IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN CRANE INC., Plaintiff, v. SIMON GREENSTONE PANATIER BARTLETT, A PROFESSIONAL CORPORATION; JEFFREY B. SIMON; DAVID C. GREENSTONE, Defendants.	District Court No. 1:16-cv-5918 JURY TRIAL DEMANDED

COMPLAINT

Plaintiff John Crane Inc. ("JCI") brings this action against Simon Greenstone Panatier Bartlett, P.C., Jeffrey B. Simon, and David C. Greenstone (collectively the "Defendants"), and in support hereof states as follows:

1. This case arises from what the United States District Court for the Western District of North Carolina has characterized as a "startling pattern of misrepresentation," involving "withholding," and "manipulation of exposure evidence" in asbestos litigation carried out by the Defendants against JCI and others. *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71, 82-86 (Bankr. W.D.N.C. 2014).

2. The Defendants devised and implemented a scheme to defraud JCI and others, and to obstruct justice. The Defendants fabricated false asbestos "exposure histories" for their clients in asbestos litigation against JCI and others and systematically concealed evidence of their clients' exposure to other sources of asbestos. In particular, Defendants used this scheme to systematically conceal their clients'

exposures to highly friable, amphibole asbestos found in thermal insulation, which is much more dangerous than the non-friable, chrysotile asbestos contained and encapsulated in JCI's products. *In re Garlock Sealing Techs., LLC*, 504 B.R. at 75.

3. In essence, Defendants systematically and falsely denied that their clients were exposed to numerous other asbestos-containing products in litigation against JCI, and then once that litigation was complete, filed claims with asbestos bankruptcy trusts set up by bankrupt companies. The claims filed with those trusts were based on claimed exposures that were explicitly denied and fraudulently concealed in the litigation against JCI.

4. Among other acts, this scheme was carried out by:

a. Misrepresenting clients' exposures to asbestos-containing products in sworn testimony, in discovery responses, and in other written statements in the JCI litigation;

b. Knowingly withholding evidence of exposures to asbestos-containing products that were more dangerous than those made by JCI, while seeking in limine rulings preventing or limiting JCI argument that other exposures were responsible for the injury at issue;

c. Pursuing claims against JCI, while delaying (or withholding evidence of) the same client's filing of claims with asbestos bankruptcy trusts based on claimed exposures to products that were denied in the JCI litigation; and

d. Obstructing JCI and others from discovering evidence of alternative asbestos exposures, and ultimately, from discovering the scheme.

5. In the JCI litigation, as discussed below, the Defendants gave false asbestos exposure histories in written discovery and counseled their clients to testify falsely to the same effect so as to fraudulently obtain and inflate verdicts and settlements against JCI, whose asbestos-containing products were significantly less likely to cause injury than the products for which the Defendants falsely denied exposure.

6. As Defendant Jeffrey Simon has boasted in sworn testimony about the Defendants' litigation practices in asbestos injury cases: "Because of the business model of Simon, Eddins and Greenstone . . . they [tort-defendants] pay us more[.]" (Jeffrey Simon Test. 110, Feb. 17, 2011 (Ex. A).) That so-called "business model" was and is one of systematic fraud.

7. The fraudulent scheme and pattern of misconduct was first uncovered as a result of discovery in *In re Garlock Sealing Technologies, LLC, et al.*, Case No. 10-31607 (Bankr. W.D.N.C.) ("the *Garlock* bankruptcy"), and was the subject of a civil RICO lawsuit brought by Garlock against the Defendants. *See Garlock Sealing Techs., LLC, et al. v. Simon Greenstone Panatier Bartlett PC, et al.*, No. 3:14-cv-116 (W.D.N.C.).

8. In Garlock's civil RICO case, the court denied the Defendants' attempt to dismiss the case and held that "Defendants are accused of committing rampant fraud over the course of several years and in numerous venues throughout the country. These allegations suffice to state a claim for civil RICO." *Garlock Sealing Techs., LLC v. Simon Greenstone Panatier Bartlett, PC*, No. 3:14-cv-116, 2015 U.S. Dist. LEXIS

117028, *14-15 (W.D.N.C. Sept. 2, 2015). JCI was and continues to be a target and victim of the same fraudulent scheme.

9. Specific enumerated and described acts of misconduct, in specifically identified exemplar asbestos cases against JCI and others, are set forth at Paragraphs 111-287 below. However, JCI has obtained only limited information concerning the entirety of the fraudulent scheme carried out by Defendants. As a result, the full extent of that scheme, all its participants, and the entire amount of financial injury incurred by JCI remain to be discovered.

10. As explained in more detail below, the misconduct violated the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, the federal obstruction of justice and witness tampering statutes, 18 U.S.C. §§ 1503 and 1512, the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, *et seq.*, and constitutes common law fraud and conspiracy.

The Parties

11. Plaintiff John Crane Inc. ("JCI") is a Delaware corporation with its principal place of business in Morton Grove, Illinois. At all pertinent times, it was in the business of manufacturing and distributing industrial sealing products. JCI manufactured and sold packing, and purchased gaskets made by others and resold them under JCI's name.

12. Defendant Simon Greenstone Panatier Bartlett, PC ("the Firm"), is a law firm, organized as a professional corporation under the laws of Texas, with its principal place of business in Dallas, Texas. Upon information and belief, the Firm's partners and shareholders are residents of Texas and California. As used herein, any

allegations regarding the Firm's actions refer to actions by the Firm's partners, associates, employees, and/or other agents.

13. Defendant Jeffrey Simon ("Simon") is, on information and belief, a resident of Texas. Simon has been President, a shareholder, and a named partner of the Firm at all pertinent times.

14. Defendant David Greenstone ("Greenstone") is, on information and belief, a resident of Texas. Greenstone has been Secretary, a shareholder, and a named partner of the Firm at all pertinent times.

15. Defendants Simon and Greenstone are collectively referred to herein as "the Lawyer Defendants."

16. At all pertinent times the Lawyer Defendants were officers, partners, members, and/or shareholders of, or otherwise employed by or associated with, the Firm.

Jurisdiction and Venue

17. This Court has personal jurisdiction over the Defendants under 735 Ill. Comp. Stat. 5/2-209 and Fed. R. Civ. P. 4(k)(1)(A) because the Firm and the Lawyer Defendants purposefully availed themselves of the benefits of conducting business in Illinois by, among other things:

a. Deliberately targeting and defrauding JCI, whose headquarters and principal place of business is within this judicial district, as part of their scheme, while taking substantial actions in furtherance of his scheme here, and maintaining an active litigation practice here, as set forth herein;

b. Representing clients in asbestos personal-injury cases in courts within Illinois, including within the Northern District;

c. Filing or appearing as counsel of record in many lawsuits against JCI and others in state and federal courts located within Illinois, including within the Northern District;

d. Conducting litigation activities, including serving discovery responses, filings motions, representing clients at trial, in Illinois, including within the Northern District;

e. Taking depositions of JCI's corporate representatives in the Northern District of Illinois; by way of example, Simon came to Chicago, Illinois to take the deposition of JCI's "Person Most Knowledgeable", George McKillop, in the *White* case (discussed below);

f. Purposefully directing communications – including letters, emails and telephone calls – to JCI, its agents, and/or its counsel, O'Connell, Tivin, Miller & Burns ("OTMB"), and others located in Illinois, including within the Northern District both in connection with its scheme to defraud as discussed herein and separately;

g. Purposefully directing complaints, pleadings, discovery responses and requests to JCI, its agents, and/or OTMB, and others located in Illinois, including within the Northern District both in connection with its scheme to defraud as discussed herein and separately;

h. Purposefully directing communications to persons within Illinois, knowing that such communications were likely to be read and relied upon in Illinois

both in connection with its scheme to defraud as discussed herein and separately;

i. Targeting and directing communications to Illinois corporations, including JCI, in its scheme to defraud the companies as discussed herein;

j. Negotiating agreements with JCI and OTMB both in connection with its scheme to defraud as discussed herein and separately;

k. Conducting in-person meetings with JCI and OTMB in Chicago, Illinois for the purpose of discussing litigation and negotiating agreements and contracts;

l. Forming de facto partnerships (or in the alternative entering co-counsel relationships) with other law firms in Illinois, including firms practicing in the Northern District, to serve as their trial counsel in cases filed in Illinois, to serve as their co-counsel in cases filed in other jurisdictions, or to file or otherwise assert claims in bankruptcy trusts in Illinois and elsewhere; and,

m. For the reasons listed *infra* Paragraph 22.

18. The Defendants' activities listed above are ongoing. Among other things, Simon and the Firm are currently or were recently counsel of record in at least four cases pending in the Northern District of Illinois, including *Surita et al. v. AM General LLC*, et al., 2015-cv-7164, *Neumann v. Honeywell Int'l Inc., et al.*, 2015-cv-10507, *Messel et al. v. Viad Corp. et al.*, 2015-cv-11322 (in which JCI is a defendant), and *McAffry et al. v. 3M Company et al.*, 2015-cv-10927. Simon individually is counsel of record in both the *Neumann* and *McAffry* cases mentioned above. On information and belief, the Defendants are counsel of record in additional cases pending in Illinois state

courts within the Northern District. Additionally, Defendants are engaged in ongoing communications with OTMB regarding pending cases elsewhere.

19. This Court has subject matter jurisdiction over JCI's RICO claims under 28 U.S.C. § 1331 because those claims arise under the laws of the United States.

20. This Court has subject matter jurisdiction over JCI's common law claims under 28 U.S.C. § 1367(a) because those claims are part of the same case or controversy as the federal claims.

21. Additionally, this Court has subject matter jurisdiction over all claims pursuant to 28 U.S.C. § 1332 because JCI and the Defendants are of diverse citizenship and the amount in controversy exceeds $75,000, exclusive of interest and costs.

22. Venue is proper in this Court under 28 U.S.C. § 1391, which provides for venue in federal court generally because "a substantial part of the events or omissions giving rise to the claim occurred" in the Northern District of Illinois, including:

a. JCI suffered the harm caused by the Defendants' fraud in this District, where JCI is located;

b. The Defendants negotiated the resolution of the cases discussed in this Complaint with JCI and OTMB, both located within this District;

c. During those negotiations the Defendants directed and caused to be directed emails and telephone calls to JCI and its counsel located within this District;

d. The Defendants served or caused to be served pleadings, discovery responses, deposition transcriptions, expert reports, motions in limine, and

settlement demands and terms either directly to JCI and/or its counsel, OTMB, located within the Northern District of Illinois, or with knowledge that JCI's local counsel would forward the documents to JCI and/or OTMB;

e. The Defendants and/or persons acting on their behalf and at their direction regularly took depositions of JCI witnesses in Chicago, Illinois, including as described above, the deposition of George McKillop in the *White* case.

23. Additionally, venue is proper under 18 U.S.C. § 1965(a), for the reasons described *supra* in Paragraphs 17, 18, and 22.

Factual Background

I. The Defendants and Asbestos Litigation

24. The Lawyer Defendants founded the Firm in January 2006. The Firm's principal office is located in Dallas, Texas. The Firm also has an office in California.

25. The Firm represents injured persons in asbestos personal-injury cases, and holds itself out as "comprised of experienced trial attorneys who possess knowledge and familiarity with asbestos-related diseases," including mesothelioma. *See* http://www.sgpblaw.com/mesothelioma.html, last accessed May 24, 2016.

26. Simon has "been working on asbestos cases [his] entire professional life" and "focus[es]" on "mesothelioma cases[.]" His "specialty i[s] working up and trying such cases." (Ex. A 43.)

27. Simon serves as lead counsel of record in the Defendants' Texas mesothelioma cases, including the *White* case discussed herein.

28. In addition, on information and belief, Simon has final decision-making authority over all litigation handled by the Firm and its attorneys.

29. Greenstone heads the Firm's asbestos bankruptcy practice and serves as the Firm's managing partner.

30. The Defendants obtain asbestos clients in two ways: (1) clients hire them directly, or (2) clients are referred to the Defendants by other lawyers or law firms ("referrals" and "referring lawyers," respectively), including, without limitation, Early, Lucarelli, Sweeney & Meisenkothen a/k/a Early Ludwick ("the Early Firm").

31. Until at least 2010, most of the Defendants' asbestos clients were referrals. (Ex. A 128.)

32. Asbestos cases – particularly those involving mesothelioma – can be very lucrative for plaintiffs' lawyers, including the Lawyer Defendants and the Firm, who are generally compensated by receiving a percentage of the monies recovered by the plaintiff.

33. The Firm's website advertises numerous multimillion-dollar verdicts it claims to have obtained on behalf of mesothelioma clients. *See* http://www.sgpblaw.com/track-record.html; http://www.sgpblaw.com/news.html, last accessed May 24, 2016.

34. In particular, Simon has boasted: "[M]y law firm has gotten a couple of very large [mesothelioma] verdicts against John Crane. You know, in excess of twenty million dollars." (Ex. A 165.)

II. Asbestos Bankruptcy Trusts

35. The leading cause of mesothelioma among American workers is occupational exposure to friable thermal insulation products containing amphibole asbestos fibers.

36. Most of the companies responsible for producing this "more potent" amphibole-containing thermal insulation product have filed for bankruptcy protection due in whole or in part to liability for asbestos personal-injury claims. *In re Garlock Sealing Techs., LLC,* 504 B.R. at 73, 75.

37. To account for the current and future asbestos-related liabilities of companies seeking bankruptcy protection, bankruptcy courts have established trusts through which persons exposed to the bankrupt companies' asbestos-containing products can make claims for compensation.

38. Unlike tort claims against non-bankrupt companies, bankruptcy-trust claims are typically made and resolved outside of the judicial system and are subject to procedures established by advisory committees that oversee and effectively control the trusts. These advisory committees are often made up predominantly of members of the asbestos plaintiffs' bar. For example, the nine-member Trust Advisory Council to the Owens Corning Fibreboard Asbestos Personal Injury Trust is comprised entirely of asbestos plaintiffs' personal-injury lawyers.

39. Although claims procedures vary from trust to trust, they typically require a claimant to certify, under penalty of perjury, that he or she was exposed to the bankrupt company's asbestos-containing products. Often, this comes in the form of an affidavit by the claimant that affirms such exposure.

40. Generally, the trusts are required to pay claims only when the claimant provides credible proof of specific exposures to the company's products.

41. Because bankrupt asbestos defendants shifted their liabilities to trusts, asbestos litigation has evolved into a two-track system. Plaintiffs' lawyers seek money from non-bankrupt companies through lawsuits brought in the court system, *i.e.*, tort litigation, and seek additional recoveries from bankrupt companies through trust claims.

42. With respect to the Defendants' referral clients, the referring lawyers would "often . . . keep the bankruptcy piece of any claim[.]" (Ex. A 129.) Nevertheless, even in those instances, the Lawyer Defendants and/or the Firm would at least sometimes receive some of the money recovered from trusts. (Simon Dep. vol. 1, 50, Jan. 4, 2013; vol. 2, 225, March 26, 2013 (attached collectively as Ex. B).) The referring lawyers, in turn, "would . . . receive some fee based on amounts that [the Lawyer Defendants] recover for a client in the tort system[.]" (Ex. B 51.)

43. Under this arrangement, both the Lawyer Defendants, the Firm, and referring lawyers had an interest in ensuring that the recoveries obtained by the other were maximized, and, in fact, agreed and conspired to assist one another to this end.

44. According to Simon: "We would have provided them [the referring lawyers] with the information that we had about what [the client] was exposed to" so that information could be used to file trust claims. (Ex. B 86-88.)

45. Through the fraudulent scheme described herein, the Lawyer Defendants, the Firm, and/or their co-conspirator referring lawyers exploited the two-track trust/tort system by making or causing to be made claims and obtaining money from trusts, while

withholding, concealing, and misrepresenting in tort litigation the asbestos exposures on which the trust claims were based.

46. This conduct was facilitated by the trusts' claims procedures, which generally included the following:

a. Confidentiality provisions, which purport to transform all information submitted to the trust into confidential settlement communications and allow the claimant and the trust to prevent disclosure to third parties such as non-bankrupt companies in tort litigation;

b. Sole-benefit provisions, which provide that evidence submitted to the trust is for the sole benefit of the trust and not for asbestos defendants in the tort system; and,

c. Deferral and withdrawal provisions, which allow claimants to defer their claims until after any asbestos-injury litigation has concluded while still maintaining their place in line for distribution, or withdraw their claims without prejudice (which is often used as a reason to deny that any claims have been made when responding to discovery in tort litigation).

47. As described below, these provisions made it easier for the Defendants and/or their co-conspirators to fraudulently conceal their clients' exposures to bankrupt companies' products in tort litigation against non-bankrupt companies, while still making claims with, and obtaining money from, the trusts.

48. In addition to filing claims with bankruptcy trusts, the Defendants and/or their co-conspirators also sometimes filed or caused to be filed proofs of claim, Chapter 11 ballots, or statements pursuant to Fed. R. Bankr. P. 2019 on behalf of their clients in

asbestos bankruptcy cases. By filing or causing to be filed proofs of claim, ballots, or Rule 2019 statements on their clients' behalf, the Defendants and/or their co-conspirators asserted that their clients had personal injury claims against the bankrupt company arising from the clients' exposure to the company's asbestos-containing products.

III. The Fraudulent Scheme

A. The Importance of Exposure Evidence

49. The crux of any asbestos case is the "exposure evidence" – that is, the evidence concerning the asbestos-containing product or products to which the plaintiff was allegedly exposed and which allegedly caused the plaintiff's asbestos-related disease.

50. Defendant Simon has called exposure evidence "the most salient piece of the discovery provided." (Ex. A 96.)

51. Plaintiffs' lawyers like Simon and the other Defendants are uniquely positioned to control this exposure evidence because their client's testimony is often the primary, and sometimes the only, evidence of exposure. According to Simon: "[E]very plaintiff's circumstance is unique and has to be treated as so . . . . I am there to figure out what he knows the best I can." (Ex. A 100, 132.)

52. At all relevant times the Defendants were well aware of, and actively exploited, their control over exposure evidence.

53. Evidence of exposure to specific products is critical in asbestos cases, particularly mesothelioma ones, for several reasons:

a. First, absent evidence of exposure to one or more asbestos-containing products for which a particular company is responsible, there can be no recovery against that company, bankrupt or otherwise.

b. Second, unless there is evidence that a plaintiff was exposed to products for which one or more *non-bankrupt* companies are responsible, the plaintiff's recovery will be limited to bankruptcy trusts.

c. Third, evidence of exposure to products associated with *bankrupt* companies provides a basis for a defendant in tort litigation to argue that the products of bankrupt, non-party companies solely or partially caused the plaintiff's disease. This is particularly true when the alternative exposures were to highly friable, "more potent" amphibole asbestos, and the tort-defendants' products – like those of JCI – contained non-friable, chrysotile asbestos encapsulated in rubber or other materials. Chrysotile asbestos is "far less toxic" than amphiboles, and its use in JCI's gaskets generally "resulted in a relatively low exposure . . . to a limited population." *In re Garlock Sealing Techs., LLC*, 504 B.R. at 73 (citation omitted), 75, 82.

54. The presence of alternative exposure evidence in tort litigation against companies like JCI makes it substantially more likely that the tort-defendants will be found not liable (because the jury concludes that the alternative exposures caused the plaintiff's disease), or that the plaintiff's recovery from the tort-defendants will be reduced by the bankrupt companies' proportionate share of fault and/or set off by the amount recovered by the plaintiff from trusts.

55. Alternative exposure evidence is most compelling when it comes directly from the plaintiff ("direct evidence"), in the form of sworn testimony or written statements such as interrogatory responses or affidavits.

56. On the other hand, when there is no evidence – especially no direct evidence – of alternative exposures, the Lawyer Defendants and other plaintiff's lawyers are able to argue, and do argue, that the tort-defendants' products must have caused the plaintiff's disease because there are no other exposures that could have caused it.

57. The presence or absence of alternative exposure evidence significantly impacts liability and damages in every case. Specifically, where alternative exposure evidence is present, JCI's potential liability is lower. Where alternative exposure evidence is absent, JCI's potential liability is higher. Favorable results in tort litigation against JCI in which alternative exposure evidence is present also reflect this difference.

58. At all relevant times the Defendants were acutely aware of the critical importance of exposure evidence – particularly evidence of alternative exposure – in tort litigation against non-bankrupt companies.

59. Defendant Simon summarized the two main reasons alternative-exposure evidence is critically important to tort-defendants in his sworn testimony in the *Garlock* bankruptcy:

> "One, through trying to establish that their product is not a substantial factor in causing the disease claimed but rather other products are. The notion that other products were more prolific in this claimant's asbestos exposure. Other products contained forms of asbestos that, you know, Garlock would characterize as more potent and more significant in how this person got mesothelioma and how people in general, when they develop asbestos related mesothelioma, get it.

> The second is the comparative fault schemes where the defendant is severally, rather than jointly, severally liable for non-economic damages which tend to be the largest component of mesothelioma claims. . . .
>
> [I]n California, for example, the comparative fault scheme is established under proposition 51, what we call prop 51, and it is very permissive for the defendant standard of laying off blame on sort of every other conceivable, responsible entity for how this person developed mesothelioma and who is at fault for it. Not just causation but fault."

(Ex. A 66-67.)

60. Defendant Simon admits that alternative exposure to products associated with bankrupt companies "has a consequence on [his] client's [tort] claim" because, for example, under comparative fault the bankrupt company "might be assigned some share of fault[.]" (Ex. A 137-138.)

61. According to Defendant Simon: "If [a non-bankrupt defendant] wanted to establish that my client had [alternative] exposure [associated with a bankrupt company] and my client did have [alternative] exposure, then certainly that is to the benefit of [the non-bankrupt defendant]." (Ex. A 138.)

62. For these reasons, there is a strong incentive for plaintiffs' lawyers in asbestos litigation, such as Defendant Simon, to falsify their clients' exposure histories.

B. Admitted Duty to Disclose in Tort Litigation Alternative Exposures Related to Bankrupt Companies

63. The Lawyer Defendants, particularly Simon, have repeatedly admitted that they have a duty to disclose in tort litigation alternative exposures related to bankrupt companies.

64. In his sworn testimony to the court in the *Garlock* bankruptcy, Defendant Simon stated: "[W]e acknowledge the ethical responsibility to make sure that such

allegations are consistent throughout the case[,]" i.e., as between the tort litigation and trust claims. (Ex. A 130.)

65. Continuing, Simon testified as follows:

> I am interested in figuring out whether or not referring counsel believes they have worked up a good-faith exposure to a Johns Manville product relating to the plaintiff so that I repeat the nature of that alleged exposure in the main case because obviously the defendants are entitled to it. . . . [I]f my client or a co-worker recalls a type of exposure or a brand of exposure, [] I have a responsibility to try to determine what that is and certainly to answer discovery according to the understandings that I have. . . .
>
> I mean, what is supposed to happen is, is if the gentleman alleges that he had Johns Manville thermobestos pipe insulation exposure, and there is something about the trust – I don't have the Johns Manville trust in my head and the documents and whether one has to say that or not, but let's just assume hypothetically they do. Then that's what, you know, is important to disclose in some form, some comparable form so that the defendant is not unaware that he believes he was exposed to thermobestos during these years.

(Ex. A 136, 158-159.)

C. Defendants Coordinate with Co-Conspirator Referring Firms During Defendants' Tort Litigation, Including Discovery

66. Defendant Simon provided sworn deposition testimony as the Firm's designee during discovery in the *Garlock* estimation proceedings. When asked whether the Firm and its lawyers are "careful to coordinate with the [referring] firm regarding responses to interrogatories and documents to make sure that you're consistent in providing information truthfully," Defendant Simon responded: "I hope so. We try to be. I mean, we're mindful of our obligations to answer discovery responsibly and if we can't get information from the client but otherwise could get it from [the referring firm], then we would go there." (Ex. B 54.)

67. Defendant Simon further testified that the Firm "certainly endeavor[s] to be" and "takes steps to ensure" that it is "careful to make sure that the client's positions are consistent in the tort system and in the claims that client makes against the trust[s.]" (Ex. B 56-57.)

68. Defendant Simon agreed that the "exposure allegation" associated with a trust claim "ha[s] to be disclosed to defendants" in tort litigation. (Ex. B 59.) He further testified, "I certainly would produce [in tort litigation] the basis for the trust claim[.]" (Ex. B 59.)

69. Defendant Simon also testified that referring firms "keep very close contact with the client. They're very good at continuing to be not just attorney but counselor to clients going through this and to -- when the client has a question about what's going on in their case, they [clients] don't just call us -- and they do -- but they also call them [referring firms] and they [referring firms] discuss with us issues related to how to answer the client's question, how to make sure that the client feels that they've been fully informed of the status of their case." (Ex. B 53-54.)

70. Defendants typically share the discovery they create and provide during litigation with the referring firms. Defendant Simon stated that it was "typically" his "practice" to provide referring firms, such as the co-conspirator Early Firm, with his clients' discovery responses in litigation in order to inform the bankruptcy trust filings. (Ex. B 88.) Defendant Simon explained, in the context of the *White* case detailed below, "We would have provided them with the information that we had about what he was exposed to. We would have sent them the deposition or the work history sheet or both." (Ex. B 86-87.)

71. Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants would in some cases conduct the investigation of a tort-plaintiff's claims for both litigation and trust claims to be filed by a referring firm. (Ex. B 52-53.)

72. In short, throughout asbestos litigation that the Defendants lead, the Lawyer Defendants, those acting under the direction or supervision of the Firm or the Lawyer Defendants, and co-conspirator referring firms are in regular contact with one another, sharing information about their clients (the tort-plaintiffs), their clients' exposure to both bankrupt and non-bankrupt companies' asbestos products, investigations by the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants into their clients' exposure histories, and the status of the litigation.

D. Deliberately Delayed Trust Claims

73. According to Defendant Simon, "the focus of my firm's handling of cases has always put the tort claim first rather than the trust claim form process[.]" (Ex. B 225.)

74. Among other things, this meant that the Defendants' general practice was and is to delay the filing of trust claims (whether by themselves or referring lawyers) until after the resolution of tort litigation. This is especially true when the Defendants (as opposed to referring lawyers), namely Greenstone, handle the trust claims in addition to the tort litigation.

75. On information and belief, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants regularly

directed clients to sign affidavits affirming exposure to asbestos from bankrupt companies well in advance of filing trust claims, and often, early in the tort litigation.

76. Additionally, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants directed that a memorandum be drafted for each client discussing the client's exposure history.

77. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants conspired with one another and the referring lawyers, including in particular the Early Firm, to control the timing of trust claims with the specific intention of furthering the fraudulent scheme. (Ex. A 130.) In particular, Greenstone and others at the Firm who handled trust claims, or the referring lawyers, regularly do not file trust claims until authorized to do so by Defendant Simon or another conspirator.

78. As Judge Hodges concluded in the *Garlock* bankruptcy, the "regular practice . . . to delay filing Trust claims [was] so that remaining tort system defendants would not have that information." *In re Garlock Sealing Techs., LLC*, 504 B.R. at 84.

79. The *Lange* case, discussed in more detail below, is a prime example of this practice. JCI was dismissed from the case on the eve of trial on January 6, 2010, after lengthy and expensive discovery and in exchange for a waiver of costs. At that time, no bankruptcy or trust claims had been filed on the plaintiff's behalf. Then, on March 30, 2010, within weeks of the termination of active litigation, Greenstone or a co-conspirator referring lawyer caused claims to be filed on Lange's behalf with the bankruptcy trusts of boilermaker Babcock & Wilcox, refractory product maker Harbison Walker, and insulation makers and distributors Armstrong, Owens Corning, Fibreboard,

and Halliburton. Greenstone or a co-conspirator referring lawyer also caused claims to be filed on Lange's behalf with the Western Asbestos Settlement Trust in April 2010, and with the J.T. Thorpe Settlement Trust in August 2010. The written discovery responses and depositions provided by Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants and their client in Lange's tort case not only omitted, or affirmatively denied, that Lange was exposed to these companies' products, but also denied that he was exposed to thermal insulation or boilers at all.

80. The Defendants' practice of deliberately delaying the filing of trust claims until after the completion of tort litigation was a critical part of the fraudulent scheme against JCI and other non-bankrupt defendants. As part of fabricating an exposure history, this delay was specifically intended to create the false appearance—to JCI, other non-bankrupt defendants, the court, and the jury—that plaintiffs had only been exposed to asbestos-containing products for which non-bankrupt companies were responsible. In reality, as the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants well knew, such plaintiffs had been exposed to numerous asbestos-containing products for which bankrupt companies were responsible.

81. This fraud, in turn, was just a part of the broader fraudulent scheme to make all "evidence of exposure to those [bankrupt] insulation companies' products . . . 'disappear[].'" *In re Garlock Sealing Techs., LLC*, 504 B.R. at 84. In other words, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants sought to fabricate fraudulent client exposure histories devoid

not only of trust claims, but also of any evidence of exposure to products associated with bankrupt companies, especially thermal insulation companies whose products contained friable and "more potent" asbestos.

E. False Evidence In Discovery and At Trial

82. The Defendants' practice of deliberately delaying the filing of trust claims until after the completion of tort litigation guaranteed that JCI and other non-bankrupt companies could not point to *claims* asserted against bankrupt companies to establish alternative exposures. However, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants still needed to hide the *fact* of the alternative exposures.

83. As Judge Hodges found in the *Garlock* bankruptcy, the scheme entailed "delay[ing] filing claims against bankrupt defendants' asbestos trusts until after obtaining recoveries from Garlock (and other viable defendants)" and "withhold[ing] evidence of exposure to other asbestos products" in tort litigation, thereby making the fact of such exposures effectively "disappear[.]" *In re Garlock Sealing Techs., LLC*, 504 B.R. at 84.

84. To do so, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants systematically provided false and fraudulent responses to written discovery in tort litigation.

85. For example, in the *Kelemen* case, discussed in more detail below, between April 2008 through May 2009, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused multiple discovery responses to be served denying that Kelemen was exposed to any asbestos-containing products besides those of the defendants in his tort case. Yet in March

2009, the Lawyer Defendants, or a co-conspirator referring lawyer, filed a claim with the Owens Corning bankruptcy trust certifying that Kelemen was exposed to its thermal insulation products. The Owens Corning trust claim and the underlying exposure to Owens Corning, a well-known producer of thermal insulation, were both concealed in Kelemen's tort case. At least eleven other bankruptcy trust claims were later filed on Kelemen's behalf, and the Defendants also did not disclose in the tort litigation any exposures to the products on which those claims were based.

86. As previously set forth above, Simon admits that he, Greenstone, and the Firm had a duty to disclose in tort litigation the "exposure allegation[s]" associated with trust claims made on behalf of their clients. (Ex. B 59.)

87. The false and fraudulent discovery responses the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused to be served on their clients' behalf, and associated concealment, were a deliberate and intentional part of the Defendants' scheme to defraud JCI and others.

88. Upon information and belief, the Lawyer Defendants, particularly Simon, and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants also fraudulently caused their clients to not testify concerning exposures to products associated with bankrupt companies during their depositions in tort litigation.

89. To that end, on information and belief, the Lawyer Defendants, particularly Simon, and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused clients to identify only the products of non-bankrupt companies in

their depositions, and caused clients to not identify the products of bankrupt asbestos companies.

90. In this sense – that is, by fraudulently causing their own clients to provide incomplete and/or incorrect testimony – the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants exploited and victimized their clients in furtherance of their scheme to defraud JCI and others.

91. At the time the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants provided the false exposure history in tort litigation, JCI did not know, and could not have known, of its falsity because typically only the Defendants and their clients, the tort plaintiffs themselves, knew the true and complete exposure history. Indeed, by providing false discovery responses and deliberately delaying the filing of trust claims, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants ensured that information concerning their clients' alternative exposures that could undermine litigation claims remained undisclosed to anyone else, including the trusts, until after the tort litigation concluded.

92. These exposure histories, which the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intentionally caused to be prepared and served, were false when made. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew them to be false, or, in the alternative, acted with reckless disregard to the truth or falsity of the histories, and in causing them to be made intended to deceive JCI.

93. Certain evidence demonstrating the false exposure histories fabricated by the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants – namely, the trust claims and related exposure evidence – was only revealed as a result of discovery permitted by the Bankruptcy Court in connection with the estimation proceedings in the *Garlock* bankruptcy. The record of those proceedings was sealed until May 2015, when it was unsealed and made available to the public. But to this day, JCI remains unable to access a substantial volume of information discovered in the *Garlock* bankruptcy that would help it investigate its claims.

94. Accordingly, JCI did not know, and could not reasonably have known, of the fraud alleged herein until after May 2015, when the *Garlock* estimation trial was largely unsealed. JCI remains unable to fully investigate the fraud absent further discovery.

F. <u>Obtaining Money Based on Fabricated Exposure Histories</u>

95. The Defendants' ultimate objective was to use the fabricated exposure histories to mislead JCI, other tort-defendants, courts, and juries, thereby enabling the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants to fraudulently obtain money through verdicts, judgments and satisfactions, and/or settlements that otherwise would not have been available.

96. In particular, through the false exposure histories, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants (1) created the false appearance in tort litigation that their clients had experienced no alternative exposures to asbestos, and (2) guaranteed there would be

no direct evidence from their clients of such exposures. In fact, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants not only knew their clients had experienced alternative exposures, but also used evidence of those exposures – in particular, sworn statements by their client attesting to them – to obtain additional money by way of trust claims.

97. Because they misrepresented their clients' exposure histories, particularly their alternative exposures to "more potent" amphibole-containing products, *see In re Garlock Sealing Techs., LLC*, 504 B.R. at 75, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants could and did argue to courts and juries that JCI's (and other non-bankrupt tort-defendants') products must have caused the plaintiff's disease because there was no evidence of any other alternative asbestos exposures, or only vague and speculative evidence.

98. Indeed, as part of their fraudulent scheme, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants developed and systematically caused to be filed, including in the *Kelemen* and *Geist* cases discussed below, a form "Motion in Limine to Exclude Evidence or Reference to Other Alleged Exposures of Asbestos For Which There is No Admissible Evidence" ("Motion to Exclude Alternative Exposures"). Using this stock in limine motion, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants repeatedly represented to trial courts that there was "nothing more than unsubstantiated testimony and conjecture that mythical 'other exposures' were the cause of [the plaintiff's] disease." (*See, e.g.*, Ex. S 3.)

99. In other words, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants fabricated false exposure histories devoid of alternative exposures and then used that false evidence to argue to courts that any evidence or theory of alternative exposure presented by JCI or other defendants was “unsubstantiated”, “conjectur[al]”, or “mythical” and, therefore, must be excluded.

100. The Defendants’ stock in limine motion, which involved direct and affirmative misrepresentations not only to JCI and other defendants but also to the courts, illustrates how harmful the Defendants believed that evidence of alternative exposures would be to their case.

101. Through these fraudulently presented motions, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants deprived JCI of the opportunity to present direct evidence of alternative exposure and, at times, the opportunity to present any evidence of alternative exposure.

102. The fraudulent scheme extended into the post-trial and appellate phases of their cases, where they continued their efforts to conceal exposures associated with bankrupt companies and argued to trial and appellate courts that their fraudulently obtained verdicts must stand specifically because – according to the false exposure histories presented to the court and jury – there was no evidence of alternative exposures.

103. Through their fraudulent scheme, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants specifically intended to, and did, substantially increase (1) the likelihood that their clients

would prevail if the cases were tried to verdict, (2) the legal fees and other defense costs expended by JCI, (3) the amount of any judgment against JCI and others, and (4) the amount of any post-verdict or other settlement paid by JCI and others.

104. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants also specifically intended that JCI, other tort-defendants, courts, and juries, would rely on the false exposure histories.

105. In particular, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intended that tort-defendants including JCI would rely on the false exposure histories, including by trying or settling cases based on the false premise that there were no alternative exposures, or at least, no direct evidence thereof.

106. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intended that courts and juries would rely on the false exposure histories to hold JCI and other tort-defendants liable for causing all of the plaintiff's damages, when in fact the tort plaintiff's disease was caused, in whole or part, by other asbestos exposures that had been fraudulently concealed.

107. On the other hand, in cases where evidence was present showing full exposure histories, particularly where it included direct evidence of alternative exposures to amphiboles, JCI often succeeded in arguing that its products did not cause the plaintiff's illness and that amphibole asbestos products, such as thermal insulation, were the cause. This resulted in defense verdicts, lower defense costs to JCI, or the jury attributing a relatively low percentage of fault to JCI compared to the

cases in which the jury and court were misled as to exposure. In Simon's words: "[T]hey certainly gained considerable traction with that[.]" (Ex. A 86.)

108. The fraudulent scheme of the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants harmed JCI by causing it (and others) to suffer adverse and inflated verdicts based on false exposure histories, to pay artificially inflated satisfactions and settlements, and to pay increased defense costs. Even when JCI won a defense verdict or was dismissed prior to trial, the misrepresentation and concealment of alternative exposure evidence increased JCI's defense costs.

109. Upon information and belief, the fraudulent scheme of the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants encompassed substantially all of the mesothelioma cases they brought on behalf of clients against JCI since the Firm was formed. However, the information demonstrating the presence of false exposure histories in those cases is presently inaccessible to JCI. In addition, JCI remains unable to access a substantial volume of information discovered in the *Garlock* bankruptcy.

110. Further specific examples of the fraudulent scheme of the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants revealed in the unsealed discovery from the *Garlock* bankruptcy estimation proceedings are set forth below.

Particular Examples of Racketeering Conduct that Injured JCI

I. The *Kelemen* Case

111. On January 24, 2008, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused a complaint to be filed against JCI on behalf of David and Paula Kelemen in Los Angeles County Superior Court. (Ex. C.)

112. The *Kelemen* complaint included allegations against a variety of defendants, none of which had filed bankruptcy at the time of filing. The complaint alleged JCI's products and those of its co-defendants caused David Kelemen's ("Kelemen") mesothelioma.

113. Firm attorneys Ronald Eddins and Jennifer Bartlett, served as counsel of record.

114. Defendant Simon took the deposition of a defendant's "Person Most Knowledgeable" in the *Kelemen* case. Also, on information and belief, Defendant Simon was personally involved in the *Kelemen* strategy and trial.

115. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused the deposition of JCI's Person Most Knowledgeable to be taken in Chicago, Illinois.

116. On October 20, 2009, a jury found for David and Paula Kelemen in the amount of $30,350,913.20 and, under California's comparative fault law, apportioned 70% of fault to JCI.

117. JCI settled the case two years later on or about December 29, 2011.

118. On or about January 3, 2012, and January 10, 2012, Defendant Simon and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants negotiated via email with JCI's counsel, Daniel O'Connell, who was located in Chicago, Illinois, regarding the terms of the *Kelemen* settlement.

119. The settlement payment – which the Defendants obtained via their fraudulent scheme, and which Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants foreseeably caused JCI to make – was made via interstate wire transfer to the Firm's trust account. The settlement payment was authorized and initiated at one or more of the Defendants' request by JCI in Morton Grove, Illinois.

120. Throughout the Kelemen litigation, Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants fraudulently misrepresented, including through sworn discovery responses and arguments to the court, that no bankruptcy trust claims had been filed on behalf of Kelemen. However, between March 26, 2009 and September 27, 2012, Kelemen, through either the Lawyer Defendants, those acting under the direction or supervision of the Firm or the Lawyer Defendants, or their co-conspirator referring lawyers, filed at least twelve claims with asbestos bankruptcy trusts. (Ex. K)

121. Despite direct discovery requests for the information by JCI, Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants did not disclose any of these claims or alleged exposures to the products of bankrupt companies but instead repeatedly denied any such exposure.

A. **False Information Provided During Discovery**

122. On April 9, 2008, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused to be served on JCI via U.S. mail or interstate wire Kelemen's responses to the Los Angeles County General Order Standard Interrogatories. (Ex. D.)

123. General Order Standard Interrogatory No. 27 asked "If you [Keleman] have ever worked with asbestos manufactured, produced, prepared, distributed or sold by any other entity not named as a defendant in this lawsuit, identify each such entity." (Ex. D.) Defendants on behalf of their client responded with an express denial that Kelemen worked with any other company's asbestos product: "Upon information and belief, no." (Ex. D.) The Defendants stated that their investigation was ongoing, but never supplemented the specific response. (Ex. D.)

124. Likewise, the response to court-approved Interrogatory No. 59 identified exposure to asbestos products manufactured, produced, prepared, distributed, or sold by either the defendants named in the *Kelemen* complaint or other non-bankrupt asbestos distributors and manufacturers.

125. As part of the scheme to fabricate a false exposure history for Kelemen, the response to the interrogatories also included a "work history sheet," which identified only products associated with non-bankrupt companies. (Ex. D.) The work history sheet did not disclose exposure to products from any of the twelve bankrupt companies against which Kelemen filed claims.

126. The responses to these interrogatories (including the work history sheet), which the Lawyer Defendants and/or those acting under the direction or supervision of

the Firm or the Lawyer Defendants intentionally caused to be prepared and served, were false when made. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew those responses to be false, or acted with reckless disregard to their truth or falsity, and in causing the responses to be made intended to deceive JCI.

127. For example, on March 26, 2009, Kelemen, through either the Lawyer Defendants or a co-conspirator referring lawyer, filed a claim with the Owens Corning bankruptcy trust, a well-known producer of thermal insulation products that contained amphibole asbestos. The claim included evidence that Kelemen was exposed to Owens Corning's asbestos products. The Lawyer Defendants or their co-conspirators later caused additional claims to be filed on Kelemen's behalf with other trusts. None of the exposures on which these claims were based were disclosed in the tort case.

128. Just weeks later, on April 16, 2009, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants or the Lawyer Defendants served responses to requests for admission, which for example, asked for an admission that Keleman was exposed to thermal insulation products, including pipe covering, block insulation, insulating cements, pads, raw asbestos fiber and cloth. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants objected and then responded to Request 16 on behalf of their client: "Based upon information and belief: Unable to admit or deny. Discovery is continuing and Plaintiff reserves the right to amend and/or supplement this response at anytime." (Ex. F.)

129. These responses to these requests for admissions – prepared and caused to be served by the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants – were false when made. At the time the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused them to be served, Kelemen had already submitted a claim to the Owens Corning trust, a well-known thermal insulation maker. And Kelemen ultimately submitted claims to at least four other trusts of thermal insulation makers.

130. On May 22, 2009, in the course of responding to interrogatories, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants produced a second work history sheet. It largely duplicated the first work history sheet, and only disclosed exposure to the defendants' products and products of other non-bankrupt companies. (Ex. G.)

131. That work history sheet, which the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intentionally caused to be prepared and served, was also false. It failed to disclose Kelemen's exposure to products from any then-bankrupt companies, despite the fact that by that time Kelemen had already filed a trust claim with Owens Corning, and later filed at least eleven additional claims with other bankruptcy trusts through either the Lawyer Defendants or their co-conspirator referring lawyers.

132. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew the work history sheet to be

false, or acted with reckless disregard to its truth or falsity, and in causing it to be made intended to deceive JCI.

133. On May 22, 2009, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants served a response to an interrogatory asking whether the plaintiff "alleged exposure to asbestos from any asbestos-containing friction products." (Ex. H.) The response referred to Kelemen's answer to Standard Interrogatory No. 59, work history sheets, and the complaint.

134. The same set of interrogatories asked whether Kelemen had filed any claim asserting an injury "as a result of exposure to asbestos from brake linings or asbestos-containing friction products" other than those in the current case. The response to this interrogatory, also prepared and caused to be served by the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants, stated: "Not applicable," thereby asserting that Kelemen had not made such a claim. (Ex. H.)

135. The response to the interrogatories about friction product exposure – prepared and caused to be served by the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants – was false when made, and the response about friction product claims was fraudulent by omission when made. Kelemen, through either the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants (or their co-conspirators), later filed claims with the bankruptcy trusts for Turner & Newall and Ferodo, both known producers of asbestos-containing friction products. Those claims were supported by evidence that Kelemen was exposed to the respective companies' friction products.

136. Kelemen was deposed in May 2008. Firm attorney Ethan Horn appeared as counsel for Kelemen. (Exs. I and J.)

137. Consistent with and as a result of the scheme to fabricate false exposure histories, Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants fraudulently caused Kelemen to testify almost exclusively about products associated with named tort-defendants.

138. Kelemen testified unequivocally that he had never worked with Johns-Manville insulation and had never filed a bankruptcy claim with the Manville Trust. (Ex. I.) Yet the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants (or a co-conspiring referring lawyer) filed a claim with the Manville Trust on Kelemen's behalf – on information and belief, after Kelemen's deposition – and in so doing produced evidence that Kelemen was exposed to Johns-Manville asbestos products.

139. Kelemen also testified unequivocally that he never worked with or around drywall or stucco products and materials. (Ex. J.) Yet, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants (or a co-conspiring referring lawyer) filed a claim against U.S. Gypsum Personal Injury Trust on Kelemen's behalf, which required proof of credible evidence of Kelemen's exposure to products manufactured or distributed by U.S. Gypsum, including drywall products.

140. Kelemen's deposition testimony described above, which the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused to be provided and never corrected, was false when given

in the respects noted above. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew it to be false, or acted with reckless disregard to its truth or falsity, and in causing it to be made intended to deceive JCI.

141. During discovery, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants also claimed that "[p]laintiffs have not made any claims to a bankruptcy trust." As of March 26, 2009, this was false in light of the Owens Corning trust claim described above – and all the more so as of the date of the jury's verdict on October 20, 2009, by which time the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants (or a co-conspiring referring lawyer) had caused at least four trust claims to be filed on Kelemen's behalf. (Ex. K.) The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants deliberately refrained from supplementing Kelemen's discovery responses to account for these claims despite their admitted "duty to supplement discovery when [they] learn new facts[.]" (Ex. A 161.)

142. When responding to the discovery, during Kelemen's deposition testimony described above, and at every point after through the resolution of the litigation, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants and their co-conspirators knew of Kelemen's bankruptcy-related claims and the exposures associated with them and intended to conceal that evidence and deceive JCI.

B. Concealed Bankruptcy Claims

143. Between March 26, 2009 and September 27, 2012, Kelemen, through either the Lawyer Defendants or their co-conspirator referring lawyers, filed at least twelve claims with asbestos bankruptcy trusts. A schedule of these claims is included as Ex. K and is incorporated by reference here.

144. Each trust claim was supported by proof of Kelemen's exposure to asbestos-containing products associated with the bankrupt companies.

145. As shown in Exhibit K, at least four bankruptcy claims were made before the jury rendered a verdict in Kelemen's tort case.

146. None of Kelemen's bankruptcy claims or the exposures on which they were based were disclosed to JCI during Kelemen's tort case, despite the admitted duty to do so. In fact, as set forth above, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants affirmatively represented that no such claims had been made.

C. Affirmative Efforts to Conceal Alternative Cause Evidence

147. On July 24, 2009, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused to be filed their stock Motion to Exclude Alternative Exposures in the *Kelemen* case, thereby stating affirmatively to the court that no evidence of alternative exposures existed. (Ex. L.)

148. At Kelemen's trial, Firm attorney Ethan Horn, under the direction or supervision of the Lawyer Defendants and/or the Firm, perpetuated Kelemen's false exposure history and in fact used their disclosure of exposures to *non-bankrupt* company's products to suggest they had been forthcoming and honest to a fault in the

litigation and therefore more credible. Firm attorney Horn stated in closing argument to the jury, "We haven't hidden the fact that Mr. Kelemen was exposed to other products in the Navy. Our own experts have testified to that." (Ex. M 626.)

149. Firm attorney Horn's representation to the jury was false and fraudulent.

150. At the time trial began, Kelemen had already submitted at least four claims to bankruptcy trusts – specifically, those of Owens Corning, Fibreboard, Armstrong, and U.S. Gypsum. He went on to file a total of at least twelve trust claims: the four filed pre-trial, plus claims against the bankruptcy trusts of Harbison Walker, Halliburton, Flexitallic, Turner & Newell, Ferodo, Johns-Manville, Thorpe Insulation, and Western Macarthur.

151. The exposures associated with the foregoing claims and ballots, and the claims and ballots themselves had, indeed, been "hidden" from JCI, the jury, and the court by the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants – through misrepresentation, concealment, and, for the bulk of the claims themselves, deliberate delay.

152. As a result, JCI was deprived of the opportunity to effectively try the case with direct evidence of alternative exposures, expended sums that it otherwise would not have expended, and suffered an adverse verdict that it otherwise would not have suffered.

153. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants continued to perpetrate the scheme through their post-trial submissions to the trial court. On November 30, 2009, Firm attorney Brian Barrow filed, under the direction or supervision of the Lawyer Defendants

and/or the Firm, an opposition to JCI's motion for a new trial. (Ex. N.) In defending the verdict, the brief included the statement: "John Crane had no evidence to support any claim that other asbestos products caused Kelemen's disease. Based on John Crane's failure to present substantial evidence regarding Kelemen's work with or exposure to other products, or that such work caused his illness, the jury had no substantial evidence upon which to allocate fault to any other tortious entity besides the Navy." (Ex. N) Thus, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants argued on appeal that JCI lost at trial because JCI did not have evidence of alternate exposures – evidence that the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants had fraudulently and intentionally withheld and represented to JCI, to the Court and to the Jury did not exist.

154. The fraud continued into the appellate process. Firm attorney Brian Barrow represented to the appellate courts that there was insufficient evidence that Kelemen was exposed to non-JCI products, stating in Kelemen's opening brief, for example, that the jury had "no substantial evidence upon which to allocate fault to any other entity" and "no evidence to support any conclusion that other asbestos products caused Kelemen's disease." Combined Brief for Appellees/ Cross-Appellants , at 36, *Kelemen v. John Crane Inc.*, No. B221778, 2009 WL 7363470 (Dec. 24, 2009); opinion available at 2011 WL 3913115 (Sept. 7, 2011) (No. B221778).

155. At the time of these representations, the Defendants or their co-conspirator referring lawyers had caused to be filed on Kelemen's behalf at least six trust claims based on the very alternative exposures the Lawyer Defendants and/or

those acting under the direction or supervision of the Firm or the Lawyer Defendants represented to the courts did not exist. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew the evidence they presented in the tort case, and on which the jury's verdict was based, to be false and incomplete.

156. The fraudulent concealment of Kelemen's alternative exposures continued even after the case resolved.

157. Following Judge Hodges's January 10, 2014 Order in the *Garlock* bankruptcy revealing the "manipulation of exposure evidence," *In re Garlock Sealing Techs., LLC*, 504 B.R. at 82, JCI sought to obtain submitted and un-submitted bankruptcy trust claims, and other signed statements concerning Kelemen's alternative exposures, from the Lawyer Defendants.

158. Not only did the Lawyer Defendants refuse to provide the requested information, but in March 2014, they threatened to bring a lawsuit against JCI and its counsel if JCI pressed its request.

II. The *Geist* Case

159. On March 3, 2010, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused a complaint to be filed on behalf of Ronald Geist ("Geist") in Los Angeles County Superior Court against JCI and others. (Ex. O.)

160. The *Geist* complaint included allegations against a variety of defendants, only one of which had filed bankruptcy at the time of filing. The *Geist* complaint claimed that the tort-defendants' asbestos-containing products caused Geist's mesothelioma.

161. Firm attorneys Ronald Eddins and Jennifer Bartlett, were counsel of record in *Geist* and, on information and belief, Defendant Simon was personally involved in both pre-trial strategy and trial.

162. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused the deposition of JCI's "Person Most Knowledgeable" to be taken in Chicago, Illinois.

163. On October 20, 2010, the court entered a verdict in favor of Geist after a jury trial. Ultimately, JCI settled the case on appeal.

164. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants also filed or otherwise asserted claims in bankruptcy cases or against asbestos trusts on behalf of Geist.

165. In particular, Defendant Greenstone caused trust claims to be filed or otherwise asserted on behalf of Geist with the Manville Trust, Thorpe Insulation Settlement Trust, T H Agriculture & Nutrition, LLC Industries Asbestos Personal Injury Trust ("THAN Trust"), and in the bankruptcy case of Leslie Controls. However, as set forth below, Geist's discovery responses in the tort litigation did not disclose exposure to any products associated with Johns-Manville, Thorpe Insulation, T H Agriculture & Nutrition ("THAN"), or Leslie Controls, all which, unlike JCI's products, typically contain the friable, "more potent" asbestos.

A. False Information Provided During Discovery

166. On May 5, 2010, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused Firm attorneys to

prepare and serve Geist's responses to the Los Angeles County General Order Standard Interrogatories on JCI. (Ex. P.)

167. Like in the Kelemen case, General Order Standard Interrogatory No. 27 called for information about whether the plaintiff had "ever worked with asbestos manufactured, produced, prepared, distributed or sold by any other entity not named as a defendant in this lawsuit[.]" As in the Keleman case, the response on behalf of Geist denied any such exposure. (Ex. P 14-15.)

168. In response to General Order Standard Interrogatory No. 59, Defendants identified asbestos-containing products to which Geist allegedly had exposure. But the response only identified asbestos products manufactured or distributed by the defendants named in the *Geist* complaint – none of which had filed bankruptcy except for Flexitallic Gasket Company.[1]

169. These interrogatory responses, which the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intentionally caused to be prepared and served, were false when made because Geist was exposed to asbestos-containing products made by non-defendants Johns-Manville, Thorpe Insulation, THAN, and Leslie Controls, and filed or otherwise asserted claims against these bankrupt entities. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew the responses to be false, or, in the alternative, acted with reckless disregard as to the truth or falsity of the responses, and in causing them to be made intended to deceive JCI.

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[1] By this time, Flexitallic had exited chapter 11 bankruptcy and channeled its pre-existing asbestos liabilities to a trust as part of its reorganization.

170. Geist was deposed in June 2010. Firm attorney Stuart Purdy, acting under the direction or supervision of the Lawyer Defendants and/or the Firm, appeared as counsel for Geist. (Ex. Q.)

171. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants fraudulently caused Geist to provide incorrect and/or incomplete information concerning his exposures at this deposition.

172. When Geist was asked whether he worked around Johns-Manville sheet gaskets, he testified that "I'm not sure, because until you mentioned it, it had slipped my recollection." (Ex. Q.) After thinking about it, he denied any specific recollection, but could not rule it out. (*Id.*) Similarly, he denied knowing whether he had been exposed to "transite," a Johns-Manville asbestos product. (*Id.*) Nevertheless, on behalf of Geist, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused a claim to be submitted to the Manville Trust with requisite supporting evidence.

173. Geist's deposition testimony described above, which the Lawyer Defendants and others, including Purdy, acting at their and/or the Firm's direction fraudulently caused to be provided and made no efforts to correct, was false when given in the respects noted above. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew it to be false, or, in the alternative, acted with reckless disregard to its truth or falsity, and in causing it to be made intended to deceive JCI.

174. While one Firm lawyer – acting under the direction of Defendant Greenstone – was filing a claim for Geist with the Manville Trust, another Firm lawyer –

acting under the direction of Defendant Simon – was answering discovery in the civil case denying any such exposure or denying knowledge of any such exposures. Pursuant to and consistent with their conspiracy to defraud JCI and others, each of the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants or their co-conspirators knew and intended what the others were doing.

175. At the time they caused to be prepared and served the discovery responses and caused the deposition testimony described above to be given, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew or should have known of the evidence on which Geist's trust claims were based as those claims were filed by another Firm attorney under the direction of Lawyer Defendants and/or the Firm.

176. Among other things, on information and belief, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants regularly directed that clients sign affidavits affirming exposure to asbestos from bankrupt companies well in advance of filing trust claims, and often, early in the litigation.

B. Concealed Bankruptcy Claims

177. Despite the discovery responses the Lawyer Defendants caused to be prepared and served on Geist's behalf in tort litigation that expressly denied that he was exposed to asbestos "manufactured, produced, prepared, distributed or sold" by any non-defendant and despite Geist's testimony in which he could not identify any other exposure, the Defendants, through Defendant Greenstone in particular and others

acting at his direction or supervision, filed a claim on behalf of Geist with the Manville Trust.

178. As part of their scheme, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused evidence of Geist's exposure to Johns-Manville asbestos products to be concealed from JCI, while knowing, or acting with reckless disregard for the truth, that Geist had been exposed to such products.

179. Despite direct discovery requests for the information, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants did not disclose Geist's exposures to products manufactured, produced, prepared, distributed, or sold by Thorpe Insulation, THAN, or Leslie Controls at any time in Geist's tort case.

180. Nevertheless, Defendant Greenstone caused trust claims to be filed with the Thorpe Insulation Settlement Trust and the THAN Trust. (Ex. R.) In addition, a ballot was filed on Geist's behalf in the Leslie Controls bankruptcy case, thereby asserting that he had a personal-injury claim against Leslie Controls arising from exposure to Leslie Controls' asbestos-containing products. In furtherance of the scheme, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused evidence of Geist's exposure to Thorpe Insulation, THAN, and Leslie Controls asbestos to be concealed from JCI, while knowing, or acting with reckless disregard for the truth, that Geist had been exposed to such products.

181. For each bankruptcy claim, the Lawyer Defendants and those acting under the direction or supervision of the Lawyer Defendants and/or the Firm provided proof of Geist's exposure to asbestos-containing products associated with the bankrupt companies.

182. A schedule of bankruptcy claims the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants made or caused to be made on Geist's behalf is included as Ex. R and is incorporated by reference here.

C. Affirmative Efforts to Conceal Alternative Exposure Evidence

183. On September 16, 2010, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused to be filed their stock Motion to Exclude Alternative Exposures in the *Geist* case, as they had done in the *Keleman* case, thereby representing to the court that no evidence of alternative exposures existed. (Ex. S.)

184. The fraud continued at Geist's trial, where Firm attorney Ethan Horn, acting under the direction or supervision of the Lawyer Defendants and/or the Firm, mocked JCI's argument that Geist could have been exposed to thermal pipe insulation, pointing to the lack of evidence of any such exposure. (Ex. T.) Firm attorney Horn stated, "They [JCI] came in and talked about miles and miles of pipe covering. You know, it is funny, you didn't hear Mr. Geist talking about working with a pipe covering." (Ex. T) At the time this representation was made, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew it

to be false, or, in the alternative, acted with reckless disregard to its truth or falsity, and in causing it to be made intended to deceive JCI.

185. In truth, as demonstrated by the claim that the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused to be filed on Geist's behalf with the Manville Trust, such evidence did exist but was misrepresented and concealed by the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants in Geist's tort case.

186. As a result, JCI was deprived of the opportunity to effectively try the case with direct evidence of alternative exposures, expended sums it otherwise would not have, and suffered an adverse verdict it otherwise would not have suffered.

III. The *Lange* Case

187. On August 22, 2008, Firm attorney Jennifer Bartlett, acting under the direction or supervision of the Lawyer Defendants and/or the Firm, filed a complaint against JCI and others on behalf of Eric and Irene Lange in Los Angeles County Superior Court. (Ex. U.)

188. The *Lange* complaint included allegations against a variety of defendants, none of which had filed bankruptcy at the time of filing. The complaint alleged JCI's products and those of its co-defendants caused Eric Lange's ("Lange") mesothelioma.

189. Firm attorney Bartlett amended the complaint on March 23, 2009.

190. Firm attorney Bartlett, Firm attorney Ronald Eddins, and the Firm were counsel of record for Lange.

191. The Defendants dismissed JCI from the case on January 6, 2010, in exchange for a waiver of costs. By that time, JCI had expended substantial defense costs.

A. False Information Provided During Discovery

192. On or about December 15, 2008, Firm attorneys Robert Green and Stuart Purdy, acting under the direction or supervision of the Lawyer Defendants and/or the Firm, caused Lange's responses to the Los Angeles County General Order Standard Interrogatories to be prepared and served on JCI via U.S. mail or interstate wire. (Ex. V.)

193. The interrogatory responses disclosed exposure to a wide variety of asbestos-containing products from dozens of companies, including pumps, valves, packing and gaskets, engines, purifiers and purifier heaters, steam traps, evaporators, and flooring and caulking. Only one of the companies listed had filed bankruptcy at that time. The interrogatory responses did not disclose exposure to thermal-insulation makers or boilers at all which, unlike JCI's products, typically contain the friable, "more potent" asbestos.

194. These interrogatory responses, which the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intentionally caused to be prepared and served, were false when made because they did not disclose that Lange was exposed to thermal insulation or boilers. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew the responses to be false, or, in the alternative, acted with

reckless disregard to the truth or falsity of the responses, and in causing them to be made intended to deceive JCI.

195. On or about January 23, 2009, Firm attorneys Robert Green and Stuart Purdy, acting under the direction or supervision of the Lawyer Defendants and/or the Firm, responded by FedEx to requests for admission propounded by JCI. (Ex. W.) The responses (1) denied that Lange ever installed Johns-Manville asbestos packing, and (2) denied that Lange removed or replaced pipe insulation, block insulation, or insulating cements, or observed his coworkers doing so. (Ex. W, Requests and Responses 19, 28-30)

196. These discovery responses, which the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intentionally caused to be prepared and served, were false when made, in that evidence of Lange's exposures to these categories of products was later submitted to bankruptcy trusts in support of claims made on Lange's behalf. The Lawyer Defendants knew the responses to be false, or, in the alternative, acted with reckless disregard to the truth or falsity of the responses, and in causing them to be made intended to deceive JCI.

197. At Lange's deposition in January 2009, the Lawyer Defendants and those acting under the direction or supervision of the Lawyer Defendants and/or the Firm, including Robert Green, the Defendants' attorney-agent who appeared as counsel for Lange at the deposition, caused Lange to claim that he was unable to remember the brand name of any of the four boilers he observed at his job site. (Ex. X.) Lange further claimed he had only ever worked with one of the four boilers. (Ex. X.)

198. Nevertheless, claims were later made on Lange's behalf by the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants or co-conspirator referring lawyers with trusts associated with specific boiler makers, including Babcock & Wilcox, which were supported by evidence that Lange was exposed to those companies' products.

B. <u>Concealed Bankruptcy Claims</u>

199. On March 30, 2010, within weeks of the termination of Lange's tort litigation, Greenstone or a co-conspirator referring lawyer caused claims to be filed on Lange's behalf with the bankruptcy trust of boiler maker Babcock & Wilcox and thermal insulation makers and distributors Harbison Walker, Armstrong, Owens Corning, Fibreboard, and Halliburton. Additionally, Greenstone or a co-conspirator referring lawyer caused claims to be filed with the Western Asbestos Settlement Trust in April 2010, and with the J.T. Thorpe Settlement Trust in August 2010. The written discovery and deposition testimony in Lange's tort case omitted, or affirmatively denied, that Lange was exposed to thermal insulation at all, or to any identifiable brand of boilers.

200. A schedule of the bankruptcy claims filed on Lange's behalf is included as Ex. Y and is incorporated by reference here.

201. Each bankruptcy and trust claim made on Lange's behalf was supported by proof of Lange's exposure to asbestos-containing products associated with the bankrupt companies.

202. As a result, JCI was deprived of the opportunity to effectively try the case with direct evidence of alternative exposures, and expended sums it otherwise would not have.

IV. The *White* Case

203. On May 17, 2006, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused a complaint to be filed against JCI and others on behalf of Charles White in state court in Dallas County, Texas. (Ex. Z.) Pursuant to Texas state multi-district litigation procedures, the case was transferred to Harris County District Court for consolidated pretrial handling.

204. The *White* complaint included allegations against a variety of defendants, none of which had filed bankruptcy at the time of filing. The complaint alleged that the tort-defendants' products caused White's mesothelioma.

205. The Lawyer Defendants were counsel of record and, on information and belief, were personally involved in both pre-trial strategy and trial.

206. Defendant Simon was lead counsel. Among other things, he "conducted the direct examination by videotape of Charles White in his home in Virginia, defended him on cross examination, took depositions of expert witnesses in the case[,] worked up that case for trial, appeared in the 153rd District Court in Tarrant County for trial of that case, [and] picked a jury[.]" (Ex. B 65.)

207. On or about February 22, 2007, Simon appeared in person in Chicago, Illinois to take the deposition of JCI's "Person Most Knowledgeable," George McKillop, in the *White* case.

208. The Defendants dismissed White's case against JCI in early April 2007 shortly before trial, in exchange for a waiver of costs, but by that time JCI had expended substantial sums defending the case.

A. False Information Provided During Discovery

209. On or about July 31, 2006, Defendant Simon signed and served responses to Texas standard asbestos case interrogatories on JCI and its co-defendants via U.S. mail or interstate wire. The responses were prepared by him or others acting at his and/or the Firm's direction. (Ex. AA.)

210. When responding to one of these interrogatories requiring White to list each asbestos-containing product to which he was exposed, Defendant Simon, on White's behalf, replied by attaching a work history sheet. It listed numerous non-bankrupt (at that time) manufacturers of gaskets, packing, and other industrial equipment, and one bankrupt company's product, Worthington pumps. (Ex. AA.)

211. The White work history sheet omitted exposure to any type of asbestos paper, fireproofing, boilers, pipe covering, block, cement, insulation, joint compound, or plaster, or to any companies that manufactured or distributed these products.

212. These interrogatory responses, which the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intentionally caused to be prepared and served, were false when made. Evidence of exposures to these types of asbestos-containing products was submitted in support of bankruptcy trust claims made on his behalf by the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants or co-conspirator referring lawyers on his behalf, described below.

213. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew the responses to be false, or, in

the alternative, acted with reckless disregard to the truth or falsity of the responses, and in causing them to be made intended to deceive JCI.

214. Another interrogatory required White to disclose all settlements with non-defendants, and all bankruptcy and bankruptcy-trust claims. Defendant Simon objected to answering about settlements. As to bankruptcy and trust claims, Defendant Simon indicated that no claims had been made, which was a result of a deliberate strategy to delay the filing of trust claims until after the resolution of tort litigation. Simon did not disclose the trust claims for which he had a factual basis at that time, and which were later made on White's behalf. (Ex. AA 8-9.)

215. White was deposed in August 2006 and again in April 2007. (Exs. BB and CC respectively.) Defendant Simon and other Firm attorneys appeared as counsel for White in August 2006; attorney Jessica Dean of the Firm appeared as counsel in April 2007.

216. In White's depositions, Defendant Simon and others acting at his or the Firm's direction caused White to be unable to recall any specific brand names or manufacturers of thermal pipe insulation to which he may have been exposed.

B. Concealed Bankruptcy Claims

217. Upon information and belief, the Lawyer Defendants' co-conspirator the Early Firm filed or caused to be filed numerous trust claims for White. All but two of these claims were against bankruptcy trusts for asbestos products and companies that were misrepresented and concealed in discovery in White's tort case. Some 24 bankruptcy claims were filed on White's behalf in total, including, on information and belief, 15 against manufacturers and distributors of thermal insulation.

218. On information and belief, the first trust claim was filed on White's behalf on or about May 8, 2007, just one month after JCI was dismissed on the eve of trial.

219. The timing and contradictions of these claims was the result of a deliberate strategy and conspiracy to mislead asbestos-litigation defendants and delay trust claims until after the resolution of that litigation.

220. Each of the many trust claims filed on behalf of White was supported by proof of White's exposure to asbestos-containing products associated with the bankrupt companies, including sworn affidavits from White and his family members.

221. On June 18, 2009, the Early Firm caused a claim to be filed on White's behalf with the Western Asbestos Trust that attached several portions of White's tort discovery responses signed by Defendant Simon as an exhibit.

222. On information and belief, Defendant Simon provided the responses to the Early Firm to coordinate and pursue trust recoveries for White, which, according to Simon, "would typically be [the Defendants'] practice[.]" (Ex. B 88.)

223. On March 10, 2010, the Early Firm caused the Western Asbestos Trust claim to be supplemented by filing a verified certification, stating that White had been exposed to amphibole-containing materials distributed by Western.

224. On April 1, 2010, the Early Firm caused White's widow to sign under penalties of perjury a detailed statement about White's exposure to insulation, boilers, and other products. In particular, the affidavit stated that White had worked on the Navy ship, the USS Mountrail; information that had been withheld and concealed in the tort case. The affidavit claims that her knowledge of White's exposure was based entirely on conversations with White, not any third party source of information unknown at the

time of litigation. That affidavit was submitted to the Western Asbestos Trust on behalf of White's estate.

225. A schedule of the bankruptcy claims filed on White's behalf is included as Ex. DD and is incorporated by reference here, and those claims in JCI's possession are attached as Ex. DD-1 to DD-24.

226. None of the exposures later asserted in claims to bankruptcy trusts or in bankruptcy proceedings on behalf of White were disclosed in the JCI tort litigation, and any such exposure was expressly denied. As a result of these repeated instances of fraud, JCI was deprived of the opportunity to effectively defend the case with direct evidence of alternative exposures, which, among other things, increased JCI's defense costs.

V. The *Hill* Case

227. On or about July 20, 2012, Defendant Simon and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused a complaint to be filed against JCI and others on behalf of Charles Hill in Los Angeles County Superior Court. (Ex. EE.)

228. The *Hill* complaint included allegations against a variety of defendants, none of which had filed bankruptcy at the time of filing. The complaint alleged that the defendants' products caused Hill's mesothelioma.

229. The *Hill* case was removed to federal court on or about October 11, 2012.

230. Defendant Simon was personally involved in the *Hill* case, including negotiating the terms of JCI's Fed. R. Civ. P. 30(b)(6) deposition and the use of a corporate representative's prior testimony.

A. Active Efforts to Conceal Exposure Evidence

231. Hill was deposed in January 2013. (Ex. FF.) Firm attorneys Stuart Purdy and Jordan Blumfield-James, acting under the direction or supervision of the Lawyer Defendants and/or the Firm, appeared as counsel for Hill.

232. At his deposition, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants fraudulently caused Hill to explicitly deny that he had been exposed to Garlock gaskets or any other manufacturer's gaskets other than JCI gaskets. (Ex. FF.) At that time, Garlock had filed bankruptcy.

233. Hill's testimony, which the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intentionally caused to be given, was false when made. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew the testimony to be false, or, in the alternative, acted with reckless disregard as to the truth or falsity of the testimony, and in causing it to be made intended to deceive JCI.

234. Just weeks after Hill's deposition testimony, on or about February 19, 2013, Hill signed an affidavit in which he affirmed that he "personally removed, replaced and installed Garlock Inc., asbestos-containing gaskets. These activities created dust that I breathed." (Ex. GG.) This affidavit was made based on Hill's personal knowledge.

235. On information and belief, Hill's affidavit was procured by the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the

Lawyer Defendants and was in their possession, custody, and control at all times after it was executed.

236. For thirteen months, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intentionally caused this affidavit to be concealed from JCI and the federal court.

237. The Lawyer Defendants, or subordinate attorneys acting at their direction and/or the Firm's direction, also violated 18 U.S.C. § 1503 in the federal *Hill* case by (1) causing Hill's false testimony and (2) concealing Hill's affidavit. These actions constituted an endeavor to corruptly influence and obstruct the due administration of justice in the federal *Hill* tort case.

238. Specifically, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intentionally misrepresented and concealed evidence of Hill's true asbestos exposure from JCI with the intent to mislead JCI, the court, and the jury about Hill's asbestos exposure history and the cause of his disease.

239. After Judge Hodges's January 10, 2014 Order in the *Garlock* bankruptcy revealing the "manipulation of exposure evidence," JCI again pressed the Defendants for additional alternative exposure evidence. *See In re Garlock Sealing Techs., LLC*, 504 B.R. at 82. Only at that time did the Lawyer Defendants produce to JCI a copy of Hill's Garlock affidavit, as well as five other previously undisclosed affidavits signed by Hill that asserted exposure to products from five other bankrupt companies.

240. JCI obtained a defense verdict at the *Hill* trial on November 17, 2014. The contradiction between Hill's deposition testimony and affidavits materially contributed to

the defense verdict. Indeed, it confirmed what Simon had previously admitted in his testimony in the *Garlock* bankruptcy—that when non-bankrupt defendants are provided truthful information concerning plaintiffs' alternative exposures, they "gain[] considerable traction with that," including outright defense verdicts. (Ex. A 86.)

241. The fraudulent concealment of the Garlock and other affidavits and the exposures on which they were based materially increased JCI's defense costs in *Hill*.

242. A comparison of the outcomes in the *Kelemen* and *Hill* cases underscores the importance of complete alternative exposure evidence. In contrast to *Hill*, in *Kelemen* JCI did not learn of Kelemen's twelve bankruptcy-related claims until after trial when the *Garlock* bankruptcy discovery was unsealed. *Kelemen* went to trial based on a fraudulent exposure history devoid of alternative exposures and, as a result, the Defendants fraudulently obtained a $30 million verdict against JCI, and JCI ultimately settled the case.

B. <u>Concealing Alternative Exposures from Their Own Experts</u>

243. The *Hill* case also is an example of the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants concealing alternative exposure evidence from their own experts, thereby bolstering the false exposure history.

244. Although Hill signed his affidavit affirming exposure to asbestos from Garlock gaskets in February 2013, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants withheld the sworn statement from their expert witness, Carl Brodkin, when the Firm provided Brodkin

evidence on which to base his opinions in May 2013. Instead, they provided Brodkin only Hill's false deposition testimony.

245. Because JCI obtained the Hill affidavit, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants had no choice but to belatedly provide that same information to Brodkin. This evidence was provided to Brodkin on March 31, 2014 – the day before his report was due, over a year after Hill executed the affidavit, and ten months after Brodkin was originally provided evidence by the Defendants.

246. Brodkin added to his expert report that Hill admitted exposure to Garlock gaskets. (Ex. HH.)

247. But for Judge Hodges's opinion and JCI receiving a copy of Hill's affidavit, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intended to withhold this alternative exposure evidence from their own expert to further the scheme of fabricating false exposure histories.

248. Brodkin's expert report was transmitted through the mails and interstate wires by the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants in furtherance of the scheme to defraud.

249. The fraudulent misrepresentation and concealment of Hill's alternative exposures, among other things, materially increased JCI's defense costs.

VI. The *Heckelsberg* Case

250. On June 21, 2010, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused a complaint to be

filed against JCI and others on behalf of Richard Heckelsberg in the Court of Common Pleas in Philadelphia County, Pennsylvania. (Ex. II.)

251. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused the complaint to be served on JCI through its registered agent in Pennsylvania, CT Corporation Systems, knowing that CT Corporation Systems would transmit the complaint via U.S. mail or interstate wire to JCI in Illinois, as it ultimately did.

252. The lawsuit claimed that the asbestos-containing products produced by the tort-defendants named in that case caused Heckelsberg's mesothelioma.

253. The Lawyer Defendants served as counsel of record in *Heckelsberg*. On information and belief, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants were personally involved in, and had final decision-making authority over, discovery and pre-trial strategy in *Heckelsberg*.

254. The *Heckelsberg* trial was bifurcated into liability and damages phases, with the damages trial proceeding first. The damages phase was tried to a jury. The liability phase was tried to the court in a consolidated trial with another case.

255. Firm attorneys Jessica Dean and Ben Braley, acting under the direction or supervision of the Lawyer Defendants and/or the Firm, appeared as counsel at trial for Heckelsberg.

256. At trial, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused portions of two videotaped depositions to be played. Both depositions were of JCI's corporate representative and were taken in Chicago, Illinois.

257. On or about July 5, 2011, the damages jury found for Heckelsberg in the amount of $1,240,000.00.

258. JCI paid its share of these damages on or about August 10, 2011.

259. The satisfaction payment – which was obtained and inflated by the fraudulent scheme, and which the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants foreseeably caused JCI to make – was made via a check that was transported to the Firm via interstate mail. The check originated from JCI's headquarters in Morton Grove, Illinois.

A. False Information Provided During Discovery

260. On August 6, 2010, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused Heckelsberg's responses to the local Master Interrogatories used in asbestos personal-injury cases to be prepared and served on JCI via interstate wire. (Ex. JJ.)

261. The response to Interrogatory No. 42 stated that "Other than asbestos manufactured and/or distributed by companies presenting in this lawsuit, Plaintiff is unaware of the identity of other manufacturers who may have sold asbestos products with which Plaintiff may have had been exposed." *Id.*

262. This interrogatory response, which the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intentionally caused to be prepared and served, was false when made. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew it to be false, or acted with reckless disregard to its truth or falsity, and in causing it to be made intended to deceive JCI.

263. On a date currently unknown to JCI, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants or a co-conspirator referring lawyer caused a claim to be filed on Heckelsberg's behalf with the Manville Trust.

264. On information and belief, as part of the Manville Trust claim, the Lawyer Defendants, and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants, or a co-conspirator referring lawyer submitted an affidavit signed by Heckelsberg asserting that he was exposed to Johns-Manville asbestos-containing products, or submitted other evidence of such exposure.

265. Upon information and belief, the Lawyer Defendants, and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants, or their co-conspirator referring lawyers caused other trust claims to be filed on Heckelsberg's behalf, which were also supported by evidence that Heckelsberg was exposed to the asbestos-containing products of bankrupt companies that were not party to his tort suit.

B. Concealed Bankruptcy Claims

266. Neither the affidavits of exposure or other exposure evidence associated with Heckelsberg's Johns Manville trust claim – or any other trust claim – were produced or disclosed in discovery in the *Heckelsberg* case, even though they were responsive to the Master Interrogatories and Requests for Production served in the case.

267. The fraudulent misrepresentation and concealment of Heckelsberg's alternative exposures impaired JCI's ability to effectively defend the case and materially increased JCI's defense costs.

VII. The *Leroy Eisler* Case

268. On March 9, 2010, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused a complaint to be filed on behalf of Leroy Eisler in in Los Angeles County Superior Court. (Ex. KK.)

269. Firm attorney Jennifer Bartlett, acting under the direction or supervision of the Lawyer Defendants and/or the Firm, signed the complaint.

270. The *Eisler* complaint included allegations against a variety of defendants, including JCI, none of which had filed bankruptcy at the time the complaint was filed. The complaint alleged that the defendants' asbestos-containing products caused Eisler's mesothelioma.

271. In addition to Bartlett, Firm attorneys Ronald Eddins, Jordan Blumenfeld-James, and Tyson Gamble also appeared as counsel in the case. Also, on information and belief, the Lawyer Defendants were personally involved in the *Eisler* strategy and trial.

272. On or about April 8, 2010, Eisler settled with Garlock for $180,000. In the settlement agreement, Eisler repeated his allegations that he had been exposed to asbestos from Garlock's gaskets. (Ex. LL.)

273. On the same day that Eisler settled with Garlock, Firm attorney Tyson Gamble, under the direction or supervision of the Lawyer Defendants and/or the Firm, prepared and signed Eisler's responses to Los Angeles General Order Standard Interrogatories. (Ex. MM.) The responses were served four days later.

274. Interrogatory No. 26 required Eisler to identify all asbestos-containing products to which he had been exposed at any time. The Lawyer Defendants and/or

those acting under the direction or supervision of the Firm or the Lawyer Defendants, on Eisler's behalf, responded by attaching and incorporating a "work history sheet" listing a series of products. (Ex. NN.)

275. The work history sheet made no mention of Garlock products.

276. The work history sheet was false in that respect.

277. On June 17, 2010, Firm attorney Jordan Blumenfeld-James filed a case report with the Court that included Eisler's ostensible asbestos exposure history. The case report omitted any reference to Garlock products. (Ex. OO.)

278. The case report, which the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intentionally caused to be prepared and served, was materially false because it omitted Eisler's exposure to Garlock products, to which he had earlier sworn. The Lawyer Defendants knew it to be false, or acted with reckless disregard to its truth or falsity, and in causing it to be made intended to deceive JCI.

279. In July 2010, Eisler was deposed. (Ex. PP.) Firm attorney Jordan Blumenfeld-James, acting under the direction or supervision of the Defendants, appeared as counsel for Eisler.

280. Consistent with and pursuant to the fraudulent scheme, Eisler was caused to deny that Garlock products were present on the U.S. Navy ship where he was exposed to asbestos, despite the Lawyer Defendants having previously executed a settlement on Eisler's behalf explicitly indicating that he was exposed to Garlock products. (Ex. PP.)

281. JCI was ultimately dismissed from Eisler's tort case on December 27, 2010, in exchange for a waiver of defense costs.

282. After the conclusion of Eisler's tort case, the Lawyer Defendants, and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants, or their co-conspirator referring lawyers caused to be filed claims on Eisler's behalf with the bankruptcy trusts of Babcock & Wilcox, National Gypsum, Celotex, Johns-Manville, Owens Corning, Fibreboard, Eagle Picher, Combustion Engineering, GAF, and Raymark. In addition, a ballot was filed on Eisler's behalf in the Leslie Controls bankruptcy case, thereby asserting that he had a personal injury claim against Leslie Controls arising from exposure to Leslie Controls' asbestos-containing products.

283. A schedule of bankruptcy claims made or caused to be made on Eisler's behalf is included as Ex. QQ and is incorporated by reference here.

284. Each of these claims included proof of Eisler's exposure to asbestos products associated with the respective bankrupt companies.

285. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew of or recklessly disregarded the exposures on which each of Eisler's trust claims were based in responding to discovery and presenting Eisler's testimony during the pendency of Eisler's tort case.

286. Except for JT Thorpe, none of these companies were disclosed in Eisler's exposure histories in the tort litigation.

287. The fraudulent misrepresentation and concealment of Eisler's alternative exposures materially increased JCI's defense costs.

Allegations Common to All Misrepresentations In Discovery And Trial

288. The source of JCI's injuries was the above-described and hereby incorporated illegal acts and omissions that led to their procurement of judgments against and settlements with JCI. These improper actions resulted in JCI being unable to present certain meritorious arguments or defenses – principally those involving the underlying plaintiff's exposure to alternative sources of asbestos and admissions that those alternative sources caused the plaintiff's mesothelioma – to the various courts presiding over the cases with parties adverse to JCI. Indeed, in light of the fraudulent acts and scheme, JCI was deprived of any reasonable opportunity to raise those claims or defenses in the underlying cases.

289. Each and every specific misrepresentation or fraudulent omission alleged above was material at the time it was made.

290. In particular, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants caused the false testimony, discovery, and other representations and omissions to be made precisely because the information was material in the tort litigation in which each false statement or omission was made.

291. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew or recklessly disregarded the falsity of each misrepresentation and omission at the time it was made.

292. In the alternative, with respect to misrepresentations, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants (1) chose to remain deliberately ignorant of the statements' truth or

falsity despite a duty to investigate, or (2) made the statements, or caused them to be made, with reckless disregard for their truth or falsity.

293. In the alternative, with respect to fraudulent omissions, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants (1) chose to remain deliberately ignorant of the statements' truth or falsity despite a duty to investigate, or (2) omitted material facts, or stood silent as their clients or co-counsel did so, with knowledge of falsity or reckless disregard for the truth or falsity of the respective statements – all in circumstances where they had an obligation to make full disclosure, including by correcting the record if necessary.

294. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants made each of the fraudulent misrepresentations and omissions described above with the intent to deceive and defraud JCI, other tort-defendants, courts, and juries, and to wrongfully obtain money from JCI and other tort-defendants through contingency fees from payments by JCI and others procured and inflated based on the fraudulently fabricated false exposure histories.

295. Although reliance is not a required element of its RICO claims, JCI did reasonably, justifiably, and/or as a matter of right rely on the fraudulent misrepresentations and omissions to its detriment, including by making payments to the Defendants in the above-mentioned cases, and expending unnecessary defense costs. JCI, whose headquarters and principal place of business is in the Northern District of Illinois, relied on these representations in the Northern District of Illinois.

296. Further, JCI reasonably, justifiably, and/or as a matter of right relied on the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants to obey statutes, court orders, rules of professional ethics, court rules, rules of evidence and civil procedure, and other applicable law. JCI had a right to, and did in fact, assume that the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants would not knowingly make misstatements of material fact or fraudulent omissions, or cause their clients to do so. JCI also had a right to, and did in fact, assume that the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants would abide by their admitted duty to disclose evidence associated with trust claims in clients' tort litigation. Thus, JCI had a right to, and did, rely on answers to deposition questions not being corruptly influenced, and to assume that the Lawyer Defendants had not fraudulently misrepresented, omitted, or concealed responsive, material facts in written discovery.

297. As the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants intended, courts and juries also relied on the false exposure histories and found JCI and others fully liable for their clients' damages, even though, in truth, those damages were caused in whole or in part by the fraudulently concealed alternative amphibole exposures.

298. By causing incorrect or incomplete testimony to be given, knowingly concealing affidavits and other exposure evidence, and undertaking the other fraudulent or wrongful conduct described herein, the Lawyer Defendants and/or those acting under

the direction or supervision of the Lawyer Defendants and/or the Firm were not providing lawful, bona fide, legal representation in the cases described herein.

299. Further evidencing the material impact of the fraudulent misrepresentations and omissions, when provided with evidence of alternative exposures in other cases, JCI has successfully garnered defense verdicts or significantly reduced liability and/or damages.

300. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants knew of the material impact of this evidence. According to Simon: "If [a non-bankrupt defendant] wanted to establish that my client had [alternative] exposure [associated with a bankrupt company] and my client did have [alternative] exposure, then certainly that is to the benefit of [the non-bankrupt defendant]." (Ex. A 138.)

Use of Interstate Wires and Mails

301. The scheme was nationwide in scope. The Firm is headquartered in Texas and has offices in California, the Lawyer Defendants live and work in Texas, and actively practice throughout the country, including in this judicial district. JCI is an Illinois corporation. Exemplar cases pled in this complaint include cases in California, Pennsylvania, and Texas.

302. The scheme to defraud reasonably contemplated the use of, and depended upon, the ubiquitous use of the mails and interstate wires, including telephones, electronic mail, and electronic service of court documents via the Internet. These means of communications were used and caused to be used by the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the

Lawyer Defendants to provide deliberately false exposure histories to JCI and to prosecute cases based thereon.

303. The Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants used the mails and interstate wires to send fraudulent pleadings, discovery responses, deposition transcriptions, expert reports, motions in limine, and settlement demands and terms either directly to JCI and/or its counsel, OTMB, located in Chicago, Illinois, or with knowledge that JCI's local counsel would forward the litigation documents to JCI and/or OTMB via the mails or interstate wires.

304. On information and belief, the majority or a substantial portion of the misrepresentations made in furtherance of the scheme occurred via the mailing or emailing of pleadings, discovery responses, deposition transcripts, expert reports, motions in limine, settlement demands and terms, and other writings. Indeed, the scheme depended on, and was designed to make use of, mail and wire communications with JCI and others to expedite and execute the fraud.

305. In furtherance of the scheme, the Lawyer Defendants and/or those acting under the direction or supervision of the Firm or the Lawyer Defendants transmitted or caused to be transmitted via U.S. mail or interstate wire communication each and every pleading, discovery response, deposition transcript, and expert report specifically alleged above in this Complaint.

306. The Firm, the Lawyer Defendants, and the attorneys and employees acting at their direction or supervision caused JCI and other non-bankrupt defendants to make payments, via interstate wire transfers and mailed checks, fraudulently obtained

and inflated judgments, satisfactions, and settlements as a result of the false exposure history scheme described herein, as more particularly described in the *Kelemen, Geist*, and *Heckelsberg* cases.

307. The payments made by JCI to the Lawyer Defendants and/or the Firm for fraudulently obtained and inflated judgments, satisfactions, and settlements originated from Morton Grove, Illinois.

308. On information and belief, the Defendants communicated with one another and with their co-conspirators via interstate wire communications, including telephone calls, emails and faxes, to keep one another abreast of pertinent developments in furtherance of the scheme.

Additional Cases

309. On information and belief, the fraudulent scheme – including fabricating false exposure histories, suppressing alternative exposure evidence and evidence of trust and bankruptcy claims, filing motions to further conceal their fraud, and making false representations to juries and courts – was a regular course and method of doing business employed by the Lawyer Defendants, and involved substantially all of the cases the Defendants brought against JCI, including without limitation substantially all cases filed by the Firm against JCI in state and federal courts that lie within the Northern District of Illinois.

Count One: Violation of 18 U.S.C. § 1962(c) by the Lawyer Defendants

310. The allegations of paragraphs 1 through 309 are re-alleged and incorporated as set forth verbatim herein for purposes of alleging a claim under 18 U.S.C. § 1962(c) against the Lawyer Defendants.

311. The Lawyer Defendants are "person[s]" under 18 U.S.C. § 1961(3).

312. The Firm constitutes an enterprise engaged in, or the activities of which affect, interstate commerce for purposes of 18 U.S.C. § 1962(c). In particular, the Firm is engaged in and affects interstate commerce because it, among other things, solicits and represents clients outside Texas and throughout the United States, and enters into co-counsel relationships with law firms outside Texas. Additionally, the Firm's activities affect interstate commerce because it has obtained personal-injury verdicts and settlement payments in excess of $100 million against manufacturers and distributors of asbestos-containing products throughout the United States. The Firm is the legal successor in interest to Simon, Eddins & Greenstone, LLP.

313. The Lawyer Defendants, who were at all relevant times employed by or associated with the Firm, directly conducted and participated in the business and affairs of the Firm through a pattern of racketeering in violation of 18 U.S.C. § 1962(c).

314. In particular, the Lawyer Defendants devised and implemented a scheme specifically intended to obstruct justice, defraud JCI and others, and to obtain money from them by false pretenses by fabricating false exposure histories for mesothelioma clients. The Lawyer Defendants then used those false exposure histories in tort litigation to fraudulently obtain and inflate verdicts, judgments and satisfactions, and settlements against JCI and others, including as set forth in the *Kelemen*, *Geist,* and *Heckelsberg* cases discussed above.

315. In furtherance of this scheme, the Lawyer Defendants reasonably foresaw the use of, and did in fact repeatedly use, or cause their agents to use, the mails and wires in furtherance of essential parts of the scheme. In particular, the Lawyer

Defendants caused each and every pleading, discovery response, transcript, and other litigation document specifically described in this Complaint to be transmitted by mail or interstate wire in furtherance of the scheme.

316. Each such use of the mails or wires is a separately indictable violation of 18 U.S.C. § 1341 (mail fraud) or 18 U.S.C. § 1343 (wire fraud) and is, therefore, a separate predicate act of racketeering activity under 18 U.S.C. § 1961(1).

317. In addition, the Lawyer Defendants committed predicate acts of obstruction of justice, 18 U.S.C. § 1503, and witness tampering, 18 U.S.C. § 1512, in cases that were removed to federal court, as specified more fully above. In particular, the Lawyer Defendants' concealment of Charles Hill's affidavit affirming exposure to Garlock products, and suborning his perjurious deposition testimony, constitutes a corrupt endeavor to obstruct the due administration of justice in Hill's federal tort case, in violation of 18 U.S.C. § 1503. So too the Lawyer Defendants' corrupt persuasion of Charles Hill – and other clients whose cases had been removed to federal court – to testify falsely about their exposure histories each constitutes a separate violation of 18 U.S.C. § 1512(b), and therefore each such corrupt persuasion of a federal witness also constitutes a separate predicate act of racketeering activity under 18 U.S.C. § 1961.

318. These predicate acts are related in that, as alleged above, they shared the same or similar purposes, results, participants, victims, methods of commission and were otherwise interrelated by distinguishing characteristics and were not isolated events, but rather regular and integral steps in furtherance of the Lawyer Defendants' scheme to defraud JCI and others through false exposure histories.

319. Further, the predicate acts were continuous in that they have occurred on a regular basis since at least 2006, affected multiple civil actions pending in state and federal courts in at least three states, and, on information and belief, remain ongoing in pending cases against JCI and others.

320. Accordingly, the Lawyer Defendants' acts of mail fraud, wire fraud, obstruction of justice, and witness tampering constitute a pattern of racketeering for purposes of 18 U.S.C. §§ 1961(5) and 1962(c).

321. By reason of the Lawyer Defendants' violation of 18 U.S.C. § 1962(c), JCI has been injured in its business and/or property in an amount to be proven at trial. Specifically, the Lawyer Defendants' violation of § 1962(c) has proximately caused JCI to expend substantial money and resources to defend claims based on false exposure histories in excess of the defense costs for claims based on truthful exposure histories, and to pay fraudulently obtained and inflated judgments, and/or settlements that could not and would not have been obtained absent the false exposure histories.

322. By reason of this violation of 18 U.S.C. § 1962(c), JCI is entitled to treble damages, attorney fees, costs, and interest on all of them.

Count Two: Violation of 18 U.S.C. § 1962(d) by the Lawyer Defendants

323. The allegations of paragraphs 1 through 322 are re-alleged and incorporated by reference for purposes of alleging this claim under 18 U.S.C. § 1962(d) against the Lawyer Defendants.

324. Beginning in or about 2006, and continuing through the date of this Complaint, the Lawyer Defendants knowingly and unlawfully conspired with one another and with certain referring lawyers, including but not limited to attorneys at the Early

Firm, to conduct the affairs of the Firm through a pattern of mail fraud, wire fraud, obstruction of justice, and witness tampering.

325. At all relevant times, each conspirator knew of and participated in this scheme through specific overt acts intended to further its objective of defrauding JCI and others.

326. Specifically, as described in more detail above, the Lawyer Defendants orchestrated and implemented the fraudulent scheme of fabricating false exposure histories for their clients in order to fraudulently obtain money from JCI and others. This included the knowing misrepresentation and concealment of exposure evidence.

327. Defendant Simon, for example, served and caused to be served false and fraudulent discovery responses that concealed exposure evidence, produced false work history sheets, caused clients to identify in their testimony only the products of those companies sued, misrepresented the true cause of their clients' disease to trial and appellate courts and juries, and filed motions to further conceal their fraud.

328. Defendant Greenstone and the Defendants' co-conspirator referring lawyers, for example, filed or caused to be filed (or otherwise asserted) claims in bankruptcy cases and against asbestos trusts on behalf of the Defendants' clients using evidence that was fraudulently concealed in the clients' tort litigation. Defendant Greenstone and the co-conspirator referring lawyers coordinated with the other Lawyer Defendants to ensure, to the extent possible, that trust claims were not made until after the completion of a client's tort litigation or were concealed from JCI and other non-bankrupt tort-defendants, and did so with the intent to further the fraud against JCI and other non-bankrupt tort-defendants.

329. The Lawyer Defendants and their co-conspirator referring lawyers shared the contingency fees obtained from JCI, other non-bankrupt tort-defendants, and bankruptcy trusts via the fraudulent scheme.

330. By reason of this violation of 18 U.S.C. § 1962(d), JCI is entitled to treble damages, attorney fees, costs, and interest on all of them.

Count Three: Violation of 18 U.S.C. § 1962(c) by All Defendants

331. The allegations of paragraphs 1 through 309 are re-alleged and incorporated by reference for purposes of alleging this claim under 18 U.S.C. § 1962(c) against the Defendants.

332. The Defendants are each "persons" under 18 U.S.C. § 1961(3).

333. The "Co-Counsel Enterprise" is an association-in-fact within the meaning of 18 U.S.C. § 1961(4). The Co-Counsel Enterprise consists of the Firm, the Lawyer Defendants, and referring firms, including at a minimum the Early Firm and may include unnamed others presently unknown to JCI.

334. The Co-Counsel Enterprise is associated together for the common purpose of representing clients who have potential claims against current or former manufacturers of asbestos-containing products and bankruptcy trusts or other successors of companies that formerly manufactured or distributed asbestos-containing products. Part of that joint representation included the fraudulent scheme of recovery for individuals alleging exposure to asbestos-containing products, as alleged above.

335. Since 2006, the Co-Counsel Enterprise has been engaged in and its activities have affected interstate commerce for purposes of 18 U.S.C. § 1962(c). Specifically, the Co-Counsel Enterprise solicits and represents clients throughout the

United States. The Co-Counsel Enterprise affects interstate commerce through the fees generated from recoveries against manufacturers and distributors of asbestos-containing products and bankruptcy trusts for companies that formerly manufactured or distributed asbestos-containing products throughout the United States. For example, the Lawyer Defendants and the Firm have obtained personal-injury verdicts and settlement payments in excess of $100 million against manufacturers and distributors of asbestos-containing products throughout the United States.

336. The Co-Counsel Enterprise is an ongoing organization with an ascertainable structure with a framework for making and carrying out decisions and functions as a continuing unit with established duties. In particular, the Firm represents clients in tort litigation in state or federal court through attorneys working under the direction or supervision of the Firm. The Lawyer Defendants serve as counsel for the clients and manage both the firm and tort litigation. The referring firms (including at a minimum the Early firm) refer cases to the Firm and the Lawyer Defendants, conduct investigations, file the clients' bankruptcy claims, or coordinate certain aspects of the representation of the individual clients. The Defendants communicate extensively throughout the joint representation. (Ex. B 51-57.)

337. The Co-Counsel Enterprise is amenable to hierarchical or consensual decision-making. As Defendant Simon described the role of the Early Firm, the firm "keep[s] very close contact with the client. They're very good at continuing to be not just attorney but counselor to clients going through this and to – when the client has a question about what's going on in their case, they don't just call us --- and they do – but they also call them and they discuss with us issues related to how to answer the client's

question, how to make sure that the client feels that they've been fully informed of the status of their case." (Ex. B 54-55.) The Firm, the Lawyer Defendants, and the referring firms (including at a minimum the Early Firm) also coordinate with respect to discovery in the tort litigation and coordinate regarding whether to file trust claims on behalf of the client. (*Id.*)

338. The Firm, Lawyer Defendants, and referring firms are economically interdependent through shared fees received through their representations of common clients. For example, as Defendant Simon stated in his deposition, "there is a co-counsel arrangement there [with referring firms.] They originated the case, they did work on the case before they brought it to us. They often do some work in the tort case of some kind . . . sufficient to justify having a referral fee." (Ex. B 51.)

339. The Co-Counsel Enterprise has been continuous. As alleged above, the Lawyer Defendants, the Firm, and the referring firms (including at a minimum the Early Firm) have operated the Co-Counsel Enterprise since 2006 through the joint representation of clients consistent with the enterprise's purpose. The ongoing co-counsel relationship among the Lawyer Defendants, the Firm, and the referring firms has existed apart from the pattern of racketeering activity described here. However, the Co-Counsel Enterprise was used as a tool to effectuate the pattern of racketeering activity discussed herein.

340. The Defendants directly conducted and participated in the business and affairs of the Co-Counsel Enterprise through a pattern of racketeering in violation of 18 U.S.C. § 1962(c).

341. As described above, the Defendants devised and implemented a scheme specifically intended to obstruct justice, defraud JCI and others, and to obtain money from them by false pretenses by fabricating false exposure histories for mesothelioma clients. The Defendants then used those false exposure histories in tort litigation to fraudulently obtain and inflate verdicts, judgments and satisfactions, and settlements against JCI and others, including as set forth in the *Kelemen*, *Geist,* and *Heckelsberg* cases discussed above. In addition, the Defendants directed the affairs of the enterprise by, among other things, the work of those under the supervision or direction of the Firm or the Lawyer Defendants, their management of the clients' tort litigation, and their direction regarding the filing of bankruptcy-trust claims.

342. The Firm participated in the scheme through the actions of its management, shareholders, attorneys, paralegals, and/or other agents. These individuals acted under the direction or supervision of the Firm, including the direction or supervision of the Firm's President (Defendant Simon) and the Firm's Secretary / Managing Partner (Defendant Greenstone). The Firm derived a financial benefit from the fraud. On information and belief, the inflated recoveries obtained by the Lawyer Defendants constituted revenue for the Firm. The acts that contributed to the fraudulent scheme described herein were carried out in the course of legal work for the Firm's clients and thus were within the scope of these individuals' employment. The Firm acquiesced and/or authorized the acts of those who furthered the fraudulent scheme described herein because Firm President Defendant Simon and Firm Secretary / Managing Partner Defendant Greenstone were aware of, directed, and perpetrated the

fraudulent scheme and have tried to prevent the disclosure of the fraudulent scheme on behalf of the Firm.

343. In furtherance of this scheme, the Defendants reasonably foresaw the use of, and did in fact repeatedly use, or cause their agents to use, the mails and wires in furtherance of essential parts of the scheme. In particular, the Defendants caused each and every pleading, discovery response, transcript, and other litigation document specifically described in this Complaint to be transmitted by mail or interstate wire in furtherance of the scheme.

344. Each such use of the mails or wires is a separately indictable violation of 18 U.S.C. § 1341 (mail fraud) or 18 U.S.C. § 1343 (wire fraud) and is, therefore, a separate predicate act of racketeering activity under 18 U.S.C. § 1961(1).

345. In addition, the Defendants committed predicate acts of obstruction of justice, 18 U.S.C. § 1503, and witness tampering, 18 U.S.C. § 1512, in cases that were removed to federal court, as specified more fully above. For example, the Defendants' concealment of Charles Hill's affidavit affirming exposure to Garlock products, and suborning his perjurious deposition testimony, constitutes a corrupt endeavor to obstruct the due administration of justice in Hill's federal tort case, in violation of 18 U.S.C. § 1503. So too the Defendants' corrupt persuasion of Charles Hill – and other clients whose cases had been removed to federal court – to testify falsely about their exposure histories each constitutes a separate violation of 18 U.S.C. § 1512(b), and therefore each such corrupt persuasion of a federal witness also constitutes a separate predicate act of racketeering activity under 18 U.S.C. § 1961.

346. These predicate acts are related in that, as alleged above, they shared the same or similar purposes, results, participants, victims, methods of commission and were otherwise interrelated by distinguishing characteristics and were not isolated events, but rather regular and integral steps in furtherance of the Defendants' scheme to defraud JCI and others through fraudulently fabricated false exposure histories.

347. Further, the predicate acts were continuous in that they have occurred on a regular basis since at least 2006, affected multiple civil actions pending in state and federal courts in at least three states, and, on information and belief, remain ongoing in pending cases against JCI and others.

348. Accordingly, the Defendants' acts of mail fraud, wire fraud, obstruction of justice, and witness tampering constitute a pattern of racketeering for purposes of 18 U.S.C. §§ 1961(5) and 1962(c).

349. By reason of the Defendants' violation of 18 U.S.C. § 1962(c), JCI has been injured in its business and/or property in an amount to be proven at trial. Specifically, the Defendants' violation of § 1962(c) has proximately caused JCI to expend substantial money and resources to defend claims based on false exposure histories in excess of the defense costs for claims based on truthful exposure histories, and to pay fraudulently obtained and inflated amounts that could not and would not have been obtained absent the false exposure histories.

350. By reason of this violation of 18 U.S.C. § 1962(c), JCI is entitled to treble damages, attorney fees, costs, and interest on all of them.

Count Four: Violation of 18 U.S.C. § 1962(d) by All Defendants

351. The allegations of paragraphs 1 through 309 and paragraphs 331 through 350 are re-alleged and incorporated by reference in order to state a claim against all Defendants.

352. Beginning in or about 2006, and continuing through the date of this Complaint, the Defendants knowingly and unlawfully conspired to conduct the affairs of the Co-Counsel Enterprise through a pattern of mail fraud and wire fraud.

353. At all relevant times, each conspirator knew of and participated in this scheme through specific overt acts intended to further its objective of defrauding JCI.

354. Specifically, as described in more detail above, the Defendants orchestrated and implemented the fraudulent scheme of fabricating false exposure histories for their clients in order to fraudulently obtain money from JCI and others. This included the knowing misrepresentation and concealment of exposure evidence.

355. The Defendants also served and caused to be served false and fraudulent discovery responses that concealed exposure evidence, coached clients to only identify products of those companies sued in their testimony, misrepresented the true cause of their clients' disease to courts, and argued motions to further conceal their fraud.

356. The Defendants conspired to file or cause to be filed (or otherwise asserted) claims in bankruptcy cases and against asbestos trusts on behalf of their clients using evidence that was fraudulently concealed in the clients' tort litigation. The Defendants coordinated to ensure, to the extent possible, that trust claims were not made until after the completion of a client's tort litigation or were concealed from JCI

and other non-bankrupt tort defendants, and did so with the intent to further the fraud against JCI and other non-bankrupt tort defendants.

357. By reason of this violation of 18 U.S.C. § 1962(d), JCI is entitled to treble damages, attorney fees, costs, and interest on all of them.

Count Five: Common Law Fraud by the Lawyer Defendants

358. The allegations of paragraphs 1 through 309 are re-alleged and incorporated by reference for purposes of alleging common law fraud against the Lawyer Defendants.

359. The Lawyer Defendants had a duty not to make or cause to be made false statements, and to truthfully answer the discovery responses, in *Kelemen*, *Geist, Lange, White, Hill, Heckelsberg,* and *Eisler*, and to make truthful disclosures as more particularly described above.

360. The representations the Lawyer Defendants made or caused to be made in *Kelemen*, *Geist, Lange, White, Hill, Heckelsberg,* and *Eisler* were material, important, and factual when made.

361. The omissions the Lawyer Defendants made or caused to be made in *Kelemen*, *Geist, Lange, White, Hill, Heckelsberg,* and *Eisler* were material, important, and factual when concealed.

362. The representations the Lawyer Defendants made or caused to be made, particularly regarding asbestos exposure from non-defendants' products, in *Kelemen*, *Geist, Lange, White, Hill, Heckelsberg,* and *Eisler* were false.

363. When the Lawyer Defendants made or caused to be made the misrepresentations in *Kelemen*, *Geist, Lange, White, Hill, Heckelsberg,* and *Eisler,* the

Lawyer Defendants knew they were false or made them recklessly without any knowledge or regard for their truth.

364. The Lawyer Defendants intentionally failed to disclose material facts in *Kelemen*, *Geist, Lange, White, Hill, Heckelsberg,* and *Eisler*; disclosed some facts but intentionally failed to disclose other material facts, making the disclosures deceptive; intentionally failed to disclose material facts that were known only to themselves and that JCI could not have otherwise discovered; and actively concealed material facts from JCI or prevented JCI from discovering those facts.

365. JCI did not know and could not reasonably have known of the concealed facts.

366. The Lawyer Defendants misrepresented and fraudulently concealed facts in *Kelemen*, *Geist, Lange, White, Heckelsberg,* and *Eisler* with the intent that JCI, other tort-defendants, courts, and juries rely and act upon them.

367. The Lawyer Defendants misrepresented and fraudulently concealed facts in *Kelemen*, *Geist, Lange, White, Hill, Heckelsberg,* and *Eisler* with the intent to deceive and defraud JCI, other tort-defendants, courts, and juries.

368. As more fully set forth above, JCI had a right to rely upon, and acted in reasonable and/or justifiable reliance upon, the fraudulent misrepresentations and nondisclosures in *Kelemen*, *Geist, Lange, White, Hill, Heckelsberg,* and *Eisler*.

369. As a proximate result of the Lawyer Defendants' fraudulent misrepresentations and nondisclosures in *Kelemen*, *Geist, Lange, White, Hill, Heckelsberg,* and *Eisler,* JCI suffered compensatory damages in an as-yet

undetermined amount to be proven at trial, which exceeds $75,000, exclusive of interests and costs.

370. JCI's reliance on the misrepresentations and nondisclosures in *Kelemen*, *Geist, Lange, White, Hill, Heckelsberg,* and *Eisler* was a substantial factor in causing JCI's harm.

Count Six: Common Law Conspiracy by the Lawyer Defendants

371. The allegations of paragraphs 1 through 309 are re-alleged and incorporated by reference for purposes of alleging for common law conspiracy against the Lawyer Defendants.

372. As more particularly described above, the Lawyer Defendants and certain referring lawyers, including but not limited to those at the Early Firm, had a meeting of the minds on a common object to be accomplished and an agreement to commit wrongful acts to that end. Specifically, the Lawyer Defendants sought and obtained the recovery of contingency fees that were obtained and artificially inflated through fraudulent misrepresentation and concealment of evidence in *Kelemen*, *Geist* and *Heckelsberg*, and their subsequent post-trial settlements, while also, in conjunction with their co-conspirator referring lawyers, recovering fees from asbestos bankruptcy trust claims.

373. The Lawyer Defendants and their co-conspirators committed various unlawful and wrongful acts as more particularly described above in pursuit of the fraudulently obtained verdicts and subsequent settlements in *Kelemen*, *Geist,* and *Heckelsberg*.

374. The Lawyer Defendants were aware of each other's plans to commit the wrongful acts.

375. Consistent with their agreement, the Lawyer Defendants intended that the wrongful acts be committed.

376. As a proximate result of the Lawyer Defendants' civil conspiracy, JCI suffered compensatory damages in an amount to be proven at trial, which exceeds $75,000, exclusive of interests and costs.

Prayer for Relief

377. For each Count, JCI respectfully requests that the Court enter judgment in JCI's favor and against the Defendants, each of them jointly and severally, in the following amounts:

a. Compensatory damages in an amount to be determined at trial.

b. That the damages attributable to the RICO claims be trebled, as permitted by 18 U.S.C. § 1964.

c. Punitive damages on the damages attributable to the common law fraud and civil conspiracy claims.

d. Attorney's fees, costs, and pre- and post-judgment interest.

e. An injunction prohibiting the Defendants from continuing to perpetrate their fraudulent scheme against JCI.

f. Such other and further relief as justice may require.

378. JCI demands a jury trial on all issues so triable.

Dated: June 6, 2016

Respectfully submitted,

JOHN CRANE INC.

/s/ Mark E. Ferguson

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