

Medical Criteria and Transparency For Asbestos/Silica Claims

Issue

Mass litigation involving asbestos claims has had a significant impact on our courts, employees and businesses. In recent years, similar cases have been filed for alleged silica exposure. West Virginia needs to establish standards and criteria for an individual who wants to file a claim related to an injury or impairment from asbestos or silica exposure. Several other states have enacted objective standards as a way to help improve an injured person's ability to adjudicate a claim and to receive appropriate and timely compensation. These standards and criteria also have helped to combat fraudulent claims, many of which only clog the court system to the detriment of truly injured individuals and families. In addition, with the establishment of more and more well funded bankruptcy trusts by defendants, there is a need for transparency full disclosure by claimants in order to avoid fraudulent "double-dipping."

Background

West Virginia has developed a reputation as a favorable forum for filing asbestos claims; and it is anticipated that the state may develop the same reputation for silica claims. Not only is this a concern for businesses, but it also is a concern for injured individuals. Currently in West Virginia, there is an order issued by the State Supreme Court that only permits the "sickest claimants" to have their cases heard. This is a much improved procedure for asbestos cases. However, even with this Order, there are impaired individuals who are delayed in getting their cases heard. Further, there are no standards for determining when a person is impaired, and as a result companies are still settling claims for non-impaired individuals, depleting resources available to compensate sick claimants.

The asbestos litigation system in West Virginia has hurt victims, workers, businesses and economic development in West Virginia. Specifically:

- People who are sick/impaired with asbestos-related illness have received reduced or delayed compensation.
- Companies doing business in West Virginia have faced significant challenges, including bankruptcy, because a few aggressive plaintiff attorneys have filed thousands of asbestos suits for non-impaired claimants.
- Bankruptcies from asbestos litigation threaten West Virginia's workers, retirement plans and economic development in the state. Nationally, more than 85 companies have filed for bankruptcy as a result of asbestos litigation.
- More and more companies doing business in West Virginia are being sued for asbestos and silica claims.

Another serious problem in the current process is the current "screening process" to determine the existence of asbestosis or silicosis. Lawyers have hired doctors who have no relationship with the exposed worker. These doctors often diagnose workers without even meeting them often on the basis of medical and occupational histories and x-rays taken by individuals who are not properly trained and without appropriate oversight by medical professionals.

Finally, with newly created bankruptcy trusts, there is the opportunity for claimants to “game the system” through multiple recoveries, first in the court system and next from the trusts. Because of the lack of coordination between these venues, and the confidentiality requirements imposed through the bankruptcy process, unscrupulous claimants may recover both in the court system and then before a trust, without an appropriate setoff to their compensation. Without legislation to address this problem, defendants will pay more than their fair share in damages, certain claimants will receive more than they are entitled to, and other claimants, through reduced funds, will receive reduced compensation.

To address these problems, legislation has been written that establishes minimum medical standards for filing an asbestos or silica claim and require that the diagnosis be made by a qualified physician. Enactment of this legislation would bring integrity to the process. It also would enable people who are truly sick to pursue their claims immediately. Those who are not sick would be able to bring their claims when and if they become sick. **No one who is ill, now or in the future, from a disease caused by asbestos or silica exposure, will be prevented from having their day in court.**

This legislation presents a common-sense solution to the current asbestos litigation and prevents a future silica litigation crisis from arising. It preserves the ability to compensate people who develop asbestos-related or silica-related illnesses in the future, while assisting in the avoidance of unnecessary financial hardship for companies with the devastating effects on claimants, employee jobs, 401(k) plans, pensions, shareholders, local communities and the economy. Further, model legislation developed will establish disclosure requirements so that the opportunity for “double-dipping” will not exist.

The Chamber’s Position

The West Virginia Chamber of Commerce supports legislation that would establish (1) minimum medical criteria and procedures for asbestos and silica claims; (2) require a physician with a physician-patient relationship to diagnose and establish the presence of these criteria in the exposed workers; and (3) require disclosure of present or future bankruptcy trust claims in state court proceedings. This legislation will not prohibit those individuals who are impaired as a result of exposure to asbestos or silica from having their day in court. It will only restrict those individuals who are not impaired from going forward until such time as they meet certain minimum medical criteria.

This kind of medical criteria legislation, which has been enacted in several states including Ohio, Texas, Florida, South Carolina, Kansas, Georgia and Tennessee (for silica), would:

- Apply sensible, objective medical standards to asbestos and silica claims filed in West Virginia courts to ensure compensation goes to people who are truly sick.
- Provide that medicine is practiced by physicians who are accountable to their patients.
- Keep the door open for people who may become sick in the future.
- Give relief to West Virginia courts trying to cope with thousands of non-sick/non-impaired asbestos claims and prevent this problem from arising with respect to silica claims.
- Provide fairness to West Virginia’s workers, businesses, pension plans and West Virginia’s economy, which are threatened by the crushing burden of runaway asbestos litigation.
- Ensure that resources will be available for those who are currently suffering from asbestos-related and silica-related illnesses and for those who may become sick in the future.