



TUCKER ELLIS LLP

CLIENT ALERT

JANUARY 2013

OHIO GOVERNOR SIGNS LAW REQUIRING DISCLOSURE OF ASBESTOS CLAIMS FILED WITH BANKRUPTCY TRUSTS

On December 20, 2012, Ohio Governor John Kasich signed legislation requiring all Ohio asbestos plaintiffs to provide a sworn statement identifying all existing asbestos trust claims they have made or that have been made on their behalf. The new law, Amended Substitute House Bill 380, is meant to protect defendants in Ohio from asbestos plaintiffs who fail to disclose asbestos trust claims, wait to make claims until after their civil case is resolved, double-dip, and/or, worse yet, lie in depositions or affidavits regarding exposure to asbestos or asbestos-containing products to obtain settlements and funds from as many manufacturers and companies as possible.

Under the law, within 30 days of filing a complaint or other initial pleading, a claimant shall provide to all parties a sworn statement identifying all existing trust claims made by the claimant, or made on his behalf, and all trust claims material relating to the claim. *See R.C. Section 2307.952 (A)(1)(a)*. This disclosure must include the date the claim was made and if a request was made for a delay, suspension, or tolling of the claim. This duty is ongoing and requires supplementation by asbestos plaintiffs. Failure to provide the sworn statement and trust materials is grounds for a court to decline to assign a trial date or to extend the existing trial date. *See R.C. Section 2307.952(B)*.

An asbestos plaintiff is now also prevented from waiting to file a trust claim until after his civil case is resolved. Under R.C. 2307.953(A), a defendant may move for a stay in the proceedings if it can set forth credible evidence demonstrating all of following: (1) the identity

of all asbestos trusts not previously disclosed but against which the defendant has a good faith belief the plaintiff may make a successful asbestos trust claim; (2) the information/documentation to support its good faith belief; and (3) a description of the information sufficient to meet the trust claim requirements of the trusts identified by the moving defendant. After a defendant moves for a stay, the plaintiff can respond by either filing a claim for the trust(s) at issue and adhering to the disclosure requirements or requesting that the court determine that the information submitted by the defendant should be modified or that it is insufficient to support submitting/filing a trust claim. *See R.C. Section 2307.953(B)*. If the court agrees with the moving defendant, the proceedings shall be stayed until the plaintiff submits/files the claim and meets all disclosure obligations.

This important legislation requires Ohio asbestos plaintiffs to disclose information to support alternative causation/exposure arguments, challenge identification of products, and protect against windfalls for plaintiffs and overpayment by viable defendants.

The law also addresses evidentiary issues regarding the disclosed information. All claim information subject to disclosure is presumed authentic, relevant to, and discoverable in asbestos tort actions. Further, it is presumed not to be privileged. The law also recognizes that this information is evidence of alternative causation and can be used as such in trial. *See R.C. Section 2307.954(B)*.

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Defendants found liable by a judge or jury are also protected if a plaintiff fails to comply with the disclosure requirements. Under the law, a tort judgment may be vacated if a plaintiff fails to comply with the disclosure requirements. *See R.C. Section 2307.954(D)*. Courts can also reopen a tort judgment if, after the judgment is rendered, a plaintiff files claims to trusts in existence when the plaintiff obtained the judgment; under this circumstance the court can adjust the judgment or order any other relief the court deems proper. *See R.C. Section 2309.954(E)*.

This important legislation requires Ohio asbestos plaintiffs to disclose information to support alternative causation/exposure arguments, challenge identification of products, and protect against windfalls for plaintiffs and overpayment by viable defendants. The law applies to any case filed on or after December 20, 2012 and to any pending case in which trial has not commenced. Tucker Ellis recognizes the significance of this new legislation and will utilize it to defend its clients in Ohio asbestos litigation.

ADDITIONAL INFORMATION

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