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SUMMATION OF RECENTLY ENACTED LEGISLATION IN OHIO, GEORGIA, TEXAS, FLORIDA, AND MISSISSIPPI

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OHIO

Ohio is credited with creating the first legislation which seeks to reform the litigation process for asbestos claims.[1] The main purpose behind the Ohio statutes was to limit the number of claims by plaintiffs who had not yet exhibited symptoms of asbestosis while preserving the right of these same plaintiffs to file later if and when symptoms become apparent. This was accomplished by establishing evidentiary hurdles for claims filed by plaintiffs with non-malignant illnesses and for claims filed by plaintiffs who smoke.

For asbestos claims based on nonmalignancy, the Ohio statutes require that a claimant submit medical criteria including: (1) occupational and exposure history, (2) medical and smoking history, and (3) a diagnosis from competent medical authority of: (a) a permanent respiratory impairment and (b) evidence of asbestosis substantiated by either a chest x-ray of 1/1 or a chest x-ray of 1/0 with additional testing.

For asbestos claims based on lung cancer where the claimant is a smoker, the statutes require that a claimant submit exposure criteria that includes: (1) a diagnosis from competent medical authority of primary lung cancer for which exposure to asbestos is a substantial contributing factor that that cancer, (2) evidence of a 10-year latency period between exposure and diagnosis, and (3) evidence of exposure substantiated by proof of either exposure of at least five years or exposure at a level equal to 25 fiber per cc years.

For asbestos claims based on wrongful death, the statutes require that a claimant submit exposure criteria that includes: (1) a diagnosis by competent medical authority that exposure to asbestos was a substantial contributing factor to the death, (2) evidence of a 10-year latency period, and (3) evidence of exposure substantiated by either exposure of at least five years or exposure at a level equal to 25 fiber per cc years.

[1] Ohio, Georgia, Florida and Texas have also enacted legislation with respect to silicosis and/or mixed-dust claims. Those statutes are not reviewed herein.

When a claimant cannot demonstrate physical impairment due to asbestos exposure as defined in the statutes, the statute of limitations does not begin to run until that exposed person becomes sick. The Ohio statutes also provide a series of other reforms involving premises liability and piercing the corporate veil.

Due to state constitutional constraints on the power of the Ohio General Assembly to enact rules pertaining to civil procedure, the Ohio General Assembly requested the Ohio Supreme Court to adopt venue and consolidation rules in an attempt to achieve comprehensive reform.

GEORGIA

The Georgia statutes require a prima-facie showing that the plaintiff has a physical impairment resulting from a medical condition for which exposure to asbestos was a substantial factor. Prima facie evidence must include a diagnosis by a board certified pathologist of primary cancer that was not more probably the result of a cause other than exposure to asbestos.

In the case of a non-malignant disease, prima facie evidence consists of a medical report signed by board certified internist, pulmonologist or pathologist stating the following 1) that at least fifteen years have passed since exposure and diagnosis; 2) the plaintiff has a pulmonary impairment; 3) a detailed medical and smoking history that states probable causes for existing medical conditions; 4) verifies that the person has grade 1(B) or higher asbestosis or other specified pulmonary irregularities; and 5) concludes that exposure to asbestosis was a substantial contributing factor to that plaintiff's condition and that the condition was not more probably the result of other factors.

The statue of limitations does not begin to run until the person discovers or should have discovered he is physically impaired.

Complaints are dismissed 180 days after filing unless all parties agree that prime facie evidence has been introduced by the plaintiff, or the court finds the same.

Discovery, other than to establish prima facie evidence, may not begin until the plaintiff has made a showing of prima facie evidence.

Only plaintiffs who reside in Georgia at the time of filing or who were exposed in Georgia may file in Georgia. Venue is only appropriate in the county of the plaintiff's residence at the time of filing or the county where the most substantial exposure occurred. Consent of all parties is required to consolidate claims unless the consolidated claims emanate from one person or members of one person's household.

FLORIDA

The Florida statutes require prima facie evidence of physical impairment similar to the

Georgia statues with the following notable exceptions: 1) Florida only requires a 10 year latency period between exposure and diagnosis; 2) Florida requires identification of the nature, duration and level of exposure for each place of employment; 3) Florida has separate requirements for prima facie evidence when a smoker makes a claim for cancer of the lung, larynx, pharynx or esophagus; and 4) a diagnosis that impairment is "consistent with" or "compatible with" exposure to asbestos is not sufficient.

Only a plaintiff who is domiciled in Florida or whose exposure in Florida was a substantial contributing factor to his impairment may file in Florida.

The statute of limitations does not run until a plaintiff discovers or should have discovered the impairment.

Damages may not be awarded for fear of contracting cancer. Punitive damages may not be awarded.

The seller of an asbestos containing product, other than the manufacturer, can only be held liable if the plaintiff proves that a warranty was given and breached by the seller, and the seller engaged in intentional conduct. A defendant who leases or rents asbestos containing products is not liable for the tortious acts of others solely by reason of ownership. Florida also limits the liability of successor corporations in asbestos suits. The liability of a successor is limited to the fair market value of the total gross assets of the transferor determined at the time of merger or consolidation. If there was a prior merger or consolidation, the market value is determined by examining the total gross assets of the prior transferor at the time of the earlier transfer. The limits on successor liability apply to companies who were successors before January 1, 1972 and the successors of such companies.

TEXAS

In Texas, a claimant asserting an asbestos related injury must serve on each defendant a report signed by a physician who is board certified in pulmonary medicine, occupational medicine, internal medicine, oncology or pathology that states that exposed person has been diagnosed with malignant cancer, and to a reasonable degree of medical certainty, the exposure to asbestos was a cause of the illness.

If a claimant does not have malignant cancer the report must state the following: 1) an examination was performed or, if the exposed person is deceased, that medical records were reviewed; 2) a detailed occupational and exposure history was conducted; 3) a detailed medical and smoking history was conducted; 4) 10 years have passed since exposure; 5) the person has one of several enumerated pulmonary injuries; and 6) the injury was not more likely caused by a source other than exposure to asbestos.

A defendant may file a motion to dismiss if the plaintiff fails to timely serve the physicians report or serves a report that does not fully comply with the above requirements.

Claims may not be joined unless all parties agree to joinder.

The cause of action accrues upon the earlier of death of the exposed person or the date the claimant serves the defendant with the physician's report. The statute of limitations is two years.

MISSISSIPPI

Mississippi has enacted general tort reform, but nothing specifically related to claims based on exposure to asbestos.

Venue is appropriate in the county where a defendant resides, or if the defendant is a corporation, the county of the corporation's principal place of business, or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred. Actions alleging a defective product may be brought in the county where the plaintiff obtained the product. If the defendant is a non-resident and venue is not appropriate under the above, the action may be brought in the county where the plaintiff resides or is domiciled.

Non-economic damages are limited to $500,000 for med-mal actions and $1,000,000 for all other actions.

Mississippi's product liability statute was modified to add the following language protecting sellers of defective products:

> ...the seller of a product other than the manufacturer shall not be liable unless the seller exercised substantial control over that aspect of the design, testing, manufacture, packaging or labeling of the product that caused the harm for which recovery of damages is sought; or the seller altered or modified the product, and the alteration or modification was a substantial factor in causing the harm for which recovery of damages is sought; or the seller had actual or constructive knowledge of the defective condition of the product at the time he supplied the product. It is the intent of this section to immunize innocent sellers who are not actively negligent, but instead are mere conduits of a product.

Punitive damages in Mississippi are limited based on the net worth of the defendant as follows:
Twenty million dollar cap for a defendant with a net worth over one billion dollars,
fifteen million dollar cap for a defendant with a net worth over seven hundred and fifty million dollars but not more than one billion dollars,
five million dollar cap for a defendant with a net worth over five hundred million dollars but not more than seven hundred and fifty million dollars,
three million seven hundred and fifty thousand dollar cap for a defendant with a net worth over one hundred million dollars but not more than five hundred million dollars,
two million five hundred thousand dollar cap for a defendant with a net worth over fifty million dollars but not more than one hundred million dollars, and

two percent of net worth cap for a defendant worth of fifty million dollars or less. New worth is calculated using Generally Accepted Accounting Procedures. The caps do not apply to actions brought for damages resulting from an act or a failure to act by the defendant.

Owners, occupants, lessees and managing agents are not liable for the death or injury of an independent contractor or his employee resulting from dangers that the contractor knew or reasonably should have known.

Liability is several unless the defendants are shown to have consciously and deliberately pursued a common plan or design to commit a tortious act, or actively took part in it. Fault is allocated without regard for the immunity of a joint tort-feasor and fault allocated to an immune defendant or one whose liability is limited by law may not be re-allocated to any other tort-feasor.