

**Statement of John J. Hare, Esq., In Support Of
The Fairness in Claims and Transparency (FACT) Act**

**Pennsylvania House of Representatives
Judiciary Committee
April 8, 2013**

Mr. Chairman, members of the committee, thank you for allowing me to speak to you on this important subject. My name is John J. Hare. I am the chairman of the Post-Trial and Appellate Litigation Department at Marshall Dennehey Warner Coleman and Goggin, a law firm based in Philadelphia with eight offices in Pennsylvania and offices in six states.

At any given time, in Pennsylvania alone, my firm handles more than 1000 asbestos lawsuits on behalf of dozens of defendants, and we have about 350 asbestos lawsuits listed for trial in Philadelphia County every year. I have been an active participant in asbestos litigation, including arguing significant appeals in Pennsylvania appellate courts, for more than 10 years.

You have already heard about the significant problem that FACT seeks to address. In particular, you have heard the powerful incentive that plaintiffs have to conceal their filing of trust claims, which can result in redundant recoveries (or "double dipping") from the trust and civil litigation systems. The question then becomes: how rampant is this problem? There are a number of noted cases where disclosure of trust claim forms has demonstrated misrepresentation and even fraud in our sister states like Delaware¹ and Ohio², and I can tell you from my own

¹ See Montgomery v. Am. Steel & Wire Corp., 09C-11-217 (Del. Sup. Ct.)(the civil lawsuit was dismissed upon agreement of the parties after significant inconsistencies between trust claim forms and claims in the civil lawsuit were uncovered, and the court stated: "This is really seriously egregiously bad behavior. This is misrepresenting. This is trying to defraud. I don't like that in this litigation. And it happens a lot. And I'm trying to put an end to it. This is an example of the games that are being played.").

² See Kananian v. Lorillard Tobacco Co., No. CV 442750 (Ohio Ct. Com. Pl. Cuyahoga County 2007)(in a ruling that received national attention and was affirmed on appeal, a Cleveland trial judge, Harry Hanna, barred the plaintiffs' law firm from practicing before his court based upon glaring fraud and inconsistencies between allegations made in asbestos trust

experience and that of my firm that the problem of plaintiffs concealing their trust filings is extremely widespread in Pennsylvania as well.

For example, I examined a random universe of 21 recent civil lawsuits where we sent out discovery requests asking whether plaintiffs had filed trust claims. In responding to those discovery requests, plaintiffs denied that any trust claims were filed, and the civil lawsuits were then resolved by settlement or verdict. Following the resolution of the cases, we sent inquiries to the Johns Manville Trust, which is only one of the many trusts with whom plaintiffs can file claims. Of those 21 civil lawsuits we examined, the Johns Manville Trust responded that 17 claims had been both filed and paid and one claim was pending. Therefore, of the 21 original lawsuits where plaintiffs had denied that trust claims were filed, they ultimately filed claims in 18 of those cases. And those were claims with only one trust. Who knows how many claims were filed with other trusts?³

So this problem of either denying that claims are filed or waiting until litigation is over to file them happens all the time and it happens because plaintiffs want to prevent the use of their trust recoveries in the civil litigation. They do this so they can double dip, that is, get recoveries for the same asbestos disease from both the trust system and the civil litigation system.

A well-respected Philadelphia trial judge, Stephen E. Levin, described the problem like this in a 2010 case:

It is not uncommon for a person who can show exposure to asbestos to make

claim forms and the pending civil litigation). The *Wall Street Journal* editorialized that Judge Hanna's opinion should be "required reading for other judges" to provide "more scrutiny of 'double dipping' and the rampant fraud inherent in asbestos trusts." Editorial, *Cuyahoga Comeuppance*, Wall St. J., January 22, 2007, at A14.

³ This question cannot be answered with precision because, although a number of trusts provide information regarding claims filed and/or paid, they will provide such information only to existing defendants in pending lawsuits. Because the cases referenced above have been resolved, we are unable to obtain information from these other trusts.

application to several, or even more bankruptcy trusts, to simultaneously sue other, non-bankrupt, manufacturers, often more than one, in civil court proceedings. Thus, one individual or estate has two avenues of recovery; the bankruptcy trusts administrative procedure, as well as civil lawsuits. This has led to the potential of double recovery, as there has only been haphazard reporting, if at all by plaintiffs of funds received from bankruptcy trusts, despite recoveries also received at trial.

Reed v. Allied Signal, 20 PA D&C 5th 385, 400 (Phila. CCP 2010).

This is exactly what happens. Plaintiffs conceal or delay their trust filings until after they recover in a lawsuit and thereby prevent use of the trust recovery in the lawsuit.⁴ This double dipping is the abuse that FACT addresses, and I urge you to pass it.

⁴ This concealment is aided by the procedures of the trusts themselves. In fact, 65% of the asbestos trusts have included confidentiality procedures in their distribution plans that prevent production of claims information. See Lloyd Dixon et al., "Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts," 25 (2010 RAND Corporation), at www.rand.org/pubs/technical_reports/2010/RAND_TR872.pdf).