

CONSUMER ATTORNEYS OF CALIFORNIA

Seeking Justice for All

Protection for dying asbestos workers and their families

SB 632

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SUMMARY

The bill will ensure sensible and safe limits exist on depositions of dying mesothelioma victims. Specifically, this bill will limit depositions to 7 hours of total testimony for such terminally ill patients. A court may grant an additional 7 hours of deposition testimony for 14 hours of total testimony, if the health of the deponent does not appear to be endangered by the additional time.



Consider the case of Beatrice Ann Chan who was 72 years old when she was diagnosed with mesothelioma. Exposed to one asbestos-containing consumer product (drywall compound) at a single location (her home), she brought what should have been a relatively simple lawsuit against a handful of defendants. But her

experience was anything but simple: Her deposition became a grueling interrogation over the course of a month. Her experience is emblematic of the abuses that terminal cancer patients routinely endure in mesothelioma lawsuits.

THE PROBLEM

Many workers, especially in the trades, suffered exposure to asbestos in their workplace. Asbestos poisoning can result in terrible diseases, including mesothelioma. The manufacturers of products containing asbestos knew of the dangers for many years yet did not remove asbestos from products that exposed workers. As a result, workers and their families have the right to pursue a civil action against those manufacturers to seek compensation for their injuries. Unfortunately, once a person is diagnosed with mesothelioma, they are locked into a painful death spiral. Many of these people are older and will die quickly due to the nature of the disease. Defendants often subject the dying asbestos victims to lengthy depositions, at times so long that the plaintiff dies before a deposition is complete. Their claims die with them, and justice is denied.

SETTING SENSIBLE LIMITS

Right now, marathon depositions inflict undue emotional and physical harm on mesothelioma patients during their final days of life. In some instances, depositions end in death.

Before her deposition, Ms. Chan presented medical evidence of “significant doubt” that she would “survive beyond six months,” invoking the intended protections of Code of Civil Procedure section 2025.290 that her deposition be limited.

Ms. Chan was then interrogated for 12 days, over the course of a month. Questioning “on the record,” by the asbestos defense attorneys exceeded 20 hours. Because her dire health necessitated breaks for medicine and feedings, this grilling took place in Ms. Chan’s own home, invaded by numerous attorneys, a videographer, and a court reporter for over 40 total hours. Ms. Chan requested limitations from the court and the relief was denied. After this ordeal, Ms. Chan’s health continued to decline and she passed just weeks later.

Beatrice Chan’s story is not an isolated case. Under this bill, she would have been protected during her final days from enduring a marathon deposition just before her death.

Legislative Department

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DEPO STATUTORY BACKGROUND

Once a civil action for asbestos poisoning is filed, defendants are entitled to seek information from the plaintiff through both written discovery (interrogatories and request for admission) and oral discovery (depositions). These methods of discovery elicit the information that defendants need to assess product exposure. Defendants in these cases often have more information about exposure than the plaintiff.

Opponents claim that these cases can often involve multiple defendants necessitating more time. As an accommodation for that possibility, the bill provides for an additional 7 hours of time if a judge determines it is necessary and will not harm the plaintiff.

A deposition is a witness's out-of-court testimony reduced to writing for later use in a court proceeding. In federal court, oral depositions are presumptively limited to a single seven-hour day unless the court orders or the parties agree otherwise based on the needs of the case. (Federal Rules of Civil Procedure Rule 30(d)(1)).

Added in 2012, California Code of Civil Procedure 2025.290 contains a similar presumptive time limit of one day of seven hours similar to the successful federal law.

California law includes some exceptions to the seven-hour rule, including for cases declared complex pursuant to Rule 3.400 of the California Rules of Court. An exception, however, is made only in those cases where a licensed physician attests that the person suffers from an illness that raises substantial medical doubt of survival beyond six months. In those cases, the deposition is limited to two days lasting no more than seven hours each day. Thus, dying victims in complex cases have a presumptive time limit of 14 hours.

PROBLEM

These protections for terminally ill plaintiffs in complex cases include those with mesothelioma or

other asbestos-related diseases. Despite the clear intent of the California Legislature in 2012 to protect dying victims from abusive depositions, courts overseeing asbestos cases have ignored the 14-hour presumption, relying on broad language in Code of Civil Procedure 2025.290 (a) permitting “judicial discretion” in determining the length of a deposition.

As a result, courts are ignoring the presumptive time limit altogether, and dying asbestos plaintiffs continue to be subjected to unnecessary lengthy – and sometimes fatal – depositions.

These courts do not evaluate cases on an individual basis and are failing to apply the rule limiting these types of marathon depositions regardless of the facts of an individual case or the health of a dying victim.

The purpose of the original 2012 legislation – to create a presumption and require defendants to come forward with particularized reasons to extend the presumptive time limit – is being ignored for the most vulnerable plaintiffs: Terminally ill asbestos victims.

This bill would carry out the original intent of the 2012 CA law and protect dying mesothelioma victims from marathon depositions.

SUPPORT: Consumer Attorneys of California; SEIU; State Building & Construction Trades Council of CA; California Labor Federation; California Professional Firefighters; Courage Campaign; Labor & Employment Committee - National Lawyers Guild; California Conference of the Amalgamated Transit Union; California Teamsters Public Affairs Council; California Conference of Machinists; UNITE HERE!, AFL-CIO; International Longshore and Warehouse Union; Sacramento Central Labor Council, AFL-CIO; SAG-AFTRA; Utility Worker Union of America Local 132; Engineers & Scientists of California IFPTE Local 20; Professional and Technical Engineers IFTPE Local 21, AFL-CIO; Asbestos Workers Local 16 Retirees Club; Communications Workers of America District 9; Communications Workers of America Local 9421; San Francisco Bay Area Physicians for Social Responsibility; WORKSAFE!; Asbestos Disease Awareness Organization; Heat & Frost Insulators & Allied Workers Local 5; District Council of Iron Workers of the State of CA; Democratic Party of Sacramento County; Green Democratic Club of Sacramento County; Town & Country Democratic Club; JFK Democratic Club of Sacramento County.

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