

THE WALL STREET JOURNAL.

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <http://www.djreprints.com>.

<http://www.wsj.com/articles/SB10001424127887323864304578318611662911912>

BUSINESS

As Asbestos Claims Rise, So Do Worries About Fraud

By **DIONNE SEARCEY** and **ROB BARRY**

Updated March 11, 2013 5:55 a.m. ET

Three decades after Manville Corp. collapsed under an avalanche of asbestos litigation, personal-injury claims continue to pile up at a rate of 85 per day.

They find their way to a small office building in suburban Virginia, where processors evaluate the paperwork of pipe fitters and welders and shipbuilders who say they contracted debilitating lung diseases from the company's insulation products. By last March, a Manville bankruptcy trust had already paid out nearly \$4.3 billion.



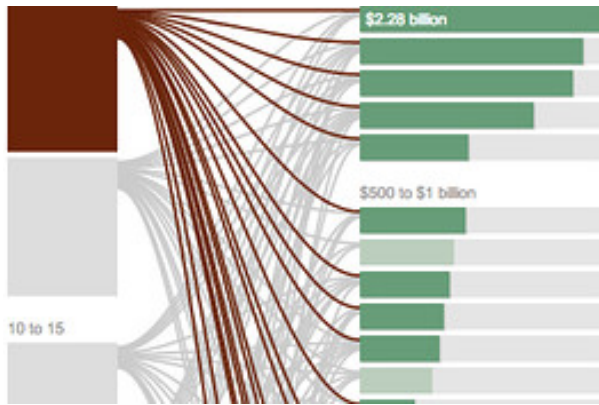
A client of Brent Coon, above, who runs a Texas law firm, got a higher payout by claiming mesothelioma when in fact he died from lung cancer. *DAVE RYAN/THE BEAUMONT ENTERPRISE*

So when a beneficiary of one David E. Knight came to the trust saying the former seaman had succumbed to the deadly cancer mesothelioma, the administrators didn't blink. Within five weeks, the claimant received a check for \$26,250.

The only problem: There was no such Mr. Knight. Police say the claim was phony, filed by an employee of a law office specializing in extracting payouts from asbestos bankruptcy trusts. California prosecutors are investigating.

A MATTER OF TRUST

Highlight the connections between law firms and bankruptcy trusts.



ASBESTOS THROUGH THE YEARS

Asbestos was used for decades in the U.S. starting in the mid-1800s before regulators took action to rein in the mineral that produces cancer-causing fibers.



- More photos and interactive graphics (http://online.wsj.com/public/page/O_0_WP_2003.html)

The apparently bogus claim is a footnote in the history of the multibillion-dollar asbestos-litigation industry, but it illustrates a troubling underside of the nation's longest-running tort. With dozens of asbestos-related manufacturers forced into bankruptcy, a burgeoning swath of the legal action has shifted out of the courtroom and into a nebulous world of trusts that evaluate claims and authorize payouts with little outside scrutiny.

By design, many are guided by teams of plaintiffs' lawyers—the very group that seeks money for clients and has earned billions of dollars in fees on payouts through the years. Fraud allegations have periodically dogged the trusts. And, even though the worst asbestos-related diseases are finally starting to taper off, there is growing concern that the trusts will run out of money before America runs out of asbestos victims.

"Right now there are a lot of suggestions that fraud and abuse are present," says House Judiciary Chairman Bob Goodlatte, a Republican from Virginia, who has scheduled a hearing Wednesday on a bill requiring trusts to publish detailed claims reports to help ensure money goes only to legitimate victims.

In recent months, judges across the country who handle asbestos cases involving still-viable companies have granted defense requests to subpoena bankruptcy trusts to

sniff out potentially false and conflicting evidence. Many defendants believe such data could help expose fraudulent or inflated claims that could potentially save them hundreds of millions of dollars in jury verdicts.

As part of an investigation into the state of asbestos litigation, The Wall Street Journal reviewed trust claims and court cases of roughly 850,000 people filed since the late 1980s until as recently as 2012.

The analysis found numerous apparent anomalies: More than 2,000 applicants to the Manville trust said they were exposed to asbestos working in industrial jobs before they were 12 years old.

Hundreds of others claimed to have the most-severe form of asbestos-related cancer in paperwork filed to Manville but said they had lesser cancers to other trusts or in court cases.

The Manville trust declined to comment on individual cases, citing privacy concerns. The trust's general counsel, David Austern, said the trust tightened its oversight after a 2005 claims scandal, adding: "We audit periodically and haven't found any fraud."

Joseph Rice, of the South Carolina-based Motley Rice law firm that has handled asbestos cases for 30 years, argues that thorough fraud prevention systems would be too costly and would leave less money to pay claims. Mr. Rice, whose firm holds advisory positions on a dozen trusts, including Manville, adds that because the trusts process such a huge volume of claims, "there are going to be errors, and errors are not fraud."

Now numbering more than 40, the trusts represent the assets set aside by insulation makers, cement manufacturers and mining companies. As a group, the trusts set up by the bankrupt firms had at the end of 2010 paid about 3.3 million claims valued at \$17.5 billion, according to a 2011 U.S. Government Accountability Office report. Roughly \$18 billion was left to pay claims as of the end of 2011, trust filings show.

Yet even those huge numbers may not be enough to satisfy the growing throng of people alleging asbestos injury. The number of claims paid by Manville, one of the biggest trusts and generally considered a bellwether, has tripled since 2007.

So fast are assets being depleted that nearly half of the trusts have reduced payments to new victims at least once since 2010. The median payout percentage has dipped to 15% of what the trusts initially determined would be full value, as trusts attempt to preserve assets for future victims. That is the lowest level since 2003, according to economic

consultant Bates White, which has defense firms and insurers among its clients for asbestos-related work.

One puzzling complication: Asbestos-related claims continue to rise even though mesothelioma, the most severe asbestos-related disease and one that can take years to emerge in a patient, is waning. According to the National Cancer Institute, the incidence of mesothelioma in the U.S. fell 22% between 1992 and 2009, to 0.96 new cases per 100,000 from 1.23.

Before the U.S. government began regulating asbestos in the late 1980s, it was widely used as a fire retardant and insulator. Manville Corp., North America's largest producer of asbestos-containing products, advertised its materials as "a barrier against weather, time and fire." In fact, when asbestos dust is released in the air, tiny, jagged fibers can lodge in lungs. Cancer and other diseases from breathing in the harmful fibers sometimes don't show up for as long as 20 years or more.

During Manville's bankruptcy proceedings, federal judge Jack Weinstein noted, "There is compelling evidence that asbestos manufacturers and distributors who were aware of the growing knowledge of the dangers of asbestos sought to conceal this information from workers and the general public."

In 2001, the company's successor, now called Johns Manville, was purchased by Warren Buffett's Berkshire Hathaway Inc. According to its website, it makes "formaldehyde-free" insulation that creates a "healthier living environment."

In the wake of Manville's collapse, federal bankruptcy laws were amended to allow the companies to shed asbestos liabilities and keep operating after they set up trusts to pay eligible victims who can prove exposure to their asbestos products.

Top authorities at the trusts, called trustees, are typically appointed by the federal judge overseeing the bankruptcy. Many are retired judges or lawyers with bankruptcy experience. Most are paid an annual salary. Daily operations are usually handled by professional staff.

In most trusts a handful of plaintiffs' attorneys, selected because they represented numerous clients suing the bankrupt company, sit on advisory committees. Most receive no salary, just reimbursements for expenses. But they hold considerable sway, according to trust documents, helping to design general payment policies and, in some cases, signing off on auditing procedures.

**Now—unruly power
has a ring in its nose!**

WITNESS the mass of pipes, pumps, boilers and valves, which you may have seen in a power plant, all vast streams of energy, coursing in every direction.

This power, so essential to production, is constantly trying to escape through every joint in the armor which man has devised to curb it.

For years it has been the function of packing to prevent such escape.

Steel plungers and piston rods slide through sleeves or washers of like tough fabric—through a ring-like wall of packing which holds back great steam and water pressures, while the steel shaft passes back and forth—constantly.

But until Johns-Manville introduced the patented Sea King Packing, this unruly power often did escape and such costly leaks could be stopped only at great price, for the leaking action of the old fashioned packing set up tremendous friction—wear and tear and loss of power.

So much so in some cases that the leakage was preferable to the cost.

It is impossible to estimate how much coal, steam, power, or equipment has been conserved by the introduction of the Sea King—but surely a great deal. Thousands of horsepower, which otherwise would have been dissipated either in useless frictional heat or direct leakage, are now saved and doing useful work in plants everywhere.

The other Johns-Manville Packings listed here, in their respective uses have as vital a relation to conservation as the Johns-Manville Sea King, in keeping power from running amok.

Johns-Manville Packing
 Steam Shaft, Steam Piston, Governor Rod Packing, Exhaust Valve, Marine and Ship Packing, Engine and Flywheel Packing, Steam Coil Packing, Universal Joint Packing, Universal Steam Engine Piston Packing, Piston Rod Packing, Piston Ring Packing.

JOHNS-MANVILLE CO.
 100 Madison Ave., 4th Fl., New York 17, N.Y.
 Sole U.S. and Canadian Distributors
 In Canada: JOHN-MANVILLE CO., Ltd.
 Toronto, Ontario



Asbestos
 and its allied products

JOHNS-MANVILLE
 Serves in Conservation

A 1920s ad from Manville Corp., which has varied its name over the years. *EVERETT COLLECTION*

Unlike court, where plaintiffs can be cross-examined and evidence scrutinized by a judge, trusts generally require victims or their attorneys to supply basic medical records, work histories and sign forms declaring their truthfulness. The payout is far quicker than a court proceeding and the process is less expensive for attorneys.

Solvent companies are still being sued in court, and a single asbestos

verdict or settlement can still net millions of dollars for asbestos victims and their attorneys, who collect fees of up to 40%. A California jury in June awarded \$48 million to the family of a mesothelioma patient who said he inhaled asbestos fibers working as a contractor.

Meanwhile, the bankrupt companies' trusts pay liquidated claims for pennies on the dollar of what they would be worth in court, so a single claim against a single trust isn't especially valuable. But there is no limit to how many trusts a person can tap. That is because it is impossible to trace asbestos fibers in lungs to a particular company. Numerous trusts offer on their websites lists of job site locations that will qualify claims if victims can offer credible evidence they worked there and were injured from asbestos



ASBESTOS
THE LONG
TRIAL

FIRST IN
A SERIES

READ MORE

- **Q&A:** What's the Asbestos Risk Today? (</articles/SB10001424127887323628804578346881884626540>)

exposure there. Some legal offices have mastered the various eligibility rules for each trust.

John Lynch, an employee of the California-based Asbestos Legal Center who police allege filed the phony mesothelioma claim to Manville, had worked in the past at a company that processed claims for several other trusts. In this previous job, he ensured that attorneys provided proper proof their clients spent time toiling on qualifying Naval ships or in shipyards during periods when the trusts' asbestos products were in use.

The Legal Center's founder, Michael Mandelbrot, said he hired Mr. Lynch in 2010 to join his small office so he could tap into that expertise.

Mr. Mandelbrot called police when he learned about the allegedly false claim, which he said Mr. Lynch filed on his own. Mr. Lynch is no longer employed at the law office.

Petaluma, Calif., police and Sonoma County prosecutors are investigating. Mr. Lynch hasn't been charged. He and his public defender didn't respond to requests for comment.

Several trusts have raised broader questions about Mr. Mandelbrot's operation. In federal bankruptcy court filings, lawyers for three trusts—Western Asbestos Settlement Trust, the J.T. Thorpe Settlement Trust and the Thorpe Insulation Settlement Trust—say they suspect Mr. Mandelbrot's law office has submitted unreliable information about numerous clients' asbestos exposure and has withheld evidence that could scuttle or reduce the value of their claims.

According to court filings, the claims include those from nurses who say they were exposed to asbestos on the job when they chipped paint from boilers—which the trusts allege is incongruous work for that occupation. They also say Mr. Mandelbrot's office has filed claims from distant relatives of dead people who are able to assemble meticulous, decades-old lists of job sites where the victims worked that qualify them for a payout.

Mr. Mandelbrot denies his law office engaged in any misconduct.

"For an office that has built itself up on helping these victims and always having checks and balances in place, to be accused of these things...it really is a tragedy, what's happening," Mr. Mandelbrot said.

Mr. Mandelbrot, whose office has filed more than 3,000 claims to dozens of trusts, said the Manville trust offers the simplest route to getting his clients' claims paid. "They admit their products were everywhere," he said. "It's very easy. You don't have to really produce much."

Manville and most other trusts consider claims to be legal settlements that contain personal health information and refuse to provide detailed information about them. The opportunity for abuse flourishes as a result, say some politicians, judges and defense lawyers.

William Warfield's estate sued Union Carbide and several other solvent companies in Circuit Court for Baltimore City blaming them for the mesothelioma that eventually killed him in 2007. In a deposition, Mr. Warfield said he had been exposed to asbestos products only between 1965 and 1985 when he worked in a federal government job as a carpenter. But his claims to nine bankruptcy trusts, including Manville, said he was exposed between 1947 and 1991, according to court records.

Circuit Judge John M. Glynn noted the differences in court. Had Mr. Warfield claimed in his court case he was exposed to asbestos after 1985, he would have been subject to certain Maryland laws that cap damage awards.

The attorney for Mr. Warfield's beneficiaries, Edward Monaghan from the Law Offices of Peter G. Angelos, declined to comment on the case, which is still pending. The Angelos firm later noted in a written statement that Mr. Monaghan had told the judge evidence standards for trust claims are different than those for trial.

In an interview, Judge Glynn, who presides over one of the largest asbestos dockets in the nation with about 500 active cases a year involving solvent defendants, said trust claimants "make these rather thin allegations, and they don't require any real proof."

He added: "It comes across as the plaintiffs' lawyers see this as free money."

In its analysis, the Journal found 2,689 Manville applicants through 2005 who claimed to be working in various labor-intensive occupations while under the age of 12. Among them were 753 people who claimed their exposure to asbestos began while working in construction before turning 12; 356 people who said they were metal workers; and 184 chemical workers.

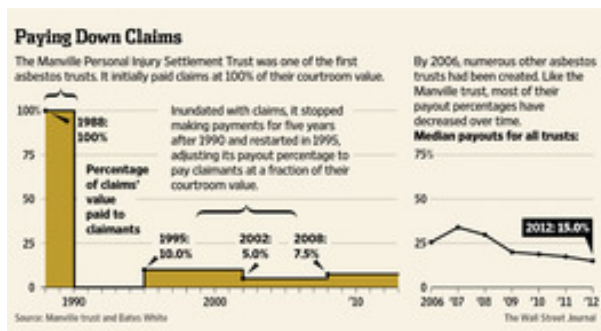
It is possible that some claim dates were recorded erroneously or the occupation listed on the claim may actually be that of an adult family member who tracked the asbestos dust home on their clothing, according to people familiar with Manville's claims processing.

Meanwhile, at least 312 people submitted mesothelioma claims to Manville while describing the disease as lung cancer in filings to public court dockets or other bankruptcy trusts.

Manville assigns the highest value of payment to mesothelioma, a cancer of the lining of the lungs or other organs, because it is fatal, generally progresses rapidly and causes much suffering.

One law firm that made disparate filings was Brent Coon and Associates of Beaumont, Texas. Mr. Coon, who plays guitar in a rock band and is known for Christmas parties featuring performers such as Foreigner, represented Richard Baker, a Nevada electrician and smoker whose death certificate and pathology reports say he died of lung cancer in 2005. His claim forms to at least seven trusts say he died of lung cancer, as did his sweeping lawsuit against 42 solvent companies filed in state court in Harris County, Texas. The suit, stuck in a gummed up asbestos docket, is still pending.

But to the Manville trust, Mr. Coon's firm said that its client had mesothelioma—despite pathology reports submitted to the trust that listed Mr. Baker's disease as lung cancer, a



distinctly different diagnosis. In December 2004, the trust accepted Mr. Baker's mesothelioma claim and offered him the standard value it assigns to that disease, a payout of about \$17,500. Had his disease been listed as lung cancer the value would have been \$4,750.

When contacted for comment, Mr. Baker's beneficiary, Carol Bellman, referred calls to Mr. Coon's firm. Mr. Coon said his files for the case were likely tucked away in storage.

"What we try to do with our clients is get them what we can, where we can," said Mr. Coon, who sits on the advisory committee overseeing the roughly \$1 billion in the trust set up by Combusting Engineering Inc. "Since we have thousands and thousands of these cases, we get work histories and their medical histories, and I'm sure there are errors made from time to time."

Mr. Coon said his clients "are victims of the worst corporate mass genocide in history, one that has taken the lives of millions of industrial workers and their innocent families...and they get off making token payments for what they have done to these people."

The trust has faced problems before. In 2005, a federal judge's ruling in Texas led to the determination that doctors were fraudulently diagnosing numerous plaintiffs with asbestos-related diseases. The judge, Janis Graham Jack of Houston, discovered that in mass screenings a handful of doctors were diagnosing silica dust-related diseases in the same patients already diagnosed with asbestos-related diseases at improbably high rates. Concerned some claims could be fraudulent, Manville and others banned payments to people who included reports from several doctors and X-ray screening companies. Tens of thousands of claims to Manville had relied on them.

Immediately following the scandal, payouts by the Manville trust dropped dramatically. They began to rise again in 2007 and have since climbed at a steady annual pace.

Manville's longtime managing trustee, Robert Falise, a former executive vice president of Irving Bank Corp., said: "We're paying out over \$100 million in claims [annually] so it doesn't take much mathematics to figure out that won't go on forever."

Draining the fund are claims such as one from Gail Garner, who in 2000 filed a claim on

behalf of her father, Angelo Palermo. Ms. Garner obtained a diagnosis of a type of mesothelioma for him 37 years after he died.

Mr. Palermo's April 1966 death certificate lists his cause of death at age 51 as "acute liver failure due to metastasis cancer due to primary stomach (place of origin)." Ms. Garner said he once worked for Manville.

Armed with the death certificate, a blurry torso X-ray and brief medical notations, Ms. Garner asked pulmonologist William Beckett to offer a second opinion. Dr. Beckett, who was working in Rochester, N.Y., at the time, concluded that given Mr. Palermo's job history at asbestos work sites it was "quite possible" he suffered from mesothelioma of the stomach, a condition that medical experts believe is caused by asbestos exposure.

In an interview, Dr. Beckett, who now practices in Massachusetts, stood by his diagnosis. He said he came to his conclusion "given [Mr. Palermo's] exposure history and everything I could find out from his daughter and his medical records, which were pretty sparse."

The Manville trust reviewed Dr. Beckett's conclusion and eventually awarded her father's estate the highest possible payout. Ms. Garner, in an interview, wouldn't confirm the award but given Manville's payout percentages during the time frame her claim was processed she received as little as \$37,500 or as much as \$75,000.

"The panel finds this decision to be a particularly difficult one," Manville counsel Mr. Austern wrote on June 6, 2003, explaining the award to Ms. Garner.

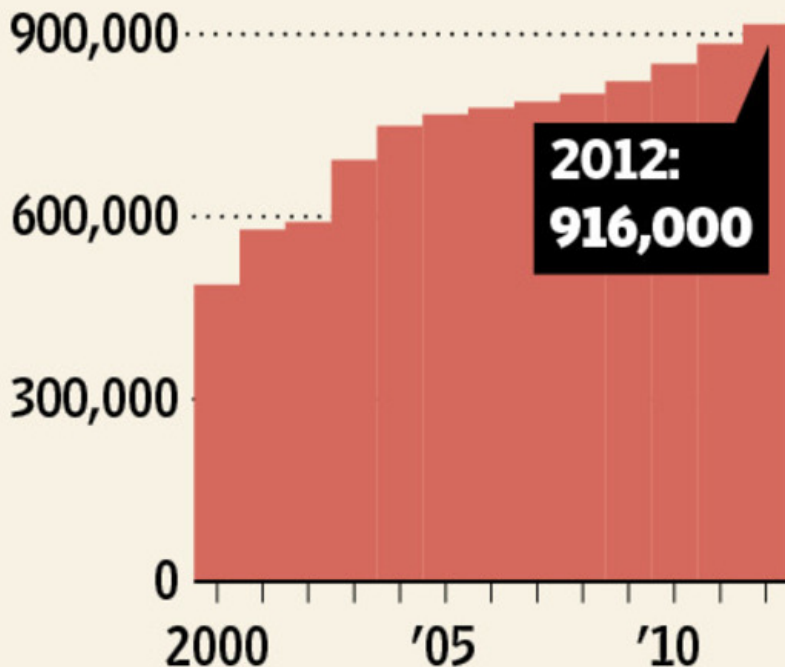
"On the one hand, the deceased claimant has been able to produce very little by way of medical evidence to challenge the diagnosis/death decision that was made 34 years ago. On the other hand, there was extensive pain and suffering in this case, and early death, and abundant and apparent exposure to asbestos. In the totality of the circumstances, the Panel believes this claim deserves extraordinary consideration."

At least three other trusts paid Ms. Garner's claim, but she sued two others, including the DII Industries LLC Asbestos PI Trust, in federal court when they did not.

"From the trust perspective there really was never any diagnosis," said Beth Petronio, a K&L Gates attorney for the DII trust. The trust eventually settled the case after Ms. Garner lost and then appealed, because "at some point, litigation is costly," Ms. Petronio said.

Toxic Heap

Cumulative number of claims received by Manville asbestos trust since 1998



Source: Manville trust annual reports
The Wall Street Journal

Ms. Garner said in an interview she pursued the claims "because of the love of my father and how he died in a horrible and tragic, suffering death, how we had to grow up with my father not in my life."

Ms. Garner said she plans to write a how-to book on successfully filing claims to asbestos trusts.

—James Oberman contributed to this article.

Corrections & Amplifications

Remarks on a court case described in an earlier version of this article about the continued increase in asbestos claims were incorrectly attributed to Judge John M. Glynn of the Circuit Court for Baltimore City. Those remarks came from an analysis by a person

familiar with the case.