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LICENSED in IL and WI

April 11, 2013

## OPPOSITION TO SB-13

My name is Jill Rakauski, I am an attorney with Penn Rakauski in Racine, and I have been representing Wisconsin asbestos victims since 1998. I have represented asbestos victims all over the State of Wisconsin. Wisconsin asbestos victims built and worked in the industries which are and were the backbone of the state. From the breweries in Milwaukee, to the foundries in Neenah, Waukesha, Milwaukee Waupaca, to the paper mills in Northern and Central Wisconsin, building our courthouses and state buildings, and working in our shipyards in Door County, Manitowoc and Marinette among many other industries. A great percentage of these asbestos victims are also our veterans and were exposed in the Navy or other military exposures.

### "Transparency"

I find it ironic that the same corporations that for decades hid the dangers of asbestos exposure from their workers are now the same companies coming to the legislature and asking for so-called transparency in a one-sided bill that would only hurt asbestos victims.

This bill is unnecessary because there is already full disclosure in Wisconsin. In every lawsuit, defendants serve the asbestos victim's lawyer with requests for production. One of the requests is always all claims and documents the victim has filed with any bankruptcy trust. We as victims' attorneys always respond to these requests detailing all claims made and providing copies of any trust documents. The asbestos companies are aware of this fact. This bill's only true goal is to delay and deny compensation to asbestos victims.

From the asbestos victim's perspective, it is offensive for the asbestos industry, the largest supporters of this bill, to make false claims about a lack of transparency when this industry covered up the dangers of asbestos for decades, causing thousands of deaths and still to this day often refuse to produce important health and safety information regarding its asbestos containing products.

For instance, I have put forth three exhibits for the committee,

In 1935, two asbestos industry Company Presidents are corresponding the first states "I think the less said about asbestos the better off we are." (Sumner Simpson, October 1, 1935) while the second one responds "I quite agree with you that our interests are best served by having asbestosis receive the minimum of publicity." (Vandiver Brown, October 3, 1935)

In 1966, a US asbestos brake company executive wrote to an asbestos supplier about the media attention asbestos is receiving and said "My answer to the problem is: if you have enjoyed a good life while working with asbestos products why not die from it. There's got to be some cause." (Martin, E.A., September 12, 1966)

### **"Double Recovery"**

The proponents of the bill claim that asbestos victims are getting a double recovery by receiving compensation from trusts and litigation defendants. This notion is fundamentally false.

Most of the victims are exposed to a variety of products in the field. As such, like a victim who is mugged by five individuals who all will be prosecuted, an asbestos victim will prosecute a case against all products that he or she can show caused the disease. This may include trust defendants and defendants in state court. In order to recover from ANY defendant, the plaintiff must prove each defendant contributed to causing the disease.

Also even after the victim or victim's family shows that the defendant is responsible, according to current Wisconsin negligence law, no defendant ever pays more than its portion of the damages. The proponents of the bill fail to reveal that if there is evidence of exposure to a product, whether it is a company in bankruptcy, a defunct company or a defendant sitting at the court room table, all of those entities are assessed negligence in Wisconsin. Any negligence assessed to a bankrupt trust defendant is not recoverable by the plaintiff in Wisconsin. So a bankrupt trust defendant may be assessed 50% of the fault in Wisconsin and the only recovery to plaintiff could be the \$2000 he receives eventually through a trust payment rather than 50% of whatever the verdict may be. This amount is not recovered from any solvent party.

### **Victims Lose Rights with the Delays**

The bill requires a stay and the stay is not lifted until Plaintiff files all anticipated bankruptcy claims. There is no requirement in this bill that the asbestos defendants provide the asbestos victim with any documents that they may possess regarding asbestos at the victim's worksites to assist the plaintiff in this process. There is no requirement for any asbestos defendant to provide the asbestos plaintiff with any sworn testimony it may have regarding victim's worksites and the asbestos exposures at these worksites. The victim's case could be delayed for months if not years because some trusts have not even opened the claims process. During the stay there is no right for the plaintiff to seek records regarding asbestos exposures via subpoena, or to take depositions of persons with knowledge.

It is very common in asbestos cases that once these documents are received, the documents may reveal the existence of parties that manufactured, supplied, or sold asbestos that should be named as defendants. However, the stay and the delay may result in the plaintiff's statute of limitations expiring before this information is ever received by the plaintiff. As such, the delays may result in the victims losing the right to pursue a cause of action altogether.

#### **Asbestos Corporations are the only Beneficiaries of the Provisions in SB-13**

Although not readily apparent, this bill is a direct attempt by asbestos corporations to shirk liabilities for causing disease in Wisconsin victims.

Take the case of Bob Petersdorf, who worked as a test engineer for Wisconsin Electric Power Company. Wisconsin Electric has several different power plants in Wisconsin. Bob Petersdorf, throughout his career, was in and out of most of these power plants performing tests and taking readings on the pressure, temperature of the steam and other items. One of the power plants he worked at was the Oak Creek Power Plant in Wisconsin. He did not work directly with asbestos.

One of the products used on one of the eight power generation units at the Oak Creek Power Plant was an insulation called Unibestos made by a company called UNARCO. The evidence shows that this UNARCO asbestos insulation was used to insulate a small percentage of the pipes, on this one particular unit at that one particular power plant. There was no testimony in the case that Mr. Petersdorf worked with or around that UNARCO asbestos insulation or even that he worked on that one particular unit.

If UNARCO was a viable solvent defendant, the plaintiff's case against the company may very likely have been dismissed for lack of evidence. However, in bankruptcy, for some trusts, the evidentiary standards are somewhat relaxed. As such, for this trust, if the claimant can show that he or she was present in a building where the asbestos product was present, (even though there may be no evidence of exposure), the claim may be approved.

Generally UNARCO has paid claims at a .82 payment percentage which resulted in a settlement of roughly \$1250. This is a small amount given the months and months of pain and suffering that Mr. Petersdorf endured.

In order to make this UNARCO claim, a claim form must be completed by the claimant, or the attorneys on his behalf. The claim form must list the "dates of exposure", "location where claimant has been exposed to any asbestos product" and "Exposure to the specific UNR Products" I have attached the UNARCO exposure claim form to my written testimony.

According to the proposed bill, if Mr. Petersdorf chooses not to make this UNARCO claim, pursuant to proposed section 802.025(5) a defendant may bring a motion to the court simply describing the evidence against UNARCO and asserting that if Mr. Petersdorf filed the claim, he would likely be successful. It is then Plaintiff's burden to show that he or she does not meet the UNARCO trust's

criteria. In this case, that will likely be a difficult burden and Mr. Petersdorf probably could not show his claim would be denied. So after a motion and a response, and a court hearing, if the Judge orders it, the plaintiff would be forced to file the claim and sign the statement of exposure in the claim form and eventually receive \$1250. Plaintiff must then provide a copy of this signed UNARCO exposure statement he was forced to make to the defendants in the case.

What will the asbestos defendants do with this exposure statement plaintiff was forced to sign?

According to Section (3) of the proposed bill, Defendants will now take the claim form which plaintiff was forced to sign and show this statement of exposure to the jury to prove alternate causation or to allocate liability. Because the client was forced to admit exposure to the UNARCO product and signed the form, UNARCO will be placed on the verdict form as an entity for the jury to allocate liability.

If the Senate makes the same amendment to the bill that the Assembly has already done and that becomes part of the bill, then any percentage allocated on the jury verdict to UNARCO will not be recoverable by the plaintiff. So if the plaintiff receives a verdict for \$1,000,000 for the loss of society and companionship and the pain and suffering and medical bills as a result of asbestos exposure, and UNARCO was assessed 10% of the fault, then that \$100,000 share would not be collectible. And remember, that is amount only to one trust. As such, the defendants, by forcing plaintiff to sign the statement of exposure, in my example would net \$100,000; the plaintiff would get a check for \$1250 from UNARCO, minus the \$100 non-refundable filing fee. I have attached a jury verdict form actually used in a Wisconsin asbestos case to illustrate that point. I note in Wisconsin that there are trust defendants on the jury verdict, as it has always been the case in Wisconsin that any party that can be shown to be a cause will be included on the verdict form. However, never has plaintiff been required to make exposure statements against their interest so that the asbestos defendants may use these statements to reduce the recovery of the asbestos victim.

Of course the jury would likely not be allowed to learn that victim was forced to complete this trust exposure document nor that the trust only resulted in a recovery of \$1150 to the plaintiff. Further, under existing Wisconsin law, Plaintiff could not inform the jury that any fault placed upon UNARCO means that Plaintiff will not recover that percentage of a jury verdict.

At the Assembly, a representative asked me if this bill created a cap on damages and limited damages to the plaintiff and I did not have an easy answer because it cannot be simply explained, but this scenario is exactly how this bill would serve as a payout to the asbestos companies at the expense of hurting the victims of asbestos disease.

Now, to further complicate this story, as of Tuesday, the UNARCO trust put a "moratorium" on asbestos claims while it reconsiders the payment percentage. The trust asked that plaintiffs do not make any claims until the moratorium has ended which could take "some months" according to the letter which I have attached for the record. So, again, if this bill was passed, Mr. Petersdorf's case would be stayed for several months until he could file this UNARCO claim valued less than \$1250. How, again, does this benefit the victims of asbestos disease?



I would also note that the testimony has focused on mesothelioma cases. However, this bill would also apply to victims of asbestosis. The trust payments are very low for asbestosis victims with some payments under \$100. If you look at the UNARCO letter I have attached, it acknowledges that the mandatory non-refundable filing fee \$100 is actually more than the payment for asbestosis cases. As a result, asbestosis victims would actually be forced to pay to trust \$10, and sign a statement admitting the exposure to the product to meet the requirements of this bill or face a delay.

Another problem not taken into account by the bill is that there are many times extended delays from the creation of a trust until the trust is ready to accept claim submissions. According to the bill, the plaintiff's cases in Wisconsin would be in a holding pattern until a bankruptcy trusts begins accepting claims which could be months-years.

### **CONCLUSION**

I respectfully encourage the members of this committee to see this bill for what it is: an attempt by the asbestos industry to avoid compensating the victims they've injured and killed. An examination of the way things currently work clearly shows that no information is being hidden and Wisconsin courts are fully capable of enforcing the law. What this bill does is create so many unnecessary hoops for victims to jump through that cases will be delayed and victims will die before seeing any possibility of compensation for their families. Accordingly, I urge you to oppose SB-13

Jill Rakauski

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7-31

RH 1257 Ant.:

*Arthur*

— Johns-Manville —

TWENTY-TWO EAST FORTIETH STREET  
NEW YORK, N.Y.



October 3, 1935

*Tuesday  
ny*

Mr. S. Simpson, President,  
Raybestos-Manhattan, Inc.,  
Bridgeport, Conn.

My dear Mr. Simpson:

I wish to acknowledge receipt of yours of October 1st enclosing copy of the September 25th letter from the editor of the magazine "ASBESTOS". I quite agree with you that our interests are best served by having asbestosis receive the minimum of publicity. Even if we should eventually decide to raise no objection to the publication of an article on asbestosis in the magazine in question, I think we should warn the editors to use American data on the subject rather than English. Dr. Lanza has frequently remarked, to me personally and in some of his papers, that the clinical picture presented in North American localities where there is an asbestos dust hazard is considerably milder than that reported in England and South Africa.

I believe the question raised by Miss Rossiter might well be considered at the committee meeting scheduled for next Tuesday, at which I understand both you and Mr. Judd will be present.

Very truly yours,

*Vandiver Brown*  
Vandiver Brown  
Attorney.

*W. J. Judd*

VS:7

*Mr. Judd will  
see Jones & tell  
him he can not  
publicity*

*S. O. Judd*





September 12, 1966

Mr. Noel Hendry  
Canadian Johns Manville Co. Ltd.  
Asbestos, Quebec  
Canada

Dear Noel

Just to be sure you have a copy, an article that appeared in Chemical Week magazine is inclosed.

So that you'll know that Asbestos is not the only contaminat<sup>ed</sup>, a second article from O.P. & D Reporter assesses a share of the blame on trees.

My answer to the problem is: if you have enjoyed a good life while working with asbestos products why not die from it. There's got to be some cause.

Director Of Purchases

E. A. Martin

EAM:MAC  
EEC:



Claims Processing Facility, Inc.

## **UNR Trust - Summary of Claim Filing Instructions**

When an individual believes he or she is suffering from an asbestos injury resulting from exposure to UNR asbestos-containing products, he or she can file a standardized claim form with the UNR Trust. The claim form is sent to the CPF in North Aurora, IL.

### **REQUIRED NON-REFUNDABLE FILING FEE**

**All claims must be accompanied by a \$100.00 non-refundable filing fee. Checks should be made payable to the UNR Asbestos-Disease Claims Trust.**

### **CLAIM FORM**

A claimant must complete the standardized claim form in its entirety and sign the certification attesting to the accuracy and completeness of the information contained therein. Valid medical documentation supporting the alleged injury must be attached and submitted with the completed claim form. Additionally, the claim form must be submitted to the CPF within the applicable statute of limitations to be considered for payment.

### **OPTION SELECTIONS**

- **OPTION 1: CASH PAYMENT**

- This option is currently suspended and not available.

- **OPTION 2: INDIVIDUALIZED RESOLUTION**

- Option 2 involves an in-depth review of the claim using tort

East-West Corporate Center, 1771 W. Diehl Rd., Suite 220, Naperville, IL 60563

## Social Security No. of Person with Asbestos Disease:

<b>Date(s) of Exposure(s)</b>	<b>Location</b> (Specific - Shipyard, Company, Factory site, Government branch [Army, Navy, etc]. <b>Please specify every location known where claimant has been exposed to any asbestos product of any manufacturer.</b>	<b>Trade or Job Classification</b> – please be as descriptive of job duties as space will allow – add attachment if necessary	<b>Products Exposed to.</b> For UNR products, please be specific. Exposure to the products of other manufacturer's is assumed at any site listed, unless specifically explained. If no UNR products were at any of the sites listed, indicate products as "other"
<b>From</b>	<b>To</b>		

[illegible]

I select the following option: ☐ Option 1 (if available) ☐ Option 2 ☐ Option 3

TO THE BEST OF MY KNOWLEDGE, THE INFORMATION CONTAINED IN THIS PROOF OF CLAIM IS TRUE AND COMPLETE, AND IS SUBMITTED TO THE UNR TRUST WITH A DECLARATION OF ITS ACCURACY UNDER PENALTY FOR PRESENTATION OF A FRAUDULENT CLAIM IN ACCORDANCE WITH TITLE 18 U.S.C., § 152.

Name of Claimant or Attorney  
Representing Claimant



HELEN GOSZ,

Plaintiff,

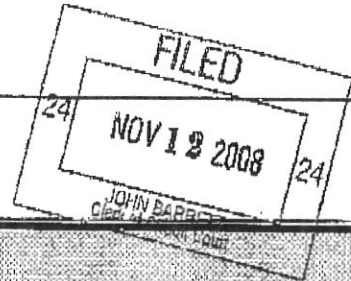
v.

Case No. 05-CV-9218

BUILDING SERVICE INDUSTRIAL SALES COMPANY,

Defendant.

## VERDICT



## QUESTION 1: CAUSE OF DISEASE

1. Was Clarence Gosz' malignant mesothelioma caused by significant occupational exposure to asbestos fibers?

Yes

☒

No

☐

If you answered question 1 "no," go to question 6. If you answered question 1 "yes," then go to question 2.

## QUESTIONS 2, 3 &amp; 4: CELOTEX PRODUCTS

2. Did Clarence Gosz have significant occupational exposure to asbestos fibers from Celotex asbestos-containing pipe cover?

Yes

☒

No

☐

If you answered question 2 "yes," go to question 3. If you answered "no," then go to question 5.

3. If Clarence Gosz had significant occupational exposure to asbestos fibers from Celotex asbestos-containing pipe cover, was that product unreasonably dangerous and defective?

Yes

☒

No

☐

If you answered question 3 "yes" then go to question 4. If you answered "no," then go to question 5.

4. Was the defective and unreasonably dangerous condition of Celotex asbestos-containing pipe cover a cause of Clarence Gosz' malignant mesothelioma?

Yes

☒

No

☐

**QUESTIONS 5, 6 & 7: FOSTER WHEELER ASBESTOS-CONTAINING INSULATED BOILERS**

**5. Did Clarence Gosz have significant occupational exposure to asbestos fibers from Foster Wheeler asbestos-containing insulated boilers?**

Yes X No       

*If you answered question 5 "yes," go to question 6. If you answered "no," then go to question 8.*

**6. If Clarence Gosz had significant occupational exposure to asbestos fibers from Foster Wheeler asbestos-containing insulated boilers, was that product unreasonably dangerous and defective?**

Yes X No       

*If you answered question 6 "yes" then go to question 7. If you answered "no," then go to question 8.*

**7. Was the defective and unreasonably dangerous condition of Foster Wheeler asbestos-containing insulated boilers a cause of Clarence Gosz' malignant mesothelioma?**

Yes X No       

**QUESTIONS 8, 9 & 10: COMBUSTION ENGINEERING ASBESTOS-CONTAINING INSULATED BOILERS**

**8. Did Clarence Gosz have significant occupational exposure to asbestos fibers from Combustion Engineering asbestos-containing insulated boilers?**

Yes X No       

*If you answered question 8 "yes," go to question 9. If you answered "no," then go to question 11.*

**9. If Clarence Gosz had significant occupational exposure to asbestos fibers from Combustion Engineering asbestos-containing insulated boilers, was that product unreasonably dangerous and defective?**

Yes X No       

*If you answered question 9 "yes" then go to question 10. If you answered "no," then go to question 11.*

**10. Was the defective and unreasonably dangerous condition of Combustion Engineering asbestos-containing insulated boilers a cause of Clarence Gosz' malignant mesothelioma?**

Yes X No



QUESTIONS 11, 12 & 13: JOHNS MANVILLE ASBESTOS-CONTAINING PIPE COVERS

11. Did Clarence Gosz have significant occupational exposure to asbestos fibers from Johns Manville asbestos-containing pipecover?

Yes X No       

If you answered question 11 "yes," go to question 12. If you answered "no," then go to question 14.

12. If Clarence Gosz had significant occupational exposure to asbestos fibers from Johns Manville asbestos-containing pipecover, was that product unreasonably dangerous and defective?

Yes X No       

If you answered question 12 "yes" then go to question 13. If you answered "no," then go to question 14.

13. Was the defective and unreasonably dangerous condition of Johns Manville asbestos-containing pipecover a cause of Clarence Gosz' malignant mesothelioma?

Yes X No       

QUESTIONS 14, 15 & 16: PRODUCTS DISTRIBUTED BY BUILDING SERVICE INDUSTRIAL SALES (BSIS) INCLUDING ASBESTOS-CONTAINING CEMENT OR OWENS-CORNING FIBERGLASS, INC. KAYLO ASBESTOS-CONTAINING PIPECOVER

14. Did Clarence Gosz have significant occupational exposure to asbestos fibers from pipecover products distributed by Building Service Industrial Sales (BSIS), including cement or Owens-Corning Fiberglass, Inc. Kaylo?

Yes        No X

If you answered question 14 "yes," go to question 15. If you answered "no," then go to question 17.

15. If Clarence Gosz had significant occupational exposure to asbestos fibers from pipecover distributed by Building Service Industrial Sales was that product unreasonably dangerous and defective?

Yes        No       

If you answered question 15 "yes" then go to question 16. If you answered "no," then go to question 17.

16. Was the defective and unreasonably dangerous condition of pipecover products distributed by Building Service Industrial Sales a cause of Clarence Gosz' malignant mesothelioma?

Yes        No

QUESTIONS 17 & 18: AMERICAN CAN COMPANY

17. Did American Can Company fail to provide Clarence Gosz with employment as safe as the nature of his employment would reasonably permit?

Yes ☒ No ☐

If you answered question 17 "yes," go to question 18. If you answered "no," then go to question 19.

18. Was the failure of American Can Company to provide a safe place of employment for Clarence Gosz a cause of Clarence Gosz' malignant mesothelioma?

Yes ☒ No ☐

QUESTIONS 19 & 20: THILMANY PAPER COMPANY

19. Did Thilmany Paper Company fail to provide Clarence Gosz with employment as safe as the nature of his employment would reasonably permit?

Yes ☒ No ☐

If you answered question 19 "yes," go to question 20. If you answered "no," then go to question 21.

20. Was the failure of Thilmany Paper Company to provide a safe place of employment for Clarence Gosz a cause of Clarence Gosz' malignant mesothelioma?

Yes ☒ No ☐

QUESTIONS 21 & 22: EMPLOYER P.G. MIRON

21. Did employer P.G. Miron fail to provide Clarence Gosz with employment as safe as the nature of his employment would reasonably permit?

Yes ☒ No ☐

If you answered question 21 "yes," go to question 22. If you answered "no," then go to question 23.

22. Was the failure of P.G. Miron to provide a safe place of employment for Clarence Gosz a cause of Clarence Gosz' malignant mesothelioma?

Yes ☒ No ☐



### QUESTION 23: COMPARISON OF FAULT

Now you must assign a percentage of the fault of each company which contributed to Mr. Gosz' disease.

Answer this question only for each company corresponding to any "yes" answers you gave to questions 4, 7, 10, 13, 16, 18, 20 or 22.

For all the to which you gave a "yes" answer on questions 4, 7, 10, 13, 16, 18, 20 or 22, assign a percentage of responsibility for the disease of Mr. Gosz. This question asks for the percentage of responsibility of each such company to reach a total of 100%. The total of your numbers must equal 100.

23. Taking 100% of the total, what percentage of the total cause of fault for Clarence Gosz' asbestos exposure do you attribute to each of the following?

A. Celotex asbestos-containing pipe cover

22% - Trust JAF

B. Foster Wheeler asbestos-containing insulated boilers

22%

C. Combustion Engineering asbestos-containing insulated boilers

22% - Trust JAF

D. Johns Manville asbestos-containing pipe covers

22% - Trust JAF

E. Products distributed by Building Service Industrial Sales, including asbestos-containing joint cement and Owens-Corning Fiberglass, Inc. Kaylo asbestos-containing pipecover

0

F. American Can Company

4%

G. Thilmany Paper Company

1%

H. P.G. Miron Company

1%

100%

## UNR ASBESTOS-DISEASE CLAIMS TRUST

EAST-WEST TECH CENTER  
1771 WEST DIEHL ROAD, SUITE 220  
NAPERVILLE, IL 60563

DAVID E. MAXAM  
Executive Director

PHONE: (630) 281-6548  
FACSIMILE: (630) 281-6748

April 9, 2013

### RE: UNR CLAIMS PROCESSING MORATORIUM

Dear Claimant Counsel:

As of April 9, 2013 the UNR Trust will begin a moratorium on claims processing. During the moratorium the UNR Trustees and the UNR TAC will examine the Trust's recent, material increase in malignancy claim filings and review Trust payment procedures. They then will confer with the Trust's actuarial expert on the impact these filings or any changes in payment procedures may have on the Payment Percentage. This work will be done as quickly as possible, but in all likelihood the moratorium will last for some months.

Claims received but not yet fully processed by the Trust as of April 9, 2013 will not be processed or further reviewed during the moratorium. The Trust will toll any applicable statute of limitations for the duration of the moratorium; therefore, please do not file claims until you receive notice from the Trust that the moratorium has ended. When the moratorium is ended, the Trust will advise on how claims currently filed will be handled.

#### Outstanding Offers and Releases; Second Installment Payments

The UNR Trust will honor all outstanding offers for which a signed release is received by the Trust by 180 days from the date of the offer, otherwise the offer will be considered abandoned and closed without payment. If the claimant elects the one-payment plan, payment will be made based on the current Payment Percentage of 0.82%. If claimant elects the two-payment plan, the first payment will be based on the current Payment Percentage of 0.82% and the second payment will be adjusted so that the total payment equals the Payment Percentage in effect at the time of the second payment, as the release itself provides.

If a second payment is due during the Moratorium, the second payment will be based on the current Payment Percentage of 0.82%.

#### Living Mesothelioma Claims

During the Moratorium the UNR Trust will process and pay living mesothelioma claims on request by counsel. These claims will be paid at the current Payment Percentage of 0.82%. All processing procedures currently in effect will apply.

If you have any questions, please call me directly.

Yours very truly,

