



Ending depo abuse of dying asbestos and silica victims

SB 645
Sen. William Monning

THE PROBLEM

Many workers, especially in the trades, have been exposed to asbestos and silica on the job. When ill and dying due to silicosis or mesothelioma, victims may bring a civil action in state court to hold accountable the manufacturers and others who knew for decades about the horrendous dangers, but failed to warn or provide adequate protection. Victims suffering from these diseases – often fatal within a year of diagnosis – suffer yet again when subjected to grueling, drawn-out depositions that sometimes stretch for weeks and end with the death of a patient. Once a patient dies, the defendants that caused these untimely deaths are no longer liable for damages related to the victim's pain and suffering, which in many cases is the only significant recovery for the victim's families. SB 645 sets sensible limits for deposition of such terminally ill victims.



2012 LAW IGNORED

California Code of Civil Procedure 2025.290 was approved in 2012 and contained a presumptive time limit of 7 hours – similar to federal law. More time was granted in complex cases, but the law specifically limited depositions to no more than 7 additional hours for dying deponents.

Unfortunately, this protection for dying deponents has been bypassed by some state courts who issue blanket case-management orders without considering each individual plaintiff's circumstances. The current law must be changed to carry out the intent of the original bill – to protect dying deponents.

THE SOLUTION

SB 645 will solve this problem, restoring the intended protection of the 2012 law – and protecting terminally ill asbestos patients from deposition discovery abuse.

It accomplishes this while maintaining due process rights. Defendants have extensive discovery in California including written interrogatories and document production. As well, the bill allows defendants to request up to an additional 3 hours of examination beyond the 7-hour presumptive limit for no more than 10 hours of total deposition testimony conducted by the defendants. Court discretion is applied in determining that an extension is in the interest of fairness and that the deponent does not appear endangered by the extended deposition.

DEPOSITION DISCOVERY ABUSE

Unfortunately, there are many instances of unnecessarily lengthy depositions in an attempt to delay and discourage litigation. Consider the case of John Tommaney, who sued several corporations for causing his terminal asbestos-related cancer. As the disease progressed, Mr. Tommaney completed his direct-examination deposition testimony in just four hours. Then the defense attorneys' cross-examination began. Their prolonged questioning spanned 22 days. On the 23rd day, John Tommaney's attorney informed the defendants, "Mr. Tommaney is unavailable for deposition today as he died last night."

SETTING SENSIBLE LIMITS

SB 645 will limit depositions of dying mesothelioma and silicosis victims to 7 hours. A court, in its discretion, may grant up to 3 more hours upon request by defense counsel in the interests of fairness, as long as the health of the deponent does not appear endangered by the grant of additional time. Without these limits, marathon depositions will continue to inflict undue emotional and physical harm on victims during their final days of life – even hastening death.

SPONSORS

State Building & Construction Trades Council
Consumer Attorneys of California
District Council of Iron Workers of the State of CA and Vicinity

CONTACTS

Jeremy Smith
jsmith@sbctc.org
(916) 443-3302

Jacque Serna
jserna@caoc.org
(916) 442-6902

Lea-Ann Tratten
ltratten@trattenprice.com
(916) 769-6820

Keith Dunn
keithdunn@me.com
(916) 273-6567