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BILL ANALYSIS



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House Bill 5456 (as passed by the House)
Sponsor: Representative Jason Wentworth
House Committee: Michigan Competitiveness
Senate Committee: Michigan Competitiveness

Date Completed: 2-27-18

CONTENT

The bill would enact the "Asbestos Bankruptcy Trust Claims Transparency Act" as Chapter 30A of the Revised Judicature Act to do the following:

- Require the plaintiff in an asbestos action to provide the court and all parties with a sworn statement that all asbestos trust claims had been investigated and all such claims that the plaintiff could make had been completed and filed.
- Require the plaintiff to provide all parties with all trust claims materials (a final executed proof of claim and all other documents related to a claim against an asbestos trust).
- Permit a defendant in an asbestos action to file a motion requesting a stay of the proceedings, and require the motion to identify the asbestos trust claims not previously identified that the defendant believed the plaintiff could file.
- Require the court to stay the asbestos action until the plaintiff 1) filed an asbestos trust claim, or 2) if the cost of submitting a claim exceeded the plaintiff's reasonably anticipated recovery, produced a statement of history of exposure to, use of, or other connection to asbestos covered by the trust.
- Provide that the court could not schedule the action for trial sooner than 60 days after the plaintiff complied with these requirements.
- Specify that trust claims materials and trust governance documents would be presumed relevant and authentic, and would be admissible in evidence in an asbestos action.
- Permit a defendant to seek discovery from an asbestos trust, and provide that the plaintiff could not claim confidentiality or privilege to bar discovery.
- State that trust materials that were sufficient to entitle a claim to consideration for payment under the applicable trust governance documents would be sufficient to support a jury finding that the plaintiff was exposed to products for which the trust was established to provide compensation and that exposure was a substantial contributing factor in the plaintiff's injury.
- Provide that if a plaintiff filed an additional asbestos trust claim after obtaining a judgment in an asbestos action, and if the trust existed at the time of the judgment, the court could reopen and adjust the judgment by the amount of subsequent payments the plaintiff obtained.

Definitions

"Asbestos action" would mean a claim for damages or other civil or equitable relief presented in a civil action that arises out of, is based on, or is related to the health effects of exposure

to asbestos, and any other derivative claim made by or on behalf of an individual exposed to asbestos or a representative, spouse, parent, child, or other relative of the individual.

"Asbestos trust" would mean a government-approved or court-approved trust, qualified settlement fund, compensation fund, or claims facility that is created as a result of an administrative or legal action, a court-approved bankruptcy, or under 11 USC 524(g), 11 USC 1121(a), or another applicable provision of law and that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos.

(Title 11 of the U.S. Code is commonly referred to as the Bankruptcy Code. Chapter 5 of Title 11 governs creditors, the debtor, and the estate, and Chapter 11 allows a reorganization of the debtor. Under Section 524(g), a court that enters an order confirming a plan of reorganization under Chapter 11 may issue an injunction to enjoin the entities from taking legal action for the purpose of collecting, recovering, or receiving payment with respect to any claim that, under a plan of reorganization, is to be paid in whole or in part by a trust that meets certain criteria, except legal actions permitted by the injunction. Under Section 1121(a), a debtor may file a plan of reorganization with a petition commencing a voluntary case, or at any time in voluntary or involuntary case.)

"Plaintiff" would mean the person bringing the asbestos action, including a personal representative if the asbestos action is brought by an estate, or a conservator or next friend if the action is brought on behalf of a minor or legally incapacitated individual.

"Trust claims materials" would mean a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including claims forms and supplementary materials, affidavits, depositions and trial testimony, work history, and medical and health records, all documents that reflect the status of a claim against an asbestos trust, and, if the trust claim has settled, all documents related to the settlement.

"Trust governance documents" would mean all documents that relate to eligibility and payment levels, including claims payment matrices, trust distribution procedures, and plans for reorganization, for an asbestos trust.

Requirements for Plaintiff

Within 30 days after an asbestos action was filed, or within 30 days after the effective date of proposed Chapter 30A, whichever was later, the plaintiff would have to comply with the following requirements to provide a sworn statement and trust claims materials. As described below, the plaintiff would have a continuing duty to supplement the information and materials.

If the plaintiff failed to comply with these requirements, the court could dismiss the asbestos action.

Sworn Statement of Investigation & Filing of Claims. The plaintiff would have to provide the court and parties with a sworn statement indicating that an investigation of all asbestos trust claims had been conducted and that all such claims that could be made by the plaintiff or any person on the plaintiff's behalf had been completed and filed. A deferral or placeholder claim that was missing necessary documentation for the asbestos trust to review and pay the claim would not meet these requirements.

The sworn statement would have to indicate whether there had been a request to defer, delay, suspend, or toll, withdraw, or otherwise alter the standing of any asbestos trust claim, and provide the status and disposition of each such claim.

The sworn statement would have to be signed by the plaintiff and the plaintiff's counsel, under penalty of perjury.

Trust Claims Materials. The plaintiff would be required to provide all parties with all trust claims materials, including trust claims materials that related to conditions other than those that were the basis for the asbestos action. The materials also would have to include all trust claims materials from all law firms connected to the plaintiff in relation to exposure to asbestos, including anyone at a law firm involved in the action, any referring law firm, and any other law firm that had filed an asbestos trust claim for the plaintiff or on the plaintiff's behalf.

These documents would have to be accompanied by a custodial affidavit from the asbestos trust certifying that the trust claims materials submitted were true and complete.

Continuing Duty to Supplement. The plaintiff would have a continuing duty to supplement the information and materials required to be provided. The plaintiff would have to do so within 30 days after the plaintiff or a person on the plaintiff's behalf supplemented an existing asbestos trust claim, received additional information or materials related to an asbestos trust claim, or filed an additional asbestos trust claim.

Defendant's Motion to Stay Proceedings

A defendant in an asbestos action could file a motion requesting a stay of the proceedings by the 60th day before trial of the action was set to begin or any other time that the defendant had a good-faith basis to request a stay, whichever was later. The motion would have to identify the asbestos trust claims not previously identified that the defendant believed the plaintiff could file.

Within 10 days after receiving the motion, the plaintiff would have to do one of the following:

- File the asbestos trust claims.
- File with the court a response stating that there was insufficient evidence for the plaintiff to file the asbestos trust claims.
- File with the court a written response requesting a determination that the cost to file the claims exceeded the plaintiff's reasonably anticipated recovery.

If the court determined that there was a sufficient basis for the plaintiff to file an asbestos trust claim that was the subject of the motion, the court would have to stay the asbestos action until the plaintiff filed the asbestos trust claim and produced all related trust claims materials.

If the court determined that the cost of submitting an asbestos trust claim exceeded the plaintiff's reasonably anticipated recovery, the court would have to stay the asbestos action until the plaintiff filed with the court and provided to all parties a verified statement of the plaintiff's history of exposure to, use of, or other connection to asbestos covered by the asbestos trust.

The court could not schedule the asbestos action for trial sooner than 60 days after the plaintiff complied with the applicable requirements.

Presumption of Relevance; Discovery

Trust claims materials and trust governance documents would be presumed to be relevant

and authentic, and would be admissible in evidence in an asbestos action. A claim of privilege would not apply to trust claims materials or trust governance documents.

A defendant in an asbestos action could seek discovery from an asbestos trust. The plaintiff could not claim privilege or confidentiality to bar discovery. The plaintiff would have to provide consent at the time of asbestos trust identification, including authorization for release of trust materials or other expression of permission that could be required by the trust to release information and materials a defendant sought.

Sufficiency of Trust Materials

If trust materials were sufficient to entitle a claim to consideration for payment under the applicable trust governance documents, the trust materials would be sufficient to support a jury finding that the plaintiff was exposed to products for which the trust was established to provide compensation and that, under applicable law, the exposure was a substantial contributing factor in causing the plaintiff's injury.

Additional Asbestos Trust Claim

If a plaintiff or a person on the plaintiff's behalf filed an additional asbestos trust claim after obtaining a judgment in an asbestos action, and if that trust were in existence at the time the plaintiff obtained the judgment, the trial court, on a motion by a defendant or judgment debtor seeking sanctions or other relief, would have jurisdiction to reopen and adjust the judgment by the amount of any subsequent asbestos trust payments obtained by the plaintiff, and order any other relief that the court considered proper.

A defendant or judgment debtor would have to file any such motion within a reasonable time and not more than one year after the judgment was entered.

Application of Chapter 30A

The proposed chapter would apply to asbestos actions filed on or after its effective date. Chapter 30A also would apply to any pending asbestos actions in which trial had not begun on or before the chapter's effective date.

If the application of Chapter 30A would unconstitutionally affect a vested right, the chapter would have to be applied prospectively only.

Proposed MCL 600.3010-600.3016

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.