WEST VIRGINIA CODE CHAPTER 55 ARTICLE 7I

WV Legislature

§55-7I-1. Findings and purpose.

(a) The West Virginia Legislature finds that:

(1) Asbestos-related claims threaten the continued viability of uniquely situated companies that have never manufactured, sold or distributed asbestos or asbestos products and are liable only as successor corporations.

(2) The viability of these businesses is threatened due solely to their status as successor corporations by merger or consolidation based on actions taken prior to the May 13, 1968, American Conference of Governmental Industrial Hygienists change in the recommended, longstanding threshold workplace-exposure limit for asbestos.

(3) More than twenty other states have enacted legislation similar to this article to provide limits on asbestos-related liabilities for innocent successors.

(4) The public interest as a whole is best served by providing relief to innocent successors so that they may remain viable.

(b) The purpose of this article is to limit the cumulative recovery by all asbestos claimants from innocent successors.

WV Legislature

§55-7I-2. Definitions.

As used in this article:

(1) “Asbestos claim” means any claim, wherever or whenever made, for damages, losses, indemnification, contribution or other relief arising out of, based on, or in any way related to asbestos, including:

(A) Property damage caused by the installation, presence or removal of asbestos;

(B) The health effects of exposure to asbestos, including any claim for:

(i) Personal injury or death;

(ii) Mental or emotional injury;

(iii) Risk of disease or other injury; or

(iv) The costs of medical monitoring or surveillance; and

(C) Any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child or other relative of the person.

(2) “Corporation” means a corporation for profit, including:

(A) A domestic corporation organized under the laws of this state; or

(B) A foreign corporation organized under laws other than the laws of this state.

(3) “Successor asbestos-related liabilities” means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under section five of this article, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments or other discharges in this state or another jurisdiction.

(4) “Successor” means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.

WV Legislature

(5) “Transferor” means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

WV Legislature

§55-7I-3. Applicability.

(a) The limitations in section four of this article shall apply to a domestic corporation or a foreign corporation that has had a certificate of authority to transact business in this state or has done business in this state and that is a successor which became a successor prior to May 13, 1968, or which is any of that successor corporation's successors, but in the latter case only to the extent of the limitation of liability applied under subsection (b), section four of this article and subject also to the limitations found in this article, including those in subsection (b) of this section.

(b) The limitations in section four of this article shall not apply to:

(1) Workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of chapter twenty-three of this code or a comparable workers' compensation law of another jurisdiction;

(2) Any claim against a corporation that does not constitute a successor asbestos-related liability;

(3) An insurance corporation;

(4) Any obligation under the National Labor Relations Act, 29 U. S. C. Section 151, et seq., as amended, or under any collective bargaining agreement;

(5) A successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed or installed by the transferor;

(6) A contractual obligation existing as of the effective date of this article that was entered into with claimants or potential claimants or their counsel and which resolves asbestos claims or potential asbestos claims;

(7) Any claim made against the estate of a debtor in a bankruptcy proceeding commenced prior to the effective date of this article, under the United States Bankruptcy Code, 11 U. S. C. Section 101, et seq., by or against such debtor, or against a bankruptcy trust established under 11 U. S. C. Section 524(g) or similar provision of the United States Code in such a bankruptcy; and

(8) A successor asbestos-related liability arising under common law or statute for premises liability, or a cause of action for premises liability, as applicable, but only if the successor owned or controlled the premise or premises at issue after the merger or consolidation.

WV Legislature

§55-7I-4. Limitations on successor asbestos-related liabilities.

(a) Except as further limited in subsection (b) of this section, the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in subsection (a) of this section, for purposes of determining the limitation of liability of a corporation.

WV Legislature

§55-7I-5. Establishing fair market value of total gross assets.

(a) A corporation may establish the fair market value of total gross assets for the purpose of the limitations under section four of this article through any method reasonable under the circumstances, including:

(1) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction; or

(2) In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total gross assets include intangible assets.

(c) Total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this section and which insurance has been collected or is collectible to cover successor asbestos-related liabilities (except compensation for liabilities arising from workers' exposure to asbestos solely during the course of their employment by the transferor). A settlement of a dispute concerning such insurance coverage entered into by a transferor or successor with the insurers of the transferor 10 years or more before the enactment of this article shall be determinative of the aggregate coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

(d) The fair market value of total gross assets shall reflect no deduction for any liabilities arising from any asbestos claim.

WV Legislature

§55-7I-6. Adjustment.

(a) Except as provided in subsections (b), (c) and (d) of this section, the fair market value of total gross assets at the time of the merger or consolidation increases annually at a rate equal to the sum of:

(1) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation; and

(2) One percent.

(b) The rate found in subsection (a) of this section is not compounded.

(c) The adjustment of the fair market value of total gross assets continues as provided in subsection (a) of this section until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise included in the definition of total gross assets by subsection (c), section five of this article.

WV Legislature

§55-7I-7. Scope of article; application.

(a) This article shall be liberally construed with regard to successors.

(b) This article applies to all asbestos claims filed against a successor on or after the effective date of this article.

WV Legislature