

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 470
PROPOSED COMMITTEE SUBSTITUTE S470-PCS35305-TG-16

Short Title: Personal Injury Bankruptcy Trust Claims.

(Public)

Sponsors:

Referred to:

March 30, 2017

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING RULE 26 OF THE NORTH CAROLINA RULES OF CIVIL
3 PROCEDURE RELATING TO DISCOVERY IN BANKRUPTCY TRUST PERSONAL
4 INJURY CLAIMS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 1A-1, Rule 26(b) of the Rules of Civil Procedure, is amended by
7 adding a new subdivision to read:

8 "Rule 26. General provisions governing discovery.

9 ...

10 (b) Discovery scope and limits. – Unless otherwise limited by order of the court in
11 accordance with these rules, the scope of discovery is as follows:

12 ...

13 (2a) Bankruptcy Trust Personal Injury Claims. –

14 a. Within 30 days after a civil action is filed asserting personal injury
15 claiming disease based upon exposure to asbestos, the plaintiff shall
16 provide to all parties a sworn statement indicating that an
17 investigation of all bankruptcy trust claims has been conducted and
18 that all bankruptcy trust claims that can be made by the plaintiff have
19 been filed.

20 b. The plaintiff shall provide the parties with the identity of all
21 bankruptcy trust claims made and all materials submitted to or
22 received from a bankruptcy trust.

23 c. The plaintiff shall supplement the information and materials that
24 plaintiff provides pursuant to this subsection within 30 days after the
25 plaintiff files an additional bankruptcy trust claim, supplements an
26 existing bankruptcy trust claim, claim, or receives additional
27 information or materials related to any claim against a bankruptcy
28 trust.

29 d. If a defendant has a reasonable belief that the plaintiff can file
30 additional bankruptcy trust claims, the defendant may move the court
31 to stay the civil action until the plaintiff files the bankruptcy trust
32 claim.

33 e. A defendant in the civil action may seek discovery from a
34 bankruptcy trust. The plaintiff may not claim privilege or
35 confidentiality to bar discovery and shall provide consent or other



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1 expression of permission that may be required by the bankruptcy
2 trust to release information and materials sought by the defendant.

3"

4 **SECTION 2.** G.S. 1B-4 reads as rewritten:

5 **"§ 1B-4. Release or covenant not to sue.**

6 When a release or a covenant not to sue or not to enforce judgment is given in good faith to
7 one of two or more persons liable in tort for the same injury or the same wrongful death:

- 8 (1) It does not discharge any of the other tort-feasors from liability for the injury
9 or wrongful death unless its terms so provide; but it reduces the claim
10 against the others to the extent of any amount stipulated by the release or the
11 covenant, or in the amount of the consideration paid for it, including the
12 amount of any monies awarded or, for a case not stayed pursuant to
13 G.S. 1-75.12(b), reasonably expected to be awarded from a bankruptcy trust,
14 whichever is the greater; and,
15 (2) It discharges the tort-feasor to whom it is given from all liability for
16 contribution to any other tort-feasor."

17 **SECTION 3.** Article 4 of Chapter 8C of the General Statutes is amended by adding
18 a new section to read:

19 **"Rule 415. Evidence of bankruptcy asbestos trust claims.**

20 In any civil action asserting personal injury claiming disease based upon exposure to
21 asbestos, there shall be a rebuttable presumption that bankruptcy trust claims materials are
22 relevant, authentic, and admissible in evidence in the civil action."

23 **SECTION 4.** G.S. 1-75.12 reads as rewritten:

24 **"§ 1-75.12. Stay of proceeding to permit trial in a foreign ~~jurisdiction;~~jurisdiction or**
25 **bankruptcy trust claim processing.**

26 (a) When Stay May be Granted. – If, in any action pending in any court of this State,
27 the judge shall find that it would work substantial injustice for the action to be tried in a court
28 of this State, the judge on motion of any party may enter an order to stay further proceedings in
29 the action in this State. A moving party under this subsection must stipulate his consent to suit
30 in another jurisdiction found by the judge to provide a convenient, reasonable and fair place of
31 trial.

32 (a1) In any civil action asserting personal injury claiming disease based upon exposure to
33 asbestos, if a defendant has a reasonable belief that the plaintiff can file additional bankruptcy
34 trust claims, the court on motion of the defendant may enter an order to stay the civil action
35 until the plaintiff files the bankruptcy trust claim and such claim is addressed by the bankruptcy
36 trust.

37 (b) Subsequent Modification of Order to Stay Proceedings. – In a proceeding in which a
38 stay has been ordered under this section, jurisdiction of the court continues for a period of five
39 years from the entry of the last order affecting the stay; and the court may, on motion and
40 notice to the parties, modify the stay order and take such action as the interests of justice
41 require. When jurisdiction of the court terminates by reason of the lapse of five years following
42 the entry of the last order affecting the stay, the clerk shall without notice enter an order
43 dismissing the action.

44 (c) Review of Rulings on Motion. – Whenever a motion for a stay made pursuant to
45 subsection (a) above is granted, any nonmoving party shall have the right of immediate appeal.
46 Whenever such a motion is denied, the movant may seek review by means of a writ of
47 certiorari and failure to do so shall constitute a waiver of any error the judge may have
48 committed in denying the motion."

49 **SECTION 5.** This act is effective when it becomes law and applies to actions
50 pending on or after that date.