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CCS-75

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March 7, 2002

via HAND DELIVERY

Honorable Allan L. Tereshko
Philadelphia Court of Common Pleas
679 City Hall
Philadelphia, PA 19107

Re: **IN RE: ASBESTOS LITIGATION, PCCP NO. 001, OCTOBER TERM 1986**

PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT OF DEFENDANT CROWN CORK & SEAL COMPANY, INC.

Defendant's Counsel:

Dear Judge Tereshko:

Defendant Crown Cork & Seal Company, Inc. ("Crown") has filed a global motion for summary judgment based on 15 Pa.C.S.A. §1929.1. This is the response on behalf of all of the cases subject to the motion in which the plaintiff is represented by Brookman, Rosenberg, Brown & Sandler. Plaintiffs oppose the Crown motion for all of the reasons set forth below.

I. THE STATUTE DOES NOT ESTABLISH A LIABILITY DEFENSE

First, summary judgment is inappropriate because the statute at issue does not establish a defense to the claims against Crown in these cases. The statute sets forth a formula for capping the total cumulative responsibility for asbestos-related claims of corporations that meet certain criteria (designed to benefit only Crown). The statute does not make the corporation immune from lawsuits, however. To the contrary, the statute provides that: "such corporation shall have no responsibility for successor asbestos-related liabilities in excess of such limitation." §1929.1(a)(1). In other words, the liabilities may exist, but the corporation does not have to honor them. Indeed, far from establishing a procedural mechanism for gaining dismissal from lawsuits, the law provides that the eligible corporation's assets "... shall be exempt from restraint, attachment, and execution on judgments ..." for asbestos-related claims. 15 Pa.C.S.A. *§1929.1(b)(1). Thus, it is clear that* the plan of the statute is to attempt to insulate Crown from answering for judgments against it. Nowhere does the statute make Crown immune or otherwise provide authority for a pretrial dismissal of Crown on that basis, however.[1]

Indeed, the distinction is a potentially crucial one for a plaintiff. In a case in which a plaintiff settles with some defendants and takes others to trial, there can be a substantial difference in recovery for a plaintiff depending upon whether the statute at issue entitles Crown to pretrial judgment. If Crown is not entitled to pretrial judgment, then it may be assigned a share of the liability verdict, and if the statute renders the plaintiff unable to collect Crown's share of the verdict, then the plaintiff can call upon the other liable defendants to fund Crown's share. Baker v. AC and S, 562 Pa. 290, 755 A.2d 664, 672 (2000). See also 42 Pa.C.S.A. §7102(b). As the legislative history shows, the legislature did not intend to require an asbestos victim to bear the loss of

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[1] The legislature could easily have drafted the statute so as to entitle Crown to judgment, by eliminating completely successor liability for a corporation in Crown's circumstances. It chose not to do so, however, instead providing a formula for determining when Crown would not have to pay judgments entered on its asbestos-related successor liability. It is appropriate, moreover, that the issue of whether Crown has reached the statutory cap be litigated when a plaintiff has a judgment against Crown, rather than in the abstract.

compensation caused by the benefit the legislature has given to Crown, rather than to have intended that the victim be compensated, to the fullest extent possible, from other sources. During debate in the Senate, Senator Stack stated:

> Now, I know many of my colleagues are concerned about insuring that individuals injured by asbestos receive just compensation, but it should be these companies that were actually involved in the production and installation of asbestos that should bear the cost of compensating individuals exposed to asbestos and suffering health problems.

2001 Legislative Journal - Senate 1232 (December 11, 2001) (a copy of relevant pages from the Senate Journal is appended hereto as Exhibit "A"). The intent to allow injured plaintiffs to recover for their injuries can best be effectuated by allowing a jury to determine whether Crown is liable for the plaintiff's injuries, rather than to allow pretrial judgment in favor of Crown.

II. THE STATUTE IS UNCONSTITUTIONAL AS APPLIED TO THESE PLAINTIFFS

Even if the statute can be read as authorizing summary judgment if Crown has met the statutory criteria for its liability cap, Crown would not be entitled to judgment because it would be unconstitutional to apply the statute to these cases, which embody claims against Crown that had vested before this statute was enacted.[2] Article 1, §11 of the Pennsylvania Constitution provides in relevant part that: "... every man for an injury done him in his ... person ... shall have remedy by due course of law ...". Our courts have held that this provision does not remove from the legislature the power to abolish totally a cause of action, Singer v. Sheppard, 464 Pa. 387, 346 A.2d 897, 903 (1975), or to abolish a cause of action against a particular class of defendants, Sherwood v. Elgart, 383 Pa. 110, 117 A.2d 899, 901 (1955). However, the legislature cannot constitutionally extinguish a

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[2] Pursuant to Pa.R.Civ.P. 235, plaintiffs are providing to the Attorney General of Pennsylvania a notice of their claims that 15 Pa.C.S.A. §1929.1 is unconstitutional.

vested cause of action or an accrued claim. Gibson v. Commonwealth, 490 Pa. 156, 415 A.2d 80, 83 (1980). A cause of action in tort accrues on the date of accident or injury. Id.

Under this constitutional principle, courts of this Commonwealth have repeatedly declined to apply newly-enacted substantive law to tort claims that had already accrued. In Gibson v. Commonwealth, supra, the court was faced with an appeal from the dismissal of a lawsuit filed against the Commonwealth arising out of the allegedly negligent supervision of a dam. After the damage occurred for which the plaintiffs sought compensation, the legislature passed a law creating sovereign immunity. The Commonwealth preliminarily objected to the Complaint, claiming that the statute made it immune from the lawsuit. In response, the Commonwealth Court granted the objections, dismissing the lawsuit. The Pennsylvania Supreme Court reversed, holding that the statute's elimination of a remedy in damages from the Commonwealth violated Article 1, §11 of the Pennsylvania Constitution. In so doing, the court stated that, under that constitutional provision, "It is well-settled that the Legislature may not extinguish a right of action which has already accrued to a claimant." 415 A.2d at 83. Accord, Garvey v. Rosanelli, 144 Pa. Cmwlth. 588, 601 A.2d 1334, 1337, allocatur denied, 532 Pa. 648, 614 A.2d 1144 (1992).

Just as the courts have applied this principle to the grant of immunity to a party defendant, the courts have prohibited the abrogation of a cause of action based on the elimination of a right to relief. In Rebel v. Standard Sanitary Mfg. Co., 340 Pa. 313, 16 A.2d 534 (1940), the plaintiff sued his employer for his contraction of silicosis. The basis of the lawsuit was the employer's alleged violation of a 1905 statute that required the employer to have sufficient means of exhaust to avoid the employee's exposure to silica dust. The plaintiff was diagnosed with silicosis in 1935. A verdict in his favor was upheld on appeal. In affirming the plaintiff's judgment, the Pennsylvania Supreme Court rejected the defendant's argument that a 1937 repeal of the 1905 statute removed the basis of the negligence case against it. The court held that: "The vested right under the provisions of the Act of 1905, supra, which plaintiff had immediately upon the injury occurring in 1935, could not be impaired by the later enacted repealing statute." 16 A.2d at 537. Further, the court held that to permit the repeal to apply to a cause of action that became complete before the repeal would be a denial of due process. 16 A.2d at 537-539.

Similarly, in Stroback v. Camaioni, 449 Pa. Super. 395, 674 A.2d 257, allocatur denied, 545 Pa. 674, 682 A.2d 306 (1996), a defendant in an automobile accident case attempted to exclude proof of medical bills that had been paid by a medical insurer on behalf of the plaintiff. The accident had occurred before enactment of an amendment to the Motor Vehicle Financial Responsibility Law that clearly extinguished the plaintiff's right to recover such medical expenses. The Pennsylvania Superior Court ruled that the statute had to be interpreted not to apply to the accident that had occurred before enactment of the amendment so as to avoid the extinguishment of a right that had already accrued. Finally, in Jenkins v. Hospital of the Medical College of Pennsylvania, 401 Pa. Super. 604, 585 A.2d 1091 (1991), affirmed, 535 Pa. 252, 634 A.2d 1099 (1993), the Pennsylvania Superior Court ruled that it would be unconstitutional to apply the statutory extinguishment of a cause of action for wrongful birth to a cause of action raising that theory of recovery when the allegedly wrongful birth had occurred prior to the enactment of the statute.

These cases establish beyond doubt that the statute at issue herein cannot constitutionally be applied to the cases that are the subject of Crown's instant motion, all of which accrued before the statute became law. In apparent recognition of the statute's unconstitutionality on this ground, Crown's motion takes great pains to characterize the statute as one that "varies the remedies" available to these plaintiffs. This spurious formulation does not save the statute from the constitutional challenge to its retroactive effect. Calling the statutory scheme one that has "varied" the remedies does not make it so. Crown seeks complete dismissal from these cases. If, as Crown contends, the statute authorizes grant of judgment for Crown, then the legislature has extinguished these plaintiffs' remedies against Crown. It appears that Crown believes that the sense in which the plaintiffs' remedies have been "varied" is that if the plaintiffs had been able to bring their claims before Crown reached the statutory cap on its liability, they would have had a remedy, but now that Crown has reached its cap, they do not have a remedy. It is only by an intolerably cynical twisting of words that this elimination of remedy can be termed a mere variation.[3] It is plain that application of the statutory cap to dismiss these plaintiffs' claims against Crown would violate Article 1, §11 of the Pennsylvania Constitution.[4]

III. THE STATUTE IS UNCONSTITUTIONAL UNDER THE FEDERAL COMMERCE CLAUSE

Crown's summary judgment motion also must be denied because the statute under which it claims an entitlement to dismissal is unconstitutional on its face as it is in violation of the Commerce Clause of the United *States Constitution*, U.S. Const. Art. I, §8, cl. 3. It is well established that the federal Commerce Clause denies states the power to burden the interstate flow of articles of commerce. Oklahoma Tax Commission v. Jefferson Lines, Inc., 514 U.S. 175, 115 S.Ct. 1331 (1995); Annenberg v. Commonwealth, 562 Pa. 570, 757 A.2d 333,

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[3] Furthermore, in Stroback v. Camaioni, supra, if the new statute had been held to apply, the plaintiff could not have recovered any of his medical bills that had been paid by other insurance, but if the new statute did not apply, he could recover only the excess over $10,000.00. This certainly comes closer to a "variation" of remedies than the "variation" claimed by Crown here, yet the Superior Court found it constitutionally impermissible for the legislature to deprive the plaintiff of the ability to recover medical expenses greater than $10,000.00.

[4] It is clear that the constitution requires that the legislature not eliminate a remedy for a person's injury, even if the person retains another cause of action, and even if the retained cause of action is against the same defendant. Jenkins v. Hospital of the Medical College of Pennsylvania, 585 A.2d at 1098. Thus, it is no answer to the constitutional question raised that the plaintiffs may recover from other defendants.

335 (1998), cert. denied, 531 U.S. 959, 121 S.Ct. 385 (2000). This constitutes a prohibition against treating a domestic corporation differently from a foreign corporation.. As the Supreme Court has stated, "This 'negative' aspect of the Commerce Clause prohibits economic protectionism - - that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." New Energy Company of Indiana v. Limbach, 486 U.S. 269, 273, 108 S.Ct. 1803 (1988). Further, "... where simple economic protectionism is effected by state legislation, a virtually *per se* rule of invalidity has been erected." City of Philadelphia v. New Jersey, 437 U.S. 617, 624, 98 S.Ct. 2531 (1978).

There can be no question that the statute here in issue constitutes precisely the type of economic protectionism prohibited by the federal Commerce Clause. The statute limits "... the cumulative successor asbestos-related liabilities of a domestic business corporation that was incorporated in this Commonwealth prior to May 1, 2001 ..." 15 Pa.C.S.A. §1929.1(a)(1). A domestic corporation is one incorporated under the laws of Pennsylvania. 15 Pa.C.S.A. §102. There is no statutory limit on the successor asbestos-related liabilities of a corporation that was not incorporated in Pennsylvania. Thus, the statute is blatant economic protectionism; it grants a clear competitive advantage to a Pennsylvania corporation by putting a cap on its liabilities. This has the inevitable effect of increasing the liabilities of out-of-state corporations, thus burdening their interests in a way prohibited by the Commerce Clause.

There is a wealth of cases that plainly demonstrate the constitutional infirmity of the instant statute. Perhaps most pertinent is Annenberg v. Commonwealth, supra. There, the Pennsylvania Supreme Court had before it a taxation statute in which Pennsylvania citizens had to pay personal property tax on the value of certain stock. The statute was drafted in such a way that the tax was due only on the stock of corporations that were neither incorporated in Pennsylvania nor did business in Pennsylvania. The court held that:

> The discrimination against foreign corporations, and the preferential treatment afforded corporations which were either incorporated in Pennsylvania or do business in Pennsylvania, is plain to see. It is beyond peradventure that the §4821 facially discriminates against interstate commerce.

757 A.2d at 337. Because of the facially discriminatory nature of the statute, the court noted that the burden was on the Commonwealth to establish that the law "advances a legitimate local purpose that cannot be adequately served by reasonably nondiscriminatory alternatives." Id., quoting New Energy Co. of Indiana v. Limbach, 486 U.S. at 278.

Similarly, in Boston Stock Exchange v. State Tax Commission, 429 U.S. 318, 97 S.Ct. 599 (1977), the United States Supreme Court reviewed a New York statute that imposed a transfer tax on certain securities transactions. The scheme of the legislation called for a heavier tax on transactions involving an out-of-state sale than transactions involving in-state sales. The Court held that: "The obvious effect of the tax is to extend a financial advantage to sales on the New York exchanges at the expense of the regional exchanges." 429 U.S. at 331. Ultimately, the Court invalidated the law, stating that: "Because it imposes a greater tax liability on out-of-state sales than on in-state sales, the New York transfer tax, ... falls short of the substantially evenhanded treatment demanded by the Commerce Clause." 429 U.S. at 332.

Moreover, the cases make clear that the reach of the Commerce Clause is not limited to instances of discrimination in taxation. In City of Philadelphia v. New Jersey, supra, the Supreme Court struck down a New Jersey law that prohibited the importation into New Jersey of waste materials that originated outside of the state. The Third Circuit, in Juzwin v. Asbestos Corporation, Ltd., 900 F.2d 686 (3d Cir.), cert. denied, 498 U.S. 896, 111 S.Ct. 246 (1990), reviewed a New Jersey statute of limitations tolling provision. The relevant limitations period for an action to recover damages for asbestos-caused personal injuries was two years. However, the tolling provision excepted from the statutory period any time in which a defendant that was not incorporated in New Jersey had no corporate office there, was not registered to do business there, and had no appointed agent for service in the state. In Juzwin, the plaintiff sued Carey Canada, Inc., more than two years after the plaintiff was diagnosed with asbestosis. Carey Canada's circumstances fit precisely the criteria of the tolling statute. In the trial court, Carey Canada moved for summary judgment on statute of limitations grounds. Its motion was denied. On appeal, the Third Circuit reversed, holding that the tolling statute was facially discriminatory under the Commerce Clause because it applied to out-of-state corporations but not to New Jersey corporations. 900 F.2d at 689. In reviewing whether there existed a legitimate state purpose that could not be served by nondiscriminatory means, the court noted that the test must be applied "with considerable rigor," and is "virtually a *per se* rule of invalidity." Id. The court found that the state could not justify the statute under that standard of heightened review.

Here, it is certain that the Commonwealth cannot justify the discriminatory treatment afforded to out-of-state corporations, as the reason for the statute is to benefit a single Pennsylvania corporation, Crown Cork & Seal. If the Commonwealth's legitimate purpose were to limit the law of successor liability, it surely could have done so across the board. This statute clearly, palpably, and plainly violates the Commerce Clause of the United States Constitution. As a result, Crown's summary judgment motion must be denied.

IV. THE STATUTE VIOLATES VARIOUS OTHER CONSTITUTIONAL PROVISIONS

A. The Statute Constitutes A Denial Of Equal Protection

Further, the statute violates several other constitutional provisions. The statute's discrimination against out-of-state corporations, as well as running afoul of the Commerce Clause, must be found to be a denial of equal protection. In WHYY, Inc. v. Borough of Glassboro, 393 U.S. 117, 89 S.Ct. 286 (1968), the United States

Supreme Court reviewed a New Jersey law that exempted certain nonprofit corporations from paying real estate taxes. Among the criteria for exemption was that the corporation had been incorporated in New Jersey. The Court found the statute unconstitutional, holding that the disparate treatment of domestic and foreign corporations was violative of the out-of-state corporation's right to equal protection. The same flaw clearly infects the statute upon which Crown seeks judgment. In addition, the removal from an injured plaintiff of the right to recover from only Pennsylvania corporations whose liability is based on the rules of successor liability deprives the plaintiff of equal protection. See Moyer v. Phillips, M.D., 462 Pa. 395, 341 A.2d 441 (1975) (statute's exception of defamation claims from actions that survive the death of the injured party is a violation of the constitutional right to equal protection).

B. The Law Is An Unconstitutional Exercise Of Legislative Power

(1) The Statute Sets An Unconstitutional Limit On Personal Injury Damages

The statute also violates several state constitutional provisions that limit the power of the legislature. First, the Pennsylvania Constitution permits the legislature to pass laws limiting the compensation to be paid by employers to injured employees, but goes on to state that "... in no other cases shall the General Assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property, ...". Pennsylvania Constitution, article 3, §18. Here, the legislature has purported to limit the damages that may be recovered in third party actions by asbestos victims. Although the statute herein sets a limit from the standpoint of the amount of money a particular defendant can be required to pay, rather than from the perspective of the plaintiff, nothing in the constitutional provision would except this law from the prohibition on limiting recovery amounts. The legislature has done just what the constitution forbids in article 3, §18, and therefore the statute must be found unconstitutional on that basis also.

(2) The Statute Is An Unconstitutional "Special Law"

Second, the statute constitutes a "special law" which is prohibited by article 3, §32 of the Pennsylvania Constitution. The Supreme Court has held that the test for determining whether a statute is violative of the constitutional prohibition of special laws is as follows:

> Legislation for a class distinguished from a general subject is not special, but general; and classification is a legislative question, subject to judicial revision only so far as to see that it is founded on real distinctions in the subjects classified, and not on artificial or irrelevant ones, used for the purpose of evading the Constitutional prohibition. If the distinctions are genuine, the Courts cannot declare the classification void, though they may not consider it to be on a sound basis. The test is not wisdom, but good faith in the classification.

Dufour v. Maize, 358 Pa. 309, 56 A.2d 675, 677 (1948), quoting Seabolt v. Commissioners, 187 Pa. 318, 41 A. 22 (1898). Therefore, the court's inquiry is whether the classifications made in the statute are real distinctions. See Freezer Storage, Inc., v. Armstrong Cork Company, 476 Pa. 270, 382 A.2d 715, 718 (1978). Here, it is manifestly obvious that, taken as a whole, the classifications in the statute are to benefit Crown alone, not the result of genuine distinctions.

The first classification in the statute is between corporations and all other business entities. The second is between corporations incorporated in Pennsylvania and those incorporated anywhere else. Third, the statute classifies Pennsylvania corporations incorporated before and after May 1, 2001. Next, the statute separates domestic corporations incorporated before May 1, 2001, on the basis of whether they have liability for asbestos-caused personal injuries. Finally, it divides those domestic corporations incorporated before May 1, 2001, who have liability for asbestos-caused personal injuries, into those whose liability is as a successor and those whose liability is based on any other legal theory. These classifications are plainly intended solely to benefit Crown, as no other business entity fits within all five of the classifications made in the statute. While each of the five distinctions may in theory be of general application, when the five are considered together, no conclusion is possible other than that the legislature has attempted to evade the constitutional proscription against special laws.

This conclusion is buttressed by the legislative history. Senator Waugh, speaking in support of the bill, stated that the legislation "... has obviously been here for quite some time in the General Assembly and been identified, as the two speakers before me so eloquently pointed out, as the Crown Cork & Seal legislation." 2001 Legislative Journal - Senate 1232 (December 11, 2001). One of the two speakers referred to by Senator Waugh was Senator Tomlinson, who termed the bill one that "... will help the company Crown Cork & Seal ..." 2001 Legislative Journal - Senate 1230 (December 11, 2001). The statute plainly constitutes special legislation, and therefore, must be found unconstitutional as violative of article 3, §32 of the Pennsylvania Constitution. See Harrisburg School Dist. V. Hickok, 563 Pa. 391, 761 A.2d 1132, 1136 (2000) (" ... this court has held that a classification is per se unconstitutional when the class consists of one member and it is impossible or highly unlikely that another can join the class."); Allegheny County v. Monzo, 509 Pa. 26, 500 A.2d 1096, 1105-1106 (1985).

(3) **The Statute Was Constitutionally Flawed In The Manner Of Its Enactment**

Finally, the law was passed in violation of article 3, §1 and article 3, §3 of the Pennsylvania Constitution. The former section provides that: "No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose." The latter provision states that: "No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof." Here, the purpose of the statute at issue was altered substantially after the relevant bill was first introduced in the Pennsylvania Senate, and the final bill contained more than one subject.

This statute was passed as Senate Bill No. 216. In its original form (Printer's No. 223), the bill's title stated that it would be an act "Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for limitations of actions." Its only substance was a proposed amendment of 42 Pa.C.S.A. §5524 to set the statute of limitations for asbestos-caused injuries and deaths at two years from the date a plaintiff was informed by his doctor of his injury. A copy of Senate Bill No. 216 (Printer's No. 223) is appended hereto as Exhibit "B."[5] The original bill was passed unanimously by the Senate on March 14, 2001 (a copy of the history of Senate Bill 216, obtained from the Pennsylvania legislative website, is appended hereto as Exhibit "C").

In the House of Representatives, the bill was amended and reprinted under Printer's No. 1576. A copy of Senate Bill No. 216 (Printer's No. 1576) is appended hereto as Exhibit "D." That amendment changed the language of the statute of limitations section, but also added an extensive section detailing costs to be charged by the judicial system for certain cases. The new title of the bill read: "Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for COSTS, FOR COMMONWEALTH PORTION OF FINES AND FOR limitations of actions." This amended version of the bill, as yet containing no mention of the limitation on successor asbestos-related liabilities, passed the House of Representatives, with one vote against, on December 5, 2001.

When the bill was returned to the Senate for concurrence in the House amendments, the bill was again amended, and given Printer's No. 1617. For the first time, one of the houses added the language upon which

[5] The court can take judicial notice of the different versions of Senate Bill 216 in its passage through the legislature. Common Cause/Pennsylvania v. Commonwealth, 710 A.2d 108, 112 (Pa. Cmwlth. 1998), affirmed, 562 Pa. 632, 757 A.2d 367 (2000); Pennsylvania AFL-CIO v. Commonwealth, 691 A.2d 1023,1026 (Pa. Cmwlth. 1997), affirmed, 563 Pa. 108, 757 A.2d 917 (2000).

Crown seeks dismissal from these lawsuits. In addition, the Senate deleted all of the House amendment dealing with judicial costs, made further changes to the statute of limitations provision, and added a section that amended 42 Pa.C.S.A. §8128, dealing with transfers of claims against Commonwealth residents. A copy of Senate Bill No. 216 (Printer's No. 1617) is appended hereto as Exhibit "E." The new title provided:

> AMENDING TITLES 15 (CORPORATIONS AND UNINCORPORATED ASSOCIATIONS) AND 42 (JUDICIARY AND JUDICIAL PROCEDURE) OF THE PENNSYLVANIA CONSOLIDATED STATUTES, PROVIDING FOR LIMITATIONS ON ASBESTOS-RELATED LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS'; AND FURTHER PROVIDING FOR CERTAIN STATUTES OF LIMITATIONS AND FOR CERTAIN TRANSFERS.

The Senate concurred in the House amendments, as further amended, on December 11, 2001, and the House concurred in the new Senate amendments the next day. Upon the bill being signed in both houses, it was sent to the governor, who approved it on December 17, 2001.

Thus, this law clearly was altered, so as to change its original purpose, as it journeyed through the legislature. It began as a bill that related solely to the statute of limitations, passed the Senate, and then was substantially altered to provide for certain judicial costs. After the amended bill passed the House, for the first time there appeared language to change substantively the law of successor liability. Therefore, the purpose of the bill was altered twice, each time in a manner that changed its original purpose. In addition, the final bill contained two distinct subjects - the statute of limitations amendment and the substantive change in the law of successor liability. As a result, it is clear that the law was passed in violation of article 3, §§1 and 3 of the Pennsylvania Constitution. See Common Cause of Pennsylvania v. Commonwealth, 668 A.2d 190 (Pa. Cmwlth. 1995), affirmed, 544 Pa. 512, 677 A.2d 1206 (1996). Crown's motion for summary judgment must be denied on the additional basis that the enactment of the law on which its motion is based was constitutionally flawed.

Wherefore, for the foregoing reasons, plaintiffs represented by Brookman, Rosenberg, Brown & Sandler respectfully request that the motion for summary judgment of Crown Cork & Seal Company be denied.

Respectfully submitted,

Brookman, Rosenberg, Brown and Sandler

By: ______________________
Steven J. Cooperstein, Esquire

SJC:jmd

cc: See attached Counsel List

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EXHIBIT

A

An Act amending the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law, further providing for membership of an advisory committee.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

BILLS OVER IN ORDER

SB 533 and SB 587 — Without objection, the bills were passed over in their order at the request of Senator PICCOLA.

BILL ON SECOND CONSIDERATION

SB 656 (Pr. No. 1574) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for definitions; defining the offense of unlawful access to information; and further providing for unlawful use of computer and for bases of personal jurisdiction over persons outside this Commonwealth.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

BILL OVER IN ORDER

HB 1333 — Without objection, the bill was passed over in its order at the request of Senator PICCOLA.

REPORTS FROM COMMITTEES

Senator THOMPSON, from the Committee on Appropriations, reported the following bill:

HB 1944 (Pr. No. 3070) (Amended) (Rereported)

An Act amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, authorizing municipalities to deny issuing permits, variances, licenses or other approvals to persons who are delinquent in tax payments or are in violation of certain codes, statutes or regulations; modifying provisions on taxation and fiscal affairs for cities of the first class; making repeals; and providing for funds for specified fines and penalties.

Senator BRIGHTBILL, from the Committee on Rules and Executive Nominations, reported the following bills:

SB 216 (Pr. No. 1617) (Amended) (Rereported) (Concurrence)

An Act amending Titles 15 (Corporations and Unincorporated Associations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for limitations on asbestos-related liabilities relating to certain mergers or consolidations; and further providing for certain statutes of limitations and for certain transfers.

SB 696 (Pr. No. 1618) (Amended) (Rereported) (Concurrence)

An Act amending the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, defining "environmental media"; and providing for certain notification when there are releases from storage tanks.

SB 837 (Pr. No. 1619) (Amended) (Rereported) (Concurrence)

An Act amending the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, further providing for payment of certain claims from the Underground Storage Tank Indemnification Fund; and for Underground Storage Tank Environmental Cleanup Program.

HB 1633 (Pr. No. 3033) (Rereported) (Concurrence)

An Act amending the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, further defining "occupational disease."

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 1

SENATE CONCURS IN HOUSE AMENDMENTS AS AMENDED

SB 216 (Pr. No. 1617) — The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 15 (Corporations and Unincorporated Associations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for limitations on asbestos-related liabilities relating to certain mergers or consolidations; and further providing for certain statutes of limitations and for certain transfers.

On the question,

Will the Senate concur in the amendments made by the House, as amended by the Senate, to Senate Bill No. 216?

Senator PICCOLA. Madam President, I move that the Senate do concur in the amendments made by the House, as amended by the Senate, to Senate Bill No. 216.

On the question,

Will the Senate agree to the motion?

The PRESIDING OFFICER. The Chair recognizes the gentleman from Bucks, Senator Tomlinson.

Senator TOMLINSON. Madam President, an amendment that was put into Senate Bill No. 216 in the Committee on Rules and Executive Nominations is an amendment that will help the company Crown Cork & Seal, an international company with its world headquarters located in Philadelphia, about 5 minutes from my district. Crown Cork & Seal is a company that makes cans and bottles and bottle caps. It has a thousand employees and a payroll of about $47 million, pays local taxes and State taxes of about $4 million, and besides that it does about a billion dollars' worth of business in the State of Pennsylvania with other Pennsylvania companies. So, its financial impact on this State is very, very important, and at a time when we are losing more and more jobs and at a time when we are losing good, family-sustaining jobs, and at a time when we are losing manufacturing jobs, this company is critically important to the financial welfare of many, many families in my district.

But something has happened to them. They have been under siege by litigants and lawyers from Texas and Mississippi, and they are now paying to the tune of about $100 million a year in litigation and claims to people who have asbestos claims against Crown Cork & Seal.

Now, the thing that aggrieves me about that is that Crown Cork & Seal does not and never has made asbestos or used asbestos in its products. It did, however, in 1963 acquire a bottle cap company that had an asbestos division, but within 90 days sold off that division and relieved itself of that business. Because of that and an investment of about $6 million, they now have paid out almost $300 million in claims in Texas and Mississippi. What that has done to this company is destroyed its bond rating. Its bond rating is now junk-rate bonds, it is having difficulty borrowing money, and that has impacted on the company very, very severely. I think it is important that we try to protect Pennsylvania jobs and a Pennsylvania company against out-of-State litigants when they do not even have asbestosis. Not one of the claimants has been found to be sick or have asbestosis, and the company does not make asbestos. So, what we have done here is tried to limit the liability of the company to the amount that it paid for the subsidiary that it bought in 1963, and that is about $6 million.

Madam President, it does not make any sense to me to have an 80-year-old litigant in Mississippi who does not have asbestosis get an award of $25 million from a company that did not make asbestos. Yet, I have a retired couple in my district who worked all their life, raised a family, they have now retired, they have done everything right, they have saved their money, and now they are looking at losing their pension, and they certainly have looked at the stock they bought from a company that they worked for all their life go from $45 to $50 a share down to about $1.50 a share.

It makes no sense to me that I have people who are 55 years of age working in Bensalem, Philadelphia, Wilkes-Barre, Connellsville, working and giving a lot of their life to this company who are now not sure they are going to have a job, when a 55-year-old litigant in Mississippi gets a $25 million award. What we are doing is transferring money from a company that makes bottles and cans to people in Mississippi and Texas who do not have asbestosis. Yet, I have workers who are working for a company who are worried about their jobs, who are worried about their futures, who are worried about their retirements, and who are worried about their pensions.

So, Madam President, I ask that we adopt Senate Bill No. 216 with the amendment that Senator Conti put into it in the Committee on Rules and Executive Nominations, and I ask for the Members' support on this issue.

The PRESIDING OFFICER. The Chair recognizes the gentleman from Philadelphia, Senator Stack.

Senator STACK. Madam President, I also rise in support of Senate Bill No. 216. I rise today to discuss legislation that will have an important impact on Pennsylvania public policy. It should be a basic governmental interest to make sure our corporate merger laws do not unfairly expose innocent companies to ruin solely because of a merger.

It is now evident that as an unforeseen consequence of mergers that happened in the past, Pennsylvania corporations that never themselves produced, sold, or installed asbestos products may become subject to asbestos-related liabilities. Similarly, the amount of assets fairly available to satisfy those asbestos-related liabilities may have become unfairly and unjustly enlarged. There is an unprecedented avalanche of asbestos-related claims made in the United States today. What has been described by the U.S. Supreme Court as an elephantine mess that the court has called out for legislative solutions. In view of this historically unprecedented situation, it is an essential governmental interest and matter of public policy that the amount of assets available to satisfy asbestos-related claims be fairly limited to the value of assets of the person or company that actually caused the damage through the production, sale, or installation of asbestos.

What this all boils down to is really an issue of fairness. That is the goal of this legislation, to achieve some measure of fairness for Pennsylvania companies like Crown Cork & Seal. Now, I believe many of you are familiar with the problems that Crown Cork & Seal is facing, but I want to provide a brief summary to put this issue into perspective.

Crown Cork & Seal, a solid Pennsylvania company that employs 1,000 Pennsylvania residents and contributes close to $1 billion to the State economy, is teetering on the brink of bankruptcy. It is in this predicament, in large part, because of an avalanche of asbestos-related lawsuits the company faces, hundreds of thousands of lawsuits amounting to hundreds of millions of dollars in claims. Crown Cork & Seal faces these lawsuits and this dire financial situation despite the fact the company never manufactured, sold, or installed a single asbestos-containing product, not a single asbestos product in the company's 100 year history.

The origins of this problem began some 40 years ago when Crown Cork & Seal, a manufacturer of bottle caps and beverage and food containers, was seeking to expand its operations. As part of that effort, it acquired a stock interest in Mundet Cork Company, a manufacturer of cork-lined bottle caps, called crown corks, that were first invented in the 1800s by Crown Cork & Seal's founder. A small division of Mundet, prior to any Crown involvement with the company, had at one time manufactured cork and asbestos insulation. However, those asbestos manufacturing operations were shut down before any Crown involvement with Mundet. In addition, what was left of that insulation division was sold off to another company within 93 days of Crown's first stock interest in Mundet, and 2 years later the remainder of Mundet was merged into Crown.

Now Crown's very existence is threatened, the result of an avalanche of lawsuits against the company for a product it never produced or sold. Today, we have a chance to restore fairness for companies like Crown Cork & Seal. We have in this amendment a fair and equitable solution. One section of the amendment limits liability inherited solely because of the merger law to the total value of the assets of the merged company that was actually in the asbestos business. And in an independent section, the amendment places the assets of a Pennsylvania corporation that exceed that total value beyond the reach of claimants. The amendment eliminates what is essentially a windfall to claimants, a windfall that is destroying innocent corporations and innocent working people's jobs.

The amendment to Title 15 that will become law as part of Senate Bill No. 216 is substantively the same as the amendment to section 7104 of Title 42 in Senate Bill No. 818, with revisions to certain terms to conform with the definitions in Title 15.

Now, I know many of my colleagues are concerned about insuring that individuals injured by asbestos receive just compensation, but it should be those companies that were actually involved in the production and installation of asbestos that should bear the cost of compensating individuals exposed to asbestos and suffering health problems. Crown Cork & Seal is not one of those companies. Beyond that fact, there are typically dozens, if not hundreds, of companies named in asbestos lawsuits. Do not let anyone fool you by saying that these people will not be compensated. I think it is clear they will. More importantly, they will be compensated by the companies that actually bear some responsibility.

I have also heard arguments against the bill that say it will only apply to Pennsylvania claimants. That is plain wrong. This bill will apply to out-of-State claimants in out-of-State courts. Yes, in the case of Crown Cork & Seal, claims against Mundet will continue to be filed in out-of-State courts, and each court will use its own State liability law to determine the impact that Mundet's products had on claimants. However, each out-of-State court will have to look to Pennsylvania corporate law to determine the extent which Crown, as a successor by merger, is responsible for Mundet's liability.

Pennsylvania public policy should insure that domestic corporations like Crown Cork & Seal that engage in a merger do not become the subject of unfair, unjustifiable, and unprecedented liability solely as a result of the merger.

This legislation also provides protections for working families and retirees. Specifically, the legislation states that the provisions shall not apply to insurance companies, workers' compensation benefits, collective bargaining agreements, or obligations arising under the National Labor Relations Act. These protections, as well as a significant number of Pennsylvania jobs this bill will save, are why so many labor unions are backing this legislation. The International Association of Machinists and Aerospace Workers, the Teamsters, and the Seafarers International Union, as well as other local Pennsylvania unions, are all supporting this bill. It is not often that Pennsylvania's business community and labor unions join together in support of an issue such as this. When they do, I think it is important to take notice.

Today, we have the opportunity to make a significant statement in terms of Pennsylvania public policy. By voting "yes," you can ensure that a major Pennsylvania company like Crown Cork & Seal is treated equitably, and that jobs will be protected for our Pennsylvania citizens and families.

Thank you, Madam President.

The PRESIDING OFFICER. The Chair recognizes the gentleman from York, Senator Waugh.

Senator WAUGH. Madam President, the legislation before us today, Senate Bill No. 216, is legislation that I support. I rise today to just make a few comments for the record on the proposal. It has obviously been here for quite some time in the General Assembly and been identified, as the two speakers before me so eloquently pointed out, as the Crown Cork & Seal legislation.

I would like to, first of all, just say for the record, make no mistake, this legislation does affect some 150 to 200 jobs in the legislative district that I represent. In Hanover, there is a Crown Cork & Seal plant. But I would like to just say to the Members briefly that there is really more to this legislation than just the jobs that we have heard about. Before you make your decision, please consider the subject, and that subject is asbestos litigation. Under the history and future of asbestos-related litigation in the United States, asbestos claims have been going on for nearly a generation, Madam President. Tens of thousands of claims are filed each year by a relatively small number of "specialized," quote, unquote, law firms. It has been said that the asbestos attorneys, as they are called, file claims using a shotgun approach. This method of naming claimants is that they list every possible manufacturer of asbestos products or a parent corporation that may have been the cause of harm to their clients. After a court finds liability or the company is ready or agrees to settle the lawsuit, the lawyers simply go after the deepest pockets to satisfy that judgment.

Over the years, the list of defendants with a direct relationship to asbestos manufacturing and installation has really been shrinking. Corporations named as defendants in these suits have been falling into bankruptcy, quite frankly. When one of the big guys falls, their pockets are finally empty, the asbestos attorneys focus their efforts on the next biggest, and then the next, and then the next. Right or wrong, that is just the way the game is played in asbestos litigation. Since 1982, 28 national companies have declared or been involved in bankruptcy because of asbestos-related claims. Among those corporations that have fallen in just the past year alone, Owens Corning International, W. R. Grace Company, Babcock and Wilcox Company, Armstrong World Industries, and G-I Holdings. All of these corporations have sought bankruptcy protection because of liabilities from claims for asbestos-containing products that they stopped using decades ago. The fact is, more than 40,000 asbestos-related cases are filed each year; 40,000 asbestos-related cases are filed each year. Even more startling, 1,200 companies have been drawn into asbestos litigation so far. Even though asbestos has not been used since the mid-1970s, insurance experts believe that claims will continue to be filed until the year 2050. By then the tab for asbestos-related claims is expected to hit $200 billion in compensation and punitive damage payments. Madam President, that is equivalent to the budget of the Commonwealth of Pennsylvania for 10 full years.

A recent study conducted by the Rand Corporation's Institute for Civil Justice predicts that all of the remaining asbestos manufacturers will be driven into bankruptcy within the next 2 years alone. The study goes on to predict that when the companies that actually caused the harm all go under, asbestos attorneys will file claims against a whole new list of targets, including oil refining businesses, retailers, automobile manufacturers and distributors of automobiles, textile manufacturers, and other businesses, businesses that had little or absolutely no relationship to asbestos products or asbestos industries.

I ask the Members of this body to look to their own senatorial districts. Think about it. Consider whether you have a company, a manufacturer, a retailer, a refinery that could be named as a defendant in an asbestos-related claim sometime in the near future. According to the Rand Corporation study, every Senate Member likely does, and in my case, as I pointed out earlier, there are more than 150 employees of the Crown Cork & Seal Company in York County. I am deeply concerned about those workers, and I am concerned about the futures for their families. I have received a number of letters, phone calls, and faxes from them over the last several weeks. I would like to give you one example. This one constituent wrote to me with his perspective. His sentiments were echoed time and time again in the messages I received. Here is what he wrote: quote, "The company I work for was in the wrong place at the wrong time. They are getting hammered 40 years after the temporary ownership of an asbestos-producing company, even though they never even produced asbestos, and now we are being pushed to the brink of financial ruin by lawsuits," unquote. They have families, homes, hopes for the future that may well ride on the passage of this bill.

Make no mistake, Madam President, I support Senate Bill No. 216 for the jobs, the constituents that I have just alluded to, but any legislation, in my book at least, that we pass here really has to be fundamentally fair, and that was mentioned earlier by Senator Stack. Senate Bill No. 216 is fair. I doubt that there is anyone who would stand on this Senate floor today and argue that persons afflicted with asbestosis or a malignant cancer of some type related to asbestos inhalation should not be compensated for their injury. There is no one in this Senate who would say compensation is not due if you have that type of an injury. Certainly, they should receive compensation. They have been harmed, they should be allowed to go after the companies that manufactured and installed asbestos products and be permitted to extract a fair, a fair amount of compensation for the harm done to them.

Madam President, that is exactly what the legislation before us today does. It does nothing to stop a person suffering from an asbestos-related injury from going after the ones who are responsible for causing the harm. This legislation is about ensuring that the list of potential or possible defendants in these lawsuits only includes the ones that have actually done harm. Today that list of defendants includes a company that is headquartered in Pennsylvania, with employees in my senatorial district. It is a company that never, ever manufactured or installed an asbestos product in all the years of its operation. Today it is Crown Cork & Seal. If the Rand Corporation study is to be believed, in the not-too-distant future that list of named defendants and asbestos-related claims will possibly include a company in the senatorial district that you represent, with employees that you serve as constituents.

I urge your support of this legislation this evening. Thank you, Madam President, for the time.

The PRESIDING OFFICER. The Chair recognizes the gentleman from Schuylkill, Senator Rhoades.

Senator RHOADES. Madam President, will Senator Tomlinson submit to interrogation.

Senator TOMLINSON. Yes, Madam President.

Senator RHOADES. Madam President, will this amendment affect anthracosilicosis or any black lung claims?

Senator TOMLINSON. Madam President, no, it will not. In fact, as Senator Waugh and Senator Stack have stated, it will not affect those even with asbestosis claims, so it will not affect black lung.

Senator RHOADES. Madam President, it affects no present, no future black lung claims?

Senator TOMLINSON. No, Madam President.

Senator RHOADES. Madam President, and it is not intended to limit anthracosilicosis or black lung claims?

Senator TOMLINSON. Madam President, that is true; it is not intended to limit that.

Senator RHOADES. Thank you, Madam President.

POINT OF ORDER

The PRESIDING OFFICER. The Chair recognizes the gentleman from Philadelphia, Senator Stack.

Senator STACK. Madam President, I rise to ask the Chair for a ruling under Senate Rule XXI, section 2. As a partner in a law firm that represents Crown Cork & Seal, is it appropriate for me to vote on this bill, or should I recuse myself?

The PRESIDING OFFICER. The Senator has requested a ruling from the Chair as to whether he is required to vote on the motion. He cites his membership in a law firm that is involved in the matter. The rules require that a Member not voting have a direct pecuniary interest in the outcome of the matter before this body. We find that as an attorney, Senator Stack is a member of a class and has, at best, if any interest, an indirect pecuniary interest, and it is the ruling of the Chair that you are required to vote on the motion.

Senator STACK. Thank you, Madam President.

And the question recurring,
Will the Senate agree to the motion?

The yeas and nays were required by Senator PICCOLA and were as follows, viz:

YEA-44

Armstrong	Greenleaf	Mellow	Stack
Bodack	Holl	Mowery	Stout
Boscola	Hughes	Murphy	Thompson
Brightbill	Jubelirer	Musto	Tomlinson
Conti	Kasunic	O'Pake	Wagner
Corman	Kitchen	Piccola	Waugh
Costa	Kukovich	Punt	Wenger
Dent	LaValle	Rhoades	White, Donald
Erickson	Lemmond	Robbins	White, Mary Jo
Fumo	Logan	Scarnati	Williams, Anthony H.
Gerlach	Madigan	Schwartz	Wozniak

NAY-5

Earll	Orie	Tartaglione	Williams, Constance
[illegible]			

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

EXHIBIT

B

PRINTER'S NO. 223

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 216 Session of 2001

INTRODUCED BY TARTAGLIONE, BELL, WAGNER, MELLOW, STOUT, MUSTO, O'PAKE, SCHWARTZ, LAVALLE, HUGHES, COSTA, KASUNIC, BODACK, BOSCOLA, KUKOVICH AND STACK, JANUARY 31, 2001

REFERRED TO JUDICIARY, JANUARY 31, 2001

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for limitations of actions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5524 of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a paragraph to read:

§ 5524. Two year limitation.

The following actions and proceedings must be commenced within two years:

* * *

<u>(8) An action to recover damages for injury to a person or for the death of a person caused by the exposure to asbestos shall be commenced within two years from the date the person was informed by a licensed physician that the person has an injury which is caused by such exposure.</u>

Section 2. This act shall take effect in 60 days.

L14L42RLE/20010S0216B0223

EXHIBIT

C

SB 216 By Senators TARTAGLIONE, BELL, WAGNER, MELLOW, STOUT, MUSTO, O'PAKE, SCHWARTZ, LAVALLE, HUGHES, COSTA, KASUNIC, BODACK, BOSCOLA, KUKOVICH and STACK.

Prior Printer's Nos. 223, 1576. Printer's No. 1617.

An Act amending Titles 15 (Corporations and Unincorporated Associations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for limitations on asbestos-related liabilities relating to certain mergers or consolidations; and further providing for certain statutes of limitations and for certain transfers.

Referred to JUDICIARY, Jan. 31, 2001
Reported as committed, Feb. 13, 2001
First consideration, Feb. 13, 2001
Second consideration, March 12, 2001
Third consideration and final passage, March 14, 2001 (46-0)

In the House

Referred to JUDICIARY, March 15, 2001
Reported as committed, June 19, 2001
First consideration, June 19, 2001
Laid on the table, June 19, 2001
Removed from table, Oct. 3, 2001
Second consideration, Oct. 3, 2001
Re-referred to APPROPRIATIONS, Oct. 3, 2001
Re-reported as committed, Nov. 19, 2001
Re-referred to JUDICIARY, Nov. 21, 2001
Re-reported as amended, Dec. 4, 2001
Third consideration and final passage, Dec. 5, 2001 (192-1)
(Remarks see House Journal), Dec. 5, 2001

In the Senate

Referred to RULES AND EXECUTIVE NOMINATIONS, Dec. 5, 2001
Re-reported on concurrence, as amended, Dec. 11, 2001
Senate concurred in House amendments, as amended by the Senate, Dec. 11, 2001 (44-5)
(Remarks see Senate Journal), Dec. 11, 2001

In the House

Referred to RULES, Dec. 12, 2001
Re-reported on concurrence, as committed, Dec. 12, 2001
House concurred in Senate amendments to House amendments, Dec. 12, 2001 (168-30)

Signed in Senate, Dec. 12, 2001
Signed in House, Dec. 12, 2001
In hands of the Governor, Dec. 12, 2001
Last day for action, Dec. 22, 2001
Approved by the Governor, Dec. 17, 2001
Act No. 101

EXHIBIT

D

HOUSE AMENDED

PRIOR PRINTER'S NO. 223 PRINTER'S NO. **1576**

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 216

Session of 2001

INTRODUCED BY TARTAGLIONE, BELL, WAGNER, MELLOW, STOUT, MUSTO, O'PAKE, SCHWARTZ, LAVALLE, HUGHES, COSTA, KASUNIC, BODACK, BOSCOLA, KUKOVICH AND STACK, JANUARY 31, 2001

AS RE-REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, DECEMBER 4, 2001

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for COSTS, FOR COMMONWEALTH PORTION OF FINES AND FOR limitations of actions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

~~Section 1. Section 5524 of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a paragraph to read:~~

SECTION 1. SECTIONS 1725.1 AND 3571(C) OF TITLE 42 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

§ 1725.1. COSTS.

(A) CIVIL CASES.--SUBJECT TO SUBSECTION (F), THE COSTS TO BE CHARGED BY DISTRICT JUSTICES IN EVERY CIVIL CASE, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, SHALL BE AS FOLLOWS:

(1) ACTIONS INVOLVING $500 OR LESS.. $30.00

(2) ACTIONS INVOLVING MORE THAN

$500 BUT NOT MORE THAN $2,000........................ $40.00

(3) ACTIONS INVOLVING MORE THAN $2,000 BUT NOT MORE THAN $4,000....................... $50.00

(4) *ACTIONS INVOLVING* MORE THAN $4,000 BUT NOT MORE THAN $8,000....................... $75.00

(5) LANDLORD-TENANT ACTIONS INVOLVING LESS THAN $2,000..................................... $45.00

(6) LANDLORD-TENANT ACTIONS INVOLVING MORE THAN $2,000 BUT NOT MORE THAN $4,000................. $55.00

(7) LANDLORD-TENANT ACTIONS INVOLVING MORE THAN $4,000 BUT NOT MORE THAN $8,000................. $75.00

(8) ORDER OF EXECUTION.......................... $22.50

(9) OBJECTION TO LEVY........................... $10.00

(10) REINSTATEMENT OF COMPLAINT................. $ 5.00

SUCH COSTS SHALL INCLUDE ALL CHARGES EXCEPT THE COSTS OF A DISTRICT JUSTICE'S TRANSCRIPT OF EVERY PROCEEDING ON APPEAL OR CERTIORARI (*INCLUDING AFFIDAVIT* AND CERTIFICATE) WHICH SHALL BE $2.50 PER TRANSCRIPT. SAID COSTS SHALL NOT INCLUDE, HOWEVER, THE COST OF POSTAGE AND REGISTERED MAIL WHICH SHALL BE BORNE BY THE PLAINTIFF.

(A.1) *CUSTODY* CASES.--EXCEPT AS PROVIDED IN SECTION 1725(C)(2)(V) (RELATING TO ESTABLISHMENT OF FEES AND CHARGES) AND SUBJECT TO SUBSECTION (F), IN A CUSTODY CASE, THE COURT OF COMMON PLEAS SHALL, IN ADDITION TO THE COST PROVIDED BY GENERAL RULE, ASSESS A COST OF $5.00. EIGHTY PERCENT OF THE FUNDS GENERATED BY THE CHARGE UNDER THIS SUBSECTION SHALL BE TRANSMITTED BY THE PROTHONOTARY TO THE ADMINISTRATIVE OFFICE TO PAY FOR THE IMPLEMENTATION OF SECTION 1904 (RELATING TO AVAILABILITY OF CRIMINAL CHARGE INFORMATION IN CHILD CUSTODY PROCEEDINGS).

(B) CRIMINAL CASES.--SUBJECT TO SUBSECTION (F), THE COSTS TO BE CHARGED BY THE MINOR JUDICIARY OR BY THE COURT OF COMMON PLEAS WHERE APPROPRIATE IN EVERY CRIMINAL CASE, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, SHALL BE AS FOLLOWS:

(1) SUMMARY CONVICTION, EXCEPT MOTOR VEHICLE CASES.. $28.50

(2) SUMMARY CONVICTION, MOTOR VEHICLES CASES, OTHER THAN PARAGRAPH (3)............................ $22.50

(3) SUMMARY CONVICTION, MOTOR VEHICLE CASES, HEARING DEMANDED.................................... $27.50

(4) MISDEMEANOR.................................... $32.50

(5) FELONY... $37.50

SUCH COSTS SHALL INCLUDE ALL CHARGES INCLUDING THE COSTS OF GIVING A DISTRICT JUSTICE'S TRANSCRIPT TO THE PROSECUTOR OR DEFENDANT, OR BOTH, IF REQUESTED. SUCH COSTS SHALL NOT INCLUDE, HOWEVER, THE COST OF POSTAGE AND REGISTERED MAIL WHICH SHALL BE PAID BY THE DEFENDANT UPON CONVICTION.

(C) UNCLASSIFIED COSTS OR CHARGES.--SUBJECT TO SUBSECTION (F), THE COSTS TO BE CHARGED BY THE MINOR JUDICIARY IN THE FOLLOWING INSTANCES NOT READILY CLASSIFIABLE SHALL BE AS FOLLOWS:

(1) ENTERING TRANSCRIPT OF JUDGMENT FROM ANOTHER MEMBER OF THE MINOR JUDICIARY....................... $ 5.00

(2) MARRYING EACH COUPLE, MAKING RECORD THEREOF, AND CERTIFICATE TO THE PARTIES...................... $25.00

(3) GRANTING EMERGENCY RELIEF PURSUANT TO 23 PA.C.S. CH. 61 (RELATING TO PROTECTION FROM ABUSE)........... $10.00

(4) ISSUING A SEARCH WARRANT (EXCEPT AS PROVIDED IN SUBSECTION (D))................................. $10.00

(5) ANY OTHER ISSUANCE NOT OTHERWISE PROVIDED FOR

IN THIS SUBSECTION................................ $10.00

(D) SEARCH WARRANTS.--IN EVERY CASE WHERE A SEARCH WARRANT IS REQUESTED BY A POLICE OFFICER, CONSTABLE OR OTHER PEACE OFFICER ENGAGED AS SUCH IN THE EMPLOY OR SERVICE OF THE COMMONWEALTH OR ANY OF ITS POLITICAL SUBDIVISIONS, NO COST OR CHARGE SHALL BE ASSESSED AGAINST SUCH OFFICER, THE COMMONWEALTH OR POLITICAL SUBDIVISION FOR THE ISSUANCE OF SUCH SEARCH WARRANT.

(E) FISH AND BOATING OFFENSES.--

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2), ANY PERSON CONVICTED OF A SUMMARY OFFENSE UNDER TITLE 30 (RELATING TO FISH) SHALL, IN ADDITION TO THE FINE IMPOSED, BE SENTENCED TO PAY $10 AS COSTS OF THE ISSUING AUTHORITY WHICH COSTS SHALL INCLUDE ALL CHARGES INCLUDING, WHEN CALLED FOR, THE COSTS OF POSTAGE AND REGISTERED OR CERTIFIED MAIL AND THE COSTS OF GIVING A TRANSCRIPT TO THE PROSECUTOR OR DEFENDANT, OR BOTH, IF REQUESTED.

(2) WHERE THE PERSON CHARGED WITH A SUMMARY OFFENSE UNDER TITLE 30 DEMANDS A HEARING, THE COSTS OF THE ISSUING AUTHORITY SHALL BE $15, WHICH COSTS SHALL INCLUDE ALL CHARGES INCLUDING THE CHARGES SPECIFIED IN PARAGRAPH (1).

(F) ANNUAL INCREASE IN COSTS.--BEGINNING ON JANUARY 1, 1994, AND EACH JANUARY 1 THEREAFTER, THE COSTS UNDER SUBSECTIONS (A), (B) AND (C) SHALL BE INCREASED BY THE PERCENTAGE OF INCREASE IN THE CONSUMER PRICE INDEX FOR URBAN WORKERS FOR THE IMMEDIATE PRECEDING CALENDAR YEAR WHICH SHALL BE PUBLISHED IN THE PENNSYLVANIA BULLETIN ANNUALLY BY THE SUPREME COURT ON OR BEFORE THE PRECEDING NOVEMBER 30. THIS SUBSECTION SHALL EXPIRE JANUARY 1, [2001] 2010.

§ 3571. COMMONWEALTH PORTION OF FINES, ETC.

* * *

(C) COSTS IN DISTRICT JUSTICE PROCEEDINGS.--

(1) COSTS COLLECTED BY A DISTRICT JUSTICE SHALL BE TRANSMITTED MONTHLY TO THE COMMONWEALTH IN AMOUNTS AS PRESCRIBED IN SUBSECTION (B) AND THE BALANCE SHALL BE TRANSMITTED MONTHLY TO THE COUNTY IN WHICH THE MAGISTERIAL DISTRICT IS LOCATED. COSTS TRANSMITTED TO THE COMMONWEALTH SHALL BE CREDITED TO THE GENERAL FUND. COSTS TRANSMITTED TO THE COUNTY SHALL BE RETAINED BY THE COUNTY FOR ITS USE.

(2) AMOUNTS PAYABLE TO THE COMMONWEALTH:

(I) SUMMARY CONVICTION, EXCEPT MOTOR VEHICLE CASES.. $10.00

(II) SUMMARY CONVICTION, MOTOR VEHICLE CASES OTHER THAN SUBPARAGRAPH (III)........................ $10.00

(III) SUMMARY CONVICTION, MOTOR VEHICLE CASES, HEARING DEMANDED.................................. $10.00

(IV) MISDEMEANOR.......................... $13.00

(V) FELONY................................ $20.00

(VI) ASSUMPSIT OR TRESPASS INVOLVING:

(A) $500 OR LESS..................... $12.50

(B) MORE THAN $500 BUT NOT MORE THAN $2,000.................................... $20.00

(C) MORE THAN $2,000 BUT NOT MORE THAN $4,000................................ $30.00

(D) MORE THAN $4,000 BUT NOT MORE THAN $8,000................................ $50.00

(VII) LANDLORD-TENANT PROCEEDING INVOLVING:

(A) $2,000 OR LESS................... $20.00

(B) MORE THAN $2,000 BUT NOT MORE THAN $4,000.................................. $25.00

(C) MORE THAN $4,000 BUT NOT MORE THAN $8,000.................................. $35.00

(VIII) OBJECTION TO LEVY.................. $ 5.00

(IX) ORDER OF EXECUTION.................... $15.00

(X) ISSUING A SEARCH WARRANT (EXCEPT AS PROVIDED IN SECTION 1725.1(D) (RELATING TO COSTS))...... $ 7.00

(XI) ORDER OF POSSESSION.................. $15.00

(3) IN ALL CASES WHERE COSTS ARE BORNE BY THE COUNTY PURSUANT TO SECTION 1725.2 (RELATING TO ASSUMPTION OF SUMMARY CONVICTION COSTS BY COUNTY), NO SHARE OF SUCH COSTS SHALL BE PAYABLE TO THE COMMONWEALTH.

(4) BEGINNING ON JANUARY 1, 1994, AND EACH JANUARY 1 THEREAFTER, THE COSTS UNDER PARAGRAPH (2) SHALL BE INCREASED BY THE PERCENTAGE OF INCREASE IN THE CONSUMER PRICE INDEX FOR URBAN WORKERS FOR THE IMMEDIATE PRECEDING CALENDAR YEAR WHICH SHALL BE PUBLISHED IN THE PENNSYLVANIA BULLETIN ANNUALLY BY THE SUPREME COURT ON OR BEFORE THE PRECEDING NOVEMBER 30. THIS PARAGRAPH SHALL EXPIRE JANUARY 1, [2001] 2010.

* * *

SECTION 2. SECTION 5524 OF TITLE 42 IS AMENDED BY ADDING A PARAGRAPH TO READ:

§ 5524. Two year limitation.

The following actions and proceedings must be commenced within two years:

* * *

~~(8) An action to recover damages for injury to a person or for the death of a person caused by the exposure to asbestos shall be commenced within two years from the date the person was informed by a licensed physician that the person has an injury which is caused by such exposure.~~ <—

(8) AN ACTION TO RECOVER DAMAGES FOR INJURY TO A PERSON OR FOR THE DEATH OF A PERSON CAUSED BY EXPOSURE TO ASBESTOS. THE TIME WITHIN WHICH SUCH ACTION MUST BE COMMENCED SHALL BE COMPUTED FROM THE DATE ON WHICH THE PERSON IS INFORMED BY A HEALTH CARE PRACTITIONER WHO IS AUTHORIZED TO PRACTICE SOME COMPONENT OF THE HEALING ARTS BY A LICENSE, PERMIT, CERTIFICATE OR REGISTRATION ISSUED BY A COMMONWEALTH LICENSING AGENCY OR BOARD OR AN EQUIVALENT AGENCY OR BOARD IN ANOTHER STATE THAT THE PERSON HAS BEEN INJURED BY SUCH EXPOSURE OR FROM THE DATE ON WHICH THE PERSON KNEW, OR IN THE EXERCISE OF REASONABLE DILIGENCE, AS DETERMINED BY THE TRIER OF FACT, SHOULD HAVE KNOWN, THAT HE HAD AN INJURY WHICH WAS CAUSED BY SUCH EXPOSURE, WHICHEVER DATE OCCURS FIRST.

Section ~~2~~ 3. This act shall take effect in 60 days.

EXHIBIT

E

PRIOR PRINTER'S NOS. 223, 1576 PRINTER'S NO. 1617

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 216 Session of 2001

INTRODUCED BY TARTAGLIONE, BELL, WAGNER, MELLOW, STOUT, MUSTO, O'PAKE, SCHWARTZ, LAVALLE, HUGHES, COSTA, KASUNIC, BODACK, BOSCOLA, KUKOVICH AND STACK, JANUARY 31, 2001

SENATE AMENDMENTS TO HOUSE AMENDMENTS, DECEMBER 11, 2001

AN ACT

~~Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for costs, for Commonwealth portion of fines and for limitations of actions.~~

AMENDING TITLES 15 (CORPORATIONS AND UNINCORPORATED ASSOCIATIONS) AND 42 (JUDICIARY AND JUDICIAL PROCEDURE) OF THE PENNSYLVANIA CONSOLIDATED STATUTES, PROVIDING FOR LIMITATIONS ON ASBESTOS-RELATED LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS; AND FURTHER PROVIDING FOR CERTAIN STATUTES OF LIMITATIONS AND FOR CERTAIN TRANSFERS.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

~~Section 1. Sections 1725.1 and 3571(c) of Title 42 of the Pennsylvania Consolidated Statutes are amended to read:~~

~~§ 1725.1. Costs.~~

~~(a) Civil cases. Subject to subsection (f), the costs to be charged by district justices in every civil case, except as otherwise provided in this section, shall be as follows:~~

~~(1) Actions involving $500 or less.. $30.00~~

~~(2) Actions involving more than~~

~~$500 but not more than $2,000........................ $40.00~~

~~(3) Actions involving more than $2,000 but not more than $4,000...................... $50.00~~

~~(4) Actions involving more than $4,000 but not more than $8,000...................... $75.00~~

~~(5) Landlord-tenant actions involving less than $2,000.................................... $45.00~~

~~(6) Landlord-tenant actions involving more than $2,000 but not more than $4,000.................. $55.00~~

~~(7) Landlord-tenant actions involving more than $4,000 but not more than $8,000.................. $75.00~~

~~(8) Order of execution........................... $22.50~~

~~(9) Objection to levy............................ $10.00~~

~~(10) Reinstatement of complaint................. $ 5.00~~

~~Such costs shall include all charges except the costs of a district justice's transcript of every proceeding on appeal or certiorari (including affidavit and certificate) which shall be $2.50 per transcript. Said costs shall not include, however, the cost of postage and registered mail which shall be borne by the plaintiff.~~

~~(a.1) Custody cases.--Except as provided in section 1725(c)(2)(v) (relating to establishment of fees and charges) and subject to subsection (f), in a custody case, the court of common pleas shall, in addition to the cost provided by general rule, assess a cost of $5.00. Eighty percent of the funds generated by the charge under this subsection shall be transmitted by the prothonotary to the Administrative Office to pay for the implementation of section 1904 (relating to availability of criminal charge information in child custody proceedings).~~

~~(b) Criminal cases. Subject to subsection (f), the costs to be charged by the minor judiciary or by the court of common pleas where appropriate in every criminal case, except as otherwise provided in this section, shall be as follows:~~

~~(1) Summary conviction, except motor vehicle cases.. $28.50~~

~~(2) Summary conviction, motor vehicles cases, other than paragraph (3)............................ $22.50~~

~~(3) Summary conviction, motor vehicle cases, hearing demanded.................................. $27.50~~

~~(4) Misdemeanor.................................. $32.50~~

~~(5) Felony.. $37.50~~

~~Such costs shall include all charges including the costs of giving a district justice's transcript to the prosecutor or defendant, or both, if requested. Such costs shall not include, however, the cost of postage and registered mail which shall be paid by the defendant upon conviction.~~

~~(c) Unclassified costs or charges. Subject to subsection (f), the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:~~

~~(1) Entering transcript of judgment from another member of the minor judiciary...................... $ 5.00~~

~~(2) Marrying each couple, making record thereof, and certificate to the parties...................... $25.00~~

~~(3) Granting emergency relief pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse).......... $10.00~~

~~(4) Issuing a search warrant (except as provided in subsection (d))................................ $10.00~~

~~(5) Any other issuance not otherwise provided for~~

~~in this subsection.................................. $10.00~~

~~(d) Search warrants.--In every case where a search warrant is requested by a police officer, constable or other peace officer engaged as such in the employ or service of the Commonwealth or any of its political subdivisions, no cost or charge shall be assessed against such officer, the Commonwealth or political subdivision for the issuance of such search warrant.~~

~~(e) Fish and boating offenses.--~~

~~(1) Except as provided in paragraph (2), any person convicted of a summary offense under Title 30 (relating to fish) shall, in addition to the fine imposed, be sentenced to pay $10 as costs of the issuing authority which costs shall include all charges including, when called for, the costs of postage and registered or certified mail and the costs of giving a transcript to the prosecutor or defendant, or both, if requested.~~

~~(2) Where the person charged with a summary offense under Title 30 demands a hearing, the costs of the issuing authority shall be $15, which costs shall include all charges including the charges specified in paragraph (1).~~

~~(f) Annual increase in costs.--Beginning on January 1, 1994, and each January 1 thereafter, the costs under subsections (a), (b) and (c) shall be increased by the percentage of increase in the Consumer Price Index for Urban Workers for the immediate preceding calendar year which shall be published in the Pennsylvania Bulletin annually by the Supreme Court on or before the preceding November 30. This subsection shall expire January 1, [2001] 2010.~~

~~§ 3571. Commonwealth portion of fines, etc.~~

~~* * *~~

~~(c) Costs in district justice proceedings.~~

~~(1) Costs collected by a district justice shall be transmitted monthly to the Commonwealth in amounts as prescribed in subsection (b) and the balance shall be transmitted monthly to the county in which the magisterial district is located. Costs transmitted to the Commonwealth shall be credited to the General Fund. Costs transmitted to the county shall be retained by the county for its use.~~

~~(2) Amounts payable to the Commonwealth:~~

~~(i) Summary conviction, except motor vehicle cases.. $10.00~~

~~(ii) Summary conviction, motor vehicle cases other than subparagraph (iii)........................ $10.00~~

~~(iii) Summary conviction, motor vehicle cases, hearing demanded.................................. $10.00~~

~~(iv) Misdemeanor.......................... $13.00~~

~~(v) Felony................................ $20.00~~

~~(vi) Assumpsit or trespass involving:~~

~~(A) $500 or less....................... $12.50~~

~~(B) More than $500 but not more than $2,000...................................... $20.00~~

~~(C) More than $2,000 but not more than $4,000................................. $30.00~~

~~(D) More than $4,000 but not more than $8,000................................. $50.00~~

~~(vii) Landlord tenant proceeding involving:~~

~~(A) $2,000 or less..................... $20.00~~

~~(B) More than $2,000 but not more than $4,000...................................... $25.00~~

~~(C) More than $4,000 but not more than $8,000.................................... $35.00~~

~~(viii) Objection to levy.................. $ 5.00~~

~~(ix) Order of execution.................. $15.00~~

~~(x) Issuing a search warrant (except as provided in section 1725.1(d) (relating to costs))...... $ 7.00~~

~~(xi) Order of possession................. $15.00~~

~~(3) In all cases where costs are borne by the county pursuant to section 1725.2 (relating to assumption of summary conviction costs by county), no share of such costs shall be payable to the Commonwealth.~~

~~(4) Beginning on January 1, 1994, and each January 1 thereafter, the costs under paragraph (2) shall be increased by the percentage of increase in the Consumer Price Index for Urban Workers for the immediate preceding calendar year which shall be published in the Pennsylvania Bulletin annually by the Supreme Court on or before the preceding November 30. This paragraph shall expire January 1, [2001] 2010.~~

~~* * *~~

~~Section 2. Section 5524 of Title 42 is amended by adding a paragraph to read:~~

~~§ 5524. Two year limitation.~~

~~The following actions and proceedings must be commenced within two years:~~

~~* * *~~

~~(8) An action to recover damages for injury to a person or for the death of a person caused by the exposure to asbestos shall be commenced within two years from the date the person was informed by a licensed physician that the person has an injury which is caused by such exposure.~~ <--

~~(8) An action to recover damages for injury to a person or for the death of a person caused by exposure to asbestos. The time within which such action must be commenced shall be computed from the date on which the person is informed by a health care practitioner who is authorized to practice some component of the healing arts by a license, permit, certificate or registration issued by a Commonwealth licensing agency or board or an equivalent agency or board in another state that the person has been injured by such exposure or from the date on which the person knew, or in the exercise of reasonable diligence, as determined by the trier of fact, should have known, that he had an injury which was caused by such exposure, whichever date occurs first.~~

~~Section 3. This act shall take effect in 60 days.~~

SECTION 1. TITLE 15 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED BY ADDING A SECTION TO READ: <—

§ 1929.1. LIMITATIONS ON ASBESTOS-RELATED LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS.

(A) LIMITATION ON SUCCESSOR ASBESTOS-RELATED LIABILITIES.--

(1) EXCEPT AS FURTHER LIMITED IN PARAGRAPH (2), THE CUMULATIVE SUCCESSOR ASBESTOS-RELATED LIABILITIES OF A DOMESTIC BUSINESS CORPORATION THAT WAS INCORPORATED IN THIS COMMONWEALTH PRIOR TO MAY 1, 2001, SHALL BE LIMITED TO THE FAIR MARKET VALUE OF THE TOTAL ASSETS OF THE TRANSFEROR DETERMINED AS OF THE TIME OF THE MERGER OR CONSOLIDATION AND SUCH CORPORATION SHALL HAVE NO RESPONSIBILITY FOR SUCCESSOR ASBESTOS-RELATED LIABILITIES IN EXCESS OF SUCH LIMITATION.

(2) IF THE TRANSFEROR HAD ASSUMED OR INCURRED SUCCESSOR ASBESTOS-RELATED LIABILITIES IN CONNECTION WITH A PRIOR MERGER OR CONSOLIDATION WITH A PRIOR TRANSFEROR, THEN THE

FAIR MARKET VALUE OF THE TOTAL ASSETS OF THE PRIOR TRANSFEROR, DETERMINED AS OF THE TIME OF SUCH EARLIER MERGER OR CONSOLIDATION, SHALL BE SUBSTITUTED FOR THE LIMITATION SET FORTH IN PARAGRAPH (1) FOR PURPOSES OF DETERMINING THE LIMITATION OF LIABILITY OF A DOMESTIC BUSINESS CORPORATION.

(B) LIMITATION ON TOTAL ASSETS AVAILABLE TO SATISFY SUCCESSOR ASBESTOS-RELATED LIABILITIES.--

(1) EXCEPT AS FURTHER LIMITED IN PARAGRAPH (2), THE ASSETS OF A DOMESTIC BUSINESS CORPORATION THAT WAS INCORPORATED IN THIS COMMONWEALTH PRIOR TO MAY 1, 2001, SHALL BE EXEMPT FROM RESTRAINT, ATTACHMENT OR EXECUTION ON JUDGMENTS RELATED TO CLAIMS FOR SUCCESSOR ASBESTOS-RELATED LIABILITIES IF THE CUMULATIVE AMOUNTS WHICH, AFTER THE TIME OF THE MERGER OR CONSOLIDATION AS TO WHICH THE FAIR MARKET VALUE OF TOTAL ASSETS IS DETERMINED FOR PURPOSES OF THIS SUBSECTION AND SUBSECTION (A), ARE PAID OR COMMITTED TO BE PAID BY OR ON BEHALF OF THE CORPORATION, OR BY OR ON BEHALF OF A TRANSFEROR, IN CONNECTION WITH SETTLEMENTS, JUDGMENTS OR OTHER DISCHARGES OF CLAIMS OF ASBESTOS-RELATED LIABILITIES, EXCEED THE FAIR MARKET VALUE OF THE TOTAL ASSETS OF THE TRANSFEROR, DETERMINED AS OF THE TIME OF THE MERGER OR CONSOLIDATION.

(2) IF THE TRANSFEROR HAD ASSUMED OR INCURRED SUCCESSOR ASBESTOS-RELATED LIABILITIES IN CONNECTION WITH A PRIOR MERGER OR CONSOLIDATION WITH A PRIOR TRANSFEROR, THEN THE FAIR MARKET VALUE OF THE TOTAL ASSETS OF THE PRIOR TRANSFEROR, DETERMINED AS OF THE TIME OF SUCH EARLIER MERGER OR CONSOLIDATION, SHALL BE SUBSTITUTED FOR THE LIMITATION SET FORTH IN PARAGRAPH (1) FOR PURPOSES OF DETERMINING THE EXTENT OF THE EXEMPTION OF THE ASSETS OF A DOMESTIC BUSINESS

CORPORATION.

(C) FAIR MARKET VALUE OF TOTAL ASSETS.--

(1) A DOMESTIC BUSINESS CORPORATION MAY ESTABLISH THE FAIR MARKET VALUE OF TOTAL ASSETS THROUGH ANY METHOD REASONABLE UNDER THE CIRCUMSTANCES, INCLUDING BY REFERENCE TO THE GOING CONCERN VALUE OF SUCH ASSETS OR TO THE PURCHASE PRICE ATTRIBUTABLE TO OR PAID FOR SUCH ASSETS IN AN ARM'S LENGTH TRANSACTION, OR, IN THE ABSENCE OF OTHER READILY AVAILABLE INFORMATION FROM WHICH FAIR MARKET VALUE CAN BE DETERMINED, BY REFERENCE TO THE VALUE OF SUCH ASSETS RECORDED ON A BALANCE SHEET. TOTAL ASSETS SHALL INCLUDE INTANGIBLE ASSETS. A SHOWING BY THE DOMESTIC BUSINESS CORPORATION OF A REASONABLE DETERMINATION OF THE FAIR MARKET VALUE OF TOTAL ASSETS SHALL BE PRIMA FACIE EVIDENCE OF THEIR FAIR MARKET VALUE.

(2) ONCE A REASONABLE DETERMINATION OF THE FAIR MARKET VALUE OF TOTAL ASSETS HAS BEEN THUS ESTABLISHED BY A DOMESTIC BUSINESS CORPORATION, A CLAIMANT DISPUTING THAT DETERMINATION OF VALUE SHALL THEN HAVE THE BURDEN OF ESTABLISHING A DIFFERENT FAIR MARKET VALUE OF SUCH ASSETS.

(3) FOR THE PURPOSE OF ADJUSTING THE LIMITATIONS SET FORTH IN SUBSECTIONS (A) AND (B) TO ACCOUNT FOR THE PASSAGE OF TIME, THE FAIR MARKET VALUE OF TOTAL ASSETS AT THE TIME OF A MERGER OR CONSOLIDATION SHALL BE INCREASED ANNUALLY, UNTIL THE EARLIER OF:

(I) THE DATE OF THE SETTLEMENT, JUDGMENT OR OTHER DISCHARGE TO WHICH THE LIMITATIONS IN SUBSECTION (A) OR (B) ARE BEING APPLIED; OR

(II) THE DATE ON WHICH SUCH ADJUSTED FAIR MARKET VALUE IS FIRST EXCEEDED BY THE CUMULATIVE AMOUNTS PAID OR

COMMITTED TO BE PAID BY OR ON BEHALF OF THE CORPORATION, OR BY OR ON BEHALF OF A TRANSFEROR, AFTER THE TIME OF THE MERGER OR CONSOLIDATION AS TO WHICH THE FAIR MARKET VALUE OF TOTAL ASSETS IS DETERMINED FOR PURPOSES OF SUBSECTIONS (A) AND (B), IN CONNECTION WITH SETTLEMENTS, JUDGMENTS OR OTHER DISCHARGES OF THE SUCCESSOR ASBESTOS-RELATED LIABILITIES,

AT THE RATE EQUAL TO THE PRIME RATE AS LISTED IN THE FIRST EDITION OF THE WALL STREET JOURNAL PUBLISHED FOR EACH CALENDAR YEAR SINCE SUCH MERGER OR CONSOLIDATION, PLUS 1%, NOT COMPOUNDED.

(D) APPLICATION.--

(1) THE LIMITATIONS SET FORTH IN SUBSECTIONS (A) AND (B) SHALL APPLY TO MERGERS OR CONSOLIDATIONS EFFECTED UNDER THE LAWS OF THIS COMMONWEALTH OR ANOTHER JURISDICTION CONSUMMATED PRIOR TO MAY 1, 2001.

(2) THE LIMITATIONS SET FORTH IN SUBSECTIONS (A) AND (B) SHALL APPLY TO ALL ASBESTOS CLAIMS, INCLUDING EXISTING ASBESTOS CLAIMS, AND ALL LITIGATION, INCLUDING EXISTING LITIGATION, AND SHALL APPLY TO SUCCESSORS OF A DOMESTIC BUSINESS CORPORATION TO WHICH THIS SECTION APPLIES.

(3) THE LIMITATIONS SET FORTH IN SUBSECTIONS (A) AND (B) SHALL NOT APPLY TO WORKERS' COMPENSATION BENEFITS PAID BY OR ON BEHALF OF AN EMPLOYER TO AN EMPLOYEE PURSUANT TO THE ACT OF JUNE 2, 1915 (P.L.736, NO.338), KNOWN AS THE WORKERS' COMPENSATION ACT, OR COMPARABLE WORKERS' COMPENSATION LAW OF ANOTHER JURISDICTION.

(4) THE LIMITATIONS SET FORTH IN SUBSECTIONS (A) AND (B) SHALL NOT APPLY TO ANY CLAIM AGAINST A DOMESTIC BUSINESS CORPORATION THAT DOES NOT CONSTITUTE A SUCCESSOR ASBESTOS-

RELATED LIABILITY.

(5) THIS SECTION SHALL NOT APPLY TO AN INSURANCE CORPORATION AS DEFINED IN SECTION 3102 (RELATING TO DEFINITIONS).

(6) THE LIMITATIONS SET FORTH IN SUBSECTIONS (A) AND (B) SHALL NOT APPLY TO ANY OBLIGATIONS ARISING UNDER THE NATIONAL LABOR RELATIONS ACT (49 STAT. 449, 29 U.S.C. § 151 ET SEQ.), OR UNDER ANY COLLECTIVE BARGAINING AGREEMENT.

(E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION:

"ASBESTOS CLAIM." ANY CLAIM, WHEREVER OR WHENEVER MADE, FOR DAMAGES, LOSSES, INDEMNIFICATION, CONTRIBUTION OR OTHER RELIEF, ARISING OUT OF, BASED ON OR IN ANY WAY RELATED TO ASBESTOS, INCLUDING PROPERTY DAMAGE CAUSED BY THE INSTALLATION, PRESENCE OR REMOVAL OF ASBESTOS, THE HEALTH EFFECTS OF EXPOSURE TO ASBESTOS, INCLUDING ANY CLAIM FOR PERSONAL INJURY, DEATH, MENTAL OR EMOTIONAL INJURY, RISK OF DISEASE OR OTHER INJURY OR THE COSTS OF MEDICAL MONITORING OR SURVEILLANCE. THE TERM SHALL ALSO INCLUDE ANY CLAIM MADE BY OR ON BEHALF OF ANY PERSON EXPOSED TO ASBESTOS OR ANY REPRESENTATIVE, SPOUSE, PARENT, CHILD OR OTHER RELATIVE OF ANY SUCH PERSON.

"SUCCESSOR ASBESTOS-RELATED LIABILITIES." ANY LIABILITIES, WHETHER KNOWN OR UNKNOWN, ASSERTED OR UNASSERTED, ABSOLUTE OR CONTINGENT, ACCRUED OR UNACCRUED, LIQUIDATED OR UNLIQUIDATED OR DUE OR TO BECOME DUE, RELATED IN ANY WAY TO ASBESTOS CLAIMS, THAT WERE ASSUMED OR INCURRED BY A DOMESTIC BUSINESS CORPORATION OR FOREIGN BUSINESS CORPORATION AS A RESULT OF OR IN CONNECTION WITH A MERGER OR CONSOLIDATION, OR THE PLAN OF MERGER OR CONSOLIDATION RELATED THERETO, WITH OR INTO ANOTHER DOMESTIC

BUSINESS CORPORATION OR FOREIGN BUSINESS CORPORATION EFFECTED UNDER THE LAWS OF THIS COMMONWEALTH OR ANOTHER JURISDICTION OR WHICH ARE RELATED IN ANY WAY TO ASBESTOS CLAIMS BASED ON THE EXERCISE OF CONTROL OR THE OWNERSHIP OF STOCK OF SUCH CORPORATION PRIOR TO SUCH MERGER OR CONSOLIDATION. THE TERM SHALL ALSO INCLUDE LIABILITIES WHICH, AFTER THE TIME OF THE MERGER OR CONSOLIDATION AS TO WHICH THE FAIR MARKET VALUE OF TOTAL ASSETS IS DETERMINED FOR PURPOSES OF SUBSECTIONS (A) AND (B), WERE OR ARE PAID OR OTHERWISE DISCHARGED, OR COMMITTED TO BE PAID OR OTHERWISE DISCHARGED, BY OR ON BEHALF OF THE CORPORATION, OR BY OR ON BEHALF OF A TRANSFEROR, IN CONNECTION WITH SETTLEMENTS, JUDGMENTS OR OTHER DISCHARGES IN THIS COMMONWEALTH OR ANOTHER JURISDICTION.

"TRANSFEROR." A DOMESTIC BUSINESS CORPORATION OR FOREIGN BUSINESS CORPORATION FROM WHICH SUCCESSOR ASBESTOS-RELATED LIABILITIES ARE ASSUMED OR INCURRED.

SECTION 2. SECTION 5524 OF TITLE 42 IS AMENDED BY ADDING A PARAGRAPH TO READ:

§ 5524. TWO YEAR LIMITATION.

THE FOLLOWING ACTIONS AND PROCEEDINGS MUST BE COMMENCED WITHIN TWO YEARS:

* * *

(8) AN ACTION TO RECOVER DAMAGES FOR INJURY TO A PERSON OR FOR THE DEATH OF A PERSON CAUSED BY EXPOSURE TO ASBESTOS SHALL BE COMMENCED WITHIN TWO YEARS FROM THE DATE ON WHICH THE PERSON IS INFORMED BY A LICENSED PHYSICIAN THAT THE PERSON HAS BEEN INJURED BY SUCH EXPOSURE, OR UPON THE DATE ON WHICH THE PERSON KNEW, OR IN THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE KNOWN, THAT THE PERSON HAD AN INJURY WHICH WAS CAUSED BY SUCH EXPOSURE, WHICHEVER DATE OCCURS

FIRST.

SECTION 3. SECTION 8128 OF TITLE 42 IS AMENDED TO READ:

§ 8128. TRANSFER OF CLAIM TO AVOID POLICY OF COMMONWEALTH.

(A) GENERAL RULE.--IT SHALL BE UNLAWFUL FOR ANY CREDITOR OR OBLIGEE TO COMMENCE AN ACTION ON OR TO TRANSFER ANY CLAIM AGAINST A RESIDENT OF THIS COMMONWEALTH FOR THE PURPOSE OF HAVING SUCH CLAIM COLLECTED BY PROCEEDINGS IN A FORUM WHICH ACCORDS SUCH RESIDENT LESS FAVORABLE EXEMPTIONS FROM ATTACHMENT OR EXECUTION THAN ARE ACCORDED BY THIS COMMONWEALTH, OR FOR THE PURPOSE OF DEPRIVING SUCH RESIDENT OF THE RIGHT TO HAVE HIS PERSONAL EARNINGS WHILE IN THE HANDS OF HIS EMPLOYER EXEMPT FROM APPLICATION TO THE PAYMENT OF HIS DEBTS.

(B) REMEDY.--IN ADDITION TO REMEDY BY INJUNCTION OR OTHERWISE, A RESIDENT OF THIS COMMONWEALTH WHO IS AGGRIEVED BY ANY ACTION BY A CREDITOR OR OBLIGEE IN VIOLATION OF SUBSECTION (A) SHALL HAVE A RIGHT OF ACTION AGAINST THE CREDITOR OR OBLIGEE FOR TREBLE THE AMOUNT RECOVERED FROM SUCH RESIDENT IN VIOLATION OF THIS SECTION AND REASONABLE COUNSEL FEES. THE TRANSFER OF ANY CLAIM AGAINST THE RESIDENT AND THE COMMENCEMENT OF ANY ACTION THEREON OUTSIDE THIS COMMONWEALTH SHALL BE PRIMA FACIE EVIDENCE OF A PURPOSE TO VIOLATE THE PROVISIONS OF SUBSECTION (A).

(C) APPLICATION TO TITLE 15.--THE PROVISIONS OF THIS SECTION SHALL ALSO APPLY TO THE LIMITATIONS SET FORTH IN 15 PA.C.S. § 1929.1 (RELATING TO LIMITATIONS ON ASBESTOS-RELATED LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS).

SECTION 4. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

(1) THE ADDITION OF 42 PA.C.S. § 5524(8) SHALL TAKE EFFECT IN 60 DAYS.

(2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IMMEDIATELY.