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

IN RE:	)	**CASE NO. 10-31607**
	)	
GARLOCK SEALING	)	
TECHNOLOGIES, LLC, ET AL.,	)	**CHAPTER 11**
	)	
DEBTORS.[1]	)	**Jointly Administered**
	)	

JOINT OMNIBUS OPPOSITION TO
CERTAIN MOTIONS TO SEAL FILED PURSUANT TO PROTOCOL ORDER

Ford Motor Company; Honeywell International Inc.; Resolute Management, Inc., AIU Insurance Company, American Home Assurance Company, Birmingham Fire Insurance Company of Pennsylvania, Granite State Insurance Company, Lexington Insurance Company, and National Union Fire Insurance Company of Pittsburgh, Pa.; Volkswagen Group of America, Inc.; and Mt. McKinley Insurance Company and Everest Reinsurance Company (collectively, the "**Public Access Proponents**"), by and through undersigned counsel, and pursuant to the *Order Establishing Protocols for Public Access to Sealed Materials in Record of Estimation Proceeding*, entered by this Court on August 1, 2014 (Dkt. No. 3925) (the "**Protocol Order**"), file this *Joint Omnibus Opposition to Certain Motions to Seal Filed Pursuant to Protocol Order* (the "**Opposition**") to the motions to seal filed at Docket Numbers 4015, 4025, 4032, 4033, 4042, 4045, 4049, 4052, 4053, 4055, and 4057 (collectively, the "**Motions to Seal**").[2]

[1] The debtors in these jointly administered chapter 11 cases are Garlock Sealing Technologies LLC, Garrison Litigation Management Group, Ltd., and The Anchor Packing Company (collectively, "**Garlock**" or the "**Debtors**").

[2] The Future Asbestos Claimants' Representative (the "**FCR**") filed a statement indicating that "[t]he FCR has no objection to his filings or submissions (identified in Exhibit A) being made public. All such documents and testimony, however, were sealed or withheld by the FCR due to confidentiality designations of the Debtors, the [Committee], or individual plaintiffs. Accordingly, it is for those parties to confirm whether or not such

I. Preliminary Statement.[3]

After months of intense dispute over mere procedural issues that ranged from this Court to the District Court and back again, there are now only four categories of information and documents subject to the Protocol Order about which there remains a dispute regarding the public's right of access. Once these four discrete disputes are resolved, *all* of the Sealed Evidence described in Exhibit A to the Protocol Order may be redacted of information subject to Fed. R. Bankr. P. 9037(a) (as all interested parties agree should be done) and released to the public. The first category is the names of adult asbestos claimants, but those are not inherently confidential and have already been voluntarily and repeatedly disclosed, and so should not be redacted from the Sealed Evidence before it is released to the public. The second, third, and fourth categories are the Questionnaires and the Trust Claims (including alleged settlement information reflected therein), and settlement amounts wherever else they appear in the Sealed Evidence, but the movants have not met their burden of demonstrating that any of these materials should remain under seal, and so they should be released to the public.

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documents and testimony should remain under seal, and disclosure of such documents and testimony should await the Court's ruling on any motions to seal filed by any affected parties." (Dkt. No. 4043, at 2.) As the FCR did not move to seal any materials, the Public Access Proponents do not address the FCR's statement herein. Additionally, The Mundy Firm PLLC and Mundy & Singley LLP filed a pleading titled "Objections to Orders—Documents 3925 & 3943 And Rule 12(e) Motion on Behalf of the Clients and the Firms The Mundy Firm PLLC and Mundy & Singley LLP" (Dkt. No. 3996) purporting to object to the entire protocol process on the basis that the Debtors should be required to disclose the names of asbestos plaintiffs subject to the Protocol Order. This pleading is untimely and does not constitute a proper motion to seal under the Protocol Order and is accordingly not addressed herein other than to note that this pleading highlights the absurdity of certain movants' arguments that asbestos plaintiff names should be sealed. These firms know, or should know, which of their clients sued the Debtors. Furthermore, the Public Access Proponents object to the factually and legally unsupported request for attorneys' fees. (*See* Dkt. No. 3996, at 6.)

[3] Capitalized terms used in this Preliminary Statement shall have the meanings ascribed to them elsewhere in the Opposition.

II. Background and Summary of Public Access Proponents' Response to Motions to Seal Filed Pursuant to Protocol Order.[4]

On July 15, 2014, the United States District Court for the Western District of North Carolina (the "**District Court**") heard oral argument in, *inter alia*, the Public Access Proponents' appeals regarding public access to the testimony, exhibits, and other evidence submitted under seal in connection with the estimation proceedings, hearings, and trial (collectively, the "**Estimation Proceedings**"), which culminated in January 2014 in this Court's *Order Estimating Aggregate Liability* (the "**Estimation Order**") (Dkt. No. 3296). The transcript of that oral argument is attached hereto as **Exhibit A**. During argument, the District Court stated that "I think you're entitled to access. I just think I can probably remand it back to the bankruptcy court to do it." (Ex. A, Hr'g Tr. July 15, 2014, at 9:2–4.) Later, in response to a statement from Debtors' counsel that the Debtors "wanted a trial that was open to the public," the District Court stated that "I think you're entitled to that." (*Id.*, at 11:19–22.)

Following that oral argument, the District Court entered its *Memorandum of Decision and Order* on July 23, 2014 (the **"Remand Order**") (attached hereto as **Exhibit B**), which, *inter alia*, reversed "all of the Orders of the bankruptcy court appealed from sealing evidence, hearings, transcripts, or filings, or excluding the press or the public from the hearing," and remanded "such Orders and the motions underlying them . . . for further consideration in light of this decision." The District Court emphasized that, on remand, the Court may not carry forward confidentiality and protective orders that were previously entered by this Court with respect to

[4] The Public Access Proponents will not endeavor in this brief to respond to the revisionist procedural history concerning public access issues as set forth in the "Background" section of the motion to seal filed by the Official Committee of Asbestos Personal Injury Claimants (the "**Committee**"). (*See, e.g.*, Dkt. No. 4023, at 5 (characterizing the Committee as having "urged [this] Court and the parties to go forward at once" on a process to unseal the Sealed Evidence). For a more complete account of the Committee's various public access feints, see *Ford Motor Company's Reply in Support of Motion to Withdraw Reference*, Case No. 14-cv-00171-MOC (W.D.N.C.), Dkt. No. 42, at 6–10 (explaining the Committee's efforts to involve this Court and the District Court in a procedural shell game as to jurisdiction over public access issues).

the Estimation Proceedings. (*Id.*, at 4–8.) The District Court also specifically held that "such proceedings [i.e., the Estimation Proceedings] were improperly closed." (*Id.*, at 3.)

While those appeals were pending but before the District Court entered its Remand Order, the Committee filed the *Motion of the Official Committee of Asbestos Personal Injury Claimants to Reopen the Record of the Estimation Proceeding* (the "**Motion to Reopen**") (Dkt. Nos. 3725, 3726, 3728), which motion was partially sealed, and engendered subsequent filings that similarly sought to extend this Court's prior confidentiality and protective orders. (*See, e.g.*, Dkt. Nos. 3817, 3817, 3819, 3877.) The Public Access Proponents lodged an objection to further sealing and asserted their public right of access to the briefing, evidence, and proceedings in connection with the Motion to Reopen and to the items that were previously maintained under seal in connection with the Estimation Proceedings. (*See* Dkt. No. 3804.)

In response to these sealing requests, this Court entered the (i) *Order Regarding Use of Confidential Material at Hearing on Motion to Reopen the Record of the Estimation Proceeding* (Dkt. No. 3875) on July 21, 2014; (ii) *Order Granting Ex Parte Motion to Seal Memorandum in Support of Motion of the Official Committee of Asbestos Personal Injury Claimants to Reopen the Record of the Estimation Proceeding* (Dkt. No. 3738) on June 5, 2014; (iii) *Ex Parte Order Granting Motion for Leave to File Portions of Coltec Industries Inc.'s Response to the Motion of the Official Committee of Asbestos Personal Injury Claimants to Reopen the Record of the Estimation Proceeding Under Seal* (Dkt. No. 3829) on July 1, 2014; and (iv) *Order Granting Ex Parte Motion to Place Documents under Seal* (Dkt. No. 3830) also on July 1, 2014 (collectively, the "**Sealing Orders**"). Each of the Sealing Orders was (1) premised upon earlier orders entered by this Court that the District Court reversed in its Remand Order, (2) entered without notice to the public, and (3) not supported by any showing of any basis for sealing.

Recognizing that the Motion to Reopen cannot proceed under seal pursuant to the Sealing

Orders in light of the Remand Order,[5] this Court entered an *Order Postponing Hearing on Motion to Reopen* (Dkt. No. 3900) on July 28, 2014, and the Protocol Order on August 1, 2014. The Protocol Order establishes procedures and deadlines to govern motions to seal with respect to:

> [D]ocuments and other materials the Court has sealed or otherwise withheld from public access in connection with the estimation hearing pursuant to the Order Regarding Use of Confidential Material at the Estimation Hearing, dated July 23, 2013 (Dkt. No. 3060) (and any other similar orders), or has permitted to be filed under seal or otherwise withheld from public access in connection with the Motion to Reopen the Record of the Estimation Proceeding filed by the Official Committee of Asbestos Personal Injury Claimants (Dkt. No. 3725).

(Dkt. No. 3925, at 1.) These materials are referenced herein as the "**Sealed Evidence**."

The chart set forth in the Appendix attached hereto summarizes the categories of Sealed Evidence with respect to which various entities filed motions to seal pursuant to the Protocol Order, and the Public Access Proponents' response to each. As explained in the chart, Garlock, the Committee, and the Public Access Proponents all appear to agree that the following information may be redacted wherever it appears in the Sealed Evidence:

- The first five (5) digits of an individual's social-security number or taxpayer-identification number;
- The month and day of an individual's birth date;
- The full names of an individual known to be and identified as a minor, other than their initials;
- All but the last four (4) digits of financial-account numbers; and
- Medical information other than claimed disease (i.e. mesothelioma, asbestosis, etc.).

[5] In this Circuit, "few legal precepts are as firmly established as the doctrine that the mandate of a higher court is 'controlling as to matters within its compass.'" *United States v. Bell*, 5 F.3d 63, 66 (4th Cir. 1993) (quoting *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 168 (1939)). When an appellate court remands for further proceedings in the trial court, the trial court must "implement both the letter and spirit of the mandate, taking into account [the appellate court's] opinion and the circumstances it embraces." *Id.* at 66–67 (citations and internal quotation marks omitted).

The primary remaining areas of disagreement concern (1) the names of adult asbestos creditors; (2) all questionnaires submitted pursuant to the Court's orders at Docket Nos. 1390, 2337, and 2338 authorizing the Debtors to issue various questionnaires in connection with the Estimation Trial (collectively, the "**Questionnaires**"); (3) the documents and information reflecting submissions made by various asbestos claimants to certain asbestos trusts (collectively, the "**Trust Claims**"); and (4) all settlement amounts wherever they appear in the Sealed Evidence. For all of the reasons that follow, the Motions to Seal do not overcome the Public Access Proponents' presumptive rights of access to these materials under 11 U.S.C. § 107(a), the First Amendment, and the common law. Accordingly, all of the Sealed Evidence described in Exhibit A to the Protocol Order should be unsealed and released to the public subject only to the narrow redactions noted above.

III. Standards Governing Public Access Proponents' Right of Access to the Sealed Evidence.

A. Section 107(a) of the Bankruptcy Code.

Section 107(a) of the Bankruptcy Code expressly establishes a right of public access to "paper[s] filed in a case under this title . . . ." 11 U.S.C. § 107(a). Because all of the Sealed Evidence constitutes "paper[s] filed in a case under this title," the Public Access Proponents have a presumptive right of access to the Sealed Evidence.

To justify denial of access to any "papers" filed in this case, which by their filing are deemed under Section 107(a) to be "public records and open to examination by an entity at reasonable times without charge," the proponent of secrecy must show that the information proposed to be sealed is "a trade secret or confidential research, development, or commercial information," a "scandalous or defamatory matter," or information the disclosure of which "would create undue risk of identity theft or other unlawful injury to the individual or the

individual's property." 11 U.S.C. § 107(b)(1), (2), (c)(1). In sum, "Section 107 . . . establishes a broad right of public access, subject only to limited exceptions set forth in the statute, to all papers filed in a bankruptcy case." *Gitto v. Worcester Telegram & Gazette Corp.* (*In re Gitto Global Corp.*), 422 F.3d 1, 7 (1st Cir. 2005). Because "Sections 107(b) and (c) . . . define a universe of information that is exempt from the right of public access established by subsection (a)," where, as in this case, the exceptions do not apply, any broader sealing or redaction is impermissible. *See In re Blake*, 452 B.R. 1, 8 (Bankr. D. Mass. 2011); *see also* Fed. R. Bankr. P. 9037 (identifying certain categories of information that may be redacted).

No movant challenges the applicability of Section 107(a) to the Sealed Evidence, although certain of the movants assert that this Court did not "rely on" certain categories of information in the Sealed Evidence in its Estimation Order. (*See, e.g.*, Claimant Firms' Motion to Seal, Dkt. No. 4052, at 10.) Section 107(a) grants public access to papers filed in a bankruptcy case regardless of whether the Court has "used" or "relied on" such papers.[6] The First Circuit has held:

> [t]he common law requires the court to determine whether the document at issue is a "judicial record" subject to the presumption of public access, and, if so, to "balance[] the public interest in the information against privacy interests." *Section 107 displaces this approach entirely.* First, it dispenses with the need to determine whether the document at issue is a "judicial record" by clarifying that, in the bankruptcy context, the presumption of public access applies to any paper filed in a bankruptcy case, not only the narrower category of papers that would be considered judicial

[6] The Committee's attempt to characterize the discovery obtained in connection with the Estimation Trial as unique or out-of-the-ordinary (*see* Dkt. No. 4042, at 2)—even if it were true (which the Public Access Proponents contest)—merely reinforces the need for public access to the Sealed Evidence in order to "monito[r] the functioning of the courts" because shielding these materials from the public "makes the ensuing decision look more like a fiat." *See Company Doe v. Public Citizen*, 749 F.3d 246, 266 (4th Cir. 2014). In any event, these assertions amount to nothing more than a preview of arguments against the precedential value of this Court's decision and do not overcome the public's right to access the Sealed Evidence. *See Wilson v. American Motors Corp.*, 759 F.2d 1568, 1571 (11th Cir. 1985) (holding that the "desire to prevent the use of this trial record in other proceedings is simply not an adequate justification for its sealing").

> records under the common law. Once the presumption of public access attaches under § 107(a), the next step in the inquiry is not to engage in a balancing of the equities, as required by the common law, but rather to determine whether the material at issue falls within a specific exception to the presumption—namely, into one of the § 107(b) categories. Finally, if material does come within one of the statutory exceptions to public access, § 107 requires a court to act at the request of an interested party—and permits a court to act *sua sponte*—to protect the affected party. In short, § 107 speaks directly to the issues regarding disclosure that are addressed by the common law analysis; its framework is not merely a prelude to the common law analysis.

In re Gitto Global Corp., 422 F.3d at 9–10 (emphasis added) (internal citations omitted); *accord Father M. v. Various Tort Claimants* (*In re Roman Catholic Archbishop of Portland in Or.*), 661 F.3d 417, 430–31 (9th Cir. 2011).

Also irrelevant are certain movants' assertions that they "supplied" information in discovery in this case "with the understanding that the information supplied would remain sealed." (*See, e.g.*, Dkt. Nos. 4015, 4025, 4032.) For the reasons cogently explained by Judge Cogburn in the Remand Order, the protective orders governing discovery in this case do not overcome the Public Access Proponents' right of access to the Sealed Evidence. (*See* Ex. B, Remand Order, at 4–8); *see also Johnson v. Corr. Corp. of Am.*, No. 3:12-CV-00246-H, 2014 U.S. Dist. LEXIS 111771, at *7 (W.D. Ky. Aug. 12, 2014) (holding that alleged reliance on a protective order does not outweigh the public's right to access judicial documents). Moreover, the protective and confidentiality orders themselves provided for a means to seek access and, as such, recognized that access might be allowed. (*See, e.g.*, Dkt. Nos. 1225, at ¶ 12(b); 1390, at ¶ 18; 2337, at ¶ 18; 2338, at ¶ 18; 2430, at ¶ 20; 2807, at ¶ 20; 3060, at ¶ 6.) Additionally, as Garlock has explained in other briefing, the confidentiality designations by the producing parties were not appropriate in the first instance because they designated as confidential information and documents that were already public, such as complaints (which typically contain, *inter alia*, full

names, exposure allegations, and asbestos disease type), transcripts, and ballots. (*See* Case No. 3:13-cv-00464-MOC, Dkt. No. 20 (W.D.N.C.).) Finally, a subpoena constitutes a court order that is ignored at one's peril. The notion advanced by certain of the movants that they would not have complied with the subpoenas absent promises of confidentiality is nothing more than posturing, but, even if it were true, such disregard for the Court's authority does not support sealing. And the Protocol Order is itself designed to give movants yet another opportunity to meet their burden of proving that the Sealed Evidence should remain under seal.

Similarly, arguments that there should be "more information about how [*sic*] the context in which this information will be requested or how this information will be used," (*see* Dkt. No. 4033, at 3), are likewise irrelevant under the plain language of 11 U.S.C. § 107(a). *See Father M.*, 661 F.3d at 431 ("Under § 107, the strength of the public's interest in a particular judicial record is irrelevant"); *In re Anthracite Capital Inc.*, 492 B.R. 162, 172, 182–83 (Bankr. S.D.N.Y. 2013) (explaining that the language of Section 107(a) does not contemplate a weighing of factors, and even if it did, any such factors should only be considered after one of the specific statutory exceptions in Section 107(b) has been met) ("Congress has articulated and codified [in Section 107] those public policies that it believes override the public's general right to access court documents, namely confidential commercial information and scandalous material. Congress has mandated through § 107(a) that any papers filed with this Court that do not fall within the stated exceptions of § 107(b) 'are public records and open to examination . . . .' By enacting § 107, Congress has balanced the harms for the bankruptcy courts. Any other public policy concerns that may or may not arise in the context of a motion under § 107 [have] been determined by Congress to be less important than the public's right to access." (internal citation omitted)); (*see also* Ex. B, Remand Order, at 4 (quoting *Nixon v. Warner Commc'ns, Inc.*, 435

U.S. 589, 597 (1978), for the proposition that "American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit")).

Even if the Public Access Proponents' purpose in seeking access to the Sealed Evidence were a permissible inquiry under Section 107 of the Bankruptcy Code, their purpose is indisputably legitimate. Release of the Sealed Evidence is a matter of substantial public importance because, aside from vindicating the right of public access, which is itself a legitimate purpose, the Court in its Estimation Order found that the Sealed Evidence revealed a pattern of "widespread" and "demonstrable misrepresentation" by certain asbestos claimants and their lawyers in pursuit of inflated settlements, and predicted, in reference to the limited discovery the Court permitted for purposes of the Estimation Trial, "that more extensive discovery would show more extensive abuse." (Dkt. No. 3296, at 35, ¶ 66.) One former asbestos plaintiffs' attorney has described the state of affairs identified by this Court, and the present management of the dual system of claims against bankruptcy asbestos trusts and non-bankruptcy tort claims against solvent public companies, as "institutionalized fraud." *See* Thomas M. Wilson, *Institutionalized Fraud in Asbestos Bankruptcy Trusts*, 29-7 MEALEY'S LITIG. REP. ASB. 36 (2014). The informational asymmetries between plaintiffs and defendants in the dual-system of recovery for asbestos plaintiffs has not escaped the notice of the North Carolina General Assembly, which considered legislation to address this problem and noted its concerns about fraud in light of the Estimation Order. *See* Craig Jarvis, *Bill Would Target Asbestos Double-Dipping Claims*, CHARLOTTE OBSERVER (May 24, 2014); Heather Isringhausen Gvillo, *N.C. Bill 648 passes Senate Without Proposed Bankruptcy Transparency Amendment* (June 27, 2014) (explaining that House of Representatives may offer its own transparency amendment and Senate has referred the

transparency amendment for further study in the Senate in the meantime). A retired Delaware judge who presided over that state's asbestos docket for nearly two years has even written a thoughtful article asserting that the Estimation Order should be "required reading" for all judges presiding over asbestos cases. *See* Peggy L. Ableman, *The Garlock Decision Should Be Required Reading for All Trial Court Judges in Asbestos Cases*, 37 AM. J. TRIAL ADVOC. 479, 488 (2014). Accordingly, there can be no doubt that access to the Sealed Evidence is vital to the Public Access Proponents' ability to protect their own legal rights (by allowing them to investigate whether they have been victims of similar misrepresentations and to assert, in any other forum or context, any rights they may have if so), to informing an ongoing and weighty public dialogue, and to addressing serious concerns about the administration of justice in asbestos litigation in the bankruptcy asbestos trust and non-bankruptcy tort contexts. These certainly are not the types of "improper purposes" for which courts deny access under traditional common law and First Amendment analysis, *see, e.g.*, *Appelbaum*, 707 F.3d at 293 (explaining that improper purposes are "promoting public scandals or unfairly gaining a business advantage"), and the same would be true under Section 107 of the Bankruptcy Code if the Public Access Proponents' purpose can be deemed relevant at all (which it is not). While Section 107 of the Bankruptcy Code is completely dispositive of the Public Access Proponents' right of access to the Sealed Evidence, the Public Access Proponents are also entitled to access the Sealed Evidence under the First Amendment and the common law for the reasons explained below.

B. The First Amendment and the Common Law.

To justify denial of access to judicial records that are subject to the Public Access Proponents' First Amendment rights of access, the party seeking to seal must show that sealing is

the most narrowly tailored way to advance a compelling government interest. *See Company Doe*, 749 F.3d at 266 (holding that, under the First Amendment, "access may be restricted only if [sealing] is necessitated by a compelling government interest and the denial of access is narrowly tailored to serve that interest" (internal quotation marks omitted)).

Under the common law, the party seeking to seal must prove "that 'countervailing interests *heavily* outweigh the public interests in access.'" *Company Doe*, 749 F.3d at 266 (emphasis added) (quoting *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988)); *see also In re U.S. for an Order Pursuant to 18 U.S.C. Section 2703(D)* (*United States v. Appelbaum*), 707 F.3d 283, 290 (4th Cir. 2013) (noting that the common law affords a presumptive right to all "documents filed with the court [that] play a role in the adjudicative process, or adjudicate substantive rights"). In addition, the "'countervailing interest'" identified must be "'significant.'" *Appelbaum*, 707 F.3d at 293 (quoting *Under Seal v. Under Seal*, 326 F.3d 479, 486 (4th Cir. 2003)).

In light of these high standards and the compelling interest in public access to the workings of the judicial branch, the Fourth Circuit has repeatedly, and recently, "cautioned district courts that the right of public access, whether arising under the First Amendment or the common law, may be abrogated only in unusual circumstances." *Company Doe*, 749 F.3d at 266 (internal quotation marks omitted); *see also In re Gitto*, 422 F.3d at 6 ("'[O]nly the most compelling reasons can justify non-disclosure of judicial records.'" (quoting *FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 410 (1st Cir. 1987))).

Certain movants suggest that the First Amendment applies only to proceedings that involve the dispositive liquidation of an individual asbestos claim at trial or on summary judgment. (*See* Dkt. Nos. 4042, at 10–11; 4049, at 5; 4052, at 23.) This is an incorrect

interpretation of case law within the Fourth Circuit. In the Fourth Circuit, a proceeding need not be "dispositive" in order for the First Amendment public access rights to apply; rather, the First Amendment applies to proceedings that adjudicate substantive rights or that serve as a substitute for trial. *See Rushford*, 846 F.2d at 252 (holding that the First Amendment attaches to documents submitted as evidence in civil proceedings that adjudicate substantive rights or serve as a substitute for trial). The Fourth Circuit has held that the First Amendment is inapplicable to documents attached to a motion to dismiss because, in deciding such a motion, lower courts are not permitted to consider any materials outside of the pleadings, and extraneous documents attached to a motion to dismiss, therefore, necessarily do not play any role in the adjudicative process at that stage—not because an order on a motion to dismiss is not always "dispositive" or immediately appealable (which, of course, it would be if, by granting it, the court completely disposes of the litigation). *See, e.g.*, *In re Policy Mgmt. Sys. Corp.*, No. 94-2254, 1995 U.S. App. LEXIS 25900, at *9–11 (4th Cir. Sept. 13, 1995).[7] The First Amendment is applicable to the Sealed Evidence because the Estimation Trial served as a substitute for trial of the mesothelioma claims against Garlock and established (through findings and conclusions made on the basis of a voluminous evidentiary record) the substantive rights of asbestos creditors on an aggregate basis for purposes of plan solicitation and confirmation. (*See* Dkt. No. 3296, Estimation Order, at ¶ 3 (explaining that the Court held the Estimation Trial for the purpose of determining an "estimate

[7] Certain movants cite *Va. Dep't of State Police v. Washington Post*, 386 F.3d 567, 580 (4th Cir. 2004), for the proposition that, in the Fourth Circuit, the First Amendment does not apply to documents filed in connection with a non-dispositive civil pre-trial motion. (*See, e.g.*, Dkt. No. 4049, at 5.) However, the Fourth Circuit in *Virginia Department of State Police* expressly declined to decide the issue of whether the First Amendment applied to such a motion (there, the document at issue was a transcript of a hearing concerning discovery issues), as the party in favor of secrecy did not offer any reason for sealing and thus failed to meet its burden of proof under both the First Amendment and the common law. *Va. Dep't of State Police*, 386 F.3d at 580. As explained above, the dispositive versus non-dispositive dichotomy is an erroneous characterization of the standard for First Amendment applicability in the Fourth Circuit, and, in any event, the pre-trial discovery hearing at issue in *Virginia Department of State Police* is a far cry from the Estimation Trial, which was a multi-week trial involving a voluminous trial record assembled after years of pre-trial discovery and litigation in this bankruptcy case.

[of] the aggregate amount of Garlock's asbestos liability for the purpose of formulating a plan of reorganization" in lieu of "a determination of claims in an individual allowance proceeding").)

Furthermore, the Fourth Circuit made clear in *Appelbaum* that "judicial documents" subject to the public's common law right of access include documents that are filed in a case and are "relevant to the performance of the judicial function and useful in the judicial process." *See Appelbaum*, 707 F.3d at 291 (adopting and quoting, *inter alia*, *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995)). Certainly the evidence and testimony from the Estimation Trial are relevant to this Court's judicial function as the fact-finder at the Estimation Trial, and the Sealed Evidence therefore also constitutes judicial documents and records for purposes of the common law right of access.

IV. Belluck & Fox LLP Fails to Satisfy Its Burden of Proving That Names of Adult Asbestos Claimants Should Be Redacted from the Sealed Evidence Before It Is Released to the Public.

In *Company Doe*, the Fourth Circuit explained that "[t]he Federal Rules of Civil Procedure require that the identities of the parties to a case be disclosed," and that a party may litigate anonymously only in "exceptional circumstances" because "[p]seudonymous litigation undermines the public's right of access to judicial proceedings. The public has an interest in knowing the names of the litigants." *Company Doe*, 749 F.3d at 273 (citing Fed. R. Civ. P. 10(a), *Coe v. Cook County*, 162 F.3d 491, 498 (7th Cir. 1998), and *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993)). The Fourth Circuit therefore held that "when a party seeks to litigate under a pseudonym, a district court has an independent obligation to ensure that extraordinary circumstances support such a request by balancing the party's stated interest in anonymity against the public's interest in openness and any prejudice that anonymity would pose to the opposing party." *Id.* at 274. The Fourth Circuit in *James v. Jacobson* described several examples where anonymity has been allowed, including where it is necessary to protect the attorney-client

privilege, to protect minor plaintiffs with unpopular personal beliefs from violence, to protect a pregnant 19-year old alleging that she was fraudulently induced to enter a girls' home, or to protect the identity of a litigant asserting sexual orientation discrimination claims against an insurance company, and where it has not been allowed, including to protect against mere economic retaliation or personal embarrassment. *See James*, 6 F.3d at 238–39. In the specific context of bankruptcy proceedings, courts have applied a similar analysis and held that creditors may not participate anonymously in a bankruptcy case in light of the First Amendment right of access to open judicial proceedings. *See San Antonio Express-News v. Blackwell* (*In re Blackwell*), 263 B.R. 505, 508–510 (W.D. Tex. 2000).

Belluck & Fox LLP asserts that the names of its adult asbestos claimant clients should be sealed.[8] As shown below, Belluck & Fox LLP has not established that extraordinary circumstances support its request for anonymity, and has also been unable to cite a single case or instance in which adult asbestos plaintiffs have been permitted to litigate anonymously or in which the names of adult asbestos plaintiffs have been ordered to be redacted or otherwise withheld from the public. This is unsurprising given that there is absolutely nothing inherently confidential about the names of adult asbestos claimants, and, upon information and belief, the adult asbestos claimants whose names appear in the Sealed Evidence have already made their identities public by asserting claims against one or more of the Debtors in the past (and they are all purported creditors of Garlock who presumably will assert claims against these bankruptcy estates and whose lawyers have actively participated in this bankruptcy case).

[8] The Claimant Firms, as such term is defined in the Appendix, state that they seek only the redaction of minor names (*see* Dkt. No. 4052, at 2), and yet also inconsistently state that they seek the use of pseudonyms for all asbestos claimants solely in order to "de-link" an asbestos claimant from "any and all settlement amounts received" (*id.*, at 26–27, ¶¶ 69–73). The use of pseudonyms should be denied for the reasons discussed in this Part IV with respect to Belluck & Fox LLP's similar request for anonymity and also because, as set forth in Part V below, no movant has met its burden of rebutting the public's presumptive right of access to any settlement information that may appear in the Sealed Evidence.

For example, Garlock's Schedules of Assets and Liabilities and Statement of Financial Affairs contain approximately *thirty-six hundred (3,600) pages* of asbestos creditors' full names based on the claims that existed as of the petition date. (*See* Dkt. Nos. 250, 256.) Furthermore, the full names of all asbestos claimants subject to the Questionnaires (who were required to answer the Questionnaires precisely because they had already filed suit against the Debtors, and publicly disclosed their identities, in state or federal court) have been repeatedly publicly disclosed on the docket in this case. (*See* Dkt. Nos. 1415, 2337 at Ex. B.) Likewise, upon information and belief, any adult claimant names identified in the Trust Claims are included because they were all claimants who settled with Garlock between 1999 and 2010, and the adult claimant names reflected in documents produced by various plaintiffs' firms are included because they either settled with or obtained verdicts against Garlock. Finally, several of the Motions to Seal even disclose the names of asbestos claimants, (*see* Dkt. Nos. 4015, 4025, 4032, 4033), and asbestos claimants (certain of whom are represented by the very same law firms among those who filed Motions to Seal) disclose not only their full names, last four (4) digits of SSNs, and addresses, but also unredacted copies of settlement agreements (including settlement amounts), asbestos disease type, and pathology reports, in their proofs of claim (*see, e.g.*, Proof of Claim Nos. 459-1, 1314-1, 1375-1, 1380-1, 1456-1, 1457-1).

Asbestos claimants' names, like those of virtually all adult litigants, are routinely disclosed in filings made in non-bankruptcy litigation. A review of the docket in the asbestos MDL pending in the Eastern District of Pennsylvania reveals innumerable filings by that court and the parties in those cases that publicly disclose the full names of asbestos claimants. *See, e.g.*, Case No. 02:01-MD-875 (E.D. Pa.), Dkt. No. 4725-1 (list filed by Goldberg, Persky & White, P.C. disclosing 317 asbestos plaintiffs' full names). In fact, that court provides an Excel

spreadsheet containing the names of asbestos claimants on the court's website devoted to the asbestos MDL. *See https://www.paed.uscourts.gov/mdl875m.asp* (spreadsheet dated 11/06/2013 available in the "Updates" portion of the Maritime Docket Case Info tab) (last visited September 25, 2014).

The names of adult asbestos claimants are also routinely disclosed when it serves their lawyers' interest. For instance, Belluck & Fox LLP publishes the names, disease type, *and physical images* of their asbestos claimant clients on its website as a marketing tool. *See http://www.belluckfox.com/about-us/media-center/* (last visited September 25, 2014) (advertising Belluck's "Mesothelioma Patient Thomas Burnett," "Mesothelioma Patient James Cobb," "Mesothelioma Patient James Desalvo," "Mesothelioma Patient Lawrence Potter," "Mesothelioma Patient Irving Raymond (#2)," and "Mesothelioma Patient Rodney Thaut"). The "news" section of Waters & Kraus LLP's website similarly contains numerous press releases disclosing the full names of asbestos plaintiffs, among other information. *See http://www.waterskraus.com/index.aspx?id=newsarchive* (last visited September 25, 2014). In light of these marketing efforts in which their clients' names (many of whom are elderly and infirm) and their recoveries are used for their lawyers' benefit, Belluck & Fox LLP's conclusory allegation that its unidentified clients would be at "risk of identity theft" if its clients' names are disclosed (*see* Dkt. No. 4049, at 8–9, 9 n.5) is not only insufficient under Section 107(c) (which requires an evidentiary showing that disclosure itself would "create *undue* risk of identity theft or other unlawful injury to the individual or the individual's property"),[9] it is also entirely

[9] Likewise, the Claimant Firms' conclusory allegations that some of their clients are "generally older" or that they "lack [] sophistication," (*see* Dkt. No. 4052, at 28, ¶¶ 80, 83), are plainly insufficient to warrant wholesale sealing of the names of all adult asbestos claimants under Section 107(c). *See, e.g.*, *Ferm v. United States Trustee* (*In re Crawford*), 194 F.3d 954, 960 (9th Cir. 1999) (explaining that disclosure is not necessarily causally related to identity theft because that requires the two additional elements of "(1) an identity thief and (2) a vulnerable account," and explaining that "the speculative possibility of identity theft is not enough to trump the importance of the governmental interests behind[, *inter alia*] § 107").

disingenuous.

The public has an interest in the disclosure of the names of adult asbestos claimants as set forth in the Sealed Evidence because only by matching the names of claimants who asserted claims against Garlock to claimants who asserted claims in other forums against other sources was the Court able to discern the widespread misrepresentations that it discusses at length in the Estimation Order. In other words, the names themselves are at the very heart of the issues addressed in the Estimation Order. Unsealing of the names is critical to the public's ability to understand and monitor the work of the Court as set out in the Estimation Order, and, as the Court itself suggested in the Estimation Order, it may well reveal a much larger pattern of misrepresentations in courts all over the country, perhaps on the scale of those uncovered by Judge Janice Jack in the silica mass tort litigation (which, like this case, were exposed by, *inter alia*, comparing the names of silica claimants to the names of individuals who also filed claims against asbestos trusts in light of the fact that "a golfer is more likely to hit a hole-in-one than an occupational medicine specialist is to find a single case of both silicosis and asbestosis"). *See In re Silica Prods. Liability Litigation*, 398 F. Supp. 2d 563, 603 (S.D. Tex. 2005).

For all of these reasons, Belluck & Fox LLP has not met, and cannot meet, its burden of proving that extraordinary circumstances exist to support its request for anonymity here.

V. Fed. R. Evid. 408 and State Law Analogues Do Not Provide a Basis to Deny Access to Any Portion of the Questionnaires or the Trust Claims, or to Deny Access to Settlement Amounts Wherever Else They May Appear in the Sealed Evidence.

As a threshold matter, wholesale sealing of the Questionnaires and Trust Claims (or any other document or transcript included in the Sealed Evidence) on the basis that they may contain settlement information alleged to be inadmissible under Rule 408 of the Federal Rules of Evidence, as is requested by certain of the movants (*see, e.g.*, Dkt. Nos. 4025, at 1, 5; 4033, at 3), is not appropriate. *See Appelbaum*, 707 F.3d at 294 ("[I]n determining whether to seal judicial

records, a judicial officer '"must consider alternatives to sealing the documents' which may include giving the public access to some of the documents or releasing a redacted version of the documents that are the subject of the government's motion to seal." (quoting *Media Gen. Operations, Inc. v. Buchanan*, 417 F.3d 424, 429 (4th Cir. 2005))); (*see also* Ex. B, Remand Order at 6, 9); 11 U.S.C. § 107(b), (c) (providing only that a court may "protect" information to the extent it qualifies under one of the exceptions to the broad right of public access); *see also Anthracite*, 492 B.R. at 180 (holding that Section 107 does not mandate wholesale sealing of documents); *In re Oldco M Corp.*, 466 B.R. 234, 237 (Bankr. S.D.N.Y. 2012) ("But rather than wholesale sealing of documents containing some confidential information, redacting the document to remove only confidential information is the preferred form of protection.").

Furthermore, Rule 408 simply is not applicable at all to the Questionnaires, the Trust Claims, or to settlement amounts wherever else they may appear in the Sealed Evidence, because the Sealed Evidence obviously was already discovered and admitted at the Estimation Trial, and Rule 408 is a "rule of evidence, which has no relevance to the issue of non-disclosure of court records." *Trowbridge v. Law Offices of Mark S. Stewart & Assocs., P.C.*, No. 4:06-CV-221-A, 2006 U.S. Dist. LEXIS 92343, at *21 n.8, 23–24 (N.D. Tex. Dec. 21, 2006) (holding that settlement agreement filed in a case is subject to public right of access notwithstanding Rule 408 and explaining that "[t]here is a particularly compelling reason for a public disclosure in the instant action. The complaint by which this action was instituted discloses that an officer of this court, who is licensed to practice law by the State of Texas, has engaged in conduct that, if the allegations are accepted as true, probably is criminal, and certainly is unethical. The allegations of the Trustee's plea in intervention, if true, disclose that [an attorney] engaged in dishonest, if not criminal, conduct related to his bankruptcy case. The public has a vital interest in having

complete knowledge of the handling, and basis for disposition, of a case such as this.").

To the contrary, numerous courts across the country have held that the public has a right of access to settlement documents that, like the Sealed Evidence, become judicial records. *See Colony Ins. Co. v. Burke*, 698 F.3d 1222, 1241 (10th Cir. 2012) (denying motion to seal and granting public access to documents containing terms of confidential settlement agreements and holding that party seeking sealing did not meet its burden of overcoming the presumption of public access where "[t]he parties' only stated reason for filing these documents under seal is that they involve the terms of confidential settlement agreements and/or they were filed under seal in the district court[, . . .] particularly in light of the centrality of these documents to the adjudication of this case").

Movants' assertion that there is "a strong public policy, on both the national and state level, in favor of encouraging settlements," (*see, e.g.*, Dkt. No. 4015, at 4–5), is an insufficient basis on which to deny public access to settlement documents that become judicial records. *See Bank of Am. Nat'l Trust & Sav. Ass'n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 343 (3d Cir. 1986) (holding that "[o]nce a settlement is filed in the district court, it becomes a judicial record, and subject to the access accorded such records" and explaining that "[i]n the name of encouraging settlements, [the dissent] would have us countenance what are essentially secret judicial proceedings. We cannot permit the expediency of the moment to overturn centuries of tradition of open access to court documents and orders."); *see also id.* at 346 ("Even if we were to assume that some settlements would not be effectuated if their confidentiality was not assured, the generalized interest in encouraging settlements does not rise to the level of interests that we have recognized may outweigh the public's common law right of access."); *Miles v. Ruby Tuesday, Inc.*, 799 F. Supp. 2d 618, 624 (E.D. Va. 2011) ("It is true, of course, that [p]ublic

policy . . . favors private settlement of disputes. But to argue that the benefits of sealing a settlement outweigh the public's interest in open access could allow the exception to swallow the rule. To seal a settlement because the parties deem privacy material to their agreement could easily convert the exception to the commonplace, as all settlements would then be sealed if any party insisted on it as a condition of settlement." (citations and quotation marks omitted)); *White v. Bonner*, 2010 U.S. Dist. LEXIS 118038, at *3–4 (E.D.N.C. Nov. 4, 2010) ("Essentially, [movants] argued that sealing is appropriate because the [settlement agreement] contains confidentiality provisions. That reason, standing alone, routinely has been rejected by courts within the Fourth Circuit as a basis for sealing." (citing *Calderon v. SG of Raleigh*, No. 5:09-CV-00218-BR, 2010 U.S. Dist. LEXIS 49166, at *2 (E.D.N.C. May 18, 2010))). A desire to preserve bargaining leverage in future settlement negotiations has been similarly rejected as an insufficient basis on which to seal settlement information once it becomes a judicial record. *See, e.g.*, *In re Oldco M Corp.*, 466 B.R. 234, 238 (Bankr. S.D.N.Y. 2012); *In re Quigley Co.*, 437 B.R. 102, 153–54 (Bankr. S.D.N.Y. 2010).

Moreover, and notwithstanding the misleading citation of case law in certain of the Motions to Seal,[10] multiple courts all over the country have held that trust claims and supporting factual information are indeed discoverable,[11] and many jurisdictions have even promulgated

[10] HendlerLaw, Madeksho, R&C, and the Claimant Firms each cite *Allison v. Goodyear Tire & Rubber Co.*, MDL 875 EDPA Civil No. 07-69104, 2010 U.S. Dist. LEXIS 85917 (E.D. Pa. Aug. 19, 2010) (Hey, J.) for the proposition that bankruptcy trust information is not subject to discovery even if the settlement documents indicate statements of exposure because it would violate Rule 408. (*See* Dkt. Nos. 4015, at 5; 4025, at 2–3; 4032, at 2; 4052, at 18.) Each of these movants fails to inform this Court that the Eastern District of Pennsylvania (in an opinion again authored by Judge Hey) reversed itself on this point in a matter of mere days. *See Shepard v. Pneumo-Abex, LLC*, MDL 875 EDPA Civil No. 09-91428, 2010 U.S. Dist. LEXIS 90122, at *4–5 (E.D. Pa. Aug. 30, 2010) ("I agree that a claim made to a bankruptcy trust is more analogous to a complaint than an offer of settlement or compromise. Thus, I find that Rule 408 does not bar production of certain information contained in the claim."). In light of the circumstances revealed in the Estimation Order, this failure to brief the Court accurately on case law and to disclose adverse authority is especially disappointing.

[11] *See* Victor E. Schwartz, *A Letter to the Nation's Trial Judges: Asbestos Litigation, Major Progress Made over the Past Decade and Hurdles You Can Vault in the Next*, 36 Am. J. Trial Advoc. 1, 17–18, 18 n.86 (2012)

case management orders that expressly require the disclosure of bankruptcy-related information, including trust claims and payments.[12]

Finally, settlement information is routinely admitted at trial if offered for a permissible purpose under Rule 408. For example, "evidence of offers or agreements of compromise have been admitted to prevent abuse of the general exclusionary rule and its policy of promoting compromises," and "to demonstrate the existence of other parties that may have been responsible for the plaintiff's injury, or to demonstrate the extent of a party's liability . . . ." 1-7 Weinstein's Evidence Manual § 7.05 (footnotes omitted); *see also C & E Servs., Inc. v. Ashland Inc.*, 539 F. Supp. 2d 316, 321 (D.D.C. 2008) (holding that settlement information is admissible to demonstrate "express misrepresentations, half truths, and deceptions" because the information is

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(citing *Shepherd v. Pneumo-Abex, LLC*, MDL No. 875, 2010 WL 3431633 at *1–2 (E.D. Pa. Aug. 30, 2010) (order); *In re Asbestos Prods. Liab. Litig.* (No. VI), MDL 875 (*Lyman v. Union Carbide Corp.*, Civil Action No. 09-62999; *Utterback v. Hexion Specialty Chems., Inc.*, Civil Action No. 09-62944; *Broderick v. Abex Corp.*, Civil Action No. 09-62886; *Smith v. Ford Motor Co.*, Civil Action No. 09-69125; *Getto v. Aircraft Breaking Sys. Corp.*, Civil Action No. 09-65346)) (E.D. Pa. Sept. 18, 2009) (order requiring plaintiffs to produce documentation related to asbestos bankruptcy settlement trusts); *Volkswagen of Am., Inc. v. Superior Court of San Francisco*, 43 Cal. Rptr. 3d 723, 726–27 (Cal. Ct. App. 1st Dist. 2006); *Casper v. Dow Chem. Co.*, No. 49D02-9801-MI-001-295 (Ind. Super. Ct. Marion County Oct. 5, 2005) (order); *Alvey v. 999 Quebec, Inc.*, No. 04CV200183 (Mo. Cir. Ct. Jackson County Mar. 19, 2007) (order); *In re Eighth Judicial Dist. Asbestos Litig.* (*Drabczyk v. Amchem Prods., Inc.*), No. 2005/1583 (N.Y. Sup. Ct. Erie County Jan. 18, 2008) (decision and order); *In re Eighth Judicial Dist. Asbestos Litig.* (*Malcolm v. A.W. Chesterton Co.*), No. 2002-10666 (N.Y. Sup. Ct. Buffalo City Dec. 30,2005); *Miller v. PECO Energy Co.*, No 50-07014451 (Pa. Ct. Com. PI. Phila. County Apr. 16, 2007) (order); *In re Asbestos Litig.*, MDL No. 2004-03964 (Tex. Cir. Ct. Harris County Jan. 16, 2009) (letter ruling); *In re New York City Asbestos Litig.* (*Negrepont v. A.C. & S., Inc.*), No. 120894/01 (N.Y. Sup. Ct. N.Y.C. Dec. 11, 2003) (order at motions hearing); and *In re Personal Injury & Wrongful Death Asbestos Litig.* (*Poole v. A.C. & S., Inc.*), No. 24XO400077 (Md. Cir. Ct. Baltimore City Jan. 6, 2005) (order at motions hearing)).

[12] *See id.* at 18 n.87 and 19–20 n. 91 (citing *In re Asbestos Pers. Injury Litig.*, No. 03-C-9600 (W. Va. Cir. Ct. Kanawha County Mar. 3, 2010) (order amending case management order and addressing claims against bankruptcy trusts); *see also In re Asbestos Litig.*, No. 77C-ASB-2 (Del. Super. Ct. New Castle County Dec. 21, 2007) (Standing Order No. I, ¶ 7(1)); *In re Asbestos Pers. Injury Litig.*, Master File (Ky. Cir. Ct. Jefferson County Mar. 6, 2006); *In re All Asbestos Pers. Injury Cases*, No. 03-31 0422-NP (Mich. Cir. Ct. Wayne County Mar. 27, 2009) (Order No. 16) (case management order requiring mandatory production of bankruptcy claim forms); *In re All Asbestos Cases*, No. CV-073958 (Ohio Ct. Com. Pl. Cuyahoga County May 8, 2007); *Thibeault v. Allis Chalmers Corp. Prod. Liab. Trust.*, No. 07-27545 (Pa. Ct. Com. Pl. Montgomery County Feb. 22, 2010) (order applying to all asbestos cases pending or to be filed in the court); *In re Asbestos Litig.*, No. 0001 (Pa. Ct. Com. Pl. Phila. County Apr. 5, 2010) (order amending master case management order requiring asbestos personal injury plaintiffs to respond to discovery concerning applications or claims to any 524(g) asbestos bankrupt trusts); and *In re Mass. State Court Asbestos Litig.*, Amended Pre-Trial Order No. 9, ¶ XIII(C)(7)(o)(2) (effective June 27, 2012)).

"not being used to establish the validity of the underlying claims extinguished by the [s]ettlement, but rather for the 'other purpose' of establishing . . . misrepresentations upon which plaintiffs allegedly relied"). Indeed, the Fifth Circuit has expressly held that admission of evidence concerning asbestos plaintiffs' prior settlements does not violate Rule 408 where it is offered for the purpose of establishing that the asbestos plaintiffs "had been exposed to the products of the other defendants." *Belton v. Fibreboard Corp.*, 724 F.2d 500, 505 (5th Cir. 1984). So too here—any alleged settlement information in the Questionnaires, the Trust Claims, or elsewhere in the Sealed Evidence was admitted at the Estimation Trial for the purpose of establishing asbestos claimants' other exposures in order to form an accurate estimate of Garlock's liability for mesothelioma claims, which is a permissible purpose under Rule 408.

In short, movants have not meet their burden of demonstrating that any portion of the Questionnaires and the Trust Claims should remain under seal or that settlement information should be redacted from other portions of the Sealed Evidence. Even if the Court were to determine that settlement amounts that are attributable to individual asbestos plaintiffs should be redacted, it would be inappropriate to redact aggregate settlement information or settlement information that is otherwise not attributable to an individual asbestos plaintiff, or any other non-settlement-related information, from the Questionnaires, the Trust Claims, or any other portion of the Sealed Evidence.

VI. Conclusion.

Garlock, the Committee, and the Public Access Proponents all appear to agree on redaction of the following information from the Sealed Evidence:

- The first five (5) digits of an individual's social-security number or taxpayer-identification number;
- The month and day of an individual's birth date;
- The full names of an individual known to be and identified as a

minor, other than their initials;
- All but the last four (4) digits of financial-account numbers; and
- Medical information other than claimed disease (i.e. mesothelioma, asbestosis, etc.).

Subject to those redactions, the Public Access Proponents request immediate access to all of the Sealed Evidence described in Exhibit A to the Protocol Order as the movants have not rebutted the public's right of access under 11 U.S.C. § 107 by demonstrating that these materials satisfy one of the exceptions under Section 107(b) or (c); under the First Amendment by demonstrating that sealing is the most narrowly tailored way to advance a compelling government interest; and under the common law by demonstrating that countervailing interests heavily outweigh the public interests in access.

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Dated: September 25, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on September 25, 2014, (i) via First Class Mail and/or via ECF on those parties entitled to notice under the Protocol Order, including counsel for each of the persons and entities who filed Motions to Seal and the persons and entities listed on the Updated Master Service List at Docket No. 4024; and (ii) via ECF on all other parties entitled to receive electronic notices in this action.

/s/ K. Elizabeth Sieg

Appendix

Chart Summarizing Motions to Seal & Public Access Proponents' Response

Category of Information Proposed to be Sealed	Debtors[1]	Committee & Joinder[2]	Claimant Firms & Joinders[3]	R&C and J&C[4]	Madeksho[5]	HendlerLaw[6]	Belluck[7]	Public Access Proponents' Response
Names of Asbestos Claimants	X (except adults)	X (except adults)	X (except adults)	N/A	N/A	N/A	X	**Do not oppose redaction of names of minors**
Social Security Numbers	X (except last 4 digits)	X (except last 4 digits)	X (except last 4 digits)	N/A (R&C) X (J&C) (except last 4 digits)	N/A	N/A	X	**Do not oppose redaction of first 5 digits of SSNs**
Dates of Birth	X (except year)	X (except year)	X (except year)	N/A	N/A	N/A	X	**Do not oppose redaction of month and day**

[1] This column refers to the Motion to Seal filed by the Debtors (Dkt. No. 4058). As explained in the Opposition, the Public Access Proponents do not oppose the relief sought by the Debtors in their Motion to Seal.

[2] This column refers to the Motion to Seal filed by the Committee (Dkt. No. 4042), and the joinder thereto filed by Waters & Kraus, LLP, Estate of Ronald C. Eddins, Michael L. Armitage, Jeffrey B. Simon, C. Andrew Waters, Peter A. Kraus, Stanley Iola, LLP, and Mark Iola (collectively, "**Waters & Kraus**") on behalf of certain unidentified asbestos claimants referenced therein (Dkt. No. 4045).

[3] This column refers to the Motion to Seal filed by the law firms identified as the "**Claimant Firms**" on behalf of certain unidentified asbestos claimants referenced therein (Dkt. No. 4052), and the joinders thereto filed by Williams Kherkher Hart Boundas, LLP ("**Williams Kherker**") on behalf of certain unidentified asbestos claimants referenced therein (Dkt. No. 4053), Simon Greenstone Panatier Bartlett, PC ("**Simon Greenstone**") on behalf of certain unidentified asbestos claimants referenced therein (Dkt. No. 4055), and the Shein Law Center, Ltd. ("**Shein**") on behalf of certain unidentified asbestos claimants referenced therein (Dkt. No. 4057).

[4] This column refers to the Motion to Seal filed by Roussel & Clement ("**R&C**") on behalf of certain asbestos claimants listed therein (Dkt. No. 4015), and the substantially similar Motion to Seal filed by Jacobs & Crumplar, P.A. ("**J&C"**) on behalf of certain asbestos claimants listed therein (Dkt. No. 4033).

[5] This column refers to the Motion to Seal filed by the Madeksho Law Firm, PLLC ("**Madeksho**") on behalf of certain asbestos claimants listed therein (Dkt. No. 4032).

[6] This column refers to the Motion to Seal filed by HendlerLaw, P.C. ("**HendlerLaw**") on behalf of certain asbestos claimants listed therein (Dkt. No. 4025).

[7] This column refers to the Motion to Seal filed by Belluck & Fox LLP ("**Belluck**") on behalf of certain unidentified asbestos claimants referenced therein (Dkt. No. 4049).

Category of Information Proposed to be Sealed	Debtors	Committee & Joinder	Claimant Firms & Joinders	R&C and J&C	Madeksho	HendlerLaw	Belluck	Public Access Proponents' Response
Financial Account Numbers	X (except last 4 digits)	X (except last 4 digits)	X (except last 4 digits)	N/A	N/A	N/A	X (except last 4 digits)	**Do not oppose redaction of all but last 4 digits**
Medical Information (Except Type of Asbestos Disease)	X	X	X	N/A	N/A	N/A	X	**Do not oppose redaction of all medical information other than type of asbestos disease**
Settlement Amounts	N/A	N/A	X	X	N/A	X	X	**Oppose**
Questionnaires	N/A	N/A	N/A	X	X	X	N/A	**Oppose**
Trust Claims	N/A	N/A	N/A	X	X	N/A	N/A	**Oppose**

60379506

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
(Charlotte Division)

IN RE: 3:13-CV-464-MOC

GARLOCK SEALING TECHNOLOGIES, INC.

Tuesday, July 15, 2014
Charlotte, North Carolina

The above-entitled action came on for a Motions Hearing Proceeding before the HONORABLE MAX O. COGBURN, Jr., United States District Judge, in Courtroom 3, commencing at 1:56 p.m.

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P R O C E E D I N G S

THE COURT: Good afternoon. We've got lots of Garlock stuff here. Everybody's interested. All right. Who's here on the "closing the courtroom" issue? Who all's here on that? If everyone will stand, and up we'll start that.

MS. SIEG: Your Honor, I'll start. This is Beth Sieg of McGuire Woods for Ford Motor Company. With me here, I have Mike Brady of McGuire Woods and Kirk Warner of Smith Anderson.

THE COURT: All right. Glad to have all of you. Anybody else?

MR. CASSADA: Good afternoon, Your Honor. My name is Garland Cassada. I'm with the law firm of Robinson, Bradshaw and Hinson. We represent the debtor, Garlock. I'm accompanied today by Blaine Sanders, Rich Worf and Jonathan Krisko, all of my firm.

THE COURT: Okay. Very good.

MS. JOHNSTON: Good afternoon, Your Honor. Alice Johnston from Olbermayer, Rebmann, Maxwell and Hippel for Volkswagen Group of America and my co-counsel, Teresa Lazzaroni.

MR. DUNCAN: Your Honor, Alan Duncan, along with my partner, Steve Russell, from Van Laningham Duncan. We're here on behalf of Legal Newsline.

MR. DAVIS: Good afternoon, Your Honor. Lee Davis from Winston-Salem, for Honeywell, along with Nava Hazan from New York.

THE COURT: Very good.

MS. HILDEBRAN: Good afternoon, Your Honor. I'm Jodi Hildebran on behalf of Resolute Management Company and AIU Member Company. Joining me today is John Favate who is also appearing for them.

MR. FAVATE: Thank you, Judge.

THE COURT: Okay.

MR. CLODFELTER: Good afternoon, Your Honor. I'm Daniel Clodfelter of Parker, Poe, Adams and Bernstein. With me is Mr. Taylor Stukes of Warren van Allen. Together we represent Coltec Industries, Inc. We are the parent company of the debtor, Garlock.

MR. SWETT: Good afternoon, Your Honor. Trevor Swett, Caplin and Drysdale, for the Official Committee of Asbestos Personal Injury Claimants, along with Tom Moon of Moon, Wright and Houston, Kevin Maclay and Kevin Davis of Caplin and Drysdale, and Richard Wright of Moon, Wright and Houston.

THE COURT: Very good.

MR. GORHAM: Good afternoon, Your Honor. I'm Sam Gorham of Hickory and I represent Mt. McKinley Insurance Company and Everest Reinsurance Company.

THE COURT: We're glad you all are here today.

All right. You may proceed.

MS. SIEG: Thank you, Your Honor. We're here today on -- at least as it relates to the public access appeals. We're here today with essentially three procedural issues that we're asking Your Honor to decide. All of these issues have arisen in several appeals that relate to the public's right of access to the exhibits and testimony that were admitted into evidence in the asbestos Estimation trial conducted in the Garlock bankruptcy case.

THE COURT: Okay. Tell me what they are and tell me what you want me to do, briefly, before you get into any long argument.

MS. SIEG: Your Honor, the first issue before you today is Ford Motor Company's motion to withdraw the reference over public access issues. In that motion, Ford, joined by others who moved for access below, are asking that Your Honor withdraw the reference of jurisdiction from the bankruptcy court and assume original jurisdiction over issues pertaining to public access.

The second issue before Your Honor is, if you decide that you will exercise appellate jurisdiction, as opposed to original jurisdiction, then should you remand

these appeals to the bankruptcy court for further proceedings. Your Honor, the Ford Motor Company and the other movants who requested access oppose remand to the bankruptcy court. And I'll explain in a few minutes why we think it's more expeditious for this court to exercise original jurisdiction.

The third procedural issue you're being asked to decide today really relates to consolidation. And those -- those decisions will be driven by what you decide on whether you withdraw the reference or whether you remand the cases for appeal. Ford Motor Company and the other movants believe that if the appeals proceed in your court, then the motion to withdraw the reference would be decided and taken care of and all of the access appeals should be consolidated into one case number for administrative convenience.

However, we would suggest that since Legal Newsline, the debtors, and all of the movants -- the parties who have requested access as a member of the public -- that those three groups of -- groups of parties should have their own separate briefs because they present different interests.

Your Honor, those are the three main issues that we're asking you to decide today. If it would be helpful, I'm happy to go through a procedural background

and --

THE COURT: No. I think you're entitled to access. I just think I can probably remand it back to the bankruptcy to do it. I'll consider the other, but I think you're entitled to the access.

MS. SIEG: Thank you, Your Honor.

On the remand -- on the remand issue specifically, as you know, Section 28 U.S.C., 157(d) allows Your Honor to withdraw the reference partially. And we would ask that Your Honor, if you do remand it, not only do it with the specific instructions that Garlock has proposed -- and I'll let Mr. Cassada speak to that specifically. But we would ask that the remand be for purposes of a report and recommendation, with Your Honor to issue final decision.

THE COURT: Yeah. It's pretty clear nobody's consenting. So, without that, it looks like we're going to be handling it ultimately. So I will be remanding it with instructions, if that's what I do, and that's probably what I'm going to do is to remand with some instructions.

MS. SIEG: Thank you, Your Honor. I could -- I could go on but I think it's time for me to cede the podium to Mr. Cassada.

THE COURT: That's always the smart thing to do.

When you've won, don't keep arguing.

MS. SIEG: Thank you, Your Honor.

THE COURT: All right. Any other comments on this first matter dealing with access? Yes, sir.

MR. CASSADA: Your Honor, Garland Cassada. As I mentioned earlier, I represent the debtor, Garlock Sealing Technologies. We filed a response opposing the Committee's request with just a simple remand without detailed instructions and without reversal. And we proposed in our paper specific instructions for the Court. If I might approach the Court, I've got a one-page chart that describes each instruction that we propose and it sets forth the basis in the case law for that instruction.

THE COURT: That would be fine. Thank you. I Apologize we're in this -- we have trials going on in the two big courtrooms. We'll end up probably with more people in this courtroom than in the others, but the -- the jury trials get the bigger courtrooms. So everything else is left with this one down here in the courtroom. I don't know how this got to be a courtroom but it is.

MR. CASSADA: Your Honor, thank you. You'll see that we do propose specific, rather detailed instructions. We believe that these instructions are appropriate and, indeed, that they're supported by the

case law. The Committee has suggested that what the Court should do is not to reverse the bankruptcy judge's decision but to simply remand it with general instructions that the Court follow the case law or follow the *Knight Publishing* factors.

Your Honor, we believe that the appropriate thing to do, given the state of the record, is to reverse the bankruptcy court. Because there's no disagreement among the parties that the bankruptcy judge did not follow the *Knight Publishing* factors.

THE COURT: You want him to follow the factors and then seal everything.

MR. CASSADA: I'm sorry?

THE COURT: You want him to follow the factors and then seal it?

MR. CASSADA: No. No.

THE COURT: Okay.

MR. CASSADA: Just to be clear. Your Honor, the debtor's position from the start is that it wanted a trial that was open to the public. We felt that that was in the best interest.

THE COURT: I think you're entitled to that.

MR. CASSADA: And the specific evidence that's drawn the most interest in our case, we specifically objected to sealing that, and we pointed out that that

evidence was not the kind of evidence that courts seal. There is -- I think there's one case that Your Honor might look at that we think is four square with this case and that's a case that's actually cited by the Committee in support of its position that the Court should not reverse and should not give detailed instructions. That's the *Stone* case, *Stone v University of Maryland*.

The federal district court in that case entered a sealing order without following the *Knight Publishing* protocol, and the Fourth Circuit reversed and remanded with specific instructions. So the court reversed precisely because of the failure to follow the *Knight Publishing* factors, and the court provided the specific types of instructions that we're requesting here.

It said on remand that the court must first determine the right of access with respect to each document sealed. Here there might be multiple rights, but we think that the most obvious right is the right that exists under Bankruptcy Code Section 107 which is a very specific provision that says that all documents filed in a bankruptcy case are available to the public unless they fit certain defined exceptions. And we don't believe that the -- any of the documents that are at issue here fit any of those exceptions. Therefore, we believe the public's entitled to it. But there are other

parties that are arguing First Amendment right. And that right, as well, probably applies to many, if not all, of the documents and maybe the common law, but I think we have relied on Bankruptcy Code Section 107.

The specific instructions that we cite -- and they're set forth in the handout -- is that the Court must first give public notice of their requests to seal and a reasonable opportunity to challenge it. The Court must consider less drastic means. And, importantly, if the Court decides to seal documents, it must state the reason for it specifically to, seal supported by specific finding, and reasons for rejecting alternatives to sealing them in order to provide an adequate review of the record. So that's what happened in the *Stone* case.

Now there's another case, *Rushford*, that's been cited in the brief, and that's a case where the court did not reverse but did remand with instructions. The reason it didn't reverse is because the request for public access was not made until the case had been decided and it was on appeal. So, in that case, the court -- a member of the public requested access in the first instance from the Fourth Circuit which remanded to the district court with very specific instructions about how to follow the *Knight Publishing* factors.

THE COURT: We've got some great bankruptcy judges

that can follow the law. It mean, it's not like they have to be -- although wrong on this particular instance, in this court's opinion, the bankruptcy judge involved in this is as good as it gets.

MR. CASSADA: I certainly agree with that, Your Honor. Our bankruptcy judge --

THE COURT: It's one of those situations where -- there a lot of things that a court can do with regard to sending back. The main thing to do is let's get it right. Let's just get it right and then we'll be okay.

MR. CASSADA: Our judge was faced with the untenable situation of having to deal with a continuous line of motions to seal because the Committee and the plaintiff lawyers in this case designated literally everything as confidential and requested sealing for everything. So we could have had -- we could have spent the month that we spent in trial deciding whether they were entitled to seal documents. So I think what the judge did, and the procedure he followed, is understandable. It's just -- unfortunately, it's led to us having to be here today.

THE COURT: Okay. I think that's -- I think you've stated it very well.

MR. CASSADA: Okay. Thank you. Well that's all I have to say. I commend my -- this one-pager to Your

Honor to consider when it considers the instructions.

THE COURT: Yes, sir. Thank you very much.

MR. SWETT: Your Honor, I represent the Committee. I am the adverse party. There seem to be some other line parties who wish to address you first, but I certainly hope that you will reserve judgment on particulars until we have a chance to address you.

THE COURT: Oh, I will. I haven't decided anything on any of the particulars, just that it is -- it is going to go back. Yes, sir.

MR. DUNCAN: Your Honor, my name is Allen Duncan. Again, I represent Legal Newsline. We come to you with, actually, two appeal points. As Your Honor is aware, the first one has to do with our First Amendment concern with respect to the closure of the proceedings on at least eight occasions during the Estimation trial. In that instance, we would request of the Court that it wouldn't just simply be a remand but in fact there's an order in place that closed it. And we would ask that that order be reversed under the First Amendment before there's a remand with instructions that are provided.

With respect to the access -- the second question, the access issues which we've already heard from other parties from -- we would be in the same place as those other parties. We made an access motion. We may have

even made the first access motion with respect to the reasoning for the judge's opinion in that case. And so, again, if that were to be remanded, we would want it to be clear that it's with respect to a reversal of the judge's, sort of, non-decision decision where he was asking this court for guidance, specifically, to help in terms of how to best handle these issues so that it can then be clear in terms of the instructions that the Court would provide that follow.

I took a quick look at the instructions that were passed up an moment ago by Mr. Cassada and would make just two comments about them from the standpoint of Legal Newsline. On the first page of the instructions, on the left-hand side near the bottom, the first bullet point in the last section, it says: "The nature of the public right attaching to the record." And we would ask that specific findings be made with respect to the First Amendment rights in terms of the first appeal. That is, the trial proceeding that would appear, also, to apply with respect to the question about any unsealing of documents or whatever else was required for the Court's reasoning.

And the second on -- on the second page, the second to last box, it says, "The bankruptcy court should disregard protective orders." We would ask -- I think

that's clearly appearing to apply to the access issue that has been argued by Ford and Mr. Cassada. We would ask, also, that there be a reversal or an order to disregard the bankruptcy court's order entered on our first motion which had to do with the opening of the courtroom, the courtroom proceedings and then, of course, that that be followed by the application of the *Knight Publishing* standards and I know the Court's already made reference to that.

So, with respect to our client, for those limited purposes, I think those revisions would be appropriate. And with that, I won't take any more of the Court's time. Thank you, Your Honor.

THE COURT: Thank you.

MR. SWETT: Your Honor, Trevor Swett for the Official Committee of Asbestos Personal Injury Claimants. First, let me explain who we are. We are a statutory committee of creditors consisting of 12 asbestos victims who act in the affairs of the Committee through their tort counsel. They, in turn, represent tens of thousands of persons out there in the world who have asbestos diseases and who have, by the time of the petition date, asserted lawsuits against Garlock for damages resulting from their injuries. It's a large constituency.

It is their interests at stake in the information

that has stirred up so much interest among the solvent defendants who are not in the bankruptcy, such as Ford and Crane and Volkswagen and so forth and their insurers. There are several points I'd like to make to you. First, the debtors acquiesced in a procedure whereby, rather than foregoing the three-week Estimation hearing that had long been scheduled and was due to start on July 22nd of 2013, the date for which they noticed their motion challenging the designation of confidentiality materials wholesale, under no fewer than seven protective orders under which they had induced highly unusual discovery.

Rather than forego the opportunity to go forward with that trial, notwithstanding having made the motion to wholesale strip certain categories of information of their confidentiality designations, the debtors acquiesced. They said, in effect, we'll do it the way you want to do it, Judge -- and I'm looking at a transcript of July 13th, I believe it is, 2013. When we tendered our order -- I'm sorry, July 13. We tendered our order for how to handle confidentiality information at the -- confidential information at the hearing.

And the debtors said -- this is at page 260, lines 13 and following. They filed their motion. "However, we'll certainly defer to the Court, the Court's view of the best way to proceed on this. We want to be sure that

whatever the Court does, it doesn't interfere with our ability to efficiently conduct the trial and put on our case." And, again, at page 265, Mr. Cassada, again speaking for the debtors: "Obviously, we will abide by any order. The Court procedure you suggested seems like it would allow us to move forward in trial in efficient" -- I think it means "in an efficient manner." "That's our number one interest today and over the next three weeks."

The procedure he was referring to was reflected in the confidentiality order entered by the judge for the handling of confidential material and hearing. It basically said if we're going to receive into evidence designated materials, we will seal them. If we are going to expose the contents of confidential information through testimony or exhibits we will, for that brief portion of the hearing, exclude people who have not signed the protective order.

Now, Legal Newsline had been monitoring the case closely and reporting, by their own accounts, on all significant developments in the case. Legal Newsline did not come in to join the argument over that confidentiality order. The debtors did not appeal it. Legal Newsline did not intervene to take an appeal from it. Instead, Legal Newsline showed up in the midst of

trial and moved, in effect, to trump the confidentiality order just made a week before by way of preventing the closing of the courtroom and preventing the sealing of documents. And the judge said no. You-all didn't come in to argue when I was dealing with this last week; we're going to forward with this long scheduled trial. We are not going to disrupt this process.

However, the confidentiality order expressly contemplates that after the hearing there would be an opportunity to administer and resolve sealing -- requests to continue the seal or to remove it, with all parties receiving fair notice. And notice that when Legal Newsline showed up -- when it parachuted in with its motion in the midst of trial, it gave one day's notice by regular mail to the thousands of claimants out there in the world whose information they were trying to pry open.

Now, what about the nature of the information? Judge Hodges explained in his confidentiality -- in his order denying Legal Newsline's motion, in paragraph one -- this is docket number 3,069 in the bankruptcy case. He says, "The matters regarding which the Court has required confidentiality include the circumstances of certain asbestos best plaintiffs' cases, particular" -- I'm sorry -- "plaintiffs' particular exposures and how the law firms identified and analyzed products to which

their clients were exposed, the process by which the law firms were retained by their clients, their referral sources, the extent of their pre-filing investigations, how the law firms responded to discovery, the questions they asked their clients in responding, and how the law firms approached settlement negotiations."

He continues, "Such matters amount to trade secrets, confidential business information and attorney-client privilege information about which the parties involved have significant privacy rights. The Court has concluded that those rights outweigh the public's interest in these matters." Again, that's in the context of here we are ready to go forward with the trial; we will deal with challenges after we receive the evidence.

Now, it's important to note that when he made that ruling the judge didn't have the evidence. He was not in a position to make the specific document-by-document or transcript-by-transcript filings -- findings that he's in a position to make now and that only he is in a position to make now. The Fourth Circuit has been very clear that in this kind of situation you remand to the court of first instance, the one that received the evidence, so that it can make the findings required by law to sustain or withdraw the seal.

Our position in these matters collectively that reference withdrawal and the appeals from the order of July 31, 2013 and the order of April 11, 2014 is that they should go back to the bankruptcy court so that he can make the requisite filings under *Virginia State Police* and the other guidance in the opinions of the Fourth Circuit. We will cooperate in that process. We will have issues.

Our prime issue is notice. We want the people whose information is at stake here to be given a fair opportunity to come in and make their arguments. There is no need to instruct the bankruptcy court, which is used to dealing with large creditor constituencies, on how best to implement notice, on how to structure the briefing process, on the timing of these activities in relation of other important business in the bankruptcy case.

Instead, what should happen is the debtors and the Committee, and other interested persons, should confer over the protocol that the debtors proposed when Legal Newsline came in with its second access motion this spring only to withdraw it without prejudice when they saw what the bankruptcy judge's inclinations were. That protocol would muster up all the positions of all interested persons, put it on a structured basis for

briefing and decision on adequate notice. And that would produce a record that would be appropriate for an appeal, unlike anything you presently have in front of you. So that's what we want.

But we take strong exception to the notion that you have to instruct this bankruptcy judge in the fine particulars of the process that he is to follow. The Fourth Circuit case law is explicit. It tells him he must ascertain the source of the claimed access right in any given circumstance and then make the findings as to what interests are at stake and which ones override. He can do that without being spoon fed.

Now, what Legal Newsline has just asked you to do is to summarily grant their appeal and reverse without briefing of the first appeal or the second appeal. That would clearly be inappropriate. Judge Hodges held, based upon Fourth Circuit precedent, that there was no First Amendment right of access to this Estimation hearing because, in the words of the Fourth Circuit precedent, "it was a nondispositive civil matter." And they have never held, in the words of this opinion, "that such a matter is subject to a First Amendment right of access." And the First Amendment right of access that didn't exist was the sole argument that Legal Newsline made in clamoring to keep the courtroom open and the exhibits

unsealed.

Now in their second appeal, it's from an order denying without consideration of the merits an application they made last spring -- in light of the Estimation order -- to get at the evidence underlying the judge 's opinion. There they did mount other arguments. But if you were to just take their advice and summarily Reverse without briefing, you would be overriding a well-considered, well-founded and precedent decision by the bankruptcy court that this particular matter was not subject to the First Amendment, as he entered into this complicated task of conducting this three-week Estimation by way of providing guidance for the formulation of the plan rather than by way of disposing of the rights of any claimant or stakeholder.

So there is a significant legal issue there that should not be plowed over by an overhasty reaching of merits that haven't been briefed. I couldn't agree with you more that the thing needs to go back in all of its permutations to the bankruptcy court so that it can make the record such that, if we can't resolve these disputes under the orders of the bankruptcy court, that an appeal will come in front of the district court on a proper record where you can make sense of what has gone below but which you're not in a position to do now.

I would like to call on my colleague Kevin Maclay to briefly respond to a couple of aspects of the debtor's proposed instructions to the bankruptcy court.

MR. MACLAY: Thank you, Your Honor. This is Kevin Maclay, also from the Committee of Asbestos Personal Claimants. Your Honor, just to make a couple of points. My colleague Ted Swett has gone through a lot of the important issues here. I think to pick up where he left off with respect to the first Legal Newsline appeal. As he mentioned, you couldn't reverse without at least implicitly holding that the First Amendment applied, which is a substantive issue that hasn't been briefed to Your Honor yet. And we would argue that that, in fact, would be a mistake and that the First Amendment doesn't apply. But I think almost -- if not everyone in this courtroom, Your Honor agrees that remand is appropriate for a variety of reasons; it just shouldn't be with respect to the first Legal Newsline appeal or reversal.

With respect to the second set of access motions. I haven't heard any argument today that those motions were on the merits. The Court was quite clear below that when he denied that second raft of access motions he was doing so without being on the merits. And I think everyone agrees that that was inappropriate under *Knight Publishing*. So the issue then comes to Your Honor, what

should happen when you remand it? And with respect to that, a key thing to recognize is, given that the Court wasn't ruling on the merits of the second raft, the motions for access, the merits of those motions are not before Your Honor and that it would be a mistake to then go on to address those merits with respect to the remand.

And the cases that we've cited in our brief to Your Honor include *Singleton v Wolf* that make clear that you shouldn't go beyond a procedural issue on appeal to address the merits. And, of course, among the other cases, *Barlow v Colgate-Palmolive Co.* -- and Your Honor was, of course, on that panel -- which refused to go into the merits, as opposed to the procedural correctness of the lower court's order.

The court procedurally didn't go through the appropriate process and it did not address the motions on their merits. But because it didn't address those motions on their merits, those merits are not ripe for appeal. And any remand with instructions, as my colleague mentioned, should be limited to following the appropriate process below and not a ruling on the merits which aren't really up on appeal.

And finally, Your Honor, another reason why it's important that the debtors' proposed instructions not be given as they have proposed them today to Your Honor and

to others is the importance of third party reliance interests. It's not just important because those third parties have due process rights. It's also important because the record for the lower court, and if it comes back before Your Honor or another district court judge, will be incomplete without those third party views with respect to their own documents. And we've cited to Your Honor a number of cases, including *Longman* and *Zenith* which refused to unseal documents because reliant third party's interests were not, in fact, part of the record, and so the unsealing was denied.

And in the recent case of *Doe v Public Citizen,* Your Honor, also makes clear that the privacy rights of third parties can impede even First Amendment rights of access. And so I would ask Your Honor to be careful when remanding not to prevent the bankruptcy court from including the views of the record evidence of third parties to that we can have a complete record if in fact this proceeding continues and doesn't get resolved below, which we would hope it would pursuant to protocol. Thank you, Your Honor.

THE COURT: Thank you. Response.

MS. SIEG: Thank you, Your Honor. I would like to respond to just a few points. One of the more significant admissions I think we heard from Mr. Swett

today was that he represents creditors of Garlock. That has been surprisingly disputed by the Committee earlier in the bankruptcy case. So I was glad to hear that we're fighting about who are the creditors in Garlock's bankruptcy case.

Mr. Cassada will respond in more detail about the Committee's argument that the debtor acquiesced in protective orders. I think you've heard a little bit of misrepresentation about what those orders provide. They both preserved Garlock's ability to object.

THE COURT: Maybe it was just a misunderstanding about it.

MS. SIEG: A misunderstanding.

THE COURT: It was just a misunderstanding, rather than a misrepresentation --

MS. SIEG: We have different views of the terms of those orders.

THE COURT: -- I think that's probably better.

MS. SIEG: Those orders contain provisions that permit Garlock to object to the designation of certain documents produced as "confidential." Garlock did that. Those orders also protected -- those protective orders also provided that documents produced in discovery could be filed under seal if permissible by the Court. So the orders embody the notion that a sealing -- a separate

sealing determination will be made at a later date, and no party has ever filed a motion to seal.

Your Honor, under Fourth Circuit case law the instruction to the bankruptcy court to disregard protective orders as irrelevant is appropriate. The point is those protective orders are not dispositive of the separate seal in question. So if there's a need to wordsmith that instruction to provide the protective orders aren't dispositive, they aren't controlling and they don't determine the outcome on the sealing issue, that's the point of that instruction and it's entirely appropriate under Fourth Circuit law.

The other major point that you have heard the Committee suggest today is that it's Ford and others' burden to provide notice to Garlock creditors of their motion to unseal. Your Honor, this is a reversal of the burdens under the Fourth Circuit precedent. The burden is on the party who wants to restrict access to come in and file a motion to -- a motion to seal and then parties who want access to object. That's how the case law is set up.

The practical way to accomplish this is for Your Honor to enter an order that contains the remand instructions Garlock has proposed and require the Committee to provide notice of that order on its

constituency. The Committee is the one who knows who these people are. Certainly, Ford doesn't have the burden to provide unknown individuals with notice. I think that can be easily accomplished by asking the Committee or even the debtors who know who these people are to provide them a copy of Your Honor's order that requires them to file a motion to seal within a certain number of days.

Your Honor, here the Committee has suggested that you would be micromanaging if Your Honor were to go ahead and enter the remand instructions that Garlock has proposed. And here, the bankruptcy court was quite open. It asked for guidance. It said it would be helpful if this court would provide it some guidance, and we think it's entirely appropriate.

I think the Committee has suggested that the parties should know that Your Honor has decided these cases should go back and we should then have a conferral process on what the protocol would be in the bankruptcy court. Your Honor, that issue is fully briefed and ready for a decision by Your Honor today. The remand instructions were included in Garlock's response. The Committee has objected to them, both in writing and today, and we would ask that Your Honor make a specific decision about each of the instructions that we've asked

for, because it would just invite further delay if these parties who are clearly adverse to each other are asked to try to work out an agreement on what Fourth Circuit case law requires. I think that would be a fruitless waste of time.

Your Honor, *Company Doe* speaks to so many issues that are presented in this case and one of them is that the Fourth Circuit requires Your Honor to act in the most expeditious way possible. That way forward is by providing specific instructions so there's no question about what the Fourth Circuit requires. Let's get that issue decided today and provide clarity to all parties.

The Committee also suggests that the merits of Ford's request -- Ford and others -- everyone's request for access has not been decided on the merits, and yet the Fourth Circuit in *Company Doe* recognized that denial of a right of access, even passively -- even a passive judicial act that keeps documents under seal -- is a denial of that right after access. And so today, as we sit here, Ford has been denied access to this evidence.

We ask that Your Honor include the remand instructions that Garlock has proposed, and we also ask that the remand be for purposes of reporting recommendation with Your Honor to enter the final order. Thank you.

MR. SWETT: In rebuttal, let me start with the last point. When she says she wants the findings below to be by way of recommendation, she is suggesting implicitly that you withdraw the reference. Remember what the request on this second round of access motions this spring was: Judge, tell us what evidence you relied on in rendering your Estimation decision and give us that evidence. Now she's asking that you tell Judge Hodges what evidence he relied on to make his decision and give them the evidence. That is completely inappropriate.

It is also contrary to the consistent Fourth Circuit precedent, when remanding, to insist that the trial court, the court of first instance -- in this instance, the bankruptcy court that received the evidence -- be the one to make the findings. It's the one that's familiar with the evidence. Here all the more so since the evidence they want is the evidence that he supposedly looked at when he made his decision. This record is vast. There are more than 4,000 exhibits. There are something like 4,000 pages of transcript which he has suggested is simply not practical or fair to the bankruptcy court.

When I said the debtor acquiesced, I wasn't talk about his stipulation to the protective order. I was talking about its acquiescence in the confidentiality

order that said, okay. To implement the protective orders here's how we're going to handle the confidentiality -- the confidential information in the three-week trial we are now today embarking on. That's very different.

Ms. Sieg misunderstood me. The instruction to disregard protective orders. What could be more overbearing? We have cited you to case law that says that a party like Garlock that induces discovery by stipulating to a protective order bargains away its right of access. There is no need for the debtors to be acting here in the public interest. You've got other members of the public here. But that distinction, what rights does the debtor have versus what rights do these other -- what I call strangers to the bankruptcy case have -- is an important one in the disposition of specific requests to seal or unseal, and it would be a mistake to gloss over that or to plow it under by way of unnecessary heavy-handed instructions to the bankruptcy court. The only instructions he needs are citation to the governing cases and an instruction to implement a process for fulfilling their mandate. Thank you, Judge.

THE COURT: Thank you.

MR. CASSADA: Your Honor.

THE COURT: Briefly --

MR. CASSADA: Yeah.

THE COURT: -- because I'm going back and forth. Go ahead.

MR. CASSADA: Actually, I have no further comment then.

THE COURT: Oh, good. Thank you. That's excellent. That's excellent. I wish everyone did that. Let's hear from the news folks. They've parachuted in at least once. The second one may have been a ground invasion but the first time was a parachute landing.

(Laughter.)

MR. DUNCAN: We got stuck on the roof, Your Honor. Somehow we didn't make it in.

A couple of points for clarification. I think I heard the Committee say that Legal Newsline either withdrew its motion or withdrew its appeal with respect to the second access motion. Just for clarity, we did not withdraw either the motion or the appeal on the second access motion. I'm not sure that's what was intended.

MR. SWETT: No, sir, that's not what I said.

MR. DUNCAN: That's what I heard but I wanted to make sure there was clarity on that point.

As part of the argument, it was made clear that the Committee said that the bankruptcy court ruled that

the First Amendment did not apply in that proceeding. I'm not sure I saw a clear ruling that the First Amendment did not apply. But, in any event, we would be entitled to such a ruling would be the point. That's what we moved under. We would be entitled to such a ruling, and that's what we would ask this court to do it.

I would agree -- and I had not addressed the consolidation on briefing motion because that's not really what we've been talking about then. I would agree that we have not fully briefed that point, but I would also have to observe that that point's been fully briefed in connection with a number of other points that have been made by the parties. We will be glad to brief that point. But we would say to the Court we would want to do so in an expedited basis because we are concerned that this matter move forward quickly and promptly.

We believe that we have been entitled to, depending upon what the Court rules, obviously, that we have been entitled to access for a significant period of time. And if we need to take that appeal further on an expedited briefing, with respect to the First Amendment, we would suggest that that should not change the instructions that would go back with respect to the general access motions that are also pending by Legal Newsline and by several other parties so that could move

forward. The cleanest thing, of course, is to make the determination that it's a First Amendment right with respect to giving the Court the standard with which it is now working back on the remand from this court which we believe to be the case.

And so I leave it in the Court's judgment that we are glad to do whatever the Court believes we should do in order to give clarity to that issue and for it to go back with clarity with the notion behind it that we're very interested, as I believe all the other parties seeking the information are extremely interested, in getting access to the information as soon as they can. In our case, this goes back a year now when our reporter was seeking to be able to be present during the course of the trial proceeding. So those would be the primary points I'd want to make.

The last one I would say is this *Rushford* case is also one which plays some role here in that the district court -- or in this case the bankruptcy court -- is not in a position to merely allow continue effective of pre-trial discovery motion. When you get into an open trial proceeding a different set of standards apply, and that's where *Knight Publishing* comes in. I think it's important that that distinction not get blurred, and I sense there's been some sense to blur that in some senses

in terms of this discussion. I think it's important that we not do that from a First Amendment standpoint and, really, from any access point. Those would be the quick points, Your Honor. Thank you.

THE COURT: Thank you.

MR. CLODFELTER: Your Honor.

THE COURT: Yes, sir.

MR. CLODFELTER: I have one brief procedural housekeeping matter. And if I may address the Court from here, I hope?

THE COURT: You may.

MR. CLODFELTER: Coltec was a party to and direct participant in the Estimation trial. And we have filed -- on the access motion before you today we have filed a motion to intervene in those proceedings. If the Court determines to reverse or vacate the orders below and to remand the post-trial motions for access, Your Honor, our motion's moot and does not need to be decided today. We could come back as a direct party and direct participant before Judge Hodges and can argue the matter there.

We are not an appellant because, as the parties have pointed out, the Court, Judge Hodges, decided those post-trial access motions before the deadline for our responsive brief was due and before the noticed hearing date at which we could have argued the matter. So the

matter was decided before we even had a chance at bat, but we'll have that if you reverse and remand for decision the first instance by Judge Hodges.

I would say, though, that if the Court withdraws the reference and remands for purposes of a recommended set of findings on the order, then, technically, the motions are still before you and we would at that point then meet our motion to intervene before you to be heard and decided so that there's no question about our right to participate in the proceeding before Judge Hodges and then gently before you.

I don't think that matter really needs to be decided today, but we would say the difference between whether it's reversed or vacated and remanded and whether or not you retain the reference here and reverse for recommended findings and the recommended order, that may, then, call into play the motion to intervene by Coltec.

THE COURT: All right. Thank you very much.

MR. SWETT: We would welcome Coltec's participation if you remand and, thus, restore Subject Matter Jurisdiction to the bankruptcy judge.

THE COURT: Thank you very much.

MR. CLODFELTER: This is one of the unique occasions in the four-year history of this case in which I find myself in agreement with the Committee.

THE COURT: I'm glad you all are getting along so well.

All right. Let's move on to the other motions here.

MS. HIGGINS: Your Honor, I'm Sally Higgins. I'm with the firm of Higgins and Owens here in Charlotte. I would like to introduce my co-counsel, the other lawyers for the four adversary proceedings. And if I may, before I do that, just mention to the Court that I am supposed to be on a plane to Ireland a little bit later today. So if the clock ticks, I may slip out.

THE COURT: This will not take long, based upon my participation.

MS. HIGGINS: Thank you, Your Honor. I'd like to introduce Jim Sottile. He is counsel for the Belluck and Fox defendants.

This is Mike Magner from New Orleans --

MR. MAGNER: Hello, Judge.

MS. HIGGINS: -- and he is counsel for the Simon Greenstone defendants.

This is Dan Brier from Scranton, Pennsylvania. He is counsel the Shein Law Center and those defendants.

In the back is counsel for the Waters and Kraus firm and defendants.

THE COURT: Maybe if you folks wouldn't bring so

many people you wouldn't have to seal the courtrooms and stuff.

THE COURT: All right.

MR. SANDERS: Your Honor, let me introduce myself. Your Honor, may it please, I'm Blaine Sanders. This is my partner, Garland Cassada, who you've already heard from, and then my partner Rich Worf. We're with Robinson, Bradshaw and Hinson. We represent Garlock and we are opposing the motions to withdraw the reference.

THE COURT: All right. I'll hear briefly from everybody.

MR. SOTTILE: Thank you, Your Honor. We'll spare you some of that because we've agreed that I'll take the lead in arguing for all of the law firm defendants in support of withdrawing the reference. As the Court knows, we're here today on a day where you need to decide whether the bankruptcy court should be handling certain matters or whether the district court should.

THE COURT: Are these core matters or non-core?

MR. SOTTILE: Non-core, Your Honor. All the parties agree and that, of course, weighs heavily in favor of the premise that it ought to be handled by the district court, as does the nature of these claims. Your Honor, what we're dealing with here are claims asserted against four law firms who represent asbestos personal

injury victims who have claims against Garlock and many other asbestos best defendants. The nature of the lawsuits now brought as adversary proceedings by Garlock is the claim that somehow my clients and the other law firms defrauded them into paying too much to settle those cases -- twisted their arms behind their backs somehow and persuaded them these cases were worth a whole lot more than they really are.

THE COURT: It sounds like there has been some information like that somewhere.

MR. SOTTILE: Your Honor, the claims asserted importantly focus on violations of RICO. The allegation is that there's mail and wire fraud in connection with discovery matters in state courts around the country and that all that adds up to a pattern of racketeering activity, and then they tack on state law fraud and state law civil conspiracy claims. What they don't have, Your Honor, are any bankruptcy claims. There's no fraudulent transfer claims here. None of the law firms filed any claims against Garlock. This is a case that, but for the happenstance that Garlock has filed for bankruptcy, would be pending in district court. There's no doubt about it. This kind of RICO claim would never see the doors of a bankruptcy court but for the happenstance that the plaintiff here is in bankruptcy.

Your Honor, this is a case that needs to be heard by the district court from the beginning to the end. Because it's non-core, because Garlock has demanded a jury trial, we know it's going to have to be tried in the district court. Nobody disputes that. The only issue before you, Your Honor, is whether or not the bankruptcy court ought to handle this case up to the point of trial. And that means, should it be the bankruptcy court or the district court that deals with discovery matters, scheduling and, importantly, dispositive motions: Summary Judgment, motions to dismiss and the like.

Your Honor, we believe the answer's clear that the court that's going to try this case, the court that's going to have to grapple with some novel issues under RICO, like whether or not conduct by lawyers in state courts in answering discovery can ever constitute predicate acts that would support a claim for RICO, those are issues that are strangers to the bankruptcy court. Those are issues, however, that district courts have substantial experience in dealing with, as this court does. RICO cases are quintessentially matters where district courts have expertise and experience to apply and bankruptcy courts don't.

And in this circumstance, with these RICO claims, the reference of the bankruptcy court should be withdrawn

now for two reasons. First, Your Honor, it's mandatory under 28 U.S.C., Section 157(d). What that section provides is two bases for withdraw of the reference, one where it's absolutely required, where if you meet the standard laid out in the statute then the Court doesn't have any choice and it has to withdraw the reference right away. The other is permissive withdrawal where the Court may withdraw the reference if it makes sense if it's a case that ought to be in the district court.

Why is it mandatory here? Because 28 U.S.C., 157(d) says that if a case requires consideration, both of bankruptcy law, matters under Title 11, and of matters arising under non-bankruptcy federal law, then the reference must be withdrawn -- "shall be withdrawn" is the words of the statute. No discretion. It has to be withdrawn if it requires consideration.

And as I've indicated, Your Honor, this isn't your garden variety RICO case, if there is such a thing. We're dealing with a claim that lawyers, when they were answering discovery and doing other routine litigation activities in state courts around the country, were somehow committing mail and wire fraud that added up to a pattern of racketeering. Your Honor, that kind of issue is not a garden variety ordinary thing where a bankruptcy court judge that has no experience with RICO could look

to establish precedent to decide. Someone's going to have to make law in this area.

And what 28 U.S.C., 157(d) tells us is that in that situation where you're going to have to interpret a non-bankruptcy statute, not just apply undisputed law to facts, then you must withdraw the reference. You must take it from the beginning to the district court because it's the district court that is charged with deciding those kinds of thorny issues of interpreting non-bankruptcy federal statutes.

And, Your Honor, even if you were to conclude it's not required here, you ought to withdraw the reference here. Everything the courts look at when they think about whether or not a case ought to be in the bankruptcy court or the district court points here to the district court. As I said, in the beginning, we've got a case that we know is going to have to be tried in the district court. We've got a case that involves RICO which district courts deal with all the time and bankruptcy courts don't deal with them. We have a bankruptcy court judge to whom these cases are being transferred, Judge Whitley, who has almost no background in this case. These are not going to be handled by Judge Hodges who had a background with the parties and some of the issues. If they're going to go forward in the bankruptcy court it's

going to be with a new judge who has doesn't have any institutional knowledge, doesn't have any experience other than, I think, the first day motions in the bankruptcy. So whoever is going to handle this case is going to start fresh.

And importantly, Your Honor, the bankruptcy court judge can't even make a final decision, as this court knows, on dispositive motions. The bankruptcy court judge can't grant a Motion for Summary Judgment on its own. It can't grant a motion to dismiss. It can't decide that the RICO claim here doesn't state a cause of action. All it can do is make recommendations to the district court judge.

So if you were to leave this case in the bankruptcy court for pretrial purposes and motions, what you're going to do is guarantee that if any part of this case ought to be thrown out on dispositive motions -- and we submit a lot of it should be, and we've already filed some dispositive motions -- then you're going to guarantee that two judges, one of whom doesn't deal with RICO at all, are going to look at the same issues. That's a waste, Your Honor, of the court's resource, of the parties' resources. And it just doesn't make any sense for this case, even if withdrawal wasn't required which it is to stay in the bankruptcy court.

Your Honor, let me say a word about some of the other factors that courts look at in deciding whether to withdraw the reference permissively where it's not absolutely required. We've talked about the fact this is non-core, that it involves RICO claims; we've also talked about the fact that judicial economy is best served here by having the same judge who's going to have to try the case decide dispositive motions, shape the discovery that will define the evidence that will be presented at trial and who will be in a position to grant dispositive motions.

Now Garlock tells us well it's no big deal because the bankruptcy court judge has the power to deny dispositive motions. All the bankruptcy court judge is limited from doing is granting them. Your Honor, with respect, that makes no sense at all. That makes matters worse. What they're saying there is that if the defendants move to dismiss the RICO claim here the bankruptcy court judge can deny it and make sure this case moves forward to trial without this court ever having an opportunity to weigh in until you get to the very end and the case is ready for trial.

In a circumstance where this court might look at that same motion to dismiss that the bankruptcy court -- no experience in RICO denied -- and say, you know, I

think this motion is well taken and this RICO claim, or part of it, ought to be dismissed. But if you take Garlock's approach and you leave this case in the bankruptcy court, you won't get the opportunity to consider a circumstance where the bankruptcy court judge denies a dispositive motion.

The only time it might come up to the district court is if the bankruptcy court were inclined to grant a dispositive motion, in which case you'd have to do all the work over again without a whole lot of help. Because the person -- the judge who passed on it in the first instance would, by definition, be a judge that doesn't have a whole lot of experience dealing with RICO claims.

THE COURT: You think that's why he gave the different opinions he gave on this thing? Talking about this -- talking about what he thought about it?

MR. SOTTILE: It may be.

THE COURT: Lack of experience?

MR. SOTTILE: Your Honor, I think this court -- the bankruptcy court was a sophisticated judge who has extraordinary knowledge of bankruptcy issues and took a lot of care with this case. And respectfully, we believe the Court erred in a number of areas. You've heard from Mr. Swett about some of those, but no one's here arguing that this bankruptcy judge is not -- Judge Hodges, who's

handled things up to now, isn't a competent or effective judge.

THE COURT: So is Judge Whitley, who would be handling it.

MR. SOTTILE: Both of them are very good judges.

THE COURT: Both of them are good. The only thing keeping them from this seat is a Presidential appointment. They're way smart, to me.

MR. SOTTILE: Your Honor, there's two things they don't have that you have. One is they haven't dealt with RICO cases, by the very nature of what their role is as bankruptcy court judges. This court has dealt with RICO cases in a wide variety of contexts. The second thing they don't have, Your Honor, is they don't have the power to grant a dispositive motion and you do. You can look at our motions, some of which have already been filed upon the RICO claims and the fraud claims, and you can decide that some or all the claims ought to be dismissed or thrown out in Summary Judgment. And that, of course, is one of the central roles judges play in the pretrial. You narrow the case to get to the essential issues that have to be tried. Here the bankruptcy court judges, as able and experienced as they are, can't do that.

THE COURT: Okay. Let me hear from them for a minute --

MR. SOTTILE: Certainly.

THE COURT: -- then I'll let you get back up if you need to say anything else. Yes, sir.

MR. SANDERS: Thank you, Your Honor. We oppose these motions and we think that the reference ought to be maintained. We come at this from a common sense perspective, Your Honor. As you said in the first part of hearing, we have some great bankruptcy judges here and they can handle this matter. There's a recognition by this court -- the standing order of reference hadn't been mentioned yet, but I need to mention it. That's the basis. That's where we start from.

For years and years and years the Western District has had this standing order of reference and it says that in all adversary proceedings in the bankruptcy court in this district in which a demand for jury trial has been made and it prevents the bankruptcy court from conducting the trial -- that's what we've got here -- the district court hereby refers to the bankruptcy court all pretrial proceedings in such cases -- and then there's a parenthetical -- including ruling on dispositive motions. So that's what the Western District has said for years and years and years. These cases go to the bankruptcy court.

THE COURT: But none of these things are core

matters. Don't you think these things -- I mean I'm -- I'd love for you to tell me why I don't have to do any of this work on this case, but it just seems like this is something that I ought to do.

MR. SANDERS: Well I'll be glad to tell you why you don't have to do the work in these cases. I mean they are non-core matters, that's right, and a demand for jury trial's been made and that's what the standing --

THE COURT: And we've got good rules to try these cases and bring them up and have them go through and we don't -- we don't fool around. We get to them real quick. This seems like we're going to be gumming up the bankruptcy court by sending it back. It seems like that myself and a referred magistrate judge can handle this stuff and put this stuff together and take care of it and take care of it in pretty short order.

I know that you're going to be switching over to Judge Whitley. I guess Judge Whitley or whatever, Judge Hodges, may have said a few things that make you-all feel that maybe he feels that there might have been some wrongdoing over here or something. But, you know, a fresh look is going to find whatever it's going to find and it's not going to be a problem. It is what it is. The truth's going to be what the truth comes out to be. And if your claims are good, they're going to survive

this judge's rulings. And if I make any mistakes or they -- they've got plenty of folks up the line that will take care of me.

MR. SANDERS: Let me address that point, Your Honor. You're not going to -- they're not going to want you to hear these cases. The next thing -- if you grant this motion, Your Honor, the next time you see these folks they are going to be asking you to transfer -- there are eight motions pending in the bankruptcy court right now. Four of them are motions to transfer. All of these folks are going to ask you to send these cases away. They're going to ask that you send them to Pennsylvania, to Texas, maybe California, and to New York. They don't want you hearing them. They don't care about our local rules or anything like that. They're going to ask that these cases be sent hither and yon.

And then the Simon defendants who -- they filed a motion for abstention. So then they're going to ask that -- they've asked the bankruptcy court -- they're going to ask that these cases be sent to various state courts. They're going to try to get out of the federal courts. So, Your Honor, they're not going to be -- I think we can't have blinders on, sort of, what an overall strategy here is.

THE COURT: Your position is if I do it I have to

send them off?

MR. SANDERS: Oh, no, Your Honor.

THE COURT: Can I keep them here and handle it?

MR. SANDERS: No, Your Honor. I'm just telling you that they don't want you to have them. They don't want you to have them. They want you to have them today. That's the argument for today.

THE COURT: All right.

MR. SANDERS: They want you to have them for today. But then when they come see you next they're going to ask you to send them away.

THE COURT: But they might win today and lose tomorrow.

MR. SANDERS: I understand that that could happen, but I don't know why we have to go there. And let me -- this really brings it to the heart of the argument, Your Honor. The key -- these are non-core matters and everybody agrees on that. Of course, that's the understanding -- that's the point of the order of reference. I mean those are matters that could not be heard in the bankruptcy court.

THE COURT: And in bankruptcy matters, it's always great for the bankruptcy judges to hear those because they're really good at hearing those. They know that stuff. I mean I've got to sit here and worry over it a

lot more than they do, things that are second nature to them. By the same token, some of this stuff that I've handled, either as an attorney or as a magistrate judge or as a district judge, these things are second nature to me. I know the answers to lots of these questions without having to go through any kind of strain.

So it just seem seems to me, counsel, that these cases are better left with the district court. And probably, to avoid inconsistency, it probably ought to be one district court that hears all of this.

MR. SANDERS: And when you get to that point we completely agree. We completely agree. But let me talk about the bankruptcy. Let me talk --

THE COURT: All right. I'm not there yet but I'm getting close.

MR. SANDERS: Let me talk -- and I understand, and I appreciate you telling me what you're thinking. The key factor, once you -- obviously, the non-core/core factor's important and we acknowledge that. But that -- you know, that's there in all of these cases. That was there in this Jimsook [ph.] case that Judge Conrad decided in March. He treated them as non-core matters and maintained the reference, and he said that's the standard of practice here and that's the policy. But let me talk about why -- I submit to you that.

THE COURT: We're rogue sometimes. Every now and then you get a rogue judge.

MR. SANDERS: Judge Conrad is a rogue?

THE COURT: No. I'm talking about me,

MR. SANDERS: Oh. You're a rogue? Don't be a rogue.

(Laughter.)

MR. SANDERS: It didn't work out for Sarah Palin very well.

Your Honor, let me talk -- it is an important factor, the promotion of the efficient administration of the bankruptcy case. And there are three things that have happened since the briefing had been completed here that, I think, makes our argument even stronger on that point. Let me go through those quickly.

On June 4th, the Committee, Mr. Swett and his clients, filed a motion to re-open the Estimation trial proceeding. They filed a motion to re-open it, and so we obviously opposed the merits of that. We think that motion will eventually be denied. The Estimation trial is not over. So these links between this evidence at the Estimation trial and these findings that Judge Hodges made, well, they're still alive in the bankruptcy case. And as I'm sure Your Honor realizes, these complaints that we filed, or those 13 of those same lawsuits. So

that link is still there. This Estimation proceeding is still being litigated and it's going to be appealed. So there is a strong tie. So that's the first thing that's happened since the briefing was completed.

The second thing that happened is that on May 29th Garlock filed its amended plan of reorganization. That plan has procedures for dealing with these claims that are -- where there's suppression of evidence, this same kind of thing that we're talking about in the complaints. So that's a bankruptcy matter that is going to be there. No doubt the Committee will object to those procedures that are in there. But those issues about how to deal with suppression of the evidence are going to continue to be part of this pending bankruptcy.

So there's a big overlap there.

The third thing that's happened since the briefing has been completed is that just very recently the bankruptcy court entered a bar date for settled claims. "Settled claims" means claims that were settled with Garlock before the petition but not paid before the petition. So there's still an issue about whether or not those claims will in fact be paid. Garlock has objected to those settled claims. And the reason that Garlock has objected is this same reason, this same suppression of the evidence that's infected settlements. And so that

issue is going to get litigated and that's a bankruptcy matter. And so when Your Honor is talking about things that are bankruptcy matters, those things are very much alive here.

Let me give you one more. This is not something that's happened since the briefing. It's covered in the briefing, but it's worth mentioning it. An important part of our case are the bankruptcy filings. They were -- we contend that evidence was suppressed in the underlying state court case and was not disclosed. And our proof of the suppression is that after settlement, in the underlying state court case, filings were made with bankruptcy trusts or in bankruptcy courts that disclosed and claimed exposures that had previously been undisclosed in underlying state court cases. There are bankruptcy trust claims, there ar Rule 2019 statements, and there are bankruptcy ballots.

Those are pure bankruptcy issues, I submit to you, but you certainly would understand them. But the -- I'd submit to you that the bankruptcy court is the better tribunal to evaluate those things. Those were issues already -- the bankruptcy court has already -- let me mention that the bankruptcy court's already handled a case that's just these like these, Your Honor. You're nodding your head because you know about it from the

briefing, this Williams Kirker case. It was the same kind of case.

I mean, we sued asbestos plaintiffs' lawyers because they withheld information during discovery. Judge Hodges handled that case. It's the same fact pattern. It does not include RICO claims. It does not include RICO claims because we didn't think there were a sufficient number of cases to allege a pattern, so we didn't bring a RICO claim. But it's the same fact pattern. And to call these complicated RICO cases is giving them for credit than they deserve. These are simple. The factual basis of these cases it's simple.

THE COURT: It's in the right court if it's really simple. That's what I need is a simple case.

MR. SANDERS: Certainly, the bankruptcy can't --

THE COURT: Let me ask you this question. How are you going to be hamstrung on having your -- the evidence you need to prove your side of the case by the case being in district court? Are we going to need to wait on anything from bankruptcy? Is there going to be a problem with that? Because I want everybody to have a fair trial wherever we have this.

MR. SANDERS: I can't say that we would be hamstrung.

THE COURT: Okay.

MR. MAGNER: Judge, may I ask an administrative question?

THE COURT: Yes, sir.

MR. MAGNER: Mike Magner representing the Simon Greenstone defendants. We do have a number of pretrial motions pending and partially briefed. In your court's order you mentioned that you were suspending the briefing schedule. I would just simply ask the Court to consider an appropriate time for a status conference where we can set new dates to conclude the briefing of these matters.

THE COURT: We would end up -- it looks like I'm going to take it. And if I'm going to do that, I'm going to assign it to a magistrate judge and we'll get all that done and we'll get it appropriately set up. The rules will followed. You can look at those rules, and I'm likely to follow those, but maybe not the bankruptcy rules right now.

MR. MAGNER: Thank you, Your Honor. That will be welcome.

THE COURT: I think this case needs to -- these are matters that need to be heard in the district court. I've pretty well had that decided before I came in here today and have not heard anything that's changed my mind on it. You all make good, strong arguments about it, and I understand that, but I think you can get a fair trial

and these things can be heard and we can deal with those. So I think this -- these matters are better handled just by me. So we'll do that and get a magistrate judge involved in it. I'll get an order out on that. And if there's any problems with that, let -- you know, let the Court know.

Understand we can only react to filings. Calling my law clerk, although he's very accommodating and very easy to talk to, is not a motion or something that gets an order out of the Court. If you need help, you've got to file a paper. You've got to go on the ECF and you've got to get that done. That is the only thing we respond to. We do not respond to phone calls. We like to get them from folks that we like to talk to, but it is of no moment and you can't rely on anything that you're saying or hearing on the telephone. File your motion and then we'll put something in writing and then you can rely on it. So.

MR. MAGNER: Thank you, sir.

THE COURT: Thank you all.

With regard to the first matter, we'll get something out in fairly short order. Thank you.

(Off the record at 3:05 p.m.)

CERTIFICATE

I, Tracy Rae Dunlap, RMR, CRR, an Official Court Reporter for the United States District Court for the Western District of North Carolina, do hereby certify that I transcribed, by machine shorthand, the proceedings had in the case of IN RE: GARLOCK SEALING TECHNOLOGIES, INC., 3:13-CV-464-MOC, on July 15, 2014.

In witness whereof, I have hereto subscribed my name, this 17th day of July 2014.

__/S/__Tracy Rae Dunlap___
TRACY RAE DUNLAP, RMR, CRR
OFFICIAL COURT REPORTER

Exhibit B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:13-cv-00464-MOC

LEGAL NEWSLINE,	)	
	)	
Plaintiff(s),	)	
	)	
Vs.	)	MEMORANDUM OF DECISION
	)	and ORDER
	)	
GARLOCK SEALING TECHNOLOGIES LLC,	)	
	)	
Defendant(s).	)	

THIS MATTER is before the court on a number of motions and appeals from the Bankruptcy Court for the Western District of North Carolina, Honorable Judge George R. Hodges, Senior United States Bankruptcy Judge Presiding.

FINDINGS and CONCLUSIONS

I. Group I: Appeals Related to Access to Court Proceedings and Filings

For a number of years, Judge Hodges has presided over the bankruptcy of Garlock Sealing Technologies LLC ("Garlock") and last year, in performance of those duties, conducted an estimation trial or hearing The purpose of that hearing was to make a reasonable and reliable aggregate estimate of Garlock's liability for present and future mesothelioma claims. A central issue in the trial was whether consideration of Garlock's past mesothelioma settlements constituted a reliable method for estimating Garlock's present and future liability.

In the run up to making such determination, allegations surfaced that national counsel for mesothelioma victims had engaged in fraud, deceit, and other activities prohibited by the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968, in

settling their clients' claims with Garlock. While claims of fraud and violations of RICO are common in federal civil litigation and seldom garner any attention from the public, the allegations in Garlock were of interest to the public, the press, and other still solvent enterprises that were subject to asbestos related claims and had dealings with these attorneys.

As a corollary to its appeal, Legal Newsline asks this court to determine the source of the right of access, be it the common-law presumption which favors access to all judicial proceedings and filings or the First Amendment guarantee of access. The public right of access has two components: first, the right of access protects the public's ability to oversee and monitor the workings of the federal courts, Columbus–Am. Discovery Grp. v. Atl. Mut. Ins. Co., 203 F.3d 291, 303 (4th Cir.2000) (finding that "[p]ublicity of such records, of course, is necessary in the long run so that the public can judge the product of the courts in a given case."); and second, public access promotes the institutional integrity of the judiciary. United States v. Cianfrani, 573 F.2d 835, 851 (3d Cir.1978) (holding that "[p]ublic confidence [in the judiciary] cannot long be maintained where important judicial decisions are made behind closed doors …."). The Court of Appeals for the Fourth Circuit has long held that "the rights of the news media ... are coextensive with and do not exceed those rights of members of the public in general." In re Greensboro News Co., 727 F.2d 1320, 1322 (4th Cir.1984). Indeed, anyone, be they a reporter or a member of the general public, who "seek[s] and is denied access to judicial records sustains an injury." Doe v. Public Citizen, 749 F.3d 246, 263 (4th Cir. 2014). However, *Legal Newsline*'s request that this court make such determination as to *the source of the right of access* in the first instance would require fact finding that is not appropriate and perhaps not possible on appellate review. Indeed, it appears that the Fourth Circuit routinely remands that issue to the trial court for determination. Stone v. University of Maryland Medical System Corp., 855 F.2d 178, 181

(4th Cir. 1988) (holding that "[o]n remand, it [the district court] must determine the source of the right of access with respect to each document sealed. Only then can it accurately weigh the competing interests at stake.").

Prior to the estimation trial, *Legal Newsline* filed its Emergency motion to keep the Estimation Trial open to the public, which Judge Hodges denied July 31, 2013. *Legal Newsline* filed that motion in response to the bankruptcy court's earlier decision to close the courtroom to the media and the public during a witness's testimony. Such denial of the first motion resulted in *Legal Newsline*'s "first appeal," 3:13cv464, which asks whether the bankruptcy court's closure of the courtroom and denial of tis motion violated the substantive and procedural protections associated with the First Amendment right to attend court proceedings. As discussed below, the court agrees with Legal Newsline that such proceedings were improperly closed, will reverse the closure and the denial of *Legal Newsline's* motion, and remand the Order appealed from to Judge Hodges for further consideration in light of prevailing law, in the manner discussed below.

The issue raised in the second appeal is whether *Legal Newsline*'s First Amendment and common law interests in access to judicial documents requires disclosure of the evidence upon which the bankruptcy court relied in reaching its decision. After the estimation trial was conducted in the summer of 2013, the estimation Order entered in January 2014; thereafter, *Legal Newsline* filed its second motion with the bankruptcy court, this time asking Judge Hodges to unseal the trial transcript and exhibits on which his estimation Order was based. For cause, *Legal Newsline* argued that the public and the press had a right to review for itself the evidence that supported the court's conclusion. On April 11, 2014, Judge Hodges denied that motion as well as motions filed by other interested parties seeking to unseal that evidence and a second

round of appeals followed not just from Legal Newsline, but from other interested parties, in particular, solvent corporations facing similar asbestos related claims.

As to both challenged determinations, the court finds that, although done with the best judicial intentions of providing for the efficient administration of justice, Judge Hodges decision to seal the estimation hearing and maintain the seal as to judicial filings and the transcript of those proceedings after his estimation Order was contrary to the requirements of prevailing case law. When a document or a hearing is sealed, a court is required to "state the reasons for its decision to seal supported by specific findings, and the reasons for rejecting alternatives to sealing to provide this court with sufficient information for meaningful appellate review." Media General Operations, Inc. v. Buchanan, 417 F.3d 424, 431 (4th Cir. 2005) (internal quotation marks omitted and corresponding citations). In Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978) the United States Supreme Court held, as follows:

> [i]t is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.... American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen's desire to keep a watchful eye on the workings of public agencies, and in a newspaper publisher's intention to publish information concerning the operation of government.

Nixon, 435 U.S. at 597–98 (citations and footnote omitted).

Clearly, the only basis relied on by the bankruptcy court other than judicial efficiency in its sealing determinations was the existence of protective orders and the representations by interested counsel that such documents were confidential. While designation of a document as "confidential" may well be the impetus for attorney requesting a court to seal a document, it is by no means an endpoint. Instead, the bankruptcy court was required to "show its work" by providing sufficient information concerning the reasons such exceptional relief was merited,

which would have provided a basis for meaningful appellate review by this court as provided under Media General. Such a determination should have included not only specific findings that supported the given reason for sealing, but reasons for rejecting less drastic alternatives to sealing. Tthe Confidentiality Order relied on by the district court accomplishes none of the Media General objectives and shifted the presumption that favors open courts to a presumption favoring the closure of proceedings based on confidentiality designations by counsel, improvidently shifting the burden to the public and the press to disprove the contours of a need to seal which has also not been described.

Put another way, an order providing that materials submitted to the court would be initially entered under seal and the courtroom closed to the public, subject to a challenge from the public or press, does not satisfy the requirements of Media General and its progeny. The Fourth Circuit has held, as follows:

> When presented with a request to seal judicial records or documents, a district court must comply with certain substantive and procedural requirements. As to the substance, the district court first must determine the source of the right of access with respect to each document, because only then can it accurately weigh the competing interests at stake. A district court must then weigh the appropriate competing interests under the following procedure: it must give the public notice of the request to seal and a reasonable opportunity to challenge the request; it must consider less drastic alternatives to sealing; and if it decides to seal it must state the reasons (and specific supporting findings) for its decision and the reasons for rejecting alternatives to sealing. Adherence to this procedure serves to ensure that the decision to seal materials will not be made lightly and that it will be subject to meaningful appellate review. This determination is one properly made in the first instance from the superior vantage point of the [lower court, rather than the appellate court].

Va. Dep't of State Police v. Wash. Post, 386 F.3d 567, 576 (4th Cir. 2004) (quotation marks and citations omitted).

This court is both familiar and complicit in the practice of entering lengthy protective orders in advance of parties engaging in Rule 26 discovery. Such orders typically give the

producing party *carte blanche* in designating documents "confidential," "highly confidential," and "highly confidential – attorney's eyes only." While this court routinely allows such protective orders, it has in place a Local Civil Rule which makes clearly that an attorney's designation of confidentiality does not result in automatic sealing. Protective orders serve legitimate purposes in both expediting discovery and protecting trade secrets, proprietary information, privileged communications, and personally sensitive data from inadvertent disclosure during the process of discovery; however, the confidentiality afforded under a Protective Order to discovery materials does not automatically extend to documents submitted to the court. At best, a Protective Order can require a party who desires to file a document marked confidential to seek an Order sealing or redacting that document before such filing.

While a court may seal any number of documents, proceedings, or applications for appropriate reasons, it simply cannot delegate that responsibility to the litigants by giving deference to protective orders. As a gatekeeper, a judge must consider sealing as the exception not the rule, Va. Dep't of State Police v. Wash. Post, supra, give the public notice of its intent to seal, require counsel to provide valid reasons for such extraordinary relief, and then explain that decision as well as the reason why less drastic alternatives were not employed. The reason is simple: the public and the press have a co-extensive right to view and consider documents tendered a judge and/or jury when a dispute in brought in the ultimate public forum, a courtroom. Doe v. Public Citizen, supra.

As mentioned above, the judges of this court, in conjunction with the public, attorneys, and members of Bar representing the press, developed Local Civil Rule 6.1, "Sealed Filings and Public Access," to dispose of requests for sealing in an orderly manner. That rule provides, as follows:

LCvR 6.1 SEALED FILINGS AND PUBLIC ACCESS.

(A) ***Scope of Rule***. This rule shall govern any request by a party to seal, or otherwise restrict public access to, any materials filed with the Court or utilized in connection with judicial decision-making. As used in this rule, "materials" shall include pleadings as well as documents of any nature and in any medium.

(B) ***Filing Under Seal.*** No materials may be filed under seal except by Order of the Court, pursuant to a statute, or in accordance with a previously entered Rule 26(e) Protective Order.

(C) ***Motion to Seal or Otherwise Restrict Public Access***. A request by a party to file materials under seal shall be made by formal motion, separate and apart from the motion or other pleading sought to be sealed, pursuant to LCvR 7.1.

(D) ***Filing of an Unredacted Copy Allowed.*** If necessary, information deemed confidential by a party may be redacted from the filed motion or brief and an unredacted version submitted under seal for *in camera* review. Materials deemed confidential may be submitted under seal for *in camera* review via cyberclerk.

(E) ***Public Notice.*** No motion to seal or otherwise restrict public access shall be determined without reasonable public notice. Notice shall be deemed reasonable where a motion is filed in accordance with the provisions of LCvR 6.1(C). Other parties, interveners, and non-parties may file objections and briefs in opposition or support of the motion within the time provided by LCvR 7.1 and may move to intervene under Fed. R. Civ. P. 24.

(F) ***Orders Sealing Documents.*** Orders sealing or otherwise restricting access shall reflect consideration of the factors set forth in LCvR 6.1(C). In the discretion of the Court, such orders may be filed electronically or conventionally and may be redacted.

(G) ***Filings Subsequent to Entry of an Order Sealing Documents.*** After an Order permitting the filing under seal has been entered, any materials filed pursuant to that Order shall be filed electronically with a non-confidential description of the materials filed. Administrative Procedures

(H) ***Motions to Unseal.*** Nothing in this Local Rule shall limit the right of a party, intervenor, or non-party to file a motion to unseal material at any time. Such a motion to unseal shall include a statement of reasons why the material should be unsealed and any change in circumstances that would warrant unsealing.

(1) Case Closing. Unless otherwise ordered by a Court, any case file or documents under Court seal that have not previously been unsealed by the Court shall be unsealed at the time of final disposition of the case.

(2) Access to Sealed Documents. Unless otherwise ordered by the Court, access to documents and cases under Court seal shall be provided by the Clerk of Court only pursuant to Court Order.

> Unless otherwise ordered by the Court, the Clerk of Court shall make no copies of sealed cases files or documents.
>
> **(I)** ***Impact on Designation of Confidential Materials.*** Nothing in this Local Rule shall limit the ability of parties, by agreement, to restrict access to discovery or other materials not filed with the Court or to submit motions pursuant to Fed. R. Civ. P. for a Protective Order governing such materials.

L.Civ.R. 6.1. As provided above, the rule contemplates that attorneys will designate materials as confidential, but makes it clear that such designation does not necessarily extend to materials "filed with the court." L.Civ.R. 6.1(I).

The parties appear to be in agreement that remand is appropriate and the parties have submitted various well-reasoned proposals to remedy the sealing issue. Garlock has provided the court with a two-page proposal for very specific instructions as to what procedure should be employed by the bankruptcy court on remand in determining what to unseal as well as the time frames for the parties to file objections. *Legal Newsline* has argued that the court should remand and direct the bankruptcy court to immediately lift the seal as the press and public have compelling First Amendment and common law interests in reviewing those materials. These are reasonable solutions, but the court finds the appropriate instructions on remand fall somewhere between the two proposals.

In ordering remand, this court is guided by the reasoning of the Court of Appeals for the Fourth Circuit in Stone v. Univ. of Md. Med. Sys. Corp., supra. In accordance with that decision, the court will reverse the Orders appealed from, remand those Orders and the motions underlying them for further consideration in light of this decision, restore subject matter jurisdiction over these proceedings to the bankruptcy court, and instruct the bankruptcy court to determine in the first instance the source of the right of access with respect to each document or the testimony of any witness as to which any party proposes or has proposed be sealed, give the

public notice of any such request to seal and a reasonable opportunity to challenge it, onsider any reasonable alternatives to sealing, all in accordance with In re Knight Publishing Co., 743 F.2d 231 (4th Cir. 1984) and then, if such materials are sealed, provide sufficient information supporting that decision for meaningful appellate review, all in accordance with Media General, supra.

II. Group II: Withdrawal of the Reference

While understanding that the Group I cases concerning the sealing orders had little to do with the cases in Group II, which seeks withdrawal of the reference as to non-core proceedings, the court consolidated all the cases for hearing as understanding the issues presented by Group I informed decision in Group II. The court believes it was correct in that conclusion as the courtroom, packed with attorneys, did not empty when the court shifted its consideration to the Group II motions to withdraw the reference.

As mentioned, Group II seeks withdrawal of the reference to the bankruptcy court of non-core claims asserted by Garlock for common law and statutory tort claims against the lawyers who allegedly engaged in fraud and violations of RICO in settling their clients' mesothelioma claims. On January 10, 2014, Judge Hodges entered his estimation Order. In re Garlock Sealing Techs, LLC, 504 B.R. 71 (Bankr. W.D.N.C. 2014). After hearing evidence from fifteen settled cases, Judge Hodges found that Garlock's settlements were not a reliable predictor of liability because misrepresentation had infected them:

> [T]he fact that *each and every one of them* contains such demonstrable misrepresentation is surprising and persuasive. More important is the fact that the pattern exposed in those cases appears to have been sufficiently widespread to have a significant impact on Garlock's settlement practices and results.

Id. at 85 (emphasis in the original). Judge Hodges went on to describe the plaintiffs' lawyers' conduct in these cases as forming a "startling pattern of misrepresentation." Id. at 86.

The finding has apparently lead the bankruptcy estate, *eo nominee* Garlock, to pursue civil claims against those lawyers to recoup funds they believe are due and owing to the bankruptcy estate based on tort. The parties are in agreement that such claims are non-core proceedings and that they could not be tried in the bankruptcy court without consent of all the parties, which is not forthcoming. While Garlock warns that the attorney defendants who are eager for this court to withdraw the reference will promptly move to transfer venue to their home districts, such possibility is of no moment as this court is at home not only with fraud and RICO claims, but with preliminary motions concerning appropriate fora. The court will, therefore, in accordance with 28 U.S.C. § 157(d), withdraw the reference as to each of the non-core actions and reference those proceedings to one United States Magistrate Judge for full pretrial case management consistent with this court's Order of Referral and the Local Civil Rules of this court.

ORDER

IT IS, THEREFORE, ORDERED that as to cases forming "Group I" of this consolidated action (3:13cv464-MOC (Legal Newsline is appellant), 3:14-cv-00171-MOC (Ford Motor Company, Motion to Withdraw Ref.), 3:14-cv-00210-MOC (Ford Motor Company, Appeal), 3:14-cv-00212-MOC (Legal Newsline, Appeal), 3:14-cv-00214-MOC (Garlock Appeal), 3:14-cv-00215-MOC (Honeywell Appeal), 3:14-cv-00216-MOC (Insurance Companies' Appeal); 3:14-cv-00217-MOC (Volkswagen Appeal), 3:14-cv-00221-MOC (McKinnley/Everesst Insur. Appeal), 3:14-cv-00116-MOC (Simon Greenstone Motion to Withdraw Ref.), 3:14-cv-00118-MOC (Belluck &Fox Motion to Withdraw Ref.), 3:14-cv-00130-MOC (Asbestos Attorneys Motion to Withdraw Ref.), and 3:14-cv-00137-MOC (Shein law Center Motion to Withdraw Ref.)),

(1) the Group I appeals seeking reversal of the bankruptcy court's sealing and exclusion Orders are **GRANTED** for the reasons discussed herein. To the extent such appeals seek relief beyond such determination, the appeals are otherwise **DENIED**;

(2) the Group I motions seeking to withdraw the reference are denied as **MOOT** as the impediment which has prevented relief below has been removed;

(3) all of the Orders of the bankruptcy court appealed from sealing evidence, hearings, transcripts, or filings, or excluding the press or the public from the hearing are **REVERSED;** such Orders and the motions underlying them are **REMANDED** for further consideration in light of this decision; subject matter jurisdiction over the proceedings appealed from is **RESTORED** to bankruptcy court; and, if any party moves upon remand to seal, the bankruptcy court is **INSTRUCTED** to determine in the first instance the source of the right of access with respect to each document or the testimony of any witness any party proposes or has proposed to be sealed, give the public notice of any such request to seal and a reasonable opportunity to challenge it, and then consider any reasonable alternatives to sealing, all in accordance with In re Knight Publishing Co., 743 F.2d 231 (4th Cir. 1984) and then provide sufficient information for meaningful appellate review as provided under Media General;

(4) all other motions pending in Group I are denied without prejudice as a matter of housekeeping; and

(5) all Group I cases are **SEVERED** from this consolidated action and upon administrative reopening are **DISMISSED** based on the disposition herein provided.

IT IS FURTHER ORDERED that as to cases forming "Group II" of this consolidated action (Garlock Sealing Technologies LLC v. Simon Greenstone Panatier Bartlett, APLC, 3:14cv116-MOC (W.D.N.C.), Adv. No. 14-AP-03037 (Bankr. W.D.N.C.), Garlock Sealing Techs. LLC v. Belluck & Fox, LLP, 3:14-cv-00118-MOC (W.D.N.C.), Adv. No. 14-AP-03036 (Bankr. W.D.N.C.); Garlock Sealing Techs. LLC v. Waters & Kraus, LLP, 3:14-cv-00130-MOC (W.D.N.C.), Adv. No. 14-AP-03038 (Bankr. W.D.N.C.), and Garlock Sealing Techs. LLC v. Shein Law Ctr., Ltd., 3:14-cv-00137-MOC (W.D.N.C.), Adv. No. 14-AP-03035 (Bankr. W.D.N.C.),

(1) the Motions to Withdraw the Reference in each of those cases is **ALLOWED**, and the REFERENCE of such cases to the bankruptcy court is WITHDRAWN;

(2) the Clerk of Court is instructed to randomly draw one United States Magistrate Judge in the Charlotte Division and refer each Group II case to that judge for complete pretrial management in accordance with the court's Order of Reference and

(3) all Group II cases are **SEVERED** from this consolidated action and from each other and shall proceed under the civil district court case numbers previously assigned to them.

Signed: July 23, 2014

Max O. Cogburn Jr.
United States District Judge