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H.B. No. 1492

A BILL TO BE ENTITLED

AN ACT

relating to consideration of asbestos or silica trust claims in
certain actions asserting asbestos- or silica-related injuries.

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

SECTION 1. Chapter 90, Civil Practice and Remedies Code, is
amended by designating Sections 90.001 through 90.012 as Subchapter
A and adding a subchapter heading to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Section 90.010(d-1), Civil Practice and Remedies
Code, is amended to read as follows:

(d-1) Beginning on September 1, 2014, the MDL pretrial court
shall dismiss each action for an asbestos-related injury or a
silica-related injury that was pending on August 31, 2005, unless a
report was served on or after September 1, 2013, that complies with
Section 90.003, Section 90.004, or Subsection (f). The MDL
pretrial court shall provide for the dismissal of such actions in a
case management order entered for that purpose. All ~~such~~ actions
for a silica-related injury shall be dismissed on or before August
31, 2015. All actions for an asbestos-related injury shall be
dismissed on or before December 31, 2015.

SECTION 3. Chapter 90, Civil Practice and Remedies Code, is
amended by adding Subchapter B to read as follows:

SUBCHAPTER B. ASBESTOS OR SILICA TRUST CLAIMS

Sec. 90.051. DEFINITIONS. In this subchapter:

1 (1) "Asbestos or silica trust" means a claims
2 facility, a claims agent, a qualified settlement fund, or any other
3 entity that:

4 (A) is created under 11 U.S.C. Section 524(g) or
5 another applicable law for the benefit of creditors of a bankrupt
6 person;

7 (B) is formed for the purpose of compensating
8 claimants for asbestos- or silica-related injuries; and

9 (C) is in existence on the date trial in an action
10 asserting an asbestos- or silica-related injury is set to commence.

11 (2) "Trust claim" means any filing with or claim
12 against an asbestos or silica trust seeking recovery of
13 compensation or damages for or arising from the asbestos- or
14 silica-related injury of an exposed person.

15 (3) "Trust claim material" means documentation filed
16 as part of or in connection with a trust claim, including:

17 (A) documentation that a claimant submits or
18 provides to an asbestos or silica trust for the purpose of
19 demonstrating asbestos or silica exposure, the existence of an
20 asbestos- or silica-related injury, or the validity of a trust
21 claim; and

22 (B) claim forms and other materials that an
23 asbestos or silica trust requires a claimant to submit.

24 Sec. 90.052. REQUIREMENT TO MAKE TRUST CLAIMS. (a) Except
25 as provided by Subsection (d), a claimant who has filed an action to
26 recover damages for or arising from an asbestos- or silica-related
27 injury shall make a trust claim against each asbestos or silica

1 trust the claimant believes may owe compensation or damages to the
2 claimant for the injury that is the basis of the claimant's action.

3 (b) A claimant must make each trust claim required under
4 this section not later than:

5 (1) the 150th day before the date trial in the action
6 is set to commence; or

7 (2) a date provided by court order if trial is set to
8 commence on or before January 31, 2016.

9 (c) A claimant may file a motion seeking relief from the
10 obligation to make a trust claim otherwise required by this section
11 if the claimant believes that the fees and expenses, including
12 attorney's fees, for filing the trust claim exceed the claimant's
13 reasonably anticipated recovery from the trust.

14 (d) If a claimant files a motion under Subsection (c), the
15 court shall determine whether the claimant's fees and expenses,
16 including attorney's fees, for making the trust claim exceed the
17 claimant's reasonably anticipated recovery from the trust. If the
18 court determines that the claimant's fees and expenses exceed the
19 claimant's reasonably anticipated recovery, the claimant is not
20 required to make the trust claim but shall provide the court with a
21 verified statement of the exposed person's exposure history to
22 asbestos or silica that is covered by the trust.

23 Sec. 90.053. NOTICE OF TRUST CLAIM; PRODUCTION OF TRUST
24 CLAIM MATERIAL. (a) A claimant in an action to recover damages for
25 or arising from an asbestos- or silica-related injury shall serve
26 on each party notice of, and trust claim material relating to, each
27 trust claim made by or on behalf of the exposed person. The notice

1 must:

2 (1) identify each trust claim made by or on behalf of
3 the exposed person;

4 (2) state the amount of any trust claim payment made to
5 compensate for the exposed person's injury; and

6 (3) state the date each trust claim was made and
7 whether a request for individual or enhanced review or for a
8 deferral, delay, suspension, or tolling of the claim has been
9 submitted to the trust.

10 (b) The claimant shall serve the notice and trust claim
11 materials required by Subsection (a) not later than:

12 (1) the 120th day before the date trial in the action
13 is set to commence; or

14 (2) a date provided by court order if the court entered
15 an order under Section 90.052(b).

16 (c) The notice and trust claim materials required to be
17 served under Subsection (a) are in addition to any notice or
18 materials required to be served or produced under other law, rule,
19 order, or applicable agreement.

20 (d) If a claimant makes a trust claim after the date
21 provided by Section 90.052(b) but before the date that trial in the
22 action commences, the claimant shall serve the notice of, and trust
23 claim material relating to, the trust claim as required by
24 Subsection (a) reasonably promptly after making the trust claim,
25 but not later than the earlier of:

26 (1) the date that trial commences; or

27 (2) the 15th day after the date the additional trust

1 claim is made.

2 (e) If a claimant discovers that the notice or trust claim
3 materials provided by the claimant under this section were
4 incomplete or incorrect at the time the notice or trust claim
5 materials were served or that the notice or trust claim materials as
6 served are no longer complete and correct, the claimant shall
7 supplement the notice and the production of trust claim materials.
8 The claimant shall serve the supplemental notice or trust claim
9 materials reasonably promptly after the claimant discovers the
10 necessity for the supplementation, but not later than the 15th day
11 after the date the claimant discovers the necessity for the
12 supplementation.

13 (f) A claimant shall serve notice of, and trust claim
14 material relating to, a trust claim regardless of whether the claim
15 is for an injury resulting in cancer or an injury not resulting in
16 cancer.

17 Sec. 90.054. FAILURE TO MAKE TRUST CLAIM OR PROVIDE NOTICE
18 AND TRUST CLAIM MATERIAL. (a) An MDL pretrial court may not remand
19 an action to a trial court and a trial court may not commence trial
20 in the action unless the claimant has:

21 (1) made each trust claim as required by this
22 subchapter; and

23 (2) served the notice of, and trust claim material
24 relating to, those trust claims in accordance with Section 90.053.

25 (b) If a claimant received compensation from an asbestos or
26 silica trust for an injury that also gave rise to a judgment against
27 a defendant for the same injury and the claimant failed to serve the

1 relevant notice and trust claim material as required by Section
2 90.053, the trial court, on a defendant's or judgment debtor's
3 motion and after reasonable notice to the parties, may impose an
4 appropriate sanction, including setting aside the judgment and
5 ordering a new trial.

6 (c) This section may not be construed to require payment of
7 a trust claim by an asbestos or silica trust before the MDL pretrial
8 court remands the action for trial or before a judgment is rendered
9 in the action.

10 Sec. 90.055. MOTION TO STAY. (a) A defendant may file a
11 motion requesting a stay of the proceedings under Section 90.057 on
12 or before the later of:

13 (1) the 60th day before the date trial in the action is
14 set to commence;

15 (2) the 15th day after the date the defendant first
16 obtains asbestos- or silica-exposure information that could
17 support an additional asbestos or silica trust claim by the
18 claimant; or

19 (3) a date provided by court order if the court entered
20 an order under Section 90.052(b).

21 (b) The motion described by Subsection (a) must include:

22 (1) a list of asbestos or silica trusts not disclosed
23 by the claimant against which the defendant in good faith believes
24 the claimant may make a successful trust claim; and

25 (2) information supporting the additional trust claim
26 described by Subdivision (1), including information that may be
27 used to meet the trust claim requirements of an asbestos or silica

1 trust described by Subdivision (1).

2 Sec. 90.056. RESPONSE TO MOTION TO STAY. (a) Not later
3 than the 14th day after the date the defendant files a motion to
4 stay under Section 90.055 or the date provided by court order under
5 Section 90.052(b), the claimant may file a response:

6 (1) stating and providing proof that the claimant has
7 made a trust claim identified in the defendant's motion and served
8 the notice of, and trust claim material relating to, the claim as
9 prescribed by Section 90.053; or

10 (2) requesting a determination by the court that the
11 fees and expenses, including attorney's fees, for filing a trust
12 claim identified in the motion exceed the claimant's reasonably
13 anticipated recovery from the trust.

14 (b) If the claimant files a response making a request under
15 Subsection (a)(2), the court shall determine whether the claimant's
16 fees and expenses, including attorney's fees, for making the
17 relevant trust claim exceed the claimant's reasonably anticipated
18 recovery from the trust. If the court determines that the
19 claimant's fees and expenses exceed the claimant's reasonably
20 anticipated recovery, the claimant is not required to make the
21 trust claim but shall provide the court with a verified statement of
22 the exposed person's exposure history to asbestos or silica that is
23 covered by the trust.

24 Sec. 90.057. STAY OF PROCEEDINGS. (a) The court shall grant
25 a motion to stay under Section 90.055 if the court determines the
26 motion was timely filed and the claimant is likely to receive
27 compensation from a trust identified by the motion. The stay shall

1 continue until the claimant provides proof that the claimant has
2 made the claim and served notice of, and trust claim material
3 relating to, the claim as prescribed by Section 90.053.

4 (b) The court may not stay the proceedings if, with respect
5 to each trust claim identified in the motion:

6 (1) the court determines that the claimant has
7 satisfied the requirements of Section 90.053(a); or

8 (2) the court makes a determination described by
9 Section 90.052(d) or 90.056(b).

10 Sec. 90.058. EVIDENCE OF TRUST CLAIMS. (a) Trust claim
11 material is presumed to be authentic, relevant, and discoverable in
12 an action to which this subchapter applies.

13 (b) Notwithstanding an agreement, including a
14 confidentiality agreement, trust claim material is presumed to not
15 be privileged in an action to which this subchapter applies.

16 (c) This section may not be construed to affect the
17 application of Section 33.003 to an action governed by this
18 chapter.

19 SECTION 4. Subchapter B, Chapter 90, Civil Practice and
20 Remedies Code, as added by this Act, applies to an action:

21 (1) commenced on or after the effective date of this
22 Act; or

23 (2) pending on the effective date of this Act.

24 SECTION 5. This Act takes effect September 1, 2015.