

**Statement of Judge Peggy L. Ableman**  
**The Fairness in Claims and Transparency (FACT) Act**

Prior to my retirement last December I served for more than 29 years as a Trial Judge in the Delaware State Court system. During the last few years of my term on the Delaware Superior Court, I was solely responsible for the asbestos litigation docket, which comprised approximately 500 to 600 cases filed by plaintiffs from all over the United States and even by foreign nationals. My experience gave me a unique insight into the inherent unfairness built into a system that permits plaintiffs' filing with bankruptcy trust claims to remain secret and undisclosed while a plaintiff is also actively engaged in tort litigation.

I have been asked specifically to address the question of whether this legislation will place an impossible burden on plaintiffs and their counsel to identify potential "other claims" that they "reasonably may file," particularly if a plaintiff genuinely forgets a potential claim or source of exposure.

As asbestos litigation has evolved over the past few decades, it is inconceivable that any plaintiff or plaintiff's attorney will have difficulty identifying potential other defendants or apportionment nonparties early in the claims process. Nor will they be burdened by the need to do so. The vast majority, if not all, of these plaintiffs have been recruited by law firms specializing exclusively in asbestos litigation and in the pursuit of maximum compensation for victims of asbestos-related disease. Plaintiffs' counsel are experienced, accomplished, and seasoned attorneys in this field of the law. They are cognizant of the identities of every manufacturer, employer, or landowner who may, at any time, have been a potential source of asbestos exposure. They are also fully aware of the names of the entities that have established asbestos bankruptcy trusts, the products with which these entities were associated, the manner in

which maximum compensation can be achieved, the diseases that are most likely to maximize recovery, and the identity of manufacturers of any component part that may have been incorporated in the products to which a plaintiff may have been exposed.

Tort lawsuits filed by asbestos plaintiffs typically name as many as of fifty to a hundred defendants, all of whom are known by plaintiffs' attorneys as they are often the same recurring defendants in asbestos tort suits nationwide. Indeed, plaintiffs' attorneys have become more aggressive and technologically savvy in their pursuit of defendants with even an incidental connection to asbestos- containing materials. The internet and social media have expanded the opportunities for plaintiffs to connect with law firms that specialize in this litigation, and these firms, in turn, have discovered an ever-increasing number of peripheral defendants who now find themselves front and center in the defense of their alleged asbestos- related liability. Sophisticated marketing models and litigation strategies have enabled plaintiffs' firms to file an increasing number of asbestos-related lawsuits against a pool of defendants that is ever expanding. Firms also sponsor informational websites with the goal of facilitating the gathering of asbestos claims, which are then packaged and sold to other firms for filing in state and federal courts throughout the country.

Under the present compensation system as it has evolved since the 1980s and 1990s, with experienced and savvy plaintiffs' law firms who utilize extraordinarily sophisticated methods to connect with plaintiffs, and who have an acute awareness of the universe of potential defendants, it makes little sense to believe that a plaintiff in these circumstances would forget, omit, or overlook any source of compensation either through tort litigation or from bankruptcy trusts.