

**Effective 5/3/2023**

**Part 24**  
**Asbestos Litigation Requirements**

**78B-6-2401 Definitions.**

As used in this part:

- (1) "AMA guides" means the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of an examination or test on an exposed individual.
- (2) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 C.F.R. Sec. 1910 at the time the asbestos action is filed.
- (3) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by the inhalation of asbestos fibers.
- (4)
  - (a) "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action resulting from, based on, or related to:
    - (i) the health effects of exposure to asbestos, including:
      - (A) loss of consortium;
      - (B) wrongful death;
      - (C) mental or emotional injury;
      - (D) risk or fear of disease or other injury; and
      - (E) costs of medical monitoring or surveillance; and
    - (ii) any other derivative claim made by or on behalf of an individual exposed to asbestos or a representative, spouse, parent, child, or other relative of that individual.
  - (b) "Asbestos action" does not include a claim for workers' compensation or veterans benefits.
- (5) "Asbestos trust" means a:
  - (a) government-approved or court-approved trust that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;
  - (b) qualified settlement fund that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;
  - (c) compensation fund or claims facility created as a result of an administrative or legal action that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;
  - (d) court-approved bankruptcy that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products; or
  - (e) plan of reorganization or trust pursuant to 11 U.S.C. Sec. 524(g) or 11 U.S.C. Sec. 1121(a) or other applicable provision of law that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products.
- (6) "ATS testing standards" means the official technical statements from the American Thoracic Society for pulmonary function testing in effect at the time of the performance of an examination or test on an exposed individual.

- (7) "Board-certified physician in internal medicine" means a licensed physician who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.
- (8) "Board-certified physician in occupational medicine" means a licensed physician who is certified in the specialty of:
  - (a) occupational medicine by the American Board of Preventative Medicine; or
  - (b) occupational and environmental medicine by the American Osteopathic Board of Preventative Medicine.
- (9) "Board-certified physician in pathology" means a licensed physician:
  - (a) who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Pathology; and
  - (b) whose professional practice is principally in the field of pathology involving regular evaluation of pathology materials obtained from surgical or postmortem specimens.
- (10) "Board-certified physician in pulmonary medicine" means a licensed physician who is certified in the specialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine.
- (11) "Certified B reader" means a physician who is certified as a B reader by the National Institute for Occupational Safety and Health.
- (12) "Chest x-ray" means a chest film taken in accordance with applicable state and federal laws and taken in the posterior-anterior view.
- (13) "Exposed individual" means an individual whose exposure to asbestos is the basis for the asbestos action.
- (14) "FEV1" means the maximal volume of air expelled in the first second during performance of spirometry.
- (15) "FEV1/FVC ratio" means the ratio that is calculated from FEV1 divided by FVC.
- (16) "FVC" means the maximal volume of air expired with maximum effort from a position of full inspiration.
- (17) "ILO system" means the system for the classification of chest x-rays provided in the International Labour Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect at the time of the performance of an examination or test on an exposed individual.
- (18) "Law firm" means a person that employs a lawyer.
- (19) "Lawyer" means an individual who is authorized to provide legal services in any state or territory of the United States.
- (20)
  - (a) "Nonmalignant condition" means a condition that may be caused by asbestos other than a diagnosed cancer.
  - (b) "Nonmalignant condition" does not include asbestos-related lung cancer accompanied by asbestosis.
- (21) "Pathological evidence of asbestosis" means a statement by a board-certified physician in pathology that more than one representative section of lung tissue demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies and there is no other more likely explanation for the presence of the fibrosis.
- (22) "Plaintiff" means:
  - (a) the person bringing the asbestos action, including a personal representative if the asbestos action is brought by an estate; or
  - (b) a conservator or next friend if the asbestos action is brought on behalf of a minor or legally incapacitated individual.

- (23) "Plethysmography" means the test for determining lung volume in which the exposed individual is enclosed in a chamber equipped to measure pressure, flow, or volume change.
- (24) "Predicted lower limit of normal" means the fifth percentile of healthy populations based on age, height, and gender as referenced in the AMA guides.
- (25) "Pulmonary function testing" means spirometry, lung volume testing, and diffusion capacity testing, including appropriate measurements, quality control data, and graphs, that are performed in accordance with the methods of calibration and techniques provided in the AMA guides and the ATS testing standards in effect at the time of the performance of a test on an exposed individual.
- (26) "Qualified physician" means a licensed physician who:
- (a) is a board-certified physician in internal medicine, a board-certified physician in occupational medicine, a board-certified physician in pathology, or a board-certified physician in pulmonary medicine, as is appropriate to the diagnostic specialty in question;
  - (b)
    - (i) conducted a physical examination of the exposed individual and took a detailed occupational, exposure, medical, smoking, and social history from the exposed individual; or
    - (ii) if the exposed individual is deceased, reviewed the pathology material and took a detailed history from the individual most knowledgeable about the information forming the basis of the asbestos action;
  - (c)
    - (i) treated the exposed individual and had a physician-patient relationship with the exposed individual at the time of the physical examination; or
    - (ii) if the licensed physician is a board-certified physician in pathology, examined tissue samples or pathological slides of the exposed individual;
  - (d) prepared or directly supervised the preparation and final review of a medical report under this part; and
  - (e) has not relied on any examinations, tests, radiographs, reports, or opinions of a doctor, clinic, laboratory, or testing company that performed an examination, test, radiograph, or screening of the exposed individual in violation of a law, regulation, licensing requirement, or medical ethics requirement of the state in which the examination, test, radiograph, or screening of the exposed individual was conducted.
- (27) "Radiological evidence of asbestosis" means a quality 1 or 2 chest x-ray showing bilateral small, irregular opacities, classified by width as s, t, or u, that occur primarily in the lower lung zones graded by a certified B reader as at least 1/0 on the ILO system.
- (28) "Radiological evidence of diffuse bilateral pleural thickening" means a quality 1 or 2 chest x-ray showing diffuse bilateral pleural thickening of at least b2 on the ILO system and blunting of at least one costophrenic angle as classified by a certified B reader.
- (29) "Spirometry" means a test of air capacity of the lung through a spirometer that measures the volume of air inspired and expired.
- (30) "Supporting test results" means a report by a certified B reader, x-ray examinations, diagnostic imaging of the chest, pathology reports, pulmonary function testing, and other tests, which are reviewed by the diagnosing physician or qualified physician in reaching the physician's conclusions.
- (31) "Sworn declaration" means the same as that term is defined in Section 78B-18a-102.
- (32) "Timed gas dilution" means a method for measuring total lung capacity in which the individual breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time and the concentration of that inert and insoluble gas in the lung is compared to the concentration of that type of gas in the spirometer.

- (33) "Total lung capacity" means the volume of gas contained in the lungs at the end of the maximal inspiration.
- (34) "Trust claims materials" means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including:
- (a) claims forms and supplementary materials;
  - (b) affidavits;
  - (c) depositions and trial testimony;
  - (d) work history;
  - (e) medical and health records;
  - (f) documents reflecting the status of a claim against an asbestos trust; and
  - (g) all documents relating to the settlement of the trust claim if the trust claim has settled.
- (35) "Trust governance documents" means all documents that relate to eligibility and payment levels, including:
- (a) claims payment matrices; and
  - (b) trust distribution procedures or plans for reorganization for an asbestos trust.
- (36) "Veterans benefits" means a program for benefits in connection with military service administered by the United States Department of Veterans Affairs under United States Code, Title 38, Veterans Benefits.
- (37)
- (a) "Workers' compensation" means a program administered by the United States or a state to provide benefits, funded by a responsible employer or the employer's insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries.
  - (b) "Workers' compensation" includes the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Sec. 901 et seq., and Federal Employees' Compensation Act, 5 U.S.C. Sec. 8101 et seq.
  - (c) "Workers' compensation" does not include the Federal Employers' Liability Act, 45 U.S.C. Sec. 51 et seq.

Renumbered and Amended by Chapter 80, 2023 General Session

**78B-6-2402 Required disclosures by plaintiff within 21 days of filing asbestos action.**

- (1) Within 21 days after the day on which the first answer is filed in response to the plaintiff's complaint in an asbestos action, the plaintiff shall provide all parties with a sworn declaration stating the evidence providing the basis for each claim against each defendant, including:
- (a) the name, address, date of birth, marital status, occupation, smoking history, and current and past employers and worksites of the exposed individual;
  - (b) the name and address of each individual who is knowledgeable about each exposure to asbestos and the exposed individual's relationship to that individual;
  - (c) the manufacturer or seller and the specific name of each asbestos-containing product, including any brand or trade name of that product, to which the exposed individual was exposed to asbestos or the other individual was exposed to asbestos if the exposed individual's exposure to asbestos was through another individual;
  - (d) the specific sites and the location at the sites that establish the direct connection between the exposed individual, or the other individual if the exposed individual's exposure to asbestos was through another individual, and each defendant;

- (e) the beginning and ending dates of each exposure and the frequency of each exposure for the exposed individual or the other individual if the exposed individual's exposure to asbestos was through another individual;
  - (f) the condition that is alleged to have been caused by exposure to asbestos; and
  - (g) any supporting documentation relating to the information required under this Subsection (1).
- (2) The sworn declaration under Subsection (1) is in addition to the disclosures required under Sections 78B-6-2403 and 78B-6-2405.
- (3) Except as provided in Subsection (4), on a motion by a defendant in an asbestos action, the court shall dismiss a plaintiff's asbestos claim without prejudice:
- (a) against a defendant if the defendant's asbestos-containing product or site is not specifically identified in the sworn declaration under Subsection (1); or
  - (b) against all defendants if the plaintiff fails to comply with Subsection (1).
- (4) The court may not dismiss a plaintiff's asbestos claim under Subsection (3) upon a showing of good cause by the plaintiff.

Enacted by Chapter 80, 2023 General Session

**78B-6-2403 Requirements for asbestos action alleging nonmalignant condition -- Evidence.**

- (1) Within 90 days after the day on which the plaintiff files the complaint in an asbestos action alleging a nonmalignant condition, the plaintiff shall file a detailed narrative medical report and diagnosis, signed under oath by a qualified physician and accompanied by supporting test results, constituting prima facie evidence that the exposed individual has a physical impairment for which exposure to asbestos was a substantial contributing factor.
- (2) A defendant shall have a reasonable opportunity before trial to challenge the adequacy of the prima facie evidence required under this section.
- (3) A court shall dismiss an asbestos action without prejudice upon a finding that the plaintiff failed to make the prima facie showing required by this section.
- (4) To make a prima facie showing under Subsection (1), the detailed narrative medical report and diagnosis shall include:
- (a)
    - (i) radiological evidence of asbestosis or pathological evidence of asbestosis;
    - (ii) radiological evidence of diffuse bilateral pleural thickening; or
    - (iii) a high-resolution computed tomography scan showing evidence of asbestosis or diffuse pleural thickening;
  - (b) a detailed occupational and exposure history from the exposed individual, or the individual most knowledgeable about the exposed individual's exposure to asbestos if the exposed individual is deceased, that includes:
    - (i) the exposed individual's principal places of employment;
    - (ii) the exposed individual's exposure to airborne contaminants; and
    - (iii) whether the exposed individual's principal places of employment involved any exposure to airborne contaminants, including asbestos fibers or other disease-causing dusts or fumes that may cause a physical impairment and the nature, duration, and level of that exposure;
  - (c) a detailed medical, social, and smoking history from the exposed individual, or the individual most knowledgeable about the exposed individual's exposure to asbestos if the exposed individual is deceased, that includes a thorough review of the past and present medical problems of the exposed individual and the likely cause of the medical problems;
  - (d) evidence verifying that at least 15 years have passed between the exposed individual's date of first exposure to asbestos and the date of diagnosis;

- (e) evidence that the exposed individual has a permanent respiratory impairment rating of at least class 2 as defined by and evaluated in accordance with the AMA guides;
  - (f) evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial factor to the exposed individual's physical impairment based on a determination that the exposed individual has:
    - (i) FVC below the predicted lower limit of normal and a FEV1/FVC ratio, using actual values, equal to or above the predicted lower limit of normal;
    - (ii) total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; or
    - (iii) a chest x-ray showing bilateral small, irregular opacities, classified by width as s, t, or u, and graded by a certified B reader as at least 2/1 on the ILO system; and
  - (g) a statement from the qualified physician that exposure to asbestos was a substantial contributing factor to the exposed individual's physical impairment and was likely not the result of any other cause.
- (5) A statement by the qualified physician that the exposed individual's physical impairment is consistent with, or compatible with, an exposure to asbestos, or words to that effect, does not satisfy the requirements under Subsection (4)(g).
- (6) Evidence relating to the prima facie showing under this section:
- (a) shall comply with the quality controls, equipment requirements, methods of calibration, and techniques provided in the AMA guides and ATS testing standards;
  - (b) may not be based on testing or examination that violates a law, regulation, licensing requirement, or medical ethics requirement of the state in which the test or examination was conducted;
  - (c) may not be obtained under the condition that the plaintiff retains the services of the lawyer or law firm sponsoring the examination, test, or screening;
  - (d) does not create a presumption that the exposed individual has an asbestos-related injury or impairment; and
  - (e) is not conclusive as to the liability of any defendant.
- (7) A party in an asbestos action may not offer evidence at trial regarding, and the jury may not be informed of:
- (a) the grant or denial of a motion to dismiss an asbestos action under this section; or
  - (b) the requirements of a prima facie showing under this section.
- (8)
- (a) Except as provided in Subsection (8)(b), a plaintiff may not commence discovery against any defendant in an asbestos action until a court enters an order determining that the plaintiff has established a prima facie showing under this section.
  - (b) The parties to an asbestos action may conduct discovery in regard to establishing or challenging a prima facie showing under this section.

Enacted by Chapter 80, 2023 General Session

**78B-6-2404 Accrual of action alleging nonmalignant condition.**

Notwithstanding the requirements of Section 78B-2-117, the statute of limitations for an asbestos action alleging a nonmalignant condition that is not time barred on or before May 3, 2023, may not begin to run until the earlier of the day on which:

- (1) the exposed individual is diagnosed with a physical impairment that meets the prima facie evidence requirements of Section 78B-6-2403;

- (2) the exposed individual discovered facts that would have led a reasonable individual to obtain a diagnosis with respect to the existence of a physical impairment from exposure to asbestos that would have met the prima facie evidence requirements of Section 78B-6-2403; or
- (3) the exposed individual dies.

Enacted by Chapter 80, 2023 General Session

**78B-6-2405 Required disclosures by plaintiff in asbestos action within 120 days of trial.**

- (1) For each asbestos action filed in this state, the plaintiff shall provide all parties with a sworn declaration identifying all asbestos trust claims that have been filed by the plaintiff or by anyone on the plaintiff's behalf, including claims with respect to asbestos-related conditions other than those that are the basis for the asbestos action or that potentially could be filed by the plaintiff against an asbestos trust.
- (2) The sworn declaration shall be provided no later than 120 days prior to the date set for trial for the asbestos action.
- (3) For each asbestos trust claim or potential asbestos trust claim identified in the sworn declaration, the sworn declaration shall include:
  - (a) the name, address and contact information for the asbestos trust;
  - (b) the amount claimed or to be claimed by the plaintiff;
  - (c) the date the plaintiff filed the claim;
  - (d) the disposition of the claim; and
  - (e) whether there has been a request to defer, delay, suspend, or toll the claim.
- (4) The sworn declaration shall include an attestation from the plaintiff, under penalties of perjury, that the sworn declaration is complete and based on a good faith investigation of all potential claims against asbestos trusts.
- (5) The plaintiff shall make available to all parties all trust claims materials for each asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff's behalf against an asbestos trust, including any asbestos-related disease.
- (6) The plaintiff shall supplement the information and materials provided pursuant to this section within 90 days after the day on which the plaintiff files an additional asbestos trust claim, supplements an existing asbestos trust claim, or receives additional information or materials related to any claim or potential claim against an asbestos trust.
- (7) Failure by the plaintiff to make available to all parties all trust claims materials as required by this part shall constitute grounds for the court to extend the trial date in an asbestos action.
- (8)
  - (a) A court shall stay an asbestos action if the court finds that the plaintiff has failed to make the disclosures required by this section within the time period described in Subsection (2).
  - (b) If a plaintiff identifies a potential asbestos trust claim in the disclosures required by this section, the court may stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials for the asbestos trust claim.

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**78B-6-2406 Identification of additional or alternative asbestos trusts by defendant before trial.**

- (1) Not less than 90 days before trial, if a defendant identifies an asbestos trust claim not previously identified by the plaintiff that the defendant reasonably believes the plaintiff can file,

- the defendant shall meet and confer with the plaintiff to discuss why the defendant believes the plaintiff has an additional asbestos trust claim.
- (2) The defendant may move the court for an order to require the plaintiff to file the asbestos trust claim after the meeting under Subsection (1).
  - (3) The defendant shall produce or describe the documentation that the defendant possesses or is aware of in support of the motion under Subsection (2).
  - (4) Within 10 days after the day on which the plaintiff receives the defendant's motion under Subsection (2), the plaintiff shall for each asbestos trust claim identified by the defendant:
    - (a) file the asbestos trust claim;
    - (b) file a written response with the court setting forth the reasons why there is insufficient evidence for the plaintiff to file the asbestos trust claim; or
    - (c) file a written response with the court requesting a determination that the plaintiff's expenses or the plaintiff's attorney fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the trust.
  - (5)
    - (a) If the court determines that there is a sufficient basis for the plaintiff to file the asbestos trust claim identified by the defendant, the court shall:
      - (i) order the plaintiff to file the asbestos trust claim; and
      - (ii) stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials no later than 30 days before trial.
    - (b) If the court determines that the plaintiff's expenses or the plaintiff's attorney fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the asbestos trust, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the asbestos trust.

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**78B-6-2407 Discovery of materials and documents for asbestos trust claim -- Use of asbestos trust materials.**

- (1) Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence.
- (2) Claims of privilege may not apply to any trust claims materials or trust governance documents.
- (3) A defendant in an asbestos action may seek discovery from an asbestos trust.
- (4) The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release information and materials sought by a defendant.
- (5) If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is resolved, the filing of the asbestos trust claim may be considered as relevant and admissible evidence.

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**78B-6-2408 Failure to provide information -- Sanctions.**

A plaintiff who fails to provide all of the information required under Section 78B-6-2405, 78B-6-2406, or 78B-6-2407, is subject to sanctions as provided in the Utah Rules of Civil Procedure and any other relief for the defendants that the court considers just and proper.

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