WEST VIRGINIA CODE: §55-7G-6

§55-7G-6. Elements of proof for silica actions alleging silicosis.

No silica action related to alleged silicosis may be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment as a result of silicosis. The plaintiff shall make a prima facie showing of claim for each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

(1) Radiological or pathological evidence of silicosis or a high-resolution computed tomography scan showing evidence of silicosis;

(2) A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including silica or other disease causing dusts or fumes, that may cause pulmonary impairment and the nature, duration and level of any exposure;

(3) A detailed medical, social and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems and their most probable cause;

(4) Evidence that a sufficient latency period has elapsed between the exposed person's date of first exposure to silica and the day of diagnosis;

(5) Evidence based upon a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, based upon the person's medical records, demonstrating that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment or reported significant changes year to year in lung function for FVC, FEV1 or DLCO as defined by the American Thoracic Society's Interpretative Strategies for Lung Function Tests, 26 European Respiratory Journal 948-68, 961-62, Table 12 (2005) and as updated; and

(6) The specific conclusion of the qualified physician signing the report that exposure to silica was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion stating that the medical findings and impairment are consistent with or compatible with exposure to silica, or words to that effect, do not satisfy the requirements of this subdivision.

WV Legislature