UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE	:	
	:	**Chapter 11**
OWENS CORNING, et al.,	:	
	:	**Case Nos. 00-3837 to 3854 (JKF)**
	:	**(Jointly Administered)**
	:	
Debtors.	:	

NOTICE OF FILING OF SUPPLEMENTAL REPORT OF LESTER BRINKMAN

PLEASE TAKE NOTICE that Credit Suisse First Boston ("CSFB"), as Agent for the prepetition institutional lenders to Owens Corning and certain of its affiliates, hereby files the supplemental report of Lester Brinkman ("Supplemental Report").

PLEASE TAKE FURTHER NOTICE that on December 2, 2004, counsel for CSFB caused to be sent by overnight mail to the Chambers of the Honorable John P. Fullam, Senior Judge, a copy of this report. A copy of the Supplemental Report also was served on counsel for the Debtors, the Designated Members of the Official Committee of Unsecured Creditors, the Official Committee of Asbestos Claimants, the Legal Representative for Future Claimants, the Ad Hoc Committee of Bondholders and Century Indemnity Company.

Dated: December 2, 2004

LANDIS RATH & COBB LLP

Richard S. Cobb (I.D. No. 3157)
Rebecca L. Butcher (I.D. No. 3816)
919 Market Street, Suite 600
Wilmington, DE 19810
Telephone: (302) 467-4400
Facsimile: (302) 467-4450

-and-

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Kenneth H. Eckstein
Ellen R. Nadler
Gary M. Becker
919 Third Avenue
New York, New York 10022
Telephone: (212) 715-9100
Facsimile: (212) 715-8000

-and-

WEIL, GOTSHAL & MANGES LLP
Martin J. Bienenstock
John J. Rapisardi
767 Fifth Avenue
New York, NY 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Counsel for Credit Suisse First Boston, as Agent

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	**Chapter 11**
	)	
	)	**Case No. 00-03837 (JKF)**
Owens Cornings, et al.	)	
	)	
Debtors.	)	
	)	**Jointly Administered**
	)	
	)	

Supplemental Report of Lester Brickman

1. I, Lester Brickman, filed an expert report in this matter on October 15, 2004 (the "October 15, 2004 Report"). Appendix A, appended to the October 15, 2004 Report stated my qualifications as an expert.

2. In the October 15, 2004 Report I presented an overview of asbestos litigation including: the rise of an entrepreneurial model of claim generation and processing in the aftermath of the Johns Manville bankruptcy; the resort to attorney sponsored asbestos screenings; the reliance on a comparative handful of B-readers consistently hired by plaintiff lawyers; the results of my research on the frequency of findings of mild asbestosis by this comparative handful of B-readers; a review of medical studies of the incidence of mild asbestosis; the maladministration of pulmonary functions tests by screening enterprises; the use of such pulmonary function testing techniques to victimize Owens Corning; and discussion of the Manville Trust's audit program. For the reasons set forth below, I am filing this supplemental report.

3. On November 22, 2004, the Court in this matter issued a memorandum and order stating that it is "reasonably well known" that Owens Corning's history of

dealing with asbestosis claims "has indicated payments to large numbers of claimants who actually sustained little or no harm from their exposure to Owens Corning's products." Memorandum And Order, *In re: Owens Corning,* Bankr. No. 00-3837 (D. Del., Nov. 22, 2004). The Court further indicated that determining "what amount of money will be necessary, and sufficient, to cover Owens Corning's liability to claimants," necessarily contemplated the "structuring of a program of payments which to the extent possible, recognizes only legitimate claims, and accords the appropriate priority to the claims of all creditors." *Id.*

4. In this supplemental report, I analyze the Owens Corning/Fibreboard Asbestos Personal Injury Trust Distribution Procedures (the "OC TDP"), set forth in the Fourth Amended Joint Plan of Reorganization for Owens Corning and its Affiliated Debtors and Debtors-in-Possession (Oct. 24, 2004), No. 00-3837 (Bankr. D. Del.) (the "Plan") as Exh. D-1, from the perspective of whether the OC TDP is designed to "recognize only legitimate claims."

5. In my opinion, the structures, claiming procedures and the OC TDP will significantly fail to "recognize only legitimate claims," and instead will result in the payment of substantial funds to claimants without credible evidence of injury caused by exposure to asbestos-containing products and without credible evidence of sufficient exposure to Owens Corning's products for that exposure to have been a significant factor in causing such injury.

6. In Paragraphs 71-79 of my October 15, 2004 Report, I discuss how the initial trust distribution procedures instituted by the Manville Trust did not effectively distinguish between legitimate claims of claimants who have been injured as a result of

exposure to Manville products and the hundreds of thousands of claims brought by unimpaired asymptomatic claimants or by claimants lacking credible evidence of sufficient exposure to Manville products.

7. The Manville Trust initially largely failed to adopt trust distribution procedures which: (a) provided for appropriate medical criteria for establishing that an asbestos-related injury is eligible for compensation; (b) required appropriate medical documentation of the diagnosis; (c) required the submission of pulmonary function test ("PFTs") results demonstrating impairment that were administered in close compliance with American Thoracic Society ("ATS") standards and which included the documentation allowing an auditor to determine whether ATS standards have been complied with; (d) required rejection of claims based upon unreliable or inadequate medical diagnoses and reports or upon PFTs not administered in accord with ATS standards; and (e) mandated audit procedures to (1) identify and reject findings and diagnoses of B-readers and other medical professionals most frequently selected by plaintiff lawyers who have routinely misdiagnosed claimants, and (2) identify and reject PFT tests that do not accord with ATS standards which, on the basis of my research, includes the substantial majority of PFT tests administered by attorney sponsored asbestos screening enterprises. Although the Manville Trust ultimately remedied some of these problems many other asbestos trust do not have adequate trust distribution procedures.

8. In my opinion, the proposed OC TDP exhibits similar deficiencies. The OC TDP will permit payment of claims generated through the mass screening model that are a product of the entrepreneurial litigation system I described in my October 15, 2004

Report. The OC TDP will fail to eliminate claims based on evidence from "medical service providers" who plaintiffs' attorneys repeatedly use to support claims despite the substantial evidence reflected in the Friedman Report, the Gitlin/Linton Article and the Manville Audit and elsewhere that this "evidence" is deeply flawed.

9. Section 5.7(a)(2) of the OC TDP highlights the fact that the OC TDP will fail to ensure that only legitimate claims are paid. Section 5.7(a)(2) provides that "[m]edical evidence... is presumptively reliable... [if it] is consistent with evidence submitted to OC to settle for payment similar disease cases prior to OC's bankruptcy..." This necessarily includes claims submitted to OC under its NSP and claims OC settled connected to the Pitts and McNeese litigations. *See* October 15, 2004 Report at ¶¶ 38-41. In view of the considerable evidence that many of these claims were not legitimate, including the evidence set forth by Dr. Friedman in his report and the fact that 80% of the B-readings in the stratified claim sample examined by Dr. Friedman were supplied by just five B-readers, it is reasonably clear that this feature of the OC TDP is not designed to limit payments to "legitimate claims."

10. Moreover, the OC TDP permit significant compensation for unimpaired claimants (many, if not all, of whom rely on this suspect evidence) despite the fact that the Manville Trust essentially eliminated scheduled compensation such claimants when it revised its own trust distribution procedures last year. When the Manville Trust eliminated significant compensation for these unimpaired claims and increased scrutiny of medical evidence submitted in support of claims, it saw a decrease in the claims filing rate of approximately 80%. October 15, 2004 Report at ¶¶ 82-86.

11. The OC TDP are also deficient with respect to the evidence a claimant needs to establish "product identification." For example, while the OC TDP require certain prepetition claimants who have filed a claim with another asbestos trust that required medical evidence to include that medical evidence when submitting a claim to the OC trust, §5.7(a)(1)(c), the OC TDP does not require the claimant to submit evidence of product exposure previously submitted to other trusts. Thus, the OC Trust has no way of determining whether claims with mutually inconsistent product identification evidence are being submitted and paid.

12. Even assuming that the OC TDP confined payment to claimants with credible evidence of actual injury and exposure to OC products, it would be necessary to establish protocols for litigating unresolved asbestos-related claims that will have been channeled to the trust for resolution. Effective protocols would include a process by which asbestos claims that are based upon unreliable scientific evidence of injury and unreliable evidence that OC's products caused the claimed disease may be determined.

13. As an example, the motion recently filed in the W.R. Grace bankruptcy (Debtors' Motion For Entry of a Case Management Order Establishing Protocols For Litigating Asbestos-Related Claims Following Plan Confirmation, *In re: W.R. Grace, et al.,* November 13, 2004, No. 01-1139 (JFK), (Bankr. D. Del.)), sets forth proposed protocols for litigating asbestos related claims following plan confirmation as a means of resolving claims against the trust for those claims holders that do not elect to accept the settlement offers to be made by the trust in that case, although these are not the only methods which could be implemented.

14. I note that OC has not proposed any effective mechanism for determining the legitimacy of nonmalignant claims. In the course of my several articles on asbestos litigation, I have commented extensively on the mechanism employed by the late U.S. District Court Judge Carl Rubin to scrutinize medical evidence submitted to support asbestos claims. Judge Rubin recognized that it had "become apparent that the plaintiffs [in asbestos cases] had available a group of experts who always found asbestosis." *See* Carl Rubin and Laura Ringenbach, *The Use of Court Experts in Asbestos Litigation*, 137 F.R.D. 35, 38 (1991). To combat the usual "battle of the experts," Judge Rubin appointed neutral and independent medical experts (such as could be appointed by the Court or the OC Trust upon direction from the Court) to evaluate the medical evidence in 65 then-pending cases. *Id.* at 37. Although plaintiffs' experts undoubtedly would have testified that every single one of the 65 plaintiffs had asbestosis, the court-appointed experts concluded that 65% of the claimants had no asbestos-related conditions at all and only 15% had asbestosis. *Id.* at 45. Were the same process to be followed today, almost 15 years after it was employed by Judge Rubin, the likelihood is substantial that an even smaller percentage of claimants would be found to have asbestosis.

Dated: December 2, 2004
New York, NY

/s/
Lester Brickman

DOCUMENTS RELIED ON BY LESTER BRICKMAN IN PREPARING SUPPLEMENTAL REPORT[1]

1. Memorandum and Order of Hon. John P. Fullam dated Nov. 19, 2004, *In re Owens Corning*, Bankr. Case No. 00-3837 (Bankr. D. Del.).

2. Fourth Amended Joint Plan of Reorganization for Owens Corning and its Affiliated Debtors and Debtors-in-Possession (Oct. 24, 2004), No. 00-3837 (Bankr. D. Del.).

3. Debtors' Motion For Entry of a Case Management Order Establishing Protocols For Litigating Asbestos-Related Claims Following Plan Confirmation, *In re: W.R. Grace, et al.*, November 13, 2004, No. 01-1139 (JFK), (Bankr. D. Del.).

4. Carl Rubin and Laura Ringenbach, *The Use of Experts in Asbestos Litigation*, 137 F.R.D. 35, 39 (1991).

[1] Documents relied upon in formulating the October 15, 2004 Report which I consulted in connection with this Supplemental Report are not listed again.