

**Speech by Peter J. Neeson, Esquire  
Rawle & Henderson, LLP  
Philadelphia, PA**

**Before the House of Representatives Judiciary Committee**

**Monday, April 8, 2013**

**Subject Matter: Commentary on the Proposed Legislation Involving the Integration of  
Bankruptcy Trust Compensation System with the Civil Trial Torts System**

**I. The Problem**

At the present time there exist two separate and independent systems for compensation of Plaintiffs who have been exposed to and injured by asbestos-containing products. First, there is the Bankruptcy Trust Compensation System which awards Plaintiffs compensation for injuries arising out of exposure to various asbestos-containing products manufactured by companies that are in bankruptcy because of their asbestos liabilities. This system is an administrative process done through the submission of paperwork verifying the various requirements that are necessary for recovery. Second, there is also the potential recovery for Plaintiffs under the more traditional method of the civil lawsuits which involve trial by jury with compensation determined by the jury based on the evidence presented before it.

Presently there remains a disconnect between these two competing systems for compensation which has caused serious and sustaining problems which have impacted Pennsylvania businesses and employers who find themselves as tort defendants in Pennsylvania asbestos trials.

In short, because our state's tort system has no present way in which to take into account the compensation obtained independently by Plaintiffs from the Bankruptcy Trusts, the Plaintiffs are in reality getting paid twice for the same injury, a fact which is not only unfair and unjust, but also unnecessarily penalizing Pennsylvania businesses and employers. Under the trial system in this state, as it exists today, not only are Pennsylvania businesses paying jury awards for whatever asbestos responsibility they may have, but they are also paying money for those asbestos-containing products covered under the Bankruptcy Trusts.

If these double recoveries are to be eliminated, it is necessary that there be a legislative mechanism by which both the tort system and Bankruptcy Trust System are connected in a way in which the money received by the Plaintiffs under the Bankruptcy Trust System is also taken into account by our juries when they determine what the Plaintiff may recover against the traditional defendants in jury trials here in this state.

At the present, that is not happening and as a result there is no statute which enables a Pennsylvania jury to consider the proper allocation of responsibility of all of the various products that may have caused the plaintiff's injury. Additionally there is no statute which enables a judge to take into account money awarded to the plaintiff for his injuries under the Bankruptcy Trust System.

As I stated previously, this creates a double recovery for the plaintiff at the expense of Pennsylvania businesses who are being penalized by being forced to pay more than their fair share of the jury's verdict for the plaintiff's injury.

The way the Bankruptcy Trust System currently operates, the plaintiff and his counsel need only file some preliminary paper work with the Bankruptcy Trust and then delay the final application process and approval of the Bankruptcy Trust award until after the civil trial is over. Under the current system, once the trial is finished, the plaintiffs and their counsel can then go back to the trusts and collect whatever money is awarded to them from the Bankruptcy Trusts they had previously applied to.

By delaying the completion of the trust application until after the trial or settlement of the civil case, the plaintiff gets his award from the jury or settlements from the tort defendants and then afterward at the later time gets a separate set of compensation awards from the various Bankruptcy Trusts with whom he or she has filed an application. Under this system the jury is deprived of the opportunity to learn about all of the asbestos products involved plaintiff's in the case and only gets to make its assessment of fault with regard to just the businesses and companies who have been sued in Pennsylvania courtrooms. Because of the plaintiffs' intentional delay in the completion of the trust application process, the Bankruptcy Trust products are not disclosed to the jury or their names put on the verdict sheet for the jury to consider, even though the trusts' products also caused the plaintiff's illness. This enables the plaintiffs to get two separate recoveries for one injury.

## **II. The Solution**

This legislation will connect the Bankruptcy Trust System to the civil tort system so that the jury can be permitted to determine the impact of the plaintiff's asbestos exposure to all of the products he used or was exposed to, including those covered under the Bankruptcy Trusts.

As a result, under this legislation, the juries in Pennsylvania will have basis for comparison between the plaintiffs' exposures to the defendants' products in the civil tort system and the plaintiffs' exposures to the asbestos products covered under the Bankruptcy Trusts.

Because of this legislative change, the jury verdicts and settlements in this state will then reflect a more balanced and accurate allocation of the responsibilities for any injuries caused by asbestos exposure to the plaintiffs.

This will also benefit those Pennsylvania businesses that are being sued in these cases because the presence of the Bankruptcy Trust products before the jury will provide the jury with an opportunity, if they so desire, to apportion responsibility for the plaintiffs' injuries among manufacturers of all those products who, in the jury's view, contributed to the cause of the plaintiffs illness.

This legislation creates incentives for plaintiffs and their attorneys to file their Bankruptcy Trust applications sooner and complete the application process more quickly and indeed to do so before the actual trial in the case. This provides Pennsylvanians with many benefits. First of all, those plaintiffs who are Pennsylvania residents will get their trust compensation much sooner than under the existing approach because the legislation creates strong incentives for the plaintiffs to file and complete the trust applications as soon as possible and obtain an award for the plaintiffs and their family before the civil case goes to the jury.

When the plaintiff's trial begins, the jury will then be able to include the plaintiff's exposure to the Bankruptcy Trusts as part of their deliberations and then assess their

responsibility for the causation for the plaintiff's illness. At that point, the plaintiff will have already received compensation under the Bankruptcy Trust System and so they will not have to wait, as they presently do, for that part of their compensation which is deservedly owed to them as a result to their illness.

Under this legislation; (1) jury trials will ensure that the plaintiff gets awarded what he or she deserves; (2) there will be no double recoveries for the same injury; (3) Pennsylvania businesses, whether insured or not, will now pay their fair share for any money owed to the plaintiff of his asbestos related injuries and will no longer have to pay money for what the Bankruptcy Trusts are responsible for.

Because there are no civil consequences for the plaintiffs' failure to timely complete those applications, there is nothing that our trial courts can currently do which can force the plaintiffs and their counsel to process these applications quickly and to permit these trust awards to be integrated into civil trials – this legislation changes that.

Under the current system, plaintiffs and their counsel can manipulate the Bankruptcy Trust System by controlling the timing of the Bankruptcy Trust filing as well as avoiding full disclosure of those results to the trial court and the parties in the civil case – this legislation changes that.

This legislation will require the plaintiff to timely identify all existing and potential trust claims which can be made against any Bankruptcy Trust and then permits the trial court to be notified of those payments and credited toward the total amount awarded to the plaintiff by the jury.

This legislation is similar in many respects to the Uniform Contribution Among Joint Tortfeasor Act which has been a staple of our civil tort system for years. That act created a mechanism for a connection between the settlement side of the case with the trial verdict side of the case. Here this legislation creates a mechanism for a connection between the Bankruptcy Trust System of Compensation and the tort system of compensation along with full disclosure incentives and a greater sense of fairness for all parties involved in these cases.