STATE OF NEW YORK

2511

2017-2018 Regular Sessions

IN SENATE

January 13, 2017

Introduced by Sens. BONACIC, DeFRANCISCO -- read twice and ordered printed, and when printed to be committed 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:

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

ARTICLE 99

TRUTH IN ASBESTOS TRUST CLAIMS

Section 9901. Definitions.

9902. Requirement to make trust claims.

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

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

9905. Motion to stay.

9906. Response to motion to stay.

9907. Stay of proceedings.

9908. Evidence of trust claims.

9909. Motion for sanctions.

§ 9901. Definitions. As used in this article:

(1) "Asbestos trust" means a government-approved or court-approved trust, qualified settlement fund, compensation fund or claims facility created as a result of an administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U.S.C. 524(g) or 11 U.S.C. 1121 (a) or other applicable provision of law, that is intended, in whole or in part, to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos.

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

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

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

a. documentation, materials and information that a claimant submits or provides to an asbestos trust for the purpose of demonstrating asbestos exposure, the health effects of exposure to asbestos, or the validity of a trust claim; and

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

§ 9902. Requirement to make trust claims. (1) Except as provided by subdivision four of this section, a claimant who has filed an action to recover damages for or arising from an asbestos-related injury, and any person who is representing the claimant and/or has a fiduciary duty to the claimant for the claim, including but not limited to the claimant's representatives, agents, counsel and assigns, shall conduct an investigation and timely file all trust claims that can be made by the claimant.

(2) A claimant, and any person who is representing the claimant and/or has a fiduciary duty to the claimant for the claim, including but not limited to the claimant's representatives, agents, counsel and assigns, must make each trust claim required under this section not later than forty-five days after the claimant's commencement of the action.

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

(4) If a claimant files a motion under subdivision three of this section, the court shall determine whether the claimant's fees and expenses, including attorney's fees, for making the trust claim exceed the claimant's reasonably anticipated recovery from the asbestos trust. If the court determines that the claimant's fees and expenses exceed the claimant's reasonably anticipated recovery, the claimant is not required to make the trust claim but shall provide the court with a verified statement of the exposed person's exposure history to asbestos that is covered by each asbestos trust against which a claim is not required.

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

a. identify each trust claim made by or on behalf of the exposed person;

b. state the amount of any trust claim payment made or to be made to compensate for the exposed person's injury; and

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

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

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

(4) If a claimant discovers that the sworn statement or trust claim material provided by the claimant under this section were incomplete or incorrect at the time the sworn statement or trust claim material was served or that the sworn statement or trust claim material as served is no longer complete and correct, the claimant shall supplement the sworn statement and the production of trust claim material. The claimant shall serve the supplemental sworn statement or trust claim material reasonably promptly after the claimant discovers the necessity for the supplementation, but not later than the thirtieth day after the date the claimant discovers the necessity for the supplementation.

(5) If a claimant has settled with a party, for up to five years following the date of the settlement, the settled party can request, and the claimant shall provide, a supplemental sworn statement and trust claim material relating to each trust claim made by or on behalf of the claimant as of the date of the settled party's request.

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

a. made each trust claim as required by this article; and

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

(2) If a claimant received compensation from an asbestos trust for an injury that also gave rise to a judgment against a defendant for the same injury and the claimant failed to serve the required sworn statement and trust claim material as required by section ninety-nine hundred three of this article, the court, on a defendant's or judgment debtor's motion, and after reasonable notice to the parties, may impose an appropriate sanction, including, but not limited to, setting aside the judgment and ordering a new trial.

(3) This section may not be construed to require that the claimant receive payment of a trust claim from an asbestos trust before a judgment is rendered in the action.

§ 9905. Motion to stay. (1) A defendant may file a motion requesting a stay of the proceedings under section ninety-nine hundred seven of this article on or before the later of:

a. the sixtieth day before the date trial in the action is set to commence; or

b. the fifteenth day after the date the defendant first obtains asbestos-exposure information that could support an additional asbestos trust claim by the claimant.

(2) The motion described by subdivision one of this section must include:

a. a list of asbestos trusts not disclosed by the claimant against which the defendant in good faith has a reasonable basis to believe the claimant may make a successful trust claim; and

b. information supporting the additional trust claim described by paragraph a of this subdivision, including information that may be used to meet the trust claim requirements of an asbestos trust described by such paragraph a.

§ 9906. Response to motion to stay. (1) Not later than the fourteenth day after the date the defendant files a motion to stay under section ninety-nine hundred five of this article, the claimant may file a response:

a. stating and providing proof that the claimant has made a trust claim identified in the defendant's motion and served the sworn statement, and trust claim material relating to, the claim as prescribed by section ninety-nine hundred three of this article; or

b. requesting a determination by the court that the fees and expenses, including attorney's fees, for filing a trust claim identified in the motion exceed the claimant's reasonably anticipated recovery from the asbestos trust.

(2) If the claimant files a response making a request under paragraph b of subdivision one of this section, the court shall determine whether the claimant's fees and expenses, including attorney's fees, for making the relevant trust claim exceed the claimant's reasonably anticipated recovery from the asbestos trust. If the court determines that the claimant's fees and expenses exceed the claimant's reasonably anticipated recovery, the claimant is not required to make the trust claim but shall provide the court with a verified statement of the exposed person's exposure history to asbestos that is covered by the asbestos trust.

§ 9907. Stay of proceedings. (1) The court shall grant a motion to stay under section ninety-nine hundred five of this article if the court determines the motion was timely filed and the claimant is likely to receive compensation from an asbestos trust identified by the motion. The stay shall continue until the claimant provides proof that the claimant has made the claim and served a sworn statement, and trust claim material relating to, the claim as prescribed by section ninety-nine hundred three of this article.

(2) The court may not stay the proceedings if, with respect to each trust claim identified in the motion:

a. the court determines that the claimant has satisfied the requirements of subdivision one of section ninety-nine hundred three of this article; or

b. the court makes a determination described by subdivision four of section ninety-nine hundred two or subdivision two of section ninety-nine hundred six of this article.

§ 9908. Evidence of trust claims. (1) Trust claim material is presumed to be authentic, relevant, and discoverable in an action to which this article applies.

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

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

a. an alternate source for the cause of the exposed person's injury, death or loss;

b. a basis to allocate responsibility for the exposed person's injury, death, or loss; or

c. any other issue relevant to adjudication of a claim asserted in the action.

§ 9909. Motion for sanctions. (1) On the motion of a defendant or judgment debtor seeking sanctions or other relief in an action to recover damages for or arising from the health effects of exposure to asbestos, the court may impose any sanction provided by court rule or law, including, but not limited to, vacating a judgment rendered in the

action, for a claimant's failure to comply with the disclosure require-ments of section ninety-nine hundred three of this article.

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

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

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