

## W.Va. Restricts Overnaming Defendants In Asbestos Suits

By **Sue Reisinger**

Law360 (April 19, 2021, 4:30 PM EDT) -- A West Virginia law signed last week requires plaintiffs in asbestos cases to file a "sworn information form" specifying the evidentiary basis for each claim and to provide any supporting documentation.

The purpose of the new law, which goes into effect on June 29, is to block plaintiffs' lawyers who file claims that "overname" defendants, a process that has angered general counsel and corporate defense attorneys. Overnaming occurs when plaintiffs throw company names into their claims even if there's a lack of evidence against them.

It has cost companies millions of dollars over the years to get baseless suits dismissed.

Asbestos defense attorney Mary Margaret Gay told Law360 on Monday, "I think the swift passage of the bill in West Virginia will encourage other states to stop this abuse of the legal system that has been a factor in forcing companies into bankruptcy."

Gay, a founding member of the Jackson, Mississippi, law firm Gay Jones & Kuhn PLLC, has worked with general counsel on national asbestos defense teams and analyzed this type of litigation for more than 20 years.

"This is really simple," Gay said. "Plaintiffs' lawyers should not be suing companies at random. They should only be suing companies when they have evidence that the company has a relationship to the plaintiff's injury."

Lester Brickman, an emeritus professor of law and former acting dean at the Benjamin N. Cardozo School of Law in New York City, said recently that overnaming generates millions of dollars in settlements, "because it is cheaper to pay plaintiff counsel a couple thousand dollars than to litigate the issue of relevance to the claim of injury. Some plaintiff counsel list hundreds of defendants that are served when they file an asbestos case."

West Virginia is the second state to pass a law against overnaming in asbestos cases, after Iowa passed a similar measure last year. West Virginia Gov. Jim Justice signed the bill into law on Thursday.

Under the new law, failure to provide the sworn information with the claim can lead to dismissal of the action against that defendant.

The required information includes, to the best of the plaintiff's ability, the location and manner of each alleged exposure, the beginning and ending dates of each exposure, and the identity of the manufacturer of the specific asbestos or silica product for each exposure.

Morgantown, West Virginia, plaintiff attorney John Hurst does not see the need for such a law. Hurst handles toxic tort cases at Motley Rice LLC.

"It's certainly wasn't our proposal, from those representing West Virginia asbestos victims," Hurst said. "It's something that we'll learn to live with, through different procedural adjustments."

Hurst said that numerous defendants are often named because asbestos cases are unique in that individuals could be exposed to it in a number of products.

"I don't view overnaming as being a problem," he said. "There was already a process to dismiss cases if there's no evidence."

--Editing by Nicole Bleier.

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