

State of North Dakota

DISTRICT COURT
EAST CENTRAL JUDICIAL DISTRICT
CASS COUNTY COURTHOUSE
BOX 2806
FARGO, NORTH DAKOTA 58108
(701) 451-6940

Honorable John C. Irby
Presiding District Judge

Honorable Susan L. Bailey
District Judge

Honorable Reid A. Brady
District Judge

Honorable Steven L. Marquart
District Judge

Honorable Steven E. McCullough
District Judge

Honorable Thomas R. Olson
District Judge

Honorable Stephannie N. Stiel
District Judge

Honorable Tristan J. Van de Streek
District Judge

Honorable Wade L. Webb
District Judge

January 29, 2021

Lawrence Klemin, Chairman
House Judiciary Committee
State Capitol
600 E. Boulevard
Bismarck, ND 58505-0360

Re: HB 1207, Asbestos Litigation

Dear Chairman Klemin:

I am writing to you as the Presiding Judge of the East Central Judicial District. I was recently made aware of HB 1207, a Bill regarding substantive and procedural requirements for a plaintiff to bring a case for an asbestos injury or death. I write in regards only to how this legislation might affect the case flow in our district, and I am not intending to comment on any policy set forth by the Legislature. As the Presiding Judge, I am responsible for the timely movement of the cases commenced in our district, which is my concern with this Bill.

As you are no doubt aware, since 2013, all state court asbestos litigation is brought in Cass County of the East Central Judicial District. Odd as it may seem, Cass County is the only county in which these cases are now filed. I understand the reasons for this, but I also recognize that legislation directed at asbestos litigation will have a disproportionate effect on the East Central Judicial District. So, on behalf of the Judges of the East Central Judicial District, I feel compelled to comment on the effects of HB 1207 on our case flow.

As stated, I fully recognize that policy is the purview of the Legislature. From the Court's point of view, however, HB 1207 mandates specific and significant pre-trial requirements to bring forward an asbestos action. Through substantial effort, Plaintiffs must establish a *prima facie* case and clear significant hurdles to do so within a relatively short period of time. Each defendant in each case – and there are often upwards of 100 defendants – will be able to challenge the timeliness and the sufficiency of what the plaintiff has provided for its *prima facie* case. If you were to look at the requirements, especially in the context of some of the definitions, there would be ample opportunity for defendants to challenge the

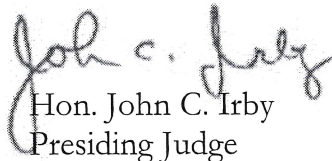
sufficiency of the plaintiff's compliance. Each defendant will be able to put the plaintiff to its proof on all of these requirements. This means, of course, that each defendant can bring a motion to dismiss, which must be heard by the Court. I can envision the substantial likelihood of significant pretrial litigation over these requirements. I can further envision plaintiffs bringing litigation in regards to the constitutionality of this legislation, contending that there has been an abrogation of the Court's rules in regard to litigation management.

As it stands now, asbestos cases are cumbersome to manage given the large number of "players" in the game and the number of filings. For example, I presided over the Judy Geier case, 09-2014-CV-1765. This case was litigated all the way to a jury verdict. According to the Odyssey case management system, 2,768 documents were filed; those documents consisted of 22,698 pages. The impact of HP 1207 on a similar case is not known. I would urge a "go slow" approach to this legislation so that the effects on court resources can be determined. Given the significant impact this legislation will have on asbestos case management, I believe that to be appropriate. I would even go so far as to say that it would be appropriate to refer this legislation for a study and bring it back for full consideration in the next session.

The Judges of the East Central Judicial District and administration would be more than willing to act as a resource and provide whatever information we can to assist.

Thank you very much for your attention to this.

Very truly yours,



Hon. John C. Irby
Presiding Judge
East Central Judicial District

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