



**OHIO  
ASSOCIATION *for*  
JUSTICE**  
TRIAL LAWYERS HELPING PEOPLE

## **Opposition Testimony to SB 63**

**Shawn M. Acton**

**House Insurance Committee**

**December 4, 2024**

Chair Lampton, Vice-Chair Barhorst, Ranking Member Jarrells, and other Members of the Ohio House Insurance Committee,

My name is Shawn M. Acton. I am an attorney from Cleveland, Ohio. For the past twenty-four years, I have represented mesothelioma victims and their families. I have tried well over one hundred fifty civil cases to verdict as lead trial counsel, including some mesothelioma cases. I am here today on behalf of the Ohio Association of Justice (“OAJ”) and my clients living throughout the State of Ohio, including veterans and civilians who have contracted and/or died from mesothelioma.

Mesothelioma is a rare and aggressive tumor that originates in the lining of the lungs or abdomen. Mesothelioma is always a deplorable, devastating, and disabling disease. Sadly, even after decades of study, there is no cure for mesothelioma. Mesothelioma always results in death, usually less than one year after diagnosis.

I, and the OAJ, are deeply concerned about SB 63 in its current form (“SB 63” or “the Bill”). OAJ members, as attorneys for victims of asbestos poisoning, seek to have the responsible entities pay only their fair share of harm done to veterans and civilians, rather than have families, the health care system (including private health care insurers) and/or the government pay. SB 63 will eliminate the opportunity for Ohio veterans and civilians to bring valid claims against culpable entities in a substantial number of cases.

### **Overview:**

There is not a pervasive over-naming problem in Ohio. If a mesothelioma victim did not work with or around a particular type of asbestos-containing product, manufacturers and suppliers of that product are not sued. Moreover, the same defendants are not sued repeatedly in a “cookie cutter” fashion. All parties can agree that asbestos litigation is extremely complex and involves multiple defendants. For example, a tradesman working out of union hall for decades may have worked for dozens of different employers on hundreds of different jobsites, sometimes for a day or two at a time. During this time, the mesothelioma victim may have been exposed to many different types of asbestos products made and supplied by different companies.

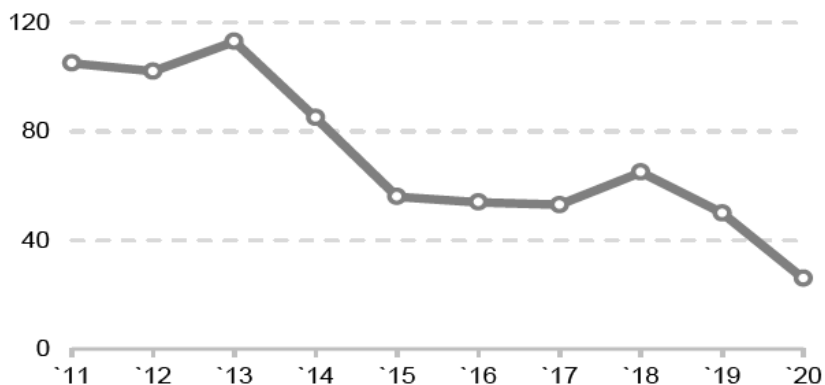
Multiple companies may be liable under Ohio law for harm done to a mesothelioma victim. For example, manufacturers and suppliers of the final product *and* additional manufacturers and suppliers of the various asbestos-containing component parts that make up the final product may be held liable under Ohio's Product Liability Act. Each company is only liable for its fair share of the harm caused by the victim's exposure to that separate company's final product or component part.

It is important to note that Ohio legislators already banned lawsuits involving virtually all non-malignant asbestos related diseases and lung cancer in people who were also smokers; therefore, SB 63 only affects mesothelioma victims and their families. In these cases, a small number of mesothelioma victims and their families are seeking redress in Ohio courts for massive medical bills, lost wages and income, funeral and burial expenses, and the extreme pain and suffering that all mesothelioma victims and their families endure. Almost all Ohio tort actions involving asbestos are filed in Cuyahoga County. The following chart illustrates the number of asbestos cases filed from 2011 to 2020:

**FIGURE 4**

**Cuyahoga County Asbestos Docket**

New Filings, 2011 to 2020



Over the past few years, approximately thirty new asbestos cases were filed each year within the State of Ohio.

**Impact of the bill**

SB 63 in its current form is much more than an attempt to end the alleged problem of over-naming.

Mesothelioma victims often do not possess every piece of specific information necessary to comply with the bill's extremely specific requirements. Often this evidence is in the sole possession of others, including defendants. The only way to obtain this evidence is through the discovery process set forth by the Ohio Rules of Civil Procedure. Discovery includes written questions sent to an adverse party to be answered under oath, written requests for production of documents in the possession of an adverse party, depositions, and subpoenas.

Whether situated as a plaintiff or a defendant, civil litigants need discovery responses to obtain necessary and relevant information from others. For example, a 1966 internal memo, which was obtained through discovery, from an asbestos defendant stated, “My answer to the problem is: if you have enjoyed a good life while working with asbestos products, why not die from it.”

SB 63 both chronologically and explicitly prohibits the discovery process. Within 60 days, plaintiffs are supposed to swear to disclosures such as:

1. “specific brand and trade name of each asbestos-containing product”
2. “... the specific location at each site”
3. “the beginning and ending dates of each exposure”
4. “the specific manner of each exposure”
5. “the frequency and length of each exposure”
6. “the proximity of the asbestos-containing product or its use to the exposed person”

Mesothelioma victims and their next of kin (often a spouse, child, or someone even further removed from the victim) cannot produce these specific details within that time and are barred from seeking any of the specific information required by the bill from others via discovery. Section (E) of the bill clearly prohibits discovery.

Without discovery, mesothelioma victims, widowers, surviving family members, or plaintiff attorneys cannot provide these details to the Judge, requiring the Judge to dismiss the defendant and deny victims the opportunity to seek justice against culpable defendants.

## **Conclusion**

Proponents of the bill have rejected suggestions for a reciprocal duty for defendants to issue a sworn statement disclosing information and producing documents in their possession prior to the proposed dismissal including information and documents indicating 1) whether they manufactured/supplied they type of asbestos products identified by Plaintiff 2) the types of component parts of their product that historically contained asbestos and who made and supplied them, 3) whether Defendants have any information and/or documents indicating whether the products identified by Plaintiff were sold to and/or present at the job sites identified by Plaintiff.

Sadly, the enactment of this bill will require victims or their surviving families to prove their case before it even starts. Ohio veterans, laborers, fire fighters, and others who have or will suffer through mesothelioma cancer will be denied their 7<sup>th</sup> amendment right to seek support. Thus, we respectfully urge a “no” vote on the bill.

Thank you for your time and consideration regarding this especially important issue that affects all Ohio mesothelioma victims including Ohio veterans, workers, fire fighters, and their families.