

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1792

By: Jolley

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5
6 AS INTRODUCED

7 An Act relating to asbestos tort actions; creating
8 the Asbestos Claims Transparency Act; providing short
9 title; defining terms; establishing disclosure
10 requirements for certain tort actions; authorizing
11 additional disclosure requirements; allowing
12 defendant to file certain motion; requiring certain
13 evidence; authorizing claimant to take certain
14 actions within specified time period; establishing
15 requirements for stay of certain proceedings;
16 establishing requirements for certain trust claims;
17 allowing discovery of certain information;
18 authorizing additional discovery and disclosure under
19 certain circumstances; authorizing imposition of
20 sanctions under certain circumstances; authorizing
21 reopening of certain judgments under specified
22 circumstances; defining term; stating applicability
23 of act; providing for codification; providing for
24 noncodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 81 of Title 76, unless there is
created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Asbestos Claims
Transparency Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 82 of Title 76, unless there is
3 created a duplication in numbering, reads as follows:

4 As used in the Asbestos Claims Transparency Act:

5 1. "Asbestos" means all minerals defined as "asbestos" in 29 CFR
6 1910, as amended;

7 2. "Asbestos claim" means any claim for damages, losses,
8 indemnification, contribution, or other relief arising out of, based
9 on, or in any way related to asbestos. "Asbestos claim" includes a
10 claim made by or on behalf of any person who has been exposed to
11 asbestos, or any representative, spouse, parent, child, or other
12 relative of that person, for injury, including mental or emotional
13 injury, death, or loss to person, risk of disease or other injury,
14 costs of medical monitoring or surveillance, or any other effects on
15 the person's health that are caused by the person's exposure to
16 asbestos;

17 3. "Asbestos tort action" means a tort action based on an
18 asbestos claim;

19 4. "Asbestos trust", except as otherwise provided in subsection
20 E of Section 5 of this act, means and encompasses all trust
21 entities, claims agents, or claims processing facilities that are
22 created pursuant to the jurisdiction of a United States Bankruptcy
23 Court and Section 524(g) of Chapter 11 of the United States
24 Bankruptcy Code, 11 U.S.C. 524(g), or other applicable provision of

1 law, that are formed for the purpose of compensating claimants
2 asserting eligible asbestos claims, and that are in existence on the
3 date initially set for trial in the asbestos tort action;

4 5. "Asbestos trust claim" means any claim for compensation by an
5 exposed person or the exposed person's representative against any
6 asbestos trust;

7 6. "Cancer" means a malignant condition;

8 7. "Claimant" means any person asserting an asbestos claim or
9 asbestos trust claim. "Claimant" includes a plaintiff,
10 counterclaimant, cross-claimant, or third-party plaintiff;

11 8. "Exposed person" means any person whose exposure to asbestos
12 or to asbestos-containing products is the basis for an asbestos
13 claim;

14 9. "Noncancer" means a nonmalignant condition;

15 10. "Proof of claim" means any form of documentation that a
16 potential claimant against an asbestos trust submits or provides to
17 the asbestos trust that attests to or asserts the existence of any
18 liquidated or unliquidated asbestos claim that the claimant may have
19 against the asbestos trust or its predecessors under any theory of
20 law;

21 11. "Trust claims material" means documents constituting an
22 asbestos trust claim, including, but not limited to, claim forms,
23 proofs of claim, and informational material required by an asbestos
24 trust to be submitted by a claimant in order to have the claim

1 evaluated by the asbestos trust and relied upon by the asbestos
2 trust in making its compensation determination; and

3 12. "Trust governance documents" means and encompasses all
4 documents that are set forth in the plan of reorganization and
5 related orders, terms, conditions, distribution procedures, payment
6 schedules and matrixes, evaluation paradigms and adjustment
7 formulas, and all other policies and procedures that are utilized to
8 determine a claimant's eligibility for, and the amounts or levels
9 of, payment to a claimant by an asbestos trust.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 83 of Title 76, unless there is
12 created a duplication in numbering, reads as follows:

13 A. 1. a. Within thirty (30) days after filing the complaint or
14 other initial pleading in an asbestos tort action that
15 is not otherwise barred or deferred under applicable
16 law or within thirty (30) days of the effective date
17 of this section with respect to asbestos tort actions
18 that are pending on that effective date, a claimant
19 shall provide to all of the parties in the action a
20 sworn statement by the claimant, under penalty of
21 perjury, identifying all existing asbestos trust
22 claims made by or on behalf of the claimant and all
23 trust claims material pertaining to each identified
24 asbestos trust claim. The sworn statement shall

1 disclose the date on which each asbestos trust claim
2 against the relevant asbestos trust was made and
3 whether any request for a deferral, delay, suspension,
4 or tolling of the asbestos trust claims process has
5 been submitted.

6 b. The submission of the sworn statement under
7 subparagraph a of this paragraph shall be in addition
8 to any disclosure requirements otherwise imposed by
9 law, civil rule, court order or ruling, applicable
10 agreement or stipulation, local rule, or case
11 management order.

12 2. If the claimant, subsequent to the submission of the sworn
13 statement under subparagraph a of paragraph 1 of this subsection,
14 files with or submits to any asbestos trust additional asbestos
15 trust claims not previously disclosed, the claimant shall provide to
16 all of the parties in the asbestos tort action an amendment updating
17 the sworn statement and identifying the additional asbestos trust
18 claims. The claimant shall provide any amendment under this
19 paragraph within thirty (30) days of filing an additional asbestos
20 trust claim with, or submitting an additional asbestos trust claim
21 to, any asbestos trust.

22 3. With respect to any asbestos trust claim that a claimant
23 discloses under paragraph 2 of this subsection in an amendment to
24 the sworn statement, the claimant shall provide to all of the

1 parties in the asbestos tort action all trust claims material
2 pertaining to each additional asbestos trust claim identified in
3 that amendment. The claimant shall provide the trust claims
4 material under this paragraph within thirty (30) days of filing or
5 submitting each additional asbestos trust claim.

6 B. Failure to provide to all of the parties in the asbestos tort
7 action all trust claims material as required by this section in a
8 timely manner shall constitute grounds for the court to decline to
9 assign an initial trial date or extend the date set for trial in the
10 action.

11 C. Nothing in this section prevents a court of competent
12 jurisdiction from requiring any disclosures in addition to the
13 disclosures required under this section.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 84 of Title 76, unless there is
16 created a duplication in numbering, reads as follows:

17 A. Any defendant in an asbestos tort action may file a motion
18 with the court, with notice to the claimant and to all of the
19 parties in the action, for an order to stay the proceedings. A
20 defendant's motion to stay the proceedings shall set forth credible
21 evidence that demonstrates all of the following:

22 1. The identities of all asbestos trusts not previously
23 disclosed by the claimant pursuant to Section 3 of this act against
24 which the claimant has not made any asbestos trust claims but

1 against which the defendant in good faith believes the claimant may
2 make a successful asbestos trust claim;

3 2. The information that the defendant believes supports the
4 additional asbestos trust claims described in paragraph 1 of this
5 subsection; and

6 3. A description of the information sufficient to meet the
7 asbestos trust claim requirements of the asbestos trusts described
8 in paragraph 1 of this subsection.

9 B. Within fifteen (15) days after the filing of the defendant's
10 motion for an order to stay the proceedings under subsection A of
11 this section, the claimant may do either of the following:

12 1. File the asbestos trust claims with or submit them to the
13 asbestos trusts identified in the defendant's motion for an order to
14 stay the proceedings. The submission to the court and to all of the
15 parties in the asbestos tort action of proof demonstrating that the
16 asbestos trust claims identified in the defendant's motion to stay
17 the proceedings have been filed with or submitted to the appropriate
18 asbestos trusts is dispositive of the defendant's motion for an
19 order to stay the proceedings. Alternatively, the defendant may
20 withdraw the motion brought under subsection A of this section; or

21 2. File with the court a response to the defendant's motion for
22 an order to stay the proceedings requesting a determination by the
23 court that the information supporting the asbestos trust claims
24 against the asbestos trusts identified in the defendant's motion for

1 an order to stay the proceedings should be modified prior to the
2 filing of an asbestos trust claim with, or the submission of an
3 asbestos trust claim to, an asbestos trust or that there is
4 insufficient information to file or submit the asbestos trust claim
5 identified in the defendant's motion for an order to stay the
6 proceedings.

7 C. If the defendant has not met its burden under subsection A of
8 this section and if the claimant files a response pursuant to
9 paragraph 2 of subsection B of this section, the court shall
10 determine if a successful asbestos trust claim could be submitted in
11 good faith to each asbestos trust identified in the defendant's
12 motion for an order to stay the proceedings brought under subsection
13 A of this section. The claimant has the burden of proof, by a
14 preponderance of the evidence, to demonstrate that the information
15 set forth by the defendant pursuant to paragraphs 2 and 3 of
16 subsection A of this section should be modified prior to the filing
17 of an asbestos trust claim with, or the submission of an asbestos
18 trust claim to, each asbestos trust identified in the defendant's
19 motion or that the asbestos trust claim should not be filed with or
20 submitted to the asbestos trust because a successful asbestos trust
21 claim cannot be made in good faith.

22 D. If the court determines that there is a good faith basis for
23 filing an asbestos trust claim with, or submitting an asbestos trust
24 claim to, an asbestos trust identified in the defendant's motion for

1 an order to stay the proceedings brought under subsection A of this
2 section, the court shall stay the proceedings until the claimant
3 files the asbestos trust claims with or submits them to the asbestos
4 trusts identified in the defendant's motion for an order to stay the
5 proceedings and has otherwise met the obligations set forth in this
6 section and Section 3 of this act.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 85 of Title 76, unless there is
9 created a duplication in numbering, reads as follows:

10 A. A noncancer asbestos trust claim and a cancer asbestos trust
11 claim are based on distinct injuries caused by a person's exposure
12 to asbestos. A noncancer asbestos trust claim that is subject to
13 disclosure under Section 3 or 4 of this act or is identified in this
14 section means the noncancer asbestos claim that is the subject of
15 the asbestos tort action in which the defendant seeks discovery
16 pursuant to this section and to Section 3 or 4 of this act. If a
17 claimant previously filed a noncancer asbestos trust claim with, or
18 submitted a noncancer asbestos trust claim to, an asbestos trust and
19 subsequently filed an asbestos tort action based on a cancer
20 asbestos claim, a cancer asbestos trust claim that is subject to
21 disclosure under Section 3 or 4 of this act or is identified in this
22 section means both the earlier filed noncancer asbestos trust claim
23 and the cancer asbestos claim that is the subject of the subsequent
24 asbestos tort action.

1 B. Asbestos trust claims and the information that is the subject
2 of disclosure under Section 3 or 4 of this act are presumed to be
3 authentic, relevant to, and discoverable in an asbestos tort action.
4 Notwithstanding any agreement or confidentiality provision, trust
5 claims material are presumed to not be privileged. The parties in
6 the asbestos tort action may introduce at trial any trust claims
7 material to prove alternative causation for the exposed person's
8 claimed injury, death, or loss to person, to prove a basis to
9 allocate responsibility for the claimant's claimed injury, death, or
10 loss to person, and to prove issues relevant to an adjudication of
11 the asbestos claim, unless the exclusion of the trust claims
12 material is otherwise required by the rules of evidence. An
13 asbestos trust claim rejected by an asbestos trust may be excluded
14 as evidence if the exclusion is required by the rules of evidence.

15 C. In addition to the disclosure requirements set forth in
16 Sections 3 and 4 of this act, the parties to the asbestos tort
17 action may seek additional disclosure and discovery of information
18 relevant to the action by any mechanism provided by any applicable
19 section of the Oklahoma Statutes, the Rules of Civil Procedure, any
20 local rule, or any case management order. In addition to the
21 disclosure described in this division, any defendant in the asbestos
22 tort action also may seek discovery of the claimant's asbestos trust
23 claims directly from the asbestos trusts involved.

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1 D. In an asbestos tort action, upon the filing by a defendant or
2 judgment debtor of an appropriate motion seeking sanctions or other
3 relief, the court may impose any sanction provided by a law of this
4 state, including, but not limited to, vacating a judgment rendered
5 in an asbestos tort action for a claimant's failure to comply with
6 the disclosure requirements of this section and Section 3 or 4 of
7 this act.

8 E. 1. If subsequent to obtaining a judgment in an asbestos tort
9 action in this state a claimant files any additional asbestos trust
10 claim with, or submits any additional asbestos trust claim to, an
11 asbestos trust that was in existence at the time the claimant
12 obtained that judgment, the trial court, upon the filing by a
13 defendant or judgment debtor of an appropriate motion seeking
14 sanctions or other relief, has jurisdiction to reopen its judgment
15 in the asbestos tort action and do either of the following:

- 16 a. adjust the judgment by the amount of any subsequent
17 asbestos trust payments obtained by the claimant; or
- 18 b. order any other relief to the parties that the court
19 considers just and proper.

20 2. As used in this subsection, "asbestos trust" means and
21 encompasses all trust entities, claims agents, or claims processing
22 facilities that are created pursuant to the jurisdiction of a United
23 States Bankruptcy Court and Section 524(g) of Chapter 11 of the
24 United States Bankruptcy Code, 11 U.S.C. 524(g), or other applicable

1 provision of law and that are formed for the purpose of compensating
2 claimants asserting eligible asbestos claims.

3 SECTION 6. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 86 of Title 76, unless there is
5 created a duplication in numbering, reads as follows:

6 This act shall apply to asbestos tort actions filed on or after
7 the effective date of this act and to pending asbestos tort actions
8 in which trial has not commenced as of the effective date of this
9 act. This act shall apply to claims made against any asbestos
10 trusts, without regard to whether those trusts were in existence on
11 or created after the effective date of this act.

12 SECTION 7. This act shall become effective November 1, 2012.

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