

A Stubborn Manufacturer Exposes the Asbestos Blame Game

This story appears in the April 13, 2015 issue of Forbes.

In a quiet bankruptcy court in Charlotte, N.C., closed to all but court personnel and people who'd signed strict confidentiality orders, attorney Garland Cassada laid out the inner workings of one of the longest-running and most lucrative schemes in the American litigation business.

Arguing for a manufacturer of asbestos gaskets named Garlock Sealing Technologies, Cassada explained how lawyers had tailored the testimony of their clients to minimize their exposure to more dangerous products, thus making Garlock seem more liable than it really was.

Cassada's evidence for this scheme came from the mouths of the asbestos lawyers themselves. In an unprecedented move Garlock had persuaded U.S. Bankruptcy Judge George Hodges to allow it to dig into case files and question the lawyers who'd helped drive the company into bankruptcy.

That led to revealing disclosures like that of Benjamin Shein, a prominent Philadelphia asbestos attorney whose firm had settled the case of a former shipyard worker named Vincent Golini against then-solvent Garlock in 2009.

Golini was dying of the excruciating, asbestos-linked cancer known as mesothelioma when he sued Garlock and testified that he couldn't recall working with other, more common and more hazardous products like Owens Corning' Kaylo pipe insulation or EaglePicher asbestos cement. As soon as he settled, however, Golini's lawyers filed claims against those precise companies based on affidavits they'd drawn up before Golini professed ignorance of their products.

"Our goal is to maximize a client's recovery, okay, and in order to do that, what we focus on for the deposition is the viable, nonbankrupt companies," said Shein in his own deposition. "That's our job, okay?"

And had the asbestos lawyers prevailed, Shein's efforts and Golini's multiple filings would have remained secret. But thanks to Garlock's persistence (and a successful lawsuit by [Legal Newsline](#), a U.S. Chamber-funded publication seeking release of sealed court documents) the evidence has come spilling out. That evidence could be the biggest turning point in the decades-long multibillion-dollar battle over who will pay for asbestos cleanup across the U.S. Garlock is suing Shein and lawyers at five other firms for racketeering and fraud over their asbestos litigation. Shein's lawyer, Daniel Brier, says that "Ben Shein is a zealous advocate for his clients" and the lawsuit has no merit.

"More justice was done in the Garlock bankruptcy than in all the previous bankruptcies put together," says [Lester Brickman](#), a professor at [Yeshiva University's](#) Cardozo School of Law and a paid expert for Garlock, whose research revealed how asbestos lawyers were gaming the system. "There's rampant fraud in every one of those cases."

It wasn't supposed to turn out this way. Garlock had been a bit player in the asbestos saga throughout the 1980s and 1990s, settling mesothelioma cases for a few thousand dollars apiece, but by the early 2000s bigger asbestos manufacturers like Johns Manville and OwensCorning had all gone through bankruptcy and were immune from further asbestos lawsuits, so the lawyers turned their attention to Garlock. Settlement demands escalated as lawyers won some big victories, including a \$37 million jury verdict in California. Soon Garlock's total payout exceeded \$1 billion, four times its annual revenue.

Normally, a company in this situation strikes a deal with the plaintiff lawyers to set up a bankruptcy trust to settle the current litigation and pay claims into the future. But Garlock wasn't willing to go along.

Stephen Macadam, the 54-year-old chief executive of Garlock's Charlotte, N.C. parent company, EnPro Industries, was skeptical about the company's liability in the first place. Macadam had started his career as a [DuPont](#) engineer working beside pipe fitters and millwrights. He knew it often took all day to break down a single valve and replace the gasket, supporting the testimony of Garlock's medical experts that it would be nearly impossible to get a lethal dose of asbestos from its gaskets.

“We were attracting the claims of every person diagnosed with mesothelioma, and they all said they got it from a Garlock gasket,” says Macadam, who joined EnPro in 2008. “It was just ridiculous.”

Garlock’s problem was the people suing it couldn’t seem to remember working with anybody else’s products, especially the potentially deadly insulation pipe fitters had to cut through to get to a Garlock gasket. In depositions, dying cancer patients would answer no to repeated questions about whether they’d worked with common construction materials like pipe insulation or asbestos-containing joint compound. In one case a former Navy worker claimed others removed valves from ships, cleaned off all the insulation and brought them to him to disassemble onshore, conveniently eliminating the possibility of being exposed to anything but a Garlock gasket.

Garlock’s average mesothelioma settlement payment rose past \$70,000 in the mid-2000s from less than \$10,000 in 1999, while the cost of defending itself at trial sometimes exceeded \$400,000.

Macadam put Garlock in bankruptcy in June 2010. Once there he gave Cassada permission to pursue a highly unconventional strategy of proving that the claims against Garlock had been inflated by fraud. After a lengthy battle with the asbestos lawyers who tried to keep them secret, the company obtained millions of claims filed with more than 20 bankruptcy trusts.

Finally, Judge Hodges allowed full discovery into 15 high-value claims Garlock had settled, including depositions of the lawyers involved. Hodges found plaintiffs had hidden their exposure to other products until they settled with Garlock, only to file additional bankruptcy trust claims that often contradicted their previous testimony, sometimes literally the day after settling.

Citing settlements that had been “infected by the manipulation of exposure evidence by plaintiffs and their lawyers,” Hodges last year slashed Garlock’s bankruptcy liability from the \$1.3 billion plaintiff lawyers were seeking to \$125 million.

The asbestos lawyers insist that prior to declaring bankruptcy, Garlock made a business decision to settle cases rather than challenge them in court, implying it didn’t delve deeply into the evidence that might exonerate it.

Garlock is still in bankruptcy, but Macadam's refusal to play by the asbestos bar's rules may yield huge dividends for other firms like Honeywell, Ford and Volkswagen that are still solvent and facing tens of thousands of asbestos-related lawsuits. They've filed briefs in Hodges' court seeking the millions of documents Garlock uncovered. Congress, meanwhile, is considering a law that would require the asbestos bankruptcy trusts to open their records.

"If you're a solvent defendant still in the tort system, you're scared to death of these guys, and we were, too, until we entered reorganization," Macadam says. "All they have to do is make up their mind to go after you, and they can make you hurt. And make you pay."