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Navigating the Ins and Outs of the Asbestos Trust World

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Of the Legal Staff

To paraphrase the immortal Mark Twain, news of the demise of asbestos litigation has been greatly exaggerated. Asbestos litigation is alive and well, and many firms nationwide and in Philadelphia are still immersed in it.

The National Cancer Institute estimates that roughly 2,000 new cases of mesothelioma — a devastating and exceptionally aggressive form of cancer — continue to be diagnosed annually in the U.S. Exposure to asbestos is overwhelmingly, if not exclusively, recognized as the cause of this deadly disease. The latency period for the development of mesothelioma ranges from as little as 10 years to as many as 50 years or more in some instances. As a result, mesothelioma continues to rear its ugly head decades after the world learned of the dangers of asbestos and decades after asbestos products were removed from the market. What's more, each year countless victims continue to be diagnosed with other types of asbestos-related cancer, asbestosis, a chronic inflammatory medical condition affecting the tissue of the lungs, and pleural thickening. During the last 30 years, our firm has represented thousands of victims of asbestos-related injuries and hundreds of mesothelioma victims. We have seen, firsthand, the devastation this disease causes.

ASBESTOS LITIGATION: A CHANGING LANDSCAPE

The landscape in asbestos litigation has dramatically changed through the years. The number of major viable asbestos manufacturers has diminished, while the number of manufacturers who have sought protection through bankruptcy has increased exponentially. With a market share of between 25-40 percent, Johns Manville Corp., the largest corporate asbestos producer in the world, filed for bankruptcy and created the Asbestos Trust Fund of Manville in 1986. From 1986 through 2000, a handful of additional manufacturers followed suit. Thereafter, the floodgates opened, and dozens of significant asbestos manufacturers filed for bankruptcy.

FAIR ACT AND ASBESTOS TRUSTS

In 2003, the Republican-controlled U.S.

Senate first introduced the Fairness in Asbestos Injury Resolution Act, allegedly to ensure prompt and just compensation to victims of asbestos related injuries. To the contrary, the FAIR Act was anything but fair. Victims of asbestos disease faced an underfunded proposal by the Senate and a system that denied them access to the courts. The act languished in the Senate for years because of the Republicans' inability to convince enough senators and the American people that it would fairly compensate these victims. Concurrently, more and more asbestos companies filed for bankruptcy, resulting in continued delays for victims' rights to recovery. By 2006, primarily because of the inadequate funding proposed to compensate victims and the inherent unfairness in preventing claimants the opportunity to have their day in court, the FAIR Act was finally withdrawn.

Following the FAIR Act's demise, many of the asbestos bankruptcy proceedings, including appeals, abruptly ended with the creation of trusts to pay victims. For example, asbestos manufacturer Owens Corning and its Fiberboard subsidiary's six-year bankruptcy proceeding resolved in October 2006 with the Bankruptcy Court requiring the company to fund the Owens Corning Asbestos Trust in the amount of roughly \$4.5 billion. Several dozen other former asbestos suppliers and manufacturers have followed the route of bankruptcy and now have trusts approved by the court. Other former asbestos companies have yet to complete bankruptcy proceedings, as the court still has not approved their trusts. Victims have been and may continue to be forced to wait many years before they receive benefits from these manufacturers.

On the bright side, the trusts that have been established in recent years have begun accepting claims, and some are already processing claims and compensating victims. Each claimant is obligated to submit an individual claim to each trust he or she alleges benefit entitlement. The process requires that injured claimants submit claim forms, which identify their work exposure and asbestos-related medical diagnosis. The trusts created a rigorous submission process whereby each claim is reviewed to confirm that the victim was exposed to the asbestos products manufactured by the specific company for which the trust was established. Concurrently,

each claimant's medical records are reviewed to determine the magnitude of the injury and the proper compensation.

Claims are denied when a claimant fails to provide sufficient evidence of exposure to a company's product or when the medical records do not support sufficient evidence of an asbestos-related disease. When claims are approved, each trust has a specific payment schedule and amount, which is based on the severity of the injury. Depending upon the funding in the trust, each claim ranges in value from a few hundred dollars for mild asbestosis or pleural thickening to tens of thousands of dollars for mesothelioma victims.

Thankfully, the trustees of the various trusts have learned over time that this claims process lends itself ideally to electronic submissions. Gone are the days of requiring useless and voluminous paper filing. Most of the trusts are now coordinated within a few online claims processing trust facilities. By coordinating the review process, claims are now more promptly reviewed and, in most instances, more fairly and consistently evaluated.

In addition to bankruptcy claims, victims of asbestos disease continue to be entitled to have their day in court, at least against those companies who have not sought the protection of bankruptcy.

While this system is by no means perfect, it is unquestionably a better solution than the dismembered FAIR Act. Business is protected by the bankruptcy laws, and victims are compensated for the heinous behavior perpetrated by the asbestos industry so many years ago. •

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