

Department of Justice  
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## Justice Department Files Statement of Interest Urging Transparency in the Compensation of Asbestos Claims

The Department of Justice today filed a Statement of Interest in *In re Bestwall LLC* in the U.S. Bankruptcy Court for the Western District of North Carolina. In this bankruptcy case, the debtor Bestwall LLC seeks to establish a trust to resolve its asbestos liabilities pursuant to 11 U.S.C. § 524(g), a provision in the Bankruptcy Code that provides the framework for responding to the unique issues associated with asbestos liability.

As part of the bankruptcy, the court will evaluate the submitted asbestos claims and estimate the amount of the debtor's asbestos liabilities. In order to ensure the accuracy of the estimation, the debtor has asked the court to require asbestos claimants to fill out a questionnaire providing basic information about their claims and to authorize discovery from other asbestos trusts to which claimants have submitted claims. The department's Statement of Interest supports these proposed procedures on the ground that they will further transparency in the evaluation of the submitted asbestos claims and ensure the reliability of the estimation of the debtor's asbestos liabilities.

"It has become increasingly common for claimants' counsel to seek duplicative recoveries from multiple sources by misrepresenting the asbestos products to which claimants were exposed," said Deputy Assistant Attorney General Douglas Smith of the Justice Department's Civil Division. "Such duplicative claiming depletes resources that would otherwise be available to compensate deserving claimants filing claims in the future. Today's Statement of Interest is one of many actions the department has taken over the last several years to encourage greater transparency in asbestos bankruptcy proceedings and prevent fraud."

"In recent years, numerous courts and commentators have recognized that many asbestos claims are based on inaccurate or even fraudulent information," said U.S. Attorney R. Andrew Murray for the Western District of North Carolina. "That lack of transparency in the compensation of asbestos claims has been a significant problem,"

Congress enacted 11 U.S.C. § 524(g) to create a comprehensive mechanism for addressing injuries caused by asbestos. Under section 524(g), asbestos-related claims may be channeled to a special trust created under the bankruptcy plan of reorganization, which then assumes responsibility for both the defense and payment of those claims. The trusts are managed by trustees, who often must secure support for major decisions from a "trust advisory committee," whose members are often the same attorneys who represented asbestos claimants during the bankruptcy. Since 1994, more than 60 such trusts have been established by chapter 11 debtors with asbestos-related liabilities. According to the Government Accountability Office, asbestos bankruptcy trusts paid \$17.5 billion from 1988 through 2011, and more recent studies estimate higher amounts.

Both courts and commentators have expressed growing concerns that claims submitted in these bankruptcies may be fraudulent. In 2014, the same bankruptcy court in which the United States today filed its Statement of Interest found a substantial pattern of misrepresentation in another case, *In re Garlock Sealing Technologies LLC*, 504 B.R. 71 (Bankr. W.D.N.C. 2014). The court found that, in a sample of asbestos claims submitted before the bankruptcy, in each and every case key evidence about

asbestos exposure had been misrepresented or withheld. In several instances, plaintiffs made claims against defendants to whose products they had previously represented they had never been exposed. Similarly, several studies have demonstrated problems with claims submitted to asbestos trusts. One study found that, in the study period, people without malignant asbestos injury accounted for 86 percent of all claims made to the trusts and 37 percent of all trust payments. Another found that many of the claim forms submitted by the same claimants and law firms to different trusts contradicted each other. The secrecy with which asbestos claims are processed by asbestos trusts has facilitated the payment of claims that do not deserve compensation and has made it difficult to detect when plaintiffs are seeking a recovery based on inaccurate or fraudulent representations. Recognizing this problem, 16 states have already passed legislation requiring disclosure of basic information regarding other sources of asbestos compensation as well as the asbestos products to which claimants were exposed.

The United States' Statement of Interest argues that there should be transparency in the estimation of asbestos claims in bankruptcy proceedings in order to prevent fraud and abuse. As the statement explains, courts presiding over asbestos bankruptcy cases increasingly are putting in place procedures requiring claimants to provide basic information documenting their allegations regarding product identification (and other elements of their claims) as well as any prior claims they have filed in the courts or with other asbestos trusts. Courts increasingly recognize that such transparency is critical to the fair and efficient resolution of asbestos claims.

Today's filing is part of broader efforts by the department to look for opportunities to increase the transparency of asbestos bankruptcy proceedings and asbestos trusts in order to protect the interests of legitimate claimants and the United States. This includes objecting to bankruptcy plans that lack critical provisions to ensure transparency and accountability and to prevent fraudulent claims and mismanagement of asbestos trust funds, including provisions: that require compliance with the Medicare Secondary Payer Statute that notify claimants of their potential obligation to reimburse Medicare; that prevent excessive administrative costs and attorney contingency fees; that avoid conflicts of interest among members of the trust advisory committee; and that prevent payments to those who cannot demonstrate exposure to the defendants' products or who have made inconsistent claims in other asbestos proceedings.

This matter is being handled by the Justice Department's Civil Division with assistance from the U.S. Trustee Program and the U.S. Attorney's Office for the Western District of North Carolina.

**Attachment(s):**

[Download Bestwall US Statement of Interest.pdf](#)

**Component(s):**

[Civil Division](#)

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