of the claim may be considered relevant and admissible evidence.

WEST VIRGINIA

Statute: W. Va. Code §§ 55-7F-1 through 55-7F-11

Summary of Statute's Provisions:

- At least 120 days before trial, the plaintiff in an asbestos action must provide all parties with a sworn statement identifying each asbestos trust claim that the plaintiff has filed or could potentially file. The plaintiff must include trust claims both for the disease that is the subject of the lawsuit and for other asbestos-related conditions. The statement must include an attestation that the statement is complete and based on a good faith investigation of all potential trust claims.
- The plaintiff shall make available to all parties any trust claim materials for each claim. The plaintiff must make a supplemental disclosure of information and trust claim materials within ninety days of filing an additional trust claim, supplementing an existing trust claim, or receiving additional information or material related to any trust claim or potential claim.
- If a plaintiff's disclosure identifies a potential asbestos trust claim that the plaintiff has not yet filed, the court may stay the action until the plaintiff files the claim and provides all parties the trust claims material for the claim.
- No later than ninety days before trial, a defendant who has identified an additional trust claim that the defendant reasonably believes the plaintiff may file shall confer with the plaintiff regarding the additional claim. Thereafter, the defendant may move the court to order the plaintiff to file the additional trust claim.
- Within ten days of receiving the motion, the plaintiff shall file the additional claim identified, file a written response showing that there is insufficient evidence to make the claim, or request that the court determine that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery from the trust.

- If the court determines that the plaintiff has a sufficient basis to file the identified trust claim, the court shall order the plaintiff to file the claim and shall stay the action until the plaintiff files the claim and provides all parties with any trust claim materials no later than thirty days before the trial date. If the court determines that the cost of preparing and filing the claim would exceed the reasonably anticipated recovery, the court shall stay the action until the plaintiff files a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the identified trust.
- A defendant may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar such discovery and shall provide any consent required by a trust to release information and materials to the defendant.
- Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible. No claims of privilege apply to any trust claims materials or trust governance documents.
- If the plaintiff proceeds to trial before a trust claim is resolved, the filing of the claim may be considered relevant and admissible evidence.
- Trust claims materials sufficient to support payment of a trust claim may be sufficient to support jury findings of the plaintiff's exposure to products covered by the trust and substantial factor causation due to such exposure.

WISCONSIN

Statute: Wis. Stat. § 802.025

Summary of Statute's Provisions:

- Within forty-five days after service of a defendant's answer, the plaintiff in an asbestos action must provide all parties with a sworn statement identifying each asbestos trust claim that the plaintiff has filed or reasonably anticipates filing.

- Within sixty days of after service of a defendant's answer, the plaintiff must produce copies of the filed proof of claim and other trust claim materials for each trust claim and a list of additional trust claims the plaintiff reasonably anticipates filing.
- The plaintiff must make a supplemental disclosure of information and trust claim materials within thirty days of filing an additional trust claim or receiving additional information or documents related to any trust claim.
- Within a deadline to be set by the court, a defendant who has identified an additional trust claim that the defendant reasonably believes the plaintiff should file may move the court to require the plaintiff to file the claim.
- If the court orders the plaintiff to file the claim, the court shall stay the action until the plaintiff files the claim and provides the court and all parties the proof of claim form and other trust claim materials relevant to the claim.
- A defendant may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar such discovery and shall provide any consent required by a trust to release information and materials to the defendant.
- Trust claims materials and trust governance documents are admissible. No claims of privilege apply to any trust claims materials or trust governance documents.
- Trust claims materials sufficient to support payment of a trust claim may be sufficient to support jury findings of the plaintiff's exposure to products covered by the trust and substantial factor causation due to such exposure.
- If the jury finds in the plaintiff's favor and finds a defendant to be 51% or more at fault, the plaintiff may not collect damages until the plaintiff assigns any pending, current, or future trust claims to the defendant. If the jury finds in the plaintiff's favor but finds the defendant to be less than 51% at fault, the plaintiff may not collect damages until he assigns any future trust claims to the defendant.