MICHAEL J. MANDELBROT, SBN172626
Attorney At Law
11 Bridle Path Lane
Novato, CA 94945
Telephone (415) 895-5175
Telephone: (800) 970-3878
E-Mail: mandelbrot@asbestoslegalcenter.org

Attorney for Beneficiary Rhonda Levine and Beneficiaries
of the Johns-Manville Personal Injury Settlement Trust

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

In re: JOHNS-MANVILLE CORPORATION, et al., Debtors,	Case Nos. 82 B 11656 (CGM) Through 82 B 11676 (CGM) Chapter 11

MASTER INDEX FOR

OBJECTION TO THE APPLICATION FOR ORDER APPROVING ACCOUNT OF TRUSTEES, ACCOUNT OF THE TRUSTEES, ORDER APPROVING ACCOUNT OF TRUSTEES DUE TO FRAUD, OMISSION OF MATERIAL FACTS, BAD FAITH, ATTEMPTED EXTORTION AND FAVORITISM

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11 Bridle Path Lane
Novato, CA 94945
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The Beneficiary Rhonda Levine (hereinafter "Levine"), as well as hundreds of other Beneficiaries, by and through their Counsel Michael Mandelbrot (hereinafter "Mandelbrot"); hereby **object** to the Manville Trust Account of Trustees for the Period January 1, 2014, through December 31, 2014 Trust based upon Fraud; Misrepresentation of Material Facts; Breach of Fiduciary Duty; Bad Faith; Misappropriation of Claimant Funds; Attempted Extortion; Favoritism.

GENERAL OBJECTIONS

The Affirmations of Manville Trustees Kirk P. Watson, Mark A. Peterson, Robert A. Falise and Edward D. Robertson (hereinafter "Trustees") as well as the Affidavit of Manville General Counsel Jared Garelick (hereinafter "Garelick") are knowingly and intentionally false and fraudulent Affidavits intended to deceive the Court, beneficiaries and claimant's counsel. Each Trustee has falsely affirmed under oath that they "do not know of any error or omission in the account to the prejudice of any creditor of, or person interested in the Trust Estate" when each Trustee and Trust Counsel Garelick are keenly aware and specifically authorized omissions in the Trustee's 2014 Account to the prejudice of beneficiaries such as Rhonda Levine, claimants counsel (Mandelbrot), and hundreds of beneficiaries of the Estate represented by Mandelbrot.

SPECIFIC OBJECTIONS

Fraudulent Omissions by the Trustees and Garelick – Improper "Suspension" of Hundreds of Claims Impacting Claimants Equity

The Account of the Trustee and the Notes to the Consolidated Special Purpose Financial Statement omit critical facts which prejudice claimants (Rhonda Levine) and Claimants' Counsel. On May 30, 2014, Trust Counsel Garelick, by and through the Trustees, *suspended without merit and in direct violation of the Trust Distribution Procedures* the Mandelbrot Law Firm and its hundreds of pending claims with the Manville Trust. **See Exhibit A**. Manville Trust Distribution Procedures Section C (8) clearly permits Audits of claimants and claimants counsel (which Mandelbrot urged the Trust to perform). Manville Trust Distribution Procedures also discuss ADR (which Mandelbrot also requested). But nothing in the Manville Procedures permitted a *"suspension."* The acts of Garelick and the Trustees by authorizing this "suspension" was purely a knowingly bad faith and corrupt violation of the Trust Distribution Procedures by the Trustees and Garelick while impairing claimants and impacting claimants equity..

No discussion of this unauthorized and bad faith suspension of hundreds of claims with the Manville Trust was noted in the Account of Trustees, despite each Trustee having specific knowledge of the same. Clearly this was an intentional *omission* by the Trustees and Garelick *to the prejudice of persons interested in the Trust Estate* (hundreds of claimants and Mandelbrot).

Mandelbrot's responsive letter to Garelick and Trustees clearly displayed the bad faith and unauthorized nature of the suspension. (**See Exhibit B - Letter from Mandelbrot to Trust dated September 8, 2014**). Despite Mandelbrot urging in good faith the Trustees to follow the Procedures and audit claims, the Trustees corrupt, misguided and bad faith suspension of Mandelbrot's Manville claims, including that of Rhonda Levine, remained suspended.

The claims suspended by Garelick and the Trustees *represents approximately 1/3 of the claims filed in California during the Accounting period* and the suspension clearly had and has a significant impact on the pending and future Accounting of the Trustees.

The omission, concealment and cover up of the suspension of hundreds of Manville claims is fraud on the court, the beneficiaries, and the claimants. As a result of this fraud, there is extensive misrepresentation of material facts in the Account and Exhibits by the Trustees and Garelick. Moreover, the suspension of Mandelbrot and hundreds of beneficiary claims (and failure to disclose the same in the Accounting) is a Breach of the Fiduciary Duty by the Trustees which requires disclosure.

Nothing authorized (or warranted) a suspension of Mandelbrot's claims and the pending claim of Rhonda Levine and hundreds of beneficiaries. The Manville Trustees refuse to follow the 2002 Trust Distribution Procedures, refuse to audit Mandelbrot's Manville claims, reject the notion of ADR, and continue to engage in bad faith by suspending Mandelbrot and the claims of hundreds of claimants, including his client Rhonda

Levine. These malicious acts by Garelick and the Trustees require disclosure in the Account of Trustees as they have a material impact on the Account and claimant's equity.[1]

Attempted Extortion by Trustees and Garelick

Extortion is defined as "using a position of power to take something of value from another." Following the unauthorized and bad faith suspension of Mandelbrot and hundreds of beneficiary claims during the Accounting period, the Trustees by and through their Counsel Garelick began a practice of attempting to *extort* claims of the Mandelbrot Law Firm by forcing him to withdraw pending claims. On multiple occasions during the Accounting period, Trust Counsel Garelick (and later, newly hired "high priced" Counsel Friedman, Kaplan Seiler & Adelman LLP) indicated the only way Mandelbrot claimants' claims would be reviewed is if Mandelbrot "withdraw" as counsel "so the claims may be re-filed by the claimants themselves or new counsel and processed promptly for the benefit of the claimants." (**See Exhibit C – Letter dated September 18, 2014 from Friedman to Mandelbrot).** The Trustees, Garelick, and then Counsel Emily Stubbs were clearly attempting to take something of value (Manville claims filed by the Mandelbrot office) from Mandelbrot by using their position of power. This was an attempt at extortion.

Like the "suspension" of Mandelbrot and hundreds of claims, there is no mention in the Annual Account of this attempted extortion and its impact on hundreds of pending claims (and thousands of future claims). This attempt at extortion by the Trustees, Garelick and Trust Counsel (and to resulting year long delays in payments of hundreds of claims during the Accounting period) are clearly facts material to the contents of the Account of Trustees and the Notes to the Consolidated Special Purpose Financial Statements.

The attempted extortion by Garelick (and now new counsel from Freidman Jason C. Rubenstein) is clearly an error or omission from the 2014 Trustees Report known to both the

[1] The Trustees reliance on a wholly unrelated Thorpe case Appeal by Mandelbrot (also subject to an extensive Judicial Complaint) to suspend Mandelbrot is bad faith. The Trustees have indicated they are awaiting the results of the Appeal before removing the suspension. Mandelbrot has requested the Trustees assume Mandelbrot *loses* the Appeal solely for the purpose of resolving this dispute.

Manville Trustees and Garelick and specifically designed to deceive the Court, claimants and claimant's counsel.

Misappropriation of Trust Funds by Trustees, Garelick, and Jason Rubenstein

The unauthorized suspension of Mandelbrot and hundreds of claims resulted in litigation between Mandelbrot and the Trustees/Trust. The Trustees and General Counsel Garelick – after Mandelbrot challenged the authority to suspend hundreds of claims - hired high priced but questionable New York Lawyers Friedman Kaplan (present lawyer - Jason C. Rubinstein). The hiring of Rubenstein has resulted in the misappropriation of extensive claimants funds (over $500,000) to Rubinstein and his firm during the Accounting period. Specifically, during the Accounting period, Professional Fees **increased $545,322 from the previous year** (an almost 300% increase in Professional fees). **See Trustees Accounting Exhibit II, Page 16 under "professional fees."** This *massive* increase in Professional fees during the 2014 Accounting period was clearly due to the improper and corrupt suspension of Mandelbrot privileges and the extensive billings of Jason C. Rubinstein has resulted in a misappropriation of Trust Funds. Had the misguided "suspension" of Mandelbrot claims never taken place, the misappropriation of funds (from claimant's equity) would have never occurred.

This increase in Professional Fees (with no end to Rubinstein's billing in sight) and the reasons claimants' equity was shifted to lawyers are clearly an error or omission from the 2014 Trustees' Report known to both the Manville Trustees and Garelick specifically designed to deceive the Court, Claimants and Claimant's Counsel.

Trustees Favoritism towards Certain Law Firms Filing Claims

Section I of the 2002 Trust Distribution Procedures states that "All Trust Beneficiaries (shall be) Treated Alike." The failure to disclose in the Account of Trustees the unauthorized and bad faith suspension of the Mandelbrot Law Firm and hundreds of beneficiary claims displayed a corrupt favoritism at the Manville Trust in which all beneficiaries are *not treated equal*. The Mandelbrot Law Firm, who has never filed an

unreliable Manville claim and would welcome an audit or ADR, is suspended. Unlike Mandelbrot, the Law Firm of Brayton Purcell (California's largest filer of claims) has submitted Manville Trust claims which were described by an Ohio Court as "distorted," "exaggerated," and "fictional." **See Exhibit 4: Ohio Court Order, Judge Hanna, January 18, 2007.** Brayton Purcell, who lied to the Court and tried to deceive the Manville Trust about the Kananian claim was not suspended. This favoritism taking place by the Trustees and Garelick, omitted from the 2014 Trustees Accounting, violates the Trust Distribution Procedures and is clearly material to the 2014 Trustees Accounting.

Modifications Necessary to the Manville Personal Injury Settlement Trust Account of the Trustees for the Period ending December 31, 2014

The following modifications to the 2014 Trustees Accounting are necessary to make the Report complete:

1. Full disclosure (either in footnotes or the Account) of the unauthorized suspension of Mandelbrot and hundreds of beneficiary claims. (Trustees Accounting and Notes to the Consolidated Special Purpose Financial Statements #4, #10 and #11).
2. Impact and Value of the suspension of Mandelbrot on claimants' equity, including projected increase in Professional fees (Notes to the Consolidated Special Purpose Financial Statements #6).
3. Number of Claims/Law Firms "Suspended." (Notes #10).
4. Trust Authority for the Suspension of Firms.
5. Accounting of Suspended Claims – Value and by disease (Notes #10, #11 and Supplementary Schedule).
6. A specific listing of all Legal Matters, including specific "Professional fees" related to the suspension of Mandelbrot during the Accounting Period. (Trustees Reporting, Notes to Supplementary Schedule, Exhibit II)
7. A breakdown of all monies paid to Jason C. Rubinstien (for disgorgement at a later time) and Friedman Kaplan. (Notes to Supplementary Schedule, Exhibit II).

8. Provide to BDO, LLP all information regarding the suspension of Mandelbrot and a requirement to BDO to modify the Notes to the Consolidated Special Purpose Financial Statements, Exhibits and Supplemental Reports.
9. Removal of language in Exhibit I (Order) which insulates or protects the Trustees, Garelick or Rubinstein from any liability during the Accounting period.
10. Extensive revisions to the Notes to the Financial Statement.

CONCLUSION

Trustees and Garelick have submitted fraudulent Affidavits to the Manville Personal Injury Settlement Trust Account of Trustees for the period ending December 31, 2014. Each Trustee and Garelick knows of "errors, and omission in the Account to the *prejudice* of creditors of, *and persons interested in the Trust Estate"* and specifically authorized the same in the Trustees Accounting. Each Trustee and Counsel Garelick is aware of the "suspension" of Mandelbrot and hundreds of beneficiary claims impacting claimant's equity, including claimant/beneficiary Rhonda Levine. Each Trustee, individually and collectively, and their General Counsel Garelick are aware of *and* authorized omissions to the Account of the Trustees to the prejudice of claimants counsel (Mandelbrot) and hundreds of beneficiaries of the Manville Trust Estate. The 2014 Report of the Trustees Accounting conceals these material facts necessary for a proper Accounting. The Trustees, by and through their counsel, have also engaged in attempted extortion, bad faith, favoritism and the misappropriation of claimants equity during the Accounting period – all facts which were omitted from the 2014 Trustees Accounting.

Dated: July 1, 2015

/s/_Michael Mandelbrot _____
MICHAEL J. MANDELBROT
Attorney for Beneficiaries

Exhibits

CRMC
CLAIMS RESOLUTION MANAGEMENT CORPORATION

Office of the General Counsel

May 30, 2014

Michael J. Mandelbrot, Esq.
Mandelbrot Law Firm
582 Market Street, Suite 608
San Francisco, CA 94104
VIA EMAIL AND U.S. MAIL
mandelbrot@asbestoslegalcenter.org

Re: Suspension by Manville Trust

Dear Mr. Mandelbrot,

This is to inform you that effective immediately, the Manville Personal Injury Settlement Trust (the "Trust" or "Manville Trust") is suspending processing of claims filed by you or by the Mandelbrot Law Firm ("Mandelbrot Claims") and suspending acceptance of any new Mandelbrot Claims.

We take this step in light of the Findings of Fact and Conclusions of Law, to which you "agreed and stipulated in open court on the record," in *J.T. Thorpe Settlement Trust, Thorpe Insulation Co. Asbestos Settlement Trust v. Michael J. Mandelbrot and The Mandelbrot Law Firm.*[1] Those Findings of Fact report that you agreed with the determinations of three different asbestos bankruptcy trusts that "Mandelbrot, the person and the firm, are unreliable and with respect to [two of the trusts] specifically, have engaged in a pattern and practice of filing unreliable evidence and support claims filed with those two trusts …."[2] You agreed with the sanction that you and your firm be forever barred from filing claims with the trusts that brought the action, which you agreed to be reasonable, and agreed that your pending claims with those trusts be transferred to an attorney who will take responsibility for them as if he or she were the attorney that originally filed the claim.[3]

We have also reviewed a transcript of your April 21, 2014 testimony in the Seattle case of *Garrahan, as Personal Representative of Jimmie Hindman, deceased v. Georgia-Pacific LLC, et al.,*[4] in which you assert that the exposure information submitted by your firm to support a specific Manville Trust claim was falsified. In the *Hindman* deposition, you place the complete blame for the falsified submission on a rogue employee of your firm. This contradicts your testimony in the California *Thorpe* trusts action, as reported by the Findings. In the "May 24th

[1] United States Bankruptcy Court for the Central District of California, Los Angeles Division, Adversary Case No. 2:12-ap-02183-BB, entered April 9, 2014 (the "Findings of Fact"). Quotation at Findings of Fact Paragraph II.3.
[2] Findings of Fact at Paragraph II.3(g).
[3] *Id.* at Paragraph II.3(a), (b), and (h).
[4] Superior Court for the State of Washington In and For the County of King, Cause No. 12-2-12917-7 SEA.

Letter" incorporated into the Findings, it states: "Mandelbrot has not claimed that [the employee] was responsible for submitting any of the unreliable or falsified evidence to the Trusts.... As Mr. Mandelbrot correctly noted during his deposition, 'I personally authorized the filing of every claim, so it comes back to me.'"[5]

There was other disturbing information in your April 21 testimony in the Seattle *Hindman* case. You testified that when you discovered that the allegedly rogue employee in your office had filed falsified information with asbestos trusts: [E]very claim that he had ever filed with my office, just because I didn't want the stain of this criminal associated with my office, *every claim that was filed and unpaid I withdrew it* ...."[6] In fact, at least as to the Manville Trust, it does not appear that your firm withdrew all its pending claims.

More disturbingly, your testimony in *Hindman* suggested, falsely, that an attorney who files claims with the Manville Trust need not sign the claim form or review a claim that he files, and therefore is not responsible for the information submitted to support a claim. You testified:

> "And what you can tell – and this is, you know, sort of tells you about the Johns-Manville claim form. You can see the attorney doesn't have to sign them. He doesn't have to review the claims. There's – my name isn't on that thing because obviously everything that's in there was done by him [the allegedly rogue employee]."

In fact, a Manville Trust Proof of Claim ("POC") filed in paper format states that "All claims must be signed by the injured party or the person filing on his/her behalf. *If the claimant is represented by counsel, counsel must also sign."* (Emphasis added.) Further, the form states of those who sign: "By signing the POC form you are certifying that all representations you have made are true and accurate."

Most Manville Trust claims now are filed not in paper format but electronically using the "e-Claims" electronic processing system maintained by the Trust's Claims Resolution Management Corporation ("CRMC") claims processing subsidiary. A law firm that wishes to file claims electronically must sign a master "Electronic Filing Agreement" that states, at Section 5.1:

> Complete and Accurate Information. Consistent with the Customer's[7] legal and professional responsibilities and consistent with CRMC's rules and procedures referenced in Paragraph [4.1] of this Agreement, in response to the questions asked by the CRMC, the Customer will provide complete and accurate information in the Customer's e-Claims filings."

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[5] May 24th Letter at page 18.
[6] Transcript of April 21, 2014 Michael J. Mandelbrot testimony at page 27 (emphasis added).
[7] A "Customer" is a lawyer or law firm that files Manville Trust claims.

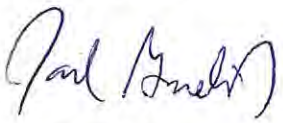
"Hybrid" filers – law firms that make part of their filings in paper format but engage in portions of the claims process through electronic communications – sign a similar agreement.

In sum, contrary to your testimony, a lawyer or law firm that submits Manville Trust claims *does* accept the obligation to submit true and accurate information in support of those claims, for every claim.

The Manville Trust does not lightly suspend processing of a law firm's claims, but it is an extraordinary circumstance to have a lawyer who files Trust claims stipulate to a court's findings that he and his firm have engaged in a pattern and practice of filing unreliable evidence to support claims filed with asbestos bankruptcy trusts. That you appear to have given different accounts of your responsibility for your firm's filings to different courts strengthens the conclusion that information you provide is unreliable.

We understand that you have since attempted, unsuccessfully,[8] to withdraw the stipulation you entered "in open court on the record," and that you have appealed the Judgment entered in the California *Thorpe* trusts case. It is our understanding that your appeal remains pending. The Manville Trust will review its suspension of you and your firm upon resolution of that appeal.

Very truly yours,



Jared S. Garelick
General Counsel

[8] Findings of Fact at Paragraph II.19.

MANDELBROT LAW FIRM

www.asbestoslegalcenter.org

11 Bridle Path,
Novato, CA 94945
Phone: 415.408-3632
Fax: 415.727.4700

September 8, 2014

BY E-MAIL ONLY

Emily A. Stubbs
Friedman Kaplan Seiler & Adelman LLP
7 Times Square
New York, NY 10036-6516

Re: **Improperly Suspended Manville Claims filed by the Mandelbrot Law Firm**

Dear Ms. Stubbs,

I received your letter dated September 5, 2014 indicating you now represent the Manville Personal Injury Settlement Trust relating to the improper, unethical and corrupt suspension of my office from filing claims with the Manville Trust. I was somewhat surprised that the Trust would now choose to misappropriate additional funds by getting another lawyer involved, but when dealing with dishonest, unethical and corrupt lawyers (Mr. Garelick and Ms. Metzfield), your involvement is not shocking. Moreover, as the year gets close to the end, it's well known how 'billable hours' play a strong role in some lawyer's actions.

As you should know, I first received a letter from Mr. Garelick on May 30, 2014 indicating that he was taking the (admittedly) 'extraordinary' step 'suspended' my office from filing claims with the Manville Trust. He primarily cited incomplete testimony I gave in the Hindman case related to a Manville claim as well as the unrelated Thorpe case (which had absolutely no relation to Manville claims and clearly involved corrupt adverse lawyers improperly attacking me and my office). This May 30 letter from Garelick came within 10 days of the incomplete Hindman testimony after improperly circulation of my testimony by another lawyer. Knowing I have never and would never file an unreliable claim with any Trust, I immediately opposed any actions relating to my office and urged Mr. Garelick to review the facts of Hindman. Mr. Garelick indicated he would review the facts once my testimony in Hindman was completed and clearly indicated he would look at it with an "open mind". This, of course, was another lie.

On July 17, 2014, I provided Garelick with my completed Hindman testimony. This testimony not only showed I have never filed an improper Manville claim, but also showed more. My testimony clearly showed that I am the most honest asbestos plaintiff's attorney in the Country who has taken extensive efforts to wipe out fraud in Manville claim filing, have contacted the F.B.I. and authorities when I've discovered others filing improper claims and that I have taken great efforts to recoup Manville Trust funds when they've been received fraudulently by others (despite those improper claims having absolutely no relation to me or my office).

In addition, on August 22, 2014, I spoke with your client Melissa Metzfield. On that date, Ms. Metzfield indicated in no uncertain terms that the "the Trust would just need to confirm the exposure on some claims…and that the entire process will be done expeditiously." Ms. Metzfield promised to provide me a list of

claims early the following week so that I could provide her with the information she needed. As I indicated to Ms. Metzfield, "As always, I'm more than happy to undergo an audit on any and all claims you request and to please provide me with a list as quickly as possible for the benefit of the beneficiaries of the Manville Trust who I represent." Ms. Metzfield also confirmed and acknowledged in that conversation her clear recollection of my extensive efforts to wipe out fraud (unlike any attorney in the Country) in Manville claims by others, including my recoveries of thousands of dollars of Trust funds wrongfully paid to others. In reliance on Ms. Metzfield representations, I told my clients, staff and firms from around the Country that I strongly expected the audit to be closed shortly and claims by office reviewed and paid. Since that date, I have not received one communication from Ms. Metzfield. She clearly lied.

Unfortunately, the following week, the corrupt, incompetent and clearly adverse Mr. Garelick got involved once again. Not mentioning one word about the Hindman matter (the clear impetus for the extraordinary measures he took in the first place), Mr. Garelick indicated that the suspension remained in effect and now solely cited the unrelated Thorpe matters. Clearly, with a strong incentive to bill this case and misappropriate funds, I'm hoping you have read the documentation in those cases. Not only was the Thorpe case wholly unrelated to Manville claims, but it also clearly involved lawyer perjury (the Trust lawyers and staff) and the subornation of perjury, as well as a wholly fraudulent and misleading study of my firm and it's Thorpe claims. Worse yet, the Thorpe case in my office also involved extensive Judicial Misconduct. If you have not received a copy of my complaint for Judicial Misconduct, I'm happy to e-mail you a copy. The case is now before the Judicial Board of Review and the case as a whole is under Appeal. Clearly, any Manville Trust reliance or utilization of that case in support of a suspension of my office is in bad faith and guided by adverse interests. I urge you to not only read my Declarations in that case, but also (and very importantly), my very extensive Objections to the Annual Reports and Declarations attached to those documents.

As I mentioned to you in my e-mail of last Friday September 5, 2014, I have already rejected the Manville Trust's offer to improperly harm the beneficiaries and withdraw claims. To do so without my client's consent and full understanding of the facts would involve unethical and improper conduct by me and would seemingly authorize the Trust's criminal, corrupt, bad faith and unethical actions designed to harm Manville Trust Beneficiaries as well as my firm. Your 'wasteful' letter (needless billings) and proposal which just mimicked Garelick's unethical position is rejected. It is also clearly noted that, like Garelick and Metzfield, your (not even paralegal quality) letter cited no Manville Trust Rules, no provisions of the Manville Trust Distributions Procedures or Manville Trust By-Laws to support the Manville Trust's unethical and corrupt actions related to my office. Your letter only confirms the same. Consequently, as I'm sure you are aware, (given the substantial harm to Trust Beneficiaries due to the corrupt and unethical actions of Garelick and Metzfield), I've already filed a Fraud Complaint with the Department of Justice, am preparing State Bar Complaints related to Metzfield and Garelick and look forward to various Press Releases related to the Trust's conduct. Your involvement changes nothing or the facts of the case. It only changes the headlines to "After Manville Trust commits fraud and acts in bad faith, it Misappropriates Funds by hiring N.Y. Law Firm" or "Manville Trust hires N.Y. Lawyer after committed fraud, acting in bad faith and harming Trust beneficiaries."

To be very clear, I have no desire to enter into any litigation with the Manville Trust. None. It would be a complete waste of resources and designed to continue to harm beneficiaries. I have always simply asked the Trust attorneys to (please!) just read and follow the rules. I'm not sure why that is so hard. If the Manville Trust has any concern whatsoever about the filing of any claim by my office, I'm happy to provide the Trust with documents supporting the claims. Moreover, as always, I'm open to any reasonable and expeditious audit of claims. Really, how hard is it to just follow the rules? Garelick and Metzfield were clearly incompetent to do so and guided by corrupt and adverse interests (related to Alan Brayton and Steven Kazan). As I'm you sure you know, plaintiff's attorney Alan Brayton (Brayton Purcell) committed extensive fraud in the filing of Manville claims and attempted to cover up and conceal the same. I was also personally employed at the Brayton office and raised these issues with the Managing Partner of the firm and left shortly thereafter. It's not ironic that the Manville Trust has chosen to 'suspend' me (when I have never and would never do anything wrong) but has

done nothing but protect Brayton despite have clear knowledge and documents relating to his extensive fraud (see my Objections in the Thorpe and especially the Western Asbestos case).

I urge the Manville Trust to immediately drop the suspension of my office and to immediately begin paying and processing claims filed by my firm. It's really not that difficult. The Manville Trust can continue to unethically and improperly suspend my office, misappropriate funds, act in bad faith, commit fraud, fail to follow any Trust rules and be guided by adverse and corrupt interests or, in the alternative, the Trust can act in good faith, follow the rules and move forward with the processing and payment of my firm's claims. If nothing changes by Friday September 12, 2014, please check the local asbestos periodicals (and your local paper maybe) for a Press Release relating to the Trust's actions (similar to my last communication with Garelick and Metzfield) as well as an updated Department of Justice Complaint and State Bar Complaints.

I can be reached at (415) 408-3632 should you have any questions. Please call anytime.

Sincerely,

Michael J. Mandelbrot

FRIEDMAN KAPLAN SEILER & ADELMAN LLP

BRUCE S. KAPLAN
EDWARD A. FRIEDMAN
GARY D. FRIEDMAN
BARRY A. ADELMAN
ERIC SEILER
ROBERT D. KAPLAN
ANDREW W. GOLDWATER
ROBERT J. LACK
GREGG S. LERNER
SCOTT M. BERMAN
ERIC CORNGOLD
HAL NEIER
PHILIPPE ADLER
LANCE J. GOTKO
KATHERINE L. PRINGLE
MERYL S. ROSENBLATT
DANIEL B. RAPPORT
HALLIE B. LEVIN
ANNE E. BEAUMONT
MARY E. MULLIGAN
EMILY A. STUBBS
KENT K. ANKER
AMY C. BROWN
RICARDO SOLANO JR.
JOHN N. ORSINI
JEFFREY R. WANG
JEFFREY C. FOURMAUX
JASON C. RUBINSTEIN
MICHAEL A. GORDON

7 TIMES SQUARE
NEW YORK, NY 10036-6516
TELEPHONE (212) 833-1100
FACSIMILE (212) 833-1250
WWW.FKLAW.COM

WRITER'S DIRECT DIAL
212-833-1193
WRITER'S DIRECT FAX
212-373-7993
E-MAIL
ESTUBBS@FKLAW.COM

RICHARD M. HOFFMAN
SENIOR COUNSEL

NORMAN ALPERT
ASAF REINDEL
L. REID SKIBELL
COUNSEL

STEVEN E. FRANKEL
DANIEL R. GREENBERG
TIMOTHY M. HAGGERTY
CHRISTOPHER M. COLORADO
CHRISTOPHER L. McCALL
YITZCHAK E. SOLOVEICHIK
PEARLINE M. HONG
ERIC J. FINKELSTEIN
JENNIFER A. MUSTES
EMILY L. CHANG
ANDREW M. ENGLANDER
CHARLES E. ENLOE
ALEXANDER D. LEVI
ELIZABETH L. MACCHIAVERNA
SARAH F. FOLEY
JAMUNA D. KELLEY
RAINA L. NORTICK
MICHAEL S. PALMIERI
ELLIOT CHOI
TANVIR VAHORA
NORA BOJAR
KEVIN J. LIN
ANDREW C. KOSTIC

September 18, 2014

BY E-MAIL AND REGULAR MAIL

Michael J. Mandelbrot, Esq.
Mandelbrot Law Firm
11 Bridle Path
Novato, CA 94945
Mandelbrot@asbestoslegalcenter.org

Re: *Manville Personal Injury Settlement Trust / Claims Resolution Management Corp. ("CRMC")*

Dear Mr. Mandelbrot:

I write to respond to your email of September 16, 2014. As you requested, I am also confirming electronic receipt of your letter dated September 8, 2014.

As I previously advised you, I represent the Manville Personal Injury Settlement Trust (the "Manville Trust" or the "Trust") and Claims Resolution Management Corp. ("CRMC") with respect to matters relating to claims submitted by you or your firm to the Manville Trust for processing by CRMC. All communications concerning the Manville Trust should be directed solely to me and should not be copied to CRMC personnel or anyone else associated with the Manville Trust or CRMC. *See* Cal. Rule of Prof. Conduct 2-100(A).

Although you attach to your email communications to you from Jacob L. Newton, Esq., on behalf of various trusts administered by Verus, and a response from you to Mr. Newton, I do not represent Verus or any of the trusts for which claims are

administered by Verus, and these communications are not relevant to the Manville Trust. Further, the Trust strongly disagrees with your statements asserting that it has acted in bad faith, has committed fraud, is harming beneficiaries, or has engaged in any other wrongful conduct. In addition, please refrain from further *ad hominem* attacks against Mr. Garelick and Ms. Metzfield in your communications concerning the Trust and its actions.

You state in your email that you have questions concerning claims pending with the NARCO Asbestos Trust, "USMIN" (*i.e.*, the United State Mineral Products Company Asbestos Personal Injury Settlement Trust), "and other" trusts. With respect to claims to trusts, other than the Manville Trust, for which CRMC processes claims, you may follow the normal procedures for contacting CRMC personnel unless otherwise instructed by CRMC or the particular trust. Specifically, in CRMC's e-Claims electronic claims filing system, you may use the "Inquiry" button to request clarification on any particular point. To the extent you require further information, you may contact CRMC in writing by email to inquiry@claimsres.com. Please do not contact CRMC by telephone.

The Manville Trust reiterates its prior request that you withdraw claims submitted by you or the Mandelbrot Law Firm (the "Mandelbrot Claims"), so the claims may be refiled by the claimants themselves or new counsel and processed promptly for the benefit of the claimants. If you have any questions, you may reach me at 212-833-1193.

Very truly yours,

Emily A. Stubbs

Signed by Judge Hanna on January 18, 2007

Appendix A.

5

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

Jack Kananian, et al.	)	Case No. CV 442750
Plaintiffs,	)	
vs.	)	Judge Harry A. Hanna
Lorillard Tobacco Company,	)	
Defendant.	)	Order & Opinion

The Defendant has asked the Court to revoke Brayton Purcell's privilege to practice before this Court, which was granted on an *ad hoc* basis, and to dismiss the complaint. The basis of Defendant's motion is a claim that "the objective record in this case tells an appalling story..." of lawyers' oaths of office dishonored and ethical standards of practice unmet. Specifically, it is alleged that counsel engaged in the following acts of impropriety, *inter alia*:

1. lied to the Court concerning destructive testing of the late Mr. Harry Kananian's pathology while seeking an order from this Court barring the defense from destructive testing;
2. submitted a claim form to the Johns-Manville Trust which distorted Mr. Kananian's work history and exaggerated his exposure to Johns-Manville products;
3. lied to this Court concerning when he knew that his office was amending the Johns-Manville claim form;
4. lied to the Court that the claim form was not signed and not submitted to the Trust for payment;

5. represented to the Court that he would cooperate in the discovery of other claims made on behalf of the Kananian family, but urged the Celotex trust to resist disclosure;
6. misrepresented his role in the amendment of claim-forms which had been previously prepared and submitted by Early, Ludwick and Sweeney, another law firm representing the Kananian family before several bankruptcy courts;
7. refused to obey the Court's orders concerning discovery ordered at the March 27, 2006 hearing;
8. intentionally withheld e-mails whose production had been ordered;
9. lied at his June 28, 2006 deposition concerning his awareness of the amended Johns-Manville form and thereafter submitted written answers to interrogatories with the same false information;
10. lied about the whereabouts of pathology and radiology materials;
11. was disrespectful, obstructive, and untruthful at his June 28, 2006 deposition;
12. after his deposition, and after the production of additional materials had shown that his testimony was untruthful, he submitted a tardy errata sheet which completely reversed his testimony concerning the amended Johns-Manville form; and,
13. the privilege logs tendered by counsel were incomplete and misleading.[1]

We review each of these allegations seriatim.

1. Destructive Testing

Harry and Ann Kananian first filed a personal injury lawsuit in California based on Mr. Kananian's alleged asbestos exposure. A case management order applicable to that lawsuit

[1] There were several other allegations of unprofessional conduct but, in contrast to the above thirteen, they pale into insignificance

specifically forbade parties from conducting destructive testing without first providing notice to all other parties to the litigation. That case management order provides:

> No party may conduct destructive testing or destructive preparation of pathology material without giving ten calendar days' notice to all parties by facsimile or personal service on all parties. If any party objects, they may seek a protective order from the Court for good cause. Thereafter, no testing shall proceed without further order of the Court.

Additionally, on June 28, 2000, four days after Mr. Kananian's death, David Thorne, counsel for Lorillard, wrote Mr. Andreas and specifically asked him to notify Lorillard before performing any destructive testing on Mr. Kananian's lung tissue and to agree upon a protocol for any destructive testing. Mr. Andreas never responded to Mr. Thorne's letter.

Despite the California court order, and despite Lorillard's effort to coordinate with Plaintiffs regarding tissue testing, Plaintiffs sent Mr. Kananian's lung tissue to Dr. Samuel Hammar for destructive testing in August of 2000. At no point prior to Dr. Hammar's destructive testing did Plaintiffs notify Lorillard that Dr. Hammar was performing such testing on this unique evidence. On November 24, 2000, approximately seven months prior to Plaintiffs filing this action for wrongful death in Ohio, Dr. Hammar began conducting destructive testing on Mr. Kananian's lung tissue. Dr. Hammar did not prepare duplicate adjacent samples, so his tests could be neither confirmed nor duplicated.

Later , after this lawsuit had been filed, when Lorillard requested Mr. Kananian's lung tissue, Plaintiffs refused to produce the tissue unless defense counsel first signed a stipulation regarding destructive testing. In the interim, Plaintiffs counsel sent Mr. Kananian's lung tissue to another previously undisclosed expert, Dr. Ronald Dodson, so that he could perform more destructive testing. At no point prior to sending this tissue to Dr. Dodson did Plaintiffs notify Lorillard, or this Court, that Dr. Dodson was destroying unique evidence. Like Dr. Hammar,

Dr. Dodson failed to prepare duplicate adjacent samples. His tests therefore could neither be confirmed nor duplicated. Thereafter, on December 22, 2004, Mr. Andreas received a report from Dr. Dodson detailing the results of his secret destructive testing. On the very same day, Mr. Andreas sent Lorillard's counsel a letter demanding that Lorillard sign a stipulation pertaining to any destructive testing that was to occur from that point forward. Thus, it appears that at the same time Plaintiffs were conducting unilateral destructive testing, they were asking this Court to enter an order prohibiting destructive testing without first receiving this Court's approval or opposing counsel's permission.

It is possible that, up to this point, counsel was just disingenuous to this Court. However at the January 27, 2005 hearing on Lorillard's motion to compel, this Court asked Plaintiffs' counsel whether Dr. Hammar, or anyone else, had conducted any destructive testing and Mr. Andreas said no. Cf. Declaration of Terrence Sexton 7-15-05, ¶ 24.[2] At a subsequent hearing, Mr. Andreas told this Court on the record that no destructive testing was performed.

> THE COURT: Mr. Andreas, we asked this question before you joined us. Did the plaintiffs perform any destructive testing?
>
> MR. ANDREAS: Dr. Hammar perform any destructive testing?
>
> THE COURT: Yes.
>
> MR. ANDREAS: No.

Hearing, Tr. (May 27, 2005), p. 21.

Finally, during a telephone conference, Plaintiffs' counsel specifically misrepresented to Lorillard's counsel that Dr. Dodson did no destructive testing stating that no lung tissue or

[2] There is no transcript of the January 27, 2005 hearing, but the Court's memory coincides with that of Mr. Sexton; that is why the Court was persuaded to grant the order to prevent unilateral destruction by Defendant since Plaintiffs' counsel claimed that he had not had destructive testing performed.

pathology material was sent to Dr. Dodson. Cf Declaration of Terrence Sexton 7-15-05, ¶ 37. In fact, the evidence now shows that counsel had secretly directed Dr. Dodson and Dr. Hammar to conduct destructive testing on Mr. Kananian's lung tissue without notifying Lorillard or its counsel and without preparing duplicate adjacent samples, and told both Lorillard and this Court that no destructive testing was ever conducted. This evidence was secreted from the Court before Plaintiffs' motion was granted to prevent unilateral testing by Lorillard.

2. **Fraud in the Original Johns-Manville Claim**

Brayton-Purcell prepared the original claim form for submission to the Johns-Manville Trust. In that application, they stated that Harry Kananian was a shipyard laborer working in direct contact with asbestos, mentioning Thermobestos pipe covering, 85% Magnesia Block, and 500 Cement. While these Johns-Manville products may have been previously installed on ships where he slept, there is no evidence that Harry Kananian ever worked with these products. This fiction, of course, improved chances of recovery from the trust, but was not based on Mr. Kananian's work history, client interview(s), or deposition.

3. **Mr. Andreas' Awareness of the Amendment**

When the original claim was presented to this Court by Defendant Lorillard, and its admissibility urged at the pending trial herein, the Court determined that the claim forms, if signed and submitted to the trusts, would be admissible. Later on Mr. Andreas questioned the accuracy of the forms prepared by Early, Ludwick and Sweeney, but not his office:

> So yes, I do stand by what we filed in this case. I don't stand by what Early, Ludwick & Sweeney did, Judge. I'll stand by what we filed in this case, but I don't think it's necessary to go in, but, you know, I understand if the Court's going to admit something. Again, I can deal with what we filed here because I think it's entirely accurate.

Hearing Tr. (March 23, 2006), p. 95. Despite Mr. Andreas's pledge to "stand by" the original Johns-Manville claim form, he had already expressed misgivings about the Johns-Manville claim form 13 days earlier in an e-mail to his partners:

> ...But I believe we also overstate Mr. Kananian's exposure by indicating he was exposed as some type of shipyard worker at HPNSY (he was there one day to pick up his ship).
>
> These innacurate (*sic*) claim forms are now going into evidence at trial. I am forced to try to explain them away as mistakes by clerks or attys (*sic*). A jury is going to look down on this type of fabrication by lawyers and can use this information to dump plaintiffs...
>
> What do you want to do? 1. Give the money back and improve our chances at trial in a joint and several jurisdiction with pain and suffering surviving? ... Amended claims could be submitted later to try to recoup something from the trusts.
>
> *–March 10, 2006 e-mail from Mr. Andreas to Group Partners*

Indeed, when he stood before this Court on March 23, 2006 and declared that the original Johns-Manville claim form was "entirely accurate," he knew that his office had already prepared an amended Johns-Manville claim form on March 22, 2006 with material factual changes; in fact, he had reviewed it and commented upon the changes to Mr. Poole in his office. Therefore, Mr. Andreas's representations to this Court on March 23, 2006 were patently false and could only have been designed to deceive this Court and Lorillard.

The questions surrounding the claim forms prompted the Court to continue the trial from March 27, 2006 in order to resolve those questions, including: "When plaintiffs' counsel announced a willingness to stand by, on March 23rd, the claim form that had been previously presented ..we need to know whether that was inadvertent...or we need to know whether or not Mr. Andreas was aware or unaware of it." It is now clear that Brayton Purcell submitted an amended Johns-Manville claim form on March 22, 2006. Mr. Andreas, however, repeatedly

disavowed having any knowledge at the time of the March 23, 2006 hearing that his firm was preparing or submitting an amended Johns-Manville claim form. But the subsequently disclosed e-mails reveal the truth.

At the March 28, 2006 hearing, Mr. Andreas stated to this Court:

> For instance, I'm prepared to be sworn right now about that last category about when did I find out about the amended claim form. And I can tell you, I'll just tell you right on the record and I'll repeat it under oath at any other point, I did not know about it when we argued on Thursday, last Thursday [March 23, 2006]. I did not know it had been prepared.

Hearing Tr., p. 177. Similarly, at the hearing on June 1, 2006, Mr. Andreas maintained his story:

> . . . I became aware actually late, late in the day or in the early evening of the 23rd, the amended claim forms from Johns-Manville had been sent to me after seven o'clock Pacific standard time on the night of the 22nd. I didn't read my e-mails until I got back from Court late in the afternoon on the 23rd, and at which time I saw the amended claim form.

Hearing Tr., pp. 10-11. Then, on June 13, 2006, Mr. Andreas told this Court that he did not become aware that his office was amending the claim form until March 24, 2006:

> Now, the sum total of those emails, Judge, were basically Mr. Poole attaching a copy of an amended complaint [sic] that apparently my office had prepared the evening of March 22nd, I think it was after seven o'clock PST, and my response in the morning of the 24th was when I finally got around to looking at this email because I was in court all day on the 23rd, and I asked simply whether it had been submitted. And that's the extent of the two emails.

Hearing Tr., p. 12. Mr. Andreas furthered his deception in his testimony under oath at his June 28, 2006 deposition:

> Q. All right. It's your testimony that you were in bed and asleep by 10:19 Eastern Standard Time, which is 7:19 California time, on the evening of March 22nd; correct?
>
> A. I was asleep or – yeah. I just don't recall. I wasn't sitting there timing, you know, when I actually went to sleep. All I know is that I was not picking up e-mail, including this e-mail, specifically this e-mail from Mr.

Poole that came in very late in the day, and apparently he stayed late that day –

[Colloquy of counsel]

Q. But whatever time you went to sleep, you knew, at that time, that your office had been working on preparing an amended claim form?

A. No, I did not.

Q. You knew that your office had been working on that for some time.

A. No, I did not.

[Objection by counsel]

Q. When did you first learn that your office has [sic] commenced working on the John [sic] Manville e-mails [sic]?

A. Mr. Boggs, we went through this; okay? I knew that it had been commenced, prepared and submitted – well, I should say commenced and prepared sometime on the afternoon or evening of March 23rd. I did not know it had actually been submitted until the next morning, which I think there's another e-mail that you have.

Andreas Deposition Tr. (June 28, 2006), at 62:24–64:8.

Brayton Purcell continued the deceit in its amended answers to Lorillard's Interrogatories, which were signed by Mr. Andreas:

> The amended claim form was sent by e-mail attachment to Mr. Andreas after 7:00 p.m. (PDT) on March 22, 2006 (10:00 p.m. EST). Mr. Andreas did not receive or review this e-mail until late in the afternoon on March 23, 2006, after he returned from court in Cleveland, Ohio. (Emphasis supplied).

On July 11, 2006, Brayton Purcell amended its answer to Interrogatory No. 43, now claiming:

> The amended claim form was sent by e-mail attachment to Mr Andreas after 7:00 p.m. (PDT) on March 22, 2006 (10:00 p.m. EST) Mr. Andreas does not recall reviewing the attached amended claim form until late in the afternoon on March 23, 2006, after he returned from court in Cleveland, Ohio. (Emphasis supplied).

Despite Mr. Andreas's repeated claims to the contrary, both under oath and before this Court, it is now crystal clear that he knew that his office was amending the Johns-Manville claim form on March 22, 2006 at the very latest. Mr. Andreas did, in fact, read his e-mails at 8:57 p.m. (PST)/11:57 p.m. (EST) on March 22, 2006. When he received an e-mail from Ryan Poole attaching the amended Johns-Manville claim form on the night of March 22, he replied to it. Accordingly, Mr. Andreas knew that Brayton Purcell had prepared and was submitting an amended claim form before the March 23, 2006 hearing. These e-mails confirm that Mr. Andreas lied to this Court and testified falsely under oath when he claimed that he did not look at, read, or respond to Mr. Poole's e-mail until March 23, 2006. Eventually, Mr. Andreas admitted to the truth once this information came to the Court's attention. He apparently never expected that the Court would order him to produce the e-mails that exposed his deceit.

4. **Counsel Encouraged Celotex to Resist a Subpoena, Even as it Promised This Court Full Cooperation**

In another attempt to exclude the original claim forms from evidence, Mr. Andreas argued that there was no evidence that the original claim forms were actually submitted to the bankruptcy trusts. This Court, therefore, ruled that the claim forms were admissible only if Lorillard could prove they were actually submitted.

At significant expense, Lorillard obtained commissions from this Court, engaged local counsel, procured subpoenas from courts in other jurisdictions, and took other steps to comply with the trusts' requirements. On March 10, 2006, Lorillard sought an order from this Court asking Plaintiffs' counsel to stipulate that the claim forms were submitted to the trusts. Mr. Andreas told this Court that he did not know if the Early Ludwick claim forms had been submitted. He also told this Court that he would "welcome" documentation from the trusts indicating that the claim forms were submitted. Mr. Andreas did this while knowing that his

firm and Early Ludwick had received money on behalf of Mr. Kananian from all of the trusts. He attempted to deceive this Court and Lorillard about the filing of these claims in an effort to further his "win at all costs" strategy.

After the March 10, 2006 hearing, Amy Hirsch, an employee of the Celotex Trust, asked Early Ludwick to approve the release of the Trust's file for Harry Kananian, and Early Ludwick then asked Brayton Purcell for guidance. Christina Skubic, a Brayton Purcell attorney, asked Mr. Andreas how she and Early Ludwick should respond to Ms. Hirsch's inquiry. Mr. Andreas told her to "urge Celotex to resist."

Ms. Skubic followed Mr. Andreas's instructions and encouraged Celotex to resist Lorillard's efforts. And, in an internal e-mail dated March 22, 2006, Mr. Andreas stated, "I would love if Celotex gave these (expletive deleted) a hard time."

The next day, on March 23, 2006, Mr. Andreas told this Court a different story:

> There was a letter apparently – I have just been informed of this – a letter that came from the Celotex Trust and I'm not sure if it was sent to counsel, if they received it or not. The Celotex Trust . . . has a very strong policy . . . They take a position that they're not going to turn this over. ... They will resist efforts to do this independently. ... So I don't know what to do at this point.

Hearing Tr., p. 54 (emphasis added). And on March 24, 2006, Mr. Andreas sent an e-mail to counsel for Lorillard stating:

> I have instructed my paralegal to advise the trust that my office will not be filing a motion to quash and that to our knowledge neither will Early Ludwick. That is the best I can do. Celotex may wish to take action on its own, but that is not in my control.

Then, on March 27, 2006, Mr. Andreas told this Court that his firm was not putting up any roadblocks. Yet, on March 29, 2006, with Mr. Andreas's knowledge, his firm advised Ms. Hirsch "that if the trust wants to object they can." This does not equate to the full cooperation he promised the Court to obtain the various claims forms for Lorillard.

5. Counsel Lied to This Court About Producing an Unsigned Copy of the Original Johns Manville Claim Form During Discovery

Several times Mr. Andreas indicated to the Court that the original claim forms were not submitted to the bankruptcy trusts. Plaintiffs submitted a claim form signed by Mr. Andreas's partner, Alan Brayton, to the Johns-Manville Trust in April of 2000. During discovery, however, Plaintiffs produced an *unsigned* copy of the original Johns-Manville claim form. Later, Plaintiffs moved to exclude the original claim forms from evidence. During oral argument, Mr. Andreas argued that the original Johns-Manville claim form should be excluded from evidence because, among other things, it was "unsigned." In fact, Mr. Andreas stressed, "It's an unsigned document, wasn't even executed by an attorney at my office." Hearing Tr. (February 23, 2006), p. 283.

Mr. Andreas acknowledged that the original Johns-Manville claim form came from Brayton Purcell's files and was produced to Lorillard during discovery. He argued, "I don't know whether that claim form was ever actually submitted or not. It was prepared apparently by my office." *Id.* After expending time and effort, and incurring expense, Lorillard then verified that Brayton Purcell had submitted the original Johns-Manville claim form, that Alan Brayton had signed it, and that Johns-Manville had paid money on the claim. Realizing that his argument for excluding the original Johns-Manville claim form as "unsigned" would now fail, Mr. Andreas changed his story and told the Court on March 23, 2006 that he had produced an executed copy of the original Johns-Manville claim form during discovery Specifically, he stated, "I believe what we did give them was the executed copy because I'm looking at it right now. It was executed, had all attachments to it. There's no reason to hold that back." Hearing Tr., p. 83

Later, in Plaintiffs' Amended Responses to Defendant Lorillard Tobacco Company's Second Requests for Admissions, Brayton Purcell finally admitted that it had produced an *unsigned* version of the original Johns-Manville claim form earlier in discovery Mr. Andreas has not explained why he produced an unsigned copy of the original Johns-Manville claim form during discovery or why he told this Court the exact opposite. More importantly, Mr. Andreas represented to this Court that the original Johns-Manville claim form was unsigned when he knew that it was signed and submitted, and that his firm had collected money from the Johns-Manville Trust.

6. **Brayton Purcell's Influence Over Early Ludwick**

Mr. Andreas has continually denied having any control over Early Ludwick or having any involvement in the preparation of the Early Ludwick claim forms. For example, on March 10, 2006, when asked whether settlement monies had been collected as a result of the claims filed by Early Ludwick, Mr. Andreas responded, "I don't know. I don't work for Early, Ludwig [sic] & Sweeney." Hearing Tr., p. 36. On March 23, 2006, Mr. Andreas told this Court, "We didn't prepare them [the Early Ludwick forms]; we didn't file them... we weren't involved in those at all." Hearing Tr., p. 61. On March 23, 2006, Mr. Andreas also told this Court, "I've said repeatedly, I don't work for Early, Ludwick & Sweeney. I don't know what they did in this case." *Id* at 138-39. On June 1, 2006, Mr. Andreas told this Court, "[we] keep hearing references to what Early Ludwick did with their amended claim forms. We hear about 48 Insulations and Celotex and all these others. That has nothing to do with my office." Hearing Tr., p. 29.

Communications between Brayton Purcell and Early Ludwick prove otherwise. An internal Early Ludwick e-mail shows that Brayton Purcell actually approved all of the payments

that Early Ludwick accepted from the trusts on the original claim forms. And, during his second deposition, Alan Brayton confirmed that he personally approved at least some of the Kananians' bankruptcy recoveries obtained by Early Ludwick. *See* Brayton Deposition Tr. (Oct 12, 2006), p. 197.

Mr. Andreas's representation that he was not involved with the Early Ludwick amended claim forms was also false. Indeed, the e-mails show a close coordination between Brayton Purcell and Early Ludwick to amend the claim forms. On March 24, 2006, Early Ludwick informed Brayton Purcell that it was working on amending its claim forms at Brayton Purcell's request. Drafts of the amended claim forms were then sent to Brayton Purcell for review and approval. A few days later, Mr. Andreas and Bruce Carter both provided Early Ludwick with specific instructions for editing the claim forms. Early Ludwick incorporated their edits and submitted the amended claim forms to the trusts.

7. Claim of Inaccurate Privilege Logs

When the Court first ordered discovery of the materials used to prepare the bankruptcy claim forms, Mr. Andreas prepared and signed Plaintiffs' original privilege log, which identified 27 e-mails. During his first deposition, Mr. Andreas continually instructed counsel for Lorillard to "just look at the document," and he stressed, "the document speaks for itself." Andreas Deposition Tr. (June 28, 2006), pp 54-57. Mr. Andreas also relied upon the privilege log several times at the deposition, but he did not mention that it was inaccurate or that each of the 27 entries represented a larger "string" of e-mails containing many undisclosed messages, authors, and recipients.

Then, during Alan Brayton's deposition, after Mr. Andreas, Mr. Poole and Ms. Skubic had testified, it became apparent that there were numerous errors in the original privilege log.

The privilege log misidentified several senders and recipients and failed to include a number of relevant e-mails.

After the Court required Brayton Purcell to produce the e-mails for *in camera* review, Mr. Andreas admitted that the original privilege log was materially inaccurate. Andreas Deposition Tr. (Oct. 11, 2006), p. 218. Mr. Andreas explained, "I did not involve myself in a detailed review of the actual e-mails when I prepared the original privilege log." *Id.* Mr. Andreas could not even recall if he reviewed the original privilege log for accuracy. *Id.* at 235.

Brayton Purcell produced an amended privilege log after the first log was shown to be at least incomplete. Mr. Andreas once again decided which e-mails to include in the document, and he signed it. There were now 81 e-mails listed on the amended privilege log, 54 of which were not on the original log.

The reason for Mr. Andreas's initial deception became evident after the amended privilege log was produced. One of the new e-mails was Mr. Andreas's reply to Ryan Poole at 11:57 p.m. (EST) on March 22, 2006. That e-mail proved Mr. Andreas lied to this Court when he told it that: (1) he was in bed by 10:00 p.m. (EST) on March 22; (2) he did not look at Mr. Poole's e-mail on March 22; (3) he did not send any e-mails to his office on the evening of March 22; and (4) he was not aware his office had started preparing an amended Johns-Manville claim form on March 22, 2006.

Thereafter, Mr. Andreas produced a third, so-called "final amended privilege log," containing 12 more e-mails that were omitted from the amended log. Notwithstanding Mr. Andreas's claim that the third privilege log was the "final" one, after Mr. Andreas's and Alan Brayton's second depositions, counsel produced still more new e-mails authored by Mr. Andreas and Mr. Brayton. *See* Poole Deposition Tr. (Oct. 13, 2006), at 290-295. After Lorillard filed a

renewed motion to compel a forensic computer inspection, counsel produced yet another undisclosed email dated March 23, 2006, dealing with amendment of the claim forms.

Mr. Andreas assured this Court many times that he had produced all of the e-mails owed to Lorillard; each time, however, those assurances proved false. He amended the privilege logs only after the Court obtained the underlying e-mails that exposed Mr. Andreas's deception and after key Brayton Purcell witnesses had been deposed. At best, Mr. Andreas inadvertently withheld e-mails because Brayton Purcell never engaged in a meaningful review of its files – as it should have. At worst, Mr. Andreas intentionally withheld responsive documents from Lorillard. Either way, Mr. Andreas was untruthful when he told this Court, "Brayton Purcell has done everything on its end to get its obligations for this discovery process completed in a timely manner." Hearing Tr. (June 15, 2006), p. 8.

8. **Mr. Andreas' Deposition**

There are three areas of concern arising from Mr. Andreas's June 28, 2006 deposition: appearance, attitude and veracity. Mr. Andreas appeared in a T-shirt emblazoned with this message: KILLER SMOKES – KENT CIGARETTES – 1952 - 1956 – MADE BY LORILLARD TOBACCO. The deposition was videotaped. If a lay witness had appeared so attired for a video deposition, the Court would certainly have been offended – perhaps moved to censure the witness. For an officer of the court to show such lack of respect is shocking.

Mr. Andreas spent much of the time lecturing opposing counsel, ruling on the propriety of issues of inquiry, and refusing to answer many questions. His obstructionist tactics necessitated a resumption of his deposition, and those of other Brayton Purcell witnesses, in October

Received Time Jan 18 5:47PM

Of course, the worst aspect of the June deposition is the veracity question. Since the return e-mail of March 22, 2006 from Mr. Andreas to Ryan Poole clearly establishes that Mr. Andreas was aware of the amendment of the Johns Manville claim form, his testimony under oath at his June 28, 2006 deposition is most alarming:

Q. Did you send any e-mails, on March 22nd, to your office on the subject of the amendment of claim forms?

A. ...Yeah. I sent no e-mail on the 22nd in which I said that the John Manville claim form should be amended, if that's your question...No, I did not

Q. ...Did you send any e-mails, the evening of March 22nd, to your office on the subject of John Manville claim forms?

A. No.

Q. ...Did you receive any e-mails on that evening of March 22nd, from your office on the subject of John Manville claim forms?

A. ...Right. I did receive an e-mail on the 22nd at, I believe, 7:19 p.m. Pacific time, from Ryan Poole. I found out about this, of course, the next afternoon or evening, on the 23rd, when I finally got around to picking up my e-mail.

I was extremely busy. I was asleep before 10:00 p.m. on the 22nd, which is before the e-mail arrived. So I'm trying to make this as clear as possible for you. I wasn't aware that that had actually been sent to me until the afternoon or evening of the 23rd.

Q ...But whatever time you went to sleep, you know, at that time, that your office had been working on preparing an amended claim form?

A. No, I did not.

Andreas Deposition Tr. (June 28, 2006), p. 62

There is simply no justification for these falsehoods. It is one thing, perhaps, to have imperfect memory; however, when you blatantly create a falsehood (I was asleep at ten o'clock) to buttress your previous lies, it can only be attributed to a purposeful plan to deceive the Court.

The bitter irony of all this deception is that it was directed at a relatively innocuous issue, i.e., when did Mr. Andreas become aware of the amendment? His statement of support for the original claims form could have been explained or withdrawn or ignored as an obscure issue in a case fraught with dozens of more compelling issues. But rather than admit that he rashly supported his firm's original claim form even though he was aware of its impending amendment, he chose to weave a seemingly endless web of deceit. What a shame! He jeopardized his client's case and his own reputation because he would not admit to a little bravado in the heat of the moment.

9. Obstruction of the Discovery

The Court-ordered discovery of March 27, 2006 was accomplished only after interruptions, motions and hearings. We need not repeat the previous findings that Plaintiffs' counsel consistently and persistently obstructed the discovery process, turning what should have been an orderly examination of the issues into a nine-month saga of frustration. We are reminded of the Ohio Supreme Court's take on lawyers who stifle the discovery process. In *Cincinnati Bar Ass'n v. Marsick* (1998) 81 Ohio St.3d 551, where the attorney at issue failed to disclose information and caused his client to submit false discovery responses about the existence of a witness secured by the attorney, the Court stated:

> Our system of discovery was designed to increase the likelihood that justice will be served in each case, not to promote principles of gamesmanship and deception in which the person who hides the ball most effectively wins the case.

Id., quoting *Abrahamsen v. Trans-State Express, Inc.* (6th Cir. 1996), 92 F.3d 425, 428-429

The Court stated further:

> A discovery request raises an obligation to produce the evidence sought when it is relevant and not privileged. Concealing evidence that is clearly requested is tantamount to deceiving both opposing counsel and the court. We have

consistently imposed sanctions for lying to clients, to opposing counsel, and to the court.

Id., citing *Disciplinary Counsel v. Greene* (1995), 74 Ohio St.3d 13, 16, 655 N.E.2d 1299, 1301; *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 658 N.E.2d 237.

The Court concluded that:

> The integrity of the individual lawyer is the heart and soul of our adversary system [that] depends on the integrity, moral soundness, and uprightness of the lawyer. . . . There can be no breach or compromise in that essential quality of an officer of the court without seriously undermining our entire adversary system.

Conclusion

If there is one singular characteristic of the American system of jurisprudence, it is the relentless pursuit of truth. All of our rules of procedure and evidence are designed to provide the decision maker with all relevant and trustworthy information so that the controversy can be decided based upon the truth. The process of gathering and presenting that information is to be conducted with dignity and civility. When lawyers in Ohio participate in that process, they are specifically proscribed from engaging in "...conduct involving dishonesty, fraud, deceit or misrepresentation." 19 Ohio Rev. Code, DR 1-102(A)(4). Attorneys seeking admission to practice in Ohio must swear that

> ...I will support the Constitution and the laws of the United States and the Constitution and the laws of Ohio, and I will abide by the Code of Professional Responsibility.
>
> In my capacity as an attorney and officer of the Court, I will conduct myself with dignity and civility and show respect toward judges, court staff, clients, fellow professionals, and all other persons
>
> I will honestly, faithfully, and competently discharge the duties of an attorney at law."

The record before this Court indicates that Brayton Purcell institutionally and Christopher Andreas individually have failed to abide by our rules. They have not conducted themselves with dignity. They have not honestly discharged the duties of an attorney in this case. Therefore, they have forfeited their privileges to practice before this Court. The motion to revoke *pro hac vice* privileges is granted.

The motion to dismiss is more troubling. Normally, for such egregious behavior as chronicled herein, there should be consequences. Rule 37 of the Ohio Rules of Civil Procedure provides for dismissal under such circumstances. If there had been any complicity by any member of the Kananian family, such a Draconian measure might be appropriate; however, the family did nothing improper. Furthermore, the current counsel for Plaintiff, Mr. Bruce Carter, was completely blameless as well. Therefore, the motion to dismiss is overruled.

IT IS SO ORDERED.

JUDGE HARRY A. HANNA

JANUARY 18, 2007