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11  
12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
13 **COUNTY OF SAN FRANCISCO**

**CGC-21-591870**

14 Donald Breyer, M.D.; and  
15 Mark Klepper, M.D.,  
16  
17 Plaintiffs,

18 vs.

19 Ankura Consulting Group, LLC,  
20 Defendant.  
21

Case No.:

**COMPLAINT FOR DAMAGES**

Demand for Jury Trial

22  
23 Plaintiffs Donald Breyer, M.D. and Mark Klepper, M.D. hereby make the following  
24 allegations against defendant Ankura Consulting Group, LLC.

25 **NATURE OF THIS ACTION**

26 1. This action concerns the calculated conduct of Defendant Ankura Consulting  
27 Group, LLC to end the legal consulting careers of two renowned physicians, Plaintiffs Donald  
28

ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**05/14/2021**  
Clerk of the Court  
BY: RONNIE OTERO

Deputy Clerk

1 Breyer, M.D. and Mark Klepper, M.D. The main purpose of Defendant’s conduct was to deprive  
2 thousands of present and future asbestos-related injured workers—diagnosed by Drs. Breyer and  
3 Klepper—of their rightful claims to compensation from billions of dollars available in asbestos  
4 trust funds. On information and belief, and as Drs. Breyer and Klepper expect to confirm  
5 through discovery in this action, Ankura’s conduct was coordinated by the principals of  
6 prominent plaintiff-side asbestos law firms, for the purpose of protecting what they see as “their”  
7 shares of the billions of dollars held by the trusts, yet to be distributed. These same principals of  
8 prominent plaintiff-side asbestos law firms serve as fiduciaries of the nine asbestos trusts which  
9 banned the Plaintiffs’ expert reports.

10  
11 2. Dr. Breyer became a board-certified radiologist in 1978, and Dr. Klepper has  
12 practiced in pulmonary medicine since 1986. Dr. Breyer is among just 13 doctors in California  
13 who are currently certified by the National Institute for Occupational Safety and Health  
14 (“NIOSH”) as “B-Readers” of chest x-rays, *i.e.*, physicians who have demonstrated proficiency  
15 in classifying radiographs of dust-related illnesses in human lungs. For his part, Dr. Klepper is  
16 among just 12 qualified B-Readers in Texas. B-Readers must demonstrate their proficiency in  
17 this practice by re-testing at least every four years. Dr. Breyer first became qualified as a B-  
18 Reader in 1990, and has demonstrated his skill and proficiency at diagnosing dust-related  
19 medical conditions at four-year intervals ever since, passing the NIOSH re-certification exam  
20 seven times. Dr. Klepper obtained his B-Reader qualification in 1993, and has been re-certified  
21 in 2009, 2013, and 2017.

22 3. Beginning in the late-90s, Drs. Breyer and Klepper independently began  
23 developing practices in reading chest x-rays for workers who were exposed to asbestos in the  
24 workplace, and who desired to learn whether any asbestos-related disease had manifested in their  
25 lungs, such that they might be entitled to compensation from the manufacturers of those  
26 products. As part of those practices, Drs. Breyer and Klepper have been retained by at least a  
27 dozen law firms to read the radiographs of their actual and potential asbestos disease clients, to  
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1 determine whether a given client had manifested a compensable injury. Where doctors such as  
2 Plaintiff Doctors Breyer and Klepper diagnosed such an injury, the injured worker would  
3 typically submit a claim to one or more of the several trusts that have been created in conjunction  
4 with the bankruptcies of asbestos manufacturers, including such well-known names as Celotex,  
5 Owens Corning/Fibreboard, U.S. Gypsum, Pittsburgh Corning, and W.R. Grace & Co. (which  
6 are among the trusts at issue here, and hold over \$5 billion in trust assets). If the claim is  
7 properly processed by the Trust, the injured worker would then receive a settlement amount,  
8 depending on the nature of his or her illness and other factors, adjusted by the “payment  
9 percentage” then offered by a given trust.

10 4. Twenty-seven and twenty-two years into Dr. Breyer’s and Dr. Klepper’s  
11 respective practices of submitting “B-Reads” for injured workers who had asbestosis—a  
12 sometimes lethal but non-malignant disease—nine of the asbestos trusts engaged and authorized  
13 Defendant Ankura Consulting Group (a consulting firm with whom the trusts have a  
14 longstanding consulting relationship) to design and perform an “audit” of 25 of the thousands of  
15 radiographic reads that each Dr. Breyer and Dr. Klepper had performed over the years. As  
16 alleged more fully herein, the “audit” was in fact not designed to evaluate the *accuracy* of Dr.  
17 Breyer’s and Dr. Klepper’s reads, but was instead a pretext designed to “fail” the doctors. By  
18 failing the doctors through a sham audit, Defendant Ankura consulting could effectively reduce,  
19 suppress, and delay tens of thousands of claims that were being submitted to the trusts  
20 collectively, by limiting the claims submitted through the law firms that retained the Plaintiffs.  
21 By eliminating Dr. Breyer and Dr. Klepper from the pool of qualified diagnosing doctors, and  
22 thereby restricting, delaying, and suppressing the number of claims submitted by the many law  
23 firms from around the country that retained them, Ankura and the “participating trusts” sought to  
24 ensure that the assets of those trusts would be preserved for claims tendered by the same  
25 prominent asbestos firm principals who also have seats on the “Trust Advisory Committees” or  
26 “Asbestos Claimant’s Committees” that run the affairs of the trusts and have a strict fiduciary  
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1 duty to all claimants (not just those represented by their own firms). Pursuant to that coordinated  
2 plan, in January 2020, Ankura informed Dr. Breyer and Dr. Klepper that they had “failed” the  
3 audit, and that the nine trusts on whose behalf Ankura had performed the audit would no longer  
4 accept their B-reads in conjunction with claims submitted by injured workers. Despite multiple  
5 requests from the doctors, Ankura has refused to divulge any of the criteria, basis or operations  
6 by which the “audits” were conducted, including *who* it was that determined that these  
7 preeminent doctors were incapable of reliably and accurately diagnosing asbestos-related  
8 disease.

9  
10 5. Because the manufacturer asbestos trusts themselves are immune from legal  
11 claims by anyone other than the workers they injured, Drs. Breyer and Klepper are unable to  
12 pursue an injunction against the nine trusts to have the decision reversed, and thus have their  
13 reputations restored. Accordingly, Plaintiffs bring this action for monetary relief against Ankura,  
14 seeking compensation for the past and future business and reputational losses they have suffered  
15 and will continue to suffer from the sham audit process that Ankura designed and conducted in  
16 coordination with the trusts’ and on their behalf.

17 **PARTIES**

18 6. Plaintiff Donald Breyer, M.D., is a radiologist and resident of Sonoma County,  
19 California.

20 7. Plaintiff Mark Klepper, M.D., is a specialist in pulmonary disease and resident of  
21 Texas.

22 8. Defendant Ankura Consulting Group, LLC is a Delaware limited liability  
23 company based in Washington, D.C., with offices in numerous cities worldwide, including in  
24 Los Angeles, Irvine, and San Francisco, California.

25 **JURISDICTION AND VENUE**

26 9. This Court has personal jurisdiction over Ankura Consulting Group, LLC because  
27 it conducts business within the State of California. This Court has general jurisdiction over each  
28 of the common-law causes of action alleged herein.

1 10. Venue is proper in this Court because Ankura Consulting Group, LLC does  
2 business in, and maintains an office in, San Francisco County.

3 **FACTUAL ALLEGATIONS**

4 **A. Background**

5 11. Asbestos has been widely used as a construction and insulating material since the  
6 mid-19th century. Evidence of its toxicity to the human lungs accumulated over the ensuing  
7 decades, until litigation in the 1970s proved that manufacturers in asbestos-related industries had  
8 long known of its dangers, but had concealed that information from the workers that were  
9 exposed to the substance, and worked with it every day.

10 12. In the face of ensuing waves of mass-tort litigation, dozens of the largest asbestos  
11 manufacturers have declared bankruptcy since that time, through which the company typically  
12 creates a bankruptcy “trust” that is endowed with substantial capital intended to be distributed to  
13 injured workers, as their asbestos-related diseases manifest. Illustrating the magnitude of these  
14 reserves, eight out of the nine trusts with whom Ankura conspired to engage in the conduct  
15 described herein each manage over \$1 billion in trust assets.

16 13. The formation and administration of asbestos trusts was pioneered through the  
17 bankruptcy of the Johns-Manville Corporation in 1988. The creation and administration of  
18 asbestos trusts has become largely systematic, with each trust adopting a similar “schedule” of  
19 compensatory payments to injured workers, based on the nature and extent of their manifested  
20 disease and exposure to a particular asbestos product. Those schedules of payments to injured  
21 workers (the unliquidated value) are subject to a “payment percentage” that can vary over time,  
22 depending on the number and rate of claimants, purportedly then adjusted by a given trust’s  
23 expectations regarding the extent of its future liabilities. For example, the trust established to  
24 compensate workers injured by U.S. Gypsum currently has a payment percentage of just 19.2%,  
25 such that where a worker has manifested an injury that would entitle him to \$100,000, he is  
26 entitled to only \$19,200 through filing a successful administrative claim on the U.S. Gypsum  
27 trust.  
28

1           14.     The activities of the asbestos trusts are directed by a number of “trustees.” The  
2 actions of those trustees are largely prescribed by the members of a given trust’s “Trust Advisory  
3 Committee” (often referred to as “TACs”), whose members are—according to a 2017 Forbes  
4 article describing an investigation by several state attorneys general—”dominated by plaintiff  
5 lawyers from a few prominent firms including New York’s Weitz & Luxenberg, and Baron &  
6 Budd in Dallas,” who “collect[] tens of millions [of] dollars in contingency fees from settlements  
7 paid by those trusts.” For example, Oakland asbestos attorney Steven Kazan, Perry Weitz of  
8 Weitz & Luxenberg, and Steve Baron of Baron & Budd sit on the Trust Advisory Committees of  
9 most or all of the nine trusts at issue here.

10           15.     Until they were terminated through the conduct described herein, Drs. Breyer and  
11 Klepper focused on performing radiographic examinations for clients of competitor law firms,  
12 most or all of which were not members of the inner circle of firms who hold membership in the  
13 Trust Advisory Committees (“TACs”) and thereby hold the reins of the trusts’ activities. Drs.  
14 Breyer and Klepper had never been retained by Steven Kazan, Perry Weitz, or Steve Baron for  
15 consulting work on asbestos cases.

16           16.     Despite Justice Department guidance that “disfavors” working for more than one  
17 trust, Defendant Ankura has served as a consultant or in some capacity to dozens of asbestos  
18 trusts (including the nine trusts who conspired with Ankura to engage in the unlawful conduct  
19 described herein) for approximately two decades. In its consulting role, Ankura has worked with  
20 the trusts on everything from performing overarching assessments of the liabilities facing the  
21 trusts, to providing claims management consulting services.

22  
23           **B. Drs. Breyer and Klepper**

24           17.     Plaintiff Donald Breyer, M.D. is a 1971 graduate of the University of Illinois  
25 College of Medicine, completing his residency in radiology at the Cook County Hospital and Mt.  
26 Sinai Hospital. Dr. Breyer became licensed in California in 1973, and has been a practicing  
27 radiologist since 1978. He is further certified in Diagnostic Radiology by the American Board of  
28 Radiology. Over his lengthy career, Dr. Breyer was affiliated with the Alameda County Medical

1 Center for over twenty years. During that time he served on many hospital committees and was  
2 appointed acting chief of the radiology department. Outside the hospital he served as an officer  
3 in the East Bay Radiology Society for several years including a term as president. The East Bay  
4 Radiology Society is the premier organization for radiologists and operates under the aegis of the  
5 American College of Radiology. Dr. Breyer taught for eighteen years at the University of  
6 California San Francisco (UCSF) where he achieved the rank of full clinical professor. The  
7 University of California San Francisco is among the best medical institutions in the country.

8  
9 18. The American College of Radiology elected Dr. Breyer a fellow of the college in  
10 1996 in acknowledgement of his service to the field of radiology. This is an honor accorded to  
11 ten to fifteen percent of American radiologists and allows the recipient to add the letters F.A.C.R.  
12 to his name. Since 2004 he has served as a consultant and medical expert witness in the field of  
13 chest radiology.

14 19. Dr. Breyer passed the examination to become a qualified B-Reader in 1990. Two  
15 years later, he started occasionally performing B-reads in conjunction with legal claims by  
16 individuals who had been exposed to asbestos in the workplace, and began developing a  
17 substantial practice in that area in 1997. Over the two decades that followed, Dr. Breyer has  
18 performed tens of thousands of B-reads regarding potential asbestos-related injuries. He has  
19 continuously passed NIOSH's qualifying exam at regular intervals every four years over that  
20 period.

21 20. Dr. Klepper, M.D. is a 1986 graduate of the University of Missouri Kansas City  
22 School of Medicine, completing his residency at Baylor College of Medicine. Dr. Klepper holds  
23 certifications in Internal Medicine and Pulmonary Disease from the American Board of Internal  
24 Medicine. Over his career, Dr. Klepper has served on the board of both Seton Medical Center in  
25 Austin, Texas and Providence Medical Center in in Waco. While in Austin he was a full partner  
26 in the largest pulmonary / critical care group in that city for 14 years, managing those services  
27  
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1 across five separate hospitals with 24/7 coverage. Dr. Klepper's expertise in pulmonary  
2 medicine has allowed him to obtain three medical device patents for airway devices.

3 21. Dr. Klepper passed the examination to become a qualified B-Reader in 1993. He  
4 began performing B-reads to evaluate and diagnose potential claimants respecting asbestos-  
5 related disease in 1997, and over the ensuing years has performed over 10,000 B-reads of such  
6 claimants.

7 22. The means by which Drs. Breyer and Klepper made their evaluation was by  
8 reviewing chest x-rays of potential asbestos claimants, comparing those films to a set of  
9 "standard" films adopted by NIOSH as exemplary of various degrees of asbestosis. Early in  
10 their practices the x-rays were often provided on physical x-ray film. More recently, physical  
11 films have been supplanted by high-definition digital imagery, which was typically provided to  
12 the doctors by the law firms who engaged them on computerized storage media like CDs.

13 23. The standard document by which Drs. Breyer and Klepper render their diagnosis  
14 is a two-page form promulgated by the International Labour Office ("ILO") for systematically  
15 describing and recording radiographic appearances of certain abnormalities (if any are present)  
16 caused by the inhalation of asbestos and other disease-causing dusts. This document was  
17 designed by the ILO for the purpose of achieving uniformity in evaluating such diseases across  
18 readers. It consists of a series of fields and checkboxes, beginning with a rating of the quality of  
19 the film from which the diagnosis is rendered, and continuing through a range of different  
20 variables. The most pertinent variable for diagnosing asbestosis relates to the form's boxes for  
21 "Small Opacities," in which the reviewing physician indicates the size and shape of the opacities,  
22 the region or regions of the left and/or right lung in which they are seen, and classifies the degree  
23 of "profusion" (i.e., the concentration).  
24

25 24. Profusion is rated on a scale that has 12 different values, consisting of two  
26 numbers separated by a "/." The first digit is called the "major category," where "0" signifies no  
27 asbestosis, and 1, 2, or 3 signifies increasingly advanced concentration of opacities. The second  
28



1 digit is called the “minor category,” and signifies the degree of profusion that the reader would  
2 have alternatively found. Thus, a rating of 1/0 indicates that the reader has identified a “1” level  
3 of profusion, where the next closest rating would have been “0.” In the same way, a 1/1 reading  
4 indicates that the only reasonable read is a “1” level of profusion, while a 1/2 reading indicates a  
5 “1” level, with the recognition that if the reader had not classified it a “1,” he or she would have  
6 classified it as a “2.” In developing and promulgating this classification system, both ILO and  
7 NIOSH expressly recognize the potential for “reader variability” in rendering the profusion  
8 reading.

9  
10 25. In addition to the standard ILO diagnostic form, Drs. Breyer and Klepper would  
11 sometimes (when requested by the counsel who engaged them) prepare short written reports  
12 summarizing their findings for a given potential claimant. Either on the ILO form or in those  
13 short written reports, Drs. Breyer and Klepper would often note other potential lung conditions  
14 that they thought may be important to apprise the claimant of, such as a note by Dr. Breyer in  
15 one of the diagnoses subject to the sham audit, in which he alerted the client’s counsel: “4.0 cm  
16 rounded mass in the [left] upper lung zone. This is highly suspicious for malignancy. Further  
17 evaluation recommended.” Nor did the doctors care only about conditions in the clients’ lungs,  
18 and whether asbestosis was present. Instead they frequently volunteered potentially life-saving  
19 information related to other thoracic conditions, such as in a 2016 report subject to the sham  
20 audit, in which Dr. Breyer noted: “Large right paratracheal mass. Rule out malignancy. Further  
21 evaluation is recommended. Please refer patient to personal physician.”

22 **C. Dr. Breyer’s Experience with Ankura’s Sham “Audit”**

23 26. Ankura performed a nearly identical sham audit with respect to both Dr. Breyer  
24 and Dr. Keppler.

25 27. Starting with Dr. Breyer’s experience, in April and June 2019, a law firm that  
26 represents Defendant Ankura called Keating Muething & Klekamp (“KMK”) contacted five law  
27 firms for whom Dr. Breyer had performed B-reads for asbestosis claimants. This contact was  
28 initiated on behalf of nine asbestos trusts: Armstrong World Industries, Inc. Asbestos Personal

1 Injury Settlement Trust (“AWI Trust”), Celotex Asbestos Settlement Trust (“Celotex Trust”);  
2 Babcock & Wilcox Asbestos Personal Injury Trust (“B&W Trust”), Owens Corning/Fibreboard  
3 Asbestos Personal Injury Trust (“OC/FB Trust”), Federal Mogul Asbestos Personal Injury Trust  
4 (“Federal Mogul Trust”), USG Asbestos Personal Injury Settlement Trust (“USG Trust”), WRG  
5 Asbestos PI Trust (“WRG Trust”), Pittsburgh Corning Corporation Asbestos Personal Injury  
6 Trust (“PCC Trust”), Flintkote Asbestos Trust (“Flintkote Trust”). Hereafter these trusts are  
7 referred to as the “Participating Trusts” or the “Trusts.”

8  
9 28. KMK’s letter informed the firms that during the course of audits of claims filed  
10 by those firms, “the Trusts’ expert physicians reviewed chest x-rays interpreted” by Dr. Breyer.  
11 It stated that while “Dr. Breyer indicated that a number of the x-rays supported a finding of  
12 asbestos-related disease, the Trusts’ experts determined that some of the x-rays did not support  
13 such a finding in compliance with American Thoracic Society standards.” The letter continued:  
14 “Before the Trusts reach a final conclusion regarding the acceptability of reports by Dr. Breyer,”  
15 they intended to have: “representatives of the Audit Team contact Dr. Breyer to: 1) provide him  
16 with a sampling of the previous x-rays he reviewed; and 2) discuss his process for reviewing the  
17 x-rays. The purpose would be to facilitate a conversation during which Dr. Breyer may attempt  
18 to support his determination of acceptability, which is contrary to the findings of the Trusts’  
19 expert physicians, and to avoid the possibility that the Trusts will no longer accept reports from  
20 Dr. Breyer.” The letters stated that across the five firms, Ankura would select “a total sample  
21 size of 25 claimants with both passing and non-passing claims,” and asked the firms to give  
22 permission to Ankura to contact Dr. Breyer to proceed with the review.

23 29. On July 8, 2019, Dr. Breyer emailed the signatory of four of the letters, KMK  
24 attorney Darcy Watt, to inform her that he had received the letters, accepting Ankura’s offer for  
25 him to undertake certain work to “attempt to support his determination of acceptability.”  
26 Accordingly, Dr. Breyer stated: “I agree to participate in the re-review process.” Ms. Watt  
27  
28

1 responded that same day to commemorate the agreement, stating that she would “let the audit  
2 team know that you have agreed to participate in the re-review process.”

3           30.     The next day, Ankura sent a letter to Dr. Breyer enclosing a thumb drive  
4 containing the x-ray images for 25 claimants, asking him to “review these images, using the  
5 annotation tools to mark where you identify asbestosis and/or pleural plaques/calcifications, and  
6 send us a summary of your review.” The letter was signed by Ankura’s Senior Director Bruna  
7 Patterson, whose Ankura profile page touts her “over five years of experience” in fraud  
8 prevention and detection, and describes the fact that she “manages the auditing program of 10  
9 bankruptcy asbestos trusts,” including through “present[ing] audit findings to the trusts’  
10 executive directors, counsel, and other audit committee members,” presumably including the  
11 TAC members whose law firms compete with the firms that have retained Drs. Breyer and  
12 Klepper.

13  
14           31.     Dr. Breyer engaged in a good-faith effort to perform under the agreement between  
15 he and Ankura. Ms. Patterson’s letter was accompanied by a set of instructions by which Dr.  
16 Breyer would supposedly be able to use a piece of software called the “Ramssoft DICOM  
17 Viewer” to review and annotate the images. On August 26, Dr. Breyer participated in a  
18 videoconference tutorial through which Ms. Patterson advised him as to how to use the software.  
19 The next day, he emailed Ms. Patterson to report that he had “become more comfortable with the  
20 system as I went along,” but that he “would like to review my findings [i.e., the annotations he  
21 had done while unfamiliar with the software] and confirm them before sending the key back.”  
22 He also requested advice as to “how to get a full size image,” because “[i]t has been a problem  
23 working with just half the screen.” The next day, in returning the drive, he explained:

24           I attempted to complete the audit on the existing drive but have to conclude that the  
25 images were unsatisfactory for evaluation. This is because they only filled half the  
26 screen and were therefore reduced in size from normal. It is my usual practice to  
27 call reduced size images unreadable.

1 He concluded by stating that while he had “initially overlooked this problem hoping to get  
2 started,” it “did not work out and I need to have full sized images to proceed.”

3 32. Ankura thereafter provided the images at issue on CDs. As Dr. Breyer reported in  
4 an ensuing letter to Ms. Patterson on or around September 11, 2019: “Using the CDs I was able  
5 to view the images using the NIOSH B-Viewer system including the recommended viewing  
6 software and high resolution screen.” He noted, however, that:

7 [a]fter looking at some of the saved images I am concerned that they do not appear  
8 to be of the same quality of the images I viewed. The findings that are indicative of  
9 asbestosis have to be viewed under the NIOSH recommended guidelines to be  
10 properly evaluated. I am sure you are aware of this.

11 33. Dr. Breyer nevertheless performed his side of the agreement by returning 24 of  
12 the samples with annotations on or about September 16, 2019. Noting that one of the sample  
13 claimant’s files still required review, Ankura sent that file on or about September 24, and after  
14 receiving further technical assistance from Ankura via videoconference on or about September  
15 30, Dr. Breyer returned the annotated file to Ankura, thereby completing his performance under  
16 the parties’ agreement.

17 34. Dr. Breyer does not know whether Ankura thereafter performed its obligations  
18 under the agreement, but if it did so, it did so unreasonably, either by having unqualified “expert  
19 physicians” review his findings, or by failing to review them in good faith. The next contact  
20 from Ankura was on January 7, when Ms. Patterson emailed him to inquire as to his availability  
21 for a phone call the following day. On that call Ms. Patterson stated that the trusts for whom  
22 Ankura performed the audit would no longer accept claims from claimants whose chest x-rays  
23 were read by Dr. Breyer. Despite the pretext that “[t]he purpose would be to facilitate a  
24 conversation during which Dr. Breyer may attempt to support his determination of  
25 acceptability,” there was no conversation. Instead, his termination was summarily announced,  
26 by a mid-level administrator who has zero medical training, or any other qualifications that  
27 would have enabled her to participate in such a “conversation,” even if she had wanted to.  
28

1           35.     Shocked at the abruptness of Ms. Patterson’s pronouncement, and the fact that  
2 Ankura gave no basis for its decision and refused to disclose how exactly the audit had been  
3 performed following his return of the annotated samples, Dr. Breyer emailed Ms. Patterson on  
4 January 9 asking that she “put me in contact with someone from the audit team who can give me  
5 additional information about the decision to no longer honor my x-ray reports.” The next day  
6 Ms. Patterson responded: “I shared your request with Trust counsel along with your contact  
7 information. Trust counsel will reach out to you directly.”  
8

9           36.     Hearing nothing after more than ten days, Dr. Breyer followed up:

10           It probably won't surprise you to learn that nobody from your office has “reached  
11 out” to contact me. You have arbitrarily made a decision to disallow my reports  
12 after twenty nine years in which they met all standards. Surely an explanation is  
13 forthcoming. You owe it to me and certainly to my staff, several of whom are now  
14 facing homelessness from loss of livelihood. It is not acceptable to cause havoc in  
15 peoples lives and then just run away without comment or explanation.

16 Through the date of filing, Ankura has continually refused to provide any information to Dr.  
17 Breyer as to the basis for his termination. Indeed, it has refused to identify the so-called “expert  
18 physicians” who supposedly second-guessed his capabilities, how many such experts  
19 participated in the review, or even to disclose the qualifications of whoever it was who  
20 determined that his findings were unreliable.

21           **D. Dr. Klepper’s Experience with Ankura’s Sham “Audit”**

22           37.     Dr. Klepper’s experience was virtually identical to Dr. Breyer’s. He was  
23 contacted by KMK on June 28, 2019 with an identical letter requesting his agreement to  
24 participate in the audit on behalf of “Participating Trusts,” and agreed to do so on July 8,  
25 advising “Please send me the films and whatever software to illustrate my findings.” The same  
26 attorney with whom Dr. Breyer corresponded (Darcy Watt) replied two days later: “Per your  
27 email below, I will notify the audit team that you have consented to participate in the Trusts’ re-  
28 review process.”

1           38.     Over the next week, Dr. Klepper diligently performed his obligations under the  
2 agreement, advising by reply email on July 17: “Ms Watt, I got the images and instructions I  
3 reviewed the films, made arrows and circles and entered explanations where instructed.” In that  
4 message, he further advised Ms. Watt of the obstacles he faced in performing the review on the  
5 unfamiliar Ramssoft software:

6           In saving the images I don’t have the “Adobe PDF “ as an option. I see Microsoft  
7 PDF I did all but 1 or 2 as they would not save at all. I am unable to see my results  
8 or review my text entered for each film. I don’t have clerical people working for  
9 me nor am I a computer savvy person. I spent several evenings working on this and  
10 feel that the films provided for me with exception of 2 or 3 are clearly positive and  
I have illustrated and explained my process however I am not even sure my work  
is saved and if it is I am unable to review it prior to returning it to you.

11           39.     Dr. Klepper further expressed some doubts about the reliability of Ankura’s  
12 process, noting:

13           Whoever is advising you regardless of their academic credentials can’t comment  
14 on the ILO system of scoring unless they are a B-reader themselves using the  
15 standard films for comparison side by side. That would be like sending the films  
16 to a radiologist without any instruction. You would get 80% or your films read as  
“no acute intrathoracic abnormalities”. I am going to return what I have done.

17           40.     He further explained that “I have been doing this work in good faith with constant  
18 mindfulness of accuracy and honesty,” while cautioning Ankura that “I am not comfortable with  
19 this process of being tested using a viewing/illustrating system that is foreign to me,” and where  
20 it was not even clear whether his annotations had been properly saved.

21           41.     Ms. Watt responded: “I have forwarded your message to the audit team at  
22 Ankura. A team member will reach out to you with a response.” No one from the “audit team”  
23 came forward with a satisfactory response.

24           42.     Over the ensuing months, Dr. Klepper repeatedly inquired as to the status of the  
25 “audit team’s” review of his submissions, getting nothing but repeated assurances that his  
26 concerns would be addressed, and that “Trust counsel will contact you directly regarding the  
27 review findings.” Ultimately, just like Dr. Breyer, the next communication Dr. Klepper received  
28 was a phone call from Ankura’s Bruna Patterson, informing him that his medical reports would

1 no longer be accepted by the Participating Trusts. And just like Dr. Breyer, there was no  
2 “conversation” as to the process by which the “audit” had been performed. Instead, it remained a  
3 complete black box: Neither KMK nor Ankura ever provided him with any written findings or  
4 decision, never told him who had second-guessed his work (or what their credentials were to do  
5 so), never told him which (if any) of the 25 re-reads the “audit” had disagreed with, or provided  
6 any other information about the process whatsoever.

#### 7 **E. The Sham Nature of Ankura’s “Audit” and Its Consequences**

8 43. Beyond all of the foregoing, the sham nature of the audit that Ankura developed  
9 and performed in collaboration with the “Participating Trusts” is further seen in the fact that  
10 Ankura did not select the 25-file “samples” it sent to Drs. Breyer and Klepper at random.  
11 Almost all of the claimants in the samples exhibited a “profusion” score of 1/0. As explained  
12 above, that reading means that Dr. Breyer or Dr. Klepper determined the profusion to be at a “1”  
13 level, with the possibility that it could alternatively be read at the “0” level. To the extent that  
14 Ankura and the Participating Trusts actually used one or more NIOSH-qualified B-Readers to  
15 evaluate the plaintiff-doctors’ findings, the audit was inherently designed to consider the most  
16 borderline of asbestosis cases.  
17

18 44. The fact of reader variability is recognized in dozens of publications from NIOSH  
19 and the CDC, and in dozens of scholarly articles like *Variability In The Classification Of*  
20 *Radiographs Using The 1980 International Labor Organization Classification For*  
21 *Pneumoconioses*, 114(4) *Chest* 1740-48 (1998); and *Inter-Reader Variability In Chest*  
22 *Radiography And Hrct For The Early Detection Of Asbestos-Related Lung And Pleural*  
23 *Abnormalities In A Cohort Of 636 Asbestos-Exposed Subjects*, 83(1) *Int. Arch. Occup. Environ.*  
24 *Health* 39-46 (2010). The fact of inter-reader variability is recognized in plain terms in a  
25 comprehensive 2009 NIOSH report concerning the B-Reader Certification Program: “[I]n spite  
26 of standardized classification methods and efforts in training and certification, considerable  
27 variability remains among physicians interpreting chest images for pneumoconiosis.” That  
28 report further recognizes: “The causes of reader variability are many, and include film quality,

1 reader training and experience, and bias, as well as the variability inherent in the act of  
2 individuals interpreting chest radiographs.” That report continues with a crucially important  
3 finding:

4           The inherent qualities of chest radiography and the ILO Classification, and the  
5 human element of interpretation make variation in reading inevitable (32). The  
6 extensive literature detailing inter-reader variability indicates that not all the  
7 disagreement can be from bias related to the implications of a positive or negative  
8 reading. The great variation of normal in chest radiographs, the asymmetric  
9 distribution of small opacities within lung zones, and the contribution of non-  
pneumoconiotic factors lead to variation in interpretation. Numerous studies have  
been published in which experienced readers with no financial incentives have  
significant disagreements.

10       See Centers for Disease Control and Prevention, National Institute for Occupational  
11 Safety and Health, *The NIOSH B-Reader Certification Program: Looking Into the*  
12 *Future* at 19 (2009).

13           45. Ankura and the Participating Trusts’ disqualification of Drs. Breyer and Klepper  
14 concerning their 1/0 reads was therefore based on nothing but recognition of the inherent fact  
15 that some doctors may rate a given x-ray one way, while others may rate it differently. On  
16 information and belief, the “expert physicians” who Ankura claims evaluated Dr. Breyer’s and  
17 Dr. Klepper’s findings are biased in favor of negatively diagnosing the presence of asbestos-  
18 related disease, and significantly less qualified and less experienced than either Dr. Breyer or Dr.  
19 Klepper, and thus to the extent there is disagreement between them, the only reasonable  
20 conclusion that Ankura and the Participating Trusts could have reached from the audits was that  
21 its own “expert physicians” were likely incorrect.

22           46. Moreover, it has long been the standard custom and practice (as also  
23 recommended by NIOSH) that where two qualified B-Readers disagree as to a diagnosis or the  
24 extent of the injury, that a third independent qualified B-Reader will review the same images, to  
25 break the tie. On information and belief, Ankura and the Participating Trusts did not employ that  
26 industry standard approach, but instead chose to rely on their own stable of lesser-experienced  
27 “expert physicians” who are prone to negative diagnoses of asbestos-related disease, and whom  
28



1 the Trusts compensated with victim funds with the sole bad faith intention and purpose of  
2 concluding that Drs. Breyer and Klepper had “failed” the audit.

3 47. Furthermore, on information and belief, some or all of the samples on which  
4 Ankura sought re-review were not even the original films that Drs. Breyer and Klepper had read.  
5 For example, based on the age of some of the reads, Dr. Klepper is confident that his reads  
6 would have initially been performed on physical x-ray film, while all of the re-read samples he  
7 performed were digitized, which in certain circumstances can significantly impact the readability  
8 of a film. To the extent that Ankura’s team of supposed “expert physicians” were second-  
9 guessing Drs. Breyer and Klepper’s evaluations by reviewing copies of copies, which may have  
10 passed through an unknown number of physical and software conversions in between, no  
11 reasonable radiologist could have confidence in their quality.

12 48. Ankura performed a similar sham audit on at least two other B-Readers that Dr.  
13 Breyer and Dr. Klepper are aware of: Dr. William “Rusty” Durham of Hattiesburg, Mississippi,  
14 and Dr. Henry Smith of Camp Hill, Pennsylvania. Both Dr. Durham and Dr. Smith were  
15 subjected to an identical audit process as described herein, and both were deemed to have failed.  
16 Dr. Klepper and Dr. Breyer are unaware of any doctor who went through the process and was  
17 deemed to have “passed.” In short, Ankura and the Participating Trusts designed an audit  
18 process in which every participant failed, including four readers who each have decades worth of  
19 experience in performing B-reads, and who have each been certified by NIOSH multiple times.

20 49. Significant consequences followed from Defendant Ankura’s unreasonable,  
21 harmful, and defamatory conduct. Perhaps most significantly from a human health perspective,  
22 during the pendency of the audit process Ankura and the Participating Trusts placed on hold  
23 hundreds or *thousands* of claims that had been supported by Dr. Breyer’s and Dr. Klepper’s  
24 reports. The doctors have been notified by the law firms that retained them that many (or  
25 possibly all) such claims would be denied based on Ankura’s and the Participating Trusts’  
26 determination.  
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1           50.     Even if those impacted claimants secure reads from other qualified physicians or  
2 take their claims to firms that engage other B-Readers, the compensation to which those  
3 claimants are presently entitled will necessarily be delayed by months, if not years, on account of  
4 Ankura's and the Trusts' actions – if those thousands of claimants ever receive the compensation  
5 to which they are entitled.

6           51.     From Dr. Breyer's and Dr. Klepper's perspective, the most significant  
7 consequence of Ankura's and the Participating Trusts' sham audits and findings is that they have  
8 been defamed by the dissemination of those findings, and those findings have essentially resulted  
9 in the termination of the doctors' expert witness practices in this area, causing them hundreds of  
10 thousands of dollars each in damages to date, with the prospect of additional millions of dollars  
11 in future lost profits damages.

12           52.     A third consequence of Ankura's and the Participating Trusts' sham audits and  
13 findings is what (on information and belief) motivated the conception and implementation of the  
14 entire sham process. Drs. Breyer and Klepper primarily or exclusively devoted their B-reading  
15 legal practices to supporting the claims of claimants represented by law firms whose principals  
16 are not members of the trusts' Trust Advisory Committees, and for types of injuries that the TAC  
17 members' firms do not generally pursue. By orchestrating a purge of claims submitted by TAC  
18 members' competitors, Ankura and the Participating Trusts have protected the pots of money  
19 that reside in the Trusts for distribution to the firms run by the TAC members.  
20

21           53.     The network of B-Readers who work on asbestos injury claims is small, and most  
22 participants are known to Drs. Breyer and Klepper. As noted above, Drs. Breyer and Klepper are  
23 aware of two other B-Readers who largely perform their services in the same niche that the  
24 plaintiff-doctors do, and who were similarly terminated in the same time frame, through the same  
25 sham process. Drs. Breyer and Klepper are unaware of any B-Reader who is frequently used by  
26 the firms run by the TAC members who was even subjected to the same sham audit process, let  
27 alone terminated according to it, and on that basis allege that Ankura and the Participating Trusts  
28

1 targeted only the “out-group” of doctors and law firms, to protect the practices of the “in-group”  
2 TAC members and the doctors they engage.

3 **FIRST CAUSE OF ACTION**

4 **Intentional Interference with Contractual Relations**  
5 **(by all plaintiffs against Ankura Consulting Group, LLC)**

6 54. Plaintiffs hereby reincorporate and re-allege all the preceding paragraphs as if  
7 fully set forth herein.

8 55. Drs. Breyer and Klepper were parties to contracts with the law firms that engaged  
9 them to perform B-reads of the chest x-rays of the actual and potential clients of those law firms.

10 56. Through its long experience in providing consulting services to the asbestos  
11 trusts, Ankura knew of the existence of such contracts, given that Dr. Breyer’s and Dr. Klepper’s  
12 B-reads were submitted in conjunction with claims filed by those law firms. Most obviously,  
13 Ankura knew of Dr. Breyer’s contract with Ketterman, Rowland & Westlund, given that its  
14 counsel KMK initially contacted that firm to initiate the audit. Similarly, Ankura knew of Dr.  
15 Klepper’s contract with Sammons & Berry, given that its counsel KMK initially contacted that  
16 firm to initiate the audit.

17 57. Ankura’s conduct in designing and perpetuating the audits prevented performance  
18 of those contracts by refusing to accept injury claims from claimants whose B-reads were  
19 performed by Drs. Breyer and Klepper.

20 58. Ankura intended to disrupt the performance of those contracts, and knew that  
21 such disruption was certain or substantially certain to occur.

22 59. Dr. Breyer and Dr. Klepper were harmed by Ankura’s conduct, and Ankura’s  
23 particular participation was a substantial factor in causing that harm.

24 60. Drs. Breyer and Klepper have suffered present and future monetary injuries  
25 resulting from Ankura’s and the Participating Trusts’ conspiracy to interfere with those  
26 contracts.  
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1 **SECOND CAUSE OF ACTION**

2 **Intentional Interference with Prospective Economic Relations**  
3 **(by all plaintiffs against Ankura Consulting Group, LLC)**

4 61. Plaintiffs hereby reincorporate and re-allege all the preceding paragraphs as if  
5 fully set forth herein.

6 62. Over the period shortly before and throughout the period in which the “audit” was  
7 conducted, Dr. Breyer was in an economic relationship with numerous law firms, including  
8 Ketterman Rowland & Westlund; Justinian Lane; Saklarios Blackwell & Schock; Peter T.  
9 Nicholl, and the Runkle Law Firm whereby he would review radiographic images of the firms’  
10 actual and prospective clients. Dr. Breyer was compensated for rendering his medical diagnosis  
11 at a fixed rate per client, regardless of whether the diagnosis was positive or negative. Those  
12 relationships certainly would have continued indefinitely but for the conduct alleged herein, and  
13 based on his past experience Dr. Breyer would have been engaged by additional firms as well.

14 63. Over the period shortly before and throughout the period in which the “audit” was  
15 conducted, Dr. Klepper was in an economic relationship with numerous law firms, including  
16 Bullock Campbell Bullock & Harris, PC; Cory Watson PC; Law Offices of Ezequiel Reyna, Jr.;  
17 Ferrell Law Group, Flint Law Firm, Law Offices of Patrick M. Walsh, LLC, Sach Law, LLC;  
18 and The Cheek Law Firm, whereby he would review radiographic images of the firms’ actual  
19 and prospective clients. Like Dr. Breyer, Dr. Klepper was compensated for rendering his  
20 medical diagnosis at a fixed rate per client, regardless of whether the diagnosis was positive or  
21 negative. Those relationships certainly would have continued indefinitely but for the conduct  
22 alleged herein, and based on his past experience Dr. Klepper would have been engaged by  
23 additional firms as well.

24 64. Ankura knew that Dr. Breyer and Dr. Klepper were performing this work for  
25 these specific firms. Indeed, Ankura first raised the prospect of performing these audits through  
26 having its counsel at KMK contact five of these firms (in Dr. Breyer’s case), and one of the firms  
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1 with whom Dr. Klepper was engaged to perform B-reads. Ankura further knew that that work  
2 was ongoing and expected to continue into the future.

3 65. Ankura nevertheless engaged in the sham audit process described herein, with the  
4 intent not to ensure the accuracy or reliability of Dr. Breyer and Dr. Klepper's B-reads, but to  
5 ensure that they would be deemed to "fail" the audit, and thereby be precluded from supporting  
6 the claims of additional claimants. Ankura knew that its conduct would disrupt Dr. Breyer and  
7 Dr. Klepper's economic relationship with the law firms that engaged them, and specifically  
8 intended that result.

9 66. Beyond the wrongfulness of the performance of the sham audit, Ankura's conduct  
10 was further wrongful insofar as it constituted defamation per quod, and violated the covenant of  
11 good faith and fair dealing, as alleged *infra*. It was also wrongful in that it caused the denial of  
12 the existing claims of claimants whose claims to the Participating Trusts were supported by B-  
13 reads of Drs. Breyer and Klepper, thereby delaying (in the best case), or entirely denying (in the  
14 worst) compensation to claimants who were in fact entitled to compensation.

15 67. Dr. Breyer and Dr. Klepper were economically harmed by this conduct, in  
16 amounts to be proven at trial, but at least in the amount of hundreds of thousands of dollars per  
17 year in past and future damages. Ankura's conduct was a substantial (indeed, the only) factor in  
18 causing that harm.  
19

20 **THIRD CAUSE OF ACTION**

21 **Negligent Interference with Prospective Economic Relations**  
22 **(by all plaintiffs against Ankura Consulting Group, LLC)**

23 68. Plaintiffs hereby reincorporate and re-allege all the preceding paragraphs as if  
24 fully set forth herein.

25 69. Over the period shortly before and throughout the period in which the "audit" was  
26 conducted, Dr. Breyer was in an economic relationship with numerous law firms, including  
27 Ketterman Rowland & Westlund; Justinian Lane; Saklarios Blackwell & Schock; Peter T.  
28 Nicholl, and the Runkle Law Firm whereby he would review radiographic images of the firms'

1 actual and prospective clients. Dr. Breyer was compensated for rendering his medical diagnosis  
2 at a fixed rate per client, regardless of whether the diagnosis was positive or negative. Those  
3 relationships certainly would have continued indefinitely but for the conduct alleged herein, and  
4 based on his past experience Dr. Breyer would have been engaged by additional firms as well.

5 70. Over the period shortly before and throughout the period in which the “audit” was  
6 conducted, Dr. Klepper was in an economic relationship with numerous law firms, including  
7 Bullock Campbell Bullock & Harris, PC; Cory Watson PC; Law Offices of Ezequiel Reyna, Jr.;  
8 Ferrell Law Group, Flint Law Firm, Law Offices of Patrick M. Walsh, LLC, Sach Law, LLC;  
9 and The Cheek Law Firm, whereby he would review radiographic images of the firms’ actual  
10 and prospective clients. Like Dr. Breyer, Dr. Klepper was compensated for rendering his  
11 medical diagnosis at a fixed rate per client, regardless of whether the diagnosis was positive or  
12 negative. Those relationships certainly would have continued indefinitely but for the conduct  
13 alleged herein, and based on his past experience Dr. Klepper would have been engaged by  
14 additional firms as well.

15 71. Ankura knew that Dr. Breyer and Dr. Klepper were performing this work for  
16 these specific firms. Indeed, Ankura first raised the prospect of performing these audits through  
17 having its counsel at KMK contact five of these firms (in Dr. Breyer’s case), and one of the firms  
18 with whom Dr. Klepper was engaged to perform B-reads. Ankura further knew that that work  
19 was ongoing and expected to continue into the future.

20 72. Ankura nevertheless engaged in the sham audit process described herein, knowing  
21 that if it failed to act with reasonable care, Dr. Breyer and Dr. Klepper would be precluded from  
22 performing B-reads to support the claims of additional claimants. Ankura knew or should have  
23 known that conducting an “audit” in this manner would disrupt Dr. Breyer and Dr. Klepper’s  
24 economic relationship with the law firms that engaged them.

25 73. Ankura failed to act with reasonable care, and engaged in wrongful conduct as  
26 described herein, including by (1) selecting a non-representative sample of marginal diagnoses,  
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1 while knowing of the fact of reader variability; (2) providing Dr. Breyer and Dr. Klepper with  
2 software that it knew they were unfamiliar with in asking them to re-review the claimants' x-  
3 rays; (3) tasking biased and less experienced "expert physicians" with second-guessing Dr.  
4 Breyer and Dr. Klepper's diagnoses; and (4) on information and belief encouraging or otherwise  
5 suggesting to the "expert physicians" that the purpose of the audit was to deem Dr. Breyer and  
6 Dr. Klepper's B-reads unreliable and thereby "fail" them. Ankura's failure to exercise  
7 reasonable care in designing and conducting this audit is made manifest by the fact that all four  
8 doctors known to have participated were deemed by Ankura to have "failed."

9  
10 74. Dr. Breyer and Dr. Klepper were economically harmed by this conduct, in  
11 amounts to be proven at trial, but at least in the amount of hundreds of thousands of dollars per  
12 year in past and future damages. Ankura's conduct was a substantial (indeed, the only) factor in  
13 causing that harm.

14 **FOURTH CAUSE OF ACTION**  
15 **Breach of the Implied Covenant of Good Faith and Fair Dealing**  
16 **(by all plaintiffs against Ankura Consulting Group, LLC)**

17 75. Plaintiffs hereby reincorporate and re-allege all the preceding paragraphs as if  
18 fully set forth herein.

19 76. In every contract or agreement there is an implied promise of good faith and fair  
20 dealing. This implied promise means that each party will not do anything to unfairly interfere  
21 with the right of any other party to receive the benefits of the contract. Good faith means honesty  
22 of purpose without any intention to mislead or to take unfair advantage of another.

23 77. Dr. Breyer and Dr. Klepper entered into a contract with Ankura whereby they  
24 accepted Ankura's offer that they participate in an "audit" to maintain their eligibility to continue  
25 to submit B-reads in support of claimants' claims to the trusts. In consideration of that  
26 agreement, Dr. Breyer and Dr. Klepper each spent multiple hours over the course of several days  
27 performing the obligations that they accepted. In so doing, Dr. Breyer and Dr. Klepper both did  
28

1 all, or substantially all of the significant things that their agreements with Ankura required them  
2 to do.

3 78. In performing its obligations under the contract (i.e., providing Dr. Breyer and Dr.  
4 Klepper with a sample of their prior B-reads to re-review, and in evaluating the materials that Dr.  
5 Breyer and Dr. Klepper had returned to Ankura to decide whether their B-reads would continue  
6 to be accepted by the Participating Trusts), Ankura did not act fairly or in good faith as described  
7 herein, including by (1) selecting a non-representative sample of marginal diagnoses, while  
8 knowing of the fact of reader variability; (2) providing Dr. Breyer and Dr. Klepper with software  
9 that it knew they were unfamiliar with in asking them to re-review the claimants' x-rays; (3)  
10 tasking biased and less experienced "expert physicians" with second-guessing Dr. Breyer and Dr.  
11 Klepper's diagnoses; and (4) on information and belief encouraging or otherwise suggesting to  
12 the "expert physicians" that the purpose of the audit was to deem Dr. Breyer and Dr. Klepper's  
13 B-reads unreliable and thereby "fail" them. Far from a mere failure of "good faith," this conduct  
14 was engaged in in decidedly bad faith.  
15

16 79. Dr. Breyer and Dr. Klepper were economically harmed by this conduct and in  
17 being deemed to have "failed" the audit, in amounts to be proven at trial, but at least in the  
18 amount of hundreds of thousands of dollars per year in past and future damages. Ankura's  
19 conduct was a substantial (indeed, the only) factor in causing that harm.

20 **FIFTH CAUSE OF ACTION**

21 **Defamation Per Quod**

22 **(by all plaintiffs against Ankura Consulting Group, LLC)**

23 80. Plaintiffs hereby reincorporate and re-allege all the preceding paragraphs as if  
24 fully set forth herein.

25 81. As the end result of the sham audit process described herein, Ankura made  
26 multiple statements to attorneys and law firms around the country stating that it and the  
27 Participating Trusts had conducted an audit of Drs. Breyer and Klepper, and that the  
28 Participating Trusts would no longer accept their B-reads in support of claimant's claims. The



1 necessary implication of those statements was that Drs. Breyer and Klepper were unqualified to  
2 perform reliable B-reads, that Drs. Breyer and Klepper were not “credible,” and/or that they had  
3 engaged in wrongdoing in the performance of their professional work.

4           82. While Ankura’s statements that the Participating Trusts would no longer accept  
5 B-reads performed by Dr. Breyer and Dr. Klepper was strictly true, that facts and circumstances  
6 known to the recipients of those statements injured Dr. Breyer and Dr. Klepper in their  
7 occupations, exposed them to shame, and discouraged those recipients from associating and  
8 dealing with Drs. Breyer and Klepper. Specifically, the letters that KMK had sent to the  
9 plaintiff-side firms on behalf of Ankura and the Trusts specifically indicated that the audits of  
10 Dr. Breyer and Dr. Klepper were being performed under the Trusts’ standardized “Trust  
11 Distribution Procedures” regarding the “Credibility of Medical Evidence.” Under those  
12 procedures, the Trusts reserve the right to audit the “reliability” of medical evidence submitted  
13 by doctors, and reserve the right to “decline to accept additional evidence from such provider”  
14 where the Trust “reasonably determines that any [such individual] has engaged in a pattern or  
15 practice of providing unreliable medical evidence to the PI Trust.”  
16

17           83. By thus impugning the professional integrity and/or competence of Dr. Breyer  
18 and Dr. Klepper’s work, Ankura has injured Dr. Breyer and Dr. Klepper not only with respect to  
19 work that they have performed and would in future perform on behalf of claimants to the  
20 Participating Trusts. Rather, this defamation has had widespread effects, including through other  
21 asbestos trusts either putting on “hold” claims supported by Dr. Breyer and Dr. Klepper’s B-  
22 reads, or declining such B-reads from Dr. Breyer and Dr. Klepper entirely. The defamation has  
23 caused Dr. Breyer and Dr. Klepper’s work in this area to “dry up,” because asbestos law firms  
24 around the country are now unwilling to retain them based on Ankura’s false determination that  
25 their B-reads are not “reliable,” and/or that they have “engaged in a pattern or practice of  
26 providing unreliable medical evidence.”  
27  
28



**JURY DEMAND**

Plaintiffs Donald Breyer, M.D., and Mark Klepper, M.D. hereby demand that this matter be tried to a jury.

Dated: May 14, 2021

GAW | POE LLP

By:



Mark Poe  
Attorneys for Plaintiffs

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