



## ASBESTOS LIABILITY IN NEW JERSEY

Asbestos litigation has been described by one prominent plaintiffs' lawyer as an "endless search for a solvent bystander." Nowhere is this truer than in New Jersey, where we have experienced three waves of asbestos litigation.

Significant litigation over asbestos-related ailments began in the 1970s when companies that mined asbestos or manufactured asbestos-based insulation products were taken to task for years of concealing and denying the harmful effects of asbestos. This first wave of asbestos litigation bankrupted most of the industry. In order to provide compensation for future claimants, each defendant was required to set up a bankruptcy trust that victims of their products can seek compensation from. Today, these trusts control assets worth an estimated \$36 billion.

The second litigation wave, which we are currently riding, came quickly after the first wave showed signs of ebbing. Plaintiffs and their attorneys soon realized that trust claims, though easy to file, were not nearly as lucrative as lawsuits. In order to keep the high-dollar verdicts coming, they needed to keep suing still-viable companies.

The ongoing litigation *In re Garlock Sealing Technologies, LLC* has revealed how asbestos plaintiffs and their attorneys are gaming the trust system in order to maximize their recovery. Victims seek out still viable companies who had produced products containing minimal amounts of asbestos, like gaskets, and file suit against them. After that lawsuit settled or is tried to verdict, the plaintiff then files claims with various bankruptcy trusts, and in doing so discloses exposures to asbestos that they had not disclosed during their suit against the still-viable company.

If plaintiffs were required to disclose all exposures and seek compensation from the trusts before filing a lawsuit against a still-viable company, the defendant would be able to introduce that mitigating evidence at trial. In addition, the trusts would not be forced to compensate plaintiffs who have already been made whole and are draining the corpus of trusts by double-dipping.

Gaming the trust system is still quite lucrative, but if greater transparency is introduced into the system the gig is up. Enterprising attorneys realize this, and have thus begun to look for the next deep pocket. They may have found it in New Jersey, the nation's medicine chest, and the birthplace of a still-building third wave of asbestos litigation.

In late 2013 in the case *Kaenzig v. Charles B. Chrystal, Inc.*, a Middlesex County jury awarded a plaintiff \$1.6 million in a lawsuit where it was alleged the plaintiff contracted peritoneal mesothelioma as a result of his exposure to asbestos-contaminated cosmetic talc brought home on his father's work clothes. In early 2015 the verdict was affirmed on appeal. There are now multiple cosmetic talc based asbestos cases working their way through New Jersey's court system.