WEST VIRGINIA CODE: §55-7G-4

§55-7G-4. Filing claims; establishment of a prima facie case; additional required information for claims; individual actions to be filed.

(a) A plaintiff in an asbestos or silica action alleging a nonmalignant condition shall file within ninety days of filing the complaint or other initial pleading a detailed narrative medical report and diagnosis, signed by a qualified physician and accompanied by supporting test results, constituting prima facie evidence that the exposed person meets the requirements of this article. The report shall not be prepared by a lawyer or person working for or on behalf of a lawyer or law firm.

(b) A defendant in an asbestos or silica action shall be afforded a reasonable opportunity before trial to challenge the adequacy of the prima facie evidence that the exposed person meets the requirements of this article. An asbestos or silica action shall be dismissed without prejudice upon a finding that the exposed person has failed to make the prima facie showing required by this article.

(c) A plaintiff in an asbestos or silica action filed prior to the effective date of the amendments to this article enacted during the 2021 regular session of the Legislature shall also include an information form with the complaint for nonmalignant conditions containing all of the following:

(1) The name, address, date of birth, social security number, marital status, occupation and employer of the exposed person and any person through which the exposed person alleges exposure;

(2) The plaintiff’s relationship to the exposed person or the person through which the exposure is alleged;

(3) To the best of the plaintiff’s ability, the location and manner of each alleged exposure, including the specific location and manner of exposure for any person through which the exposed person alleges exposure, the beginning and ending dates of each alleged exposure and the identity of the manufacturer of the specific asbestos or silica product for each exposure when this information is reasonably available;

(4) The identity of the defendant or defendants against whom the plaintiff asserts a claim;

(5) The specific asbestos-related or silica-related disease claimed to exist; and

(6) Any supporting documentation relating to subdivisions (3), (4) and (5) of this subsection.

(d) For any asbestos or silica action filed on or after the amendments to this article enacted during the 2021 regular session of the Legislature, a plaintiff shall file within 60 days of filing any complaint a sworn information form that specifies the evidence that provides the

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basis for each claim against each defendant. The sworn information form shall include all of the following with specificity:

(1) The name, address, date of birth, marital status, occupation, smoking history, current and past worksites, and current and past employers of the exposed person, and any person through which the exposed person alleges exposure;

(2) Each person through whom the exposed person was exposed to asbestos or silica and the exposed person's relationship to each such person;

(3) Each asbestos-containing or silica-containing product to which the person was exposed and each physical location at which the person was exposed to asbestos or silica, or the other person was exposed if exposure was through another person;

(4) The identity of the manufacturer or seller of the specific asbestos or silica product for each exposure;

(5) The specific location and manner of each exposure, including for any person through whom the exposed person was exposed;

(6) The beginning and ending dates of each exposure and the frequency of the exposure, including for any person through whom the exposed person was exposed;

(7) The specific asbestos-related or silica-related disease claimed to exist; and

(8) Any supporting documentation relating to the information required under this section.

(e) Plaintiffs have a continuing duty to supplement the information that is required to be disclosed in this section.

(f) The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action without prejudice as to any defendant whose product or premises is not identified in the required disclosures set forth in subsection (d) of this section.

(g) The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action without prejudice as to all defendants if plaintiff fails to comply with the requirements of subsection (d) this section.

(h) Asbestos and silica actions must be individually filed. No asbestos or silica action filed on or after the effective date of this article shall be permitted on behalf of a group or class of plaintiffs.

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