

60-4903. Same; filing of prima facie evidence of claim. (a) The plaintiff in any civil action alleging a silica or asbestos claim shall file within 60 days of the filing of the complaint or petition or other initial pleading a written report and supporting test results constituting prima facie evidence of the exposed person's physical impairment. The written report and supporting test results shall meet the minimum requirements specified in K.S.A. 2014 Supp. 60-4902, and amendments thereto. The defendant has 120 days from the date the prima facie evidence of the exposed person's physical impairment is proffered or 120 days from the date of the first responsive pleading, whichever is later, to challenge the adequacy of the proffered prima facie evidence of the physical impairment for failure to comply with the minimum requirements specified in K.S.A. 2014 Supp. 60-4902, and amendments thereto. If the defendant makes that challenge and uses a physician to do so, the physician must meet the requirements specified in K.S.A. 2014 Supp. 60-4901, and amendments thereto.

(b) If the defendant challenges the adequacy of the prima facie evidence of the exposed person's physical impairment as provided in subsection (a), the court shall determine from all of the evidence submitted whether the proffered prima facie evidence meets the minimum requirements specified in K.S.A. 2014 Supp. 60-4902, and amendments thereto. The court shall resolve the issue of whether the plaintiff has made the prima facie showing required by applying the standard for resolving a motion for summary judgment.

(c) The court shall dismiss the plaintiff's claim without prejudice upon a finding of failure to make the prima facie showing required by K.S.A. 2014 Supp. 60-4902, and amendments thereto. Any plaintiff whose case has been dismissed without prejudice under this subsection may move to reinstate such case if the plaintiff makes a prima facie showing that meets the minimum requirements specified in K.S.A. 2014 Supp. 60-4902, and amendments thereto.

(d) All silica and asbestos claims filed on or after the effective date of this act shall include a sworn information form containing:

- (1) the claimant's name, address, date of birth, social security number and marital status;
- (2) the exposed person's name, last address, date of birth, social security number and marital status;
- (3) if the claimant alleges exposure to asbestos through another person's exposure, the name, address, date of birth, social security number, marital status, for each person by which claimant alleges exposure (hereafter the "index person") and the claimant's relationship to each such person;
- (4) for each alleged exposure of the exposed person and for each index person, the specific location and manner of each such exposure; the beginning and ending dates of each such exposure; and the identity of the manufacturer of the specific asbestos or silica product to which the exposed person or index person was exposed;
- (5) the occupation and name of employer of the exposed person at the time of each alleged exposure;
- (6) if the silica or asbestos claim involves more than one claimant, the identity of the defendant or defendants against whom each claimant asserts a claim;
- (7) the specific disease related to silica or asbestos claimed to exist; and
- (8) any supporting documentation of the condition claimed to exist, and documentation to support the claimant or index person's identification of the silica or asbestos product that such person was exposed to. Such documentation shall include copies of the x-ray, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials and all other elements required to demonstrate compliance with the equipment, quality, interpretation and reporting standards set forth herein), lung volume tests, reports of x-ray examinations, diagnostic imaging of the chest, pathology reports, or other testing reviewed by the diagnosing, competent medical authority in reaching the physician's conclusions.

(e) A separate information form must be filed for each claimant alleging a silica or asbestos claim.

History: L. 2006, ch. 196, § 3; July 1.