

# Turning the Tables: Asbestos Defendant Sues Plaintiffs' Firms in Fraud

By [Matthew T. Wagman](#) and [Alexander P. Creticos](#), Miles & Stockbridge P.C.

LAW.COM

*This article was first published on the Law.com Contributor Network on March 10, 2014.*

Since the bankruptcy of the major asbestos defendants, plaintiffs' firms have increasingly turned their attention to smaller players, usually manufacturers of products containing small amounts of encapsulated chrysotile asbestos. One of those defendants, Garlock Sealing Technologies, LLC, recently obtained a significant ruling when a federal bankruptcy judge determined that the gasket manufacturer's liability for present and future mesothelioma claims was \$125 million, far less than the more than \$1 billion that plaintiffs' firms sought to have the entity set aside for claims. Garlock is not stopping there, however. It has also filed suit against a number of plaintiffs' firms in an effort to recoup some of the money it has paid out to claimants over the years. How these lawsuits play out will potentially reveal new avenues for asbestos defendants to gain leverage in pending and future high stakes cases.

Garlock's lawsuits were filed under seal, so the exact allegations are unknown. Insights into the nature of the manufacturer's claims, however, can be gleaned from the extensive opinion in the bankruptcy case recently resolved in Garlock's favor, *In Re: Garlock Sealing Techs., LLC*, Case No. 10-31607, \_\_ B.R. \_\_, 2014 WL 104021 (W.D.N.C. Bankr. Jan. 10, 2014).

In undertaking to estimate Garlock's potential liability for present and future claims of plaintiffs diagnosed with mesothelioma, a rare and fatal malignancy forming in the lining of the lungs, the court in *In Re: Garlock* traced the history of Garlock's participation in asbestos litigation over the past ten years, finding that plaintiffs' firms engaged in a "startling pattern" of misconduct during this time period, including suppressing exposure evidence to inflate cases' values. *Id.* at \*14.

The court underscored that the encapsulated asbestos contained in Garlock manufactured gaskets would only be released if the gaskets were cut, scraped, wire brushed, ground, or abraded. It further noted that the gaskets contained chrysotile

asbestos, a far less toxic substance than other forms of asbestos and one that is disputed to even cause mesothelioma.

The court also highlighted that Garlock's gaskets were generally bolted between steel flanges or valves and wrapped with asbestos thermal insulation produced by other manufacturers. This insulation was composed of the much more toxic amphibole asbestos, which the court found the causative factor in the large majority of cases in which Garlock was implicated.

Against this backdrop, the court noted that "[o]ne of Garlock's primary defenses was to deflect responsibility to other co-defendants," as its "contention was that its encapsulated chrysotile product did not cause injury." *Id.* at \*11. Thus, "evidence of the plaintiffs' exposure to other co-defendants products was essential to its defense and its negotiating position"—especially evidence of exposure to more toxic insulation products. *Id.*

Critically in this regard, the last of the major insulation manufacturers entered into Chapter 11 bankruptcy protection in 2005. Thus, to recover from these entities, plaintiffs must make claims to bankruptcy trusts established to process asbestos claims. Much of a viable defendant's evidence of alternative exposure can come from the information provided in these bankruptcy trust submissions.

Recognizing this, the court found that a number of plaintiffs' firms engaged in a consistent practice of withholding evidence of amphibole exposure over the last ten years by instructing witnesses to omit testimony of insulation exposure and by manipulating the bankruptcy trust submission process, either through declining to make bankruptcy trust claims until after a case had settled or simply failing to disclose to the defense what claims had been made on the plaintiffs' behalf. Moreover, these firms were directly representing that their clients had no amphibole exposure, making Garlock the central target of claims with no opportunity to establish an alternative exposure defense.

To aid in the fact-finding process, the court permitted Garlock to undertake full discovery in fifteen cases closed within the last ten years. This discovery, the court determined, revealed that over the last ten years, certain plaintiffs' firms had consistently and intentionally suppressed alternative exposure evidence from Garlock in an effort to drive up settlement values and hinder Garlock's defense. Although it made "no determination of the propriety of that practice," the court declined to consider verdicts rendered or settlements reached during this time period in estimating Garlock's potential liability for present and future mesothelioma cases, reasoning that these results were "infected by the manipulation of exposure evidence by plaintiffs and their lawyers." *Id.* at \*15, \*10.

Although the facts revealed in *In Re: Garlock* may seem extreme, they do not appear to be as isolated as one would hope. As claims have become more attenuated,

somehow testimony identifying products that contained amphibole asbestos has all but disappeared, notwithstanding what a plaintiff must have actually worked with or around. Armed with the information it obtained through discovery in *In Re: Garlock*, however, Garlock is now in a strong position to expose this corrupt system and pave the way for viable asbestos defendants to gain leverage in cases to which they are named, but are not the true responsible parties.

Disclaimer: This is for general information and is not intended to be and should not be taken as legal advice for any particular matter. It is not intended to and does not create any attorney-client relationship. The opinions expressed and any legal positions asserted in the article are those of the authors and do not necessarily reflect the opinions or positions of Miles & Stockbridge P.C., its other lawyers, or American Lawyer Media.

*Matthew T. Wagman is principal with Miles & Stockbridge's Products Liability and Mass Torts Practice Group and leads its Manufacturing and Distribution Industry Team. Alexander P. Creticos is an associate in the practice. Matt and Alex focus their practices on the defense of products liability matters, including mass torts, toxic torts, and those involving consumer products.*