

By: Janek

S.B. No. 496

A BILL TO BE ENTITLED

AN ACT

relating to civil claims involving exposure to asbestos and to certain successor liability.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 90 to read as follows:

CHAPTER 90. CLAIMS INVOLVING EXPOSURE TO ASBESTOS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 90.001. DEFINITIONS. In this chapter:

(1) "Active docket" means a trial court's regular trial docket, established in accordance with Chapter 23, Government Code, and other applicable law.

(2) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(3) "Certified B-reader" means a person who has successfully completed the x-ray interpretation course sponsored by the National Institute for Occupational Safety and Health (NIOSH) and whose NIOSH certification is current.

(4) "Chest x-rays" means chest films that are:
(A) taken in the following four views:
posterior-anterior, lateral, left oblique, and right oblique; and
(B) graded quality 1 for reading in accordance with the radiological standards established by the International Labor Office, as interpreted by a certified B-reader.

1 (5) "Claim" means a civil action seeking recovery of
2 damages for an alleged personal injury or death caused by exposure
3 to asbestos fibers.

4 (6) "Claimant" means a party seeking recovery of
5 damages for a claim, including a plaintiff, counterclaimant,
6 cross-claimant, or third-party plaintiff. In a suit in which a
7 party seeks recovery of damages for personal injury or death of
8 another person, "claimant" includes both that other person and the
9 party seeking recovery of damages.

10 (7) "Defendant" means a party from whom the claimant
11 seeks recovery of damages.

12 (8) "FEV1" means forced expiratory volume in the first
13 second, which is the maximal volume of air expelled in one second
14 during performance of simple spirometric tests.

15 (9) "FVC" means forced vital capacity, which is the
16 maximal volume of air expired with maximum effort from a position of
17 full inspiration.

18 (10) "Inactive docket" means the docket established
19 under Subchapter B for a claim.

20 (11) "Independent expert" is an expert appointed to
21 examine a contested petition to remove under Section 90.057.

22 (12) "ILO grade" means the radiological ratings of the
23 International Labor Office set forth in "Guidelines for the Use of
24 ILO International Classification of Radiographs of Pneumoconioses"
25 (1980), as amended.

26 (13) "ILO scale" means the system for the
27 classification of chest x-rays set forth in the International Labor

1 Office's "Guidelines for the Use of ILO International
2 Classification of Radiographs of Pneumoconioses" (1980), as
3 amended.

4 (14) "Mesothelioma" means a rare and fatal form of
5 cancer caused by exposure to asbestos in which the cancer invades
6 cells in the membranes lining:

7 (A) the lungs and chest cavity, the pleural
8 region; or

9 (B) the abdominal cavity, the peritoneal region.

10 (15) "Office of court administration" means the Office
11 of Court Administration of the Texas Judicial System.

12 (16) "Physician board-certified in internal medicine"
13 means a physician who is certified by the American Board of Internal
14 Medicine.

15 (17) "Physician board-certified in oncology" means a
16 physician who is certified in the subspecialty of medical oncology
17 by the American Board of Internal Medicine.

18 (18) "Physician board-certified in pathology" means a
19 physician who holds primary certification in anatomic pathology or
20 clinical pathology from the American Board of Pathology and whose
21 professional practice:

22 (A) is principally in the field of pathology; and

23 (B) involves regular evaluation of pathology
24 materials obtained from surgical or postmortem specimens.

25 (19) "Physician board-certified in pulmonary
26 medicine" means a physician who is certified in the subspecialty of
27 pulmonary medicine by the American Board of Internal Medicine.

1 (20) "Pulmonary function testing" means spirometry,
2 lung volume testing, and diffusing capacity testing that conform to
3 quality criteria established by the American Thoracic Society (ATS)
4 and are performed on equipment that meets ATS standards for
5 technical quality and calibration, as set forth in 20 C.F.R.
6 Section 718.103 and 20 C.F.R. Part 718, Appendix B, and contained in
7 the ATS guidelines in 144 *American Review of Respiratory Disease*
8 1202-1218 (1991); 152 *American Journal of Respiratory and Critical*
9 *Care Medicine* 1107-1136; 2185-2198 (1995). Pulmonary function
10 testing must be performed under the supervision of and interpreted
11 by a physician who is licensed in this state and board-certified in
12 pulmonary medicine. Each subject must be tested with and without
13 inhaled bronchodilators, with the best values taken. Predicted
14 values for spirometry and lung volume shall be those published by
15 Morris, *Clinical Pulmonary Function Testing*, 2nd Edition,
16 Intermountain Thoracic Society (1984). Predicted values for
17 diffusing capacity shall be those published by Miller et al., 127
18 *American Review of Respiratory Disease* 270-277 (1983), and shall
19 take appropriate account of smoking history or exposure to silica.

20 Sec. 90.002. APPLICABILITY. This chapter applies to any
21 claim alleging personal injury or death caused by exposure to
22 asbestos fibers.

23 Sec. 90.003. NO CAUSE OF ACTION CREATED. This chapter does
24 not create a cause of action.

25 [Sections 90.004-90.050 reserved for expansion]

26 SUBCHAPTER B. INACTIVE DOCKET

27 Sec. 90.051. INACTIVE DOCKET ESTABLISHED. (a) The supreme

1 court shall establish an inactive docket for claims under this
2 chapter. The inactive docket shall be administered by the office of
3 court administration.

4 (b) The supreme court by rule shall establish procedures to
5 implement the inactive docket according to this chapter.

6 Sec. 90.052. LIMITATIONS TOLLED. The limitations period
7 for a claim assigned to the inactive docket under this subchapter is
8 tolled as of the original date on which the complaint and
9 information form against each defendant named in the complaint are
10 filed under Section 90.054.

11 Sec. 90.053. INACTIVE CLAIMS NOT SUBJECT TO DISCOVERY AND
12 OTHER COURT ORDERS. A claim on the inactive docket is not subject
13 to any order of the trial court in which the claim was originally
14 filed affecting active claims involving exposure to asbestos
15 fibers, including discovery orders. Discovery may not proceed on
16 an inactive claim until the claim is removed to the active docket as
17 provided by this subchapter.

18 Sec. 90.054. FILING A CLAIM; FILING FEE. (a) A claimant
19 seeking recovery of damages for personal injury or death caused by
20 exposure to asbestos fibers shall file, together with the
21 complaint, a sworn information form containing the following
22 information:

23 (1) the claimant's name, address, date of birth,
24 social security number, and marital status;

25 (2) if the claimant is not the person whose alleged
26 exposure to asbestos fibers gave rise to the claim, the person's
27 name, address, date of birth, social security number, and marital

1 status and the claimant's relationship to the person;

2 (3) the beginning and ending dates of each alleged
3 exposure for each asbestos product at each location;

4 (4) the specific location of each alleged exposure;

5 (5) the occupation and name of the employer of the
6 exposed person at the time of each alleged exposure;

7 (6) the specific asbestos-related condition claimed
8 to exist; and

9 (7) any supporting documentation of the
10 asbestos-related condition claimed to exist.

11 (b) Each claimant shall:

12 (1) file a claim, including the complaint and sworn
13 information form required by this section; and

14 (2) pay the applicable filing fee.

15 (c) A claim may not be brought on behalf of a group or class
16 of persons, and multiple claims may not be joined unless each
17 claimant files a complaint and information form and pays the
18 applicable filing fee.

19 (d) Except as provided by Subsection (e), as soon as
20 possible after the complaint and an information form are filed, the
21 trial court shall transfer the claim to the office of court
22 administration for placement on the inactive docket.

23 (e) The trial court shall place a claim on the active docket
24 if the claimant's complaint and information form are accompanied
25 by:

26 (1) a sworn statement by a physician licensed in this
27 state and board-certified in pathology indicating a diagnosis of

1 pleural or peritoneal mesothelioma; or

2 (2) a written diagnosis of cancer demonstrated by:

3 (A) a medical report showing the diagnosis as a
4 primary cancer; and

5 (B) a signed and sworn report:

6 (i) certified by a physician licensed in
7 this state and board-certified in internal medicine, oncology,
8 pulmonary medicine, or pathology; and

9 (ii) stating to a reasonable degree of
10 medical certainty that the diagnosed cancer was substantially
11 caused by exposure to asbestos fibers.

12 (f) The clerk of the court in which the claim is filed shall
13 forward one-half of the filing fee paid under this section to the
14 comptroller for deposit to the asbestos claims inactive docket
15 account established under Subchapter C.

16 Sec. 90.055. PETITION FOR REMOVAL TO ACTIVE DOCKET. (a) A
17 claimant seeking to remove a claim from the inactive docket for
18 placement on the active docket shall file with the trial court in
19 which the claim was originally filed a petition for removal.

20 (b) The petition for removal must be accompanied by the
21 documentation necessary to satisfy the criteria specified by
22 Section 90.056.

23 (c) At the time of filing with the trial court, the claimant
24 shall serve the petition for removal and supporting documentation
25 on each defendant named in the claimant's original complaint.

26 (d) Not later than the 14th day after the date of service of
27 the petition for removal and supporting documentation, a defendant

1 who objects to the removal of the claim must file a motion with the
2 trial court stating the reasons for the objection. The motion shall
3 be served on the claimant and each other defendant.

4 (e) The filing by a defendant of a motion objecting to
5 removal and any documentation supporting the motion, or the
6 defendant's appearance at a hearing ordered by the court in
7 connection with a petition for removal, is not considered an
8 appearance for purposes of establishing the court's jurisdiction
9 over the defendant in the event the claim is removed to the active
10 docket.

11 (f) Not later than the 10th day after the date of service of
12 the motion objecting to removal, the claimant may file a response
13 with the trial court. The response must be served on each
14 defendant.

15 (g) A petition for removal may be filed simultaneously with
16 the original claim and information form under Section 90.054.

17 Sec. 90.056. CRITERIA FOR REMOVAL FOR NONMALIGNANCY.

18 (a) A judge reviewing a petition for removal may remove a claim
19 from the inactive docket and place it on the active docket of the
20 trial court in which it was originally filed if the claimant shows
21 by a preponderance of the evidence a diagnosis of impaired
22 asbestosis or other specific, nonmalignant asbestos-related
23 condition accompanied by a substantial, verifiable physical
24 impairment substantially caused by the asbestos-related condition.

25 (b) An impairment diagnosis under Subsection (a) must:

26 (1) be demonstrated by a medical report certified by a
27 physician licensed in this state and board-certified in internal or

1 pulmonary medicine;

2 (2) be based on objective criteria of generally
3 accepted medical standards related to impairment due to a reliable
4 history of exposure to asbestos fibers; and

5 (3) include a physical examination of the claimant by
6 the physician rendering the diagnosis that sets forth:

7 (A) a detailed medical history that includes
8 nonoccupational causes of lung and pleural changes and that
9 documents the claimant's smoking history; and

10 (B) a reliable history of exposure:

11 (i) that is based on a detailed
12 occupational and exposure history taken from the claimant by the
13 physician rendering the diagnosis or, if the claimant is deceased,
14 by the person most knowledgeable about those histories, including
15 all known trades and all principal places of employment for the
16 claimant involving airborne contaminants; and

17 (ii) that indicates whether each employment
18 involved exposures to airborne contaminants, including asbestos
19 fibers and other disease-causing dusts, that can cause pulmonary
20 impairment, and indicates the nature, duration, and level of any
21 such exposure.

22 (c) For purposes of this section, meeting the objective
23 criteria for generally accepted medical standards of impairment
24 related to a reliable history of exposure to asbestos fibers
25 requires at a minimum:

26 (1) chest x-rays that, in the opinion of a certified
27 B-reader, show bilateral small irregular opacities (s, t, or u) of

1 ILO grade of 1/1 or greater, and pulmonary function testing that
2 demonstrates either:

3 (A) forced vital capacity (FVC) less than or
4 equal to 70 percent of the predicted value with the ratio of forced
5 expiratory volume 1 to forced vital capacity (FEV1/FVC) greater
6 than or equal to 70 percent (actual value); or

7 (B) total lung capacity less than 70 percent of
8 the predicted value;

9 (2) chest x-rays that, in the opinion of a certified
10 B-reader, show asbestos-related bilateral pleural encasement
11 graded C2 or higher on the ILO scale and that include the blunting
12 of at least one costophrenic angle, and pulmonary function testing
13 that demonstrates either:

14 (A) forced vital capacity (FVC) less than 70
15 percent of the predicted value with the ratio of forced expiratory
16 volume 1 to forced vital capacity (FEV1/FVC) greater than 70
17 percent (actual value); or

18 (B) total lung capacity less than 70 percent of
19 the predicted value with the ratio of forced expiratory volume 1 to
20 forced vital capacity (FEV1/FVC) greater than 70 percent (actual
21 value); or

22 (3) if the person whose personal injury or death is the
23 basis of the claim is deceased, a medical report demonstrating an
24 appropriate diagnosis of pathological asbestosis greater than
25 grade 1B, as defined in "Asbestos-Associated Diseases," 106 *Archive*
26 *of Pathology and Laboratory Medicine* 11, Appendix 3 (October 8,
27 1982).

1 (d) A chest x-ray taken or interpreted by a person directly
2 or indirectly employed or compensated by an attorney for the
3 claimant may not be admitted for the purpose of establishing
4 whether a claim may be removed from the inactive docket.

5 Sec. 90.057. REVIEW BY INDEPENDENT EXPERT. (a) If a
6 defendant objects to the petition for removal, the trial court, not
7 later than the 45th day after the date the petition for removal is
8 filed, shall refer the medical report, test results, and other
9 documentation submitted by the claimant, the defendant's objection
10 to removal, and any other information directed by the court to an
11 independent expert randomly selected from a list of experts
12 published by the supreme court according to Section 90.058.

13 (b) The costs of the expert shall be paid:

14 (1) by the objecting defendant if the expert
15 determines the medical criteria for removal have been met; or

16 (2) by the claimant if the expert determines the
17 medical criteria for removal have not been met.

18 (c) The independent expert shall submit a report and
19 recommendation to the court not later than the 10th day after the
20 date the expert receives the information from the court. The
21 independent expert may perform pulmonary function testing to verify
22 the information submitted by the claimant.

23 Sec. 90.058. LIST OF INDEPENDENT EXPERTS. (a) The supreme
24 court shall publish a list of independent experts for the purpose of
25 reviewing petitions for removal filed under this subchapter.

26 (b) To be eligible for placement on the list of independent
27 experts, a person must:

1 (1) be a physician licensed in this state;

2 (2) be board-certified in internal medicine,
3 oncology, pulmonary medicine, or pathology; and

4 (3) be actively and primarily practicing medicine in a
5 field directly related to the physician's board certification.

6 (c) The supreme court shall distribute the list of
7 independent experts to each district court in the state. The
8 supreme court shall update the list at least annually.

9 (d) The supreme court by rule shall adopt a system for the
10 random selection of independent experts from the list.

11 Sec. 90.059. ORDER GRANTING OR DENYING PETITION FOR
12 REMOVAL. (a) Not later than the seventh day after the date the
13 expert's report and recommendation are received, the trial court
14 shall issue an order granting or denying the petition for removal
15 based on the opinion of the independent expert and the submissions
16 of the parties.

17 (b) Before issuing the order, the court may hold a hearing
18 on its own motion or, in its discretion, on the motion of a party.
19 The decision of the court not to grant a request for a hearing may
20 not be appealed and does not constitute reversible error.

21 (c) If the court orders a claim removed from the inactive
22 docket and placed on the active docket, any date, deadline, or other
23 provision in a court order relating to claims on the active docket
24 or in the Texas Rules of Civil Procedure applies as if the claim had
25 been filed on the date of the court's order granting the petition
26 for removal.

27 (d) If the trial court orders a claim removed from the

inactive docket and placed on the court's active docket, the office of court administration shall transfer the claim, accompanied by the supporting documentation, to the trial court.

Sec. 90.060. ADMISSIBILITY OF CERTAIN INFORMATION.

(a) The existence of an inactive docket, or the fact that a claim is or is not on an inactive docket, is not admissible in any proceeding for any purpose, except for a proceeding concerned with the removal of a claim from the inactive docket.

(b) The medical criteria established by this subchapter for removal of a claim from the inactive docket are established solely for the purpose of determining whether a claim may be removed to the active docket. The fact that a claimant satisfies the medical criteria for removal of a claim from the inactive docket may not be construed as an admission or determination that a person has a condition related to exposure to asbestos fibers. The criteria used to determine whether a claim should be removed may not be cited, referred to, or otherwise used in the trial of a claim for the purpose of determining whether a person has a condition related to exposure to asbestos fibers.

(c) An expert report submitted under Section 90.057 is solely for the purpose of determining whether a claim may be removed to the active docket and is inadmissible for any other purpose. An independent expert may not be compelled to testify at any hearing or trial for which the expert submitted a report under Section 90.057.

(d) Placement of a claim on an inactive docket may not be construed as an admission by a claimant or person allegedly exposed to asbestos fibers that the claimant or person has not developed a

condition related to exposure to asbestos fibers.

[Sections 90.112-90.150 reserved for expansion]

SUBCHAPTER C. FINANCIAL PROVISIONS

Sec. 90.101. ASBESTOS CLAIMS INACTIVE DOCKET ACCOUNT.

(a) The asbestos claims inactive docket account is an account in the general revenue fund.

(b) The account consists of money deposited to the account under Section 90.054, grants, gifts, and donations to the account, and interest earned on money in the account.

(c) The account may be appropriated only for purposes of administering this chapter.

(d) Sections 403.095 and 404.071, Government Code, do not apply to the account.

Sec. 90.102. DONATIONS. The office of court administration may accept for the account established under Section 90.101 a donation, grant, or gift of any kind from any person for a purpose related to the administration of this chapter.

SECTION 2. Subsection (a), Section 23.101, Government Code, is amended to read as follows:

(a) The trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, with the following actions given preference over other criminal actions:

(A) criminal actions against defendants who are detained in jail pending trial;

1 (B) criminal actions involving a charge that a
2 person committed an act of family violence, as defined by Section
3 71.01, Family Code; and

4 (C) an offense under:

5 (i) Section 21.11, Penal Code;

6 (ii) Chapter 22, Penal Code, if the victim
7 of the alleged offense is younger than 17 years of age;

8 (iii) Section 25.02, Penal Code, if the
9 victim of the alleged offense is younger than 17 years of age; or

10 (iv) Section 25.06, Penal Code;

11 (3) election contests and suits under the Election
12 Code;

13 (4) orders for the protection of the family under
14 Section 3.581, 71.11, or 71.12, Family Code;

15 (5) appeals of final rulings and decisions of the
16 Texas Workers' Compensation Commission and claims under the Federal
17 Employers' Liability Act and the Jones Act; ~~and~~

18 (6) appeals of final orders of the commissioner of the
19 General Land Office under Section 51.3021, Natural Resources Code;
20 and

21 (7) a claim alleging personal injury caused by
22 exposure to asbestos fibers if the basis for the claim is a
23 diagnosis of mesothelioma or other malignancy allegedly caused by
24 exposure to asbestos fibers.

25 SECTION 3. Article 8.02, Texas Business Corporation Act, is
26 amended to read as follows:

27 Art. 8.02. POWERS OF FOREIGN CORPORATION. A. A foreign

1 corporation which shall have received a certificate of authority
2 under this Act shall, until its certificate of authority shall have
3 been revoked in accordance with the provisions of this Act or until
4 a certificate of withdrawal shall have been issued by the Secretary
5 of State as provided in this Act, enjoy the same, but no greater,
6 rights and privileges as a domestic corporation organized for the
7 purposes set forth in the application pursuant to which such
8 certificate of authority is issued; and, as to all matters
9 affecting the transaction of intrastate business in this State, it
10 and its officers and directors shall be subject to the same duties,
11 restrictions, penalties, and liabilities now or hereafter imposed
12 upon a domestic corporation of like character and its officers and
13 directors; provided, however, that only the laws of the
14 jurisdiction of incorporation of a foreign corporation shall govern
15 (1) the internal affairs of the foreign corporation, including but
16 not limited to the rights, powers, and duties of its board of
17 directors and shareholders and matters relating to its shares,
18 ~~and~~ (2) the liability, if any, of shareholders of the foreign
19 corporation for the debts, liabilities, and obligations of the
20 foreign corporation for which they are not otherwise liable by
21 statute or agreement, and (3) any successor liability of the
22 foreign corporation.

23 SECTION 4. (a) Chapter 90, Civil Practice and Remedies
24 Code, as added by this Act, applies to all actions:

25 (1) commenced on or after the effective date of this
26 Act; or

27 (2) pending on that effective date and in which the

1 trial, or any new trial or retrial following motion, appeal, or
2 otherwise, begins on or after that effective date.

3 (b) In an action commenced before the effective date of this
4 Act, a trial, new trial, or retrial that is in progress on the
5 effective date is governed by the applicable law in effect
6 immediately before that date, and that law is continued in effect
7 for that purpose.

8 (c) The Supreme Court of Texas shall establish the inactive
9 docket, as required by this Act, not later than the 60th day after
10 the effective date of this Act.

11 (d) The Supreme Court of Texas shall publish the list of
12 independent experts and adopt a system for the random selection of
13 independent experts, as required by this Act, not later than the
14 60th day after the effective date of this Act.

15 SECTION 5. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2003.