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Re: [plaintiffsasbestos] Crown Cork Bill
David C. Thompson <dct@rrv.ne... View
To: Plaintiffs' firms representing asbestos victims <plaintiffsasbestos@lists.trialsmitth.com>

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Thursday, January 22, 2009 3:26:01 PM

List: plaintiffsasbestos Sent by: Thompson, David C. Search

I am not personally familiar with such attempts to broaden the reach to non-Crown Cork defendants -- but if you look at the different versions of this CC&S bill -- **particularly the contemporary versions which have been introduced within the past week in North Dakota (House Bill 1430), Virginia (House Bill 1762) and Indiana (Senate Bill 462)** -- you can see the "date creep" from the Texas legislation which was enacted a couple of years ago. In all three of these currently-pending bills -- the date of "backwards immunization" is **January 1, 1972** -- compared to the date of **May 13, 1968** in the Texas statute -- Tex. Civ. Prac. & Rem. Code § 149.002 (a).

Additionally -- the repose mechanism/statutory immunity in the current bills in North Dakota, Virginia and Indiana is somewhat different from the Texas law which was enacted in 2003 -- and, in my opinion, might well be more broadly applicable to *any* entity which acquired a predecessor with asbestos liabilities deriving from asbestos exposures which occurred prior to January 1, 1972 -- if these new bills should be enacted into law.

For those people out there who think that the current generation of these bills are just rehashes of the old Crown Cork & Seal legislation in Texas I say -- Wake up!! This is serious stuff. I am not familiar with the Ohio legislation, but I know that people lawyers in Virginia and Indiana who have looked at the bills pending in their jurisdictions share my concerns about this "new generation" of bills being potentially much more broadly applicable than being simply "special legislation" for Crown Cork & Seal. If this were simply a CC&S piece of legislation, the date of January 1, 1972 would not be included in these new bills.

Also -- the proponents of this legislation are moving fast. After North Dakota House Bill 1430's introduction last Thursday (1-15-09) -- the NDAJ and the AFL-CIO unions jumped it in opposition at the beginning of this week -- the Republican leadership in our House of Representatives quickly scheduled 1430 for its hearing in the House Judiciary Committee this coming Tuesday January 27th at 9:00 a.m. C.S.T. - - and its going to be a tough slog.

We have learned that House Bill 1430 was presented by Washington-based lobbyist lawyers for the "Darth Vader-esque" Kansas City law firm Shook, Hardy & Bacon -- known for its central role in representing the tobacco industry [i.e., Google "[tobaccodocuments.org](#)" and see the more than 61,000 Shook, Hardy & Bacon tobacco litigation documents]. Also involved -- not surprisingly -- were lobbyists from the Greater North Dakota Chamber of Commerce, who walked the Shook Hardy people through our State Capitol last week.

I would be interested in knowing whether Shook, Hardy & Bacon has been involved in other jurisdictions where this type of legislation has been proposed -- or whether Shook Hardy is working with the National Chamber of Commerce.

Finally --- I have difficulty believing that North Dakota, Virginia and Indiana are the only states in which this new generation of bills have been introduced over the past two weeks or so -- and I would advise everyone to check with their state trial lawyers' and AFL-CIO people -- and directly on your own respective state legislative websites -- to see if there are any other bills of this generation and type. It makes sense that there would be -- given the fact that the North Dakota, Virginia and Indiana bills are so similar to one another.

I will be more than please to network with anyone on this -- and I will know more after Tuesday morning -- when I will be testifying in Bismarck against House Bill 1430.

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TODAY: FRI, 1/23 - SUN, 2/1

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