



# LEGAL NEWSLINE

## **Law prof says firms facing Garlock's RICO cases are the progenies of Baron & Budd**

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Editor's note: This article is part of a series examining evidence submitted in Garlock Sealing Technologies' bankruptcy proceeding that was recently unsealed as a result of Legal Newsline's legal challenge.

CHARLOTTE, N.C. (Legal Newsline) – A law professor and asbestos litigation scholar testified in 2013 that the deception Garlock Sealing Technologies faced from plaintiffs attorneys traces its roots to the prominent firm Baron & Budd.

Lester Brickman, an asbestos litigation scholar and professor at the Benjamin N. Cardozo School of Law who recently testified before a House subcommittee about an asbestos claims transparency bill, submitted a memorandum to Judge George Hodges in April 2013.

The memo, which came nine months before Hodges' landmark decision decrying the practices of asbestos plaintiffs attorneys, was recently unsealed.

Brickman said the Houston firm Baron & Budd was the genesis of many of the firms that Garlock claimed were manipulating their clients' evidence in order to maximize recovery in civil lawsuits. Garlock has even filed racketeering lawsuits against some of those firms.

"The Baron & Budd techniques of witness preparation have migrated to firms that focus on mesothelioma litigation," Brickman wrote.

"Ironically, the progeny of Baron & Budd have been instrumental in this migration."

Hodges ruled in January that attorneys have been withholding their clients' evidence of exposure to asbestos products made by companies that have gone bankrupt and established trusts in order to make Garlock seem more responsible for their clients' injuries than it really is.

In determining whether past settlements and verdicts were an indicator of future asbestos liabilities for Garlock's own bankruptcy trust, Hodges ruled that they were not because the actions of asbestos attorneys had inflated them.

He ordered Garlock to put \$125 million in a trust – roughly \$1 billion less than plaintiffs attorneys had requested. Garlock’s recent settlement provides more than \$360 million for future claimants.

“This occurrence was a result of the effort by some plaintiffs and their lawyers to withhold evidence of exposure to other asbestos products and to delay filing claims against bankrupt defendants’ asbestos trusts until after obtaining recoveries from Garlock,” Hodges wrote.

“It appears certain that more extensive discovery would show more extensive abuse. But that is not necessary because the startling pattern of misrepresentation that has been shown is sufficiently persuasive.”

Brickman said that practice began at Baron & Budd and came to light in a controversial 1997 memo accidentally disclosed to defense attorneys.

Known as the “Script Memo,” the memo included preparation techniques for asbestos witnesses.

Though a judge called it “scandalous to the community as well as to the profession,” Baron & Budd disagreed. The firm also never faced any punishment.

A 1998 article by Walter Olson included some excerpts from the memo, one of which is, "It is important to maintain that you NEVER saw any labels on asbestos products that said WARNING or DANGER. Do NOT say you saw more of one brand than another, or that one brand was more commonly used than another....You NEVER want to give specific quantities or percentages of any product names....Be CONFIDENT that you saw just as much of one brand as all the others. All the manufacturers sued in your case should share the blame equally!"

Brickman noted that Garlock was one of the companies that appeared in the memo.

“Know the Names of All the Products Listed on Your Work History Sheets (such as A.P. Green, Kaylo, Garlock, etc.,” the memo says. “Know which Names go with which ‘Types of products (for instance GARLOCK made GASKETS and KAYLO made PIPE COVERING, etc.).”

A former Texas Supreme Court justice even remarked that, with the memo, a lawyer could pull a homeless person off of the street and within a couple of hours, he or she would be prepared to testify.

Years later, firms with roots at Baron & Budd were using similar practices, Brickman wrote. The memo focuses on six firms with the highest settlement average in cases against Garlock.

Dallas’ Waters & Kraus was formed by Andrew Waters and Peter Kraus, who had been partners in Baron & Budd.

Two lawyers from Waters & Kraus left to found the firm that became Simon Greenstone Panatier Bartlett, also of Dallas.

Joseph Belluck and Jordan Fox left Baron & Budd to found Belluck & Fox in New York. Troy Chandler, formerly of Williams Kherkher, was a lawyer at Baron & Budd, and Philadelphia's Shein Law Center serves as local counsel in Philadelphia cases for Waters & Kraus.

Lastly, the David Law Firm is a referral firm that refers cases to Baron & Budd.

Garlock has filed racketeering suits against four of these firms – Waters & Kraus, Simon Greenstone, Belluck & Fox and Shein Law Center.

The complaints include examples Garlock feels show the firms were actively misrepresenting their clients' exposure histories.

In one alleged instance, Waters & Kraus concealed Robert Treggett's exposure to Pittsburgh Corning's Unibestos product, successfully preventing a jury from determining that Pittsburgh Corning was partly responsible for Treggett's disease.

That jury awarded Treggett \$24 million – the largest verdict against Garlock in its history. Seven months prior, Waters & Kraus asserted Treggett's voting rights in the Pittsburgh Corning bankruptcy.

Two months after the trial, the firm submitted a claim to the Pittsburgh Corning bankruptcy trust, Garlock says.