

AB 597 – OPPOSE – ASBESTOS INDUSTRY BILL TO DELAY AND DENY ASBESTOS VICTIMS THEIR RIGHT TO FAIR COMPENSATION

SUMMARY

AB 597, sponsored by the Civil Justice Association of California (CJAC), is based on model legislation promoted nationwide by the American Legislative Exchange Council (ALEC). ALEC is the corporate-funded organization of conservative state legislators and private sector representatives that advances free-market enterprise, limited government, and federalism. It focuses on stripping consumers and workers of their rights in order to maximize profits for corporate members.

When workers and veterans and others are ill and dying from exposures to asbestos, they may sue in state court the product manufacturers, premises owners, and others who knew since the 1930's about the dangers of asbestos but failed to warn or provide protection from this deadly toxin. Many of these defendants have set up trust funds (after bankruptcy court reorganization) to process claims and simultaneously protect their assets.

This bill is designed to force asbestos victims to jump through expensive and time-consuming legal hoops before they can even prepare their main case. Delay is the point of this bill – delay which assures that those most ill will die before their case reaches judgment. Victims of mesothelioma, a disease caused only by asbestos, commonly survive less than a year after diagnosis.

Justice delayed is justice denied. In California, unlike many other jurisdictions, **if the plaintiff dies, there is NO RECOVERY for pain and suffering.** The victim's family receives far less in compensation. Thus, the corporate bad actors who poisoned the victim are shielded from full accountability and receive a windfall by the delays AB 597 creates.

WHO IS IMPACTED?

VETERANS: Vets are 30% of all mesothelioma patients. Mesothelioma is caused only by asbestos. There are 25 million US vets. Although they represent just 8% of our population, they are an astonishing 30% of all known mesothelioma deaths.

California ranks first in the country overall for mesothelioma and asbestos related deaths and is alone home to almost 2 million vets. These vets were often exposed while actively serving our country. Requiring every plaintiff to file against every trust – even if the plaintiff doesn't want to do so – ultimately reduces the amount of funds in the trust that a veteran might seek. Veterans deserve justice because they have fought for all of us.

CONSTRUCTION WORKERS AND OTHER TRADES: Construction and other tradesmen and women, maintenance workers, mechanics, etc., in refineries, power plants, schools, and in buildings during demolition or remodeling, etc., continue to be at risk for asbestos-related diseases. Although Cal/OSHA has regulations requiring protection for exposed workers, one of the most difficult regulations to enforce effectively relates to monitoring for airborne hazards such as asbestos. As well, many workers, particularly low wage immigrant workers who may work for unscrupulous contractors, continue to be exposed to asbestos.

AB 597 is a solution in search of a problem.

There is no transparency problem: California courts support liberal discovery assuring defendants have all information needed to defend themselves and bring in other defendants who may also be responsible for the victim's exposure. Those companies with special asbestos trusts may be added to a verdict form if any defendant introduces evidence to show that company contributed to the victim's illness -- and the jury can then assign a proven percent of financial responsibility for that liability. And if any defendant pays a jury verdict and believes it paid the share of a responsible asbestos trust, that defendant too can file a claim with the trust to be reimbursed.

There is no double dipping: California law already reduces plaintiff's economic damages by amounts s/he received from an asbestos trust. Further, asbestos victims can only collect the specific share of a defendant's non-economic damages (pain and suffering, etc.) after verdict. Victims cannot collect twice.

NO NEED FOR AB 597

None of AB 597's drastic changes to California civil procedure is needed. This bill, aimed **only** at asbestos victims who bring a personal injury or wrongful death case, **victimizes twice these workers and their families**:

1) ASBESTOS DEFENDANTS SEEK UNFAIR DISCOVERY ADVANTAGES (822): AB 597 requires asbestos victims provide a sworn statement identifying each asbestos trust with which they have filed or could file a claim, and provide supporting documentation before they can proceed with their primary case. Requiring a dying plaintiff to do this means his/her attorney must search for evidence of potential claims against every possible trust – within 30 days if the defendant is dying – even if the victim never intends to pursue those claims. **First and foremost, this task forces the victim's attorney to delay preparing the victim's primary case** – making it all but impossible for a dying plaintiff to be ready for their fast tracked trial. Fast tracking under CCP Section 36 is needed and permitted because in California, unlike in other states, damages for pain and suffering do not survive the death of the plaintiff. **Second, such a requirement creates an ethical dilemma for the victim's attorney** who must search its databases, unrelated to the client the attorney currently represents, for "facts" that the defendants need to reduce defendants' liability. The victim's attorney must work against her client by hand delivering the defendants with their defenses. Not only extremely burdensome, it is unfair to require the victim to prepare the defendants' defenses particularly when those defendants have access to the very same (or more) information in their own databases, in asbestos trusts' public documents, and through liberal California discovery. **Defendants already have an established right to discover information regarding other culpable defendants** through subpoenas, depositions, etc. See *Volkswagen of America, Inc. v. Superior Court (Rusk)* (2006) 139 Cal.App. 4th 1481.

2) ASBESTOS DEFENDANTS SEEK ADMISSIBILITY OF EVIDENCE WITHOUT JUDICIAL OVERSIGHT (823): AB 597 also **makes all material from the asbestos trust admissible without judicial review or oversight**. This removes judicial discretion, ignores established statutory and case law, and thus is totally inappropriate. And requiring information from every asbestos trust, even those unrelated to a particular victim simply increases the trust's administrative costs, resulting in reduced payments to **all** asbestos victims.

3) ASBESTOS DEFENDANTS SEEK TO CONTROL THE VICTIM'S CASE (36, 824, 825): Several sections of AB 597 punish victims who might – even inadvertently - fail to identify and file a claim with even 1 of the 50 or so asbestos trusts with whom the victim could potentially file a claim. In such situation, the defendant can **delay the state court case**. **This procedure can occur endlessly – resulting in delay of the case until the victim has died**. AB 597 goes beyond any existing law by allowing the defendants to decide how victims should handle their cases.

4) ASBESTOS DEFENDANTS SEEK TO REDUCE DAMAGES OWED BY AMOUNTS NOT COLLECTED BY VICTIMS (826): AB 597 seeks to reduce the **victim's damages** by what s/he received from an asbestos trust. But reducing damages by amounts a plaintiff has received is **already the law** for economic damages. And if the victim hasn't filed with the trust for what is often a *de minimus* amount, the victim's damages will still be reduced – but this time by the amount s/he could have received as opposed to the amount that the trust might have actually paid (which is often pennies on the dollar).

5) ASBESTOS DEFENDANTS SEEK A NEVER ENDING CASE (827): AB 597 provides for the court to hold open or reopen a lawsuit even after the case is resolved to re-litigate anything covered by this new law. Allowing these cases to go on forever is a waste of judicial resources and keeps the asbestos victim and his/her family from achieving closure.

Opposing AB 597:

- California Advocates for Nursing Home Reform
- California Alliance for Retired Americans
- California Conference of the Amalgamated Transit Union
- California Conference of Machinists
- California Employment Lawyers Association
- California Labor Federation AFL-CIO
- California Professional Firefighters
- California Teamsters Public Affairs Council
- Congress of California Seniors
- Consumer Attorneys of California
- Consumer Federation of California
- Engineers & Scientists of California IFPTE Local 20
- Green Democratic Club of Sacramento County
- IFPTE Local 21
- International Longshore and Warehouse Union
- Jockey's Guild
- Labor + Employment Committee of the National Lawyers Guild
- Latino Democratic Club of Sacramento County

- Lawson Stuart, Chair, Veterans Caucus of the California Democratic Party
- Sacramento Central Labor Council, AFL-CIO
- State Building & Construction Trades Council of California
- UNITE HERE!
- Utility Workers Union of America Local 132
- WORKSAFE

FOR MORE INFORMATION

Contact: Fran Schreiber (510) 302-1071 or
fschreiber@kazanlaw.com
Lea-Ann Tratten or Jacquie Serna (916) 442-6902
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