

STATE OF NEW YORK

2511--A

2017-2018 Regular Sessions

IN SENATE

January 13, 2017

Introduced by Sens. BONACIC, AKSHAR, BOYLE, BRESLIN, DeFRANCISCO, GALLIVAN, GOLDEN, GRIFFO, HELMING, MARCHIONE, O'MARA, ORTT, RANZENHOFER, SEPULVEDA, SEWARD, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged and said bill committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 provision of law, that is intended, in whole or in part, to provide
2 compensation to claimants arising out of, based on, or related to the
3 health effects of exposure to asbestos.

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

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

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

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

16 § 9902. Requirement to make trust claims. (1) Except as provided by
17 subdivision four of this section, a claimant who has filed an action to
18 recover damages for or arising from an asbestos-related injury, and any
19 person who is representing the claimant and/or has a fiduciary duty to
20 the claimant for the claim, including but not limited to the claimant's
21 representatives, agents, counsel and assigns, shall conduct an investi-
22 gation and file all trust claims that can be made by the claimant not
23 later than forty-five days after the claimant's commencement of the
24 action.

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

29 (3) If a claimant files a motion under subdivision two of this
30 section, the court shall determine whether the claimant's fees and
31 expenses, including attorney's fees, for making the trust claim exceed
32 the claimant's reasonably anticipated recovery from the asbestos trust.
33 If the court determines that the claimant's fees and expenses exceed the
34 claimant's reasonably anticipated recovery, the claimant is not required
35 to make the trust claim but shall provide the court with a verified
36 statement of the exposed person's exposure history, usage or other
37 connection to asbestos that is covered by each asbestos trust against
38 which a claim is not required.

39 § 9903. Notice of trust claim; production of trust claim material. (1)
40 A claimant in an action to recover damages for or arising from an asbes-
41 tos-related injury shall serve on each party a sworn statement, under
42 penalty of perjury, and trust claim material relating to, each trust
43 claim made by or on behalf of the exposed person. The sworn statement
44 must:

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

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

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

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

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

5 (4) If a claimant discovers that the sworn statement or trust claim
6 material provided by the claimant under this section were incomplete or
7 incorrect at the time the sworn statement or trust claim material was
8 served or that the sworn statement or trust claim material as served is
9 no longer complete and correct, the claimant shall supplement the sworn
10 statement and the production of trust claim material. The claimant shall
11 serve the supplemental sworn statement or trust claim material reason-
12 ably promptly after the claimant discovers the necessity for the supple-
13 mentation, but not later than the thirtieth day after the date the
14 claimant discovers the necessity for the supplementation.

15 § 9904. Failure to make trust claim or provide notice and trust claim
16 material. (1) A court may not commence trial in an action to recover
17 damages for or arising from an asbestos-related injury unless the claim-
18 ant has:

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

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

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

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

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

42 (a) file the asbestos trust claims;

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

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

50 (3)(a) Within 10 days of the claimant filing a written response to the
51 defendant's motion, the court shall determine if there is sufficient
52 basis for the claimant to file the asbestos trust claim identified in
53 the motion. If the court determines that there is a sufficient basis for
54 the claimant to file an asbestos trust claim identified by the defend-
55 ant, the court shall order the claimant to file the asbestos trust claim

1 identified and stay the asbestos action until the claimant files the
2 asbestos trust claim and produces all related trust claim materials.

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

9 § 9906. Evidence of trust claims. (1) Trust claim material is presumed
10 to be authentic, relevant and admissible in evidence in an action to
11 which this article applies.

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

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

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

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

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

21 § 9907. Motion for sanctions. (1) On the motion of a defendant or
22 judgement debtor seeking sanctions or other relief in an action to
23 recover damages for or arising from the health effects of exposure to
24 asbestos, and after reasonable notice to the parties, the court may
25 impose any sanction provided by court rule or law, including, but not
26 limited to, vacating a judgement rendered in the action, for a claim-
27 ant's failure to comply with the disclosure requirements of section
28 ninety-nine hundred three of this article.

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

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

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