MEMORANDUM

FROM: Ernest L. Wetzler II
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You requested research on the issue of new case law or statutes that have occurred in the past year in the State of Georgia that affect asbestos claims or class action law suits. In the past year, Georgia has passed O.C.G.A. §§ 51-14-1 to -13 and O.C.G.A. §§ 51-15-1 to -8 which sought to cure the defects of the Asbestos and Silica statute enacted on April 12, 2005. Furthermore, there has only been one case ruled on in the past year that comments on DaimlerChrysler Corp. v. Ferrante. No other significant litigation or case law has occurred within the past year in Georgia concerning asbestos, class action or mass tort law suits.

I. Georgia Statutes

Georgia has passed two statutes since the start of 2007 that deal with asbestos. The first statute is a part of Georgia Senate Bill 182, that was signed by Governor Purdue on April 30, 2007. Senate Bill 182 was codified as O.C.G.A. §§ 51-14-1 to -13, and is known as the "Georgia Asbestos and Silica Bill." The purpose of O.C.G.A. §§ 51-14-1 to – 13, is to cure the deficiencies of the Asbestos and Silica Bill that was passed by the Georgia Legislature on April 12, 2005 and was subsequently overturned by the Georgia Supreme Court in November 2006 in DaimlerChrysler Corp. v. Ferrante 637 S.E.2d 659 (GA 2006).

The Asbestos and Silica Statute of April 12, 2005 required all new claims filed after that date to establish that exposure to asbestos was a substantial contributing factor

in a plaintiff's injuries; however, claims filed before April 12, 2005 only had to establish that asbestos was a contributing factor to a plaintiff's injuries. In DaimlerChrysler, the Court opined that the Georgia Asbestos Statute of April 12, 2005 is unconstitutional and violates the ban on retroactive laws because the statute "imposes upon appellees a greater evidentiary burden than was required under the law in effect at the time their actions were filed." Id. Furthermore, the Supreme Court in DaimlerChrysler also concluded that the unconstitutional sections of the statute could not be severed because they "are the heart of the Act, and their severance from the Act would result in a statute that fails to correspond to the main legislative purpose, or give effect to that purpose." Id.

Georgia Senate Bill 182, which was signed into law on April 30, 2007, seeks to cure the unconstitutional provisions of the previously enacted Asbestos and Silica Law from April 12, 2005. Franklin P. Brannen, Jr., Richard L. Sizemore and Jacob E. Daly, in their paper titled "Product Liability" that was published in the Fall 2007 Mercer Law Review, described O.C.G.A. §§ 51-14-1 to -13:

> Under the new law, prima-facie evidence of physical impairment remains "an essential element of an asbestos claim or silica claim." The new law simply redefines "prima-facie evidence of physical impairment" so that the type of evidence necessary to sustain an asbestos or silica claim depends on the nature of the alleged injuries and whether the claim accrued before April 12, 2005, or on or after May 1, 2007. Like the 2005 version, the new law provides that a claim cannot be brought or maintained in a Georgia court unless the claimant resides in Georgia at the time of filing or did at the time of exposure. Finally, the General Assembly attempted to avoid a subsequent decision like Ferrante by including the following language in the severability clause…"This chapter shall be interpreted consistently with the General Assembly's intention not to make any substantive changes in the law applicable to cases that accrued before April 12, 2005. The General Assembly expressly declares its intent that Code Section 51-14-9 [requiring claimants to reside in Georgia at the time of filing or exposure] remain in full force and effect if any other part or parts of this chapter shall be declared or adjudged invalid or unconstitutional" (59 Mercer L. Rev. 331, 347-348 (Fall 2007)).

Consequently, Senate Bill 182 cures the earlier Georgia Constitutional law defects of O.C.G.A. §§ 51-14-1 to -13 as enacted on April 12, 2005.

The new statute of O.C.G.A. §§ 51-15-1 to -8, was also signed into law by Governor Purdue contemporaneously with O.C.G.A. §§ 51-14-1 to -13, as part of Senate Bill 182. O.C.G.A. §§ 51-15-1 to -8 is a series of statutes that protect innocent successor liability corporations from asbestos related liability. In summary, this statute applies to a corporation that assumed or incurred successor asbestos related liabilities before January 1, 1972, and limits the cumulative successor asbestos related liabilities of a corporation to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation.

In addition to the statutes described above, the Georgia House of Representatives proposed House Bill 503. The Bill has yet to be enacted, but would amend paragraph 4 of O.C.G.A. § 12-12-3 to read:

> (4) 'Contractor' means any person who contracts with an owner or operator of a facility or residential dwelling to perform the removal or encapsulation of friable asbestos-containing material from any such facility or residential dwelling. Such term shall not include any employee of a owner or operator OF A FACILITY OR RESIDENTIAL DWELLING.

This law is pending in the House and would seek to add the words “of a facility or residential dwelling.” If enacted, employees of owners or operators of facilities or residential dwellings could not be considered contractors for asbestos removal under this statute.

II. Georgia Case Law

The only case decided within the past year that comments on the decision of DaimlerChrysler is Johnson v. Ga. Pac. Corp., 285 Ga. App. 44, 44, 645 S.E.2d 583, 584 (2007). Johnson reaffirmed the decision from DaimlerChrysler. The Court of Appeals remanded the cases back to trial court in light of the DaimlerChrysler case that was originally dismissed because of the April 12, 2005 version of O.C.G.A. §§ 51-14-1 to -13. No other cases have since been decided that apply O.C.G.A. §§ 51-14-1 to -13 as passed on April 30, 2007.