



SENATE BILL 470: Personal Injury Bankruptcy Trust Claims.

2017-2018 General Assembly

Committee:		Date:	August 8, 2018
Introduced by:		Prepared by:	Bill Patterson Staff Attorney
Analysis of:	S.L. 2018-4		

OVERVIEW: *S.L. 2018-4 provides that in any personal injury action claiming disease based upon exposure to asbestos:*

- *The plaintiff must provide all parties with a sworn statement that the plaintiff has investigated all bankruptcy trust claims and has filed all bankruptcy trust claims that can be made;*
- *The plaintiff must provide all parties with the identity of all bankruptcy trust claims made and all materials submitted to or received from a bankruptcy trust;*
- *A defendant may seek discovery from a bankruptcy trust, which cannot be barred by any claim of privilege or confidentiality by the plaintiff, and the plaintiff must provide any consent required for the bankruptcy trust's release of the materials sought by the defendant;*
- *There is a rebuttable presumption that bankruptcy trust claims materials are relevant, authentic, and admissible in the action; and*
- *If a defendant has a reasonable belief that plaintiff can file additional bankruptcy trust claims, the court may grant the defendant's motion to stay the action until the plaintiff files the claim.*

This act became effective on June 12, 2018, and applies to actions filed on or after that date.

CURRENT LAW: The North Carolina Rules of Civil Procedure govern a party's discovery obligation to provide relevant information to the other parties in a civil action. The North Carolina Rules of Evidence govern the admissibility of evidence in a civil action. G.S. 1-75.12 authorizes a judge to grant a party's motion to stay an action pending if the judge finds that trying the action in this State would cause substantial injustice, and the moving party has consented to suit in a foreign jurisdiction found by the judge to provide a convenient, reasonable and fair place for trial.

Before the effective date of this act, these provisions of law governing discovery, evidence, and the stay of an action did not contain any special requirements applicable only to personal injury actions claiming disease based upon exposure to asbestos.

BILL ANALYSIS: The act amends the civil procedure discovery requirements in actions claiming disease based upon exposure to asbestos to provide that:

- Within 30 days of filing the action the plaintiff must provide the parties with a sworn statement indicating that the plaintiff has conducted an investigation of all bankruptcy trust claims and has filed all bankruptcy trust claims that can be made.
- The plaintiff must provide the parties with the identity of all bankruptcy trust claims made and all materials submitted to or received from a bankruptcy trust.

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Director

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Legislative Analysis
Division
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Senate Bill 470

Page 2

- The plaintiff must supplement the required disclosures within 30 days of: filing an additional bankruptcy trust claim; supplementing an existing bankruptcy trust claim; or receiving additional information or materials related to any such claim.

The act permits a defendant in this type of action to seek discovery from a bankruptcy trust, precludes the plaintiff from claiming privilege or confidentiality to bar that discovery, and requires the plaintiff to provide any consent that may be required in order for the bankruptcy trust to release the information and materials sought by the defendant.

The act amends the evidence rules to provide that in a civil action asserting personal injury claiming disease based on exposure to asbestos, there is a rebuttable presumption that bankruptcy trust claims materials are relevant, authentic, and admissible in evidence.

The act also provides that in any civil action asserting personal injury claiming disease based on exposure to asbestos, if a defendant has a reasonable belief that the plaintiff can file additional bankruptcy trust claims, the court is authorized to grant the defendant's motion to stay the civil action until the plaintiff files the claim.

EFFECTIVE DATE: This act became effective on June 12, 2018, and applies to actions filed on or after that date.

BACKGROUND: Under federal bankruptcy law, as a part of a reorganization plan under Chapter 11 of the Bankruptcy Code, a debtor with outstanding liability in personal injury, wrongful death, or property-damage actions allegedly caused by the presence of or exposure to asbestos may establish a trust that will fund present and future settlements of claims and lawsuits. 11 U.S.C. 524(g). Once a company emerges from bankruptcy protection having established a bankruptcy trust, all liabilities for asbestos exposure are assigned to the trust.

Most settlements between an injured party and a bankruptcy trust contain a confidentiality provision. Further, many bankruptcy trusts allow an injured party to delay claims against the bankruptcy trust until they have recovered from solvent defendants in the tort system. As a result of asbestos manufacturers filing for bankruptcy and creating bankruptcy trusts, there are fewer available defendants for an injured party to pursue, and because of confidentiality provisions and delayed claims, it is difficult for solvent defendants to prove inconsistencies in the claims of an injured party.¹

In a recent bankruptcy proceeding, the court ordered the debtor and representatives of potential claimants to estimate the liability of the debtor for purposes of establishing a bankruptcy trust. *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71 (W.D.N.C. 2014). Using different approaches, the two groups estimated the liability at very different amounts; the debtor estimated liability at \$125 million while the representatives of potential claimants estimated liability to be as much as \$1.3 billion. In ordering the trust to be funded with the lesser amount, the judge noted that plaintiffs in prior lawsuits had failed numerous times to disclose claims of plaintiffs against other defendants and bankruptcy trusts, which had resulted in the plaintiff recovering more than the value of the injury and the debtor paying more than its share of the recovery.

Staff Attorneys Jessica Sammons and Susan Sitze in the Legislative Analysis Division substantially contributed to this summary.

¹ Ziffer, Bankruptcy Trusts and Asbestos Litigation.