

SENATE BILL No. 1123

March 9, 2006, Introduced by Senator CROPSEY and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 5827 (MCL 600.5827) and by adding chapter 30
and section 5840.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 30

SEC. 3001. AS USED IN THIS CHAPTER:

(A) "AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT"
MEANS THE AMERICAN MEDICAL ASSOCIATION'S GUIDES TO THE EVALUATION
OF PERMANENT IMPAIRMENT (FIFTH EDITION, 2000).

(B) "ASBESTOS" MEANS ALL MINERALS DEFINED AS ASBESTOS IN 29
CFR 1910.1001.

1 (C) "ASBESTOS CLAIM" MEANS A CLAIM FOR DAMAGES OR OTHER CIVIL
2 OR EQUITABLE RELIEF PRESENTED IN A CIVIL ACTION, ARISING OUT OF,
3 BASED ON, OR RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO ASBESTOS,
4 INCLUDING LOSS OF CONSORTIUM AND ANY OTHER DERIVATIVE CLAIM MADE BY
5 OR ON BEHALF OF AN EXPOSED PERSON OR A REPRESENTATIVE, SPOUSE,
6 PARENT, CHILD, OR OTHER RELATIVE OF AN EXPOSED PERSON. ASBESTOS
7 CLAIM DOES NOT INCLUDE A CLAIM FOR BENEFITS UNDER A WORKERS'
8 COMPENSATION LAW OR VETERANS' BENEFITS PROGRAM OR CLAIMS BROUGHT BY
9 A PERSON AS A SUBROGEE BY VIRTUE OF THE PAYMENT OF BENEFITS UNDER A
10 WORKERS' COMPENSATION LAW.

11 (D) "ASBESTOSIS" MEANS BILATERAL DIFFUSE INTERSTITIAL FIBROSIS
12 OF THE LUNGS CAUSED BY INHALATION OF ASBESTOS FIBERS.

13 (E) "BOARD-CERTIFIED IN INTERNAL MEDICINE" MEANS CERTIFIED BY
14 THE AMERICAN BOARD OF INTERNAL MEDICINE OR THE AMERICAN COLLEGE OF
15 OSTEOPATHIC INTERNISTS.

16 (F) "BOARD-CERTIFIED IN OCCUPATIONAL MEDICINE" MEANS CERTIFIED
17 IN THE SUBSPECIALTY OF OCCUPATIONAL-ENVIRONMENTAL OR OCCUPATIONAL
18 MEDICINE BY THE AMERICAN BOARD OF PREVENTIVE MEDICINE OR THE
19 AMERICAN OSTEOPATHIC BOARD OF PREVENTIVE MEDICINE.

20 (G) "BOARD-CERTIFIED IN ONCOLOGY" MEANS CERTIFIED IN THE
21 SUBSPECIALTY OF MEDICAL ONCOLOGY OR ONCOLOGY BY THE AMERICAN BOARD
22 OF INTERNAL MEDICINE OR THE AMERICAN COLLEGE OF OSTEOPATHIC
23 INTERNISTS.

24 (H) "BOARD-CERTIFIED IN PATHOLOGY" MEANS A PHYSICIAN WHO HOLDS
25 PRIMARY CERTIFICATION IN ANATOMIC PATHOLOGY OR CLINICAL PATHOLOGY
26 FROM THE AMERICAN BOARD OF PATHOLOGY OR THE AMERICAN OSTEOPATHIC
27 BOARD OF PATHOLOGY AND TO WHOSE PROFESSIONAL PRACTICE BOTH OF THE

1 FOLLOWING APPLY:

2 (i) THE PRACTICE IS PRINCIPALLY IN THE FIELD OF PATHOLOGY.

3 (ii) THE PRACTICE INVOLVES REGULAR EVALUATION OF PATHOLOGY
4 MATERIALS OBTAINED FROM SURGICAL OR POSTMORTEM SPECIMENS.

5 (I) "BOARD-CERTIFIED IN PULMONARY MEDICINE" MEANS CERTIFIED IN
6 THE SUBSPECIALTY OF PULMONARY DISEASE BY THE AMERICAN BOARD OF
7 INTERNAL MEDICINE OR THE AMERICAN COLLEGE OF OSTEOPATHIC
8 INTERNISTS.

9 (J) "CERTIFIED 'B' READER" MEANS AN INDIVIDUAL QUALIFIED AS A
10 FINAL OR "B" READER UNDER 42 CFR 37.51(B).

11 (K) "CIVIL ACTION" MEANS AN ACTION OR CLAIM OF A CIVIL NATURE
12 IN COURT, WHETHER DEFINED AS A CASE AT LAW OR IN EQUITY OR
13 ADMIRALTY. CIVIL ACTION DOES NOT INCLUDE AN ACTION RELATING TO A
14 WORKERS' COMPENSATION LAW OR A PROCEEDING FOR BENEFITS UNDER A
15 VETERANS' BENEFITS PROGRAM.

16 (L) "ECONOMIC LOSS" MEANS A PECUNIARY LOSS RESULTING FROM
17 PHYSICAL IMPAIRMENT, INCLUDING THE LOSS OF EARNINGS OR OTHER
18 BENEFITS RELATED TO EMPLOYMENT, MEDICAL EXPENSE LOSS, REPLACEMENT
19 SERVICES LOSS, LOSS DUE TO DEATH, BURIAL COSTS, AND LOSS OF
20 BUSINESS OR EMPLOYMENT OPPORTUNITIES.

21 (M) "EXPOSED PERSON" MEANS A PERSON WHOSE EXPOSURE TO ASBESTOS
22 OR TO ASBESTOS-CONTAINING PRODUCTS IS THE BASIS FOR AN ASBESTOS
23 CLAIM.

24 (N) "FEV1" MEANS FORCED EXPIRATORY VOLUME IN THE FIRST SECOND,
25 WHICH IS THE MAXIMAL VOLUME OF AIR EXPELLED IN 1 SECOND DURING
26 PERFORMANCE OF A SIMPLE SPIROMETRIC TEST.

27 (O) "FVC" MEANS FORCED VITAL CAPACITY, WHICH IS THE MAXIMAL

1 VOLUME OF AIR EXPELLED WITH MAXIMUM EFFORT FROM A POSITION OF FULL
2 INSPIRATION.

3 (P) "ILO SCALE" MEANS THE SYSTEM FOR THE CLASSIFICATION OF
4 CHEST X-RAYS CONTAINED IN THE INTERNATIONAL LABOUR ORGANIZATION'S
5 GUIDELINES FOR THE USE OF ILO INTERNATIONAL CLASSIFICATION OF
6 RADIOGRAPHS OF PNEUMOCONIOSES (2000).

7 SEC. 3002. AS USED IN THIS CHAPTER:

8 (A) "LUNG CANCER" MEANS A MALIGNANT TUMOR LOCATED INSIDE A
9 LUNG. LUNG CANCER DOES NOT INCLUDE MESOTHELIOMA.

10 (B) "MESOTHELIOMA" MEANS A MALIGNANT TUMOR WITH A PRIMARY SITE
11 IN THE PLEURA OR THE PERITONEUM THAT HAS BEEN DIAGNOSED BY A
12 PHYSICIAN WHO IS BOARD-CERTIFIED IN PATHOLOGY USING STANDARDIZED
13 AND ACCEPTED CRITERIA OF MICROSCOPIC MORPHOLOGY OR APPROPRIATE
14 STAINING TECHNIQUES, OR BOTH.

15 (C) "NONECONOMIC LOSS" MEANS SUBJECTIVE, NONMONETARY LOSS
16 RESULTING FROM PHYSICAL IMPAIRMENT, INCLUDING PAIN, SUFFERING,
17 INCONVENIENCE, MENTAL ANGUISH, EMOTIONAL DISTRESS, DISFIGUREMENT,
18 LOSS OF SOCIETY AND COMPANIONSHIP, LOSS OF CONSORTIUM, INJURY TO
19 REPUTATION, OR ANY OTHER NONPECUNIARY LOSS OF ANY KIND OR NATURE.

20 (D) "NONMALIGNANT CONDITION" MEANS ANY CONDITION THAT IS
21 CAUSED OR MAY BE CAUSED BY ASBESTOS, OTHER THAN A DIAGNOSED CANCER.

22 (E) "NONSMOKER" MEANS A PERSON WHO DID NOT SMOKE CIGARETTES OR
23 USE ANY OTHER TOBACCO PRODUCT WITHIN THE 15 YEARS IMMEDIATELY
24 PRECEDING THE DIAGNOSIS THAT THE PERSON HAS A CONDITION OR DISEASE
25 THAT IS THE BASIS FOR AN ASBESTOS OR SILICA CLAIM.

26 (F) "PATHOLOGICAL EVIDENCE OF ASBESTOSIS" MEANS A STATEMENT BY
27 A PHYSICIAN WHO IS BOARD-CERTIFIED IN PATHOLOGY THAT MORE THAN 1

1 REPRESENTATIVE SECTION OF LUNG TISSUE UNINVOLVED WITH ANY OTHER
2 DISEASE PROCESS DEMONSTRATES A PATTERN OF PERIBRONCHIOLAR OR
3 PARENCHYMAL FIBROSIS IN THE PRESENCE OF CHARACTERISTIC ASBESTOS
4 BODIES AND THAT THERE IS NO OTHER, MORE LIKELY EXPLANATION FOR THE
5 PRESENCE OF THE FIBROSIS.

6 (G) "PREDICTED LOWER LIMIT OF NORMAL" MEANS, WITH RESPECT TO A
7 TEST, THE FIFTH PERCENTILE OF HEALTHY POPULATIONS BASED ON AGE,
8 HEIGHT, AND GENDER, AS REFERENCED IN THE AMA GUIDES TO THE
9 EVALUATION OF PERMANENT IMPAIRMENT.

10 (H) "PUNITIVE DAMAGES" MEANS DAMAGES AWARDED AGAINST A
11 DEFENDANT IN ORDER TO PUNISH OR DETER THE DEFENDANT OR OTHERS FROM
12 ENGAGING IN SIMILAR BEHAVIOR IN THE FUTURE.

13 (I) "QUALIFIED PHYSICIAN" MEANS A PHYSICIAN WHO HAS ALL OF THE
14 FOLLOWING QUALIFICATIONS:

15 (i) IS BOARD-CERTIFIED IN INTERNAL MEDICINE, ONCOLOGY,
16 PATHOLOGY, PULMONARY MEDICINE, RADIOLOGY, OR OCCUPATIONAL MEDICINE.

17 (ii) HAS CONDUCTED A PHYSICAL EXAMINATION OF THE EXPOSED
18 PERSON.

19 (iii) IS TREATING OR HAS TREATED THE EXPOSED PERSON AND HAS OR
20 HAD A DOCTOR-PATIENT RELATIONSHIP WITH THE EXPOSED PERSON.

21 (iv) DOES NOT SPEND MORE THAN 10% OF HIS OR HER PROFESSIONAL
22 PRACTICE TIME PROVIDING CONSULTING OR EXPERT SERVICES IN CONNECTION
23 WITH ACTUAL OR POTENTIAL CIVIL ACTIONS, AND THE PHYSICIAN'S MEDICAL
24 GROUP, PROFESSIONAL CORPORATION, CLINIC, OR OTHER AFFILIATED GROUP
25 DOES NOT EARN MORE THAN 20% OF ITS INCOME FROM PROVIDING SUCH
26 SERVICES.

27 (v) IS CURRENTLY LICENSED TO PRACTICE AND ACTIVELY PRACTICES

1 IN THE STATE WHERE THE PLAINTIFF RESIDES OR WHERE THE PLAINTIFF'S
2 CIVIL ACTION WAS FILED.

3 (vi) RECEIVES OR HAS RECEIVED PAYMENT FOR THE TREATMENT OF THE
4 EXPOSED PERSON FROM THE EXPOSED PERSON'S THIRD PARTY PAYER.

5 (J) "RADIOLOGICAL EVIDENCE OF ASBESTOSIS" MEANS A QUALITY 1
6 CHEST X-RAY ON THE ILO SCALE OR, IF THE EXPOSED PERSON IS DECEASED
7 AND PATHOLOGY AND A QUALITY 1 CHEST X-RAY ARE NOT AVAILABLE, A
8 QUALITY 2 CHEST X-RAY, THAT SHOWS SMALL, IRREGULAR OPACITIES (S, T)
9 GRADED BY A CERTIFIED "B" READER AS AT LEAST 1/1 ON THE ILO SCALE.

10 (K) "RADIOLOGICAL EVIDENCE OF DIFFUSE PLEURAL THICKENING"
11 MEANS A QUALITY 1 CHEST X-RAY ON THE ILO SCALE OR, IF THE EXPOSED
12 PERSON IS DECEASED AND PATHOLOGY AND A QUALITY 1 CHEST X-RAY ARE
13 NOT AVAILABLE, A QUALITY 2 CHEST X-RAY, THAT SHOWS BILATERAL
14 PLEURAL THICKENING OF AT LEAST B2 ON THE ILO SCALE AND BLUNTING OF
15 AT LEAST 1 COSTOPHRENIC ANGLE.

16 SEC. 3003. AS USED IN THIS CHAPTER:

17 (A) "SILICA" MEANS A RESPIRABLE CRYSTALLINE FORM OF SILICON
18 DIOXIDE, INCLUDING, BUT NOT LIMITED TO, ALPHA, QUARTZ,
19 CRISTOBALITE, AND TRYDMITE.

20 (B) "SILICA CLAIM" MEANS A CLAIM FOR DAMAGES OR OTHER CIVIL OR
21 EQUITABLE RELIEF PRESENTED IN A CIVIL ACTION, ARISING OUT OF, BASED
22 ON, OR RELATED TO THE HEALTH EFFECTS OF EXPOSURE TO SILICA,
23 INCLUDING LOSS OF CONSORTIUM AND ANY OTHER DERIVATIVE CLAIM MADE BY
24 OR ON BEHALF OF AN EXPOSED PERSON OR A REPRESENTATIVE, SPOUSE,
25 PARENT, CHILD, OR OTHER RELATIVE OF AN EXPOSED PERSON. SILICA CLAIM
26 DOES NOT INCLUDE A CLAIM FOR BENEFITS UNDER A WORKERS' COMPENSATION
27 LAW OR VETERANS' BENEFITS PROGRAM OR CLAIMS BROUGHT BY A PERSON AS

1 A SUBROGEE BY VIRTUE OF THE PAYMENT OF BENEFITS UNDER A WORKERS'
2 COMPENSATION LAW.

3 (C) "SILICOSIS" MEANS NODULAR INTERSTITIAL FIBROSIS OF THE
4 LUNGS CAUSED BY INHALATION OF SILICA.

5 (D) "SMOKER" MEANS A PERSON WHO HAS SMOKED CIGARETTES OR USED
6 ANOTHER TOBACCO PRODUCT WITHIN THE 15 YEARS IMMEDIATELY PRECEDING
7 THE DIAGNOSIS THAT THE PERSON HAS A CONDITION OR DISEASE THAT IS
8 THE BASIS FOR AN ASBESTOS OR SILICA CLAIM.

9 (E) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT
10 OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, THE NORTHERN MARIANA
11 ISLANDS, THE VIRGIN ISLANDS, GUAM, AMERICAN SAMOA, AND ANY OTHER
12 TERRITORY OR POSSESSION OF THE UNITED STATES OR A POLITICAL
13 SUBDIVISION OF A POLITICAL ENTITY DEFINED AS A STATE.

14 (F) "SUBSTANTIAL CONTRIBUTING FACTOR" MEANS THAT ALL OF THE
15 FOLLOWING APPLY:

16 (i) EXPOSURE TO ASBESTOS OR SILICA IS THE PREDOMINATE CAUSE OF
17 THE PHYSICAL IMPAIRMENT ALLEGED IN THE CLAIM.

18 (ii) THE EXPOSURE TO ASBESTOS OR SILICA TOOK PLACE ON A REGULAR
19 BASIS OVER AN EXTENDED PERIOD OF TIME AND IN CLOSE PROXIMITY TO THE
20 EXPOSED PERSON.

21 (iii) A QUALIFIED PHYSICIAN HAS DETERMINED WITH A REASONABLE
22 DEGREE OF MEDICAL CERTAINTY THAT THE PHYSICAL IMPAIRMENT OF THE
23 EXPOSED PERSON WOULD NOT HAVE OCCURRED BUT FOR THE EXPOSURE TO
24 ASBESTOS OR SILICA.

25 (G) "THIRD PARTY PAYER" MEANS A PUBLIC OR PRIVATE HEALTH CARE
26 PAYMENT OR BENEFITS PROGRAM, INCLUDING, BUT NOT LIMITED TO, ALL OF
27 THE FOLLOWING:

1 (i) A HEALTH INSURER.

2 (ii) A NONPROFIT HEALTH CARE CORPORATION.

3 (iii) A HEALTH MAINTENANCE ORGANIZATION.

4 (iv) A PREFERRED PROVIDER ORGANIZATION.

5 (v) MEDICAID OR MEDICARE.

6 (H) "VETERANS' BENEFIT PROGRAM" MEANS A PROGRAM FOR BENEFITS
7 IN CONNECTION WITH MILITARY SERVICE ADMINISTERED BY THE VETERANS'
8 ADMINISTRATION UNDER TITLE 38 OF THE UNITED STATES CODE.

9 (I) "WORKERS' COMPENSATION LAW" MEANS A LAW RESPECTING A
10 PROGRAM ADMINISTERED BY A STATE OR THE UNITED STATES TO PROVIDE
11 BENEFITS, FUNDED BY A RESPONSIBLE EMPLOYER OR ITS INSURANCE
12 CARRIER, FOR OCCUPATIONAL DISEASES OR INJURIES OR FOR DISABILITY OR
13 DEATH CAUSED BY OCCUPATIONAL DISEASES OR INJURIES. WORKERS'
14 COMPENSATION LAW INCLUDES THE LONGSHORE AND HARBOR WORKERS'
15 COMPENSATION ACT, 33 USC 901 TO 950, AND 5 USC 8101 TO 8193,
16 POPULARLY KNOWN AS THE FEDERAL EMPLOYEES' COMPENSATION ACT.
17 WORKERS' COMPENSATION LAW DOES NOT INCLUDE 45 USC 51 TO 60,
18 POPULARLY KNOWN AS THE FEDERAL EMPLOYERS' LIABILITY ACT.

19 SEC. 3005. (1) A PERSON IS NOT ENTITLED TO ASSERT AN ASBESTOS
20 CLAIM OR A SILICA CLAIM UNLESS THE EXPOSED PERSON HAS A PHYSICAL
21 IMPAIRMENT TO WHICH ASBESTOS OR SILICA EXPOSURE WAS A SUBSTANTIAL
22 CONTRIBUTING FACTOR.

23 (2) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
24 ALLEGING AN ASBESTOS CLAIM BASED ON A NONMALIGNANT CONDITION UNLESS
25 THE PERSON MAKES A PRIMA FACIE SHOWING THAT THE EXPOSED PERSON HAS
26 OR HAD A PHYSICAL IMPAIRMENT RESULTING FROM A MEDICAL CONDITION TO
27 WHICH EXPOSURE TO ASBESTOS WAS A SUBSTANTIAL CONTRIBUTING FACTOR. A

1 PRIMA FACIE SHOWING REQUIRED BY THIS SUBSECTION INCLUDES, AT A
2 MINIMUM, ALL OF THE FOLLOWING:

3 (A) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
4 DETAILED OCCUPATIONAL AND EXPOSURE HISTORY OF THE EXPOSED PERSON
5 OR, IF THE EXPOSED PERSON IS DECEASED, FROM A PERSON WHO IS
6 KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF THE
7 ASBESTOS CLAIM, INCLUDING BOTH OF THE FOLLOWING:

8 (i) THE IDENTIFICATION OF ALL OF THE EXPOSED PERSON'S PRINCIPAL
9 PLACES OF EMPLOYMENT AND EXPOSURES TO AIRBORNE CONTAMINANTS.

10 (ii) WHETHER EACH PLACE OF EMPLOYMENT INVOLVED EXPOSURES TO
11 AIRBORNE CONTAMINANTS, INCLUDING, BUT NOT LIMITED TO, ASBESTOS
12 FIBERS OR OTHER DISEASE CAUSING DUSTS, THAT CAN CAUSE PULMONARY
13 IMPAIRMENT AND THE NATURE, DURATION, AND LEVEL OF EACH EXPOSURE.

14 (B) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
15 DETAILED MEDICAL AND SMOKING HISTORY, INCLUDING A THOROUGH REVIEW
16 OF THE EXPOSED PERSON'S PAST AND PRESENT MEDICAL PROBLEMS AND THE
17 MOST PROBABLE CAUSE OF THE PROBLEMS.

18 (C) A DETERMINATION BY A QUALIFIED PHYSICIAN, ON THE BASIS OF
19 A MEDICAL EXAMINATION AND PULMONARY FUNCTION TESTING, THAT THE
20 EXPOSED PERSON HAS OR HAD A PERMANENT RESPIRATORY IMPAIRMENT RATING
21 OF AT LEAST CLASS 2 AS DEFINED BY AND EVALUATED PURSUANT TO THE AMA
22 GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.

23 (D) A DIAGNOSIS BY A QUALIFIED PHYSICIAN OF ASBESTOSIS OR
24 DIFFUSE PLEURAL THICKENING, BASED AT A MINIMUM ON RADIOLOGICAL OR
25 PATHOLOGICAL EVIDENCE OF ASBESTOSIS OR RADIOLOGICAL EVIDENCE OF
26 DIFFUSE PLEURAL THICKENING.

27 (E) A DETERMINATION BY A QUALIFIED PHYSICIAN THAT ASBESTOSIS

1 OR DIFFUSE PLEURAL THICKENING, RATHER THAN CHRONIC OBSTRUCTIVE
2 PULMONARY DISEASE, IS OR WAS A SUBSTANTIAL CONTRIBUTING FACTOR TO
3 THE EXPOSED PERSON'S PHYSICAL IMPAIRMENT, BASED AT A MINIMUM ON A
4 DETERMINATION THAT THE EXPOSED PERSON HAS OR HAD 1 OR MORE OF THE
5 FOLLOWING:

6 (i) TOTAL LUNG CAPACITY, BY PLETHYSMOGRAPHY OR TIMED GAS
7 DILUTION, BELOW THE PREDICTED LOWER LIMIT OF NORMAL.

8 (ii) FVC BELOW THE LOWER LIMIT OF NORMAL AND A RATIO OF FEV1 TO
9 FVC THAT IS EQUAL TO OR GREATER THAN THE PREDICTED LOWER LIMIT OF
10 NORMAL.

11 (iii) A CHEST X-RAY SHOWING SMALL, IRREGULAR OPACITIES (S, T)
12 GRADED BY A CERTIFIED "B" READER AT LEAST 2/1 ON THE ILO SCALE.

13 (F) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
14 PERSON'S MEDICAL FINDINGS AND IMPAIRMENT WERE NOT MORE PROBABLY THE
15 RESULT OF CAUSES OTHER THAN THE ASBESTOS EXPOSURE REVEALED BY THE
16 EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

17 (3) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
18 ALLEGING AN ASBESTOS CLAIM BASED ON LUNG CANCER UNLESS THE PERSON
19 MAKES A PRIMA FACIE SHOWING THAT INCLUDES, AT A MINIMUM, ALL OF THE
20 FOLLOWING:

21 (A) DIAGNOSIS BY A QUALIFIED PHYSICIAN WHO IS BOARD-CERTIFIED
22 IN PATHOLOGY, PULMONARY MEDICINE, OR ONCOLOGY OF A PRIMARY LUNG
23 CANCER AND THAT EXPOSURE TO ASBESTOS WAS A SUBSTANTIAL CONTRIBUTING
24 FACTOR TO THE CANCER.

25 (B) EVIDENCE SUFFICIENT TO DEMONSTRATE THAT AT LEAST 10 YEARS
26 HAVE ELAPSED BETWEEN THE DATE OF FIRST EXPOSURE TO ASBESTOS AND THE
27 DATE OF DIAGNOSIS OF THE LUNG CANCER.

1 (C) EITHER OF THE FOLLOWING:

2 (i) IF THE EXPOSED PERSON IS A NONSMOKER, EITHER OF THE
3 FOLLOWING:

4 (A) RADIOLOGICAL OR PATHOLOGICAL EVIDENCE OF ASBESTOSIS.

5 (B) EVIDENCE OF OCCUPATIONAL EXPOSURE TO ASBESTOS FOR 1 OR
6 MORE OF THE FOLLOWING MINIMUM EXPOSURE PERIODS:

7 (I) FIVE EXPOSURE YEARS IF THE EXPOSED PERSON WAS AN
8 INSULATOR, SHIPYARD WORKER, WORKER IN A MANUFACTURING PLANT
9 HANDLING RAW ASBESTOS, BOILERMAKER, SHIPFITTER, OR STEAMFITTER OR
10 WORKED IN ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.

11 (II) TEN EXPOSURE YEARS IF THE EXPOSED PERSON WAS A UTILITY OR
12 POWER HOUSE WORKER OR SECONDARY MANUFACTURING WORKER OR WORKED IN
13 ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.

14 (III) FIFTEEN EXPOSURE YEARS IF THE EXPOSED PERSON WAS IN
15 GENERAL CONSTRUCTION, A MAINTENANCE WORKER, A CHEMICAL OR REFINERY
16 WORKER, MARINE ENGINE ROOM PERSONNEL OR OTHER PERSONNEL ON A
17 VESSEL, A STATIONARY ENGINEER OR FIREMAN, OR A RAILROAD ENGINE
18 REPAIR WORKER OR WORKED IN ANOTHER TRADE PERFORMING SIMILAR
19 FUNCTIONS.

20 (ii) IF THE EXPOSED PERSON IS A SMOKER, THE REQUIREMENTS OF
21 BOTH SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (i) .

22 (D) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
23 PERSON'S MEDICAL FINDINGS AND PHYSICAL IMPAIRMENT WERE NOT MORE
24 PROBABLY THE RESULT OF CAUSES OTHER THAN THE ASBESTOS EXPOSURE
25 REVEALED BY THE EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

26 (4) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
27 ALLEGING AN ASBESTOS CLAIM BASED ON CANCER OF THE COLON, RECTUM,

1 LARYNX, PHARYNX, ESOPHAGUS, OR STOMACH UNLESS THE PERSON MAKES A
2 PRIMA FACIE SHOWING THAT INCLUDES, AT A MINIMUM, ALL OF THE
3 FOLLOWING:

4 (A) A DIAGNOSIS BY A QUALIFIED PHYSICIAN WHO IS BOARD-
5 CERTIFIED IN PATHOLOGY, PULMONARY MEDICINE, OR ONCOLOGY OF PRIMARY
6 CANCER OF THE COLON, RECTUM, LARYNX, PHARYNX, ESOPHAGUS, OR
7 STOMACH, AS APPLICABLE, AND THAT EXPOSURE TO ASBESTOS WAS A
8 SUBSTANTIAL CONTRIBUTING FACTOR TO THE CANCER.

9 (B) EVIDENCE SUFFICIENT TO DEMONSTRATE THAT AT LEAST 10 YEARS
10 HAVE ELAPSED BETWEEN THE DATE OF FIRST EXPOSURE TO ASBESTOS AND THE
11 DATE OF DIAGNOSIS OF THE CANCER.

12 (C) ONE OR BOTH OF THE FOLLOWING:

13 (i) RADIOLOGICAL OR PATHOLOGICAL EVIDENCE OF ASBESTOSIS.

14 (ii) EVIDENCE OF OCCUPATIONAL EXPOSURE TO ASBESTOS FOR 1 OR
15 MORE OF THE FOLLOWING MINIMUM EXPOSURE PERIODS:

16 (A) FIVE EXPOSURE YEARS IF THE EXPOSED PERSON WAS AN
17 INSULATOR, SHIPYARD WORKER, WORKER IN A MANUFACTURING PLANT
18 HANDLING RAW ASBESTOS, BOILERMAKER, SHIPFITTER, OR STEAMFITTER OR
19 WORKER IN ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.

20 (B) TEN EXPOSURE YEARS IF THE EXPOSED PERSON WAS A UTILITY OR
21 POWER HOUSE WORKER OR SECONDARY MANUFACTURING WORKER OR WORKER IN
22 ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.

23 (C) FIFTEEN EXPOSURE YEARS IF THE EXPOSED PERSON WAS IN
24 GENERAL CONSTRUCTION, A MAINTENANCE WORKER, A CHEMICAL OR REFINERY
25 WORKER, MARINE ENGINE ROOM PERSONNEL OR OTHER PERSONNEL ON A
26 VESSEL, A STATIONARY ENGINEER OR FIREMAN, A RAILROAD ENGINE REPAIR
27 WORKER, OR A WORKER IN ANOTHER TRADE PERFORMING SIMILAR FUNCTIONS.

1 (D) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
2 PERSON'S MEDICAL FINDINGS AND PHYSICAL IMPAIRMENT WERE NOT MORE
3 PROBABLY THE RESULT OF CAUSES OTHER THAN THE ASBESTOS EXPOSURE
4 REVEALED BY THE EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

5 (5) A PRIMA FACIE SHOWING UNDER THIS SECTION IS NOT REQUIRED
6 IN A CIVIL ACTION ALLEGING AN ASBESTOS CLAIM BASED ON MESOTHELIOMA.

7 (6) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
8 ALLEGING A SILICOSIS CLAIM UNLESS THE PERSON MAKES A PRIMA FACIE
9 SHOWING THAT THE EXPOSED PERSON SUFFERED A PHYSICAL IMPAIRMENT AS A
10 RESULT OF A MEDICAL CONDITION TO WHICH EXPOSURE TO SILICA WAS A
11 SUBSTANTIAL CONTRIBUTING FACTOR. A PRIMA FACIE SHOWING UNDER THIS
12 SUBSECTION SHALL INCLUDE, AT A MINIMUM, ALL OF THE FOLLOWING:

13 (A) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
14 DETAILED OCCUPATIONAL AND EXPOSURE HISTORY OF THE EXPOSED PERSON
15 OR, IF THE EXPOSED PERSON IS DECEASED, FROM A PERSON WHO IS
16 KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF THE
17 NONMALIGNANT SILICA CLAIM, WHICH HISTORY INCLUDES ALL OF THE
18 FOLLOWING:

19 (i) ALL OF THE EXPOSED PERSON'S PRINCIPAL PLACES OF EMPLOYMENT
20 AND EXPOSURES TO AIRBORNE CONTAMINANTS.

21 (ii) WHETHER EACH PLACE OF EMPLOYMENT INVOLVED EXPOSURES TO
22 AIRBORNE CONTAMINANTS, INCLUDING, BUT NOT LIMITED TO, SILICA
23 PARTICLES OR OTHER DISEASE CAUSING DUSTS, THAT CAN CAUSE PULMONARY
24 IMPAIRMENT AND THE NATURE, DURATION, AND LEVEL OF ANY SUCH
25 EXPOSURE.

26 (B) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
27 DETAILED MEDICAL AND SMOKING HISTORY, INCLUDING A THOROUGH REVIEW

1 OF THE EXPOSED PERSON'S PAST AND PRESENT MEDICAL PROBLEMS AND THE
2 MOST PROBABLE CAUSE OF THE PROBLEMS, AND VERIFYING A SUFFICIENT
3 LATENCY PERIOD FOR THE APPLICABLE STAGE OF SILICOSIS.

4 (C) A DETERMINATION BY A QUALIFIED PHYSICIAN, ON THE BASIS OF
5 A MEDICAL EXAMINATION AND PULMONARY FUNCTION TESTING, THAT THE
6 EXPOSED PERSON HAS A PERMANENT RESPIRATORY IMPAIRMENT RATING OF AT
7 LEAST CLASS 2 AS DEFINED BY AND EVALUATED PURSUANT TO THE AMA
8 GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.

9 (D) A DETERMINATION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
10 PERSON HAS EITHER OF THE FOLLOWING:

11 (i) A QUALITY 1 CHEST X-RAY UNDER THE ILO SCALE OR, IF THE
12 EXPOSED PERSON IS DECEASED AND PATHOLOGY AND QUALITY 1 X-RAY ARE
13 NOT AVAILABLE, A QUALITY 2 X-RAY, THAT HAS BEEN READ BY A CERTIFIED
14 "B" READER AS SHOWING, ACCORDING TO THE ILO SCALE, BILATERAL
15 NODULAR OPACITIES (P, Q, OR R) OCCURRING PRIMARILY IN THE UPPER
16 LUNG FIELDS, GRADED 1/1 OR HIGHER.

17 (ii) PATHOLOGICAL DEMONSTRATION OF CLASSIC SILICOTIC NODULES
18 EXCEEDING 1 CENTIMETER IN DIAMETER AS PUBLISHED IN 112 ARCHIVE OF
19 PATHOLOGY AND LABORATORY MEDICINE 7 (JULY 1988).

20 (E) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
21 PERSON'S MEDICAL FINDINGS AND IMPAIRMENT WERE NOT MORE PROBABLY THE
22 RESULT OF CAUSES OTHER THAN THE SILICA EXPOSURE REVEALED BY THE
23 EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

24 (7) A PERSON SHALL NOT BRING OR MAINTAIN A CIVIL ACTION
25 ALLEGING A SILICA CLAIM OTHER THAN A CLAIM DESCRIBED IN SUBSECTION
26 (6) UNLESS THE PERSON MAKES A PRIMA FACIE SHOWING THAT INCLUDES, AT
27 A MINIMUM, ALL OF THE FOLLOWING:

1 (A) A REPORT THAT MEETS EITHER OF THE FOLLOWING REQUIREMENTS:

2 (i) THE REPORT IS BY A PHYSICIAN WHO IS BOARD-CERTIFIED IN
3 PULMONARY MEDICINE, INTERNAL MEDICINE, ONCOLOGY, OR PATHOLOGY AND
4 STATES A DIAGNOSIS OF THE EXPOSED PERSON OF SILICA-RELATED LUNG
5 CANCER AND THAT, TO A REASONABLE DEGREE OF MEDICAL PROBABILITY,
6 EXPOSURE TO SILICA WAS A SUBSTANTIAL CONTRIBUTING FACTOR TO THE
7 DIAGNOSED LUNG CANCER.

8 (ii) THE REPORT IS BY A PHYSICIAN WHO IS BOARD-CERTIFIED IN
9 PULMONARY MEDICINE, INTERNAL MEDICINE, OR PATHOLOGY AND STATES A
10 DIAGNOSIS OF THE EXPOSED PERSON OF SILICA-RELATED PROGRESSIVE
11 MASSIVE FIBROSIS OR ACUTE SILICOPROTEINOSIS OR OF SILICOSIS
12 COMPLICATED BY DOCUMENTED TUBERCULOSIS.

13 (B) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
14 DETAILED OCCUPATIONAL AND EXPOSURE HISTORY OF THE EXPOSED PERSON
15 OR, IF THE EXPOSED PERSON IS DECEASED, FROM A PERSON WHO IS
16 KNOWLEDGEABLE ABOUT THE EXPOSURES THAT FORM THE BASIS OF THE
17 NONMALIGNANT SILICA CLAIM, WHICH HISTORY INCLUDES BOTH OF THE
18 FOLLOWING:

19 (i) ALL OF THE EXPOSED PERSON'S PRINCIPAL PLACES OF EMPLOYMENT
20 AND EXPOSURES TO AIRBORNE CONTAMINANTS.

21 (ii) WHETHER EACH PLACE OF EMPLOYMENT INVOLVED EXPOSURES TO
22 AIRBORNE CONTAMINANTS, INCLUDING, BUT NOT LIMITED TO, SILICA
23 PARTICLES OR OTHER DISEASE CAUSING DUSTS, THAT CAN CAUSE PULMONARY
24 IMPAIRMENT AND THE NATURE, DURATION, AND LEVEL OF THE EXPOSURE.

25 (C) EVIDENCE VERIFYING THAT A QUALIFIED PHYSICIAN HAS TAKEN A
26 DETAILED MEDICAL AND SMOKING HISTORY, INCLUDING A THOROUGH REVIEW
27 OF THE EXPOSED PERSON'S PAST AND PRESENT MEDICAL PROBLEMS AND THE

1 MOST PROBABLE CAUSE OF THE PROBLEMS.

2 (D) A DETERMINATION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
3 PERSON HAS EITHER OF THE FOLLOWING:

4 (i) A QUALITY 1 CHEST X-RAY UNDER THE ILO SCALE OR, IF THE
5 EXPOSED PERSON IS DECEASED AND PATHOLOGY AND A QUALITY 1 CHEST X-
6 RAY ARE NOT AVAILABLE, A QUALITY 2 CHEST X-RAY, THAT HAS BEEN READ
7 BY A CERTIFIED "B" READER AS SHOWING, ACCORDING TO THE ILO SCALE,
8 BILATERAL NODULAR OPACITIES (P, Q, OR R) OCCURRING PRIMARILY IN THE
9 UPPER LUNG FIELDS, GRADED 1/1 OR HIGHER.

10 (ii) PATHOLOGICAL DEMONSTRATION OF CLASSIC SILICOTIC NODULES
11 EXCEEDING 1 CENTIMETER IN DIAMETER AS PUBLISHED IN 112 ARCHIVE OF
12 PATHOLOGY AND LABORATORY MEDICINE 7 (JULY 1988).

13 (E) A CONCLUSION BY A QUALIFIED PHYSICIAN THAT THE EXPOSED
14 PERSON'S MEDICAL FINDINGS AND IMPAIRMENT WERE NOT MORE PROBABLY THE
15 RESULT OF CAUSES OTHER THAN THE SILICA EXPOSURE REVEALED BY THE
16 EXPOSED PERSON'S EMPLOYMENT AND MEDICAL HISTORY.

17 (8) TO QUALIFY FOR CONSIDERATION UNDER THIS SECTION AS
18 EVIDENCE RELATING TO PHYSICAL IMPAIRMENT, EVIDENCE, INCLUDING
19 PULMONARY FUNCTION TESTING AND DIFFUSING STUDIES, SHALL MEET ALL OF
20 THE FOLLOWING CRITERIA:

21 (A) COMPLY WITH THE TECHNICAL RECOMMENDATIONS FOR
22 EXAMINATIONS, TESTING PROCEDURES, QUALITY ASSURANCE, QUALITY
23 CONTROL, AND EQUIPMENT OF THE AMA GUIDES TO THE EVALUATION OF
24 PERMANENT IMPAIRMENT, AS SET FORTH IN 20 CFR PART 404, SUBPART P,
25 APPENDIX 1, PART A, SECTION 3.00 E. AND F., AND THE INTERPRETIVE
26 STANDARDS IN THE OFFICIAL STATEMENT OF THE AMERICAN THORACIC
27 SOCIETY ENTITLED "LUNG FUNCTION TESTING: SELECTION OF REFERENCE

VALUES AND INTERPRETIVE STRATEGIES" AS PUBLISHED IN AMERICAN REVIEW OF RESPIRATORY DISEASE, 1991: 144:1202-1218.

(B) NOT BE OBTAINED THROUGH TESTING OR EXAMINATIONS THAT VIOLATE ANY APPLICABLE LAW, REGULATION, LICENSING REQUIREMENT, OR MEDICAL CODE OF PRACTICE.

(C) NOT BE OBTAINED UNDER THE CONDITION THAT THE EXPOSED PERSON RETAIN LEGAL SERVICES IN EXCHANGE FOR THE EXAMINATION, TEST, OR SCREENING.

(9) FOR PURPOSES OF THIS SECTION, THE NUMBER OF EXPOSURE YEARS SHALL BE DETERMINED AS FOLLOWS:

(A) EACH SINGLE YEAR OF EXPOSURE PRIOR TO 1972 SHALL BE COUNTED AS 1 YEAR.

(B) SUBJECT TO SUBDIVISION (D), EACH SINGLE YEAR OF EXPOSURE FROM 1972 THROUGH 1979 SHALL BE COUNTED AS 1/2 YEAR.

(C) SUBJECT TO SUBDIVISION (D), EXPOSURE AFTER 1979 SHALL NOT BE COUNTED.

(D) EACH YEAR AFTER 1971 FOR WHICH THE PLAINTIFF CAN ESTABLISH EXPOSURE EXCEEDING THE UNITED STATES DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION LIMIT FOR 8-HOUR TIME-WEIGHTED AVERAGE AIRBORNE CONCENTRATION FOR A SUBSTANTIAL PORTION OF THE YEAR SHALL BE COUNTED AS 1 YEAR.

(10) ALL OF THE FOLLOWING APPLY TO A RULING BY A COURT THAT A PLAINTIFF HAS SATISFACTORILY PRESENTED PRIMA FACIE EVIDENCE TO MEET THE APPLICABLE REQUIREMENTS OF THIS SECTION:

(A) THE RULING DOES NOT RAISE A PRESUMPTION AT TRIAL THAT THE EXPOSED PERSON IS IMPAIRED BY AN ASBESTOS- OR SILICA-RELATED CONDITION.

1 (B) THE RULING IS NOT CONCLUSIVE AS TO THE LIABILITY OF ANY
2 DEFENDANT.

3 (C) THE RULING IS NOT ADMISSIBLE AT TRIAL.

4 SEC. 3007. (1) A COURT MAY CONSOLIDATE FOR TRIAL ANY NUMBER
5 AND TYPE OF ASBESTOS OR SILICA CLAIMS IF ALL OF THE PARTIES TO THE
6 CLAIMS CONSENT. IF ALL OF THE PARTIES TO THE CLAIMS DO NOT CONSENT,
7 THE COURT MAY CONSOLIDATE FOR TRIAL ONLY ASBESTOS OR SILICA CLAIMS
8 RELATING TO THE SAME EXPOSED PERSON AND MEMBERS OF THE EXPOSED
9 PERSON'S HOUSEHOLD.

10 (2) A CIVIL ACTION ALLEGING AN ASBESTOS OR SILICA CLAIM MAY
11 ONLY BE BROUGHT IN THIS STATE IF THE PLAINTIFF IS DOMICILED IN THIS
12 STATE OR THE EXPOSURE TO ASBESTOS OR SILICA THAT IS A SUBSTANTIAL
13 CONTRIBUTING FACTOR TO THE PHYSICAL IMPAIRMENT ON WHICH THE CLAIM
14 IS BASED OCCURRED IN THIS STATE.

15 (3) THE PLAINTIFF IN A CIVIL ACTION ALLEGING AN ASBESTOS OR
16 SILICA CLAIM SHALL FILE WITH THE COMPLAINT OR OTHER INITIAL
17 PLEADING A WRITTEN REPORT AND SUPPORTING TEST RESULTS THAT
18 CONSTITUTE PRIMA FACIE EVIDENCE OF THE EXPOSED PERSON'S ASBESTOS-
19 OR SILICA-RELATED PHYSICAL IMPAIRMENT THAT MEETS THE APPLICABLE
20 REQUIREMENTS OF SECTION 3005. IN AN ASBESTOS OR SILICA CLAIM
21 PENDING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
22 CHAPTER, THE PLAINTIFF SHALL FILE A WRITTEN REPORT AND SUPPORTING
23 TEST RESULTS THAT COMPLY WITH THIS SUBSECTION NOT LATER THAN 60
24 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
25 CHAPTER OR 30 DAYS BEFORE THE COMMENCEMENT OF TRIAL OF THE ACTION,
26 WHICHEVER OCCURS FIRST.

27 (4) A COURT SHALL GIVE A DEFENDANT IN A CIVIL ACTION THAT

1 INCLUDES AN ASBESTOS OR SILICA CLAIM A REASONABLE OPPORTUNITY TO
2 CHALLENGE THE ADEQUACY OF PRIMA FACIE EVIDENCE OF AN ASBESTOS- OR
3 SILICA-RELATED IMPAIRMENT OFFERED UNDER THIS CHAPTER.

4 (5) IF A COURT DETERMINES THAT A PLAINTIFF HAS FAILED TO MAKE
5 THE PRIMA FACIE SHOWING REQUIRED BY THIS CHAPTER, THE PLAINTIFF'S
6 CLAIM SHALL BE DISMISSED WITHOUT PREJUDICE.

7 SEC. 3009. (1) THE PERIOD OF LIMITATIONS FOR AN ASBESTOS OR
8 SILICA CLAIM THAT IS NOT BARRED AS OF THE EFFECTIVE DATE OF THE
9 AMENDATORY ACT THAT ADDED THIS CHAPTER ACCRUES WHEN THE EXPOSED
10 PERSON DISCOVERS, OR THROUGH THE EXERCISE OF REASONABLE DILIGENCE
11 SHOULD HAVE DISCOVERED, THAT HE OR SHE IS PHYSICALLY IMPAIRED BY AN
12 ASBESTOS- OR SILICA-RELATED CONDITION.

13 (2) AN ASBESTOS OR SILICA CLAIM ARISING OUT OF A NONMALIGNANT
14 CONDITION IS A DISTINCT CAUSE OF ACTION FROM AN ASBESTOS OR SILICA
15 CLAIM RELATING TO THE SAME EXPOSED PERSON ARISING OUT OF ASBESTOS-
16 OR SILICA-RELATED CANCER.

17 (3) DAMAGES FOR FEAR OR RISK OF CANCER SHALL NOT BE AWARDED IN
18 A CIVIL ACTION ASSERTING AN ASBESTOS OR SILICA CLAIM.

19 (4) THE SETTLEMENT OF A NONMALIGNANT ASBESTOS OR SILICA CLAIM
20 CONCLUDED AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
21 THIS CHAPTER SHALL NOT REQUIRE, AS A CONDITION OF THE SETTLEMENT,
22 THE RELEASE OF ANY FUTURE CLAIM FOR ASBESTOS- OR SILICA-RELATED
23 CANCER.

24 SEC. 3011. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE TOTAL
25 AMOUNT OF DAMAGES AWARDED FOR NONECONOMIC LOSS IN A CIVIL ACTION
26 THAT INCLUDES AN ASBESTOS OR SILICA CLAIM SHALL NOT EXCEED
27 \$250,000.00 OR 3 TIMES THE AMOUNT OF ECONOMIC LOSS, WHICHEVER IS

1 GREATER, REGARDLESS OF THE NUMBER OF PARTIES AGAINST WHOM THE
2 ACTION IS BROUGHT.

3 (2) THE TOTAL AMOUNT OF DAMAGES AWARDED FOR NONECONOMIC LOSS
4 IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS CLAIM BASED UPON
5 MESOTHELIOMA SHALL NOT EXCEED \$500,000.00 OR 3 TIMES THE AMOUNT OF
6 ECONOMIC LOSS, WHICHEVER IS GREATER, REGARDLESS OF THE NUMBER OF
7 PARTIES AGAINST WHOM THE ACTION IS BROUGHT.

8 (3) PUNITIVE DAMAGES SHALL NOT BE AWARDED IN A CIVIL ACTION
9 THAT INCLUDES AN ASBESTOS OR SILICA CLAIM.

10 (4) AT THE TIME A COMPLAINT IS FILED IN A CIVIL ACTION THAT
11 INCLUDES AN ASBESTOS OR SILICA CLAIM, THE PLAINTIFF SHALL FILE A
12 VERIFIED WRITTEN REPORT WITH THE COURT THAT DISCLOSES THE TOTAL
13 AMOUNT OF ANY COLLATERAL SOURCE PAYMENTS RECEIVED, INCLUDING
14 PAYMENTS THE PLAINTIFF WILL RECEIVE IN THE FUTURE, AS A RESULT OF
15 SETTLEMENTS OR JUDGMENTS BASED ON THE SAME CLAIM. IN A CIVIL ACTION
16 ALLEGING AN ASBESTOS OR SILICA CLAIM PENDING ON THE EFFECTIVE DATE
17 OF THE AMENDATORY ACT THAT ADDED THIS CHAPTER, THE PLAINTIFF SHALL
18 FILE THE VERIFIED WRITTEN REPORT REQUIRED BY THIS SUBSECTION NOT
19 LATER THAN 60 DAYS AFTER THE EFFECTIVE DATE OF THE ACT THAT ADDED
20 THIS CHAPTER OR 30 DAYS BEFORE THE COMMENCEMENT OF TRIAL OF THE
21 ACTION, WHICHEVER OCCURS FIRST.

22 (5) A PLAINTIFF IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS OR
23 SILICA CLAIM SHALL FILE UPDATED REPORTS DISCLOSING THE TOTAL AMOUNT
24 OF COLLATERAL SOURCE PAYMENTS RECEIVED, OR TO BE RECEIVED IN THE
25 FUTURE, ON A REGULAR BASIS UNTIL A FINAL JUDGMENT IS ENTERED IN THE
26 ACTION.

27 (6) A COURT SHALL ENSURE THAT INFORMATION CONTAINED IN THE

1 INITIAL AND UPDATED REPORTS REQUIRED BY SUBSECTIONS (4) AND (5) ARE
2 TREATED AS PRIVILEGED AND CONFIDENTIAL AND THAT THE CONTENTS OF THE
3 REPORTS ARE NOT DISCLOSED TO ANYONE EXCEPT THE OTHER PARTIES TO THE
4 ACTION.

5 SEC. 3013. (1) AN ATTORNEY OR REPRESENTATIVE OF AN INDIVIDUAL
6 SHALL NOT RECEIVE, FOR SERVICES RENDERED IN CONNECTION WITH FILING,
7 LITIGATING, SETTling, OR OTHERWISE ASSISTING IN BRINGING AN
8 ASBESTOS OR SILICA CLAIM GOVERNED BY THIS CHAPTER, MORE THAN 20% OF
9 THE AMOUNT AWARDED TO THE INDIVIDUAL BY WAY OF SETTLEMENT OR
10 JUDGMENT.

11 (2) A REPRESENTATIVE OF AN ASBESTOS OR SILICA CLAIMANT WHO
12 VIOLATES THIS SECTION SHALL BE FINED FOR EACH VIOLATION NOT MORE
13 THAN THE GREATER OF \$5,000.00 OR TWICE THE AMOUNT RECEIVED BY THE
14 REPRESENTATIVE FOR SERVICES RENDERED.

15 SEC. 3015. (1) A PRODUCT SELLER OTHER THAN A MANUFACTURER IS
16 LIABLE TO A PLAINTIFF IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS
17 OR SILICA CLAIM ONLY IF THE PLAINTIFF ESTABLISHES 1 OR MORE OF THE
18 FOLLOWING:

19 (A) ALL OF THE FOLLOWING:

20 (i) THE PRODUCT THAT ALLEGEDLY CAUSED THE HARM THAT IS THE
21 SUBJECT OF THE COMPLAINT WAS SOLD, RENTED, OR LEASED BY THE PRODUCT
22 SELLER.

23 (ii) THE PRODUCT SELLER FAILED TO EXERCISE REASONABLE CARE WITH
24 RESPECT TO THE PRODUCT.

25 (iii) THE FAILURE TO EXERCISE REASONABLE CARE WAS A PROXIMATE
26 CAUSE OF THE HARM TO THE EXPOSED PERSON.

27 (B) ALL OF THE FOLLOWING:

1 (i) THE PRODUCT SELLER MADE AN EXPRESS WARRANTY APPLICABLE TO
2 THE PRODUCT THAT ALLEGEDLY CAUSED THE HARM THAT IS THE SUBJECT OF
3 THE COMPLAINT, INDEPENDENT OF ANY EXPRESS WARRANTY MADE BY THE
4 MANUFACTURER AS TO THE SAME PRODUCT.

5 (ii) THE PRODUCT FAILED TO CONFORM TO THE WARRANTY.

6 (iii) THE FAILURE OF THE PRODUCT TO CONFORM TO THE WARRANTY
7 CAUSED THE HARM TO THE EXPOSED PERSON.

8 (C) BOTH OF THE FOLLOWING:

9 (i) THE PRODUCT SELLER ENGAGED IN INTENTIONAL WRONGDOING, AS
10 DETERMINED UNDER APPLICABLE STATE LAW.

11 (ii) THE INTENTIONAL WRONGDOING CAUSED THE HARM THAT IS THE
12 SUBJECT OF THE COMPLAINT.

13 (2) FOR PURPOSES OF SUBSECTION (1) (A) (ii), A PRODUCT SELLER'S
14 FAILURE TO INSPECT THE PRODUCT IS NOT A FAILURE TO EXERCISE
15 REASONABLE CARE WITH RESPECT TO THE PRODUCT IF EITHER OF THE
16 FOLLOWING APPLIES:

17 (A) THE FAILURE OCCURRED BECAUSE THERE WAS NO REASONABLE
18 OPPORTUNITY TO INSPECT THE PRODUCT.

19 (B) AN INSPECTION OF THE PRODUCT, IN THE EXERCISE OF
20 REASONABLE CARE, WOULD NOT HAVE REVEALED THE ASPECT OF THE PRODUCT
21 THAT ALLEGEDLY CAUSED THE EXPOSED PERSON'S IMPAIRMENT.

22 (3) IN A CIVIL ACTION THAT INCLUDES AN ASBESTOS OR SILICA
23 CLAIM, A PERSON ENGAGED IN THE BUSINESS OF RENTING OR LEASING A
24 PRODUCT IS NOT LIABLE FOR THE TORTIOUS ACT OF ANOTHER SOLELY BY
25 REASON OF OWNERSHIP OF THE PRODUCT.

26 SEC. 3017. THIS CHAPTER DOES NOT AFFECT THE SCOPE OR OPERATION
27 OF ANY WORKERS' COMPENSATION LAW OR VETERANS' BENEFIT PROGRAM OR

1 THE EXCLUSIVE REMEDY OR SUBROGATION PROVISIONS OF ANY SUCH LAW OR
2 AUTHORIZE ANY LAWSUIT THAT IS BARRED BY SUCH LAW.

3 SEC. 3019. THIS CHAPTER APPLIES TO A CIVIL ACTION THAT
4 INCLUDES AN ASBESTOS OR SILICA CLAIM IN WHICH TRIAL HAS NOT
5 COMMENCED AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
6 THIS CHAPTER.

7 Sec. 5827. Except as otherwise expressly provided, the period
8 of limitations runs from the time the claim accrues. The claim
9 accrues at the time provided in sections 5829 to ~~5838~~ 5840, and
10 in cases not covered by these sections the claim accrues at the
11 time the wrong upon which the claim is based was done regardless of
12 the time when damage results.

13 SEC. 5840. (1) AN ASBESTOS OR SILICA CLAIM DESCRIBED IN
14 SECTION 3009(1) ACCRUES AS PROVIDED IN SECTION 3009(1).

15 (2) AS USED IN THIS SECTION:

16 (A) "ASBESTOS CLAIM" MEANS THAT TERM AS DEFINED IN SECTION
17 3001.

18 (B) "SILICA CLAIM" MEANS THAT TERM AS DEFINED IN SECTION 3003.