

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2018-4
SENATE BILL 470

AN ACT AMENDING RULE 26 OF THE NORTH CAROLINA RULES OF CIVIL
PROCEDURE RELATING TO DISCOVERY IN BANKRUPTCY TRUST PERSONAL
INJURY CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 26(b) of the Rules of Civil Procedure, is amended by adding a new subdivision to read:

"Rule 26. General provisions governing discovery.

...
(b) Discovery scope and limits. – Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- ...
(2a) Bankruptcy Trust Personal Injury Claims. –
- a. Within 30 days after a civil action is filed asserting personal injury claiming disease based upon exposure to asbestos, the plaintiff shall provide to all parties a sworn statement indicating that an investigation of all bankruptcy trust claims has been conducted and that all bankruptcy trust claims that can be made by the plaintiff have been filed.
 - b. The plaintiff shall provide the parties with the identity of all bankruptcy trust claims made and all materials submitted to or received from a bankruptcy trust.
 - c. The plaintiff shall supplement the information and materials that plaintiff provides pursuant to this subsection within 30 days after the plaintiff files an additional bankruptcy trust claim, supplements an existing bankruptcy trust claim, or receives additional information or materials related to any claim against a bankruptcy trust.
 - d. If a defendant has a reasonable belief that the plaintiff can file additional bankruptcy trust claims, the defendant may move the court to stay the civil action until the plaintiff files the bankruptcy trust claim.
 - e. A defendant in the civil action may seek discovery from a bankruptcy trust. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the bankruptcy trust to release information and materials sought by the defendant.

...."
SECTION 2. Article 4 of Chapter 8C of the General Statutes is amended by adding a new section to read:

"Rule 415. Evidence of bankruptcy asbestos trust claims.



In any civil action asserting personal injury claiming disease based upon exposure to asbestos, there shall be a rebuttable presumption that bankruptcy trust claims materials are relevant, authentic, and admissible in evidence in the civil action."

SECTION 3. G.S. 1-75.12 reads as rewritten:

"§ 1-75.12. Stay of proceeding to permit trial in a foreign ~~jurisdiction~~jurisdiction or filing of a bankruptcy trust claim.

(a) **When Stay May be Granted.** – If, in any action pending in any court of this State, the judge shall find that it would work substantial injustice for the action to be tried in a court of this State, the judge on motion of any party may enter an order to stay further proceedings in the action in this State. A moving party under this subsection must stipulate his consent to suit in another jurisdiction found by the judge to provide a convenient, reasonable and fair place of trial.

(a1) In any civil action asserting personal injury claiming disease based upon exposure to asbestos, if a defendant has a reasonable belief that the plaintiff can file additional bankruptcy trust claims, the court on motion of the defendant may enter an order to stay the civil action until the plaintiff files the bankruptcy trust claim.

(b) **Subsequent Modification of Order to Stay Proceedings.** – In a proceeding in which a stay has been ordered under this section, jurisdiction of the court continues for a period of five years from the entry of the last order affecting the stay; and the court may, on motion and notice to the parties, modify the stay order and take such action as the interests of justice require. When jurisdiction of the court terminates by reason of the lapse of five years following the entry of the last order affecting the stay, the clerk shall without notice enter an order dismissing the action.

(c) **Review of Rulings on Motion.** – Whenever a motion for a stay made pursuant to subsection (a) above is granted, any nonmoving party shall have the right of immediate appeal. Whenever such a motion is denied, the movant may seek review by means of a writ of certiorari and failure to do so shall constitute a waiver of any error the judge may have committed in denying the motion."

SECTION 4. This act is effective when it becomes law and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 31st day of May, 2018.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 1st day of June, 2018 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 12th day of June, 2018.

s/ Karen Jenkins
Enrolling Clerk