

# ASBESTOS LITIGATION SCREENING CHALLENGES: AN UPDATE

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## I. INTRODUCTION

In 2003, Professor Lester Brickman, an expert on asbestos litigation, excoriated the asbestos-litigation industry as a “massive client recruitment effort”<sup>1</sup> fueled by specious evidence that scholars and many courts refused to acknowledge up to that time.<sup>2</sup> Professor Brickman predicted,

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1. Lester Brickman, *On the Theory Class's Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality*, 31 PEPP. L. REV. 33, 168 (2003). *U.S. News & World Report* described the recruitment process:

To unearth new clients for lawyers, screening firms advertise in towns with many aging industrial workers or park X-ray vans near union halls. To get a free X-ray, workers must often sign forms giving law firms 40 percent of any recovery. One solicitation reads: “Find out if YOU have MILLION DOLLAR LUNGS!”

Pamela Sherrid, *Looking for Some Million Dollar Lungs*, U.S. NEWS & WORLD REP., Dec. 17, 2001, at 36; see *Owens Corning v. Credit Suisse First Boston*, 322 B.R. 719, 723 (D. Del. 2005) (“Labor unions, attorneys, and other persons with suspect motives caused large numbers of people to undergo X-ray examinations (at no cost), thus triggering thousands of claims by persons who had never experienced adverse symptoms.”); JUDYTH PENDELL, AEI-BROOKINGS JOINT CENTER FOR REGULATORY STUDIES, REGULATING ATTORNEY FUNDED MASS MEDICAL SCREENING: A PUBLIC HEALTH IMPERATIVE? (2005), <http://www.aei-brookings.org/>

When the complete and unexpurgated history of asbestos litigation is finally written, that litigation will surely come to be considered for entry into the pantheon of such great American scandals as the . . . Savings & Loan scandals, WorldCom, and Enron. Even as that history is being written and assimilated, it has already become apparent that, for the most part, asbestos litigation has become a malignant enterprise. Despite mounting evidence of massive, specious claiming in asbestos litigation, few voices appear willing to acknowledge this reality.<sup>3</sup>

At about the same time, others began to scrutinize the practice of mass screenings. For example, former United States Attorney General Griffin Bell observed in 2003 that “[t]here often is no medical purpose for these screenings and claimants receive no medical follow-up.”<sup>4</sup> Bell said that mass screenings conducted by plaintiffs’ lawyers and their agents had “driven the flow of new asbestos claims by healthy plaintiffs.”<sup>5</sup>

An American Bar Association Commission on Asbestos Litigation confirmed that claims filed by the nonsick generally arose from for-profit screening companies whose sole purpose was to identify large numbers of people with minimal X-ray changes consistent with asbestos exposure.<sup>6</sup> The Commission, with the help of the American Medical Association,

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publications/abstract.php?pid=993.

2. See Brickman, *supra* note 1, at 161.

3. *Id.* at 35.

4. Griffin B. Bell, *Asbestos & The Sleeping Constitution*, 31 PEPP. L. REV. 1, 5 (2003).

5. *Id.*; see James A. Henderson, Jr. & Aaron D. Twerski, *Asbestos Litigation Gone Mad: Exposure-based Recovery for Increased Risk, Mental Distress, and Medical Monitoring*, 53 S.C. L. REV. 815, 823 (2002) (“By all accounts, the overwhelming majority of claims filed in recent years have been on behalf of plaintiffs who . . . are completely asymptomatic.”); Alex Berenson, *A Surge in Asbestos Suits, Many by Healthy Plaintiffs*, N.Y. TIMES, Apr. 10, 2002, at A1 (“Very few new plaintiffs have serious injuries, even their lawyers acknowledge . . . . ‘The overwhelming majority of these cases . . . are brought by people who have no impairment whatsoever.’”) (citation omitted); Roger Parloff, *Welcome to the New Asbestos Scandal*, FORTUNE, Sept. 6, 2004, at 186 (“According to estimates accepted by the most experienced federal judges in this area, two-thirds to 90% of the nonmalignants are ‘unimpaired’—that is, they have slight or no physical symptoms.”).

6. See COMM’N ON ASBESTOS LITIG., AM. BAR ASS’N, REPORT TO THE HOUSE OF DELEGATES 8 (2003), available at [http://www.abanet.org/leadership/full\\_report.pdf](http://www.abanet.org/leadership/full_report.pdf) [hereinafter ABA COMM’N REP.] (recommending a “Standard for Non-Malignant Asbestos-Related Disease Claims”).

consulted prominent occupational-medicine and pulmonary-disease physicians to craft legal standards for asbestos-related impairment.<sup>7</sup> The Commission found: “Some X-ray readers spend only minutes to make these findings, but are paid hundreds of thousands of dollars—in some cases, millions—in the aggregate by the litigation screening companies due to the volume of films read.”<sup>8</sup> The Commission also reported that litigation screening companies were finding X-ray evidence that was consistent with asbestos exposure at a “startlingly high” rate, often exceeding 50% and sometimes reaching 90%.<sup>9</sup>

Shortly thereafter, researchers at Johns Hopkins University compared the X-ray interpretations of B Readers employed by plaintiffs’ counsel with the subsequent interpretations of six independent B Readers who had no knowledge of the X-rays’ origins.<sup>10</sup> The study found that, while B Readers hired by plaintiffs claimed asbestos-related lung abnormalities in almost 96% of the X-rays, the independent B Readers found abnormalities in less

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7. *Id.* at 11. In February 2003, the ABA’s House of Delegates adopted the Commission’s proposal for the enactment of federal medical-criteria standards for nonmalignant asbestos-related claims. See *Asbestos Litigation Crisis: Hearings Before the S. Comm. on the Judiciary*, 108th Cong. 21–22 (2003) (statement of Dennis W. Archer, President-Elect, Am. Bar Ass’n), available at <http://www.gpo.gov/congress/senate/pdf/108hr/89326.pdf>.

8. ABA COMM’N REP., *supra* note 6, at 8.

9. *Id.* One of the earliest detailed reviews of B Reads in litigation arose out of information distributed to tire workers, which said that 94% of the workers screened at one location and 64% of the workers screened at another location were found to have asbestosis. See *Raymark Indus., Inc. v. Stemple*, No. 88-1014-K, 1990 WL 72588, at \*10 (D. Kan. May 30, 1990). In 1986, the National Institute for Occupational Safety and Health (NIOSH) looked into the matter and found that only 0.2% of the workers they evaluated had physical changes consistent with asbestosis. See J. JANKOVIC & R. B. REGER, HEALTH HAZARD EVALUATION REPORT, NIOSH Rep. No. HETA 87-017-1949, at 11 (Dep’t Health & Human Servs., NIOSH 1989). In 1998, an audit by the Manville Settlement Trust determined that 59% of X-ray readings relied upon by plaintiffs’ counsel to show asbestos-related abnormalities were inaccurate. See *In re Joint E. & S. Dists. Asbestos Litig.*, 237 F. Supp. 2d 297, 309 (E.D.N.Y. & S.D.N.Y. 2002). Another review of asbestos cases conducted by medical experts appointed by U.S. District Court Judge Carl Rubin of the Southern District of Ohio found that 65% of the claimants reviewed had no asbestos-related conditions and 20% presented only pleural plaques. See Carl Rubin & Laura Ringenbach, *The Use of Court Experts in Asbestos Litigation*, 137 F.R.D. 35, 39 (1991).

10. Joseph N. Gitlin et al., *Comparison of “B” Readers’ Interpretations of Chest Radiographs for Asbestos Related Changes*, 11 ACAD. RADIOLOGY 843, 843 (Aug. 2004).

than 5% of the same X-rays—a difference the researchers said was “too great to be attributed to inter-observer variability.”<sup>11</sup>

One physician, Dr. Lawrence Martin, has explained the reason why plaintiffs’ B Readers seem to see asbestos-related lung abnormalities on chest X-rays in numbers not seen by neutral experts.<sup>12</sup> Dr. Martin has said, “[T]he chest x-rays are not read blindly, but always with knowledge of some asbestos exposure and that the lawyer wants to file litigation on the worker’s behalf.”<sup>13</sup> In 2005, Senior U.S. District Court Judge John Fullam said that many B Readers hired by plaintiffs’ lawyers were “so biased that their readings were simply unreliable.”<sup>14</sup>

Recently, significant progress has been made in exposing numerous screening abuses, and sometimes fraudulent conduct, by litigation physicians, screening companies, and others.<sup>15</sup> These and other developments have helped to stem the tide of massive numbers of questionable asbestos (and silica) claims. For example, asbestos-related

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11. *Id.*

12. David E. Bernstein, *Keeping Junk Science Out of Asbestos Litigation*, 31 PEPP. L. REV. 11, 13 (2003).

13. *Id.* at 13 (quoting Lawrence Martin, *Runaway Asbestos Litigation—Why it's a Medical Problem*, <http://www.mtsinai.org/pulmonary/Asbestos/AsbestosEditorial.html>, available at <http://www.lakesidepress.com/Asbestos/AsbestosEditorial.htm>).

14. *Owens Corning v. Credit Suisse First Boston*, 322 B.R. 719, 723 (D. Del. 2005). More recently, Dr. Steven Haber, in his expert report filed in the W.R. Grace bankruptcy proceedings, reviewed the medical practice of numerous litigation physicians and screening companies and determined that, without exception, the reports they generated did not meet acceptable standards for medical screenings. His study included the following screeners: N&M; Healthscreen; Respiratory Testing Services, Inc.; American Medical Testing; and Pulmonary Testing Services. His study also included the following litigation physicians: Drs. James Ballard, Kevin Cooper, Todd Coulter, Andrew Harron, Ray Harron, Glyn Hilbun, Richard Kuebler, Larry Mitchell, Barry Levy, George Martindale, Gregory Nayden, Walter Allen Oaks, Robert Altmeyer, Jeffrey Bass, Richard Levine, Jay Segarra, Dominic Gaziano, Alvin Schonfeld, Leo Castiglioni, Phillip Lucas, Robert Mezey, James Krainson, Paul Venizelos, and Robert Von McGee. See Expert Report of Steven M. Haber, M.D., *Diagnostic Practices in a Litigation Context: Screening Companies and the Doctors They Employ*, *In re W.R. Grace & Co.*, No. 01-1139 (Bankr. D. Del. June 11, 2007).

15. *E.g.*, *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d 563 (S.D. Tex. 2005); Steve Korris, *Man in Asbestos Case to Testify Against Lawyers*, THE W. VA. REC., July 24, 2009, available at <http://www.wvrecord.com/news/220192-man-in-asbestos-case-to-testify-against-lawyers>.

bankruptcy trusts<sup>16</sup> have barred claims that rely on the diagnoses, records, and reports of discredited physicians and screening companies.<sup>17</sup>

In addition, more courts today are willing to permit broader discovery into the methods used to generate screened cases—making possible the disclosure of assembly-line, medically indefensible diagnoses of asbestos and silica disease.<sup>18</sup> Allowing broader discovery is critical to exposing the screening abuses that explain the multitude of cases on a court's docket. More courts are also requiring proof of substantial exposure to prove injury causation.<sup>19</sup>

Further, many courts have implemented inactive asbestos dockets (also called deferred dockets or pleural registries) to advance only those cases of

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16. A provision in the Bankruptcy Code allows companies threatened by asbestos liabilities to channel current and future asbestos claims into a trust set up to pay claims. 11 U.S.C. § 524(g) (2006). *See generally* William P. Shelley et al., *The Need for Transparency Between the Tort System and Section 524(g) Asbestos Trusts*, 17 NORTON J. BANKR. L. & PRAC. 257, 281 (2008); Mark D. Plevin et al., *The Future Claims Representative in Prepackaged Asbestos Bankruptcies: Conflicts of Interest, Strange Alliances, and Unfamiliar Duties for Burdened Bankruptcy Courts*, 62 N.Y.U. ANN. SURV. AM. L. 271 (2006). Currently there are over 80 § 524(g) trusts in operation and accepting claims. *See* Mark D. Plevin et al., *Where Are They Now, Part Five: An Update on Developments in Asbestos-Related Bankruptcy Cases*, 8:8 MEALEY'S ASBESTOS BANKR. REP. 1 (Mar. 2009).

17. *See* Memorandum from David Austern, President, Claims Resolution Mgmt. Corp., Suspension of Acceptance of Med. Reports (Sept. 12, 2005), available at <http://www.claimsres.com/documents/9%2005%20Suspension%20Memo.pdf>; Memorandum from William B. Nurre, Exec. Dir., Eagle-Picher Pers. Injury Settlement Trust to Claimants' Counsel (Oct. 19, 2005), available at <http://www.cpf-inc.com/includes/content/PhysicianNotice.pdf>; Memorandum from John L. Mekus, Exec. Dir., Celotex Asbestos Settlement Trust on Notice of Trust Policy Regarding Acceptance of Med. Reports (Oct. 20, 2005), available at [http://www.celotextrust.com/news\\_details.asp?nid=22](http://www.celotextrust.com/news_details.asp?nid=22); Memorandum, Plibrico Asbestos Trust, Trust Policy on Doctors and Screening Companies; Memorandum from Harry Huge, Trustee, Shook & Fletcher Asbestos Settlement Trust (Oct. 1, 2005), available at <http://www.mfrclaims.com/Change20in20Medical20Evidence.pdf>; Memorandum, Keene Creditors Trust c/o Claims Processing Facility, Inc., from Keene Asbestos Creditors Trust Trustees (Apr. 3, 2006), available at <http://www.cpf-inc.com/includes/content/KeeneClaimFilingInstructions.pdf>; Memorandum, Armstrong World Indus., Inc. Asbestos Pers. Injury Settlement Trust Trustees (May 11, 2007), available at <http://www.armstrongworldasbestostrust.com/files/AWI%20POC%20Instructions%20v5.pdf>.

18. *See, e.g., In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d 563.

19. *See* Mark A. Behrens & William L. Anderson, *The "Any Exposure" Theory: An Unsound Basis for Asbestos Causation and Expert Testimony*, 37 SW. U. L. REV. 479 (2008).

individuals with demonstrated physical impairment.<sup>20</sup> Since 2002, the list of jurisdictions with inactive asbestos dockets has grown to include Cleveland, Ohio (March 2006); Minnesota (June 2005) (coordinated litigation); St. Clair County, Illinois (February 2005); Portsmouth, Virginia (August 2004) (applicable to cases filed by the Law Offices of Peter T. Nicholl); Madison County, Illinois (January 2004); Syracuse, New York (January 2003); New York City, New York (December 2002); and Seattle, Washington (December 2002).<sup>21</sup> Earlier courts that had adopted inactive dockets include Baltimore City, Maryland (December 1992); Cook County (Chicago), Illinois (March 1991); and Massachusetts (September 1986) (coordinated litigation).<sup>22</sup> A 2005 study by the RAND Institute for Civil Justice touted the “reemergence” of inactive dockets as one of “the most significant developments” in asbestos litigation.<sup>23</sup>

Courts in several other states (Arizona,<sup>24</sup> Delaware,<sup>25</sup> Maine,<sup>26</sup> Maryland,<sup>27</sup> and Pennsylvania<sup>28</sup>) and the federal courts for Hawaii<sup>29</sup> and

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20. See Susan Warren, *Swamped Courts Practice Plaintiff Triage*, WALL ST. J., Jan. 27, 2003, at B1 (discussing the use of an inactive docket in Baltimore City, and noting attempts by courts in Cleveland and New York City to give priority to the sickest asbestos plaintiffs); see also Jeb Barnes, *Rethinking the Landscape of Tort Reform: Legislative Inertia and Court-Based Tort Reform in the Case of Asbestos*, 28 JUST. SYS. J. 157 (2007) (documenting how judges have improved the asbestos litigation environment through “court-based tort reform”).

21. See Mark A. Behrens, *What's New in Asbestos Litigation?*, 28 REV. LITIG. 501, 507-08 (2009). See generally Mark A. Behrens & Manuel López, *Unimpaired Asbestos Dockets: They Are Constitutional*, 24 REV. LITIG. 253 (2005); Peter H. Schuck, *The Worst Should Go First: Deferral Registries in Asbestos Litigation*, 15 HARV. J.L. & PUB. POL'Y 541 (1992).

22. See Behrens, *What's New in Asbestos Litigation?*, *supra* note 21, at 508-09.

23. STEPHEN J. CARROLL ET AL., ASBESTOS LITIGATION xx (2005); see *In re USG Corp.*, 290 B.R. 223, 226 n.3 (Bankr. D. Del. 2003) (“The practical benefits of dealing with the sickest claimants . . . have led to the adoption of deferred claims registries in various jurisdictions.”); Helen Freedman, *Selected Ethical Issues in Asbestos Litigation*, 37 SW. U. L. REV. 511, 513 (2008) (“Perhaps the most dramatic change since the dawn of the new century has been the restriction of the litigation to the functionally impaired.”).

24. See *Burns v. Jaquays Mining Corp.*, 752 P.2d 28, 30 (Ariz. Ct. App. 1987) (holding that subclinical asbestos-related injury was insufficient to constitute the actual loss or damage required to support a cause of action).

25. See *In re Asbestos Litig.*, No. 87C-09-24, 1994 WL 721763, at \*5 (Del. Super. Ct. New Castle County June 14, 1994) (requiring claimants to establish present physical injury to support mental anguish claim based on fear of cancer), *rev'd on other grounds sub nom. Mancari v. A.C. & S., Inc.*, 670 A.2d 1339 (Del. 1995) (unpublished table decision), available at 1995 WL 567022.

26. See *Bernier v. Raymark Indus., Inc.*, 516 A.2d 534, 542 (Me. 1986)

Massachusetts,<sup>30</sup> have held that the unimpaired do not have legally compensable claims. As the Supreme Judicial Court of Maine explained, “There is generally no cause of action in tort until a plaintiff has suffered an identifiable, compensable injury.”<sup>31</sup>

Other courts, including the Michigan and Ohio Supreme Courts, have acted to require individualized trials, removing an economic incentive for plaintiffs to file claims that may have little or no value unless they are joined with other, more serious cases.<sup>32</sup>

Beginning in 2004, state legislatures in some key jurisdictions also began to curb screening abuse by requiring asbestos and silica claimants to present credible and objective medical evidence of physical impairment to bring or proceed with a claim.<sup>33</sup> Medical-criteria procedures for asbestos

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(explaining that inhalation of asbestos dust does not constitute physical harm giving rise to a claim under state defective products statute).

27. See *Owens-Illinois v. Armstrong*, 591 A.2d 544, 560–61 (Md. Ct. Spec. App. 1991) (finding that workers with pleural plaques or pleural thickening without health significance did not have legally compensable claims), *aff’d in part, rev’d in part on other grounds*, 604 A.2d 47 (Md. 1992).

28. See *Simmons v. Pacor, Inc.*, 674 A.2d 232, 237 (Pa. 1996) (concluding that asymptomatic pleural thickening does not give rise to a cause of action).

29. See *In re Haw. Fed. Asbestos Cases*, 734 F. Supp. 1563, 1567 (D. Haw. 1990) (finding no cause of action for claimants without functional impairment).

30. See *In re Mass. Asbestos Cases*, 639 F. Supp. 1, 3 (D. Mass. 1985) (“[T]he first appearance of symptoms attributable to [asbestos] constitutes the injury.” (quoting *Payton v. Abbott Labs*, 551 F. Supp. 245, 246 (D. Mass. 1982))).

31. *Bernier*, 516 A.2d at 542.

32. See Prohibition on “Bundling” Cases, Mich. Admin. Order No. 2006-6 (2006), available at <http://courts.michigan.gov/SUPREMECOURT/Resources/Administrative/2003-47-080906.pdf>; OHIO R. CIV. P. 42(A)(2), available at <http://www.sconet.state.oh.us/LegalResources/Rules/civil/CivilProcedure.pdf>; see also *In re Asbestos Litig.*, No. 77C-ASB-2 (Del. Super. Ct. New Castle County Dec. 21, 2007) (Standing Order No. 1); *San Francisco Trial Judge Vacates His Own Consolidation Order*, HARRISMARTIN’S COLUMNS—ASBESTOS, May 2008, at 13, available at <http://www.harrismartin.com/pdfs/article/Article9860.pdf>; James C. Parker & Edward R. Hugo, *Fairness Over Efficiency: Why We Overturned a Consolidation Program*, HARRISMARTIN’S COLUMNS—ASBESTOS, July 2008, at 4, available at <http://www.harrismartin.com/pdfs/article/Article10016.pdf> (explaining why the San Francisco Superior Court overturned its consolidation program).

33. E.g., OHIO REV. CODE ANN. § 2307.92 (West 2005). See generally Joseph Sanders, *Medical Criteria Acts: State Statutory Attempts to Control the Asbestos Litigation*, 37 SW. U. L. REV. 671, 689 (2008) (concluding that “medical criteria acts are a step in the right direction”); Philip Zimmerly, Comment, *The Answer is Blowing in Procedure: States Turn to Medical Criteria and Inactive Dockets to*

and silica cases were enacted in Ohio in 2004,<sup>34</sup> Texas<sup>35</sup> and Florida<sup>36</sup> in 2005, Kansas<sup>37</sup> and South Carolina<sup>38</sup> in 2006, Georgia<sup>39</sup> in 2007, and

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*Better Facilitate Asbestos Litigation*, 59 ALA. L. REV. 771 (2008) (providing overview of state medical-criteria laws and concluding that the laws help the truly sick access courts); Matthew Mall, Note, *Derailing the Gravy Train: A Three-Pronged Approach to End Fraud in Mass Tort Litigation*, 48 WM. & MARY L. REV. 2043, 2060 (2007) (medical-criteria laws “set forth rigid criteria for the claimant diagnoses”).

34. See Act of May 26, 2004, H.B. No. 292, 2004 Ohio Laws 3970, available at [http://www.legislature.state.oh.us/BillText125/125\\_HB\\_292\\_I\\_Y.pdf](http://www.legislature.state.oh.us/BillText125/125_HB_292_I_Y.pdf) (codified as amended at §§ 2307.91-.96); Act of June 1, 2004, H.B. No. 342, 2004 Ohio Laws 3946, available at [http://www.legislature.state.oh.us/BillText125/125\\_HB\\_342\\_EN\\_N.pdf](http://www.legislature.state.oh.us/BillText125/125_HB_342_EN_N.pdf) (codified as amended at §§ 2307.84-.902). Ohio’s asbestos medical-criteria law was upheld by the Ohio Supreme Court in *Ackison v. Anchor Packing Co.*, 897 N.E.2d 1118 (Ohio 2008) (finding that asbestos medical-criteria law did not violate a prohibition against retroactive laws in the Ohio Constitution).

35. See Act of May 19, 2005, 79th Leg., R.S., ch. 97, 2005 Tex. Gen. Laws 171, available at <http://www.legis.state.tx.us/Search/DocViewer.aspx?K2DocKey=odbc%3a%2f%2fTLO%2fTLO.dbo.vwArchBillDocs%2f79%2fr%2fS%2fB%2f00015%2f5%2fB%40TloArchBillDocs&QueryText=asbestos&HighlightType=1> (codified as amended at TEX. CIV. PRAC. & REM. CODE ANN. §§ 90.001-.012 (Vernon Supp. 2008)). See generally John G. George, Comment, *Sandbagging Closed Texas Courtrooms With Senate Bill 15: The Texas Legislature’s Attempt to Control Frivolous Silicosis Claims Without Restricting The Constitutional Rights of Silicosis Sufferers*, 37 ST. MARY’S L.J. 849 (2006) (providing background on Texas silica medical-criteria law and predicting that the law would be declared constitutional); James S. Lloyd, Comment, *Administering a Cure-All or Selling Snake Oil?: Implementing an Inactive Docket for Asbestos Litigation in Texas*, 43 HOUS. L. REV. 159 (2006) (describing the Texas medical-criteria law and suggesting it passes constitutional muster).

36. See Asbestos and Silica Compensation Fairness Act, ch. 274, 2005 Fla. Laws 2563, available at [http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=\\_h1019er.doc&DocumentType=Bill&BillNumber=1019&Session=2005](http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h1019er.doc&DocumentType=Bill&BillNumber=1019&Session=2005) (codified as amended at FLA. STAT. ANN. §§ 774.201-.209 (West Supp. 2009)).

37. See Silica and Asbestos Claims Act, ch. 196, 2006 Kan. Sess. Laws 1411, available at <http://www.kslegislature.org/sessionlaws/2006/chap196.pdf> (codified as amended at KAN. STAT. ANN. §§ 60-4901 to -4911 (2005 & Supp. 2007)).

38. See Asbestos and Silica Claims Procedure Act of 2006, No. 303, 2006 S.C. Acts 2376 (codified as amended at S.C. CODE ANN. §§ 44-135-10 to -110 (Supp. 2008)).

39. See Act of Apr. 30, 2007, No. 9, 2007 Ga. Laws 4 (codified as amended at GA. CODE ANN. §§ 51-14-1 to -13 (Supp. 2008)).

