

6032

2017-2018 Regular Sessions

I N A S S E M B L Y

February 21, 2017

Introduced by M. of A. SIMOTAS, SCHIMMINGER, MOSLEY, McDONALD, SKARTADOS, COOK, OTIS, FAHY, SANTABARBARA, WOERNER, CUSICK, QUART -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to truth and fairness in asbestos litigation

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The civil practice law and rules is amended by adding a new
2 article 99 to read as follows:

3 ARTICLE 99

4 TRUTH IN ASBESTOS TRUST CLAIMS

5 SECTION 9901. DEFINITIONS.

6 9902. REQUIREMENT TO MAKE TRUST CLAIMS.

7 9903. NOTICE OF TRUST CLAIM; PRODUCTION OF TRUST CLAIM MATERIAL.

8 9904. FAILURE TO MAKE TRUST CLAIM OR PROVIDE NOTICE AND TRUST
9 CLAIM MATERIAL.

10 9905. MOTION TO STAY.

11 9906. RESPONSE TO MOTION TO STAY.

12 9907. STAY OF PROCEEDINGS.

13 9908. EVIDENCE OF TRUST CLAIMS.

14 9909. MOTION FOR SANCTIONS.

15 S 9901. DEFINITIONS. AS USED IN THIS ARTICLE:

16 (1) "ASBESTOS TRUST" MEANS A GOVERNMENT-APPROVED OR COURT-APPROVED
17 TRUST, QUALIFIED SETTLEMENT FUND, COMPENSATION FUND OR CLAIMS FACILITY
18 CREATED AS A RESULT OF AN ADMINISTRATIVE OR LEGAL ACTION, A COURT-AP-
19 PROVED BANKRUPTCY, OR PURSUANT TO 11 U.S.C. 524(G) OR 11 U.S.C. 1121 (A)
20 OR OTHER APPLICABLE PROVISION OF LAW, THAT IS INTENDED, IN WHOLE OR IN
21 PART, TO PROVIDE COMPENSATION TO CLAIMANTS ARISING OUT OF, BASED ON, OR
22 RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO ASBESTOS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD07815-01-7

1 (2) "TRUST CLAIM" MEANS ANY FILING WITH, SUBMISSION TO OR CLAIM
2 AGAINST AN ASBESTOS TRUST SEEKING RECOVERY OF COMPENSATION OR DAMAGES
3 FOR OR ARISING FROM THE HEALTH EFFECTS OF EXPOSURE TO ASBESTOS.

4 (3) "TRUST CLAIM MATERIAL" MEANS ANY AND ALL DOCUMENTATION FILED OR
5 SUBMITTED BY OR ON BEHALF OF A CLAIMANT AS PART OF OR IN CONNECTION WITH
6 A TRUST CLAIM, INCLUDING:

7 A. DOCUMENTATION, MATERIALS AND INFORMATION THAT A CLAIMANT SUBMITS OR
8 PROVIDES TO AN ASBESTOS TRUST FOR THE PURPOSE OF DEMONSTRATING ASBESTOS
9 EXPOSURE, THE HEALTH EFFECTS OF EXPOSURE TO ASBESTOS, OR THE VALIDITY OF
10 A TRUST CLAIM; AND

11 B. CLAIM FORMS AND OTHER MATERIALS THAT AN ASBESTOS TRUST REQUIRES IN
12 ORDER TO SUPPORT A TRUST CLAIM.

13 S 9902. REQUIREMENT TO MAKE TRUST CLAIMS. (1) EXCEPT AS PROVIDED BY
14 SUBDIVISION FOUR OF THIS SECTION, A CLAIMANT WHO HAS FILED AN ACTION TO
15 RECOVER DAMAGES FOR OR ARISING FROM AN ASBESTOS-RELATED INJURY, AND ANY
16 PERSON WHO IS REPRESENTING THE CLAIMANT AND/OR HAS A FIDUCIARY DUTY TO
17 THE CLAIMANT FOR THE CLAIM, INCLUDING BUT NOT LIMITED TO THE CLAIMANT'S
18 REPRESENTATIVES, AGENTS, COUNSEL AND ASSIGNS, SHALL CONDUCT AN INVESTI-
19 GATION AND TIMELY FILE ALL TRUST CLAIMS THAT CAN BE MADE BY THE CLAIM-
20 ANT.

21 (2) A CLAIMANT, AND ANY PERSON WHO IS REPRESENTING THE CLAIMANT AND/OR
22 HAS A FIDUCIARY DUTY TO THE CLAIMANT FOR THE CLAIM, INCLUDING BUT NOT
23 LIMITED TO THE CLAIMANT'S REPRESENTATIVES, AGENTS, COUNSEL AND ASSIGNS,
24 MUST MAKE EACH TRUST CLAIM REQUIRED UNDER THIS SECTION NOT LATER THAN
25 FORTY-FIVE DAYS AFTER THE CLAIMANT'S COMMENCEMENT OF THE ACTION.

26 (3) A CLAIMANT MAY FILE A MOTION SEEKING RELIEF FROM THE OBLIGATION TO
27 MAKE A TRUST CLAIM OTHERWISE REQUIRED BY THIS SECTION IF THE FEES AND
28 EXPENSES, INCLUDING ATTORNEY'S FEES, FOR FILING THE TRUST CLAIM EXCEED
29 THE CLAIMANT'S REASONABLY ANTICIPATED RECOVERY FROM THE ASBESTOS TRUST.

30 (4) IF A CLAIMANT FILES A MOTION UNDER SUBDIVISION THREE OF THIS
31 SECTION, THE COURT SHALL DETERMINE WHETHER THE CLAIMANT'S FEES AND
32 EXPENSES, INCLUDING ATTORNEY'S FEES, FOR MAKING THE TRUST CLAIM EXCEED
33 THE CLAIMANT'S REASONABLY ANTICIPATED RECOVERY FROM THE ASBESTOS TRUST.
34 IF THE COURT DETERMINES THAT THE CLAIMANT'S FEES AND EXPENSES EXCEED THE
35 CLAIMANT'S REASONABLY ANTICIPATED RECOVERY, THE CLAIMANT IS NOT REQUIRED
36 TO MAKE THE TRUST CLAIM BUT SHALL PROVIDE THE COURT WITH A VERIFIED
37 STATEMENT OF THE EXPOSED PERSON'S EXPOSURE HISTORY TO ASBESTOS THAT IS
38 COVERED BY EACH ASBESTOS TRUST AGAINST WHICH A CLAIM IS NOT REQUIRED.

39 S 9903. NOTICE OF TRUST CLAIM; PRODUCTION OF TRUST CLAIM MATERIAL.

40 (1) A CLAIMANT IN AN ACTION TO RECOVER DAMAGES FOR OR ARISING FROM AN
41 ASBESTOS-RELATED INJURY SHALL SERVE ON EACH PARTY A SWORN STATEMENT,
42 UNDER PENALTY OF PERJURY, AND TRUST CLAIM MATERIAL RELATING TO, EACH
43 TRUST CLAIM MADE BY OR ON BEHALF OF THE EXPOSED PERSON. THE SWORN STATE-
44 MENT MUST:

45 A. IDENTIFY EACH TRUST CLAIM MADE BY OR ON BEHALF OF THE EXPOSED
46 PERSON;

47 B. STATE THE AMOUNT OF ANY TRUST CLAIM PAYMENT MADE OR TO BE MADE TO
48 COMPENSATE FOR THE EXPOSED PERSON'S INJURY; AND

49 C. STATE THE DATE EACH TRUST CLAIM WAS MADE OR IS TO BE MADE AND
50 WHETHER A REQUEST FOR INDIVIDUAL OR ENHANCED REVIEW OR FOR A DEFERRAL,
51 DELAY, SUSPENSION, OR TOLLING OF THE CLAIM HAS BEEN SUBMITTED TO THE
52 ASBESTOS TRUST.

53 (2) THE CLAIMANT SHALL SERVE THE SWORN STATEMENT AND TRUST CLAIM MATE-
54 RIAL REQUIRED BY SUBDIVISION ONE OF THIS SECTION NOT LATER THAN THIRTY
55 DAYS AFTER THE COMMENCEMENT OF DISCOVERY.

1 (3) THE SWORN STATEMENT AND TRUST CLAIM MATERIAL REQUIRED TO BE SERVED
2 UNDER SUBDIVISION ONE OF THIS SECTION ARE IN ADDITION TO ANY NOTICE OR
3 MATERIALS REQUIRED TO BE SERVED OR PRODUCED AS PART OF DISCOVERY AND
4 UNDER ANY OTHER LAW, RULE, ORDER, OR APPLICABLE AGREEMENT.

5 (4) IF A CLAIMANT DISCOVERS THAT THE SWORN STATEMENT OR TRUST CLAIM
6 MATERIAL PROVIDED BY THE CLAIMANT UNDER THIS SECTION WERE INCOMPLETE OR
7 INCORRECT AT THE TIME THE SWORN STATEMENT OR TRUST CLAIM MATERIAL WAS
8 SERVED OR THAT THE SWORN STATEMENT OR TRUST CLAIM MATERIAL AS SERVED IS
9 NO LONGER COMPLETE AND CORRECT, THE CLAIMANT SHALL SUPPLEMENT THE SWORN
10 STATEMENT AND THE PRODUCTION OF TRUST CLAIM MATERIAL. THE CLAIMANT SHALL
11 SERVE THE SUPPLEMENTAL SWORN STATEMENT OR TRUST CLAIM MATERIAL REASON-
12 ABLY PROMPTLY AFTER THE CLAIMANT DISCOVERS THE NECESSITY FOR THE SUPPLE-
13 MENTATION, BUT NOT LATER THAN THE THIRTIETH DAY AFTER THE DATE THE
14 CLAIMANT DISCOVERS THE NECESSITY FOR THE SUPPLEMENTATION.

15 (5) IF A CLAIMANT HAS SETTLED WITH A PARTY, FOR UP TO FIVE YEARS
16 FOLLOWING THE DATE OF THE SETTLEMENT, THE SETTLED PARTY CAN REQUEST, AND
17 THE CLAIMANT SHALL PROVIDE, A SUPPLEMENTAL SWORN STATEMENT AND TRUST
18 CLAIM MATERIAL RELATING TO EACH TRUST CLAIM MADE BY OR ON BEHALF OF THE
19 CLAIMANT AS OF THE DATE OF THE SETTLED PARTY'S REQUEST.

20 S 9904. FAILURE TO MAKE TRUST CLAIM OR PROVIDE NOTICE AND TRUST CLAIM
21 MATERIAL. (1) A COURT MAY NOT COMMENCE TRIAL IN AN ACTION TO RECOVER
22 DAMAGES FOR OR ARISING FROM AN ASBESTOS-RELATED INJURY UNLESS THE CLAIM-
23 ANT HAS:

24 A. MADE EACH TRUST CLAIM AS REQUIRED BY THIS ARTICLE; AND

25 B. SERVED THE SWORN STATEMENT, AND TRUST CLAIM MATERIAL RELATING TO,
26 THOSE TRUST CLAIMS IN ACCORDANCE WITH SECTION NINETY-NINE HUNDRED THREE
27 OF THIS ARTICLE.

28 (2) IF A CLAIMANT RECEIVED COMPENSATION FROM AN ASBESTOS TRUST FOR AN
29 INJURY THAT ALSO GAVE RISE TO A JUDGMENT AGAINST A DEFENDANT FOR THE
30 SAME INJURY AND THE CLAIMANT FAILED TO SERVE THE REQUIRED SWORN STATE-
31 MENT AND TRUST CLAIM MATERIAL AS REQUIRED BY SECTION NINETY-NINE HUNDRED
32 THREE OF THIS ARTICLE, THE COURT, ON A DEFENDANT'S OR JUDGMENT DEBTOR'S
33 MOTION, AND AFTER REASONABLE NOTICE TO THE PARTIES, MAY IMPOSE AN APPRO-
34 PRIATE SANCTION, INCLUDING, BUT NOT LIMITED TO, SETTING ASIDE THE JUDG-
35 MENT AND ORDERING A NEW TRIAL.

36 (3) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE THAT THE CLAIMANT
37 RECEIVE PAYMENT OF A TRUST CLAIM FROM AN ASBESTOS TRUST BEFORE A JUDG-
38 MENT IS RENDERED IN THE ACTION.

39 S 9905. MOTION TO STAY. (1) A DEFENDANT MAY FILE A MOTION REQUESTING
40 A STAY OF THE PROCEEDINGS UNDER SECTION NINETY-NINE HUNDRED SEVEN OF
41 THIS ARTICLE ON OR BEFORE THE LATER OF:

42 A. THE SIXTIETH DAY BEFORE THE DATE TRIAL IN THE ACTION IS SET TO
43 COMMENCE; OR

44 B. THE FIFTEENTH DAY AFTER THE DATE THE DEFENDANT FIRST OBTAINS ASBES-
45 TOS-EXPOSURE INFORMATION THAT COULD SUPPORT AN ADDITIONAL ASBESTOS TRUST
46 CLAIM BY THE CLAIMANT.

47 (2) THE MOTION DESCRIBED BY SUBDIVISION ONE OF THIS SECTION MUST
48 INCLUDE:

49 A. A LIST OF ASBESTOS TRUSTS NOT DISCLOSED BY THE CLAIMANT AGAINST
50 WHICH THE DEFENDANT IN GOOD FAITH HAS A REASONABLE BASIS TO BELIEVE THE
51 CLAIMANT MAY MAKE A SUCCESSFUL TRUST CLAIM; AND

52 B. INFORMATION SUPPORTING THE ADDITIONAL TRUST CLAIM DESCRIBED BY
53 PARAGRAPH A OF THIS SUBDIVISION, INCLUDING INFORMATION THAT MAY BE USED
54 TO MEET THE TRUST CLAIM REQUIREMENTS OF AN ASBESTOS TRUST DESCRIBED BY
55 SUCH PARAGRAPH A.

1 S 9906. RESPONSE TO MOTION TO STAY. (1) NOT LATER THAN THE FOURTEENTH
2 DAY AFTER THE DATE THE DEFENDANT FILES A MOTION TO STAY UNDER SECTION
3 NINETY-NINE HUNDRED FIVE OF THIS ARTICLE, THE CLAIMANT MAY FILE A
4 RESPONSE:

5 A. STATING AND PROVIDING PROOF THAT THE CLAIMANT HAS MADE A TRUST
6 CLAIM IDENTIFIED IN THE DEFENDANT'S MOTION AND SERVED THE SWORN STATE-
7 MENT, AND TRUST CLAIM MATERIAL RELATING TO, THE CLAIM AS PRESCRIBED BY
8 SECTION NINETY-NINE HUNDRED THREE OF THIS ARTICLE; OR

9 B. REQUESTING A DETERMINATION BY THE COURT THAT THE FEES AND EXPENSES,
10 INCLUDING ATTORNEY'S FEES, FOR FILING A TRUST CLAIM IDENTIFIED IN THE
11 MOTION EXCEED THE CLAIMANT'S REASONABLY ANTICIPATED RECOVERY FROM THE
12 ASBESTOS TRUST.

13 (2) IF THE CLAIMANT FILES A RESPONSE MAKING A REQUEST UNDER PARAGRAPH
14 B OF SUBDIVISION ONE OF THIS SECTION, THE COURT SHALL DETERMINE WHETHER
15 THE CLAIMANT'S FEES AND EXPENSES, INCLUDING ATTORNEY'S FEES, FOR MAKING
16 THE RELEVANT TRUST CLAIM EXCEED THE CLAIMANT'S REASONABLY ANTICIPATED
17 RECOVERY FROM THE ASBESTOS TRUST. IF THE COURT DETERMINES THAT THE
18 CLAIMANT'S FEES AND EXPENSES EXCEED THE CLAIMANT'S REASONABLY ANTIC-
19 IPATED RECOVERY, THE CLAIMANT IS NOT REQUIRED TO MAKE THE TRUST CLAIM
20 BUT SHALL PROVIDE THE COURT WITH A VERIFIED STATEMENT OF THE EXPOSED
21 PERSON'S EXPOSURE HISTORY TO ASBESTOS THAT IS COVERED BY THE ASBESTOS
22 TRUST.

23 S 9907. STAY OF PROCEEDINGS. (1) THE COURT SHALL GRANT A MOTION TO
24 STAY UNDER SECTION NINETY-NINE HUNDRED FIVE OF THIS ARTICLE IF THE COURT
25 DETERMINES THE MOTION WAS TIMELY FILED AND THE CLAIMANT IS LIKELY TO
26 RECEIVE COMPENSATION FROM AN ASBESTOS TRUST IDENTIFIED BY THE MOTION.
27 THE STAY SHALL CONTINUE UNTIL THE CLAIMANT PROVIDES PROOF THAT THE
28 CLAIMANT HAS MADE THE CLAIM AND SERVED A SWORN STATEMENT, AND TRUST
29 CLAIM MATERIAL RELATING TO, THE CLAIM AS PRESCRIBED BY SECTION
30 NINETY-NINE HUNDRED THREE OF THIS ARTICLE.

31 (2) THE COURT MAY NOT STAY THE PROCEEDINGS IF, WITH RESPECT TO EACH
32 TRUST CLAIM IDENTIFIED IN THE MOTION:

33 A. THE COURT DETERMINES THAT THE CLAIMANT HAS SATISFIED THE REQUIRE-
34 MENTS OF SUBDIVISION ONE OF SECTION NINETY-NINE HUNDRED THREE OF THIS
35 ARTICLE; OR

36 B. THE COURT MAKES A DETERMINATION DESCRIBED BY SUBDIVISION FOUR OF
37 SECTION NINETY-NINE HUNDRED TWO OR SUBDIVISION TWO OF SECTION
38 NINETY-NINE HUNDRED SIX OF THIS ARTICLE.

39 S 9908. EVIDENCE OF TRUST CLAIMS. (1) TRUST CLAIM MATERIAL IS
40 PRESUMED TO BE AUTHENTIC, RELEVANT, AND DISCOVERABLE IN AN ACTION TO
41 WHICH THIS ARTICLE APPLIES.

42 (2) CLAIMS OF PRIVILEGE SHALL NOT APPLY TO ANY TRUST CLAIM MATERIAL IN
43 AN ACTION TO WHICH THIS ARTICLE APPLIES.

44 (3) A PARTY MAY USE THE TRUST CLAIM MATERIAL TO PROVE:

45 A. AN ALTERNATE SOURCE FOR THE CAUSE OF THE EXPOSED PERSON'S INJURY,
46 DEATH OR LOSS;

47 B. A BASIS TO ALLOCATE RESPONSIBILITY FOR THE EXPOSED PERSON'S INJURY,
48 DEATH, OR LOSS; OR

49 C. ANY OTHER ISSUE RELEVANT TO ADJUDICATION OF A CLAIM ASSERTED IN THE
50 ACTION.

51 S 9909. MOTION FOR SANCTIONS. (1) ON THE MOTION OF A DEFENDANT OR
52 JUDGMENT DEBTOR SEEKING SANCTIONS OR OTHER RELIEF IN AN ACTION TO
53 RECOVER DAMAGES FOR OR ARISING FROM THE HEALTH EFFECTS OF EXPOSURE TO
54 ASBESTOS, THE COURT MAY IMPOSE ANY SANCTION PROVIDED BY COURT RULE OR
55 LAW, INCLUDING, BUT NOT LIMITED TO, VACATING A JUDGMENT RENDERED IN THE

1 ACTION, FOR A CLAIMANT'S FAILURE TO COMPLY WITH THE DISCLOSURE REQUIRE-
2 MENTS OF SECTION NINETY-NINE HUNDRED THREE OF THIS ARTICLE.

3 (2) IF THE CLAIMANT, CLAIMANT'S COUNSEL, OR ANY OTHER PERSON ON THE
4 CLAIMANT'S BEHALF FILES AN ASBESTOS TRUST CLAIM(S) AFTER THE CLAIMANT
5 OBTAINS A JUDGMENT IN THE ACTION, AND THE ASBESTOS TRUST(S) WAS IN
6 EXISTENCE AT THE TIME THE CLAIMANT OBTAINED THE JUDGMENT, THE COURT, ON
7 MOTION BY A DEFENDANT OR JUDGMENT DEBTOR SEEKING SANCTIONS OR OTHER
8 RELIEF, HAS JURISDICTION TO REOPEN THE JUDGMENT IN THE ACTION AND ADJUST
9 THE JUDGMENT BY THE AMOUNT OF ANY SUBSEQUENT ASBESTOS TRUST PAYMENTS
10 OBTAINED BY OR ON BEHALF OF THE CLAIMANT AND ORDER ANY OTHER RELIEF TO
11 THE PARTIES THAT THE COURT DEEMS JUST AND PROPER.

12 (3) A DEFENDANT OR JUDGMENT DEBTOR SHALL FILE ANY MOTION UNDER THIS
13 SECTION WITHIN A REASONABLE TIME AND NOT MORE THAN ONE YEAR AFTER THE
14 JUDGMENT WAS ENTERED IN THE ACTION.

15 S 2. This act shall take effect on the thirtieth day after it shall
16 have become law, and shall apply to all actions commenced on or after
17 such date.