
DIGEST

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Garofalo

HB No. 481

Abstract: Provides disclosure procedures for asbestos and silica claims.

Proposed law requires a plaintiff to provide to all of the parties in the action a sworn statement identifying all existing claims and certain details of the claims made by or on behalf of the plaintiff against any trust created pursuant to Title 11 of the United States Code within 30 days of commencing an action involving a claim for injury, disease, or death related to asbestos or silica or within 30 days of the effective date of proposed law.

Proposed law provides that the submission of the sworn statement shall be in addition to any disclosure requirements otherwise imposed by law, court order or ruling, applicable agreement or stipulation, local rule, or case management order, and that the statement shall be amended to detail any claims filed subsequent to the original sworn statement.

Proposed law provides that failure to provide to all of the parties in the action all trust claims material in a timely manner shall constitute grounds for the court to decline to assign an initial trial date or extend the date set for trial in the action.

Proposed law authorizes any defendant in the action to file a motion with the court for an order to stay the proceedings, and requires the defendant to set forth certain credible evidence.

Proposed law provides that within 14 days after the filing of the defendant's motion for an order to stay the proceedings, the plaintiff may either file the trust claims with the trusts identified in the motion or file with the court a response to the defendant's motion for an order to stay the proceedings.

Proposed law provides that if the defendant has met its burden and if the plaintiff files a response with the court, the court shall determine if a successful asbestos claim could be submitted in good faith to each trust identified in the defendant's motion.

Proposed law provides that the plaintiff has the burden of proof, by a preponderance of the evidence, to demonstrate that the information set forth by the defendant should be modified prior to the filing of a trust claim with each trust identified in the defendant's motion or that the trust claim should not be filed with the trust because a successful trust claim cannot be made in good faith.

Proposed law provides that if the court determines that there is a good faith basis for filing a trust

claim with a trust, the court shall stay the proceedings until the plaintiff files the trust claims with the trusts and has otherwise met the obligations set forth in proposed law.

Proposed law provides that a noncancer trust claim and a cancer trust claim are based on distinct injuries caused by a person's exposure to asbestos or silica, and that a noncancer trust claim that is subject to disclosure means the noncancer claim that is the subject of the action in which the defendant seeks discovery.

Proposed law provides that if a plaintiff previously filed a noncancer trust claim with a trust and subsequently filed an action based on a cancer claim, a trust claim that is subject to disclosure under proposed law means both the earlier filed noncancer trust claim and the cancer claim that is the subject of the subsequent action.

Proposed law provides that trust claims and the information that is the subject of disclosure are presumed to be authentic, relevant to, and discoverable in an action, and that trust claims material are presumed to not be privileged.

Proposed law authorizes the parties to introduce at trial any trust claims material to prove alternative causation for the exposed person's claimed injury, death, or loss to prove a basis to allocate responsibility for the plaintiff's claim, and to prove issues relevant to an adjudication of the claim, unless the exclusion of the trust claims material is otherwise required by the rules of evidence.

Proposed law authorizes the parties to seek additional disclosure and discovery of information relevant to the action by any mechanism provided by law, including seeking discovery of the plaintiff's trust claims directly from the trusts involved.

Proposed law provides that in an action, upon the filing by a defendant or judgment debtor of a motion seeking sanctions or other relief, the court may impose any sanction provided by a law.

Proposed law provides that if subsequent to obtaining a judgment in an action in this state a plaintiff files any additional trust claim with a trust that was in existence at the time the plaintiff obtained that judgment, the trial court, upon the defendant's or judgment debtor's motion seeking sanctions, has jurisdiction to reopen its judgment in the action in order to adjust the judgment by the amount of any subsequent trust payments, or order any other relief to the parties that the court considers just and proper.

Proposed law applies to all asbestos and silica claims filed on or after the effective date of proposed law and to all pending claims in which no trial date has been set as of the effective date of proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds C.C.P. Art. 1476)