

CALIFORNIA ADVOCATES FOR NURSING HOME REFORM

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Assembly Mark Stone
Chairman Assembly Insurance Committee
State Capitol, Room 5155
Sacramento, CA 95814

March 10, 2015

RE: Oppose AB 597 (Cooley)

Dear Chairman Stone:

CANHR is adamantly opposed to AB 597. The statutory scheme AB 597 proposes creates an exception to “fast track” Section 36 of the Code of Civil Procedure. If passed, AB 597 will prevent many terminally ill, senior asbestos victims from getting court date preferences. Before being allowed a court preference date terminally ill seniors would have to do an exhaustive search of all asbestos trusts in existence. After that search they would have to submit, under penalty of perjury, the statement, “That he or she has made a good faith effort to determine if there are any asbestos trusts against which he or she has a basis to make a claim and, in the event that there are, ***that he or she has made claims with all of those asbestos trusts.***” (emphasis added). AB 597 is nothing more than a time consuming and nearly impossible impediment to litigation.

It’s difficult to imagine how any would-be senior plaintiff, in good faith, could possibly know whether he or she had made a claim to every possible asbestos trust fund. How would they go about investigating every asbestos trust in existence? To get an idea about the practicality of such a requirement I went on-line and did a Google search for “asbestos trusts”. Below are examples of what I found and I found proves how daunting a task terminally ill seniors would face trying to satisfy the demands of AB 597.

*“There are currently a plethora of business that have trust funds set up.
(<http://www.mesotheliomalawyercenter.org/>)*

*Trust funds are formally created by “trust agreements.” The agreement is between the trust, which take on the company’s asbestos liabilities, and the company, which agrees to fund the trust in the amount approved by the court. ...
(<https://www.pleuralmesothelioma.com/lawyer/trust-funds.php>)*

*The financial tool of asbestos related lawsuits drove nearly 100 companies to file for bankruptcy in recent decades. As a condition of reorganization to emerge from bankruptcy, many of these companies were ordered to established personal injury trusts so they can continue to compensate those injured as a result of their past negligence.
(<http://www.drugwatch.com/mesothelioma/trusts/>)*

In California, damages for pain and suffering do not survive the death of the plaintiff. Therefore, it is imperative for a terminally ill senior to be able to have his or her case heard before a court before they die. It is equally imperative for defense teams to draw out and prolong a court case for as long as possible because if the plaintiff dies before final judgment then damages for pain and suffering will be “taken off of the table”. This is not cynical analysis; this is an accurate depiction of the current state of California’s legal system.

It is impossible to predict how many terminally ill senior asbestos victims will be able to satisfy the requirements of AB 597 and earn a court preference date. Our guess is not many. The procedural hurdles and time wasting diversions proposed in AB 597 place an unnecessary burden on terminally ill seniors.

While we don’t believe that the intent of AB 597 is to allow defense attorneys to run out the clock on mesothelioma sufferers, that will never the less be its result. We believe this would be unconscionable. CANHR urges a No vote on AB 597.

Sincerely,

A handwritten signature in black ink, appearing to read "Prescott Cole". The signature is written in a cursive, flowing style.

Prescott Cole
Senior Staff Attorney