

CIVIL PRACTICE AND REMEDIES CODE

TITLE 4. LIABILITY IN TORT

CHAPTER 90. CLAIMS INVOLVING ASBESTOS AND SILICA

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 90.001. DEFINITIONS. In this chapter:

(1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

(2) "Asbestos-related injury" means personal injury or death allegedly caused, in whole or in part, by inhalation or ingestion of asbestos.

(3) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(4) "Certified B-reader" means a person who has successfully completed the x-ray interpretation course sponsored by the National Institute for Occupational Safety and Health (NIOSH) and passed the B-reader certification examination for x-ray interpretation and whose NIOSH certification is current at the time of any readings required by this chapter.

(5) "Chest x-ray" means chest films that are taken in accordance with all applicable state and federal regulatory standards and in the posterior-anterior view.

(6) "Claimant" means an exposed person and any person who is seeking recovery of damages for or arising from the injury or death of an exposed person.

(7) "Defendant" means a person against whom a claim arising from an asbestos-related injury or a silica-related injury is made.

(8) "Exposed person" means a person who is alleged to have suffered an asbestos-related injury or a silica-related injury.

(9) "FEV1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

(10) "FVC" means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(11) "ILO system of classification" means the radiological rating system of the International Labor Office in "Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses" (2000), as amended.

(12) "MDL pretrial court" means the district court to which related cases are transferred for consolidated or coordinated pretrial proceedings under Rule 13, Texas Rules of Judicial Administration.

(13) "MDL rules" means the rules adopted by the supreme court under Subchapter H, Chapter 74, Government Code.

(14) "Mesothelioma" means a rare form of cancer allegedly caused in some instances by exposure to asbestos in which the cancer invades cells in the membrane lining:

(A) the lungs and chest cavity (the pleural region);

(B) the abdominal cavity (the peritoneal region); or

(C) the heart (the pericardial region).

(15) "Nonmalignant asbestos-related injury" means an asbestos-related injury other than mesothelioma or other cancer.

(16) "Nonmalignant silica-related injury" means a silica-related injury other than cancer.

(17) "Physician board certified in internal medicine" means a physician who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.

(18) "Physician board certified in occupational medicine" means a physician who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine.

(19) "Physician board certified in oncology" means a physician who is certified in the subspecialty of medical oncology by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.

(20) "Physician board certified in pathology" means a

physician who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Internal Medicine and whose professional practice:

(A) is principally in the field of pathology; and

(B) involves regular evaluation of pathology materials obtained from surgical or postmortem specimens.

(21) "Physician board certified in pulmonary medicine" means a physician who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.

(22) "Plethysmography" means the test for determining lung volume, also known as "body plethysmography," in which the subject of the test is enclosed in a chamber that is equipped to measure pressure, flow, or volume change.

(23) "Pulmonary function testing" means spirometry, lung volume, and diffusion capacity testing performed in accordance with Section 90.002 using equipment, methods of calibration, and techniques that meet:

(A) the criteria incorporated in the American Medical Association Guides to the Evaluation of Permanent Impairment and reported in 20 C.F.R. Part 404, Subpart P, Appendix 1, Part (A), Sections 3.00(E) and (F)(2003); and

(B) the interpretative standards in the Official Statement of the American Thoracic Society entitled "Lung Function Testing: Selection of Reference Values and Interpretative Strategies," as published in 144 American Review of Respiratory Disease 1202-1218 (1991).

(24) "Report" means a report required by Section 90.003, 90.004, or 90.010(f)(1).

(25) "Respirable," with respect to silica, means particles that are less than 10 microns in diameter.

(26) "Serve" means to serve notice on a party in compliance with Rule 21a, Texas Rules of Civil Procedure.

(27) "Silica" means a respirable form of crystalline silicon dioxide, including alpha quartz, cristobalite, and tridymite.

(28) "Silica-related injury" means personal injury or death allegedly caused, in whole or in part, by inhalation of silica.

(29) "Silicosis" means interstitial fibrosis of the lungs caused by inhalation of silica, including:

(A) acute silicosis, which may occur after exposure to very high levels of silica within a period of months to five years after the initial exposure;

(B) accelerated silicosis; and

(C) chronic silicosis.

Added by Acts 2005, 79th Leg., Ch. 97 (S.B. 15), Sec. 2, eff. September 1, 2005.

Sec. 90.002. PULMONARY FUNCTION TESTING. Pulmonary function testing required by this chapter must be interpreted by a physician:

(1) who is licensed in this state or another state of the United States;

(2) who is board certified in pulmonary medicine, internal medicine, or occupational medicine; and

(3) whose license and certification were not on inactive status at the time the testing was interpreted.

Added by Acts 2005, 79th Leg., Ch. 97 (S.B. 15), Sec. 2, eff. September 1, 2005.

Sec. 90.003. REPORTS REQUIRED FOR CLAIMS INVOLVING ASBESTOS-RELATED INJURY. (a) A claimant asserting an asbestos-related injury must serve on each defendant the following information:

(1) a report by a physician who is board certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology and whose license and certification were not on inactive status at the time the report was made stating that:

(A) the exposed person has been diagnosed with malignant mesothelioma or other malignant asbestos-related cancer; and

(B) to a reasonable degree of medical

probability, exposure to asbestos was a cause of the diagnosed mesothelioma or other cancer in the exposed person; or

(2) a report by a physician who is board certified in pulmonary medicine, internal medicine, or occupational medicine and whose license and certification were not on inactive status at the time the report was made that:

(A) verifies that the physician or a medical professional employed by and under the direct supervision and control of the physician:

(i) performed a physical examination of the exposed person, or if the exposed person is deceased, reviewed available records relating to the exposed person's medical condition;

(ii) took a detailed occupational and exposure history from the exposed person or, if the exposed person is deceased, from a person knowledgeable about the alleged exposure or exposures that form the basis of the action; and

(iii) took a detailed medical and smoking history that includes a thorough review of the exposed person's past and present medical problems and their most probable cause;

(B) sets out the details of the exposed person's occupational, exposure, medical, and smoking history and verifies that at least 10 years have elapsed between the exposed person's first exposure to asbestos and the date of diagnosis;

(C) verifies that the exposed person has:

(i) a quality 1 or 2 chest x-ray that has been read by a certified B-reader according to the ILO system of classification as showing:

(a) bilateral small irregular opacities (s, t, or u) with a profusion grading of 1/1 or higher, for an action filed on or after May 1, 2005;

(b) bilateral small irregular opacities (s, t, or u) with a profusion grading of 1/0 or higher, for an action filed before May 1, 2005; or

(c) bilateral diffuse pleural thickening graded b2 or higher including blunting of the costophrenic angle; or

(ii) pathological asbestosis graded 1(B) or higher under the criteria published in "Asbestos-Associated Diseases," 106 Archives of Pathology and Laboratory Medicine 11, Appendix 3 (October 8, 1982);

(D) verifies that the exposed person has asbestos-related pulmonary impairment as demonstrated by pulmonary function testing showing:

(i) forced vital capacity below the lower limit of normal or below 80 percent of predicted and FEV1/FVC ratio (using actual values) at or above the lower limit of normal or at or above 65 percent; or

(ii) total lung capacity, by plethysmography or timed gas dilution, below the lower limit of normal or below 80 percent of predicted;

(E) verifies that the physician has concluded that the exposed person's medical findings and impairment were not more probably the result of causes other than asbestos exposure revealed by the exposed person's occupational, exposure, medical, and smoking history; and

(F) is accompanied by copies of all ILO classifications, pulmonary function tests, including printouts of all data, flow volume loops, and other information demonstrating compliance with the equipment, quality, interpretation, and reporting standards set out in this chapter, lung volume tests, diagnostic imaging of the chest, pathology reports, or other testing reviewed by the physician in reaching the physician's conclusions.

(b) The detailed occupational and exposure history required by Subsection (a)(2)(A)(ii) must describe:

(1) the exposed person's principal employments and state whether the exposed person was exposed to airborne contaminants, including asbestos fibers and other dusts that can cause pulmonary impairment; and

(2) the nature, duration, and frequency of the exposed person's exposure to airborne contaminants, including asbestos fibers and other dusts that can cause pulmonary impairment.

(c) If a claimant's pulmonary function test results do not

meet the requirements of Subsection (a)(2)(D)(i) or (ii), the claimant may serve on each defendant a report by a physician who is board certified in pulmonary medicine, internal medicine, or occupational medicine and whose license and certification were not on inactive status at the time the report was made that:

(1) verifies that the physician has a physician-patient relationship with the exposed person;

(2) verifies that the exposed person has a quality 1 or 2 chest x-ray that has been read by a certified B-reader according to the ILO system of classification as showing bilateral small irregular opacities (s, t, or u) with a profusion grading of 2/1 or higher;

(3) verifies that the exposed person has restrictive impairment from asbestosis and includes the specific pulmonary function test findings on which the physician relies to establish that the exposed person has restrictive impairment;

(4) verifies that the physician has concluded that the exposed person's medical findings and impairment were not more probably the result of causes other than asbestos exposure revealed by the exposed person's occupational, exposure, medical, and smoking history; and

(5) is accompanied by copies of all ILO classifications, pulmonary function tests, including printouts of all data, flow volume loops, and other information demonstrating compliance with the equipment, quality, interpretation, and reporting standards set out in this chapter, lung volume tests, diagnostic imaging of the chest, pathology reports, or other testing reviewed by the physician in reaching the physician's conclusions.

(d) If a claimant's radiologic findings do not meet the requirements of Subsection (a)(2)(C)(i), the claimant may serve on each defendant a report by a physician who is board certified in pulmonary medicine, internal medicine, or occupational medicine and whose license and certification were not on inactive status at the time the report was made that:

(1) verifies that the physician has a physician-patient relationship with the exposed person;

(2) verifies that the exposed person has asbestos-related pulmonary impairment as demonstrated by pulmonary function testing showing:

(A) either:

(i) forced vital capacity below the lower limit of normal or below 80 percent of predicted and total lung capacity, by plethysmography, below the lower limit of normal or below 80 percent of predicted; or

(ii) forced vital capacity below the lower limit of normal or below 80 percent of predicted and FEV1/FVC ratio (using actual values) at or above the lower limit of normal or at or above 65 percent; and

(B) diffusing capacity of carbon monoxide below the lower limit of normal or below 80 percent of predicted;

(3) verifies that the exposed person has a computed tomography scan or high-resolution computed tomography scan showing either bilateral pleural disease or bilateral parenchymal disease consistent with asbestos exposure;

(4) verifies that the physician has concluded that the exposed person's medical findings and impairment were not more probably the result of causes other than asbestos exposure as revealed by the exposed person's occupational, exposure, medical, and smoking history; and

(5) is accompanied by copies of all computed tomography scans, ILO classifications, pulmonary function tests, including printouts of all data, flow volume loops, and other information demonstrating compliance with the equipment, quality, interpretation, and reporting standards set out in this chapter, lung volume tests, diagnostic imaging of the chest, pathology reports, or other testing reviewed by the physician in reaching the physician's conclusions.

Added by Acts 2005, 79th Leg., Ch. 97 (S.B. 15), Sec. 2, eff. September 1, 2005.

Sec. 90.004. REPORTS REQUIRED FOR CLAIMS INVOLVING SILICA-RELATED INJURY. (a) A claimant asserting a silica-related injury must serve on each defendant a report by a physician who is

board certified in pulmonary medicine, internal medicine, oncology, pathology, or, with respect to a claim for silicosis, occupational medicine and whose license and certification were not on inactive status at the time the report was made that:

(1) verifies that the physician or a medical professional employed by and under the direct supervision and control of the physician:

(A) performed a physical examination of the exposed person, or if the exposed person is deceased, reviewed available records relating to the exposed person's medical condition;

(B) took a detailed occupational and exposure history from the exposed person or, if the exposed person is deceased, from a person knowledgeable about the alleged exposure or exposures that form the basis of the action; and

(C) took a detailed medical and smoking history that includes a thorough review of the exposed person's past and present medical problems and their most probable cause;

(2) sets out the details of the exposed person's occupational, exposure, medical, and smoking history;

(3) verifies that the exposed person has one or more of the following:

(A) a quality 1 or 2 chest x-ray that has been read by a certified B-reader according to the ILO system of classification as showing:

(i) bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, with a profusion grading of 1/1 or higher, for an action filed on or after May 1, 2005; or

(ii) bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, with a profusion grading of 1/0 or higher, for an action filed before May 1, 2005;

(B) pathological demonstration of classic silicotic nodules exceeding one centimeter in diameter as published in "Diseases Associated with Exposure to Silica and Nonfibrous Silicate Minerals," 112 Archives of Pathology and Laboratory

Medicine 7 (July 1988);

(C) progressive massive fibrosis radiologically established by large opacities greater than one centimeter in diameter; or

(D) acute silicosis; and

(4) is accompanied by copies of all ILO classifications, pulmonary function tests, including printouts of all data, flow volume loops, and other information demonstrating compliance with the equipment, quality, interpretation, and reporting standards set out in this chapter, lung volume tests, diagnostic imaging of the chest, pathology reports, or other testing reviewed by the physician in reaching the physician's conclusions.

(b) If the claimant is asserting a claim for silicosis, the report required by Subsection (a) must also verify that:

(1) there has been a sufficient latency period for the applicable type of silicosis;

(2) the exposed person has at least Class 2 or higher impairment due to silicosis, according to the American Medical Association Guides to the Evaluation of Permanent Impairment and reported in 20 C.F.R. Part 404, Subpart P, Appendix 1, Part (A), Sections 3.00(E) and (F) (2003); and

(3) the physician has concluded that the exposed person's medical findings and impairment were not more probably the result of causes other than silica exposure revealed by the exposed person's occupational, exposure, medical, and smoking history.

(c) If the claimant is asserting a claim for silica-related lung cancer, the report required by Subsection (a) must also:

(1) include a diagnosis that the exposed person has primary lung cancer and that inhalation of silica was a substantial contributing factor to that cancer; and

(2) verify that at least 15 years have elapsed from the date of the exposed person's first exposure to silica until the date of diagnosis of the exposed person's primary lung cancer.

(d) If the claimant is asserting a claim for any disease other than silicosis and lung cancer alleged to be related to exposure to silica, the report required by Subsection (a) must also

verify that the physician has diagnosed the exposed person with a disease other than silicosis or silica-related lung cancer and has concluded that the exposed person's disease is not more probably the result of causes other than silica exposure.

(e) The detailed occupational and exposure history required by Subsection (a)(1)(B) must describe:

(1) the exposed person's principal employments and state whether the exposed person was exposed to airborne contaminants, including silica and other dusts that can cause pulmonary impairment; and

(2) the nature, duration, and frequency of the exposed person's exposure to airborne contaminants, including silica and other dusts that can cause pulmonary impairment.

Added by Acts 2005, 79th Leg., Ch. 97 (S.B. 15), Sec. 2, eff. September 1, 2005.

Sec. 90.005. PROHIBITED BASIS FOR DIAGNOSIS. (a) For purposes of this chapter, a physician may not, as the basis for a diagnosis, rely on the reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the exposed person's medical condition that was conducted in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted.

(b) If a physician relies on any information in violation of Subsection (a), the physician's opinion or report does not comply with the requirements of this chapter.

Added by Acts 2005, 79th Leg., Ch. 97 (S.B. 15), Sec. 2, eff. September 1, 2005.

Sec. 90.006. SERVING REPORTS. (a) In an action filed on or after the date this chapter becomes law, a report prescribed by Section 90.003 or 90.004 must be served on each defendant not later than the 30th day after the date that defendant answers or otherwise enters an appearance in the action.

(b) In an action pending on the date this chapter becomes law and in which the trial, or any new trial or retrial following

motion, appeal, or otherwise, commences on or before the 90th day after the date this chapter becomes law, a claimant is not required to serve a report on any defendant unless a mistrial, new trial, or retrial is subsequently granted or ordered.

(c) In an action pending on the date this chapter becomes law and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, commences after the 90th day after the date this chapter becomes law, a report must be served on each defendant on or before the earlier of the following dates:

(1) the 60th day before trial commences; or

(2) the 180th day after the date this chapter becomes law.

Added by Acts 2005, 79th Leg., Ch. 97 (S.B. 15), Sec. 2, eff. September 1, 2005.

Sec. 90.007. MOTION TO DISMISS IN ACTION FILED ON OR AFTER SEPTEMBER 1, 2005. (a) In an action filed on or after September 1, 2005, if a claimant fails to timely serve a report on a defendant, or serves on the defendant a report that does not comply with the requirements of Section 90.003 or 90.004, the defendant may file a motion to dismiss the claimant's asbestos-related claims or silica-related claims. The motion must be filed on or before the 30th day after the date the report is served on the defendant. If a claimant fails to serve a report on the defendant, the motion must be filed on or before the 30th day after the date the report was required to be served on the defendant under Section 90.006. If the basis of the motion is that the claimant has served on the defendant a report that does not comply with Section 90.003 or 90.004, the motion must include the reasons why the report does not comply with that section.

(b) A claimant may file a response to a motion to dismiss on or before the 15th day after the date the motion to dismiss is served. A report required by Section 90.003 or 90.004 may be filed, amended, or supplemented within the time required for responding to a motion to dismiss. The service of an amended or supplemental report does not require the filing of an additional motion to dismiss if the reasons stated in the original motion to

dismiss are sufficient to require dismissal under this chapter.

(c) Except as provided by Section 90.010(d) or (e), if the court is of the opinion that a motion to dismiss is meritorious, the court shall, by written order, grant the motion and dismiss all of the claimant's asbestos-related claims or silica-related claims, as appropriate, against the defendant. A dismissal under this section is without prejudice to the claimant's right, if any, to assert claims for an asbestos-related injury or a silica-related injury in a subsequent action.

(d) On the filing of a motion to dismiss under this section, all further proceedings in the action are stayed until the motion is heard and determined by the court.

(e) On the motion of a party showing good cause, the court may shorten or extend the time limits provided in this section for filing or serving motions, responses, or reports.

Added by Acts 2005, 79th Leg., Ch. 97 (S.B. 15), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 146 (H.B. 1325), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 146 (H.B. 1325), Sec. 2, eff. September 1, 2013.

Sec. 90.008. VOLUNTARY DISMISSAL. Before serving a report required by Section 90.003 or 90.004, a claimant seeking damages arising from an asbestos-related injury or silica-related injury may voluntarily dismiss the claimant's action. If a claimant files a voluntary dismissal under this section, the claimant's voluntary dismissal is without prejudice to the claimant's right to file a subsequent action seeking damages arising from an asbestos-related injury or a silica-related injury.

Added by Acts 2005, 79th Leg., Ch. 97 (S.B. 15), Sec. 2, eff. September 1, 2005.

Sec. 90.009. JOINDER OF CLAIMANTS. Unless all parties agree otherwise, claims relating to more than one exposed person may not be joined for a single trial.

Added by Acts 2005, 79th Leg., Ch. 97 (S.B. 15), Sec. 2, eff. September 1, 2005.

Sec. 90.010. MULTIDISTRICT LITIGATION PROCEEDINGS. (a) The MDL rules apply to any action pending on the date this chapter becomes law in which the claimant alleges personal injury or death from exposure to asbestos or silica unless:

(1) the action was filed before September 1, 2003, and trial has commenced or is set to commence on or before the 90th day after the date this chapter becomes law, except that the MDL rules shall apply to the action if the trial does not commence on or before the 90th day after the date this chapter becomes law;

(2) the action was filed before September 1, 2003, and the claimant serves a report that complies with Section 90.003 or 90.004 on or before the 90th day after the date this chapter becomes law; or

(3) the action was filed before September 1, 2003, and the exposed person has been diagnosed with malignant mesothelioma, other malignant asbestos-related cancer, or malignant silica-related cancer.

(b) If the claimant fails to serve a report complying with Section 90.003 or 90.004 on or before the 90th day after the date this chapter becomes law under Subsection (a)(2), the defendant may file a notice of transfer to the MDL pretrial court. If the MDL pretrial court determines that the claimant served a report that complies with Section 90.003 or 90.004 on or before the 90th day after the date this chapter becomes law, the MDL pretrial court shall remand the action to the court in which the action was filed. If the MDL pretrial court determines that the report was not served on or before the 90th day after the date this chapter becomes law or that the report served does not comply with Section 90.003 or 90.004, the MDL pretrial court shall retain jurisdiction over the action pursuant to the MDL rules.

(c) In an action transferred to an MDL pretrial court in which the exposed person is living and has been diagnosed with malignant mesothelioma, other malignant asbestos-related cancer, malignant silica-related cancer, or acute silicosis, the MDL

pretrial court shall expedite the action in a manner calculated to provide the exposed person with a trial or other disposition in the shortest period that is fair to all parties and consistent with the principles of due process. The MDL pretrial court should, as far as reasonably possible, ensure that such action is brought to trial or final disposition within six months from the date the action is transferred to the MDL pretrial court, provided that all discovery and case management requirements of the MDL pretrial court have been satisfied.

(d) In an action that was pending on August 31, 2005, that was transferred to and remains pending in an MDL pretrial court, the MDL pretrial court shall not remand such action for trial unless:

(1) the claimant serves a report complying with Section 90.003 or 90.004; or

(2)(A) the claimant does not serve a report that complies with Section 90.003 or 90.004;

(B) the claimant serves a report complying with Subsection (f)(1); and

(C) the court, on motion and hearing, makes the findings required by Subsection (f)(2).

(d-1) Beginning on September 1, 2014, the MDL pretrial court shall dismiss each action for an asbestos-related injury or a silica-related injury that was pending on August 31, 2005, unless a report was served on or after September 1, 2013, that complies with Section 90.003, Section 90.004, or Subsection (f). The MDL pretrial court shall provide for the dismissal of such actions in a case management order entered for that purpose. All actions for a silica-related injury shall be dismissed on or before August 31, 2015. All actions for an asbestos-related injury shall be dismissed on or before December 31, 2015.

(e) In an action filed on or after the date this chapter becomes law that is transferred to an MDL pretrial court and in which the claimant does not serve on a defendant a report that complies with Section 90.003 or 90.004, the MDL pretrial court shall, on motion by a defendant, dismiss the action under Section 90.007 unless:

(1) the claimant serves a report that complies with

Subsection (f)(1); and

(2) the court, on motion and hearing, makes the findings required by Subsection (f)(2).

(f) In an action in which the claimant seeks remand for trial under Subsection (d)(2) or denial of a motion to dismiss under Subsection (e):

(1) the claimant shall serve on each defendant a report that:

(A) complies with the requirements of Sections 90.003(a)(2)(A), (B), (E), and (F) and 90.003(b) or Sections 90.004(a)(1), (2), and (4) and 90.004(e); and

(B) verifies that:

(i) the physician making the report has a physician-patient relationship with the exposed person;

(ii) pulmonary function testing has been performed on the exposed person and the physician making the report has interpreted the pulmonary function testing;

(iii) the physician making the report has concluded, to a reasonable degree of medical probability, that the exposed person has radiographic, pathologic, or computed tomography evidence establishing bilateral pleural disease or bilateral parenchymal disease caused by exposure to asbestos or silica; and

(iv) the physician has concluded that the exposed person has asbestos-related or silica-related physical impairment comparable to the impairment the exposed person would have had if the exposed person met the criteria set forth in Section 90.003 or 90.004; and

(2) the MDL pretrial court shall determine whether:

(A) the report and medical opinions offered by the claimant are reliable and credible;

(B) due to unique or extraordinary physical or medical characteristics of the exposed person, the medical criteria set forth in Sections 90.003 and 90.004 do not adequately assess the exposed person's physical impairment caused by exposure to asbestos or silica; and

(C) the claimant has produced sufficient

credible evidence for a finder of fact to reasonably find that the exposed person is physically impaired as the result of exposure to asbestos or silica to a degree comparable to the impairment the exposed person would have had if the exposed person met the criteria set forth in Section 90.003 or 90.004.

(g) A court's determination under Subsection (f) shall be made after conducting an evidentiary hearing at which the claimant and any defendant to the action may offer supporting or controverting evidence. The parties shall be permitted a reasonable opportunity to conduct discovery before the evidentiary hearing.

(h) The court shall state its findings under Subsection (f)(2) in writing and shall address in its findings:

(1) the unique or extraordinary physical or medical characteristics of the exposed person that justify the application of this section; and

(2) the reasons the criteria set forth in Sections 90.003 and 90.004 do not adequately assess the exposed person's physical impairment caused by exposure to asbestos or silica.

(i) Any findings made by a court under Subsection (f) are not admissible for any purpose at a trial on the merits.

(j) Subsections (d)(2) and (e)-(i) apply only in exceptional and limited circumstances in which the exposed person does not satisfy the medical criteria of Section 90.003 or 90.004 but can demonstrate meaningful asbestos-related or silica-related physical impairment that satisfies the requirements of Subsection (f). Subsections (d)(2) and (e)-(i) have limited application and shall not be used to negate the requirements of this chapter.

(k) On or before September 1, 2010, each MDL pretrial court having jurisdiction over cases to which this chapter applies shall deliver a report to the governor, lieutenant governor, and the speaker of the house of representatives stating:

(1) the number of cases on the court's multidistrict litigation docket as of August 1, 2010;

(2) the number of cases on the court's multidistrict litigation docket as of August 1, 2010, that do not meet the criteria of Section 90.003 or 90.004, to the extent known;

(3) the court's evaluation of the effectiveness of the medical criteria established by Sections 90.003 and 90.004;

(4) the court's recommendation, if any, as to how medical criteria should be applied to the cases on the court's multidistrict litigation docket as of August 1, 2010; and

(5) any other information regarding the administration of cases in the MDL pretrial courts that the court deems appropriate.

(l) A dismissal under Subsection (d-1) is without prejudice to the claimant's right to file a subsequent action seeking damages arising from an asbestos-related injury or a silica-related injury.

(m) This chapter and Section 16.0031 apply to a subsequent action for an asbestos-related injury or a silica-related injury filed by a claimant whose action was dismissed under Subsection (d-1) or by a claimant in an action described by Subsection (d) who voluntarily dismissed the action under Section 90.008.

(n) If a claimant subsequently refiles an action for an asbestos-related injury or a silica-related injury that was dismissed under Subsection (d-1), the refiled action is treated for purposes of determining the applicable law as if that claimant's action had never been dismissed but, instead, had remained pending until the claimant served a report that complied with Section 90.003, Section 90.004, or Subsection (f).

(o) A claimant whose action was dismissed under Subsection (d-1) may serve the petition and citation for any subsequently filed action for an asbestos-related or silica-related injury by certified mail, return receipt requested, or other method approved by the MDL pretrial court that is likely to accomplish service in a cost-effective manner, on a person who was a defendant in the dismissed action.

Added by Acts 2005, 79th Leg., Ch. 97 (S.B. 15), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 146 (H.B. 1325), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 532 (H.B. 1492), Sec. 2, eff. September 1, 2015.

Sec. 90.011. BANKRUPTCY. Nothing in this chapter is intended to affect the rights of any party in a bankruptcy proceeding or affect the ability of any person to satisfy the claim criteria for compensable claims or demands under a trust established pursuant to a plan of reorganization under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. Section 1101 et seq.).

Added by Acts 2005, 79th Leg., Ch. 97 (S.B. 15), Sec. 2, eff. September 1, 2005.

Sec. 90.012. SUPREME COURT RULEMAKING. The supreme court may promulgate amendments to the Texas Rules of Civil Procedure regarding the joinder of claimants in asbestos-related actions or silica-related actions if the rules are consistent with Section 90.009.

Added by Acts 2005, 79th Leg., Ch. 97 (S.B. 15), Sec. 2, eff. September 1, 2005.

SUBCHAPTER B. ASBESTOS OR SILICA TRUST CLAIMS

Sec. 90.051. DEFINITIONS. In this subchapter:

(1) "Asbestos or silica trust" means a claims facility, a claims agent, a qualified settlement fund, or any other entity that:

(A) is created under 11 U.S.C. Section 524(g) or another applicable law for the benefit of creditors of a bankrupt person;

(B) is formed for the purpose of compensating claimants for asbestos- or silica-related injuries; and

(C) is in existence on the date trial in an action asserting an asbestos- or silica-related injury is set to commence.

(2) "Trust claim" means any filing with or claim against an asbestos or silica trust seeking recovery of compensation or damages for or arising from the asbestos- or silica-related injury of an exposed person.

(3) "Trust claim material" means documentation filed

as part of or in connection with a trust claim, including:

(A) documentation that a claimant submits or provides to an asbestos or silica trust for the purpose of demonstrating asbestos or silica exposure, the existence of an asbestos- or silica-related injury, or the validity of a trust claim; and

(B) claim forms and other materials that an asbestos or silica trust requires a claimant to submit.

Added by Acts 2015, 84th Leg., R.S., Ch. 532 (H.B. 1492), Sec. 3, eff. September 1, 2015.

Sec. 90.052. REQUIREMENT TO MAKE TRUST CLAIMS. (a) Except as provided by Subsection (d), a claimant who has filed an action to recover damages for or arising from an asbestos- or silica-related injury shall make a trust claim against each asbestos or silica trust the claimant believes may owe compensation or damages to the claimant for the injury that is the basis of the claimant's action.

(b) A claimant must make each trust claim required under this section not later than:

(1) the 150th day before the date trial in the action is set to commence; or

(2) a date provided by court order if trial is set to commence on or before January 31, 2016.

(c) A claimant may file a motion seeking relief from the obligation to make a trust claim otherwise required by this section if the claimant believes that the fees and expenses, including attorney's fees, for filing the trust claim exceed the claimant's reasonably anticipated recovery from the trust.

(d) If a claimant files a motion under Subsection (c), the court shall determine whether the claimant's fees and expenses, including attorney's fees, for making the trust claim exceed the claimant's reasonably anticipated recovery from the trust. If the court determines that the claimant's fees and expenses exceed the claimant's reasonably anticipated recovery, the claimant is not required to make the trust claim but shall provide the court with a verified statement of the exposed person's exposure history to asbestos or silica that is covered by the trust.

Added by Acts 2015, 84th Leg., R.S., Ch. 532 (H.B. 1492), Sec. 3, eff. September 1, 2015.

Sec. 90.053. NOTICE OF TRUST CLAIM; PRODUCTION OF TRUST CLAIM MATERIAL. (a) A claimant in an action to recover damages for or arising from an asbestos- or silica-related injury shall serve on each party notice of, and trust claim material relating to, each trust claim made by or on behalf of the exposed person. The notice must:

(1) identify each trust claim made by or on behalf of the exposed person;

(2) state the amount of any trust claim payment made to compensate for the exposed person's injury; and

(3) state the date each trust claim was made and whether a request for individual or enhanced review or for a deferral, delay, suspension, or tolling of the claim has been submitted to the trust.

(b) The claimant shall serve the notice and trust claim materials required by Subsection (a) not later than:

(1) the 120th day before the date trial in the action is set to commence; or

(2) a date provided by court order if the court entered an order under Section 90.052(b).

(c) The notice and trust claim materials required to be served under Subsection (a) are in addition to any notice or materials required to be served or produced under other law, rule, order, or applicable agreement.

(d) If a claimant makes a trust claim after the date provided by Section 90.052(b) but before the date that trial in the action commences, the claimant shall serve the notice of, and trust claim material relating to, the trust claim as required by Subsection (a) reasonably promptly after making the trust claim, but not later than the earlier of:

(1) the date that trial commences; or

(2) the 15th day after the date the additional trust claim is made.

(e) If a claimant discovers that the notice or trust claim

materials provided by the claimant under this section were incomplete or incorrect at the time the notice or trust claim materials were served or that the notice or trust claim materials as served are no longer complete and correct, the claimant shall supplement the notice and the production of trust claim materials. The claimant shall serve the supplemental notice or trust claim materials reasonably promptly after the claimant discovers the necessity for the supplementation, but not later than the 15th day after the date the claimant discovers the necessity for the supplementation.

(f) A claimant shall serve notice of, and trust claim material relating to, a trust claim regardless of whether the claim is for an injury resulting in cancer or an injury not resulting in cancer.

Added by Acts 2015, 84th Leg., R.S., Ch. 532 (H.B. 1492), Sec. 3, eff. September 1, 2015.

Sec. 90.054. FAILURE TO MAKE TRUST CLAIM OR PROVIDE NOTICE AND TRUST CLAIM MATERIAL. (a) An MDL pretrial court may not remand an action to a trial court and a trial court may not commence trial in the action unless the claimant has:

(1) made each trust claim as required by this subchapter; and

(2) served the notice of, and trust claim material relating to, those trust claims in accordance with Section 90.053.

(b) If a claimant received compensation from an asbestos or silica trust for an injury that also gave rise to a judgment against a defendant for the same injury and the claimant failed to serve the relevant notice and trust claim material as required by Section 90.053, the trial court, on a defendant's or judgment debtor's motion and after reasonable notice to the parties, may impose an appropriate sanction, including setting aside the judgment and ordering a new trial.

(c) This section may not be construed to require payment of a trust claim by an asbestos or silica trust before the MDL pretrial court remands the action for trial or before a judgment is rendered in the action.

Added by Acts 2015, 84th Leg., R.S., Ch. 532 (H.B. 1492), Sec. 3, eff. September 1, 2015.

Sec. 90.055. MOTION TO STAY. (a) A defendant may file a motion requesting a stay of the proceedings under Section 90.057 on or before the later of:

(1) the 60th day before the date trial in the action is set to commence;

(2) the 15th day after the date the defendant first obtains asbestos- or silica-exposure information that could support an additional asbestos or silica trust claim by the claimant; or

(3) a date provided by court order if the court entered an order under Section 90.052(b).

(b) The motion described by Subsection (a) must include:

(1) a list of asbestos or silica trusts not disclosed by the claimant against which the defendant in good faith believes the claimant may make a successful trust claim; and

(2) information supporting the additional trust claim described by Subdivision (1), including information that may be used to meet the trust claim requirements of an asbestos or silica trust described by Subdivision (1).

Added by Acts 2015, 84th Leg., R.S., Ch. 532 (H.B. 1492), Sec. 3, eff. September 1, 2015.

Sec. 90.056. RESPONSE TO MOTION TO STAY. (a) Not later than the 14th day after the date the defendant files a motion to stay under Section 90.055 or the date provided by court order under Section 90.052(b), the claimant may file a response:

(1) stating and providing proof that the claimant has made a trust claim identified in the defendant's motion and served the notice of, and trust claim material relating to, the claim as prescribed by Section 90.053; or

(2) requesting a determination by the court that the fees and expenses, including attorney's fees, for filing a trust claim identified in the motion exceed the claimant's reasonably anticipated recovery from the trust.

(b) If the claimant files a response making a request under Subsection (a)(2), the court shall determine whether the claimant's fees and expenses, including attorney's fees, for making the relevant trust claim exceed the claimant's reasonably anticipated recovery from the trust. If the court determines that the claimant's fees and expenses exceed the claimant's reasonably anticipated recovery, the claimant is not required to make the trust claim but shall provide the court with a verified statement of the exposed person's exposure history to asbestos or silica that is covered by the trust.

Added by Acts 2015, 84th Leg., R.S., Ch. 532 (H.B. 1492), Sec. 3, eff. September 1, 2015.

Sec. 90.057. STAY OF PROCEEDINGS. (a) The court shall grant a motion to stay under Section 90.055 if the court determines the motion was timely filed and the claimant is likely to receive compensation from a trust identified by the motion. The stay shall continue until the claimant provides proof that the claimant has made the claim and served notice of, and trust claim material relating to, the claim as prescribed by Section 90.053.

(b) The court may not stay the proceedings if, with respect to each trust claim identified in the motion:

(1) the court determines that the claimant has satisfied the requirements of Section 90.053(a); or

(2) the court makes a determination described by Section 90.052(d) or 90.056(b).

Added by Acts 2015, 84th Leg., R.S., Ch. 532 (H.B. 1492), Sec. 3, eff. September 1, 2015.

Sec. 90.058. EVIDENCE OF TRUST CLAIMS. (a) Trust claim material is presumed to be authentic, relevant, and discoverable in an action to which this subchapter applies.

(b) Notwithstanding an agreement, including a confidentiality agreement, trust claim material is presumed to not be privileged in an action to which this subchapter applies.

(c) This section may not be construed to affect the application of Section 33.003 to an action governed by this

chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 532 (H.B. [1492](#)), Sec. 3,
eff. September 1, 2015.