

JUSTICE NEWS

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Office of Public Affairs

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Justice Department Files Statement of Interest in New Asbestos Trust Proposal

The Department of Justice today filed a Statement of Interest in *In re Kaiser Gypsum Co.* in the United States Bankruptcy Court for the Western District of North Carolina. In the case, Kaiser Gypsum Company and Hanson Permanente Cement Inc. propose the establishment of a new asbestos trust under 11 U.S.C. § 524(g), a section of the Bankruptcy Code that provides the framework for responding to the unique issues associated with asbestos liability.

“In recent years, alarming evidence has emerged of fraud and mismanagement inside asbestos trusts,” said Acting Associate Attorney General Jesse Panuccio. “Asbestos victims should feel certain that they will receive compensation when they are promised it, but fraudulent claims and mismanagement call that promise into question. In addition, the United States and all who depend on Medicare are harmed when Medicare is not reimbursed for treatment costs that have been paid by trust funds. With today’s Statement of Interest, the Department sends a clear message that we will not tolerate fraudulent conduct that cheats asbestos victims and the United States. This is just one action the Department will take to increase the transparency and accountability of asbestos trusts, and we are grateful for the **many partners we have in that mission, including the many state attorneys general who have brought attention to this issue. We encourage anyone with information about fraud or mismanagement of asbestos trusts to report it to the Department of Justice.**”

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

In recent years, both courts and researchers have expressed growing concern that the trusts, enabled by a lack of oversight or accountability, may be paying fraudulent claims and mismanaging funds. In 2014, the same bankruptcy court in which the United States today filed its statement of interest found a substantial pattern of fraud in another case, *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71 (Bankr. W.D.N.C. 2014). The court found that, in a sample of 15 civil asbestos cases, in each and every case key evidence about asbestos exposure had been improperly misrepresented or withheld. In three instances, plaintiffs made claims against defendants to whose products they had previously represented they had never been exposed. **Similarly, several studies have demonstrated problems caused by the lack of oversight.** One study found that, in the study period, people without malignant asbestos injury accounted for 86 percent of all claims made to the trusts and 37 percent of all trust payments. Another found that many of the claim forms submitted by the same claimants and law firms to different trusts contradicted each other. The secrecy with which many trust claims are submitted, allowed, and paid has made it nearly impossible to detect when plaintiffs are seeking a recovery based on misrepresentations.

The United States' Statement of Interest argues that the plans currently on file in this case do not have sufficient safeguards in place to prevent fraud and abuse. The Statement also indicates that the United States will object to any plan that lacks critical provisions to ensure transparency and accountability and to prevent fraudulent claims and mismanagement of the trust funds, including provisions: that require compliance with the Medicare Secondary Payer Statute; that notify claimants of their potential obligation to reimburse Medicare; that prevent excessive administrative costs and attorney contingency fees; that avoid conflicts of interest among members of the TAC; and that prevent payments to those who cannot demonstrate exposure to the defendants' products or who have made inconsistent claims in other asbestos proceedings. The United States is filing this Statement of Interest now to allow the parties sufficient time to address the concerns it raises.

Finally, in addition to filing the Statement of Interest, the Department also responded today to letters from 19 state attorneys general regarding concerns over asbestos trusts.

The Department will continue to look for opportunities to increase the transparency of asbestos trusts and protect the interests of legitimate claimants and the United States. The Department will also investigate conduct related to asbestos trusts that is illegal under federal law. If anyone has information on asbestos trust fraud or mismanagement, the Department welcomes the reporting of that information so that it may pursue all appropriate means under federal law to ensure that asbestos trusts operate lawfully and responsibly.

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

Attachment(s):

[Download Statement of Interest](#)
[Download Responsive Letters to State AGs](#)

Topic(s):

Health Care Fraud

Component(s):

Civil Division
Office of the Associate Attorney General
USAO - North Carolina, Western

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