

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 575

AN ACT

To amend chapter 537, RSMo, by adding thereto six new sections relating to actions for damages due to exposure to asbestos.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Chapter 537, RSMo, is amended by adding thereto
2 six new sections, to be known as sections 537.880, 537.882,
3 537.884, 537.886, 537.888, and 537.890, to read as follows:

4 537.880. 1. The provisions of sections 537.880 to 537.890
5 shall apply to asbestos actions filed on or after the effective
6 date of such sections and to pending asbestos actions in which
7 trial has not commenced as of such date.

8 2. As used in sections 537.880 to 537.890, the following
9 words and terms shall mean, unless the context clearly requires
10 otherwise:

11 (1) "Asbestos action", any claim for damages or other
12 relief presented in a civil action arising out of, based on, or
13 related to the health effects of exposure to asbestos and any
14 derivative claim made by or on behalf of a person exposed to
15 asbestos or a representative, spouse, parent, child, or other
16 relative of that person, but does not include a claim for
17 compensatory benefits pursuant to workers' compensation law or
18 for veterans' benefits;

1 (2) "Asbestos trust", a government-approved or court-
2 approved trust, qualified settlement fund, compensation fund, or
3 claims facility created as a result of an administrative or legal
4 action, a court-approved bankruptcy, or created under 11 U.S.C.
5 Section 524(g) or 11 U.S.C. Section 1121(a) or other applicable
6 provision of law, that is intended to provide compensation to
7 claimants arising out of, based on, or related to the health
8 effects of exposure to asbestos;

9 (3) "Asbestos trust claim", any claim for compensation by
10 an exposed person or the exposed person's representative against
11 any asbestos trust;

12 (4) "Claimant", any person bringing an asbestos action or
13 asserting an asbestos trust claim, including a personal
14 representative if the asbestos action or asbestos trust claim is
15 brought by an estate, or a conservator or next friend if the
16 asbestos action or asbestos trust claim is brought on behalf of a
17 minor or legally incapacitated individual. "Claimant" includes a
18 claimant, counter-claimant, cross-claimant, or third-party
19 claimant;

20 (5) "Exposed person", any person whose exposure to asbestos
21 or to asbestos-containing products is the basis for an asbestos
22 claim;

23 (6) "Trust claim materials", a final executed proof of
24 claim and all documents and information including copies of
25 electronic data and emails, submitted to or received from an
26 asbestos trust by the claimant including claim forms and
27 supplementary materials, proofs of claim, affidavits, depositions
28 and trial testimony of the claimant and others knowledgeable

1 about the claimant's exposure history, work history, exposure
2 allegations, medical and health records, all documents that
3 reflect the status of a claim against an asbestos trust, and if
4 the claim has settled, all documents relating to the settlement
5 of the trust claim;

6 (7) "Trust governance document", all documents that relate
7 to eligibility and payment levels, including claims payment
8 matrices, trust distribution procedures, or plans for
9 reorganization for an asbestos trust;

10 (8) "Veterans' benefits", a program for benefits in
11 connection with military service administered by the Veterans'
12 Administration under 38 U.S.C. Title 38;

13 (9) "Workers' compensation", a program administered by the
14 United States or a state to provide benefits, funded by a
15 responsible employer or its insurance carrier, for occupational
16 diseases or injuries or for disability or death caused by
17 occupational diseases or injuries. "Workers' compensation"
18 includes the Longshore and Harbor Workers' Compensation Act, 33
19 U.S.C. Section 901, et seq., and Federal Employees' Compensation
20 Act, 5 U.S.C. Chapter 81. "Workers' compensation" does not
21 include the Federal Employers' Liability Act of April 22, 1908,
22 45 U.S.C. Section 51, et seq..

23 537.882. 1. Within forty-five days after an asbestos
24 action is filed or within forty-five days of the effective date
25 of this section for asbestos actions that are pending on that
26 effective date, the claimant shall:

27 (1) Provide the court and parties with a sworn statement
28 signed by the claimant and claimant's counsel indicating that an

1 investigation has been conducted and that all asbestos trust
2 claims that can be made by the claimant or any person on the
3 claimant's behalf have been completed and filed. A deferral or
4 placeholder claim that is missing necessary documentation for the
5 trust to review and pay the claim does not meet the requirements
6 of this section. The sworn statement shall indicate whether
7 there has been a request to delay, suspend, withdraw, or
8 otherwise alter the standing of any asbestos trust claim and
9 provide the status and disposition of each asbestos trust claim;

10 (2) Provide all parties with all trust claim materials,
11 including trust claim materials that relate to conditions other
12 than those that are the basis for the asbestos action and
13 including all trust claim materials from all law firms connected
14 to the claimant in relation to exposure to asbestos. Documents
15 provided under this subsection shall be accompanied by an
16 affidavit certifying that the trust claim materials are true and
17 complete; and

18 (3) Produce all available trust claims filed by any
19 individual other than the claimant if the claimant's asbestos
20 trust claim is based on exposure to asbestos through that other
21 individual and the materials are available to the claimant or
22 claimant's counsel.

23 2. The claimant shall have a continuing duty to supplement
24 the statement and materials provided under subsection 1 of this
25 section within thirty days after the claimant files an additional
26 asbestos trust claim, supplements an existing asbestos trust
27 claim, or receives additional trust claim materials related to
28 any asbestos trust claim made against an asbestos trust.

1 3. A court may impose sanctions for failure by a claimant
2 or claimant's counsel to comply with the requirements of sections
3 537.880 to 537.890, including dismissal of the asbestos action
4 with prejudice for willful failure to comply with the
5 requirements of sections 537.880 to 537.890.

6 537.884. 1. Not less than sixty days before the date the
7 trial in an asbestos action is set to commence, if the defendant
8 believes the claimant has not filed all asbestos trust claims as
9 required by section 537.882 the defendant may move the court for
10 an order to require the claimant to file additional asbestos
11 trust claims. The motion shall identify the asbestos trust
12 claims the defendant believes the claimant can file and include
13 information supporting those asbestos trust claims.

14 2. If a defendant has previously filed a motion under
15 subsection 1 of this section, the court shall not grant a
16 subsequent motion if the defendant knew that the claimant met the
17 criteria for payment for the additional asbestos trust claim
18 identified in the subsequent motion at the time the earlier
19 motion was filed.

20 3. Within ten days after the filing of the defendant's
21 motion, the claimant shall:

22 (1) File the asbestos trust claims and produce all related
23 trust claim materials; or

24 (2) File a written response with the court stating why
25 there is insufficient evidence for the claimant to file the
26 asbestos trust claims.

27 4. Within ten days of the claimant filing a written
28 response to the defendant's motion, the court shall determine if

1 there is a sufficient basis for the claimant to file the asbestos
2 trust claim identified in the defendant's motion.

3 5. If the court determines that there is a sufficient basis
4 for the claimant to file an asbestos trust claim identified in
5 the defendant's motion, the court shall order the claimant to
6 file the asbestos trust claim and produce all related trust claim
7 materials within ten days. If the claimant does not comply with
8 the court's order, the asbestos action shall not proceed to trial
9 until at least thirty days after the claimant complies with the
10 court's order.

11 537.886. 1. Trust claim materials and trust governance
12 documents are presumed to be relevant and authentic and are
13 admissible in evidence in an asbestos action. No claims of
14 privilege apply to trust claim materials or trust governance
15 documents.

16 2. A defendant in an asbestos action may seek discovery
17 against an asbestos trust identified under sections 537.880 to
18 537.890. The claimant shall not claim privilege or
19 confidentiality to bar discovery. The claimant shall provide
20 consent or any other expression of permission that may be
21 required by the asbestos trust to release information and
22 materials sought by the defendant.

23 3. Trust claim materials that are sufficient to entitle a
24 claim to consideration for payment under the applicable trust
25 governance documents may be sufficient to support a jury finding
26 that the claimant was exposed to products for which the trust was
27 established to provide compensation and that such exposure was a
28 substantial contributing factor in causing the claimant's injury

1 that is at issue in the asbestos action.

2 4. The parties in the asbestos action may introduce at
3 trial any trust claim materials or trust governance documents to
4 prove, without limitation, alternative causation for the exposed
5 person's claimed injury, death, or loss to person; to prove that
6 the bankrupt entity is a joint tortfeasor, liable for the same
7 injury or wrongful death for the purposes of section 537.060; or
8 to prove issues relevant to an adjudication of the asbestos
9 claim, unless the exclusion of the trust claim material is
10 otherwise required by the rules of evidence. The jury shall not
11 be informed of the specific amount of consideration paid by a
12 trust to a claimant in settlement of a claim.

13 537.888. 1. If a claimant proceeds to trial in an asbestos
14 action before an asbestos trust claim is resolved, there is a
15 rebuttable presumption that the claimant is entitled to, and will
16 receive, the compensation specified in the trust governance
17 documents applicable to his or her claim at the time of trial.
18 The court shall take judicial notice that the trust governance
19 documents specify compensation amounts and payment percentages
20 and shall establish an attributed value to the claimant's
21 asbestos trust claims.

22 2. In an asbestos action in which damages are awarded and
23 setoffs are permitted under applicable law, a defendant is
24 entitled to a setoff or credit in the amount the claimant has
25 received from the asbestos trust, and the amount of the valuation
26 established under subsection 1 of this section. If multiple
27 defendants are found to be liable for damages, the court shall
28 distribute the amount of setoff or credit proportionally between

1 the defendants, according to the liability of each defendant.

2 3. In an asbestos action in which damages are awarded and a
3 setoff is applied under applicable law, the setoff or credit for
4 an asbestos trust claim that has been resolved shall be the
5 amount of the actual payment received by the claimant from the
6 asbestos trust after application of any applicable payment
7 percentages.

8 537.890. 1. If, subsequent to obtaining a judgment in an
9 asbestos action, a claimant files any additional asbestos trust
10 claim with, or submits any additional asbestos trust claim to, an
11 asbestos trust that was in existence at the time the claimant
12 obtained judgment, the trial court, upon the filing by a
13 defendant or judgment debtor of an appropriate motion seeking
14 sanctions or other relief, has jurisdiction to reopen the
15 judgment in the asbestos action and adjust the judgment by the
16 amount of any subsequent asbestos trust payments obtained by the
17 claimant and order any other relief that the court considers just
18 and proper.

19 2. A defendant or judgment debtor shall file any motion
20 under this section within a reasonable time and not more than one
21 year after the judgment was entered or taken.