UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re: DBMP LLC,[1] Debtor.	Chapter 11 Case No. 20-30080 (JCW)

INFORMATIONAL BRIEF OF THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS OF DBMP LLC

Dated: August 23, 2021
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[1] The last four digits of the Debtor's taxpayer identification number are 8817. The Debtor's address is 20 Moores Road, Malvern, Pennsylvania 19355.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes

Treatises

Other Authorities

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

The Official Committee of Asbestos Personal Injury Claimants (the "Committee") submits this *Informational Brief of the Official Committee of Asbestos Personal Injury Claimants of DBMP LLC* (the "Committee Brief") in the chapter 11 case of DBMP LLC (the "Debtor" or "DBMP") to address the issues presented in the *Informational Brief of DBMP LLC* [Docket No. 22] (the "Debtor Brief").

PRELIMINARY STATEMENT[2]

This chapter 11 case is the final step in a carefully orchestrated scheme by a fully solvent entity and its ultimate parent company—a vast international industrial conglomerate, with no current or anticipated financial distress—to subvert the purposes of the Bankruptcy Code by treating asbestos claimants differently from other creditors and by seeking an impermissible "bankruptcy discount" from what asbestos claimants would be entitled to in the tort system. DBMP was created through manipulation of corporate statutes as part of a scheme to coerce victims into accepting a chapter 11 plan featuring an underfunded Section 524(g) trust, while the actual tortfeasor avoids a bankruptcy filing and all of the aspects of the bankruptcy process that it finds inconvenient and burdensome.

DBMP was expressly designed to take advantage of extraordinary relief uniquely available in bankruptcy for the benefit of other ***non-debtor, affiliated*** entities, including CertainTeed,[3] the Debtor's direct parent CertainTeed Holdings Corp., its non-debtor U.S. parent company, Saint-Gobain Corporation, a Pennsylvania corporation ("SGC") and its ultimate parent company, the

[2] Capitalized terms used in the Preliminary Statement but not yet defined shall have the meanings ascribed *infra*.

[3] For purposes of this Informational Brief, "CertainTeed" refers to (1) CertainTeed Corporation and CertainTeed LLC, as that entity existed prior to the Texas divisional merger on October 23, 2019, and (2) CertainTeed LLC, as it exists after the divisional merger. When the context requires greater specificity, "former CertainTeed" refers to pre-divisional merger CertainTeed and "current CertainTeed" refers to post-divisional merger CertainTeed.

multi-billion-dollar French parent, Compagnie de Saint-Gobain, S.A. ("Saint-Gobain"), and its owners.

DBMP did not file this chapter 11 case to reorganize a failing business, save valuable customer relationships, preserve jobs, or benefit the community in which it operates. The Debtor has no employees,[4] engages in no operations, and has no revenue.[5] The Debtor's sole function is to manage its asbestos liabilities, and its legal employees charged with those duties (one full-time attorney and part-time legal staff) are seconded from the Debtor's U.S. parent, SGC.[6] Following the playbook of another debtor—Bestwall LLC—after establishing the bare minimum of presence in this district, the Debtor commenced this chapter 11 case to complete a series of transactions designed to wall off long-standing asbestos liabilities behind a phony corporate veil, while the true benefactors of the relief afforded by a chapter 11 filing, current CertainTeed and CT Holdings (and ultimately SGC and Saint-Gobain), absconded with valuable assets.

As a result of these corporate maneuverings, the Debtor purports to be the sole repository of all of former CertainTeed's historical asbestos-related liability. The only benefit it received in exchange for taking on that extensive liability is a tiny fraction of former CT's assets. In fact, the Debtor is an entirely dependent shell and, but for the Funding Agreement which was contrived to

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[4] [A-1]. *See* Starczewski Dep. 265:13-21, Oct. 1, 2020 ("The essence of it is, because DBMP does not have any technical employees, the services of certain individuals in the law department are seconded or on loan to DBMP, and this [secondment] agreement formalizes that and provides for provisions such as payment or the salaries of those individuals, termination of those individuals, replacement of those individuals, things of that nature."); 267:12-14 ("Q. Does the debtor DBMP have any other employees other than the seconded employees? A. No, it does not.").

Cites beginning with "A" prefix refer to the Appendix to the Informational Brief of the Official Committee of Asbestos Claimants of DBMP LLC, filed contemporaneously herewith.

[5] [A-2]. *See* Knapp Dep. 47:14, Sept. 30, 2020 ("DBMP does not have any revenue.").

[6] [A-1]. *See* Starczewski Dep. 266:4-17, Oct. 1, 2020 ("Q. And there are five employees that were seconded to the debtor; is that right? A. As of October 23, 2019, that's correct. Q. And you were one of those five; right? A. Yes. Q. Are you the only full-time seconded employee? A. That's correct. Q. And there are how many seconded employees currently? A. In addition to myself, including myself, there are four currently."); [A-3]. Placidet Dep. 47:19-21, Oct.14, 2020 ("No, DBMP doesn't generate revenue. DBMP is the mother company of M&P; and M&P with the two plants is generating revenue."). "M&P" is Millwork & Panel, defined *infra.*

enable the Debtor to argue that it has access to all of the worth of current CertainTeed, is virtually worthless.[7] The Funding Agreement itself is designed to shield almost all of CertainTeed's profitable and valuable assets, however. Those assets are ensconced in current CertainTeed and outside of this bankruptcy case.

In the tort system, CertainTeed's victims were free to pursue their claims against CertainTeed in the court of their choosing and were able to recover against all of CertainTeed's assets. Now, the claimants' sole recourse is against a new entity with minimal assets and a contract that replaced their direct access to assets. CertainTeed's victims have been subjected to a contrived process that seeks to provide a non-debtor affiliate with the benefits of bankruptcy without subjecting its assets to disclosure and disposition through that system.

Much of CertainTeed's asbestos liabilities arise out of its production and sale of AC Pipe, a type of cement water pipe. The ***"A" stands for asbestos***, which was a significant component of the pipe—often up to 20%. CertainTeed manufactured this pipe in five separate factories across the country, and miles of it have been laid underneath homes, factories, parks and playgrounds nationwide. CertainTeed manufactured AC Pipe as late as 1992 and sold AC Pipe as late as 1993, thereby exposing future generations of claimants to the dangers of asbestos. Further, the Debtor acknowledges that it produced other asbestos-laden products, including drywall compound, roofing shingles, coatings and cements—for over 75 years. Additionally, CertainTeed purchased and resold asbestos-containing products manufactured and distributed by other companies. Therefore, its asbestos liabilities are extensive.

[7] *See Findings of Fact and Conclusions o Law Regarding Order: (I) Declaring That the Automatic Stay Applies to Certain Actions Against Non-Debtors, (II) Denying Motion of The Official Committee of Asbestos Personal Injury Claimants to Lift the Stay, and Alternatively (III) Preliminarily Enjoining Such Actions* ¶ 57, Adv. Pro. No. 20-03004 [Adv. Docket No. 343] ("By contrast, and disregarding the Funding Agreement . . . , DBMP's assets were not then, and are not now, sufficient to satisfy its liabilities.")

CertainTeed is the last of the asbestos defendants that other defendants often refer to as the "big dusties." Due to the unique texture of asbestos cement pipes, workers, including plumbers and pipe fitters, used a handsaw or a cutoff saw to cut the pipe to length. It was also necessary to cut the pipe to accommodate corners or additional fittings, including valves, or attaching the pipe to a hydrant. An asbestos cement "collar" was attached as a way of fitting two sections of pipe together. When an asbestos cement pipe was cut or fit, a great deal of dust was generated, putting workers at risk of inhaling the dust and years later developing mesothelioma or lung cancer. Indeed, it is impossible to cut AC Pipe without creating significant "dust" that exposes those nearby to asbestos, as well as anyone who is thereafter exposed to their clothing.

CertainTeed's products and conduct exposed hundreds of thousands of individuals to asbestos. It has regularly been sued by the victims of these activities since the 1970s. In the past 20 years alone, CertainTeed paid $2.0 billion in indemnity and defense costs for over 300,000 victims, including $1.5 billion net of insurance proceeds. The Debtor has stated that between the years 2004 to 2019, CertainTeed won defense verdicts in 20 out of 25 cases that resulted in a verdict on liability.[8] Clearly, when CertainTeed wanted to fight claims in the tort system, it did, and was able to secure defense verdicts in many of the cases, thereby demonstrating that the tort system was working for it. It should not be allowed now to try to disavow that tort system history.

The Debtor also tries to downplay its total liabilities by asserting its products contained chrysotile asbestos.[9] In fact, all asbestos kills—including chrysotile—and juries and courts routinely reject the so-called "chrysotile defense."[10] Equally importantly, although 10% to 20%

[8] Debtor Brief, 17.

[9] *Id.* at 5.

[10] *See e.g., In re Asbestos Litig*., 911 A.2d 1176, 1180 (Del. Super. Ct. 2006) (in denying defendant's motion in limine, Court noted that is "generally recognized in the scientific community and by government regulators that exposure to

of AC Pipes may have contained chrysotile asbestos, they also contained about 10% to 15% ***crocidolite*** asbestos fibers, a particularly toxic form of asbestos.[11] Finally, the Debtor's effort at misdirection also ignores the fact that the Debtor remains culpable on numerous other asbestos-containing products besides AC Pipes.

This Committee Brief provides the Court with critical information about, among other things: (i) the history of CertainTeed's asbestos litigation; (ii) the science related to asbestos (including chrysotile and crocidolite asbestos fibers); and (iii) CertainTeed's acts and omissions during the decades that it used asbestos in its products while aware of the dangers posed.

Finally, the Committee asserts that the Debtor should be prohibited from using this Court to: (i) provide a shield over non-Debtor entity CertainTeed without subjecting it to the same burdens as a debtor in bankruptcy; (ii) cast unwarranted doubt on its decades of settlement and trial history; and (iii) attempt to rewrite CertainTeed's history in the tort system.

I. THE DEBTOR'S CORPORATE HISTORY AND BANKRUPTCY FILING

To understand the scope of CertainTeed's/DBMP's liabilities, as well as its attempt to manipulate the bankruptcy system to avoid paying the fatally ill victims whose injuries were the direct result of its conduct—both intentional and negligent—it is important to understand the corporate history of DBMP.

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all forms of asbestos, including chrysotile, can cause serious diseases including asbestosis, mesothelioma and lung cancer" and that each of plaintiffs' experts appropriately relied upon the settled data generated by multiple scientific disciplines, including epidemiology, that established a scientifically significant positive association between exposure to chrysotile and asbestosis, lung cancer, and mesothelioma); *Berger v. Amchem Prods.*, 818 N.Y.S. 2d 754 (N.Y. Sup. Ct. 2006) (court denied defendant's motion in limine, finding that no *Frye* hearing was required because it was not novel science that exposure to asbestos caused mesothelioma.).

[11] *Id.*

The company was originally founded in 1904 as General Roofing Manufacturing Corp., an Illinois corporation.[12] It became a Maryland entity in 1917, at which time its name was changed to Certain-Teed from its slogan "Quality made *certain,* Satisfaction Guaran*teed*." Over the next 50 years, Certain-Teed continued operations, adding and subtracting products and affiliates, some of which are relevant to its asbestos liability. For example, it manufactured and sold asbestos-containing gypsum products until 1956,[13] when it spun off Bestwall Gypsum Company into an independent entity. That entity eventually became Bestwall LLC, the debtor in Chapter 11 Case No. 17-31795 (LTB), pending in this Court. Certain-Teed obtained the asbestos-cement pipe plants of Keasbey & Mattison ("K&M") in Ambler, Pennsylvania[14] and three other locations in 1962. K&M owner, Turner & Newall, Ltd. ("T&N"),[15] the English asbestos-manufacturing

[12] Unless otherwise indicated, information about the corporate history is from the *Declaration of Robert J. Panaro in Support of First Day Pleadings* ("Panaro Decl.") ¶¶ 9-19 [Docket No. 24].

[13] Debtor Brief, 14.

[14] Ambler, Pennsylvania is one of the first asbestos company towns. There is a plethora of information on the internet detailing the asbestos history of Ambler, including its famed "White Mountains" of asbestos waste. Just a sampling of the integration of asbestos in the life of Ambler residents is as follows: "Eighty-three-year-old Victor Romano recalls factory workers not being too concerned about inhaling the mineral. 'Once in a while, you would see a guy that would have a handkerchief over his face, over his mouth, but they didn't have respirators,' he says. 'You just didn't think about it, and you didn't know.' Men returned home with their soiled clothes, and wives would launder them. Homes adjacent to the enormous piles of leftover waste—long known as the 'White Mountains'—were inundated with dust that collected on windowsills and porches and left a thick film on cars. Kids played on the White Mountains. Jack Kettner, a friendly, burly man in his late 50s, grew up in Ambler and lives within a couple of blocks of the White Mountains. 'There were walkways along the piles, and we used to run along them and throw shingles at the boys from West Ambler—sort of like a sham battle,' he says. The kids would try to avoid falling into the quicksand-like, white-purplish slurry that formed in the middle of the mountain after rain." Samson Reiny, *Living in the Town Asbestos Built*, SCIENCE HISTORY INSTITUTE (June 24, 2015), https://www.sciencehistory.org/distillations/living-in-the-town-asbestos-built. Two sites in Ambler, the White Mountains, renamed the Ambler Asbestos Piles, and BoRit were designated as U.S. Superfund sites. *Id*.

[15] [A-4]. T&N has a storied history in the asbestos industry. It was founded in 1920 through the merger of four companies that primarily used asbestos and had obtained asbestos mines in southern Africa. During the period of 1934-38, it purchased the K&M plant in Ambler, Pennsylvania which made asbestos-cement products, shingles and insulation using fiber from Bell Asbestos Mines in Quebec, Canada. Bell Asbestos Mines acquired an interest in Cassiar Asbestos Corporation, which owned chrysotile mines in western Canada. T&N was part of an international cartel promoting the international use of asbestos starting in 1920. After its purchase of K&M, T&N became involved in a price-fixing scheme with U.S. producers of asbestos insulation. The cartel was broken up by the Federal Trade Commission in 1944. Barry I. Castleman, *Asbestos Medical and Legal Aspects* 28-31, 619-621 (5th ed. 2005). In 1998, T&N was bought by Federal Mogul, a U.S. company which filed for bankruptcy in 2001 as a result of asbestos liabilities. *Id.* at 625. Unsurprisingly, DBMP's connection to T&N is absent from its discussion of its corporate history.

behemoth, sold the plants for about 20% of Certain-Teed stock, making it CertainTeed's largest single stockholder. T&N also had an agreement with Certain-Teed to supply it with asbestos fiber.[16]

In 1976, Certain-Teed Products changed its name to CertainTeed Corporation and T&N sold its interest in the company to Saint-Gobain, which became the indirect majority shareholder. CertainTeed Corporation became a wholly owned subsidiary of Saint-Gobain through a merger with Saint-Gobain Investments in 1988. CertainTeed Corporation later converted to CertainTeed LLC. Since 1976, CertainTeed's ultimate parent has been Saint-Gobain, a global conglomerate that trades on the Paris stock exchange, with annual revenues of over $35 billion.[17]

On CertainTeed's website, under the heading "About Us," it states:

> Through the responsible development of innovative and sustainable building products, CertainTeed has helped shape the building products industry for more than 110 years. Founded in 1904 as General Roofing Manufacturing Company, today, CertainTeed® is North America's leading brand of exterior and interior building products, including roofing, siding, fence, decking, railing, trim, insulation, gypsum and ceilings. A subsidiary of Saint-Gobain, one of the world's largest and oldest building products companies, CertainTeed and its affiliates have more than 6,300 employees and more than 60 manufacturing facilities throughout the United States and Canada.[18]

After over 100 years of operations, CertainTeed went through a drastic corporate reorganization in 2019 for the express purpose of creating DBMP, saddling it with all of the asbestos liabilities (but few of the assets) of former CertainTeed, and freeing CertainTeed's owners to escape with the valuable assets while its asbestos victims were left behind to fight for access to their tortfeasor's previously available assets. CertainTeed accomplished this by misusing a

[16] [A-4]. *Id*. at 596 (setting in detail the history of Certain-Teed Corporation and its relationship to T&N). Former T&N Chairman Walker Shepherd had for many years been a director of Certain-Teed. *Id.*

[17] *See* SAINT-GOBAIN, https://www.saint-gobain.com/en (last visited Mar. 10, 2021).

[18] CERTAINTEED, *About Us*, certainteed.com/about-certainteed/ (last visited Aug. 18, 2021).

provision of Texas law to shed its identity and design a vehicle intended to shield its assets, thereby delaying and depriving sick and dying people in need of compensation by misusing bankruptcy law. Under the Texas divisive merger statute,[19] the Debtor claims former CertainTeed moved to Texas, disappeared, and within a half hour sprang back to life as two new entities, DBMP LLC (the Debtor) and current CertainTeed LLC (the "Corporate Restructuring"). The Corporate Restructuring had been planned since 2018 as part of a confidential internal venture known as "Project Horizon."[20] Project Horizon was developed to allegedly provide "flexibility" and "optionality" to finally deal with CertainTeed's burdensome legacy asbestos liabilities.[21] As has been apparent throughout the litigation of the preliminary injunction, the Committee disputes this

[19] Until recently, Texas's divisive merger statute was unique. The 1989 TBCA amendments represented "continuing efforts to provide Texas with modern and flexible corporation laws . . . ." [A-5] Bus. & Com. Committee, Bill Analysis, H.B. 472, 71st Leg. (Tex. 1989). The legislative history for the 1989 amendments to Article 5.01 of the TCBA, in addition to noting that the divisive merger provision was "unprecedented," described the statute as streamlining the division process by allowing "a single transaction as part of a statutory merger without the use of conveyancing documents." *Id.* at 23. Subsequent to Georgia-Pacific's use of the statute to form Bestwall LLC, Delaware passed a similar law. Del. Code Ann. tit. 6, § 18-217 (West 2020).

[20] [A-1]. *See, e.g.,* Starczewski Dep. 74:9-15, Oct. 1, 2020 ("Q. So, in 2018, early, maybe January, maybe February, when you were discussing with Mr. Feagans the possibility, you were talking about the corporate restructuring; is that right? A. They were very general discussions, yes."); [A-6] Panaro Dep. 127:4-9, Oct. 6, 2020 ("Q. Now, was there a team or committee formed to investigate Project Horizon? A. In 2018, there was a small group of people, due to the confidential nature, that would have had – started conversations about [Project] Horizon."); [A-7] Rayfield Dep. 54:7-8, Oct. 7, 2020 ("I became aware of Project Horizon sometime in 2018.").

[21] [A-7]. *See, e.g.,* Rayfield Dep. 61:9-11, Oct. 7, 2020 ("The purpose of Project Horizon was to develop flexibility and optionality of how we could do so [reduce the burden for CertainTeed of extremely burdensome asbestos liability]."); [A-8] Bondi Dep. 156:12-18, Oct. 9, 2020 ("Q. What do you understand is meant by, quote, 'this change was made to provide flexibility for resolving legacy asbestos liability'? A. The same – it speaks directly to the optionality statements that I made earlier in our deposition."); [A-2] Knapp Dep. 59:18-23, 60:2-4, Sept. 30, 2020 ("'Q. In discussing the creation of DBMP and M&P with Mr. Campbell, did you all discuss the purpose for their creation?' A. Yes. Q. What was that purpose? . . . A. The purpose was to provide flexibility in the legacy asbestos liability that Old CertainTeed Corporation held."); [A-9] CertainTeed LLC 30(b)(6) Dep. 82:16-21, Dec. 18, 2020 (Campbell) ("Q. The purpose behind Project Horizon was to create optionality that could allow the company to resolve its asbestos liabilities one way or another; is that fair to say? A. Correct."); *see also* [A-10] DBMP 30(b)(6) Dep. 62:23-25, 63:2-8, Dec. 15, 2020 (Starczewski) ("Project Horizon was an analysis by the former CertainTeed Corporation, as well as its ultimate corporate parent, Saint-Gobain Corporation, into whether undertaking a corporate restructuring for the potential consideration of a future bankruptcy filing would be the best methodology for resolving the former CertainTeed Corporation's asbestos liabilities."); [A-3] Placidet Dep. 49:24-25, 50:2-4, Oct. 14, 2020 ("Project Horizon is a confidential project which was basically led by the lawyers to try and find a fair and global solution to the asbestos liability that we have with CertainTeed.").

characterization of Project Horizon and believes that from the inception, CertainTeed intended to use the divisive merger as part of its bankruptcy planning.

II. OLD CT'S PRODUCTS AND CONDUCT CAUSED MASSIVE EXPOSURES TO ASBESTOS

A. All Forms of Asbestos from Any Source Are Toxic

CertainTeed's asbestos-cement pipe, which was known as "Fluid-Tite," was first placed on the market in June 1962 and continued to be manufactured until 1992. Its asbestos fibers were bound in asbestos-cement pipe by a combination of cement, silica, and water through an autoclave curing process. The pipe was used for the underground transmission of water and sewage. All types of trades worked in and around construction concerning such pipes and may have been exposed to asbestos dust from the installation, repair, and cutting of these pipes.[22]

There were three types of CertainTeed asbestos-cement pipes: pressure pipe, sewer pipe, and irrigation pipe. The pressure pipe contained 15% to 20% asbestos by weight, the sewer pipe contained 10% to 15% asbestos by weight, and the irrigation pipe contained 11% to 20% asbestos by weight.[23] The Debtor emphasizes that CertainTeed's products, particularly AC Pipe, were manufactured primarily with chrysotile asbestos.[24] However, the Debtor admits—as it must—that it also used up to 15% crocidolite asbestos as well. "Crocidolite asbestos . . . is considered the most hazardous type of asbestos in the amphibole family. Crocidolite asbestos is made up of extremely fine sharp fibers that are particularly easy to inhale,"[25] making them particularly hazardous.

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[22] [A-11]. *See generally* Responses of CertainTeed Corporation to Plaintiffs' Master Interrogatories 11, *In re Asbestos Litigation*, In the District Court of Cameron, Texas (Nov. 1995).

[23] *Id.*

[24] *See, e.g.,* Debtor Brief, 5, 11-12.

[25] *See Types of Asbestos That Can Cause Asbestos Diseases*, PENN MEDICINE – ABRAMSON CANCER CENTER, https://www.pennmedicine.org/cancer/types-of-cancer/mesothelioma/asbestos-cancer/types-of-asbestos.

Indeed, CertainTeed had many raw fiber suppliers, and its pipes contained both amphibole and serpentine asbestos.[26]

The Debtor's references to chrysotile asbestos are an obvious attempt to continue the discredited practice of claiming chrysotile asbestos is less harmful than other types. However, it is widely recognized in the health care community that "because it is the most widely used, chrysotile accounts for the majority of cases of mesothelioma and asbestos diseases including pleural mesothelioma."[27] *All asbestos kills*.

1. Asbestos-Containing Pipe Contained Crocidolite Asbestos, a Particularly Hazardous and Carcinogenic Asbestos Fiber

Crocidolite, more commonly known as blue asbestos, is the fibrous form of the amphibole riebeckite, found primarily in southern Africa but also in Australia and Bolivia.[28] Generally considered "the most hazardous type of asbestos in the amphibole family," crocidolite asbestos consists of "extremely fine sharp fibers that are particularly easy to inhale."[29] Approximately 365,000 tons of crocidolite were consumed in the United States between 1900 and 2003.[30] Among the amphibole types of asbestos, "crocidolite asbestos is classified as the most carcinogenic."[31]

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[26] In answer to interrogatories, former CertainTeed remained evasive about the content of asbestos fibers, stating, "of the total asbestos content of the asbestos-cement pipe, anywhere from 0% to 24% was crocidolite (blue) fiber by weight with the remaining fiber being chrysotile (white)," and contends that the ratio of the asbestos fibers varied "in accordance with various factors, including the type of pipe and physical dimensions." [A-12] Certain-Teed Corporation's Responses to Plaintiff's First Set of Requests for Admission and Interrogatories Directed to Defendant, CertainTeed Corp., in *Hern v. Certain-Teed Corp*. (Philadelphia Ct. Com. Pl., Nov. 1999) No. 0005, 9.

[27] *Types of Asbestos That Can Cause Asbestos Diseases*, *supra* note 25.

[28] Robert L. Virta, *Mineral Commodity Profiles—Asbestos*, Circular 1255–KK, U.S. GEOLOGICAL SURVEY, 5, 8 (2005), https://pubs.usgs.gov/circ/2005/1255/kk/Circ_1255KK.pdf.

[29] *Types of Asbestos That Can Cause Asbestos Diseases*, *supra* note 25.

[30] Virta, *supra* note 28, at 1, 3.

[31] [A-13]. Joseph R. Testa, *Asbestos and Mesothelioma* 166 (2017) (citing Elke Dopp et al, ROS-mediated Genotoxicity of Asbestos Cement in Mammalian Lung Cells In Vitro, 2 Part Fibre Toxical 9 (2005); and Giulia Ballan et al, Mode of Action of Fibrous Amphiboles: The Case of Biancavilla (Sicily, Italy), 50 Ann Ist Super Sanita 133-38 (2014)).

By way of example, CertainTeed purchased "blue" crocidolite asbestos imported from African mines annually from various suppliers, as evidenced from multiple purchase orders, bills of lading, and correspondence from 1971 through 1975,[32] and was shoring up plans to secure long-term supplies of blue fiber.[33]

Crocidolite asbestos is considered "so hazardous" that studies conclude "it may be responsible for more illnesses and deaths than any other type of asbestos."[34] This is no surprise when the body's immune response to crocidolite is examined. "Crocidolite asbestos elicits an acute immune response, and because of its biopersistence can cause chronic inflammation by recruiting inflammatory cells, which then die in the process of attempting to clear the asbestos fibers."[35] "The death of such immune cells then elicits a new wave of inflammatory cell influx, thus leading to a never-ending cycle of inflammation in response to the presence of the fibers."[36] This immune response to crocidolite asbestos leads to a variety of illnesses, including mesothelioma.[37]

2. Regardless of Their Chemistry and Shape, All Forms of Asbestos Cause Asbestos-Related Diseases

According to the International Agency for Research on Cancer ("IARC"),

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[32] *See* [A-14]. Communications between Certain-Teed Products Corp. and Special Asbestos Co., July 6, 1973, Apr. 11, 1974, Dec. 18, 1975.

[33] *See* [A-14]. Communications between Certain Teed and Turners Asbestos Fibres Limited, 1971 (re 1971 and 1972 asbestos purchases); [A-15] communication from Central House to Certain Teed Corporation, Oct. 9, 1973 (quoting prices and confirming shipment for blue asbestos fiber and "setting up our fiber program for 1974"); communications between Certain Teed and Special Asbestos Co., Inc., Oct. 1974 (discussing "1975 and also long-range requirements").

[34] Types of Asbestos That Can Cause Asbestos Diseases, *supra* note 25.

[35] Testa, *supra* note 31, at 166 (citing Suresh H. Moolgavkar et al, *Pleural and Peritoneal Mesotheliomas in SEER: Age Effects and Temporal Trends, 1973-2005,* 20 Cancer Causes Control 934-944 (2009)).

[36] *Id.*

[37] K.T. Kelsey, E. Yano, H.L. Liberl & J.B. Little, *The In Vitro Genetic Effects of Fibrous Erionite and Crocidolite Asbestos*, 54 BR. J. CANCER 107 (1986), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2001647/pdf/brjcancer00518-0104.pdf ("Epidemiologic studies have shown crocidolite to be one of the most potent forms of asbestos dust for the induction of mesothelioma in man.").

> Asbestos is the generic commercial designation for a group of naturally occurring mineral silicate fibers of the serpentine and amphibole series. These include the serpentine mineral chrysotile (also known as 'white asbestos'), and the five amphibole minerals—actinolite, amosite (also known as 'brown asbestos'), anthophyllite, crocidolite (also known as 'blue asbestos'), and tremolite.[38]

The consensus of scientists is that ***all forms*** of asbestos cause ***each*** form of asbestos-related disease. IARC has stated that the "causal association between mesothelioma and asbestos has been well established."[39] The IARC goes on to conclude that "all forms of asbestos (chrysotile, crocidolite, amosite, tremolite, actinolite, and anthophyllite) . . . cause mesothelioma and cancer of the lung, larynx, and ovary," while also observing positive associations "between exposure to all forms of asbestos and cancer of the pharynx, stomach, and colorectum."[40]

According to the National Cancer Institute:

> People may be exposed to asbestos in their workplace, their communities, or their homes. If products containing asbestos are disturbed, tiny asbestos fibers are released into the air. When asbestos fibers are breathed in, they may get trapped in the lungs and remain there for a long time. Over time, these fibers can accumulate and cause scarring and inflammation, which can affect breathing and lead to serious health problems.
>
> Asbestos has been classified as a known human carcinogen (a substance that causes cancer) by the U.S. Department of Health and Human Services (HHS), the U.S.

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[38] IARC Working Group on the Evaluation of Carcinogenic Risks to Humans. *Arsenic, Metals, Fibres and Dusts*, 2012 (IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, No. 100C.) *Asbestos (Chrysotile, Amosite, Crocidolite, Tremolite, Actinolite and Anthophyllite)*, https://www.ncbi.nlm.nih.gov/books/NBK304374/.

[39] *Id.*

[40] *Id.* In 2012, the IARC Working Group was evenly divided on whether the human evidence alone was strong enough to call the evidence sufficient for linking cancer of the colorectum, but it was agreed that "[t]there is sufficient evidence in experimental animals for the carcinogenicity of all forms of asbestos." *Id.* at 294. Recently, one hundred scientists involved in the IARC Monograph process responded to industry criticism of IARC's approach to causality. These scientists reaffirmed their support for IARC's approach to causality. They explained the process of assessing whether a substance is carcinogenic:

> IARC assessments of carcinogenicity are based on, and necessarily limited to, scientific evidence available at the time of the review. The evidence comes from epidemiologic studies, animal bioassays, pharmacokinetic/mechanistic experiments, and surveys of human exposure. The aim is to include all relevant papers on cancer in humans and experimental animals that have been published, or accepted for publication, in peer-reviewed scientific journals and also any publicly available government or agency documents that provide data on the circumstances and extent of human exposure. To that end, the search of the literature takes a comprehensive approach.

Neil Pearce et al., *IARC Monographs: 40 Years of Evaluating Carcinogenic Hazards to Humans*, 123 ENVIR. HEALTH PERSPECTIVES 507 (June 2015), https://ehp.niehs.nih.gov/doi/10.1289/ehp.1409149.

> Environmental Protection Agency (EPA), and the International Agency for Research on Cancer (IARC). According to IARC, there is sufficient evidence that asbestos causes mesothelioma (a relatively rare cancer of the thin membranes that line the chest and abdomen), and cancers of the lung, larynx, and ovary. . . .
>
> Asbestos exposure may also increase the risk of asbestosis (an inflammatory condition affecting the lungs that can cause shortness of breath, coughing, and permanent lung damage) and other nonmalignant lung and pleural disorders, including pleural plaques (changes in the membranes surrounding the lung), pleural thickening, and benign pleural effusions (abnormal collections of fluid between the thin layers of tissue lining the lungs and the wall of the chest cavity). Although pleural plaques are not precursors to lung cancer, evidence suggests that people with pleural disease caused by exposure to asbestos may be at increased risk for lung cancer.[41]

According to the Agency for Toxic Substances and Disease Registry ("ATSDR"),[42] "[t]here is general agreement among scientists and health agencies . . . [e]xposure to any asbestos type (i.e., serpentine [chrysotile] or amphibole) can increase the likelihood of lung cancer, mesothelioma, and nonmalignant lung and pleural disorders."[43] ATSDR's peer-reviewed profile "identifies and reviews key literature" including "toxicologic information and epidemiologic evaluations" and "reflects ATSDR's assessment of all relevant toxicologic testing and information that has been peer-reviewed."[44]

On June 4, 2012, the Joint Policy Committee of the Societies of Epidemiology[45] ("JPC-SE") issued its Position Statement on Asbestos. As summarized by the JPC-SE:

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[41] *Asbestos Exposure and Cancer Risk*, NAT'L CANCER INST., NAT'L INSTS. OF HEALTH (June 7, 2017) https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/asbestos/asbestos-fact-sheet (describing asbestos minerals as either "serpentine"—which includes chrysotile—or "amphibole"—which includes actinolite, tremolite, anthophyllite, crocidolite, and amosite—and noting that all forms of asbestos have "been classified as a known human carcinogen") (internal citations omitted).

[42] The ATSDR is a federal public health agency of the U.S. Department of Health & Human Services.

[43] *Toxicological Profile for Asbestos*, AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, U.S. DEPT. OF HEALTH & HUMAN SERVICES, at F-20 (Sept. 2001), https://www.atsdr.cdc.gov/ToxProfiles/tp61.pdf.

[44] *Id.* at v.

[45] The International Joint Policy Committee of the Societies of Epidemiology was founded as a national and international consortium of associations of epidemiologists. In 2018, the IJPC-SE changed its name to the International Network for Epidemiology in Policy (INEP). https://epidemiologyinpolicy.org/about-us.

> A rigorous review of the epidemiologic evidence confirms that all types of asbestos fibre are causally implicated in the development of various diseases and premature death. Numerous well-respected international and national scientific organizations, through an impartial and rigorous process of deliberation and evaluation, have concluded that all forms of asbestos are capable of inducing mesothelioma, lung cancer, asbestosis and other diseases.[46]

In the last few years, 137 physicians, scientists, public health officials and scholars have submitted guidance to courts across the country supporting their understanding that all forms of asbestos, including chrysotile asbestos, cause mesothelioma.[47] In light of this, the Debtor's assertion that "the majority of asbestos fiber used was chrysotile" is a red herring.[48] Further, 10% to 15% of the asbestos fiber was crocidolite,[49] which as discussed *supra*, is recognized as a causal factor in developing mesothelioma.

3. There Is No Safe Level of Asbestos Exposure

According to the U.S. Occupational Safety and Health Administration ("OSHA"),

> [t]here is no "safe" level of asbestos exposure for any type of asbestos fiber. Asbestos exposures as short in duration as a few days have caused mesothelioma in humans. Every occupational exposure to asbestos can cause injury or disease; every occupational exposure to asbestos contributes to the risk of getting an asbestos related disease.[50]

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[46] JOINT POL'Y COMM., SOC'YS OF EPIDEMIOLOGY, *Position Statement on Asbestos* 2 (June 4, 2012), http://epimonitor.net/Epi-Docs/03.JPC-SE-Position_Statement_on_Asbestos-June_4_2012-Full_Statement_and_Appendix_A.pdf (footnote omitted) (hereinafter "JPC-SE Statement"). The JPC-SE Statement "was developed by representatives of 12 of [JPC-SE's] member societies, in consultation with these societies. On June 4th, 2012, the JPC-SE approved this Position Statement. Each member organization then followed its own endorsement process, such as the recusal of its leadership members when appropriate or necessary, such as for some government employees or for those with conflicting interests." *Id.* at 1.

[47] *See* **Annex 1** for a listing of the physicians, scientists, and public health officials and the amicus briefs filed with the highest courts of Maryland, Pennsylvania, Georgia, Ohio and New York. Although some of the signatories have served as expert witnesses in litigation, most had not, and none of the signatories were compensated for their guidance to the highest courts of these states.

[48] Debtor Brief, 5.

[49] *Id.*

[50] *Safety and Health Topics – Asbestos*, OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION ("OSHA"), https://www.osha.gov/SLTC/asbestos/ (citation omitted). OSHA is not alone in its analysis. Numerous scientific organizations and peer reviewed publications agree that a safe level of asbestos, when it comes to cancer risk, has not been identified. *See, e.g.*, [A-16], Matthew J. Soeberg et al., *Malignant Mesothelioma in Australia 2015: Current*

In a peer-reviewed medical journal, Professor Steven Markowitz explained some of the evidence supporting the mainstream position that low-level asbestos exposures can cause cancer:

> The risk of malignant mesothelioma due to asbestos is dose dependent, as amply demonstrated in many occupational cohort studies across a range of industries. Malignant mesothelioma is known to occur at lower levels of exposure to asbestos, and *no dose has been established below which there is no risk of malignant mesothelioma; that is, no "safe" threshold of cancer risk has been demonstrated*.[51]

4. All Types of Asbestos Cause Mesothelioma

The consensus of scientists outside of the defense bar is that all forms of asbestos, including chrysotile, cause mesothelioma and the other asbestos-related diseases.[52] After discussing a dispute in the scientific literature about fiber-type potency, ATSDR concluded that potency was irrelevant, stating "[d]espite the dispute in the literature . . . U.S. and international agencies concur that any type of asbestos (including chrysotile) can increase the risk for asbestosis, mesothelioma and lung cancer."[53] As all types of asbestos are deadly, the hypothetical question of the relative

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Incidence and Asbestos Exposure Trends, 19 J. TOXICOL. ENVIRON. HEALTH B CRIT. REV. 173 (2016) (stating "The dose-response relationship between asbestos exposure and mesothelioma has no threshold, and exposures as short as 1 day were found."); Collegium Ramazzini, *The Global Health Dimensions of Asbestos and Asbestos-related Diseases*, Vol. 58, at 86-90 (2016) https://www.collegiumramazzini.org/download/18_EighteenthCRStatement(2015).pdf, (stating "The Collegium has taken this position based on well-validated scientific evidence showing that all types of asbestos, including chrysotile the most widely used form, cause cancers (such as mesothelioma and lung cancer) and additionally that there is no safe level of exposure."); John Hodgson and A. Darnton, *The Quantitative Risks of Mesothelioma and Lung Cancer in Relation to Asbestos Exposure*, 44 ANN. OCCUP. HYG. 565 (2000), https://pdfs.semanticscholar.org/16b8/0f0045ecbe5de992e04a9f8bcb5a16fda086.pdf?_ga=2.29804860.2024073433.1614108864-1069247999.1614108864 (stating that "[a]ttempts to postulate thresholds or safe levels for exposure to asbestos have been dismissed as 'logical nonsense.'"); *Guidance for Preventing Asbestos Disease Among Auto Mechanics* 1, EPA-560-OPTS-86-002, ENVIRONMENTAL PROTECTION AGENCY ("EPA") (June 1986), https://nepis.epa.gov/Exe/ZyPDF.cgi/20012LJK.PDF?Dockey=20012LJK.PDF (stating "[w]hile lowering exposure lowers the risk, there is no known safe level of exposure to asbestos below which health effects do not occur.").

[51] [A-17]. Steven Markowitz, *Asbestos-Related Lung Cancer and Malignant Mesothelioma of the Pleura: Selected Current Issues,* 36 SEMIN. RESPIR. CARE MED. 334 (2015) (emphasis added).

[52] Henrik Wolff et al., *Asbestos, Asbestosis, and Cancer, the Helsinki Criteria for Diagnosis and Attribution 2014: Recommendations*, 41 SCAND. J. WORK ENVTL. HEALTH 5 (2015), https://www.sjweh.fi/show_abstract.php?abstract_id=3462&fullText=1#box-fullText; see also, **Annex 1** listing 137 physicians, scientists, and academics supporting the position that all forms of asbestos, including chrysotile, cause mesothelioma and other asbestos-related diseases.

[53] Toxicological Profile for Asbestos*, supra* note 43, at F-22 (citations omitted).

toxicity of a hypothetical single fiber of each fiber type is irrelevant in considering disease causation in real persons exposed to asbestos from CertainTeed.

The World Health Organization's ("WHO") "policy on asbestos is unequivocal."[54] Contrary to the Debtor's suggestion, the WHO has stated that "[a]sbestos causes cancer of the lung, larynx and ovary, mesothelioma (a cancer of the pleural and peritoneal linings) and asbestosis (fibrosis of the lungs)."[55] Further, the WHO specifically rejected the hypothesis that the relative potency of single fibers of equal dimension has any relevance in the question of actual disease causation:

> The scientific evidence is clear. The firm conclusion of the WHO and IARC assessments is that chrysotile causes cancer of the lung, larynx and ovary, mesothelioma and asbestosis, whether or not it is less potent than amphibole types of asbestos in doing so. Assertions about differing physicochemical properties, the question of whether or not historical epidemiological studies may have been dealing with chrysotile contaminated with amphibole types of asbestos, and the physical containment of chrysotile in modern high-density cement (at the time of manufacture) do not alter this finding.[56]

As the WHO stated about chrysotile asbestos in 2014:

> Mesotheliomas have been observed after occupational exposure to crocidolite, amosite, tremolite and chrysotile, as well as among the general population living in the neighborhood of asbestos factories and mines and in people living with asbestos workers. . . . [T]here is no evidence for a threshold for the carcinogenic effect of asbestos, including chrysotile, and that increased cancer risks have been observed in populations exposed to very low levels.[57]

The chrysotile defense was a creation of certain members of the asbestos industry and its advisers. However, other than defense-side witness testimony and "expert" reports produced in connection with asbestos litigation in the United States, there is no dispute among mainstream scientists that

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[54] *Id.* at 6.

[55] *Id*.

[56] *Id.* at 9.

[57] *Chrysotile Asbestos*, WORLD HEALTH ORGANIZATION, 3-4 (2014), http://www.who.int/ipcs/assessment/public_health/chrysotile_asbestos_summary.pdf.

chrysotile asbestos causes mesothelioma.[58] While some scientists who advocate the industry's position have concluded that risk assessment models demonstrate that there are differences in the potency of hypothetical fibers of equal dimension, these studies are based on *highly imprecise data* and lack any application to questions of individual disease causation in persons exposed to asbestos fibers from Old CT products.[59]

Dr. David Egilman, a long-time retained expert for asbestos litigation,[60] published a peer-reviewed article in the *American Journal of Industrial Medicine* detailing the origins and failings of the chrysotile defense.[61] Egilman explained that "[l]awyers for asbestos-manufacturing corporations have used [asbestos industry–sponsored] studies to assert that the causal link between asbestos exposure and cancer was unclear and hypothetical, thus effectively denying injured workers and their dependents compensation for their illness."[62] In short, the "chrysotile defense" ignores relevant data, is based on speculation, and has been rejected by numerous independent scientific panels, many internationally respected government and scientific organizations, and courts across the country.

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[58] The Russian chrysotile industry has advocated the self-serving position that chrysotile asbestos is not dangerous and can be used safely. *See* Andrew Higgins, *In Asbest, Russia, Making Asbestos Great Again*, N.Y. TIMES (April 7, 2019), https://www.nytimes.com/2019/04/07/world/europe/asbestos-russia-mine.html.

[59] The Committee does not here embark on a full deconstruction of the "chrysotile defense." By way of illustration, however, none of the studies relied upon by these defense-industry scientists has any information regarding the dimensions of the asbestos fibers breathed by the individuals who were studied. Even if such data contained the necessary information, it would be comparing apples to oranges: the measurement techniques used during the time periods the workers in these studies were in the workplace were entirely different than those used today.

[60] *See* [A-18]. Egilman Dep. 16:23-17:22, June 4, 2005, *In re Asbestos Litig.*, Cause No. 2004-03964 (Tex. Dist. Ct. Harris Cty.).

[61] David Egilman et al., *Exposing the "Myth" of ABC, "Anything But Chrysotile": A Critique of the Canadian Asbestos Mining Industry and McGill University Chrysotile Studies*, 44 AM. J. INDUS. MED. 540 (2003), https://www.researchgate.net/publication/9043200_Exposing_the_Myth_of_ABC_Anything_But_Chrysotile_A_Critique_of_the_Canadian_Asbestos_Mining_Industry_and_McGill_University_Chrysotile_Studies.

[62] *Id.* at 541 (citing asbestos defendant's motion to exclude/strike expert testimony or other evidence that workplace exposure to chrysotile asbestos was causing mesothelioma in 2003 in *Mitchell et. al. vs. Ametek, Inc. et. al.*, Case No. DV02-09281, (Tex. Dist. Ct. Dallas Cty.)).

Regardless of the exact types of asbestos that CertainTeed blended into its products, those asbestos-containing products exposed users to asbestos fibers. That exposure put them at risk for developing a variety of illnesses and conditions, including fatal cancers. This is true whether the asbestos CertainTeed put in its products was chrysotile or crocidolite—and the Debtor admits it used both kinds. The scope of this exposure is staggering, the number of victims immense, and the nature of their suffering indescribable.

B. Encapsulation in Cement Does Not Protect Against Asbestos Exposure

In addition to attempting to draw distinctions between types of asbestos, the Debtor claims its liability has been exaggerated because "the asbestos fibers were bound in a cement matrix and the pipe, therefore, was a hard cement product similar to a piece of sidewalk."[63] The Debtor's chosen analogy is an apt one, demonstrating the critical flaw in its argument. Anyone who has walked on a sidewalk has seen the cracks, and with age, the crumbling. Merely because CertainTeed placed asbestos in cement does not mean it stayed there. AC Pipes needed to be cut which created a dusty environment exposing the person cutting the pipe to asbestos fibers, people in the vicinity of the pipe being cut, and third parties who may have handled the dusty clothes.

Moreover, the Debtor claims it was necessary to use crocidolite (amphibole) asbestos because "it simply could not make a quality pipe that was strong enough without crocidolite fiber."[64] Regardless of the accuracy of the Debtor's statement—which would undoubtedly be tested at any underlying asbestos trial—the statement does reveal another crack in the Debtor's encapsulation argument. AC Pipe had to be strong because it carried "*drinking* or irrigation water that was *pumped under pressure* through the lines…"[65] Once again, the visual evidence of the

[63] Debtor Brief, 6.

[64] *Id.* at 5 n.8.

[65] *Id.* at 4 (emphasis added).

damage water under pressure does to cement is everywhere. Some of the AC Pipe that CertainTeed manufactured has been in the ground, carrying drinking water, for almost 50 years.

Plainly, the cutting of AC Pipe leads to the release of hazardous asbestos fibers. This assertion is supported by the 1977 reports prepared by an industrial hygiene consulting group, Equitable Environmental Health, for the A/C Pipe Producers Association (the "EEH Reports").[66] "The results of these studies have been frequently summarized and reported within the federal regulatory record and have been relied upon by OSHA and EPA."[67]

As of July 1, 1976, the permissible exposure limits ("PELs") under applicable regulations of OSHA was 2.0 fibers per cubic centimeter (f/cc) with a proposal that such limits be further reduced to 0.5 f/cc.[68] After examining several cutting and machining methods, the EEH Reports determined that "the use of the abrasive disc saw on A/C sewer pipe and pressure pipe produced high concentrations of airborne asbestos fibers. The peak concentrations in the breathing zone of the saw operator and his helper greatly exceeded the current OSHA standard for short-term or peak exposure."[69] In 1988 the EPA reported that the operator's average exposure when cutting AC sewer pipe with an abrasive disc saw was 35.5 f/cc and 42.1 f/cc when wetting was added, while the helper's average exposure was 64 f/cc and 10.22 f/cc when wetting was added. Likewise, the operator's average exposure when cutting AC pressure pipe with an abrasive disc saw was 20.3

[66] W.M. Noble et al., *Asbestos Exposures During the Cutting and Machining of Asbestos Cement Pipe* (Mar. 16, 1977); B.L. Kawahara, J. Flanery, *Dust Exposures During the Cutting and Machining of Asbestos/Cement Pipe* (Dec. 15, 1977), as quoted in Kyle B. Dotson, *Encapsulated Asbestos—Human Exposure, If Any, from "Locked-In" Fiber* 485 (Nov. 2012) https://www.yumpu.com/en/document/read/13392823/encapsulated-asbestos-human-exposure-if-any-from-dri.

[67] Dotson, *supra* note 66.

[68] *Id.*, quoting Noble, *supra* note 66.

[69] *Id.*

f/cc and 65.02 f/cc when wetting was added, while the helper's average exposure was 59.7 f/cc and 49.15 when wetting was added.[70]

Moreover, in contending that encapsulation protects individuals, the Debtor Brief simply skips over the AC Pipe manufacturing process. The five factories that produced AC Pipe for CertainTeed over 30 years employed thousands of workers who then exposed others through their dusty clothing. Asbestos was delivered to the plants and had to be mixed with the ingredients of cement to form the pipe. That process itself created an incredibly dusty environment for anyone in the vicinity.

The Debtor also claims that "little if any asbestos fibers were released when AC Pipe was handled or installed."[71] However, the problem with asbestos is that there is no safe level of exposure, so "little" can be "enough." Further, the study that the Debtor cites found that in a "typical installation job," a worker—even using the Debtor's preferred cutting and machinery practices—could be *exposed for a total of 7.5 hours*.[72]

The Debtor admits that another common cutting practice, using gas-powered abrasive disc saws, "could release concentrations of airborne asbestos exceeding OSHA PELs.[73] CertainTeed was so concerned about this danger that the Debtor boasts of being "the first company in the United States to place a warning label on every piece of AC Pipe it manufactured," after 1979.[74] By then CertainTeed had been manufacturing AC Pipe for almost 20 years.

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[70] ICF INC., *Asbestos Exposure Assessment,* Tables 6 and 7, (rev. ed. Mar. 21, 1988), https://tinyurl.com/8fzbvt27 (direct link to the report on the U.S. EPA's National Service Center for Environmental Publications, https://nepis.epa.gov).

[71] Debtor Brief, 6.

[72] *Id.* at 7 (emphasis added).

[73] *Id*. at 9.

[74] *Id.* at 7.

The Debtor quotes the CertainTeed warning in its brief.[75] Notably, the warning ***never mentions asbestos***. For years after first identifying this danger of asbestos fibers being released from AC Pipe, CertainTeed kept profiting from the sale of the product by callously ignoring the known dangers to those who would work with it, until in 1986, when OSHA finally prohibited the use of abrasive saws on asbestos products.[76] Even then CertainTeed did not stop but kept manufacturing asbestos-riddled pipe for six more years. The Debtor's attempt to minimize its liability for its thirty-year manufacturing of AC Pipe instead reveals the vast extent of the danger CertainTeed created.

The Debtor's description of CertainTeed's other asbestos products follows the same pattern, stressing the alleged limited exposure while skipping over critical details about the true danger. For example, the Debtor claims the risk of exposure to asbestos contained in its roofing shingles was reduced because the asbestos was bound in asphalt.[77] However, the Debtor admits that CertainTeed manufactured felts and ply roofing sheets that contained asbestos for over 20 years.[78] One only need consider the roofers who used these products on a daily basis to recognize that the Debtor is engaged in dangerous misdirection.

The Debtor also points to the low total weight of asbestos in a fiberglass shingle that CertainTeed sold for a few months in the mid-70s.[79] But the Debtor says nothing about the amount of asbestos in a different shingle that CertainTeed *sold for six years*, except that it "contained

[75] *Id.*

[76] *Id.* at 11.

[77] *Id.* Asphalt roofing sealants and coatings represent a small fraction of the Debtor's products. The case cited by the Debtor, *Asbestos Information Assoc./North America v. Reich*, 117 F.3d 891 (5th Cir. 1997), deals with this subset of products.

[78] Debtor Brief, 11.

[79] *Id.* at 12.

chrysotile asbestos in the asphalt shingle coating."[80] The Debtor again claims there was little risk of exposure, citing OSHA studies of installation to show that fibers are prevented from being released in asphalt shingles.[81] Yet again, the Debtor seeks to pretend that these shingles sat undisturbed in a vacant room, and ignores the practical reality of the use of shingles, including the fact that weather events regularly damage roofs, spreading their dust and debris and exposing vast numbers of people to their contents.

III. OLD CT'S HISTORY IN THE TORT SYSTEM

A. CertainTeed Had Extensive Knowledge of the Dangers of Asbestos at All Relevant Times

CertainTeed was well aware of the dangers of asbestos when it purchased the AC Pipe factories of Keasbey & Mattison in 1962.[82] The opening of the fifth plant occurred on the heels of the single most significant conference on the dangers of asbestos ever held—the 1964 Conference on Biological Effects of Asbestos held by the New York Academy of Sciences, which was briefed to members of CertainTeed management.[83] There is no dispute that even cursory research on CertainTeed's part would have readily disclosed the scientific evidence of its potential

[80] *Id.*

[81] *Id*. at 14.

[82] *See* [A-19]. Ambler Dep. 96:24-25, 97:3-25, Mar. 13, 2014, *Bergeron v. Kaiser Gypsum*, C.A. No. 13-2-34210-3SEA (Super. Ct. Wash., Kings Cty.). ("Q. In the early 1960s, was respiratory protection available at the Santa Clara plant? A. Yes. Q. Beginning as early as June 1, 1962, correct? A. Yes. Q. And respirators were required by CertainTeed Corporation to be worn by workers working in, quote, dusty areas, correct? A. Yeah, in areas that, that were -- had dust above the availability limits. Q. And the reason for that was to protect the health and safety of the workers from exposure to asbestos, correct? A. Correct. Q. Because CertainTeed understood at that time period, June 1, 1962, the dangers and hazards of asbestos at the Santa Clara plant, correct? . . . A. Yeah, I mean, they – CertainTeed was aware that if you were subjected to large amounts of dust over long periods of time, you ran the risk of getting a disease."); *see also* [A-20], Horowitz Dep. 44:9-11, 15-25; 45:2-21; 47:23-25; 48:1-8; 135:2-14, Feb. 1, 1982, *Weisberg v. Bell Asbestos Mines, Ltd.*, No. 4629 (Ct. Common Pl. of Philadelphia Cty., May Term, 1979) (discussing meeting with Mr. Knox from T&N sometime in 1960 to discuss the link between asbestos and a cancer identified as mesothelioma in England while employed at K&M; Mr. Horowitz was retained by CertainTeed after its purchase from K&M).

[83] [A-21] Memorandum (Nov. 10, 1964) on Conference on Biological Effects of Asbestos, New York Academy of Sciences, Section of Biological and Medical Sciences, New York City, Oct. 19-21, 1964.

dangers dating as far back as 1897.[84] Moreover, the link between T&N and CertainTeed cannot be downplayed; T&N was closely involved in CertainTeed's affairs as a majority owner of K&M. T&N's knowledge and history of asbestos is well-documented and properly imputed to CertainTeed.[85]

By 1917, U.S. manufacturers were aware of the health hazards posed by asbestos[86] (and their insurers were certainly concerned) but production and distribution of asbestos-laden products by CertainTeed continued until 1993. By 1930, it was well established that asbestos dust could cause disease.[87] Indeed, by the 1930s the link between breathing asbestos dust and cancer was suspected; by the mid-1940s that link was acknowledged by multiple medical researchers, recognized as such in 1949,[88] and confirmed by epidemiological studies in 1955.[89] A major report of mesothelioma from South Africa by was published in the *British Journal of Industrial Medicine*

[84] *See In re Joint E. & S. Dist. Asbestos Litig.*, 129 B.R. 710, 737-38 (E. & S.D.N.Y. 1991), *vacated*, 982 F.2d 721 (2d Cir. 1992), *modified*, 993 F.2d 7 (2d Cir. 1993) ("*Manville I*") (providing an in-depth discussion of the health hazards of asbestos identified throughout the 19th and 20th centuries).

[85] *See supra* notes 15, 16.

[86] Frederick L. Hoffman, *Mortality from Respiratory Diseases in Dusty Trades (Inorganic Dusts)*, U.S. BUREAU OF LABOR STATISTICS, Bull. 231, 176–181 (June 1918), https://fraser.stlouisfed.org/files/docs/publications/bls/bls_0231_1918.pdf

[87] In 1932, an ILO bibliography, *Pneumoconioses*, identified 70 references to asbestosis. With the exception of one article on geological occurrence, the remaining articles were medical reports about asbestosis. [A-4] Castleman, *supra* note 15, at 22. Despite the widespread knowledge of the deadly nature of asbestos, and the availability of asbestos-free substitutes, the sale of asbestos fiber and insulation increased. This was made possible because some makers of alternative products were bought out by asbestos giants such as Johns-Manville (J-M) and T&N, inducing these producers to use asbestos in some of their products and thereby drawing more and more companies into a "conspiracy of silence." *Id.* at 28-29. For example, J-M bought Banner Rock and Celite, competitors who made non-asbestos thermal insulation, and T&N purchased seven other insulation companies. *Id.* at 29.

[88] [A-22]. *Asbestosis and Cancer of the Lung*, 140 J. Am. Med. Assoc. 1219 (1949).

[89] *See Manville I*, 737-38 (citing Richard Doll, *Mortality from Lung Cancer in Asbestos Workers*, 12.2 Brit. J. Indus. Med. 81 (1955)). There were many articles coming out in the 1940s and 1950s that noted the risk of asbestosis and in some cases cancer in individuals who were exposed to asbestos in the course of using asbestos-containing products. There were 50 individual case reports, some involving one or two individuals, some involving as many as ten or more. These case reports were published mostly in the English-language in medical journals between 1932 and 1963.

in 1960.[90] Within a very short time it was widely accepted that asbestos did cause mesothelioma; that levels of asbestos exposure present from environmental exposure as well as occupational exposure were sufficient to cause mesothelioma; and that mesothelioma was affecting a considerable number of workers in shipyards.

Despite CertainTeed's knowledge of the dangers posed by its asbestos-laden products, it nevertheless made a conscious decision to keep manufacturing and selling them.[91] Indeed, CertainTeed admittedly was aware in the 1960s that asbestos caused disease, including cancer.[92] From the time CertainTeed acquired Keasbey & Mattison in 1962, workers were told to use respirators when in dusty areas of the factory.[93] Several mid-1960s CertainTeed memorandums confirm additional knowledge. On May 4, 1964, Supervisor of Safety at the Ambler, Pennsylvania facility of CertainTeed, Leon D. Horowitz, sent a letter to Clifford Sheckler at Johns-Manville Corporation enclosing a copy of an article in the *Evening Bulletin*, a Philadelphia newspaper, reviewing the seminal medical researcher Dr. Irving Selikoff's mortality study of insulators paper, entitled, "Doctors Say Working with Asbestos May Cause Cancer After Many Years," with a

[90] [A-4]. Castleman, *supra* note 15, at 102-03. J. Christopher Wagner was the principal investigator of mesothelioma in South Africa. In 1958, he traveled extensively throughout Europe to discuss his research with medical experts. Among those he met with was Dr. John Knox of T&N as well as executives of T&N and Cape Asbestos who had asbestos interest in South Africa. *Id.* Years later, Dr. Wagner stated: "The directors of the companies showed some interest but assured me that I was following a line of research which seemed to them of little value, and that I would be advised to follow other lines of investigation." *Id.* at 103. By the time Dr. Wagner made his first presentation in 1959, a number of employees at T&N had died of mesothelioma. By late 1959, Dr. Wagner had urged Dr. Knox to investigate the possibility that employees exposed to asbestos, especially blue asbestos, had died of mesothelioma. *Id.*

[91] Appellate courts have upheld jury verdicts regarding CertainTeed concealing their knowledge. *Burch v. Certainteed Corp.*, 34 Cal. App. 5th 341, 352 (Ct. App. 2019) (upholding concealment finding by the jury, including that CertainTeed "had exclusive knowledge of material facts not known to the plaintiff.").

[92] [A-23]. Ambler Dep. 77:1-79:16, Jan. 12, 1999, *Raymond v. Raritan Supply*, Civil No. 1965/1991 (Terr. Ct. Virgin Islands, Div. of St. Croix); [A-24] Himmelberger Dep. 107:11-18, Oct. 16, 2002, *Lenhart v. ACandS,* Cause No. CC-00-131553-H (Cty. Ct. of Dallas Cty., Tex. 2000).

[93] [A-19]. Ambler Dep., *supra* note 82, at 97:3-25.

notation that said, "You can imagine the reaction to this article at our local plant."[94] Mr. Horowitz, an industrial hygienist, had previously worked for K&M at the Ambler facility.

Mr. Horowitz attended the 1964 Selikoff conference on Biological Effects of Asbestos in New York City, which included the observation that increasing evidence demonstrated insulation workers, even with "low exposure to asbestos dust," are linked to mesothelioma cases and that "a person with asbestosis will have greater possibility of death by cancer."[95] CertainTeed observed: "[c]oncerning the conference itself, there appears to be an accumulation of evidence of the association of asbestos with cancer."[96] Prior to attending the Selikoff conference, Horowitz met with Dr. John Knox and other representatives from English manufacturer T&N[97] and were advised that it had been known since 1931 that asbestos is a cause of lung cancer and that "[t]hey are convinced that the Maximum Allowable Concentration in U.S. for asbestos dust is too high and should be reduced."[98] Critically, T&N forewarned that the "U.S. Industry in general, does not want to accept the fact that asbestos is very hazardous and they will accept any doctor's view if he intimates that it was not hazardous."[99] Despite these dire predictions, CertainTeed did not place any asbestos warnings in its workplace or on products or take any other steps to protect its employees or the public.

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[94] [A-25]. Letter from Leon D. Horowitz, Supervisor of Safety, Certain-Teed Products Corp., to Clifford Sheckler at Johns-Manville (May 4, 1964) enclosing Karl Abraham, *Doctors Say Working with Asbestos May Cause Cancer After Many Years,* EVENING BULLETIN (Philadelphia), Apr. 30, 1964.

[95] [A-21]. Memorandum on Conference on Biological Effects of Asbestos, *supra* note 83; *see also* [A-20] Horowitz Dep., *supra* note 82, at 105:6-19 (Horowitz discussing attendance at Selikoff conference and reporting to company).

[96] [A-21]. Memorandum on Conference on Biological Effects of Asbestos, *supra* note 83.

[97] T&N was the parent company of K&M. *See* [A-4] *supra* notes 15-16 re information on T&N's historical knowledge of the dangers of asbestos.

[98] *Id.*

[99] *Id.*

By 1966, other scientific articles noted that "a cancerous condition known as mesothelioma […] has been found among workers with asbestos in far greater incidences than among the general population,"[100] especially those workers around "asbestos dust."[101] In 1968, CertainTeed internal memorandums discussed articles linking asbestos to lung cancer[102] and spelled out concerns of AC Pipe use leading to cancer.[103] These concerns included safety procedures that should be implemented for cutting cement products, such as having dust exhaust attachments when power cutting tools were used.[104] In circulating these memorandums, executives were urged to use caution and that the articles were not intended for distribution to customers.[105] In March 1968, CertainTeed circulated a brochure titled "Putting the Case for Asbestos," received from T&N as a guide for sales employees when speaking to customers in the United Kingdom. Notably, the brochure advises: "Never be the first to raise the health question."[106] Again, CertainTeed failed to take appropriate precautions or protect the people to whom its products were sold.

By the end of the 1960s, CertainTeed attended conferences, such as the "First Annual Meeting of the Health & Safety Council" in September 1969 that warned mesothelioma's latency period could be up to 40 years.[107] In 1967, a controversy arose in Nashville, Tennessee over the

[100] [A-26]. Warren A. Cook, *What Health, Safety and Plant Personnel Should Know about Dust, Fumes, Mist, Gases, Vapors, and Noise* 132, 1966 NATIONAL SAFETY CONFERENCE.

[101] [A-27]. *Occupational Health in the Construction Industry*, NATIONAL SAFETY COUNCIL, 22-25 (1967).

[102] [A-28]. Memorandum from S.E. Price to All District Managers, Marketing – West, on Health Hazards and A-C Pipe (Aug. 6, 1968).

[103] [A-29]. Letter to Charles E. DeLong, Esq. of CertainTeed Products Corp. from Malcolm Meyer re AC Pipe Health Problem (Feb. 27, 1968).

[104] [A-30]. Memorandum attaching article entitled "*Asbestos Safety and Control*" (April 15, 1968); *Asbestos Safety and Control*, ASBESTOS INFO. COMM., at 5.

[105] *Id.*

[106] [A-31]. Cover letter from T&N to Malcolm Meyer, Esquire at CertainTeed (April 1, 1969); *Putting the Case for Asbestos*, ASBESTOS INFO. COMM. (London, 1968).

[107] [A-32]. Letter from Division Headquarters, Office of General Counsel for J-M re notice of inviting members to the First Annual Meeting of the Health and Safety Council, Asbestos Cement Products Association (Nov. 7, 1969).

possibility of contamination of public drinking water through the use of A-C Pipe as opposed to cast iron pipes.[108] Dr. James Snell at Vanderbilt University School of Medicine wrote a letter stating he was "really upset" to learn that a human carcinogen was "allowed to contaminate drinking water."[109] The news report had caused concern in Virginia and Mississippi as well. J-M representatives, suspicious that the cast iron pipe manufacturers were spreading the story, sent invitations to members of certain asbestos pipe companies, including CertainTeed, and their attorneys, to a meeting in January 1968 with J-M's medical consultant to discuss relevant sales and marketing materials. The meeting was followed up with a report stating: "As agreed at our meeting on January 3, this information is to be kept strictly on a top executive level. It is ***definitely not*** to be distributed to the field."[110]

In February 1971, during a meeting of the Asbestos Textile Institute, Dr. J.L. Goodman, who was at that time associated with Raybestos-Manhattan, Inc. but later served as CertainTeed's medical director from 1973 to 1978,[111] reported on his attendance at a seminar arranged by Dr. Selikoff at Mt. Sinai School of Medicine in June 1970. Notably, the second day of the seminar was devoted to mesothelioma; Dr. Goodman stated that mesothelioma "was a very controversial and debatable form of cancer (as to cause)" and that he did not agree with many of Dr. Selikoff's statements and conclusion on the subject.[112] Dr. Goodman was generally critical of Dr. Selikoff and stated that he was a "dangerous man" and the asbestos industry was going to have to learn

[108] [A-33]. Dick Battle, *Asbestos-Cement Warning Sounded*, NASHVILLE BANNER, Nov. 30, 1967.

[109] [A-34]. Letter from Dr. James D. Snell Jr., MD, to James LaPenna (Dec. 6. 1967).

[110] [A-29]. Letter to Charles E. DeLong, Esq., *supra* note 103 (emphasis added). J-M representatives persuaded cast iron pipe industry representatives to stop discussing asbestos health hazards in selling cast iron pipes. [A-4] Castleman, *supra* note 15, at 597.

[111] [A-11]. Responses of CertainTeed Corporation to Plaintiffs' Master Interrogatories, *supra* note 22, at 22.

[112] [A-35]. Asbestos Textile Institute, Minutes, General Meeting, ¶ 11 (Feb. 4, 1971).

how to combat his tactics. According to the meeting minutes: "In regard to mesothelioma Mr. Wm. J.W. Smith asked if Dr. Selikoff differentiated between crocidolite and chrysotile fibre. Dr. Goodman said that Dr. Selikoff inferred that chrysotile was suspect as well as crocidolite."[113]

Regarding warnings of the dangers of asbestos, according to the meeting minutes, Mr. Scheckler concluded that "warning labels on products were now voluntary but probably will become mandatory at some future date. Thinks our industry must give serious consideration to the use of warning labels on asbestos products. Mentions that Common Law product liability suits are proliferating in the Thermal Insulation Industry. Date that label use began could indicate whether a manufacturer had been negligent, if lawsuit arises."[114] CertainTeed continued to fail to warn of the dangers of asbestos.

In June 1971, an Analysis of Personal Samples for worker exposure taken from the previous June at CertainTeed's Santa Clara plant indicated that 49 samples exceeded the 1970 threshold limit value for asbestos of 5.0f/cc.[115]

As a result of this mounting evidence, in 1970-1971, CertainTeed, along with other companies, formed the Asbestos Information Association ("AIA") with the purpose of counteracting the increasingly heavy attacks upon asbestos and to propagate the benefits and indispensability of asbestos. The AIA, whose board of directors included CertainTeed members, undertook a coordinated attack on the increasing database of scientific articles:

> For the program of the AIA/NA to be successful, the support of the entire industry is needed. Asbestos-health is not just an individual problem that each company can handle on its own. It has grown far beyond that. *What is needed now is a concerted effort by all members of the asbestos mining, milling and manufacturing industry in North America to halt and reverse the dangerous trend of thinking in the United States and in Canada with regard to the supposed hazards of asbestos fiber.* The

[113] *Id.*

[114] *Id.*

[115] [A-36]. Robert B. Weidner, *Analysis of Personal Samples,* CERTAIN-TEED (June 1971).

> banning of the use of asbestos in certain products and processes is already a reality, and this trend may continue and grow if the true facts are not presented in a bold and forceful manner.[116]

Starting in the mid-1970s, CertainTeed provided brochures to some customers that discussed take-home asbestos exposure.[117] Nonetheless, CertainTeed did not even publish or place any warnings on any of their asbestos-cement pipe prior to 1977.[118]

The California state appellate court in 2019 summarized CertainTeed's knowledge of asbestos exposure at all relevant times between the 1960s and 1980s, when it upheld a $10 million jury verdict in favor of Michael B. Bruch who contracted mesothelioma installing CertainTeed's AC Pipe.

> Next, substantial evidence supports the jury's findings on active concealment, intent to deceive, and reliance. In the 1960's, [CertainTeed] learned of the correlation between cancer and asbestos. [CertainTeed's] internal memoranda from the 60's recount reports in the industry of mesothelioma in people having no occupational exposure to asbestos; industry suspicion that even small concentrations of asbestos fiber have an effect if lodged in the body for long periods; reports of increased evidence that workers with low exposure to asbestos are subject to mesothelioma; a report of a correlation between mesothelioma and crocidolite asbestos; and recommended respiratory, dust control, and annual x-ray programs for defendant's plant workers due to the dangers of asbestos dust. [CertainTeed's] corporate safety director from the 60's further testified that there was never any discussion about safe levels of asbestos exposure in correlation to cancer because the only safe level of exposure to a product that may cause cancer was zero.[119]

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[116] [A-37]. Letter from William P. Raines, Secretary, Asbestos Information Association/North America to AIA/NA Board of Directors (Sept. 2, 1971), enclosing Prospectus (emphasis added).

[117] [A-19]. Ambler Dep., *supra* note 82, at 140:5-11.

[118] *Burch v. Certainteed Corp.*, 34 Cal. App. 5th 341, 353 (Ct. App. 2019) ("Defendant did not give customers pamphlets regarding the safe handling of or the health implications of its A/C pipe until 1977.").

[119] *Id.* at 341, 352 (upholding concealment finding by the jury, including that CertainTeed "had exclusive knowledge of material facts not known to the plaintiff.").

All of these facts directly and overwhelmingly contradict the Debtor's claims in its Informational Brief that the danger posed by asbestos wasn't known until the mid-1970s.[120]

Indeed, even as late as 1982, CertainTeed was still trying to hide the dangers of asbestos. In February 1982, CertainTeed sent correspondence to the Executive Director at the Information Association of North America regarding its review of the CPSC booklet discussed at the previous meeting regarding "Asbestos in the Home."[121] In the letter, CertainTeed "questioned the need or desirability of such a booklet at all."[122] Specifically, CertainTeed noted that the sentence "Children Should Not Play in Dusty Areas" was "unnecessarily alarming" and suggested softer language.[123]

B. CertainTeed Failed to Adequately Warn—If It Ever Warned—Its Customers of the Dangers of Asbestos

CertainTeed failed to provide any information to users regarding:

- Asbestos as an ingredient in the product;
- The dangers of asbestos;
- The dangers of the dust created by following CertainTeed's product instructions;
- The need to isolate areas where its products were used;
- The need to use a respirator and protective clothing when using the product; or
- The need to protect bystanders and family members from the asbestos dust released in the directed use of the product.

The Debtor expresses with false pride that finally in 1979—17 years after it first manufactured AC Pipe—it finally put a warning on its product. Unfortunately, the warning said nothing about asbestos. It only warned against use of a particular saw to cut the pipe.[124] Even a worker who observed and read the warning might never make the connection to the danger of

[120] Debtor Brief, 6. ("Throughout the 1960s and into the early 1970s, there was little health concern over AC Pipe because the asbestos fibers were encapsulated, or 'locked in,' and exposures from the normal use of the products were much less than in mines, in manufacturing facilities, and among insulation workers.").

[121] [A-38]. Letter from CertainTeed Corp. to B.J. Pigg (Feb. 11, 1982).

[122] *Id.*

[123] *Id.*

[124] *See* Debtor Brief, 10.

releasing asbestos fibers. Perhaps he would believe that type of saw might cause cracks in the pipe or cause shards to come off and cut the user. The warning did refer to a Recommended Work Practice Guide.[125] However, the Debtor does not contend that booklet warned about asbestos either.[126] The Debtor claims that it separately distributed an industry guide that did point out the health risks of asbestos, but the warning makes no reference to that guide, nor does the Debtor assert it distributed this with every shipment of pipe. Given that the industry, two years previously, had specifically recognized the danger of asbestos escaping from AC Pipe, CertainTeed's failure to include that information in its vaunted warning makes it useless.

C. CertainTeed Delayed Removing Asbestos from Its Products for Financial Gain

CertainTeed carefully controlled the messaging regarding the health hazards of AC Pipe to continue its steady revenue stream. When a warning label was proposed in the early 1970s, CertainTeed rejected the addition of such a label:

> We feel strong that any such label on our finished product, particularly pipe, to be used for drinking water transmission, would make it unsaleable. Municipalities subject to political pressures would not take a chance on a product so labeled. There is no evidence that ingestion of asbestos fiber in any way is harmful. However, all the public and the public officials will see when they see the label is the word "cancer" and the "No sale" sign will go up.[127]

At the same time CertainTeed was telling OSHA to not require a cancer warning, it was making high profit margins. On March 14, 1972, CertainTeed informed OSHA that AC Pipe was "seldom if ever cut or machined after leaving the plant,"[128] despite publishing installation guides

[125] *Id.* at 9-10.

[126] *Id.*

[127] [A-4]. Castleman, *supra* note 15, at 599, quoting CertainTeed's Vice President B.F. Leaman in hearing transcript for OSHA standards, Mar. 26, 1972.

[128] *Burch v. Certainteed Corp.*, 34 Cal. App. 5th 341, 352 (Ct. App. 2019).

in 1971 and 1974 regarding cutting the piping in the field. Again, the California state appellate court found this detail persuasive in upholding its verdict for the plaintiff, Mr. Burch.

> In 1972, despite this information, defendant rallied the Occupational Safety and Health Administration (OSHA) to raise the suggested asbestos exposure limit to one that defendant would "try to live with," while still "preserving [its] business." [CertainTeed] lobbied to keep the word "cancer" from any legally required warning signs and to prevent product warning labels on A/C pipe, stating that such warnings would make its product unsellable and there was no need for them because the pipe was "seldom if ever cut or machined" after leaving the plant. Yet, [CertainTeed's] installation guides from the 1960's and early 1970's touted the ease of cutting and machining A/C pipe in the field.[129]

The California Supreme Court also found it instructive that CertainTeed developed a script to combat the increasing questions throughout the 1970s:

> In 1977, because the question of health continued "to plague" [CertainTeed,] it developed a script for its salespeople to discuss "A/C Pipe and Health." Salespeople were told that certain information should be given to customers "only when the A/C Pipe and Health question has been raised by an existing or potential customer." They were also told not to ad lib, and to quote the script when speaking to customers.[130]

CertainTeed maintained a pattern of coordinated concealment aimed at keeping the company's revenue stream intact. To put it bluntly, CertainTeed placed its profits over lives.

D. Increased Filings Against the Debtor Are the Result of Discovery and Development of the Facts of CertainTeed's Knowledge, Distribution and Actions and Inactions in Connection with Its Sale of Asbestos Products

Having continued to manufacture and widely distribute asbestos products that would knowingly expose individuals to asbestos years after government warnings about the dangers of such products, and decades after it was first sued for the use of those same products, the Debtor seeks to argue that a "Bankruptcy Wave"—and not its own successful promotion of its deadly

[129] *Id.*

[130] *Id*.

products and their dissemination into the stream of commerce—is responsible for an increase in claims against CertainTeed.

The Debtor contends that claims against it increased dramatically from 2001 because of bankruptcy filings by the so-called "top-tier defendants." The Debtor suggests that this increased filing of claims is the result of faulty product identification and the aggressive and inappropriate pursuit of a solvent defendant by unscrupulous plaintiff firms at any cost. [131]

The "Bankruptcy Wave" argument should be seen for what it is—an after-the-fact, revisionist, strategic invention. In fact, CertainTeed voluntarily joined with other asbestos defendants in jointly resolving asbestos claims based on a formula percentage participation.

When an asbestos defendant petitions for reorganization, all claims against that defendant are enjoined while the bankruptcy is pending.[132] If, after emerging, the reorganized debtor establishes a trust to resolve its asbestos claims under Section 524(g), each claimant is generally paid only a percentage of the total value of their claim.[133] Persons with asbestos-related diseases

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[131] Indeed, the Debtor is not the only co-defendant to assert a change in its claiming history because of the "bankruptcy wave." The same mantra has been raised in other cases filed by asbestos defendants, including: *In re Bestwall, LLC,* Chapter 11 Case No. 17-31795 (Bankr. W.D.N.C.); *In re Garlock Sealing Techs., LLC*, Chapter 11 Case No. 10-31607 (Bankr. W.D.N.C.); *In re Specialty Prods. Holding Corp.*, 10-11780 (JKF) (Bankr. D. Del.); *In re Motors Liquidation Co.,* Chapter 11 Case No. 09-50026 (REG) (Bankr. S.D.N.Y.); *In re Leslie Controls, Inc.,* Chapter 11 Case No. 10-12199 (CSS) (Bankr. D. Del.); *O'Neil v. Crane Co. and Warren Pumps, LLC,* Docket No. S177401 (Cal. Sup.). Therefore, the Debtor is hard-pressed to argue that CertainTeed's historical asbestos liability is an anomaly when it is identical to the experience of other asbestos-defendants. The one parallel factor in all these cases is that each of these defendants employed Bates White as their asbestos consultants. The fictional consequences of the "bankruptcy wave" has also been espoused by Bates White in several articles. *See e.g.,* Charles E. Bates, Ph.D. and Charles H. Mullin, Ph.D., *Having Your Tort and Eating It Too*?, 6 MEALEY'S ASBESTOS BANKR. REP. 1 (Nov. 2006) https://www.bateswhite.com/media/publication/61_media.287.pdf; Charles E. Bates, Ph.D. and Charles H. Mullin, Ph.D., *The Bankruptcy Wave of 2000 – Companies Sunk By an Ocean of Recruited Asbestos Claims,* 21 MEALEY'S LIT. REP. ASBESTOS 39 (Jan. 2007) https://www.bateswhite.com/media/publication/60_media.286.pdf; Charles E. Bates, Ph.D., Charles H. Mullin, Ph.D., A. Rachel Marquardt, Ph.D., *The Naming Game*, 24 MEALEY'S LIT. REP. ASBESTOS 1 (2009) https://www.bateswhite.com/media/publication/38_media.229.pdf.

[132] *See* Deborah R. Hensler, *As Time Goes By: Asbestos Litigation After* Amchem *and* Ortiz, 80 TEX. L. REV. 1899, 1918 (2002).

[133] For example, as reported in their annual reports, the Owens Corning/Fibreboard Asbestos Personal Injury Trust's payment percentage is 10-11%. *See* Notice of Service Notice of Filing Annual Report and Claims Summary Filed by Owens Corning/Fibreboard Asbestos Personal Injury Trust, *In re Owens-Corning*, Case No. 00-03837 (Bankr. W.D.

are thus motivated to seek and name solvent defendants that made real and significant contributions to causing their asbestos-related diseases, as each such defendant is (in most jurisdictions) jointly and severally liable for the plaintiff's injury. Because of the pervasive use of asbestos in American industry, there are many defendants that made or distributed asbestos-containing products that exposed hundreds of thousands of people to asbestos. Many of those defendants were not targeted heavily in the initial stages of the asbestos litigation, because the focus was on the largest and most visible manufacturers of asbestos products. As a result of the major asbestos defendants filing for bankruptcy, other asbestos manufacturers that initially had played smaller roles in the asbestos litigation became, naturally and appropriately, more prominent in the litigation. These defendants can and do seek contribution from the trusts and other parties who share responsibility for the plaintiffs' injuries.

CertainTeed acknowledges that it actively participated in the Asbestos Claimant Facility in the mid-1980s and the Center for Claims Resolution from 1988 to 2001. In 1985, thirty-two manufacturers of asbestos and/or asbestos containing products and sixteen insurance companies signed on to the Wellington Agreement in an effort to achieve a mass resolution of their asbestos-related claims.[134] The Wellington Agreement established a nonprofit organization, the Asbestos Claims Facility ("ACF"), to administer, evaluate, settle, defend, and pay the asbestos claims of its members. Facing certain structural issues, after three years, the ACF was dissolved, but the

Pa.) [Docket No. 20888] at Ex. 1, 12-13. The ACandS Asbestos Personal Injury Trust's payment percentage is 5.78%. *See* ACandS Trust Distribution Procedures, available at http://www.acandsasbestostrust.com/ (updated Jan. 1, 2021).

[134] The "Wellington Agreement" was so named because of the role played by Harry Wellington, then-Dean of the Yale University Law School, as a facilitator in the negotiations among the parties. Lawrence Fitzpatrick, *The Center for Claims Resolution*, 53 LAW & CONTEMP. PROBS. 13 (1990), https://core.ac.uk/download/pdf/62554167.pdf.

members pledged to establish a new claims resolution facility for those parties desiring to continue.[135]

Contemporaneously with the dissolution of the ACF, the Center for Claims Resolution ("CCR") was formed with twenty-one former manufacturers from the ACF.[136] Unlike the ACF, insurance companies were not members of the CCR, but most insurers signed agreements to support the operational costs of the CCR.[137] In an effort to resolve the structural issues that plagued the ACF, the CCR had a more flexible sharing formula for liability and expenses which calculated the shares of the manufacturers across four different time periods and a dozen occupational categories. The CCR also maintained detailed data on pending claims and was able to generate reports to monitor the need for new a sharing formula that corresponded to the changing nature of asbestos claims.[138] Member votes also corresponded to the respective members' share of expenses and liabilities.[139] Finally, all members of the CCR agreed to a claims-handling process that attempted to prioritize settling meritorious claims prior to the trial date, with substantial resources spent on reducing the backlog of cases against members.[140] CertainTeed was a member of the CCR, along with other financially healthy companies.[141]

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[135] *Id.* at 15-17.

[136] The 19 financially viable defendants were: Amchem Products, Inc.; A.P. Green Industries, Inc.; Armstrong World Industries, Inc.; Certainteed Corp.; C.E. Thurston and Sons, Inc.; Dana Corp.; Ferodo America, Inc.; Flexitallic, Inc.; GAF Corp.; I.U. North America, Inc.; Maremont Corp.; National Service Industries, Inc.; Nosroc Corp.; Pfizer, Inc.; Quigley Co., Inc.; Shook & Fletcher Insulation Co.; T & N, PLC; Union Carbide Chemicals and Plastics Co.; and United States Gypsum Co. One defendant, The Asbestos Claims Management Corp., formerly the National Gypsum Company, filed for bankruptcy. *See* Susan P. Koniak, *Feasting While the Widow Weeps:* Georgine v. Amchem Products Inc., 70 CORNELL L. REV. 1045 (May 1995), https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2568&context=clr.

[137] Fitzpatrick, *supra* note 134, at 17.

[138] *Id.*

[139] *Id.*

[140] *Id.* at 18.

[141] [A-4]. Castleman, *supra* note 15, at 274.

The CCR did not settle and pay asbestos claims based upon any individualized case analysis of fault; rather, claims were paid based upon minimal exposure evidence. As acknowledged by the Debtor:

> CCR members agreed not to attempt to determine the individual liability of the members sued by plaintiffs in any given lawsuit. Instead, once a claimant provided adequate evidence of exposure to one of the CCR members' products, the CCR agreed to pay a total settlement in exchange for releases for all CCR members. The total cost of the settlement was then shared among all CCR members sued by the plaintiff pursuant to separate, internal member sharing-agreements regardless of whether the plaintiff submitted any evidence of exposure to those companies' products.[142]

CertainTeed's share was about 3%.[143] CCR payments represented the largest single payments for most plaintiffs.

Therefore, historically, despite its culpability, CertainTeed was not pursued aggressively in the tort system. Because CertainTeed had already agreed to pay as part of a consortium, claims against it increased when those arrangements ended—not because of and certainly not solely because of the "Bankruptcy Wave."

Following the dissolution of the CCR and the bankruptcy filings by other defendants, asbestos claims increased for all co-defendants as overall, average trial verdicts multiplied, and settlement averages increased well above monetary inflation during this period. As certain of the larger defendants filed bankruptcy cases, many of which lasted for years,[144] the dogged investigation by plaintiff attorneys into other companies that manufactured, distributed, and sold asbestos-containing products revealed problematic facts demonstrating how profit was placed

[142] Debtor Brief, 15.

[143] *Id.*

[144] *See e.g.*, Babcock & Wilcox Co. (six years); Pittsburg-Corning Corporation (sixteen years); Owens Corning Fiberglas (six years); Armstrong World Industries (six years); W.R. Grace & Co. (thirteen years); Federal Mogul (six years); and GAF (eight years).

above safety as the lives of unwitting consumers, employees, and bystanders were placed in danger. Having uncovered the dirty truth about this cover-up, there was no going back to the days when such companies avoided liability by hiding behind the larger companies that had picked up the responsibility and costs for all.[145]

The Debtor's argument also ignores the biological lag time between exposure to CertainTeed's products and the development of asbestos-related illnesses. The median latency period from the time of first exposure to asbestos and the development of mesothelioma in men is 45 years.[146] It is not at all surprising that CertainTeed would experience increasing claims as time passed from its entry into the market for asbestos-containing products in the 1960s. Given a median latency period of 45 years, the Debtor can expect at least as many claims after 2009 as before. Moreover, the Debtor's argument presupposes that exposure only occurs during the installation of AC Pipe. As its own example demonstrates (*see* Debtor Brief, 23), there are other instances such as subsequent removal of pipe—not to mention the impact of wear and tear on buried pipe carrying drinking water—that would affect the number of claims. Thus, the increased claims during this time period are the direct and foreseeable result of CertainTeed's misconduct. Greater public knowledge of asbestos disease also resulted in an overall increase in the number of individuals pursuing compensation for asbestos injury.

[145] Moreover, the fact that CertainTeed may have benefitted from not having been identified as a major defendant earlier has no relevance to its actual liability.

[146] The delay between exposure to asbestos and the development of symptoms, known as the "latency" period, can be as little as a few years but is almost always many decades. Accordingly, exposures to CertainTeed's AC Pipe in the 1970s continues to result in mesotheliomas diagnoses. The increased risks of asbestos-related cancer last a lifetime. *See also* [A-39] A. Marinaccio et al., *Analysis of Latency Time and Its Determinants in Asbestos Related Malignant Mesothelioma Cases of the Italian Register*, 43 EUR. J. CANCER 2722 (Dec. 2007) (median latency 45 years). Different studies have arrived at varying conclusions of latency, with some expecting latency periods as short as 6 years and others as long as 84 years.

The Debtor also suggests that an increase in filing of claims against it are the result of improper product identification by plaintiffs. This theory also suggests that courts around the country have been, and will continue to be, incapable of sorting through the merits of claims against the Debtor brought by asbestos claimants. Not only is that allegation offensive and disrespectful to the various jurists and juries who have considered claims against CertainTeed, it is unsupported by the facts. Indeed, Judge Graham C. Mullin of the U.S. District Court for the Western District of North Carolina, in confirming the plan proposed in the chapter 11 case *In re Kaiser Gypsum*, noted that "[t]his Court is not inclined to indict its colleagues on the state benches, nor does the Court believe that a bankruptcy court in North Carolina is necessary to protect state courts from fraud."[147]

The ***four*** examples set forth in the Debtor Brief pulled from the thousands of cases settled by the Debtor demonstrate that the tort system is working.[148] For example, the Debtor discusses the Florida plaintiff suffering from peritoneal (abdominal) mesothelioma who alleged exposure to asbestos in AC Pipes while cutting and removing underground irrigation pipes.[149] The Debtor asserts that the cause of mesothelioma was the plaintiff's exposure to therapeutic radiation at a young age. The Debtor also asserts that the plaintiff misidentified the type of piping as AC Pipe while its own records indicate that it could not have sold such piping during the specific time period.[150] According to the Debtor, CertainTeed excavated the pipe and found the excavated

[147] *Findings of Fact and Conclusions of Law Regarding Confirmation of the Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc., as Modified* 25-27, *In re Kaiser Gypsum Co., Inc.,* No. 16-31602 (W.D.N.C., July 27, 2021) [Docket No. 2745] (footnotes omitted).

[148] The Committee has not reviewed the entirety of the files regarding the plaintiffs referenced in the Debtor Brief. Should the Committee at some point obtain access to and review these files in their entirety, the Committee Brief may be supplemented to address these cases more fully.

[149] Debtor Brief, 19-20.

[150] *Id.*

portion was not AC Pipe. Ultimately, CertainTeed won a defense verdict at trial. This case demonstrates that the tort system works. CertainTeed was capable of defending itself against allegedly meritless claims in the tort system through motion practice, discovery, and trial.

In a second case, which settled during trial,[151] the Debtor asserts that a plaintiff and his counsel engaged in intentional withholding of evidence. Importantly, when the information that was allegedly concealed came to light—which Debtor describes as a "diametrically different story about the Navy exposure than what plaintiff had just told the jury"[152]— CertainTeed still settled for the same amount it had offered before the trial began, evidently imposing no discount for this allegedly shocking example of "the pattern of misrepresenting alternate exposures . . ."[153] The simple explanation is CertainTeed had liability. While it focuses on that one plaintiff's alleged misconduct, it carefully avoids discussion of its own.

The Debtor also misconstrues the testimony of a third plaintiff from Baltimore in an attempt to portray the plaintiff as dishonest by either denying or neglecting to identify exposures to other defendants' products.[154] However, the Debtor's own medical expert acknowledged that in his deposition, the plaintiff recalled that he may have been exposed to drywall materials and compounds manufactured by other defendants.

The Committee has been provided with little information on the fourth plaintiff from Oklahoma and therefore is unable to fully respond to the Debtor's allegations regarding this claimant.

[151] *Id.* at 21-22.

[152] *Id.*

[153] *Id.* at 21.

[154] *Id.* at 22-23.

IV. ASBESTOS TRUSTS AND TRUST ADMINISTRATION

The Debtor's attempt to blame its tort history on the "Bankruptcy Wave" ignores not only the latency period discussed *supra* but also the nature of the trust system that was put into place in connection with other asbestos bankruptcies. Because the Debtor accuses victims and their counsel of undermining CertainTeed's defense by submitting claims to trusts in addition to collecting settlement payments from CertainTeed, the Committee provides this introduction to the workings of the trust system instituted pursuant to section 524(g) of the Bankruptcy Code.

A. Section 524(g) of the Bankruptcy Code Provides for Establishment of a Trust

Due to the long latency periods inherent in asbestos-related diseases, the individuals who worked with and around asbestos had no immediate indication that they were being harmed. From a legal perspective, the decades-long latency period between initial exposure to asbestos and manifestation of asbestos-related disease means that even when the manufacturer stops using asbestos, diseases will continue to develop and manifest for 30, 40, 50 or more years after that initial exposure.

As a result, pursuant to the carefully constructed contours of section 524(g) of the Bankruptcy Code, "future claimants" or "demand holders"—individuals who will manifest injuries in the future and have the right to seek payment for such injuries—must be treated the same as those who have manifested injuries.

The *Johns-Manville* court first approved the concept of a trust to which all asbestos claims and future demands—those already manifested and those that would one day manifest—could be channeled.[155] In 1994, Congress enacted section 524(g) of the Bankruptcy Code which is the Congressional embodiment of the *Johns-Manville* resolution. Section 524(g) was enacted

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

specifically to address the unique features of an asbestos bankruptcy case in which the debtor wanted a complete resolution of its legacy asbestos liabilities and to continue in business. The statute provides an asbestos debtor relief—while providing that all claims will be channeled to a trust and the present as well as future claimants have a source of recovery for their injuries.

As Bankruptcy Judge Judith K. Fitzgerald observed:

> The purpose of section 524(g) is to provide those whose illnesses manifest post-petition regardless of pre- or post-petition exposure, with a fund for recovery equivalent to what currently ill claimants will be paid. Section 524(g) thus removes the risk that the size of payment in compensation for injuries will depend on how quickly a victim gets sick or manifests an injury. It is impossible to include all individuals who are asymptomatic in the "known, exposed category" because those individuals, themselves, do not know that they might become ill and thus, hold a right to payment, contingent on manifesting an illness. Without the existence of a trust to handle future demands, when asymptomatic individuals eventually manifest an injury, the debtor may no longer have available funds with which to compensate them.

In re Flintkote Co.[156]

Though there are a number of requirements for a trust to be established pursuant to this section, the important point is that it is a source of recovery ***even for individuals who do not know that they were affected by a debtor's products***. The trust's role is to pay for the plaintiff's injuries attributable to the debtor/defendant. That is, the trust pays the several liability of the defendant for which it was created.

B. Cumulative Exposure: Recovery Relating to Indivisible Injuries Caused by Multiple Tortfeasors

It is a fundamental tenet of American tort law that when a person is harmed by multiple tortfeasors, the victim is entitled to recover damages from each entity that caused the injury.[157]

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[156] *In re Flintkote Co.*, 486 B.R. 99, 124-25 (Bankr. D. Del. 2012).

[157] *See, e.g.*, RESTATEMENT (SECOND) TORTS § 875 (1979) ("Each of two or more persons whose tortious conduct is a legal cause of a single and indivisible harm to the injured party is subject to liability to the injured party for the entire harm."); 74 AM. JUR. 2D TORTS § 64 (Aug. 2018 update) ("Concurrent tortfeasors whose separate acts contribute to

This basic tort principle is especially warranted in cases involving harm caused by asbestos. When an individual develops an asbestos-related disease, the accumulated asbestos exposures of the victim over a lifetime are all regarded by medical experts and by the law as causes of the disease. In many cases, this involves exposure to multiple asbestos products manufactured and distributed by many different companies and utilized at numerous sites (workplaces and homes) for various purposes.

The Fifth Circuit, in the landmark case *Borel v. Fibreboard Paper Prods. Corp.,* 493 F.2d 1076 (5th Cir. 1973), *cert. denied,* 419 U.S. 869 (1974), established that manufacturers and distributors of asbestos products were liable to persons injured as a result of using their products because of their failure to warn workers of their danger. Recognizing that because of the very nature of their employment many people have been exposed to a variety of asbestos products made by a large number of manufacturers under circumstances that make it impossible to ascribe resulting disease to one particular product or exposure, the *Borel* court found that asbestos exposures attributable to each defendant could constitute a substantial contributing factor in causing asbestos diseases. Therefore, every defendant who contributed to the plaintiff's lifetime asbestos exposure is legally responsible for the plaintiff's asbestos-related injuries.[158] Courts throughout the country have accepted the legal principles set out in *Borel*.[159]

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an injury are each liable."); 2 MODERN TORT LAW: LIABILITY AND LITIGATION, § 19:1 (2d ed.) (June 2018 update) (discussing "joint torts" and noting where Professor Prosser has indicated the circumstances under which two or more defendants might be liable for the same injury including concurrent causation of a single injury); RESTATEMENT (THIRD) OF TORTS: APPORTIONMENT LIAB., § 10 (2000) ("When, under applicable law, some persons are jointly and severally liable to an injured person, the injured person may sue and recover the full amount of recoverable damages from any jointly and severally liable person.").

[158] *Borel*, 493 F.2d at 1095.

[159] *See, e.g., Jones v. John Crane, Inc.*, 35 Cal. Rptr. 3d 144, 151 (Ct. App. 2005) (experts provided substantial evidence that lung cancer was caused by cumulative exposures with each exposure constituting substantial factors contributing to the risk of injury); *John Crane, Inc. v. Wommack*, 489 S.E.2d 527, 532 (Ga. Ct. App. 1997) ("Expert testimony showed it is universally agreed that asbestos fibers are intrinsically dangerous and that respiration of each fiber is cumulatively harmful . . . "); *Blancha v. Keene Corp*., No. 87–6443, 1991 WL 224573, at *6 (E.D. Pa. Oct.

Asbestos victims have the right to recover from every entity that is legally responsible for their injury.[160] Take for example a shipyard worker who helped repair U.S. Navy warships and contracts mesothelioma. That shipyard worker may have been exposed to asbestos in and around boilers, pumps and piping systems, thermal insulation, gaskets, and packing. That individual can legally recover from every entity responsible for the manufacture and distribution of the asbestos to which he was exposed, provided he can prove exposure that meets the causation threshold of the jurisdiction whose substantive law applies to the case. The same applies to the worker who installed various brands of AC Pipe. This includes both those defendants sued in the tort system and the trusts established pursuant to section 524(g) of the Bankruptcy Code that stand in the shoes of bankrupt defendants.

An asbestos victim who commences suit against multiple defendants will have to litigate those claims to conclusion as to each defendant or settle those claims if the defendant is willing to do so.

Each individual defendant's liability is determined in accordance with applicable state law. In states applying several-only liability rules, if a responsible co-defendant cannot pay, the plaintiff bears the risk of the loss and cannot recover that co-defendant's share from other solvent co-defendants.[161]

24, 1991) (every exposure to asbestos is a substantial factor in causing mesothelioma); *Held v. Avondale Indus., Inc*., 672 So. 2d 1106, 1009 (La. Ct. App. 1996) (medical evidence shows no safe level of asbestos exposure; all exposures a substantial factor in causing mesothelioma); *Mavroudis v. Pittsburgh-Corning Corp.*, 935 P.2d 684, 686 (Wash. Ct. App. 1997) (any exposure to asbestos contributes to development of mesothelioma); *Eagle-Picher Indus., Inc. v. Balbos*, 84 Md. App. 10, 48 (Md. Ct. Spec. App. 1990) (citing *Borel*, 493 F.2d 1076, and *Dartez v. Fiberboard Corp.*, 765 F.2d 456 (5th Cir. 1985) when concluding that "it could reasonably be inferred that Eagle-Picher, in 1938 and even more likely by 1942, knew or should have known of the dangers regarding its asbestos containing products.").

[160] *See In re Asbestos Prods. Liab. Litig. (No. VI) (In re Roberta G. Devries*), 873 F.3d 232, 240 (3d Cir. 2017) (concluding that bare-metal product manufacturer "may be held liable for a plaintiff's injuries suffered from later-added asbestos-containing materials if the facts show the plaintiff's injuries were a reasonably foreseeable result of the manufacturer's failure to provide a reasonable and adequate warning.").

[161] U.S. Gov't Accountability Off., GAO-11-819, Report to the Chairman, Committee on the Judiciary, House of Representatives: *Asbestos Injury Compensation—The Role and Administration of Asbestos Trusts,* 27 (Sept. 2011). https://www.gao.gov/products/GAO-11-819.

In states applying joint and several liability rules, each defendant found liable can be required to pay the entire judgment, minus any setoffs for settlements from other joint tortfeasors (including, potentially, amounts from bankruptcy trusts).[162] Often, the verdict defendant is then allowed to seek contribution from other jointly responsible parties. Generally, after a verdict is paid, the tort system defendant who paid the verdict succeeds to any rights the asbestos-claimant may have had against any remaining tort system defendants and trusts and can recover from those defendants and trusts in the claimant's stead.[163]

Identifying which asbestos products and which asbestos-defendants contributed to the claimant's harm is the result of investigation and analysis of data gleaned from decades of asbestos-litigation. The information does not come from a single asbestos claimant. An individual claimant often does not know which entities provided the asbestos products present at a site where the claimant worked decades earlier. The claimant is typically extremely sick or dying, or is the surviving spouse of, or estate representative for, such a person. It is common that the only information known at the outset of a case is where the claimant worked and a general idea of the kinds of materials with which the claimant may have worked. The claimant could have been an asbestos-exposed worker such as a painter, pipe fitter, or construction worker, or may have dug the ditch for the AC Pipe or may be a family member who laundered the asbestos-contaminated clothes of an asbestos-exposed worker.

Because of years of asbestos litigation and discovery, asbestos litigants (including defendants and their attorneys) have access to a library of well-developed data demonstrating proof of product exposure at many job sites throughout the country, including which defendants'

[162] *Id.*

[163] *Id*.

products were present at the sites. This information is used by all parties to asbestos-litigation to identify products and defendants in the tort system and is constantly growing and evolving as new evidence comes to light.

C. Trust Administration

Often, when a co-defendant exits the tort system and concludes a bankruptcy case, it results in the formation and funding of a trust pursuant to section 524(g) of the Bankruptcy Code. The trust acts as the settlement vehicle for the payment of that particular co-defendant's obligations as they existed in the tort system. The trust replaces the debtor as a source for funding the debtor's share to the extent possible, and the distributions from the trust replace the debtor/co-defendant's share of liability to the asbestos claimant. The trust pays only that debtor/co-defendant's several liability share of tort liability.

An asbestos trust is formed pursuant to a trust agreement ("TA"). The TA sets forth the trust's purpose, acknowledges the transfer and acceptance of assets from the debtor in exchange for assuming the debtor's liability, and describes key actors in the trust's administration and their roles with the trust. The trust distribution procedures ("TDP") set forth the procedures that govern the review, valuing, and payment of asbestos-related personal injury claims. The TDP governs claims processing, assigns values for various asbestos-related diseases, sets medical and exposure criteria for the different diseases, prescribes procedures for reviewing the claims, and establishes a dispute resolution process. These provisions function to ensure that all claimants, both current and future, receive comparable compensation for their asbestos-related injuries.[164]

[164] *Id.* at 14-15; Francis E. McGovern, *The Evolution of Asbestos Bankruptcy Trust Distribution Plans,* 62 N.Y.U. ANN. SURV. AM. L. 163, 166-67 (2006), http://www.law.nyu.edu/sites/default/files/ecm_pro_064604.pdf.

Asbestos trusts are managed by one or more trustees, subject to certain consultation and consent rights afforded to a trust advisory committee ("TAC"), a group established by the TA and a Future Claimants' Representative, a position mandated by §524(g). Trustees manage the daily operation of the trusts, including overseeing the processing of claims and the trust's investments, hiring and supervising support staff and advisers, filing tax returns, and submitting annual reports to the bankruptcy court, as required by the TA. The trustees manage the trust for the sole benefit of the present and future claimant beneficiaries. The TAC and Future Claimants' Representative consult with the trustees on various matters, and as detailed in the TA and the TDP, the trustees must obtain the consent of the TAC and Future Claims' Representative with respect to certain trust matters.[165]

Each trust's governing documents are designed to enable the trust to distribute settlement payments to present and future claimants in amounts that are based on the historic tort system claim values paid by that particular debtor when it was a co-defendant in the tort system. Therefore, the trusts are not intended to and do not consider other exposures or claims of the victims because that calculation has already been "baked-in" the historical settlement payments.

D. Trust Claims Are Not Proof of Suppressed Evidence

In the Debtor's Brief, the Debtor acknowledges that many plaintiffs would submit claims to §524(g) trusts in addition to suing non-bankruptcy asbestos-related companies in the tort system. Notwithstanding this acknowledgement, the Debtor asserts—based on misrepresented summaries of only three claimant files, out of tens of thousands—that such trust claiming lead to evidence suppression that impacted the Debtor's settlement decisions. The Committee disagrees with the Debtor's assertion.

[165] GAO Report, *supra* note 161, at 14-15; McGovern, *supra* note 164, at 166-67.

An asbestos trust pays only the several liability of its predecessor defendant. Claim processes developed by asbestos trusts are designed to require only evidence relevant to whether the predecessor defendant would have had liability to the claimant. A claimant must comply with a trust's specific criteria for payment. Failure to do so can result in a claim being deemed deficient and denied. A claimant's occupation and the fact that he or she worked at a particular site during a specified time period are often sufficient to establish that a claimant is entitled to file a claim for certain trusts.

For example, the Owens Corning Fibreboard Asbestos Personal Injury Trust website (http://www.ocfbasbestostrust.com) contains a "site list" of locations where Owens Corning products were admittedly present, and the dates that those products were present at the listed site. The website contains a similar site list for Fibreboard products. If a claimant worked at one of the locations on that site list during the relevant dates in certain occupations for the requisite period of time and could therefore properly make a claim for payment under the Owens Corning Asbestos Trust, that claimant's other exposures are irrelevant because the Trust is only funded to account for Owens Corning's several liability.

Similar lists exist for most other trusts created since 2013 to resolve asbestos liabilities. A selection of trusts with site lists and work lists established in the five years immediately preceding this case is listed in the following figure, **Figure 1**.

Figure 1.
Asbestos Trusts with Site Lists (Formed since 2013)

Company	Asbestos Trust Fund	Created	Initial Funding	# sites	# states (or other juris.)
Pittsburgh Corning[166]	Pittsburgh Corning Corporation Asbestos Personal Injury Trust	2013	$3.41 billion	980	54 (+2 ships)
A. P. Green Industries[167]	APG Asbestos Trust	2014	$333 million	12,269	70
W.R. Grace & Co.[168]	WRG Asbestos Personal Injury Trust	2014	$2.98 billion	4,108	57
Flintkote Co./Flintkote Mines Ltd.[169]	Flintkote Company and Flintkote Mines Limited Asbestos Personal Injury Trust	2015	$214 million	792	46
Yarway[170]	Yarway Asbestos Personal Injury Trust	2016	$325 million	476	22 (+454 ships)

Using such a site list, a claimant diagnosed with an asbestos disease need only to establish that he or she was working at a listed site at a particular time in a particular occupation for the requisite duration in order to be compensated.

These trusts have other criteria that can qualify a claim for payment, but so do Trusts that do not have site lists. Those can include geographical limitations or affidavits requiring specific

[166] Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust. https://www.pccasbestostrust.com/ (updated July 26, 2021).

[167] APG Asbestos Trust. http://apg.mfrclaims.com/Resources.html (updated Sept. 29, 2020).

[168] WRG Asbestos PI Trust. https://www.wrgraceasbestostrust.com/ (updated July 17, 2019).

[169] The Flintkote Asbestos Trust. https://www.flintkoteasbestostrust.com/ (updated Nov. 28, 2018).

[170] Yarway Trust. http://www.yarwaytrust.com/index.php/documents/ (last visited August 16, 2021).

information relevant to the use of a particular defendant's products, or a variety of other kinds of evidence.

Every asbestos trust maintains a website that provides the forms that establish the criteria for making a claim. Typically, the website contains the documents that govern the "payment percentage" (the percentage that their limited resources permit them to pay against the liquidated value of an approved claim), the "scheduled value" for each recognized type of asbestos disease compensable by the trust (the liquidated values assigned for claims that have been qualified by expedited review), and for disease levels with respect to which a claimant is permitted to seek individual review, the "maximum value" (the most the trust will pay for a liquidated claim), and an "average value" (the average liquidated claim in a specific diagnosis category), which is used as a target for individual review when desired.

Because this information is public, asbestos defendants also routinely use this information to evaluate their own settlement strategy. By evaluating a claimant's work and exposure history (information all defendants can seek in tort discovery) and the information trusts make public, defendants can readily discern the trust recoveries a claimant may receive.[171]

Of the three cases that the Debtor points to as proof of suppression of information by plaintiffs in the tort system, two specifically are based on bankruptcy trust claims. In each of those two cases, CertainTeed settled despite what it presents as overwhelming evidence of misconduct. Notably, in one of the two cases, the alleged suppression of other exposures was not even the plaintiff, or the plaintiff's husband, the victim—but instead was a co-worker who had allegedly

[171] Charles E. Bates, Ph.D., chairman and founding member of Bates White—an economic, financial, and econometric adviser to law firms, companies, and government agencies—noted that Bates White "provides our opinion regarding what are the reasonably estimable future expenditures of the company associated with their future asbestos claims based on" all available information. *See* [A-40] Bates Dep. 24:9-14, Feb. 3, 2011, *In re Specialty Prods. Holding Corp.* (Case No. 10-11780) (Bankr. D. Del.).

submitted affidavits inconsistent with his deposition testimony. Also notable: These cases were both quite old—one went to trial in 2009 and the other in 2012. Many changes in the law that require disclosure of trust claims and potential trust claims have occurred in the decade since.[172]

CONCLUSION

The Debtor wants this Court to believe that CertainTeed was the true victim in its asbestos history. However, CertainTeed has a long history of manufacturing and selling pipes with asbestos for decades after this toxic fiber was known to be unsafe. It continued to do so for twenty years after having been sued itself, arguing its particular asbestos was not unsafe or did not cause a plaintiff's illness. The sharply declining chances of avoiding liability in the tort system, in combination with the long latency period of asbestos-related illness, made CertainTeed conclude that it was time to get rid of its asbestos problem because it just cost too much. Unfortunately, CertainTeed's victims do not have that option as they are now sick and dying.

[172] Many states have enacted statutes on this topic or special discovery rules or case management orders that require claimants to disclose certain trust information in litigation. *See e.g.,* Ga. Code Ann. § 51-14-7 (2007) (requiring sworn statement filed with complaint); Ohio R.C. §§ 2307.951-954 (eff. Mar. 27, 2013) (requiring sworn statement identifying trust claim disclosure within 30 days of discovery commencing and continuing duty to report any claim); 76 Okl. St. Ann. §§ 81-89 (eff. Aug. 22, 2013) (requires statement be provided within 90 days of commencement of lawsuit of claims filed and duty to supplement); Wis. Stat. § 802.025 (eff. Mar. 29, 2014) (requiring sworn disclosure within 45 days of commencing suit); W. Va. Code § 55-7F-4 *et seq.* (eff. June 9, 2015) (sworn statement 120 days before trial disclosing trust claims filed or to be filed); Ariz. Rev. Stat. § 12-782 (requiring sworn statement regarding anticipated and filed trust claims within 45 days after the defendant files an answer and must provide the trust documents within 60 days of the defendant's answer); Tex. Civ. Prac. & Rem. Code Ann. §§ 90.051-058 (eff. Sept. 1, 2015) (requires a plaintiff to make trust claims no later than 150 days before trial with certain caveats); Case Management Order, *In re N.Y.C. Asbestos Litig.* (NYCAL), No. 782000/2017 (N.Y.C. June 20, 2017) (controlling timing of trust claims); *id.* at Ex. C, "Defendants' Fourth Amended Standard Set of Interrogatories and Request for Production of Documents," (requiring production of bankruptcy trust claims); Standing Case Management Order for All Asbestos Personal Injury Case, *In re All Asbestos Litigation Filed in Madison County* (Ill. Cir. Ct. Madison Cty. Aug. 19, 2016) (providing for Standard Asbestos Interrogatories Directed to Plaintiffs specifically requesting information on claim submitted to trusts including name, amount and date of submission, and nature of claim); Corrected Case Management Order Requiring Disclosure of Bankruptcy Trust Claims, Claims-Related Materials and Asbestos Exposure Facts, *In re LAOSD Asbestos Litig.,* JCCP Case No. 4674 (Cal. Super. Ct. Los Angeles Cty. Jul. 15, 2015) (requiring production of bankruptcy trust related documents); Standing Order No. 1 – Amended on Oct. 10, 2013, *In re Asbestos Litig.,* C.A. No. 77C-ASB-2 (Del. Super. Ct. Oct. 10, 2013) (requiring production of executed proofs of claim and supporting materials provided to asbestos claims trusts).

CertainTeed's attempt to dump its asbestos liabilities into a worthless shell while escaping with all the assets—and to gain the benefits of bankruptcy protections for its global corporate family without any of the associated obligations—cannot be allowed to succeed. As the information the Committee presented here demonstrates, CertainTeed is not the victim. Rather, it was CertainTeed's business decision to use dangerous asbestos in its products that led to its history of litigation in the tort system. Years later, the scope of that terrible choice has become evident. These innocent and long-suffering victims are entitled to fair—and full—recovery, in the tort system and in this Court.

Dated: August 23, 2021
Charlotte, North Carolina

/s/ Glenn C. Thompson

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Counsel to the Official Committee of Asbestos Personal Injury Claimants

ANNEX 1

Listing of Amicus Briefs

Physicians, Scientists and Academics Who Agree That Chrysotile Asbestos Can and Does Cause Mesothelioma

	Amicus Brief
A	Laura S. Welch—Asbestos Exposure Causes Mesothelioma, But Not *This* Asbestos Exposure (2007)
B	*Dixon, et al. v. Ford Motor Company*, Brief of *Amici Curiae* Interested Physicians and Scientific Researchers in Support of Appellant,
C	*Rost v. Ford Motor Company*, Brief of Muge Akpinar-Elci MD, MPH, et al. as *Amici Curiae* in Support of Appellees, April 4, 2015
D	*Schwartz, et al. v. Honeywell International*, Brief of 51 Concerned Physicians, Scientists, and Scholars Regarding Causation of Asbestos-Related Disease, as Amici Curiae in Support of Appellees, July 17, 2017
E	*Delisle v. Crane Co., et al.* , Brief of 44 Concerned Physicians, Scientists, and Scholars Regarding Causation of Asbestos-Related Disease as *Amici Curiae* in Support of Petitioner, August 9, 2017
F	*Juni v. A.O. Smith Water Products Co., et al.* , Brief of Concerned Physicians and Scientists Regarding Causation of Asbestos-Related Disease, as *Amici Curiae* in Support of Appellant, January 2, 2018

	Name	**Amicus Briefing on Topic**
1	**Laura S. Welch**, MD, Adjunct Professor, George Washington University School of Public Health and Health Services, Washington, District of Columbia, USA	A, C, D, E, F
2	**Henry A. Anderson**, MD, Chief Medical Officer, Wisconsin Division of Public Health, Madison, Wisconsin, USA	A, B
3	**John C. Bailar III**, MD, PhD, Professor Emeritus, University of Chicago, Chicago, Illinois, USA	A
4	**John R. Balmes**, MD, Professor of Medicine, University of California, San Francisco, Professor of Environmental Health Sciences, School of Public Health Sciences, School of Public Health, University of California, Berkeley, Director, Northern California Center for Occupational and Environmental Health, UC Berkeley-UC Davis-UCSF, USA	A, B
5	**Lundy Braun**, PhD, Associate Professor, Departments of Pathology and Laboratory Medicine and Africana Studies, Brown University, Providence, Rhode Island, USA	A
6	**Arnold Brody**, PhD, Professor, Department of Molecular and Biomedical Sciences, North Carolina State University, Raleigh, North Carolina. USA	A
7	**Barry Castleman**, ScD, Environmental Consultant, Garrett Park, Maryland, USA	A, C, D, F
8	**David C. Christiani**, MD, MPH, MS, Professor, Harvard School of Public Health, Professor, Harvard Medical School, Cambridge, Massachusetts, Physician, Massachusetts General Hospital, Boston Massachusetts, USA	A
9	**Devra Davis**, PhD, Director, Center for Environmental Oncology, University of Pittsburgh Cancer Institute, Professor, Department of Epidemiology, University of Pittsburgh Graduate School of Public Health, Pittsburgh, Pennsylvania, USA	A

Physicians, Scientists and Academics Who Agree That Chrysotile Asbestos Can and Does Cause Mesothelioma

	Name	Amicus Briefing on Topic
10	**John M. Dement**, Ph.D., CIH, Professor, Duke University Medical School, Division of Occupational & Environmental Medicine, Department of Community & Family Medicine, Durham, North Carolina, USA	A, C, D, F
11	**Ronald Dodson**, PhD, President, Dodson Environmental Consulting, Inc., Tyler, Texas, USA	A
12	**Anders Englund**, MD, Former Director Medical and Social Affairs, Swedish Work Environment Authority, Former Director UICC, Stockholm, Sweden	A, D
13	**Bradley Evanoff**, MD, MPH, Associate Professor of Medicine, Washington University School of Medicine, St. Louis, Missouri. USA	A
14	**Arthur Frank**, MD, PhD, Professor, Chair, Department of Environmental and Occupational Health, Drexel School of Public Health, Philadelphia, Pennsylvania, USA	A, B, D, E, F
15	**Fernanda Giannasi**, Safety and Health Engineer, Labour Inspector at the Brazilian Labor Inspectorate in Sao Paulo State (retired), Manager of Asbestos Replacement Project, Work and Employment Department in Sao Paulo State, Coordinator of the Virtual-Citizen Ban Asbestos Network for Latin America, Founder of the ABREA-Brazilian Asbestos Victims Association, Sao Paulo, Brazil	A, D
16	**Michael Gochfeld**, MD, PhD, Adjunct Clinical Professor of Environmental and Occupational Medicine, Rutgers Robert Wood Johnson Medical School, Piscataway, New Jersey, USA	A, C, E
17	**Bernard D. Goldstein**, MD, Professor, Environmental and Occupational Health, Graduate School of Public Health, University of Pittsburgh, Pittsburgh, Pennsylvania, USA	A, B
18	**Julietta Rodriguez Guzman**, MD, Graduate Occupational Health Program, Universidad El Bosque, Colombia	A
19	**Douglas Henderson**, MD, Associate Professor of Pathology, Head, Department of Histopathology, Flinders Medical Center, Adelaide, South Australia	A
20	**Robin Herbert**, MD, Associate Professor, Department of Community and Preventive Medicine, Co-Division Director, Mount Sinai Center for Occupational and Environmental Medicine, Director, World Trade Center Monitoring and Treatment Program, Data and Coordination Center Mount Sinai School of Medicine, New York, New York, USA	A
21	**James Huff**, PhD, Guest Researcher, formerly Associate Director for Chemical Carcinogenesis, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, USA	A, C, D, E, F
22	**Peter F. Infante**, DDS, DrPH, Peter F. Infante Consulting, LLC, Falls Church, Virginia, USA; Formerly, 1978-2002, Director, Office of Standards Review, Occupational Safety and Health Administration, Washington, District of Columbia, USA	A, C, D, E
23	**Tushar Kant Joshi**, FRCS, FFOM, Director, OEM Programme, Centre for Occupational and Environmental Health, New Delhi, Fellow, Collegium Ramazzini, Italy	A, B, C, D, F

Physicians, Scientists and Academics Who Agree That Chrysotile Asbestos Can and Does Cause Mesothelioma

	Name	Amicus Briefing on Topic
24	**David Kreibel**, ScD, Professor of Epidemiology, School of Health and Environment, University of Massachusetts Lowell, Lowell Massachusetts. USA	A
25	**Joseph LaDou**, MS, MD, Director, International Center for Occupational Medicine, University of California School of Medicine, San Francisco, California, USA	A
26	**Philip J. Landrigan**, MD, MSc, FAAP, Dean for Global Health, Ethel H. Wise Professor and Chairman, Department of Preventive Medicine, Professor of Pediatrics, Director, Children's Environmental Health Center, Icahn School of Medicine at Mount Sinai, New York, New York, USA	A, B, C, D, E, F
27	**James Leigh**, M.B, MD, PHD, MA, MSc, BlegS, Senior Lecturer and Director, Centre for Occupational & Environmental Health, School of Public Health, University of Sydney, New South Wales, Australia	A
28	**Stephen M. Levin**, MD, Associate Professor, Department of Community & Preventative Medicine, Mount Sinai School of Medicine, Medical Director, Mount Sinai-IJ Selikoff Center for Occupational and Environmental Medicine, New York, NY, USA (deceased Feb. 2012)	A
29	**Eugene J. Mark**, MD, Professor of Pathology, Harvard Medical School, Massachusetts General Hospital, Boston, MA, USA	A, D
30	**Arthur McIvor**, PhD, Professor of Social History, Director, Scottish Oral History Centre, History Department, University of Strathclyde, Glasgow, Scotland	A
31	**David Michaels**, PhD, MPH, Director, The Project on Scientific Knowledge and Public Policy, Research Professor and Acting Chairman, Department of Environmental and Occupational Health, The George Washington University School of Public Health and Health Services, Washington, DC, USA	A
32	**Karen B. Mulloy**, DO, MSCH, Associate Professor, Department of Preventative Medicine and Biometrics, University of Colorado School of Medicine, Director, Occupational Health & Safety, Denver Health, Denver, CO, USA	A
33	**L. Christine Oliver**, MD, MPH, MS, Associate Professor of Clinical Medicine, Harvard Medical School, Boston, MA, Associate Physician, Massachusetts General Hospital, Boston, MA, President, Occupational Health Initiatives, Inc., Brookline, Massachusetts, USA	A, C, F
34	**Rory O'Neill**, Editor, Hazards Magazine, Sheffield, England	A
35	**Domyung Paek**, MD, MSc, ScD, Professor, Occupational and Environmental Medicine, School of Public Health, Seoul National University, Korea	A, C
36	**Lewis Pepper**, MD, MPH, Assistant Professor, Environmental Health, Boston University School of Public Health, Boston, MA, USA	A
37	**Bernardo Reyes**, Director, Institute of Political Ecology, Santiago, Chile	A

Physicians, Scientists and Academics Who Agree That Chrysotile Asbestos Can and Does Cause Mesothelioma

	Name	Amicus Briefing on Topic
38	**Cecile Rose**, MD, MPH, Acting Head, Division of Environmental & Occupational Health Sciences, National Jewish Medical & Research Center, Denver, CO, USA	A
39	**Kenneth Rosenman** MD, FACE, FACPM, Professor of Medicine, Chief of the Division of Occupational and Environmental Medicine, Michigan State University, East Lansing, Michigan, USA	A, B, C, D, E, F
40	**Brian Schwartz**, MD, MS, Professor of Environmental Health Sciences, Epidemiology, & Medicine, Johns Hopkins University, Bloomberg School of Public Health, Baltimore, MD, USA	A, B
41	**Michael Silverstein**, MD, MPH, Clinical Professor, University of Washington School of Public Health, Seattle, Washington, USA	A, C, D, E
42	**Rosemary Sokas**, MD, MOH, Director, Division of Environmental & Occupational Health Sciences, School of Public Health, University of Illinois at Chicago, Chicago, IL, USA	A
43	**Nancy L. Sprince**, MD, MPH, Professor, Department of Occupational and Environmental Health, University of Iowa College of Public Health, Iowa City, IA, USA	A
44	**Ken Takahashi**, MD, PhD, MPH, Professor of Environmental Epidemiology, IIES, Director of the WHO-CC for Occupational Health, IIES, University of Occupational & Environmental Health, Iseigaoka 1-1, Yahatanishiku, Kitakyushu City, Japan	A, C
45	**Tim K. Takaro**, MD, MPH, MS, Associate Professor, Faculty of Health Sciences, Simon Fraser University, Burnaby, British Columbia	A
46	**Daniel Thau Teitelbaum**, MD, Adjunct Professor, Occupational and Environmental Health, Colorado School of Public Health, Aurora, Colorado, USA	A, C, D, F
47	**Kay Teschke**, PhD, Professor & Chair, Division of Public, Environmental, and Occupational Health, Department of Health Care and Epidemiology, The University of British Columbia, Vancouver, BC, Canada	A
48	**Lorenzo Tomatis**, MD, Former Director, International Agency for Research on Cancer (IARC), Trieste, Italy (deceased 2007)	A
49	**Ivancica Trosic**, PhD, Institute for Medical Research and Occupational Health, University of Zagreb, Zagreb, Croatia	A
50	**Robert Vajokovic**, AM, JP, President of the Asbestos Diseases Society of Australia, Inc., Osborn Park, Australia	A
51	**Andrew Watterson**, PhD, CFIOSH, Director of the Centre for Public Health and Population Health Research and Head of the Occupational and Environmental Health Research Group, School of Health Sciences, University of Stirling, Stirling, Scotland	A, C, D
52	**David H. Wegman**, MD, MSc, Professor Emeritus, Department of Work Environment, University of Massachusetts Lowell, Lowell, Massachusetts, USA	A, C, D

Physicians, Scientists and Academics Who Agree That Chrysotile Asbestos Can and Does Cause Mesothelioma

	Name	Amicus Briefing on Topic
53	**Nachman Brautbar**, Clinical Professor Emeritus of Medicine, University of Southern California, Los Angeles, California, Board Certified in Internal Medicine, Forensic Medicine & Nephrology	B, D, E, F
54	**Carla Campbell**, MD, Associate Teaching Professor of Environmental & Occupational Health, Drexel University School of Public Health	B
55	**Carl F. Cranor**, Professor, University of California Riverside, Facility Member of Environmental Toxicology Graduate Program	B, D, E
56	**Curtis Cummings**, MD, Associate Professor, Drexel University School of Public Health, Philadelphia, Pennsylvania, USA	B
57	**Arun Dev Vellore**, MD, Consultant Physician, Acute Respiratory & Internal Medicine, Heart of England NHS Foundation Trust College, Tutorat Royal College of Physicians	B
58	**Denny Dobbin**, President for the Society for Occupational & Environmental Health	B
59	**David Egilman**, MD, MPH, Clinical Associate Professor of Family Medicine, Brown University, Department of Community Health	B, F
60	**Laurence Fuortes**, MD, MS, Professor, Department of Occupational & Environmental Health & Internal Medicine, University of Iowa	B
61	**Morris Greenberg**, MD, Former HM Inspector of Factories; Former Senior Medical Officer, Division of Toxicology & Environmental Health, Department of Health, United Kingdom	B, D, E, F
62	**Noel Kerin**, MD, Occupational Health Doctor & Medical Consultant, OHCOW, Ontario, Canada	B
63	**John Last**, OC, MD, Professor Emeritus, University of Ottawa, Epidemiology & Community Medicine	B
64	**Andy Oberta**, Certified Industrial Hygienist at The Environmental Consultancy	B
65	**Carol Rice**, PhD, CIH, Certified Industrial Hygienist, Professor Emerita of the Department of Environmental Health, University of Cincinnati, Cincinnati, OH, USA	B
66	**Elihu Richter**, MD, Professor of Occupational & Environmental Medicine, Hebrew Universit	B
67	**Morando Soffritti**, MD, Scientific Director of the Ramazzini Institute, Cesare Maltoni Cancer Research Centre, Bentivoglio, Italy	B, E
68	**Colin L. Soskolne**, PhD, Professor Emeritus, University of Alberta, Edmonton, Alberta, Canada Adjunct Professor [July 1, 2013 - June 30, 2016], Faculty of Health, University of Canberra, Australia, Chair, International Joint Policy Committee of the Societies of Epidemiology (IJPC-SE), Fellow, Collegium Ramazzini, Italy	B, C, D, E, F
69	**Leslie Thomas Stayner**, PhD, Professor of Epidemiology, Division of Epidemiology & Biostatistics, University of Illinois at Chicago, School of Public Health, Chicago, Illinois, USA	B, C, F
70	**Benedetto Terracini**, Professor of Biostatistics, University of Torini, Italy (Retired), Torino, Italy	B, C, D

Physicians, Scientists and Academics Who Agree That Chrysotile Asbestos Can and Does Cause Mesothelioma

	Name	Amicus Briefing on Topic
71	**Annie Thébaud-Mony**, Emerite Director of Research, National Institute for Health and Medical Research (INSERM) Interdisciplinary Research Group on Occupational Cancer (GISCOP 93) Paris-13 University, Bobigny, France	B, C, D, F
72	**Muge Akpinar-Elci**, MD, MPH, Director, Center for Global Health, Old Dominion University, Norfolk, Virginia, USA	C
73	Prof. Dr. Med. **Xaver Baur**, University of Hamburg, School of Medicine, former Chair of Occupational Medicine, President of European Society for Environmental and Occupational Medicine (EOM Society), Hamburg, Germany; Institute for Occupational Medicine, Charité University Medicine, Berlin, Germany	C, D, F
74	**Carlos Bedrossian**, MD, PhD(Hon), FIAC, Rush University Medical Center, Chicago, IL, USA	C
75	**Eula Bingham**, PhD, Professor Emerita, Environmental Health, College of Medicine, Adjunct Professor Department of Biology, University of Cincinnati (2000-present), Assistant Secretary of Labor, Occupational Safety & Health Administration, U.S. Dept. Labor (March 1977-January 1981), Cincinnati, Ohio, USA	C, D
76	**Yv Bonnier-Viger**, MD, MSc, MM, CMSQ, FRCPC, Director, Department of Social and Preventive Medicine, Faculty of Medicine, Laval University, President, Association of Physicians Specializing in Community Health, Québec, President, Centre for International Cooperation in Health and Development (CCISD), Québec, Canada	C, D, E, F
77	**James Brophy**, PhD, Visiting Research Fellow, University of Stirling, Scotland, Former Executive Director, Occupational Health Clinics for Ontario Workers, Canada	C, E
78	**Massimiliano Bugiani**, MD, Pneumologist – Turin – Italy, Consultant of the prosecutor's office in Turin, Professional tumor section, Section of Judicial Policy Professional Cancers of the Prosecutions of the Republic of Turin, Republic of Turin, Italy	C, D
79	**Richard Clapp**, DSc, MPH, Boston University School of Public Health, University of Massachusetts Lowell, Lowell, Massachusetts, USA	C
80	**Dario Consonni**, MD PhD, Epidemiologist, Occupational Physician, Department of Preventive Medicine Fondazione IRCCS Ca Granda - Ospedale Maggiore Policlinico, Via San Barnaba, Milan, Italy	C, D, E, F
81	**Emilie Counil**, Epidemiologist, Giscop93, Paris 13 University, Bibigny, France	C
82	**Mohamed Aqiel Dalvie**, BSc, Hons, MSc, PhD, Associate Professor, Director, Centre for Occupational & Environmental Health Research (COEHR), School of Public Health & Family Medicine, Health Sciences Faculty, University of Cape Town, South Africa	C
83	**Tony Fletcher**, PhD, Department of Social and Environmental Health Research, London School of Hygiene & Tropical Medicine, London, United Kingdom	C, F
84	Professor **Bice Fubini**, President of the "G. Scansetti" Interdepartmental Center for Studies on Asbestos and other Toxic Particulates, University of Torino, Italy	C, D, E, F

Physicians, Scientists and Academics Who Agree That Chrysotile Asbestos Can and Does Cause Mesothelioma

	Name	Amicus Briefing on Topic
85	**Thomas H. Gassert**, MD, MSc, Assistant Professor of Medicine, University of Massachusetts Medical School, Visiting Scientist, Occupational & Environmental Medicine, Harvard School of Public Health, Massachusetts, USA	C, D, F
86	**David F. Goldsmith**, MSPH, PhD, Georgetown and George Washington Universities, Washington, District of Columbia, USA	C, D, F
87	**Lennart Hardell**, MD, PhD, Department of Oncology, Faculty of Medicine and Health, Örebro University, Örebro, Sweden	C
88	**Mohamed F. Jeebhay** MBChB, MPH (Occ Med), PhD, Head of Department and Director, School of Public Health and Family Medicine, Faculty of Health Sciences, University of Cape Town, South Africa	C
89	**Margaret Keith**, PhD, Adjunct Assistant Professor, Department of Sociology, Anthropology and Criminology, University of Windsor, Ontario, Canada	C
90	**John R. Keyserlingk**, MD, MSC, FRCS(C), FACS, Medical Director, Surgical Oncologist, Ville-Marie Medical Center, Montréal, Québec, Canada	C
91	**Kapil Khatter**, MD, CCFP, MES, Past President, Canadian Association of Physicians for the Environment, Family Physician, Ottawa, Ontario, Canada	C
92	**Shira Kramer**, MHS, PhD, President, Epidemiology International, Hunt Valley, Maryland, USA	C
93	**Bruce Lanphear**, MD, MPH, Clinician Scientist, Child & Family Research Institute, BC Children's Hospital, Professor, Simon Fraser University, Vancouver, British Columbia, Canada	C, D, F
94	**Richard A. Lemen**, Ph.D., MSPH, Assistant Surgeon General, USPHS (ret.), Atlanta, Georgia USA	C, D, E
95	**Charles Levenstein**, PhD, MS, Professor Emeritus of Work Environment, University of Massachusetts Lowell, Adjunct Professor of Occupational Health, Tufts University School of Medicine, Boston, Massachusetts, USA	C, E
96	**Abby Lippman**, PhD, Professor Emerita, Department of Epidemiology, Biostatistics, and Occupational Health, McGill University, Montréal, Québec, Canada	C, E, F
97	**Gerald Markowitz**, PhD, Distinguished Professor of History, John Jay College and Graduate Center, New York, New York, USA	C
98	**Dario Mirabelli**, MD, Epidemiologist at the Cancer Epidemiology Unit, Città della Salute e della Scienza Hospital, Turin, Italy	C, D, E, F
99	**Sigurd Mikkelsen**, MD, DrMedSci, Specialist in Occupational and Environmental Medicine, Senior consultant, emeritus, Department of Occupational and Environmental Medicine, Ispebjerg University Hospital, Copenhagen, Denmark	C, D, E
100	**Celeste Monforton**, DrPH, MPH, Professorial Lecturer, Milken Institute School of Public Health, George Washington University, Washington, District of Columbia, USA	C, D, E, F

Physicians, Scientists and Academics Who Agree That Chrysotile Asbestos Can and Does Cause Mesothelioma

	Name	Amicus Briefing on Topic
101	**Rama C. Nair**, BSc, MStat, MSc, PhD, FACE, Vice-Dean Professional Affairs, Professor (Epidemiology, Public Health and Preventive Medicine), Faculty of Medicine, University of Ottawa, Ottawa, Ontario, Canada	C
102	**David Ozonoff**, MD, MPH, Professor of Environmental Health, Boston University School of Public Health, Boston, Massachusetts, USA	C, D, E, F
103	**Smita Pakhalé**, MD, FRCPC, MSc (Epidemiology & Biostatistics), Associate Scientist, Ottawa Hospital Research Institute, Assistant Professor, University of Ottawa, Staff Respirologist, Division of Respiratory Medicine, The Ottawa Hospital, Ottawa, Ontario, Canada	C, D
104	**Rolf Petersen**, PhD, Chief Physician, Department of Occupational Medicine, Slagelse Hospital, Denmark	C, D
105	**Beth Rosenberg**, ScD, MPH, Department of Public Health and Community Medicine, Tufts University School of Medicine, Former Board Member of the U.S. Chemical Safety Board and Faculty Member at Tufts Specializing in Occupational Health, Boston, Massachusetts, USA	C, E
106	**David Rosner**, PhD, Ronald H. Lauterstein Professor of Public health., Mailman School of Public Health, Columbia University, New York, New York, USA	C, F
107	**Craig Slatin**, Sc.D., MPH, Professor of Public Health Policy, Department of Community Health and Sustainability, University of Massachusetts Lowell, Lowell, Massachusetts, USA	C, D
108	**Fernand Turcotte**, MD, MPH, FRCPC, Professor emeritus of public health and preventive medicine, Faculty of medicine, Université Laval, Québec, QC, Canada	C
109	Prof. Em. Dr. Med. **Hans-Joachim Woitowitz**, Professor Emeritus and Former Director of the Institute and Outpatient Clinic of Occupational and Social Medicine of the Faculty of Medicine of the Justus-Liebig University of Giessen, Emeritus Fellow of the Collegium Ramazzini (New York & Bologna) and of the German Society of Occupational Medicine and Environmental Health Association (München), Germany	C, F
110	**Francesco Barone-Adesi**, Associate Professor of Public Health, Department of Pharmaceutical Sciences, University of Eastern Piedmont, Largo Donegani n. 2, 28100, Novara, Italy	D
111	**Roberto Calisti**, Occupational Physician, Local Unit for Occupational Safety and Health, Occupational Epidemiology, ASUR MARCHE - area vasta 3 (Regional Health Service), Civitanova Marche (Italy)	D
112	**Naransukh Damiran, PhD, MSPH**, Chair at Department of Environmental Health, School of Public Health, Mongolian National University of Medical Sciences, Fellow of Collegium Ramazzini, Mongolia	D
113	**Birger G.J. Heinzow**, Head of the Department of Environmental Health at the State Agency for Social Services of Schleswig-Holstein (LAsD), Kiel, Germany	D, E, F

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	Name	Amicus Briefing on Topic
114	**Karl T. Kelsey**, MD, MOH, Professor of Epidemiology and Pathology and Laboratory Medicine, Director of the Center for Environmental Health and Technology, Brown University, Providence, Rhode Island, USA	D, F
115	**Richard Kradin**, Department of Pathology and Pulmonary Medicine, Massachusetts General Hospital, Harvard Medical School, Boston, Massachusetts, USA	D, E, F
116	**James Melius** MD, DrPH, NYS Laborers Health and Safety Fund, Albany, New York, USA	D
117	**Atul C. Mehta**, M.D., F.A.C.P., F.C.C.P., Professor of Medicine, Lerner College of Medicine, Buoncore Family Endowed Chair in Lung Transplantation, Staff, Department of Pulmonary Medicine, Respiratory Institute, Senior Editor, Journal of Bronchology and Interventional Pulmonology, Cleveland Clinic, Cleveland, OH, USA	D
118	**Laxminarayana C. Rao**, M.D., F.C.C.P., F.A.C.P., Pulmonologist and NIOSH Certified B-Reader, Hinckley, Ohio, USA	D
119	**Sheldon W. Samuels**, Director Emeritus, Industrial Unions, AFL-CIO	D
120	**Alvin J. Schonfeld**, D.O., F.A.C.O.I., F.C.C.P., Board Certified - American Board of Internal Medicine, Board Certified - American Board of Internal Medicine-Pulmonary Medicine, Fellow - American College of Osteopathic Internists, Fellow - American College of Chest Physicians, NIOSH Certified B-Reader, Chicago, Illinois, USA	D
121	**Jane C. Caldwell**, Ph.D., U.S. Environmental Protection Agency (retired)	E
122	**Luz Claudio**, Ph.D., Professor Environmental Medicine and Public Health and Chief of the Division of International Health, Department of Preventative Medicine, Mount Sinai School of Medicine, New York, New York, USA	E
123	**Pierluigi Cocco**, M.D., Professor of Occupational Medicine and Environmental Epidemiology, University of Cagliari, Cagliari, Italy	E
124	**Theresa S. Emory**, M.D., Peninsula Pathology Associates, Newport News, Virginia, USA	E, F
125	**David Gee**, Visiting Fellow, Institute of Environment, Health and Societies, Brunel University, London, United Kingdom	E
126	**Edward M. Johnson**, Ph.D., Foundation Distinguished Professor Emeritus in the Biological Sciences, Professor and Chairman Emeritus, Microbiology and Molecular Cell Biology, Eastern Virginia Medical School, Norfolk, Virginia, USA	E
127	**Reiko Kishi**, M.D., Ph.D., M.P.H., Eminent Professor, Center for Environmental and Health Sciences, Hokkaido University, Sapporo, Japan	E
128	**Roberto Lucchini**, M.D., Professor of Occupational Medicine, Icahn School of Medicine at Mount Sinai, New York, USA and University of Brescia, Brescia, Italy	E
129	**John C. Maddox**, M.D., Peninsula Pathology Associates, Newport News, Virginia, USA	E, F
130	Prof. Dr. Med. **Dennis Nowak**, Institut und Poliklinik für Arbeits-, Sozial- und Umweltmedizin, WHO Collaborating Centre for Occupational Health, Klinikum der Universität München, München, Germany	E

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	Name	Amicus Briefing on Topic
131	Prof. **Daniela Pelclova**, Emeritus Head of Department of Occupational Diseases, Prague, Czech Republic	E
132	**Michael A. Schwartz**, M.D., Peninsula Pathology Associates, Newport News, Virginia, USAe	E
133	Prof. **Peter D. Sly**, AO, MBBS, MD, DSc, FRACP, FAHMS, FERS, FThorSoc, FAPSR, Director, Childrens' Health and Environmental Program, The University of Queensland, Brisbane, Australia	E
134	**David Smith**, M.D., Peninsula Pathology Associates, Newport News, Virginia, USA	E
135	**Harri Vainio**, Professor, Environmental and Occupational Health and Dean, Faculty of Public Health, Kuwait University, Kuwait	E
136	**Margrit von Braun**, Ph.D., PE, Dean and Professor Emerita, University of Idaho, Moscow, Idaho, USA	E
137	**Fiorella Belpoggi**, M.D., Director, Research Department, Cesare Maltoni Cancer Research Center, Ramazzini Institute, Bologna, Italy	F