

Asbestos Claims Bill Would Ax Fraud, Not Privacy, Attys Say

By **Maria Chutchian**

Law360, New York (November 13, 2013, 7:52 PM ET) -- The benefits for future claimants seeking compensation from asbestos bankruptcy trusts provided under a bill the U.S. House of Representatives greenlighted Wednesday would outweigh the potential privacy issues opponents say come with it, attorneys say.

The Furthering Asbestos Claim Transparency Act, H.R. 982, was approved 221-199. If enacted, it would require asbestos trusts set up under Section 524(g) of the U.S. Bankruptcy Code for insolvent companies that have been hammered with personal injury and wrongful death claims to disclose information on the individuals who file the claims. The goal is to deter the payment of duplicative and fraudulent claims that some say have been piling up since 1994, when Congress passed the legislation, which allows bankrupt companies mired in asbestos-related litigation to set up such trusts.

The bill's proponents say they are trying to preserve the trusts' limited funds for claimants who discover their symptoms down the road and seek compensation, and bankruptcy experts think the proposed requirements could fulfill that goal.

"To the extent that [the bill is] making sure there's no double dipping, it might work for the benefit of future claimants," said Jan Hayden of Baker Donelson Bearman Caldwell & Berkowitz, PC, who represented Babcock & Wilcox Co. in its asbestos-related bankruptcy in the early 2000s.

The FACT Act would charge asbestos trusts with filing quarterly public reports with bankruptcy courts detailing each claim for compensation they receive. It would also require trusts to provide information about claims to parties in a separate asbestos suit upon request. There are about 60 trusts that collectively hand out around \$2.5 billion in payments annually, according to a study from A.M. Best Co.

It's not clear precisely how many of the payments are made to claimants who have either filed fraudulently or have already received compensation from other trusts or the tort system, though Jonathan Young of Edwards Wildman Palmer LLP notes that improper claims are "certainly part of the landscape." Whether fraud and so-called "double dipping" are widespread issues for asbestos trusts is a key dispute with respect to the bill, according to Jeremy Johnson of McDermott Will & Emery.

On the political spectrum, Republicans make up most of the legislation's supporters, while Democrats are largely opposed. Parties on both sides of the argument have produced varying estimates of the degree to which duplicative and improper claims exist, but bankruptcy attorneys say that either way, the legislation is a step in the right direction.

“I think to the extent that fraud exists, [the bill] may well be effective in combating fraud,” Johnson said.

With no safeguards in place mandating public records of who was filing claims and plaintiffs firms largely in control of the asbestos trusts — in addition to no court oversight — the claims process for these trusts has been plodding along quietly, experts say. The lack of information surrounding the claimants leaves the door open for a single individual to sue many different trusts or nonbankrupt companies for asbestos injuries he sustained without the defendants’ knowledge, attorneys say.

And due to the latent nature of asbestos symptoms, victims are constantly coming out of the woodwork decades after they were exposed, Hayden noted. Since the trusts have a finite pool of funds and have to “take care of a lot of people,” they need to be preserved for as long as possible, she said.

The bill was introduced by Reps. Blake Farenthold, R-Texas, and Jim Matheson, D-Utah, earlier this year. Even though the bill succeeded in the House, there’s a good chance it will hit trouble in the Senate, where a version was proposed last year but never gained any traction.

Proponents of the bill say the proposed regulations will preserve more funds for future asbestos claimants because the trusts will be able to see who already has filed for or received payment, which will make it more difficult for claimants to receive recovery on their additional claims.

But asbestos victim advocates have criticized the legislation as harmful to the claimants who have suffered various illnesses as a result of being exposed to asbestos either through their jobs or certain asbestos-containing products. They said the requirements will be costly, burdensome and make it more difficult for victims to seek compensation for their injuries. Opponents of the bill also contend it forces claimants to publicly share private information like the last four digits of their Social Security number, but bankruptcy experts say there’s little cause for worry.

“The reports involving claims made and claims involved will obviously have to be screened for privacy issues,” Johnson said. “But the physical act of reporting claims that are there and the status of the reconciliation process — that’s exactly what these trusts are designed to do.”

The bill says the reports would require the disclosure of the claimants’ names, the nature of their exposure to asbestos and the basis for any payment being requested from the trust. The reports would not include, however, “any confidential medical record or the claimant’s full Social Security number,” it says.

Opponents argue that “confidential medical record” is not clearly defined and that disclosing the information being sought will actually make it easier for fraudsters to submit improper claims. Young noted that the privacy concerns will rest on where the line is drawn with respect to personal identifiers.

But others say the information being sought is not burdensome enough to invalidate the benefits of preventing fraud and preserving funds for future claimants.

“Perhaps the plaintiffs bar should have come up with a way to police themselves before this, before Congress had to act,” Ronald Abrams of Ezra Brutzkus Gubner LLP said.

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