WEST VIRGINIA CODE: §55-7G-3

§55-7G-3. Definitions.

For the purpose of this article:

(1) "AMA Guides to the Evaluation of Permanent Impairment" means the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required under this article.

(2) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 C. F. R. §1910 at the time an asbestos action is filed.

(3) "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers' compensation law or for veterans' benefits.

(4) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(5) "Board-certified in internal medicine" means a physician who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(6) "Board-certified in occupational medicine" means a physician who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(7) "Board-certified in pathology" means a physician who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Pathology, whose certification was current at the time of the performance of any examination and rendition of any report required by this act, and whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or postmortem specimens.

WV Legislature

(8) "Board-certified in pulmonary medicine" means a physician who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(9) "Certified B-reader" means an individual who has qualified as a National Institute for Occupational Safety and Health (NIOSH) "final" or "B-reader" of x-rays under 42 C. F. R. §37.51(b), whose certification was current at the time of any readings required under this article, and whose B-reads comply with the NIOSH B-Reader's Code of Ethics, Issues in Classification of Chest Radiographs and Classification of Chest Radiographs in Contested Proceedings.

(10) "Chest x-ray" means chest films taken in accordance with all applicable state and federal regulatory standards and taken in the posterior-anterior view.

(11) "DLCO" means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(12) "Exposed person" means a person whose exposure to asbestos or silica or to asbestos-containing or silica-containing products is the basis for an asbestos or silica action.

(13) "FEV1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

(14) "FEV1/FVC" means the ratio between the actual values for FEV1 over FVC.

(15) "FVC" means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(16) "ILO" system and "ILO scale" mean the radiological ratings and system for the classification of chest x-rays of the International Labor Office provided in Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect on the day any x-rays of the exposed person were reviewed by a certified B-reader.

(17) "Nonmalignant condition" means any condition that can be caused by asbestos or silica other than a diagnosed cancer.

(18) "Official statements of the American Thoracic Society" means lung function testing standards set forth in statements from the American Thoracic Society including standardizations of spirometry, standardizations of lung volume testing, standardizations of diffusion capacity testing or single-breath determination of carbon monoxide uptake in the lung and interpretive strategies for lung function tests, which are in effect on the day of the pulmonary function testing of the exposed person.

(19) "Pathological evidence of asbestosis" means a statement by a board-certified pathologist

WV Legislature

that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies graded 1(B) or higher under the criteria published in Asbestos-Associated Diseases, 106 Archive of Pathology and Laboratory Medicine 11, Appendix 3 (October 8, 1982), or grade one or higher in Pathology of Asbestosis, 134 Archive of Pathology and Laboratory Medicine 462-80 (March 2010) (Tables 2 and 3), or as amended at the time of the exam, and there is no other more likely explanation for the presence of the fibrosis.

(20) "Pathological evidence of silicosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates complicated silicosis with characteristic confluent silicotic nodules or lesions equal to or greater than one centimeter and birefringent crystals or other demonstration of crystal structures consistent with silica (well-organized concentric whorls of collagen surrounded by inflammatory cells) in the lung parenchyma and no other more likely explanation for the presence of the fibrosis exists, or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(21) "Plaintiff" means a person asserting an asbestos or silica action, a decedent if the action is brought through or on behalf of an estate, and a parent or guardian if the action is brought through or on behalf of a minor or incompetent.

(22) "Plethysmography or body (BOX) plethysmography" means the test for determining lung volume in which the exposed person is enclosed in a chamber equipped to measure pressure, flow or volume change.

(23) "Predicted lower limit of normal" means any test value is the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent of the reference population, based on age, height and gender, according to the recommendations by the American Thoracic Society and as referenced in the applicable AMA Guides to the Evaluation of Permanent Impairment, primarily National Health and Nutrition Examination Survey (NHANES) predicted values, or as amended.

(24) "Pulmonary function test" means spirometry, lung volume testing and diffusion capacity testing, including appropriate measurements, quality control data and graphs, performed in accordance with the methods of calibration and techniques provided in the applicable AMA Guides to the Evaluation of Permanent Impairment and all standards provided in the Official Statements of the American Thoracic Society in effect on the day pulmonary function testing of the exposed person was conducted.

(25) "Qualified physician" means a board-certified internist, pathologist, pulmonary specialist or specialist in occupational and environmental medicine, as may be appropriate to the actual diagnostic specialty in question, that meets all of the following requirements:

WV Legislature

(A) The physician has conducted a physical examination of the exposed person and has taken or has directed to be taken under his or her supervision, direction and control, a detailed occupational, exposure, medical, smoking and social history from the exposed person, or the physician has reviewed the pathology material and has taken or has directed to be taken under his or her supervision, direction and control, a detailed history from the person most knowledgeable about the information forming the basis of the asbestos or silica action;

(B) The physician has treated or is treating the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board-certified pathologist, examined tissue samples or pathological slides of the exposed person;

(C) The physician prepared or directly supervised the preparation and final review of any medical report under this article; and

(D) The physician has not relied on any examinations, tests, radiographs, reports or opinions of any doctor, clinic, laboratory or testing company that performed an examination, test, radiograph or screening of the exposed person in violation of any law, regulation, licensing requirement or medical code of practice of the state in which the examination, test or screening.

(26) "Radiological evidence of asbestosis" means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral small, irregular opacities (s, t or u) occurring primarily in the lower lung zones graded by a certified B-reader as at least 1/0 on the ILO scale.

(27) "Radiological evidence of diffuse bilateral pleural thickening" means a quality 1 or 2 chest x-ray under the ILO system, showing diffuse bilateral pleural thickening of at least b2 on the ILO scale and blunting of at least one costophrenic angle as classified by a certified B-reader.

(28) "Radiological evidence of silicosis" means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral predominantly nodular or rounded opacities (p, q or r) occurring in the lung fields graded by a certified B-reader as at least 1/0 on the ILO scale or A, B or C sized opacities representing complicated silicosis or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(29) "Silica" means a respirable crystalline form of silicon dioxide, including quartz, cristobalite and tridymite.

(30) "Silica action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to silica, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to silica or a representative, spouse, parent,

WV Legislature

child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers' compensation law, veterans' benefits or claims brought by a person as a subrogee by virtue of the payment of benefits under a workers' compensation law. The term does not include any administrative claim or civil action related to coal workers' pnuemoconiosis.

(31) "Silicosis" means simple silicosis, acute silicosis, accelerated silicosis or chronic silicosis caused by the inhalation of respirable silica. "Silicosis" does not mean coal workers' pnuemoconiosis.

(32) "Spirometry" means a test of air capacity of the lung through a spirometer to measure the volume of air inspired and expired.

(33) "Supporting test results" means copies of the following documents and images:

(A) Pulmonary function tests, including printouts of the flow volume loops, volume time curves, DLCO graphs, lung volume tests and graphs, quality control data and other pertinent data for all trials and all other elements required to demonstrate compliance with the equipment, quality, interpretation and reporting standards set forth herein;

(B) B-reading and B-reader reports;

(C) Reports of x-ray examinations;

(D) Diagnostic imaging of the chest;

(E) Pathology reports; and

(F) All other tests reviewed by the diagnosing physician or a qualified physician in reaching the physician's conclusions.

(34) "Timed gas dilution" means a method for measuring total lung capacity in which the subject breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of that inert and insoluble gas in the lung is compared to the concentration of that type of gas in the spirometer.

(35) "Total lung capacity" means the volume of gas contained in the lungs at the end of a maximal inspiration.

(36) "Veterans' benefits" means a program for benefits in connection with military service administered by the Veterans' Administration under Title 38 of the United States Code.

(37) "Workers' compensation law" means a law relating to a program administered by the United States or a state to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries. The term includes the Longshore and Harbor Workers'

WV Legislature

Compensation Act, 33 U. S. C. §§901 et seq., and the Federal Employees' Compensation Act, Chapter 81 of Title 5 of the United States Code, but does not include the Federal Employers' Liability Act of April 22, 1908, 45 U. S. C. §§51 et seq.

WV Legislature