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Ohio Bill Requires Trust Disclosure by Plaintiffs to Inject Transparency in Asbestos Litigation

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Hinshaw Alert

The Ohio General Assembly recently responded to the accelerated rate of asbestos-driven bankruptcies by considering a new bill, H.B. 380, which requires plaintiffs in civil actions to disclose to defendants any pending claims against asbestos trusts. The bill recognizes that there are two paths to resolving asbestos related claims: (1) by suing solvent defendants in civil actions, and (2) by filing claims against trusts formed in asbestos-driven bankruptcy proceedings. The purpose of the bill is to prevent plaintiffs from alleging one set of facts in a civil lawsuit and conflicting facts in a claim against the trust. Because the legislature wishes to ensure that liability is apportioned fairly, it is considering a bill forcing plaintiff disclosures.

Specifically, H.B. 380 requires that plaintiffs in an asbestos tort action provide to all parties a sworn statement identifying all existing asbestos trust claims and that they supplement that filing if they bring new claims against other trusts. Plaintiffs also must provide copies of all the trust claims materials, such as proofs of claim and claim forms, to opposing parties. This information is not privileged and the material may be used as evidence at trial for any claim or defense so long as it conforms to the rules of evidence.

The bill creates severe consequences for plaintiffs who fail to comply with the disclosure requirements. If the plaintiff fails to provide the disclosures indicated in the bill, the court would be able to impose sanctions. The court would also have the power to reopen and reduce judgments in cases where the plaintiff makes a claim after the civil suit concludes. Finally, the court would be able to impose any other relief to the parties that it considered just.

The bill also creates a right for defendants to file a motion to stay proceedings in the asbestos tort case if they can show that the plaintiff has not filed a claim against an asbestos trust, but could have a viable claim with one of the trusts. Such a motion must include a description of the information that would satisfy the trust claim requirements. In response, the plaintiff may either file a claim with the trust as indicated in the defendant's motion, or file a response to the motion alleging that additional information is necessary in order to file a claim. The court would also be able to examine the defendant's motion and, even if the defendant had not met its burden of proof, determine that a good faith trust claim could be made. To either oppose the defendant's motion or the court's finding, the plaintiff would have to show by a preponderance of evidence that the proposed claim was insufficient and should be modified or disregarded

Attorneys

Craig T. Liljestrand

Service Areas

Complex Tort & General Casualty

entirely.

In sum, H.B. 380 has the potential to ensure that solvent companies defending asbestos suits are not driven ever closer to bankruptcy due to conflicting or redundant plaintiff claims against companies that have already succumbed to bankruptcy and established an asbestos trust. Thus, the transparency provided for in the bill would ensure that defendants understand the case they are defending in the larger context of the plaintiff's total recovery.

For more information, please contact Craig T. Liljestrand.

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