

686B.4 Asbestos claims involving nonmalignant conditions — elements of proof.

An asbestos action involving a nonmalignant condition shall not be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment for which asbestos exposure was a substantial contributing factor. The prima facie showing shall be made as to each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

1. Radiological or pathological evidence of asbestosis or radiological evidence of diffuse bilateral pleural thickening or a high-resolution computed tomography scan showing evidence of asbestosis or diffuse bilateral pleural thickening.

2. A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all of the exposed person's principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including asbestos fibers or other disease-causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure.

3. A detailed medical, social, and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems of the exposed person and the most probable cause of such medical problems.

4. Evidence verifying that at least fifteen years have elapsed between the exposed person's date of first exposure to asbestos and the date of diagnosis.

5. Evidence based upon a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, based upon the person's medical records, that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides or reported significant changes year to year in lung function for FVC, FEV1, or diffusing capacity of the lung for carbon monoxide as defined by the American thoracic society's interpretative strategies for lung function tests, 26 European Respiratory Journal 948-68, 961-62, table 12 (2005), as updated.

6. Evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial contributing factor to the exposed person's physical impairment, based on a determination that the exposed person has any of the following:

a. FVC below the predicted lower limit of normal and FEV1/FVC ratio, using actual values, at or above the predicted lower limit of normal.

b. Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal.

c. A chest X ray showing bilateral small, irregular opacities (s, t, or u) graded by a certified B-reader as at least 2/1 on the ILO scale.

7. The qualified physician signing the detailed narrative medical report has concluded that exposure to asbestos was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion that the medical findings and impairment are consistent with or compatible with exposure to asbestos, or similar opinion, does not satisfy the requirements of this subsection.

2017 Acts, ch 11, §13