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:

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. Identification of additional asbestos trust claims by defendants.

9906. Evidence of trust claims.

9907. 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.

(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:

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

LBD01068-01-9

(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 file all trust claims that can be made by the claimant not later than forty-five days after the claimant's commencement of the action.

(2) 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.

(3) If a claimant files a motion under subdivision two 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, usage or other connection 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 persons' 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.

§ 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) This section shall 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. Identification of additional asbestos trust claims by defendants. (1) Not less than ninety days before trial, if a defendant identifies an asbestos trust claim not produced by the claimant that the defendant reasonably believes the claimant may file, the defendant shall confer with the claimant and thereafter may move the court for an order to require the claimant to file the additional trust claim. The defendant shall produce or describe any documentation the defendant possesses or of which the defendant is aware in support of the motion. If a defendant has previously filed a motion under this section, the court shall not grant a subsequent motion if the defendant knew that the claimant met the criteria for payment for the additional trust claim identified in the subsequent motion at the time the earlier motion was filed.

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

(a) file the asbestos trust claims;

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

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

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

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

§ 9906. Evidence of trust claims. (1) Trust claim material is presumed to be authentic, relevant and admissible in evidence 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.

§ 9907. Motion for sanctions. (1) On the motion of a defendant or judgement debtor seeking sanctions or other relief in an action to recover damages for or arising from the health effects of exposure to asbestos, and after reasonable notice to the parties, the court may impose any sanction provided by court rule or law, including, but not limited to, vacating a judgement rendered in the action, for a claimant's failure to comply with the disclosure requirements 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 or claims after the claimant obtains a judgement in the action, and the asbestos trust was in existence at the time the claimant obtained the judgement, the court, on motion by a defendant or judgement debtor seeking sanctions or other relief, has jurisdiction to reopen the judgement in the action and adjust the judgement 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 judgement debtor shall file any motion under this section within a reasonable time and not more than one year after the judgement was entered in the action.

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