

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), was originally based on model legislation promoted nationwide by the American Legislative Exchange Council (ALEC). It was amended to parallel a local court order which would apply the judgment of that one superior court to every other California court. 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 companies 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. It focuses on interfering with a dying victim's ability to seek a speedy trial of his or her claim. Delay is the point of this bill – delay which assures that those most ill will die before their case reaches judgment.

Justice delayed is justice denied. For asbestos victims if AB 597 becomes law, in all likelihood those most ill will die before their case is decided. Victims of mesothelioma, a disease cause only by asbestos, commonly survive less than a year after diagnosis.

In practical terms, should the victim die, his/her family will be denied fair compensation because **in California, unlike many other jurisdictions, when the plaintiff dies, there is NO RECOVERY for pain and suffering.** Because most asbestos victims are older and because it often takes 20 - 40 years

before the disease appears, there is often little in the way of economic loss. Thus pain and suffering for the excruciating death experienced by asbestos victims is the bulk of the compensation awarded. AB 597 provides a financial windfall for the bad actors who injured the victim, allowing them to avoid full accountability.

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, in buildings during demolition or remodeling, etc., continue to be at risk for asbestos-related diseases. Although Cal/OSHA regulations require protection for workers, monitoring for airborne hazards such as asbestos is one of the most difficult regulations to enforce effectively. Thus, 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 defendants already have access to the same, if not more archival information than the victim has.

There is no double dipping: Asbestos victims who seek justice in state court and also file claims with asbestos trusts **do not double dip.** California law already reduces a plaintiff's economic damages by amounts received from an asbestos trust. **Further,**

California law already permits defendants to name any and all trusts or non-bankrupt companies on the verdict form and offer evidence of their liability so that a jury may assign them a proportion of the overall verdict. And when a proportional amount of the verdict is assigned to an asbestos trust, the trust doesn't even pay the full share the jury assigned it because the trust pays only pennies on the dollar. It is rare that a victim ever collects the full amount the jury awarded. And if a defendant pays a jury verdict believing it paid the share of a responsible asbestos trust, that defendant can file a claim with the trust to be reimbursed.

Finally, asbestos victims can only collect the specific share of a wrongdoer's non-economic damages (damages for 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 who are dying from the defendants' asbestos products:

1) ASBESTOS DEFENDANTS SEEK UNFAIR DISCOVERY ADVANTAGES (CCP 36(h) and CCP 822 (a) – (c)): AB 597 requires that a dying asbestos victim provide a sworn affidavit when answering interrogatories indicating that s/he complied with all disclosure requirements before being granted a speedy trial. Disclosure requirements continue and a trial may not even begin until the victim has disclosed each asbestos trust with which s/he filed a claim and provided all supporting documentation.

Most significantly, however, in **CCP 822 (d)** information regarding the victim's asbestos exposure must be disclosed even if the information came from a person or entity other than the plaintiff. This 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 seek in order to reduce the 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' case, particularly when those defendants have access to the very same (or more) information in their own databases--information that the defendants are not obligated to share with plaintiffs, in asbestos trusts' public documents, and through liberal California discovery.

Defendants already have an established right to discover information regarding other culpable defendants through interrogatories, subpoenas, depositions, etc. See *Volkswagen of America, Inc. v. Superior Court (Rusk)* (2006) 139 Cal.App. 4th 1481. AB 597 overrides existing law regarding attorney-client privilege and attorney work product privilege with respect to the required interrogatory answers.

2) ASBESTOS DEFENDANTS SEEK ADMISSIBILITY OF EVIDENCE WITHOUT JUDICIAL OVERSIGHT (822(e)): AB 597 also makes all the trust documents and the work product material from the victim's attorney admissible without judicial review or oversight. This removes judicial discretion, ignores established statutory and case law, and thus is totally inappropriate.

3) ASBESTOS DEFENDANTS SEEK TO REDUCE DAMAGES OWED BY AMOUNTS NOT ACTUALLY COLLECTED BY VICTIMS (822(f)): AB 597 not only seeks to reduce the victim's damages by what s/he received from an asbestos trust -- which is already the law for economic damages -- but also seeks to reduce the victim's damages by what s/he MAY NEVER SEEK or RECEIVE. Even if the victim hasn't filed with a trust for what is often a *de minimus* amount, the victim's damages will still be reduced -- reduced 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).

4) ASBESTOS DEFENDANTS SEEK TO CONTROL THE VICTIM'S CASE (36, 822(g)): AB 597 punishes victims who might -- even inadvertently -- fail to produce everything sought by the defendants because the defendants can delay the state court case with a motion to compel. This procedure can result in delaying the case until the victim dies. AB 597 goes beyond any existing law by allowing the defendants to decide how victims should handle their cases.

5) ASBESTOS DEFENDANTS SEEK A NEVER ENDING CASE (824): AB 597 allows the court to hold a case for four years in order to reduce sums received by the victim from trusts or other defendants after judgment. Allowing cases to go on after trial and judgement is a waste of judicial resources and keeps the asbestos victim and his/her family from achieving closure.

Opposing AB 597:

- Asbestos Disease Awareness Organization
- 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
- IFPTE Local 21
- International Longshore and Warehouse Union
- Jockey's Guild
- Labor + Employment Committee of the
National Lawyers Guild
- Sacramento Central Labor Council, AFL-CIO
- State Building & Construction Trades Council of
California
- UNITE HERE!
- Utility Workers Union of America Local 132
- Veterans Caucus of the California Democratic Party
- WORKSAFE

Local Organizations + Leaders

Opposed to AB 597

- Lawson Stuart, Immediate Past Chair, Veterans
Caucus of the California Democratic Party
- Green Democratic Club of Sacramento County
- John F. Kennedy Democratic Club
- Latino Democratic Club of Sacramento County
- Town & Country Democratic Club
- Veterans Democratic Club of Sacramento County
- Wellstone Progressive Democrats of Sacramento

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