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Spring Cleaning: Texas legislature passes bill for dismissal of inactive asbestos and silica claims

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The Texas legislature has taken a significant step toward clearing what some regard as very cluttered asbestos and silica dockets. The Texas legislature passed and sent to the governor House Bill 1325 (“HB 1325”) to provide a vehicle to dismiss inactive claims of plaintiffs who have thus far been unable to provide proof of impairment.¹

The 79th Texas legislature enacted Senate Bill 15 (“SB 15”) in 2005 to require plaintiffs claiming asbestos- or silica-related injuries to serve a compliant medical report in order to pursue their claim in court.² To be compliant, the statute requires a report by a board-certified physician, opining that specific medical criteria exist as proof of significant injury. SB 15 created a system to advance to trial the sickest claimants ahead of those who had simply been exposed to asbestos or silica without significant impairment. SB 15 also established a more generous two-year statute of limitations providing that a claim accrues on the earlier of either the claimant’s death or service of a compliant medical report.³

The Texas multi-district litigation asbestos and silica pre-trial (“MDL”) courts were also created by SB 15. The Texas MDL courts oversee all aspects of pre-trial matters before remanding a case to a trial court. It is estimated that there are currently 60,000 to 80,000 plaintiffs with asbestos-related claims and 5,000 to 6,000 plaintiffs with silica-related claims pending in the Texas MDL courts.⁴

HB 1325 directs the Texas MDL courts, beginning September 1, 2014, to dismiss asbestos- or silica-related actions pending on August 31, 2005, unless the plaintiff served a compliant medical report on or after September 1, 2013. All such claims shall be dismissed before September 1, 2015. The dismissal will not prejudice the claimant’s right to file a future action based on an asbestos- or silica-related injury. If a claimant re-files a claim that was dismissed under this statute, the re-filed action will be treated as still pending and awaiting service of a compliant medical report. The re-filing claimant may serve the petition and citation by certified mail or other MDL-approved, cost-effective method on any person who was a defendant in the first, dismissed action.

¹ See Amended Substitute HB 1325.

² Codified as Tex. Civ. Prac. & Rem. Code, Chapter 90 (2005).

³ See Tex. Civ. Prac. & Rem. Code § 16.0031.

⁴ See Texas House Research Organization bill analysis (4/19/2013).

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Nothing in HB 1325 is intended to be regarded as a decision on the merits of a dismissed action, affect the rights of any party in a bankruptcy proceeding, or affect the ability of a person to satisfy claim criteria for compensable claims or demands under a bankruptcy trust under federal law. The tort system rights of any dismissed actions are specifically preserved.

HB 1325 applies to any action pending in the Texas MDL courts on September 1, 2013, or referred to the MDL courts on or after September 1, 2013.

In passing HB 1325 the Texas legislature is creating a mechanism to clean up the inactive MDL dockets by dismissing claims previously allowed to sit inactive indefinitely until plaintiffs are able to prove impairment by serving a compliant medical report. While some of these dismissed claims will ultimately be re-filed, it seems likely that a significant portion will never again see the light of day. It seems clear that HB 1325 is a long-needed step in the right direction.

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