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Opposition Testimony to SB 252
Senate Judiciary Committee
March 29, 2022

Chair Manning, Vice-Chair McColley, and Ranking Member Thomas,

Thank you for providing the opportunity to testify to Senate Bill 252. My name is Joshua Grunda, and I am an attorney in Cleveland, specializing in asbestos-caused mesothelioma cases. I am here on behalf of the Ohio Association for Justice (OAJ). OAJ's mission is to support Ohioans' Seventh Amendment right to a civil trial by jury, which is achieved most efficiently when government stays out of disputes between private parties.

I, and the OAJ, are deeply concerned about SB 252. OAJ members, as attorneys for victims of asbestos poisoning, seek to have the responsible entities pay for their actions, rather than have families, health care system, and or the government pay. SB 252 will eliminate the opportunity for victims to bring claims against the correct entity in the majority of cases.

Before digging into the bill, I think it is important to describe our clients, their suffering, and the process we undertake to find support for those families. First, mesothelioma is a form of cancer only caused by asbestos. Second, mesothelioma typically has a 20 to 60 year latency period before onset, but once discovered, victims typically have less than 18 months to live. There is no cure for mesothelioma.

Typically, I am hired by a person with mesothelioma, or in many cases, by the deceased mesothelioma victim's estate. When a living person with mesothelioma contacts our office, they are often in intensive care or hospice to reduce their pain and suffering from the cancer. However, due to the rapid progress of the disease, I typically conclude the case by representing the victim's estate, to ensure their surviving family has the support that would have been provided by the deceased client.

Sadly, more than 30% of mesothelioma victims are veterans, who inhaled the poison while on active duty. Virtually every ship commissioned by the United States Navy between WWII and the Korean War contained several tons of asbestos in engine room insulation, along the miles of pipes in each ship, and in any fireproofed walls and doors.

While the use of asbestos products were discontinued by the military around 1980, hundreds of military and civilian installations were left with asbestos in flooring and ceiling tiles, cement foundations, as well as in thousands of military vehicles.

These cases are very difficult to prosecute because the information about the cause and liability is typically 20-60 years old. Witnesses to support such claims, if they haven't fallen victim to the mesothelioma themselves, are most often over the age of 65. However, companies often keep purchase and sales records for decades, and those records often constitute the best source of evidence in the case.

Ohio's process to litigate these cases is already very efficient. The vast majority of cases are heard by a special docket at the Cuyahoga County Court of Common Pleas. The Judge overseeing these cases is consistent, fair, and independent. The court has special rules in place specifically for asbestos related cases, which both the plaintiff and defense bars respect.

Overall, the bill would create new filing requirements for asbestos victims, which would be unique to any other type of civil case. These disclosure requirements preempt and prevent necessary discovery, a basic procedure in every type of dispute. In effect, surviving family members of asbestos poisoning would have to prove facts about the case before any meaningful discovery of records is conducted. Plaintiffs will be required to submit a sworn statement, under the penalty of perjury, regarding elements of the case which maybe in the sole possession of one of the named defendants or third-party witnesses, or which elements cannot be determined until formal discovery is conducted.

This sworn statement is to be submitted by the Plaintiff, which is often the executor of the deceased person's estate. This individual, who is often a surviving spouse or child of the decedant, often has no personal first hand knowledge regarding the nature and extent of the decedant's exposures to asbestos. SB 252 essentially asks these individuals to provide evidence that is best left to the sworn testimony of coworkers with actual first hand knowledge regarding the deceased person's exposures to asbestos. OAJ opposes the new evidentiary burdens the bill places on suffering victims and their families.

The bill lacks a mechanism to bring administratively dismissed cases back to the active docket. R.C. 2307.93 already allows the administrative dismissal of asbestos cases based upon medical criteria and has shrunk the active asbestos docket in Ohio from tens of thousands of cases to only several hundred today. R.C. 2307.93 does allow an administratively dismissed case to be reinstated where the claimant can later satisfy the medical criteria. The ability to reinstate a case is the only way that administrative dismissal can be constitutional.

OAJ is also concerned that the bill is unconstitutionally retroactive. Lines 55-61 would apply the bill to current cases, which we believe violates Ohio's Constitution Article II.28.

According to the Sponsor's testimony, the bill's goal is to reduce unintentional naming of irrelevant defendants in these cases. However, two significant state laws and rules already address this problem. First, Ohio Civil Rule 11, a Supreme Court civil procedure rule, identifies all filings as a certificate by the attorney that there is a good ground to support the claims against the named defendants. I would not risk my ethics, license, or livelihood to intentionally name too many defendants which do not belong in a case. Second, Ohio's tort reform legislation (SB 80, 125th GA) required plaintiffs to name, at the outset, anyone that could have contributed to their injury. Therefore, accurately naming possible defendants is critical in every civil case, especially when many entities share liability for the injury. Despite these objections, we respect the Senator's sincerity in pursuing this legislation.

Though we oppose the bill in its current form, OAJ is willing to think creatively about the problem. A most simple solution, is to delete only the the most egregious disclosures, adding language to allow an administratively dismissed case to be reinstated, and removing the retroactive language. We have also considered suggesting language to allow, for a period of time, a claim to be revised after the complaint is filed, thus allowing initial "undernaming" on complaints and discouraging overnaming.

Thank you for giving me the opportunity to testify, and I would be glad to address any questions from the committee.