

STATE OF NEW YORK

10964

IN ASSEMBLY

May 29, 2018

Introduced by M. of A. BUCHWALD, SCHIMMINGER, OTIS, THIELE, STIRPE --
read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to truth
and fairness in asbestos litigation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The civil practice law and rules is amended by adding a new
2 article 99 to read as follows:

ARTICLE 99

TRUTH IN ASBESTOS TRUST CLAIMS

Section 9901. Definitions.

6 9902. Requirement to make trust claims.

7 9903. Notice of trust claim; production of trust claim material.

8 9904. Failure to make trust claim or provide notice and trust
9 claim material.

10 9905. Identification of additional asbestos trust claims by
11 defendants.

12 9906. Evidence of trust claims.

13 9907. Motion for sanctions.

14 § 9901. Definitions. As used in this article: (1) "Asbestos trust"
15 means a government-approved or court-approved trust, qualified settle-
16 ment fund, compensation fund or claims facility created as a result of
17 an administrative or legal action, a court-approved bankruptcy, or
18 pursuant to 11 U.S.C. 524(g) or 11 U.S.C. 1121(a) or other applicable
19 provision of law, that is intended, in whole or in part, to provide
20 compensation to claimants arising out of, based on, or related to the
21 health effects of exposure to asbestos.

22 (2) "Trust claim" means any filing with, submission to or claim
23 against an asbestos trust seeking recovery of compensation or damages
24 for or arising from the health effects of exposure to asbestos.

25 (3) "Trust claim material" means any and all documentation filed or
26 submitted by or on behalf of a claimant as part of or in connection with
27 a trust claim, including:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (a) documentation, materials and information that a claimant submits
2 or provides to an asbestos trust for the purpose of demonstrating asbes-
3 tos exposure, the health effects of exposure to asbestos, or the validi-
4 ty of a trust claim; and

5 (b) claim forms and other materials that an asbestos trust requires in
6 order to support a trust claim.

7 § 9902. Requirement to make trust claims. (1) Except as provided by
8 subdivision four of this section, a claimant who has filed an action to
9 recover damages for or arising from an asbestos-related injury, and any
10 person who is representing the claimant and/or has a fiduciary duty to
11 the claimant for the claim, including but not limited to the claimant's
12 representatives, agents, counsel and assigns, shall conduct an investi-
13 gation and file all trust claims that can be made by the claimant not
14 later than forty-five days after the claimant's commencement of the
15 action.

16 (2) A claimant may file a motion seeking relief from the obligation to
17 make a trust claim otherwise required by this section if the fees and
18 expenses, including attorney's fees, for filing the trust claim exceed
19 the claimant's reasonably anticipated recovery from the asbestos trust.

20 (3) If a claimant files a motion under subdivision two of this
21 section, the court shall determine whether the claimant's fees and
22 expenses, including attorney's fees, for making the trust claim exceed
23 the claimant's reasonably anticipated recovery from the asbestos trust.
24 If the court determines that the claimant's fees and expenses exceed the
25 claimant's reasonably anticipated recovery, the claimant is not required
26 to make the trust claim but shall provide the court with a verified
27 statement of the exposed person's exposure history, usage or other
28 connection to asbestos that is covered by each asbestos trust against
29 which a claim is not required.

30 § 9903. Notice of trust claim; production of trust claim material. (1)
31 A claimant in an action to recover damages for or arising from an asbes-
32 tos-related injury shall serve on each party a sworn statement, under
33 penalty of perjury, and trust claim material relating to, each trust
34 claim made by or on behalf of the exposed person. The sworn statement
35 must:

36 (a) identify each trust claim made by or on behalf of the exposed
37 person;

38 (b) state the amount of any trust claim payment made or to be made to
39 compensate for the exposed persons' injury; and

40 (c) state the date each trust claim was made or is to be made and
41 whether a request for individual or enhanced review or for a deferral,
42 delay, suspension, or tolling of the claim has been submitted to the
43 asbestos trust.

44 (2) The claimant shall serve the sworn statement and trust claim mate-
45 rial required by subdivision one of this section not later than thirty
46 days after the commencement of discovery.

47 (3) The sworn statement and trust claim material required to be served
48 under subdivision one of this section are in addition to any notice or
49 materials required to be served or produced as part of discovery and
50 under any other law, rule, order, or applicable agreement.

51 (4) If a claimant discovers that the sworn statement or trust claim
52 material provided by the claimant under this section were incomplete or
53 incorrect at the time the sworn statement or trust claim material was
54 served or that the sworn statement or trust claim material as served is
55 no longer complete and correct, the claimant shall supplement the sworn
56 statement and the production of trust claim material. The claimant shall

1 serve the supplemental sworn statement or trust claim material reason-
2 ably promptly after the claimant discovers the necessity for the supple-
3 mentation, but not later than the thirtieth day after the date the
4 claimant discovers the necessity for the supplementation.

5 § 9904. Failure to make trust claim or provide notice and trust claim
6 material. (1) A court may not commence trial in an action to recover
7 damages for or arising from an asbestos-related injury unless the claim-
8 ant has:

9 (a) made each trust claim as required by this article; and

10 (b) served the sworn statement, and trust claim material relating to,
11 those trust claims in accordance with section ninety-nine hundred three
12 of this article.

13 (2) This section shall not be construed to require that the claimant
14 receive payment of a trust claim from an asbestos trust before a judg-
15 ment is rendered in the action.

16 § 9905. Identification of additional asbestos trust claims by defend-
17 ants. (1) Not less than ninety days before trial, if a defendant identi-
18 fies an asbestos trust claim not produced by the claimant that the
19 defendant reasonably believes the claimant may file, the defendant shall
20 confer with the claimant and thereafter may move the court for an order
21 to require the claimant to file the additional trust claim. The defend-
22 ant shall produce or describe any documentation the defendant possesses
23 or of which the defendant is aware in support of the motion. If a
24 defendant has previously filed a motion under this section, the court
25 shall not grant a subsequent motion if the defendant knew that the
26 claimant met the criteria for payment for the additional trust claim
27 identified in the subsequent motion at the time the earlier motion was
28 filed.

29 (2) Within 10 days of receiving the defendant's motion, the claimant
30 shall, for each asbestos trust claim identified by the defendant, do one
31 of the following:

32 (a) file the asbestos trust claims;

33 (b) file a written response with the court stating the reason there is
34 insufficient evidence for the claimant to file the asbestos trust
35 claims; or

36 (c) file a written response with the court requesting a determination
37 that the fees and expenses, including attorney's fees for filing the
38 asbestos trust claims exceed the claimant's reasonably anticipated
39 recovery from the asbestos trust.

40 (3)(a) Within 10 days of the claimant filing a written response to the
41 defendant's motion, the court shall determine if there is sufficient
42 basis for the claimant to file the asbestos trust claim identified in
43 the motion. If the court determines that there is a sufficient basis for
44 the claimant to file an asbestos trust claim identified by the defend-
45 ant, the court shall order the claimant to file the asbestos trust claim
46 identified and stay the asbestos action until the claimant files the
47 asbestos trust claim and produces all related trust claim materials.

48 (b) if the court determines that the cost of submitting an asbestos
49 trust claim identified by the defendant exceeds the claimant's reason-
50 ably anticipated recovery, the court shall stay the asbestos action
51 until the claimant files with the court and provides all parties with a
52 verified statement of the claimant's history of exposure, usage, or
53 other connection to asbestos covered by that asbestos trust.

54 § 9906. Evidence of trust claims. (1) Trust claim material is presumed
55 to be authentic, relevant and admissible in evidence in an action to
56 which this article applies.

1 (2) Claims of privilege shall not apply to any trust claim material in
2 an action to which this article applies.

3 (3) A party may use the trust claim material to prove:

4 (a) an alternate source for the cause of the exposed person's injury,
5 death or loss;

6 (b) a basis to allocate responsibility for the exposed person's inju-
7 ry, death, or loss; or

8 (c) any other issue relevant to adjudication of a claim asserted in
9 the action.

10 § 9907. Motion for sanctions. (1) On the motion of a defendant or
11 judgement debtor seeking sanctions or other relief in an action to
12 recover damages for or arising from the health effects of exposure to
13 asbestos, and after reasonable notice to the parties, the court may
14 impose any sanction provided by court rule or law, including, but not
15 limited to, vacating a judgement rendered in the action, for a claim-
16 ant's failure to comply with the disclosure requirements of section
17 ninety-nine hundred three of this article.

18 (2) If the claimant, claimant's counsel, or any other person on the
19 claimant's behalf files an asbestos trust claim or claims after the
20 claimant obtains a judgement in the action, and the asbestos trust was
21 in existence at the time the claimant obtained the judgement, the court,
22 on motion by a defendant or judgement debtor seeking sanctions or other
23 relief, has jurisdiction to reopen the judgement in the action and
24 adjust the judgement by the amount of any subsequent asbestos trust
25 payments obtained by or on behalf of the claimant and order any other
26 relief to the parties that the court deems just and proper.

27 (3) A defendant or judgement debtor shall file any motion under this
28 section within a reasonable time and not more than one year after the
29 judgement was entered in the action.

30 § 2. This act shall take effect on the thirtieth day after it shall
31 have become a law, and shall apply to all actions commenced on or after
32 such date.