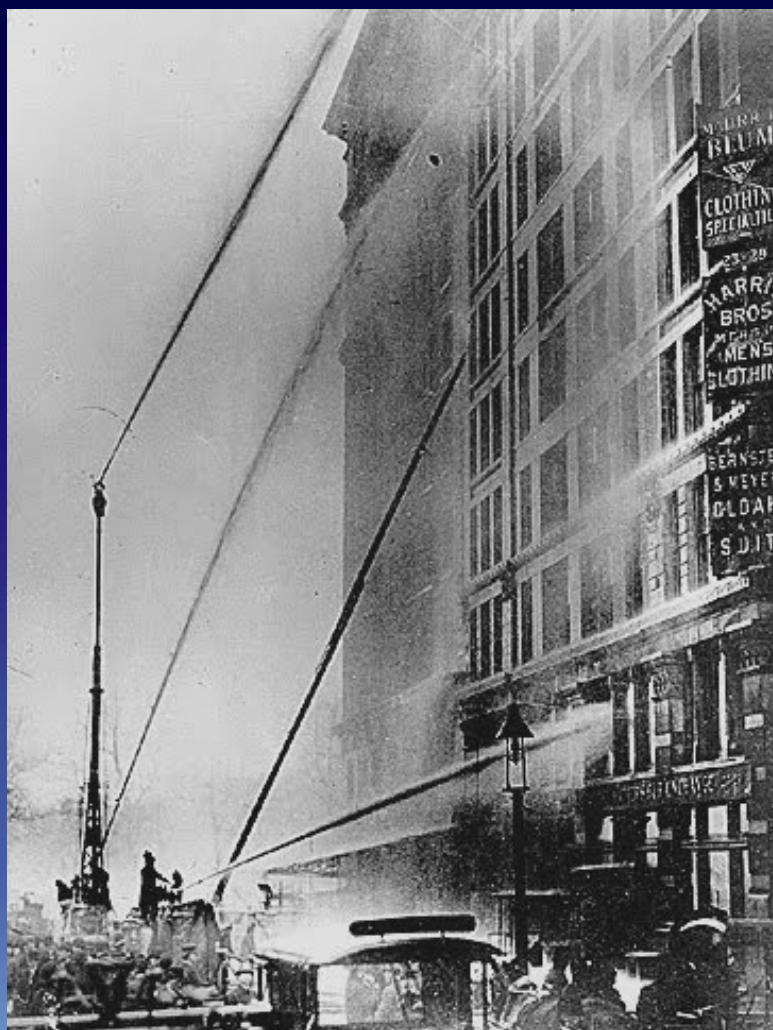


**PALS 2011**

**May 13, 2011**

**“Update on Bankruptcy Trusts”**

**Presented by Steven Kazan,  
Managing Partner  
Kazan, McClain, Lyons, Greenwood  
& Harley, PLC**



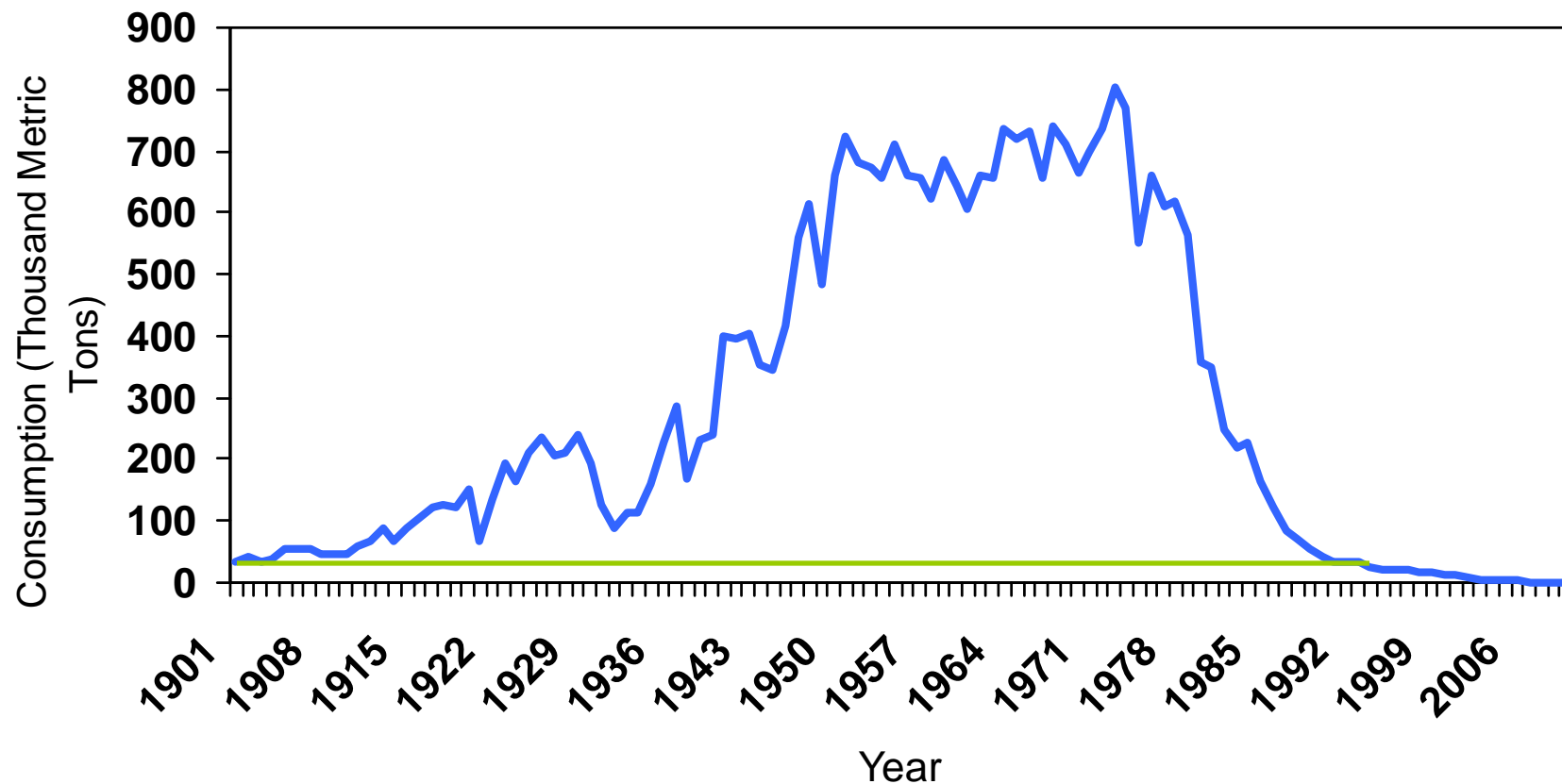
# Triangle Factory Fire March 25, 1911

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Greenwood & Harley, PLC™**

## Line graph of calculated apparent consumption of asbestos by the United States, 1900- 2010



Reference – USGS Minerals Yearbook chapters on asbestos



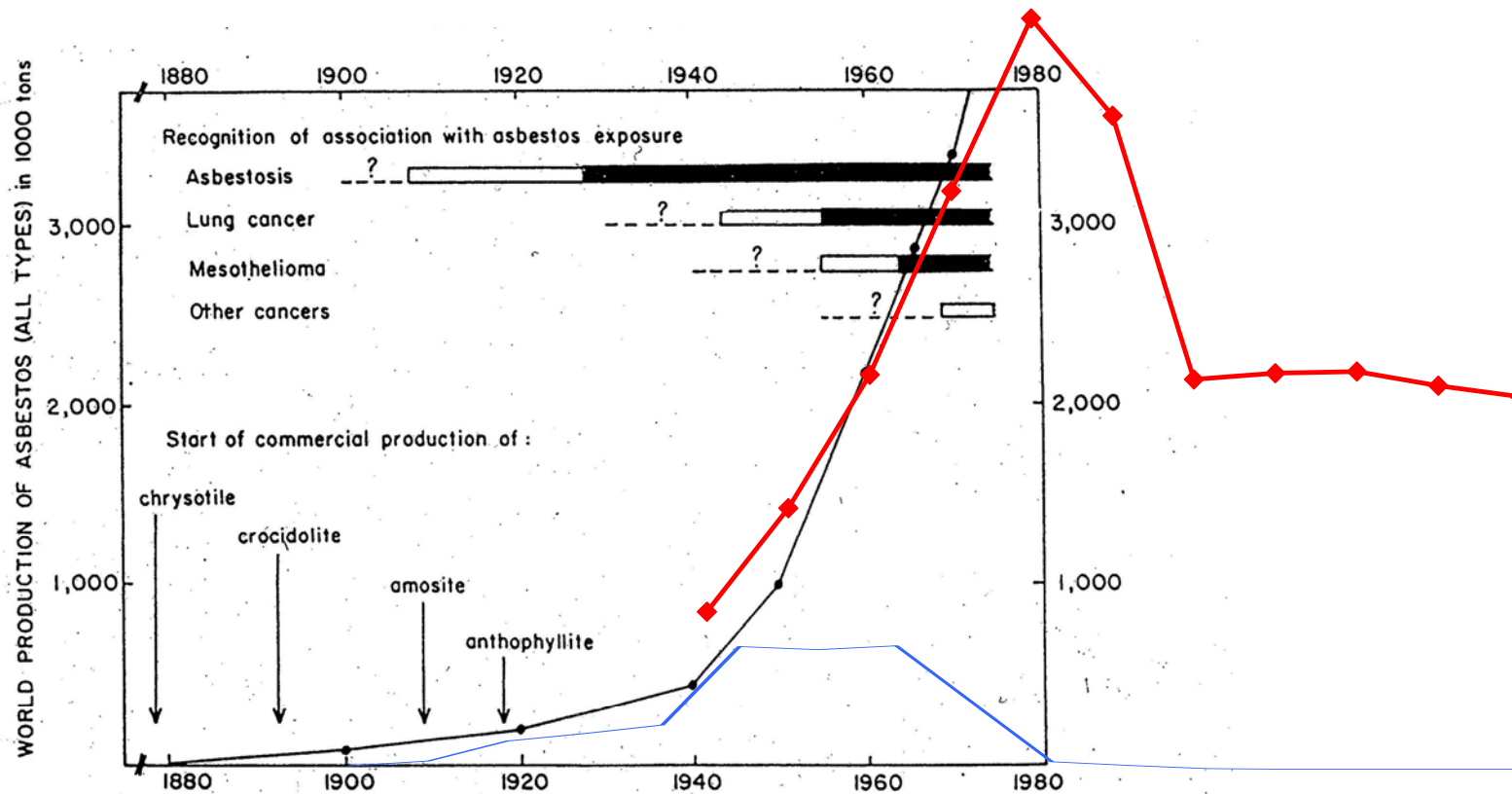


Figure 28-9. Production of Asbestos and Disease

Diagrammatic representation of the production of asbestos and the recognition of associated biologic effects. Symbols: ? = suspected; □ = probable; ■ = established. (From Becklake, Margaret "Asbestos Related Diseases of the Lung and Other Organs." American Review of Respiratory Disease 114: (1976) p.189).

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

IN RE: Chapter 11  
GARLOCK SEALING TECHNOLOGIES LLC; et al.,<sup>1</sup> Case No. 10-BK-31607  
Debtors. (Jointly Administered)

SUPPLEMENTAL DECLARATION OF CHARLES E. BATES, PHD IN SUPPORT  
OF DEBTORS' MOTION OF DEBTORS FOR AN ORDER PURSUANT TO  
BANKRUPTCY RULE 2004 DIRECTING PRODUCTION OF INFORMATION  
FROM COUNSEL REPRESENTING GARLOCK CLAIMANTS

I, CHARLES E. BATES, declare as follows:

- (1) I am Chairman of Bates White, LLC. Bates White is an economic consulting firm that has been retained by Robinson, Bradshaw & Hinson, P.A. on behalf of the Debtors and whose retention was approved by order of this Court on July 21<sup>st</sup>, 2010. An accurate copy of my curriculum vitae is attached as Exhibit A to my June 16<sup>th</sup>, 2010 Affidavit. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and do so testify competently to such facts under oath.

I am duly authorized to make this Declaration on behalf of Bates White. I make this Declaration in support of the Debtors' Motion of Debtors for an Order Pursuant to Bankruptcy Rule 2004 Directing Production of Information from Counsel Representing Garlock Claimants.

The Anchor Parking Company, Garlock Sealing Technologies LLC, and Garrison Management Group LTD.

Page 1

Filed 01/21/11

CHARLES E. BATES



Declaration of Charles E. Bates, PhD

- (3) I have previously submitted a declaration in support of a Bankruptcy Rule 2004 motion in which the Debtors sought authority to seek discovery from (a) certain claims processing facilities regarding claims filed against asbestos trusts; and (b) historical claims databases for the predecessor companies that have been replaced by asbestos trusts. In that declaration, I described work I have done in connection with these cases and why the Debtors need the information sought in that motion. In this declaration, I will focus on the reasons why the Debtors need the information sought in this additional Rule 2004 motion.
- (4) In addition to the data previously requested, the experts will need information regarding how much plaintiffs recover in total from all tort defendants and asbestos trusts on a claimant by claimant basis. The Debtors will need this information because the size of the impact of the asbestos trusts on the Debtors' future asbestos indemnity obligation will be determined by the relative size of the trust and tort recoveries for each claimant. If the magnitude of trust recoveries is a substantial fraction of claimants' total recoveries, then the trusts will have a substantial impact on the Debtors' asbestos indemnity obligations. In contrast, if the magnitude of trust recoveries is only a small fraction of claimants' total recoveries, then the trusts will have a smaller impact on the Debtors' asbestos indemnity obligations. The information is needed on a claimant by claimant basis because different claimants receive very different amounts from the Debtors, its codefendants, and the asbestos trusts. In particular, the experts in these cases will need to distinguish recoveries received by plaintiffs that typically received high payments from the Debtors from those that do not.
- (5) The size of the impact of trust payments on the Debtors' future asbestos indemnity obligation is likely to be significant. Current asbestos trust assets exceed \$20 billion and will increase by another \$10 billion in the coming years. **These assets and the trust distribution procedures that govern their distribution should result in the typical mesothelioma plaintiff in the years ahead, eventually receiving approximately \$1.2 million from the asbestos trusts.** Indirect evidence indicates that this is enough money to cover most, if not all, of the payments needed to resolve the future mesothelioma claims. **In particular, I estimate that over the last decade, a period when asbestos trust payments were not significant, mesothelioma tort claims were resolved with payments totaling between \$1.0 million and \$1.4 million from all defendants.** Because the future trust payments will be such a significant portion of the amount required to resolve claims, the impending trust payments will create a powerful economic incentive for the settling parties to alter their current practices and settle tort claims at substantially reduced amounts as compared with recent history.
- (6) The ACC's expert, Dr. Peterson, has asserted that the average total recovery of a mesothelioma tort claimant in recent years is substantially higher than indicated by the indirect evidence I have seen. For example, in previous cases, to support his assertions, Dr. Peterson has cited testimony by Dan Myer that the "total gross value" of a mesothelioma

Page 2

**These assets and the trust distribution procedures that govern their distribution should result in the typical mesothelioma plaintiff in the years ahead, eventually receiving approximately \$1.2 million from the asbestos trusts.**

**In particular, I estimate that over the last decade, a period when asbestos trust payments were not significant, mesothelioma tort claims were resolved with payments totaling between \$1.0 million and \$1.4 million from all defendants.**





Other Asbestos Disease – Cash  
Discount Payment (Level I) \$ 250 None  
None

These Scheduled Values, Average Values and Maximum Values shall apply to all Voting Claims other than Pre-Petition Liquidated Claims filed with the PI Trust before the Initial Claims Filing Date as provided in Section 5.1 above. Thereafter, with the consent of the TAC and the Future Claimants' Representative pursuant to Sections 7(b) and 6.6(b) of the PI Trust Agreement, may change these valuation amounts for use and consistent with other restrictions on the amendment power.

#### 5.4 Categorizing Claims as Extraordinary and/or Exigent Hardship

**5.4(a) Extraordinary Claims.** "Extraordinary Claim" means a PI Trust Claim that otherwise satisfies the Medical Criteria for Disease Levels IV - VIII, and that is held by a claimant whose exposure to asbestos was at least 75% the result of exposure to an asbestos-containing product or to conduct for which B&W has legal responsibility, and in either case there is little likelihood of a substantial recovery elsewhere. All such Extraordinary Claims shall be presented for Individual Review and, if valid, shall be entitled to an award of up to a Maximum Value of five (5) times the Scheduled Value set forth in Section 5.3(b)(3) for claims qualifying for Disease Levels IV -V, VII and VIII, and five (5) times the Average Value for claims in Section 5.3(b)(3) multiplied by the applicable Payment Percentage.

Any dispute as to Extraordinary Claim status shall be submitted to a special Extraordinary Claims Panel established by the PI Trust with the consent of the TAC and the Future Claimants' Representative. All decisions of the Extraordinary Claims Panel shall be final and not subject to any further administrative or judicial review. An Extraordinary Claim,

At least 75% the result of exposure to an asbestos-containing product

Maximum Value of five (5) times the Scheduled Value set forth in Section 5.3(b)(3)

5.4 Categorizing Claims as Extraordinary and/or Exigent Hardship

**National Trust Funds  
Mesothelioma Liquidated Values**

<b>Trust</b>	<b>Scheduled</b>	<b>Average</b>	<b>Maximum</b>	<b>Pay %</b>
ABB Lummus	\$25,000.00	\$60,000.00	\$400,000.00	10%
ACandS	\$150,000.00	\$220,000.00	\$550,000.00	5.78%
Armstrong	\$110,000.00	\$130,500.00	\$400,000.00	20%
Artra/Snykloid	\$275,000.00	\$320,000.00	\$700,000.00	7.5%
Asarco	\$170,000.00	\$280,000.00	\$900,000.00	22%
B&W	\$90,000.00	\$120,000.00	\$400,000.00	15%
Celotex	\$130,000.00	<b>\$130,000.00</b>	\$325,000.00	9.4%
Combustion Eng.	\$75,000.00	\$95,000.00	\$400,000.00	48.33%
DII - Halliburton	\$57,200.00	\$76,400.00	\$256,000.00	52.5%
DII - Harbison	\$136,500.00	\$182,000.00	\$610,000.00	52.5%
Eagle Picher	\$6,500.00	<b>\$6,500.00</b>	<b>\$6,500.00</b>	38%
Federal Mogul	\$200,000.00	\$250,000.00	\$600,000.00	9%
Flexitallic	\$50,000.00	\$62,500.00	\$150,000.00	9%
Fibreboard	\$135,000.00	\$180,000.00	\$450,000.00	11%
GAF/G-1	\$155,000.00	\$225,000.00	\$450,000.00	8.6%
HK Porter	\$20,000.00	<b>\$20,000.00</b>	\$40,000.00	6.3%
Johns Manville	\$350,000.00	<b>\$350,000.00</b>	\$750,000.00	7.5%
Kaiser Aluminum	\$70,000.00	\$104,000.00	\$380,000.00	35%
Keene	\$125,000.00	<b>\$125,000.00</b>	<b>\$125,000.00</b>	0.8%
Leslie Controls - Powerhouse/Navy	\$100,000.00	\$140,000.00	\$350,000.00	30.0%
National Gypsum	\$22,500.00	\$45,000.00	\$180,000.00	55.6%
Owens Corning	\$215,000.00	\$270,000.00	\$650,000.00	10%
PCC	\$175,000.00	\$200,000.00	\$500,000.00	23.7%
Plibrico	\$350,000.00	\$425,000.00	\$750,000.00	1.2%
THAN	\$150,000.00	\$238,000.00	\$900,000.00	30%
T&N US claims	\$200,000.00	\$250,000.00	\$600,000.00	9%
US Gypsum	\$155,000.00	\$225,000.00	\$450,000.00	30%
US Minerals	\$10,000.00	<b>\$10,000.00</b>	<b>\$10,000.00</b>	12.5%
W.R. Grace	\$180,000.00	\$225,000.00	\$450,000.00	30%
<b>Total</b>	<b>\$3,887,700.00</b>	<b>\$4,964,900.00</b>	<b>\$12,732,500.00</b>	





**National Trust Funds  
Mesothelioma Cash Payments**

<b>Trust</b>	<b>Pay %</b>	<b>Scheduled</b>	<b>Average</b>	<b>Maximum</b>
ABB Lummus *	10%	\$2,500.00	\$6,000.00	\$40,000.00
ACandS	5.78%	\$8,670.00	\$12,716.00	\$31,790.00
Armstrong	20%	\$22,000.00	\$26,100.00	\$80,000.00
Artra/Snykloid	7.5%	\$20,625.00	\$24,000.00	\$52,500.00
Asarco	22%	\$37,400.00	\$61,600.00	\$198,000.00
B&W	15%	\$13,500.00	\$18,000.00	\$60,000.00
Celotex	9.4%	\$12,220.00	\$12,220.00	\$30,550.00
Combustion Eng.	48.33%	\$36,247.50	\$45,913.50	\$193,320.00
DII - Halliburton	52.5%	\$30,030.00	\$40,110.00	\$134,400.00
DII - Harbison	52.5%	\$71,662.50	\$95,550.00	\$320,250.00
Eagle Picher	38%	\$2,470.00	\$2,470.00	\$2,470.00
Federal Mogul	9%	\$18,000.00	\$22,500.00	\$54,000.00
Flexitallic	9%	\$4,500.00	\$5,625.00	\$13,500.00
Fibreboard	11%	\$14,850.00	\$19,800.00	\$49,500.00
GAF/G-1	8.6%	\$13,330.00	\$19,350.00	\$38,700.00
HK Porter	6.3%	\$1,260.00	\$1,260.00	\$2,520.00
Johns Manville	7.5%	\$26,250.00	26,250.00	\$56,250.00
Kaiser Aluminum *	35%	\$24,500.00	\$36,400.00	\$133,000.00
Keene	0.8%	\$1,000.00	\$1,000.00	\$1,000.00
Leslie Controls - Powerhouse/Navy	30%	\$30,000.00	\$42,000.00	\$105,000.00
National Gypsum	55.6%	\$12,510.00	\$25,020.00	\$100,080.00
Owens Corning	10%	\$21,500.00	\$27,000.00	\$65,000.00
PCC **	23.7%	\$41,475.00	\$47,400.00	\$118,500.00
Plibrico	1.2%	\$4,200.00	\$5,100.00	\$9,000.00
THAN **	30%	\$45,000.00	\$71,400.00	\$270,000.00
T&N US claims	9%	\$18,000.00	\$22,500.00	\$54,000.00
US Gypsum	30%	\$46,500.00	\$67,500.00	\$135,000.00
US Minerals	12.5%	\$1,250.00	\$1,250.00	\$1,250.00
W.R. Grace **	30%	\$54,000.00	\$67,500.00	\$135,000.00
<b>Total</b>		<b>\$635,450.00</b>	<b>\$853,534.50</b>	<b>\$2,484,580.00</b>

\* Estimated future Payment percentage


\*\* Plan confirmed but Trust not open - estimated payment percentage



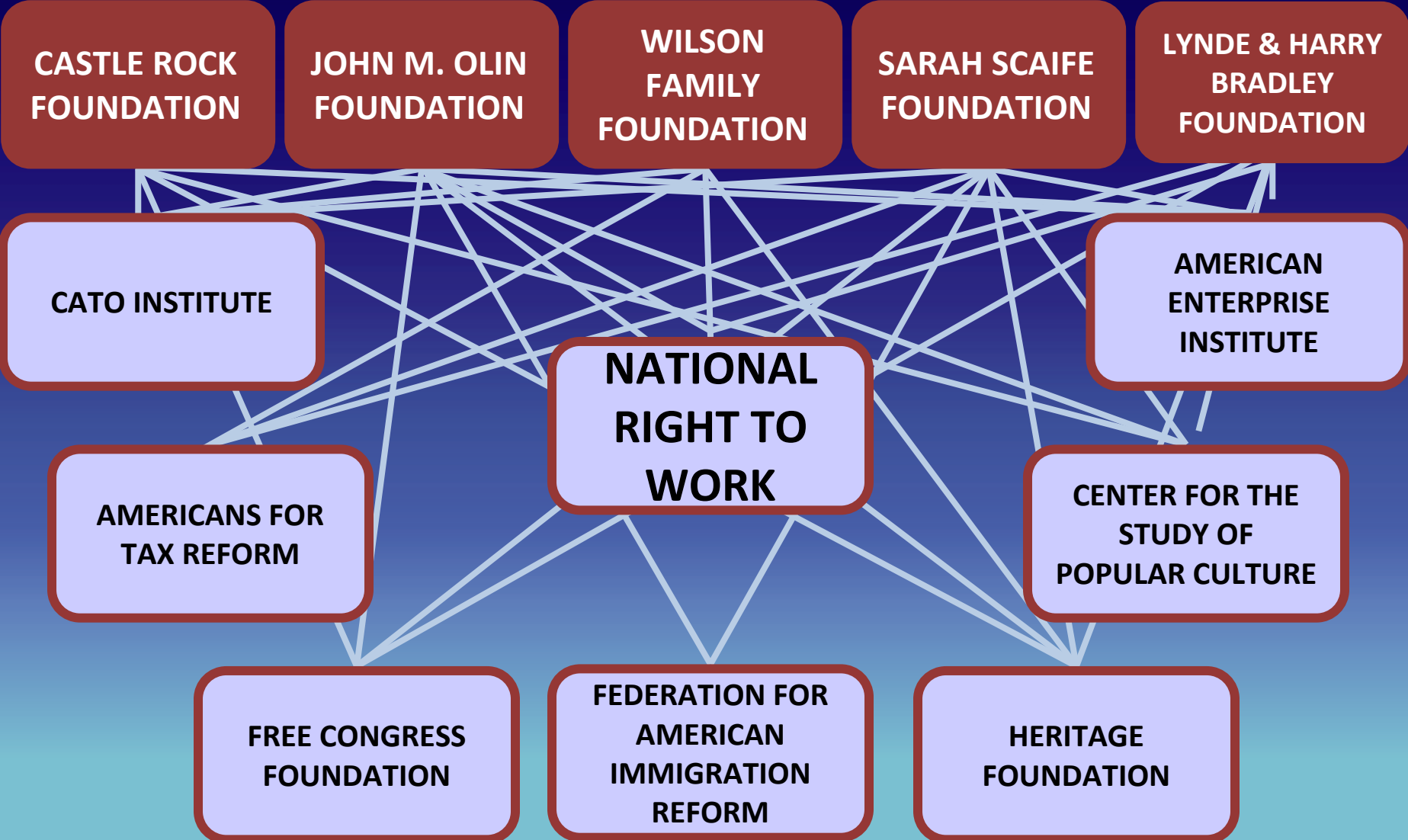


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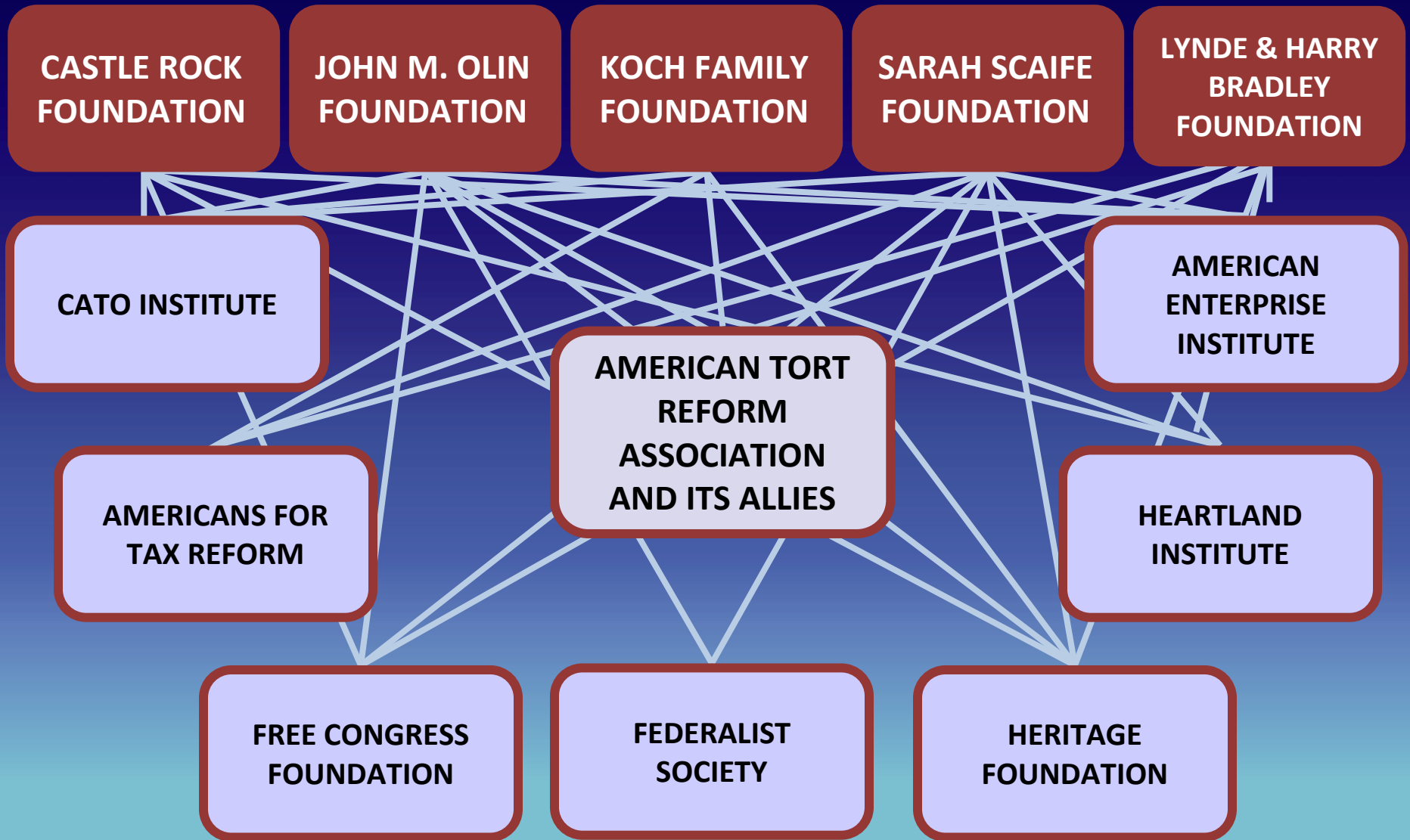
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# Anti-Union Attack Network: Right to Work



# The Attack on Trial Lawyers: Notice the Similarities?



AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To protect Americans injured by exposure to asbestos by ensuring sunshine, transparency, and fairness in the asbestos bankruptcy trust system.

1 Judicial Conference of the United States, on not less  
2 than a quarterly basis.

IN THE SENATE OF THE UNITED STATES—112th Cong., 1st Sess.

3 “(2) CONTENT.—Reports required by this sub-  
4 section shall describe each demand for payment the  
5 trust received during the reporting period, including

**S. 623**

To amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosure of discovery information in civil actions, and for other purposes.

**Sunshine and Transparency in Asbestos Bankruptcy Trusts**

6 the name and exposure history of the party submitting such demand for payment.  
7

Referred to the Committee on \_\_\_\_\_ at \_\_\_\_\_  
ordered to be printed

8 reasonably obtainable information. This section shall

Ordered to lie on the table and to be printed

9 to include information detailing any other

AMENDMENT intended to be proposed by \_\_\_\_\_

10 claims each claimant has filed with any trust established under this section or with the courts of any

Viz:

11 State or of the United States. Such reports shall not

1 At the appropriate place, insert the following:

12 include confidential medical records or claimant social security numbers.

2 SEC. \_\_\_\_\_. **SUNSHINE AND TRANSPARENCY IN ASBESTOS BANKRUPTCY TRUSTS.**

13

4 Section 524 of title 11, United States Code, is amended by adding at the end the following:

14 “(3) PROVISION OF INFORMATION.—Trusts established under this section shall, subject to appropriate protective orders, provide any information related to demands and payments to any party to any

6 “(n) TRANSPARENCY FOR TRUSTS.—

15

7 “(1) IN GENERAL.—Any trust established under this section shall file periodic reports, available to the public and in a form prescribed by the

16

17

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19

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21

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# EXODUS XXI

29. But if the ox was wont to gore in time past, and warning hath been given to its owner, and he hath not kept it in, but it hath killed a man or a woman; the ox shall be stoned, and its owner shall be put to death.

30. If there be laid on him a ransom, then he shall give for the redemption of his life whatsoever is laid upon him.

## EXODUS XXI, 28

for his tooth's sake. ¶ 28. And if an ox gore a man or a woman, that they die, the ox shall be surely stoned, and its flesh shall not be eaten; but the owner of the ox shall be put to death. 29. But if the ox was wont to gore in time past, and warning hath been given to its owner, and he hath not kept it in, but it hath killed a man or a woman; the ox shall be stoned, and its owner also shall be put to death. 30. If there be laid on him a ransom, then he shall give for the redemption of his life whatsoever is laid upon him. 31. Whether it have gored a son, or have gored a daughter, according to this judgment shall it be done unto him. 32. If the ox gore a bondman or a bondwoman, he shall give unto their master thirty shekels of silver, and the ox shall be stoned. ¶ 33. And if a man shall open a pit, or if a man shall dig a pit and not cover it, and an ox or an ass fall therein, 34. the owner of the pit shall make it good; he shall give money unto the owner of them, and the dead beast shall be his. ¶ 35. And if one man's ox hurt another's, so that it dieth; then they shall sell the live ox, and divide the price of it; and the dead also they shall divide. 36. Or if it be known that the ox was wont to gore in time past, and its owner hath not kept it in; he shall surely pay ox for ox, and the dead beast shall be his own. ¶ 37. If a man steal an ox, or a sheep, and kill it, or sell it, he shall pay five oxen for an ox, and four sheep for a sheep.

## שמות משפטים כא

28 וְכִרְיוּחַ שׂוֹר אֲתֵאֵשׁ אִם אֲתֵאֵשׁ וְנָתַתְּ סָקִיל וְסָקִיל  
29 הַשׂוֹר וְלֹא יֵאָבֵל אֶת־בְּשׂוֹרוֹ וְקָעַל הַשׂוֹר נָקוּ; וְאִם שׂוֹר  
נָתַתְּ הוּא מִתְקַמֵּל שְׁלֵשָׁם וְהוֹעֵד בְּבַעְלָיו וְלֹא יִשְׁמְרֵנוּ  
וְהַמֵּת אֵישׁ אִם אֵשׁ הַשׂוֹר יִסָּקֵל וְגַם־בַּעְלָיו יִהְיֶה־נָתַתְּ  
לֹא אִם־כֶּסֶף יִשְׁעַת עָלָיו וְתָתֵן פְּדוּן נַפְשׁוֹ כִּלְכֵּל אֲשֶׁר־יִוָּשֵׁת  
31 עָלָיו; אֲדִיבֵן יֶגֶחַ אֲדִיבֵן יֶגֶחַ כִּמְשַׁפֵּט הָהָא יַעֲשֶׂה לָּהּ  
32 אִם־כֶּסֶף יֶגֶחַ הַשׂוֹר אִם אִמָּה כֶּסֶף וְשְׁלֵשִׁים שֶׁקֶלִים יִהְיֶה  
33 לְאֵדָוִי הַשׂוֹר וְסָקִיל; וְכִרְיוּחַ אֵישׁ פֶּדוּ אִם כֶּרֶ  
יִכְרֶה אֵישׁ בָּר וְלֹא יִכְפֹּט וְנִפְלִי־שָׂמָה שׂוֹר אִם הַמֵּת  
34 כָּעַל הַמֵּת יִשְׁלַם כֶּסֶף יִשְׁיֵב לְבַעְלָיו וְנָתַתְּ הַחַיִּלָּו;  
לֹא וְכִרְיוּחַ שׂוֹר־אֵישׁ אֲתֵשׁוֹר רָעוּדוֹ וְנָתַתְּ וְנִמְכְּרוֹ אֲתֵ  
36 הַשׂוֹר הַחַי וְנִצְוֹ אֲתֵכֶסֶף וְנָם אֲתֵדָמָת דָּחָזֵן; אִם מוֹדֵעַ  
כִּי שׂוֹר נָתַתְּ הוּא מִתְקַמֵּל שְׁלֵשָׁם וְלֹא יִשְׁמְרֵנוּ בְּעַלָּיו  
37 וְכִרְיוּחַ שׂוֹר אֲתֵשׁוֹר רָעוּדוֹ וְנָתַתְּ וְנִמְכְּרוֹ אֲתֵ  
וְכִרְיוּחַ שׂוֹר אֲתֵשׁוֹר רָעוּדוֹ וְנָתַתְּ וְנִמְכְּרוֹ אֲתֵ

37. If a man steals an ox, or a sheep, and kill it, or sell it, he shall pay five oxen for an ox, and four sheep for a sheep.



# Thank you for your attention!

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Questions?

Please email me at:

[skazan@kazanlaw.com](mailto:skazan@kazanlaw.com)

