IADC COMMITTEE NEWSLETTER

TOXIC AND HAZARDOUS SUBSTANCES LITIGATION

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IN THIS ISSUE

This article explores the importance of Garlock in the fight to combat fraudulent asbestos litigation with the Racketeer Influenced and Corrupt Organizations Act.

The Recent Use of RICO to Fight Toxic Tort Abuse

ABOUT THE AUTHORS

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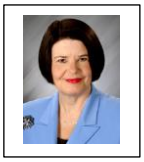

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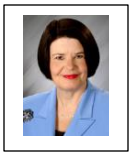

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At some point during his career, every football player has heard the oft-repeated maxim that the best defense is a good offense. This maxim holds true in the National Football League, where winning championships is big business for teams, players, and sponsors alike.

One asbestos manufacturer is putting this maxim to the test in the world of high-stakes asbestos litigation. There can be no denying that asbestos-exposure lawsuits are big business for plaintiffs' firms. During the last forty-plus years, plaintiffs' attorneys have filed hundreds of thousands of lawsuits against asbestos manufacturers and sellers. More than 10,000 individual defendants have been sued, and at least 100 of them have gone bankrupt.[1] Over the years, billions of dollars have been disbursed to claimants and their attorneys. Many plaintiffs' attorneys have become wildly successful by focusing their practices on asbestos-exposure cases.

Defense attorneys have speculated for years that some plaintiffs' attorneys have been wrongfully manipulating evidence and procedural rules for their own benefit. In the early days of asbestos-exposure cases, for example, there were reports of physicians who were paid by plaintiffs' attorneys to recruit potential claimants by offering free x-ray screens, which almost invariably gave results that were "consistent with asbestos" exposure.[2] There were reports of other plaintiffs' attorneys coaching their clients into "switching from identifying exposures to companies that had entered bankruptcy to identifying products of solvent companies that had formerly been peripheral defendants, or simply not defendants at all."[3]

John Crane Inc. ("John Crane") is fighting back against asbestos-exposure fraud. The company recently filed two lawsuits against prominent pro-plaintiff asbestos firms, alleging that they manipulated the legal process for their own benefit in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO").[4] John Crane's lawsuits would not have been possible, however, but for *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71 (2014), a comprehensive opinion issued in 2014 by the United States Bankruptcy Court for the Western District of North Carolina.

This article revisits the seminal *Garlock* opinion, highlights some of the claims asserted in the John Crane lawsuits, and opines on the impact that these lawsuits might have on asbestos-exposure lawsuits and toxic tort practice as a whole.

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[1] Brickman, Lester, *Fraud and Abuse in Mesothelioma Litigation*, 88 TUL. L. REV. 1071, 1075 (2014). Mr. Brickman's article is excellent and should be required reading for attorneys defending asbestos-exposure cases.

[2] *Id.* at 1091.

[3] *Id.* at 1095.

[4] *See John Crane Inc. v. Simon Greenstone Panatier Bartlett, P.C.*, 1:16-cv-05918 (N.D. Ill. 2016); *John Crane Inc. v. Shein Law Center*, 1:16-cv-05913 (N.D. Ill. 2016).

I. Garlock Sealing Technologies

John Crane's lawsuits would not be possible if it had not been for the Garlock Sealing Technologies, LLC ("Garlock") bankruptcy.

At one time, Garlock manufactured gaskets containing asbestos.[5] "Garlock's products released asbestos only when disturbed, such as by cutting, scraping, wire brushing, or grinding – procedures that were done sporadically and then generally only after the removal of the thermal insulation products which caused a 'snowstorm' of asbestos dust."[6] Garlock's products "resulted in a relatively low exposure to asbestos to a limited population."[7]

Plaintiffs began suing Garlock for asbestos exposure in the 1980's. Initially, Garlock was successful in defending those claims on the basis that the claimants' illnesses resulted from exposure to other companies' asbestos products.[8] That changed in the early 2000's, however, as "the remaining large thermal insulation defendants filed bankruptcy and were no longer participants in the tort system."[9] Garlock began settling cases with increasing frequency from that point forward until 2010, when its insurance was exhausted and it filed for bankruptcy.[10]

More than 4,000 mesothelioma claimants had sued Garlock before it filed for bankruptcy in 2010.[11] Plaintiffs claimed that it would require between $1.0 billion to $1.3 billion to compensate them for their illnesses.[12] Garlock estimated $125 million.[13] The United States Bankruptcy Court for the Western District of North Carolina was tasked with determining "Garlock's responsibility for causing mesothelioma and the aggregate amount of money that is required to satisfy its liability to present claimants and future victims."[14]

The Court allowed the parties to conduct extensive discovery, which included both the normal discovery allowed under the Federal Rules of Civil Procedure (*e.g.*, expert witness testimony) and questionaries' directed to the claimants.[15] The Court determined that "$125 million is sufficient to satisfy Garlock's liability for the legitimate present and future mesothelioma claims against it."[16] Perhaps more important than the amount, at least for purposes of this article, are the Court's findings with regard to evidence presented (and hidden) by plaintiffs and their attorneys.

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[5] *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 73.
[6] *Id.*
[7] *Id.*
[8] *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 73.
[9] *Id.*
[10] *Id.*
[11] *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 74.
[12] *Id.*
[13] *Id.*
[14] *Id.* at 73.
[15] *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 74 ("The evidence discussed below was presented at a hearing that took place over seventeen trial days and included 29 witnesses and hundreds of exhibits").
[16] *Id.* at 73.

A. Plaintiffs relied on questionable expert witnesses to support their position.

The parties introduced several expert witnesses to opine on various subjects relevant to Garlock's determination and amount of liability. Although the Court critiqued many of those witnesses, it was particularly critical of Plaintiffs' expert Dr. William Longo.[17]

Plaintiffs designated Dr. Longo to opine, *inter alia*, that the "fabrication and removal of [Garlock's] gaskets would expose a person to significant, but varying, amounts of asbestos fibers depending on the size of the gasket, the amount of residue on the flange, and the method of removal."[18] The Court noted that, as compared to the other experts in this case (who worked for various universities), Dr. Longo worked in a private laboratory and consulting group. To reach his opinions, Dr. Longo conducted a study in which he simulated the fabrication of Garlock gaskets.[19]

The Court was particularly harsh with respect to Dr. Longo. The Court discredited his opinion, in part, because his work simulation was performed using an asbestos removal method that was not supported by any witness testimony.[20] The Court also was critical of the amount of typos in his study, which the Court observed was "remarkable for a supposed scientific study."[21] The Court also observed that Dr. Longo's study was funded with money provided by plaintiffs' counsel, measured dust (but not necessarily asbestos fibers), and produced "puzzling results."[22] Ultimately, the Court derided Dr. Longo's studies as "pseudo-science at best" and disregarded them for purposes of its opinion.[23]

B. Plaintiffs and their counsel deliberately withheld exposure information from Garlock.

A critical part of defending any asbestos-exposure lawsuit is proving that the claimant was exposed to asbestos components manufactured by other parties. Indeed, Garlock had considerable success in the 1980's and 1990's defending lawsuits on that basis.

"One of Garlock's primary defenses was to deflect responsibility to other co-defendants."[24] As the major asbestos defendants left the tort system due to bankruptcy, "the evidence of exposure to those insulation companies' products also 'disappeared.'"[25] Incredibly, "[t]his

[17] *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 79.
[18] *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 79.
[19] *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 79.
[20] *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 79.
[21] *Id.*
[22] *Id.*
[23] *Id.* at 80.
[24] *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 83.
[25] *Id.*

occurrence was a result of the effort by some plaintiffs and their lawyers to withhold evidence of exposure to other asbestos products and to delay filing claims against bankrupt defendants' asbestos trusts until after obtaining recoveries from Garlock."[26]

Garlock introduced "substantial evidence" to show that plaintiffs' and their attorneys hid exposure evidence, including, *inter alia*, by: (i) coaching witnesses on how to testify in discovery; (ii) delaying the filing of bankruptcy trust claims until after the tort lawsuit was resolved, in order to deprive tort defendants of that information; (iii) refusing to disclose exposure information in fifteen (15) lawsuits.[27]

Ultimately, the Court determined that "[t]he withholding of exposure evidence by plaintiffs and their lawyers was significant and had the effect of unfairly inflating the recoveries against Garlock from 2000 through 2010."[28] The Court specifically said, in reaching that conclusion, that it made "no determination of the propriety of that practice."

Garlock subsequently filed a RICO lawsuit against Simon Greenstone Panatier Bartlett, P.C. and Shein Law Center.[29] Both law firms are nationally recognized for their asbestos practice. That case has been stayed pending Garlock's reorganization in bankruptcy. John Crane originally sought to intervene in that case, but later decided to pursue its own separate legal actions against the firms.

II. The John Crane Lawsuits

In June 2016, John Crane filed two lawsuits in the United States District Court for the Northern District of Illinois against Simon Greenstone Panatier Bartlett, P.C. and Shein Law Center.

Starting with the *Garlock* bankruptcy opinion, John Crane alleges that the firms engaged in a "startling pattern of misrepresentation", "withholding", and "manipulation of exposure evidence" in asbestos claims filed by them against John Crane and other defendants.[30] According to John Crane, the defendant firms "devised and implemented a scheme to defraud [John Crane] and others, and to obstruct justice" by systematically concealing "evidence of their clients' exposure to other sources of asbestos."[31]

John Crane alleges that the defendant firms undertook this activity by, *inter alia*: (i) "[m]isrepresenting clients' exposures to asbestos-containing products in sworn testimony, in discovery responses, and in other written statements"; (ii) "[k]nowingly withholding evidence of exposures to asbestos-containing products that were

[26] *Id.* at 84.
[27] *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 84.
[28] *In re Garlock Sealing Technologies, LLC*, 504 B.R. at 86.
[29] *See Garlock Sealing Technologies, LLC, et al. v. Simon Greenstone Panatier Bartlett P.C., et al.*, No. 3:14-cv-116 (W.D. N.C.).
[30] *John Crane Inc. v. Simon Greenstone Panatier Bartlett*, 1:16-cv-05918 at ¶ 1 (N.D. Ill. 2016).
[31] *Id.* at ¶ 2.

more dangerous than those made by [John Crane], while seeking in limine rulings preventing or limiting [John Crane] argument that other exposures were responsible for the injury at issue"; (iii) "[p]ursuing claims against [John Crane], while delaying (or withholding evidence of) the same client's filing of claims with asbestos bankruptcy trusts based on claimed exposures to products that were denied in the [John Crane] litigation; and (iv) "[o]bstructing [John Crane] and others from discovering evidence of alternative asbestos exposures, and ultimately, from discovering the scheme."[32] Each lawsuit alleges facts specific to the actions of the defendant law firms.

John Crane states claims for violation of RICO, common law fraud, and common law conspiracy against the defendant law firms. The purpose of these activities, as alleged by John Crane, was to "fraudulently obtain and inflate verdicts and settlements against [John Crane], whose asbestos-containing products were significantly less likely to cause injury than the products for which the [law firms] falsely denied exposure."[33]

John Crane's lawsuits would not have been possible but for the extensive discovery conducted in the *Garlock* matter. Indeed, throughout its complaints against both firms, John Crane cites extensively to the *Garlock* opinion, and notes that the defendants' "fraudulent scheme and pattern of misconduct was first uncovered as a result of discovery" in the *Garlock* matter.[34] John Crane has indicated that it intends to seek additional discovery related to "that scheme, all of its participants, and the entire amount of financial injury incurred."[35]

Defendants in both cases have filed motions to dismiss. As of the date of this article, those motions have not yet been ruled upon by the Court.

III. Impact on Toxic Tort Litigation

Attorneys who regularly defend asbestos-exposure claims should keep a careful watch on the John Crane lawsuits. It appears, given the Court's holding in *Garlock*, that there is a viable claim against some plaintiffs' firms who engage in unethical tactics to withhold and manipulate exposure evidence in order to manipulate settlement amounts. Additional discovery on those issues, if permitted by the Court, could reveal widespread litigation abuse. It could open the floodgates for other RICO actions brought by similarly situation plaintiffs.

Toxic tort attorneys, generally, also should pay attention to these cases. Experts anticipate that asbestos-exposure lawsuits will begin to taper off during the next twenty years.[36] It is unclear what area of law will replace what has often been described as

[32] *Id.* at ¶ 4.
[33] *Id.* at ¶ 5.
[34] *John Crane Inc. v. Simon Greenstone Panatier Bartlett*, 1:16-cv-05918 at ¶ 7 (N.D. Ill. 2016).
[35] *Id.* at ¶ 9.
[36] Brickman, Lester, *Fraud and Abuse in Mesothelioma Litigation*, 88 TUL. L. REV. 1071, 1076 (2014).

the longest running tort in civil litigation history. Some have speculated that lawsuits involving dangerous pharmaceuticals, silica insulation, and Chinese drywall might one day supplant asbestos-exposure litigation. Regardless of what claim the future brings, it is probable that the next wave of exposure cases will parallel asbestos-exposure cases in many respects (*i.e.*, mass screenings of claimants, the establishment of settlement trusts, etc.).

If John Crane's RICO actions prove to be successful, the viable threat of a RICO claim might as a natural check and balance on the unscrupulous prosecution of toxic tort claims by plaintiffs' attorneys. This is precisely the kind of litigation reform that our country needs.

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