Proponent Testimony of Matthew C. O'Connell

On Senate Bill 63

Senate Insurance Commission

March 28, 2023

Mr. Chairman and Members of the Committee:

My name is Matthew O'Connell. November 1, 2023 is my 40th anniversary of joining the Ohio Bar. I am a founding member of the Cleveland law firm of Sutter O'Connell. For background, I have managed tens of thousands of asbestos cases on behalf of dozens of clients in the courts of Ohio since 1984. I presently serve as liaison counsel to the Cuyahoga County asbestos court presided over by Judge Harry Hanna. I have been privileged to represent some of our country's and Ohio's largest and most well-known corporations, and "mom and pop" companies and businesses alike.

It is my experience that the common custom and practice by some, but not all, lawyers and law firms who routinely file lawsuits on behalf of "asbestos victims" is to add dozens of Defendants to the Complaint before any work is done to determine whether any or all of them belong in the case. During the 1980s and 1990s, we would routinely receive Complaints with 75, 100, even 150 named Plaintiffs. It was axiomatic that not all defendants were properly named, as the exposure history of an asbestos plaintiff varies from case to case—it's personal to each individual. Yet dozens of undeserving corporations were routinely sued year after year.

This proposed legislation does not threaten the right of individuals to sue companies which made asbestos products in cases where there is legitimate testimony as to injurious exposure to those products. S.B. 63 presents no barrier to the opportunity for a plaintiff to sustain his or her burden of proof against a defendant in a court of law. Naming companies as defendants absent a legitimate basis to do so is a waste of resources for all concerned—the plaintiffs, the defendant companies, their lawyers and insurers, and the Courts. The attendant costs borne by companies who are repeatedly and wrongly named in asbestos cases are incalculable, not only in accounted-for dollars and cents, but also in cost to their corporate reputations. Being named in hundreds or thousands of asbestos cases without basis also damages a company's risk profile—it makes insurance more expensive and more difficult to obtain. Everyone, including that company's product purchasers, pays for that.

There may be exigent situations where a plaintiff whose life is threatened by disease may have to have his or her counsel file a case first and over-name to protect the rights of the claimant. To properly protect the plaintiff, S.B. 63's thirty-day provision accounts for that exigency, by permitting defendants to be later added.

It has been 50 years since OSHA and the EPA began proposing bans on asbestos products in the United States. And while asbestos-related diseases endure to this day, their frequency is vastly reduced from the heyday of asbestos litigation in the 1980s and 1990s. The extended existence of asbestos litigation should lend itself to the development of histories of workplace exposures and products which should make the naming of proper defendants in a case much easier for plaintiffs' representatives. With the reduction in case frequency, more attention should be paid to naming only those defendants who a

plaintiff, or his co-workers, can legitimately attribute his or her exposure to a particular product. In my view, S.B. 63 accomplishes this objective.

Accordingly, I urge passage of S.B. 63. I will be happy to answer any questions the Committee may have.