
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1150 Session of
2013

INTRODUCED BY CUTLER, GRELL, EVANKOVICH, MILLARD, ROCK, HESS,
PICKETT, SACCONI, MILLER, KAMPF, GREINER, TURZAI, SAYLOR,
MCGINNIS, EVERETT, EMRICK, MARSICO, MILNE, GROVE, STEVENSON,
TOOHIL, TRUITT, HELM, GODSHALL, PYLE, SWANGER, MALONEY,
KRIEGER AND KAUFFMAN, APRIL 8, 2013

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 8, 2013

AN ACT

1 Providing for transparency of claims made against asbestos-
2 related bankruptcy trusts, for compensation and allocation of
3 responsibility, for the preservation of resources and for the
4 imposition of liabilities.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Fairness in
9 Claims and Transparency (FaCT) Act.

10 Section 2. Purpose.

11 The purposes of this act are:

12 (1) To provide transparency of claims made against
13 bankruptcy trusts and in the tort system.

14 (2) To facilitate fair and appropriate compensation to
15 plaintiffs with a rational allocation of responsibility to
16 all persons, whether current defendants or not, consistent
17 with existing State law.

1 (3) To preserve the resources of defendants involved in
2 tort claims and bankruptcy trusts to help promote adequate
3 recoveries for deserving plaintiffs.

4 (4) To ensure that liabilities properly borne by
5 bankruptcy trusts are not imposed upon defendants in the tort
6 system.

7 Section 3. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Apportionment nonparty." An entity, regardless of solvency,
12 which establishes or has established an asbestos trust against
13 which the plaintiff has filed a claim or has a reasonable basis
14 for filing a claim.

15 "Asbestos action." Any civil lawsuit in which the plaintiff
16 seeks damages for an asbestos-related injury.

17 "Asbestos trust." Any trust or claims facility created or in
18 the process of being created as a result of bankruptcies or
19 other settlements that are intended to provide compensation to
20 plaintiffs alleging asbestos-related injuries, including trusts
21 created under 11 U.S.C. § 524(g) (relating to effect of
22 discharge).

23 "Defendant." Any party to an asbestos action other than a
24 plaintiff, an apportionment nonparty or an asbestos trust.

25 "Plaintiff." Any of the following:

26 (1) An individual filing an asbestos action on the
27 individual's behalf.

28 (2) A person permitted by law to represent an individual
29 filing an asbestos action during the individual's lifetime or
30 as the legal representative of the estate of an individual

1 claiming injury from asbestos during the individual's
2 lifetime.

3 "Settlement credit." The amount paid by an apportionment
4 nonparty through an asbestos trust in excess of the asbestos
5 trust's apportioned liability at trial.

6 Section 4. Apportionment of responsibility.

7 (a) General rule.--An apportionment nonparty shall be
8 apportioned responsibility, for liability purposes, in an
9 asbestos action pursuant to 42 Pa.C.S. § 7102(a.2) (relating to
10 comparative negligence) and this section.

11 (b) Designation of apportionment nonparty.--A defendant in
12 an asbestos action may, at any time, move to designate an
13 asbestos trust as an apportionment nonparty. If the court
14 determines by a preponderance of the evidence that the plaintiff
15 has filed or has a reasonable basis for filing a claim with the
16 asbestos trust, the court shall make the designation and
17 liability shall be apportioned pursuant to 42 Pa.C.S. §
18 7102(a.2) and this section.

19 (c) Settlement credits.--

20 (1) If liability is apportioned in an asbestos action
21 among defendants and apportionment nonparties, the court
22 shall calculate the amount of any settlement credits and mold
23 the verdict to reflect all appropriate credits.

24 (2) Each apportionment nonparty that has compensated a
25 plaintiff for more than its apportioned share of the verdict
26 shall be awarded a settlement credit, and the damages awarded
27 to the plaintiff shall be reduced by the amount of each
28 settlement credit.

29 (3) Each apportionment nonparty that has compensated a
30 plaintiff for less than its apportioned share of the verdict

1 shall not be awarded a settlement credit.

2 (4) If an asbestos action proceeds to verdict before the
3 plaintiff has received a final decision as to payment of the
4 plaintiff's claim from an apportionment nonparty, there shall
5 be a rebuttable presumption that the plaintiff will receive
6 the maximum possible value of the claim available for the
7 plaintiff's asbestos-related injury, as published in the
8 applicable trust governance documents. If a verdict in favor
9 of the plaintiff is entered, the court shall establish for
10 each pending apportionment nonparty claim the maximum
11 possible value as set forth in the trust governance
12 documents, which value, when applicable, shall be used for
13 purposes of calculating settlement credit.

14 (5) An apportionment of settlement credits provided for
15 under this section shall be governed by this section and 42
16 Pa.C.S. § 7102 and shall not be subject to the limitations of
17 42 Pa.C.S. § 8326 (relating to effect of release as to other
18 tort-feasors).

19 Section 5. Disclosure of information from asbestos trusts.

20 (a) File.--Not later than 90 days prior to trial of an
21 asbestos action, or at another time as ordered by the court,
22 whichever is earlier, a plaintiff shall file with the court and
23 serve on all parties:

24 (1) a statement listing all existing or potential claims
25 the plaintiff has filed or has a reasonable basis to file
26 against any asbestos trust; and

27 (2) a statement listing all payments or funds the
28 plaintiff has received or reasonably believes the plaintiff
29 may be entitled to receive from each asbestos trust.

30 (b) Statement.--The statement provided under subsection (a)

1 shall:

2 (1) be supported by a certification made subject to the
3 penalties of 18 Pa.C.S. § 4904 (relating to unsworn
4 falsification to authorities) from the plaintiff that the
5 plaintiff has conducted a reasonable investigation and has
6 disclosed all claims the plaintiff has filed or has a
7 reasonable basis to file against an asbestos trust;

8 (2) disclose when each claim was or will be submitted to
9 each asbestos trust and the status of each claim, including
10 whether there has been a response from the asbestos trust and
11 whether the plaintiff has requested deferral, delay or
12 tolling of any aspect of the asbestos trust claims process;
13 and

14 (3) disclose the amount of compensation, if any, the
15 plaintiff has received or reasonably believes the plaintiff
16 may receive from the asbestos trust along with a statement
17 explaining any contingencies that may cause the amount of
18 compensation to change in the future.

19 (c) Service.--When the plaintiff files and serves the
20 statement required under subsection (a), the plaintiff shall
21 serve on all parties to the asbestos action copies of the
22 plaintiff's submissions to and communications with each asbestos
23 trust identified, including copies of electronic data and e-
24 mails, proof-of-claim forms and all other materials or
25 information provided to the asbestos trust or received from the
26 asbestos trust in relation to a claim, including all of the
27 following:

28 (1) Work histories, exposure allegations, affidavits,
29 depositions and trial testimony of the plaintiff and others
30 knowledgeable about the plaintiff's exposure history.

1 (2) All medical documentation relating to the
2 plaintiff's claim, including, but not limited to, x-rays,
3 test results, diagnostic reports, CT reports, cytology
4 reports, all other medical reports and pathology results.

5 (3) The trust governance documents, including the
6 payment amounts specified in the documents.

7 (d) Duty.--The plaintiff shall have a continuing duty, until
8 final resolution of the action, to supplement the statement
9 provided under subsection (a) and the production of materials
10 under subsection (c), as follows:

11 (1) If the plaintiff learns that the statement filed
12 under subsection (a) was incomplete or incorrect when filed,
13 or although complete and correct when filed, is no longer
14 complete and correct, the plaintiff shall file and serve a
15 supplemental statement on all parties to an asbestos action.
16 The supplemental statement must be filed and served within 30
17 days after the plaintiff discovers the necessity for
18 supplementation, or within the time as ordered by the court.

19 (2) If the plaintiff files or provides a claim form or
20 other materials to an asbestos trust after the plaintiff's
21 initial service of materials under subsection (c), the
22 plaintiff must serve copies of the additional materials on
23 all parties to the action. The supplemental materials must be
24 served within 30 days after the plaintiff provides the
25 materials to the asbestos trust.

26 (3) A plaintiff's asbestos action shall be stayed in its
27 entirety until the plaintiff certifies that all existing or
28 potential claims identified in the statement provided under
29 subsection (a), as supplemented, have been filed and
30 identified. Unless all defendants in an asbestos action

1 consent, an asbestos action may not begin trial until at
2 least 30 days after a statement is supplemented under
3 paragraph (1) or mandatory disclosures are supplemented under
4 paragraph (2).

5 (e) Discovery.--A defendant in an asbestos action may seek
6 discovery from an asbestos trust identified by the plaintiff in
7 the plaintiff's statement under subsection (a), as supplemented.
8 If a defendant seeks discovery from an asbestos trust, the
9 plaintiff shall provide consent, a signed authorization and
10 permission for the release of relevant information and
11 materials, if required by the asbestos trust.

12 (f) Sanctions.--Failure by a plaintiff to comply with the
13 disclosure and discovery requirements under this section shall
14 be a basis for the imposition of sanctions.

15 Section 40. Effective date.

16 This act shall take effect in 90 days.