

# STATE OF NEW YORK

7659

## IN SENATE

February 4, 2020

Introduced by Sen. BRESLIN -- 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:

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.