

KANSAS TRIAL LAWYERS ASSOCIATION



To: Senator Rick Wilborn, Chairperson
Members of the Senate Judiciary Committee

From: Callie Jill Denton JD, Executive Director

Date: March 8, 2018

RE: **HB 2457 As amended by the House; Enacting the asbestos trust claims transparency act; providing for disclosures regarding asbestos trust claims in civil asbestos actions. (OPPOSE)**

The Kansas Trial Lawyers Association (KTLA) is a professional association of trial lawyers with members across the state. KTLA opposes HB 2457 and requests that the Senate Judiciary Committee not pass it.

Asbestos-related lung disease was well-documented in the early 1900s; linked to lung cancer by the 1940s; and found to cause mesothelioma in the 1950s. Asbestos companies have an acknowledged and known history of concealing the harms of asbestos exposure from employees and the public. It is also documented that they did so with full knowledge of the deadliness of asbestos exposure, and that the risk of injury and death was avoidable.

Kansans that are at the greatest risk for asbestos-related illness are veterans and active service members from all branches of service; firefighters; construction workers; manufacturing workers; communications and power plant workers; and auto mechanics. Asbestos has not been banned. It is an exposure hazard in schools where removal is cost-prohibitive. Asbestos can be found in retail products. Only the state of Connecticut bans its use in toys and California requires a warning label on products with respirable asbestos. Since asbestos illness can take up to 50 years to develop, exposure from decades ago may still result in disease, and exposure today may not result in disease for decades to come.

Despite the industry's history and the deadliness of asbestos, Kansas has enacted laws that protect asbestos companies. Kansas laws already allow asbestos companies to evade liability and avoid accountability: The Silica and Asbestos Claims Act, KSA 60-4901 *et. seq.*, makes it harder for plaintiffs to file a civil action against an asbestos company. The Successor Corporation Asbestos-Related Liability Fairness Act, KSA 50-11301 *et. seq.*, is a sweeping exclusion from liability for all pending and future asbestos claims and immunizes the Crown

Corporation and its successors. HB 2457 is another proposal from asbestos companies that would further reduce their accountability to Kansans.

The House Judiciary Committee amended HB 2457. However, the amendments do not address the fundamental problems of HB 2457, which are that it establishes a special procedure that applies only to asbestos claims. HB 2457 also puts unique burdens on plaintiffs that mean the procedure is not balanced and not fair to both sides of the dispute. Finally, HB 2457 is not reasonable. The Legislature has already overregulated individual Kansans' right to seek justice in court if they suffer an asbestos injury caused by another's wrongdoing.

HB 2457 is excessive. The current procedural rules in Chapter 60 that apply to other personal injury and wrongful death claims filed in Kansas are fair and sufficient to handle asbestos claims.

Kansas statutes and the rules of civil procedure are more than adequate to fairly handle civil litigation involving asbestos claims, including procedures to address concerns of any defendant that a lawsuit may be fraudulent or frivolous. There is no need for the Legislature to act to create a special procedure for asbestos claims and asbestos defendants. The special procedural burdens established for plaintiffs in asbestos suits are unwarranted.

Kansas laws already limit and deter asbestos-related claims.

The Legislature has already overregulated individual Kansans' right to seek justice if they suffer an asbestos injury due to another's dangerous and irresponsible acts. The Legislature has enacted laws protecting asbestos companies and deterring plaintiffs with an asbestos-related injury from having their day in court and does not need to pass additional regulations.

For example, the Silica and Asbestos Claims Act establishes unique gatekeeper-like standards for asbestos plaintiffs. In all but the most serious cases, a Kansas plaintiff must receive a diagnosis from a specialist and have documented proof of 10 years since exposure to asbestos and the diagnosis of asbestos-related illness. The Act also establishes specific clinical signs of disease *required before a plaintiff can file a lawsuit*. The Successor Corporation Asbestos-Related Liability Fairness Act, KSA 50-11301 *et. seq.*, immunizes the Crown Corporation and its successors from asbestos claims. In addition, Kansas has non-economic damage caps and wrongful death damage caps limiting monetary damages in civil actions, including asbestos claims.

Kansas has never seen a flood of asbestos litigation even though Kansans are at risk from the negligent acts of asbestos companies and they need the protection of law.

There is no asbestos crisis or litigation crisis in Kansas, nor crisis of asbestos trust fraud. There has never been an asbestos-related litigation crisis in Kansas. There is little reason to believe that there is a flood of tort litigation of any sort in Kansas. Personal injury cases are only 1% of

all civil and criminal cases in Kansas—2,396 tort cases out of 192,230 total civil and criminal cases filed in Kansas courts in fiscal year 2016, per the Annual Report of the Courts of Kansas. Out of the millions nationally who have filed claims with asbestos trusts, defendants have only been able to claim an error rate of 0.35%, an amount far less than other large trust systems.

However, there is no “safe” level of exposure to asbestos; even secondary exposure is dangerous. Between 1999-2013, 1,654 Kansans died from asbestos-related illnesses.¹ Kansans who discover they are the victims of the gross negligence of one or more asbestos companies deserve the fullest measure of justice of Kansas law and Kansas courts.

HB 2457 is unnecessary and unfair legislation that limits access to justice for Kansans who have been injured by asbestos exposure. On behalf of the Kansas Trial Lawyers Association, I respectfully request that the Committee not pass HB 2457.

¹ <http://www.asbestosnation.org/facts/asbestos-deaths/ks/>

Commanders' Group

Congressionally Chartered Veterans Organizations of the State of Michigan

RESOLUTION

- WHEREAS,** The Michigan Commanders' Group is committed to upholding and defending the U.S. Constitution; and
- WHEREAS,** The Fourteenth Amendment guarantees the right to due process; and
- WHEREAS,** Asbestos material was installed in many Michigan factories, used in products and used in buildings; and
- WHEREAS,** Michigan Veterans who returned from service found work in those factories, working with those products and in those buildings; and
- WHEREAS,** Asbestos was found to be a cause of cancer; and
- WHEREAS,** There is no evidence that Asbestos cases filed in Michigan are fraudulent; and
- WHEREAS,** Wayne County Courts have created a fair and proper system for both the plaintiffs and defendants to maintain the due process rights, and
- WHEREAS,** 40% of Asbestos cases filed in Michigan are filed by Veterans; and
- WHEREAS,** Citizens who feel Asbestos products caused them harm have a right to file legal suits against those responsible, and
- WHEREAS,** Those legal suits should be allowed there due process in the courts; be it
- RESOLVED,** By The Michigan Commanders' Group in regular assembled in Lansing, Michigan, February 222, 2018, That The Michigan Commanders' Group, opposes House Bill 5456 language to deny Michigan Veterans and citizens their right to proper due process.



THE HIDDEN ENEMY: ASBESTOS' LONG, DEADLY TOLL ON U.S. VETERANS



A project of



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Many of the nation's veterans who served in World War II, Korea, Vietnam and other conflicts were facing an enemy they could not see—a hidden threat that lurked in their own vessels, aircraft, vehicles and armaments: asbestos.

For most of the 20th century, the U.S. armed forces used asbestos extensively in the production and maintenance of ships, planes, tanks, trucks and other equipment.

Hundreds of thousands of sailors, soldiers, airmen and Marines were regularly and unknowingly exposed to the lethal material.

After serving their country, many of these Americans went on to work in shipyards and other places where they were likely exposed again to asbestos. **Some unwittingly carried asbestos fibers home on their clothing or work gear, exposing spouses and children through so-called deadly hugs.** To add insult to injury, asbestos has not been banned in the U.S. and importations continue, which means veterans and their families continue to be exposed to asbestos.

Veterans make up roughly 8 percent of the current U.S. population, but account for about 30 percent of the roughly 3,000 Americans who die each year from mesothelioma—a rare, incurable and almost always fatal cancer caused only by asbestos exposure. All told, some 12,000 to 15,000 Americans die annually from asbestos-triggered diseases, including mesothelioma, lung cancer and asbestosis.

The total estimate of U.S. asbestos victims over the last 50 years exceeds half a million people. The percentage of veterans in the population today is roughly 8 percent, but was much higher in previous decades, so it follows that, to date, well over 40,000 veterans may

have died from asbestos exposure. Because symptoms of asbestos-related diseases may not show up for decades after exposure, and because today's troops are still being exposed to asbestos in buildings in battle zones overseas, the death toll will continue to rise.

America owes it to these brave men and women, and their families, to make sure that asbestos is finally banned in the U.S. and that veterans who fall victim to asbestos-triggered diseases are able to hold the asbestos industry accountable.

ASBESTOS EXPOSURE MOST COMMON IN NAVY

Of all military veterans, those who served in the Navy are at the greatest risk of developing diseases caused by asbestos exposure. The Navy was the biggest user of asbestos and, beginning in the late 1930s, used it to line every vessel in its fleet. Tens of millions of Americans who served on Navy ships between 1938 and the early 1990s, before large-scale abatement procedures began, unwittingly risked contact with asbestos.

Navy personnel who served below deck in engine and boiler rooms, and in other areas involving the propulsion of ships, faced the greatest risk of inhaling asbestos fibers. Those who worked in the shipyards and dry docks, repairing and maintaining vessels, were also exposed.

Veterans who served in the Army, Air Force and Marines have also fallen ill and died from asbestos-related diseases at a higher rate than that of the general population.

Asbestos was widely used in land-based military installations, including in the floor and ceiling tiles of barracks at home and abroad. Materials containing asbestos, including brake pads and other components of vehicles used by the Army, Air Force and Marines, put many service members at risk.

MILITARY PROFESSIONS THAT PRESENT THE GREATEST RISKS OF ASBESTOS EXPOSURE

Navy: Gunner's mate, electrician's mate, boatswain's mate, hull maintenance technician, machinist, fire control, welder, pipefitter

Army: Infantry, vehicle and aircraft mechanic, artillery

Air Force: Airplane mechanic

Marines: Mechanic

RECENT MILITARY SERVICE

Many of the buildings and structures that were damaged or destroyed during the Iraq War contained asbestos, putting the more than 1.5 million Americans who served during the second Gulf War at risk of inhalation.

AFTER SERVICE, ASBESTOS THREATS LINGER

Many veterans use the skills and experience they gained during their time in uniform in professions that can re-expose them to asbestos.

FIREFIGHTERS

The National Institute for Occupational Safety and Health estimates that firefighters are twice as likely to die from mesothelioma than the general population. Firefighters regularly inhale asbestos fibers when responding to burning buildings. Their protective clothing, including jackets, helmets and boots, was once made with asbestos, too.

Up to 400,000 people, including veterans and first responders, were exposed to asbestos and other deadly toxins following

the collapse of the Twin Towers on Sept. 11, 2001. Roughly 2,000 tons of pulverized asbestos were released into the air, and swept through lower Manhattan and neighborhoods beyond. The latency period for asbestos-caused diseases is long, taking years before people become ill, which means a wave of future 9/11 victims will almost certainly arrive in the decades to come.

CONSTRUCTION WORKERS

Almost any home or building constructed before the early 1980s likely contains materials made with asbestos. As a result, those who demolish or renovate old structures will likely be exposed to large amounts of asbestos dust. Asbestos is still legal and it is used in the production of some roofing and flooring materials, putting construction workers at risk.

MANUFACTURING WORKERS

Asbestos was once used in a number of industries and trades, including automobile manufacturing, textiles, chemical production and shipbuilding, among others.

COMMUNICATIONS AND POWER PLANT WORKERS

The heat-and-fire resistant qualities of asbestos made it a widely used component in the production of the nation's power plant facilities and communications infrastructure.

MECHANICS

Auto mechanics are routinely exposed to asbestos when repairing both old and newer cars. Asbestos was used in virtually all brake pads and many other car parts for decades, and is still used in the production of some brake pads today.

THE PUSH TO ROLL BACK ASBESTOS VICTIMS' RIGHTS

Congress and state legislatures are pursuing efforts to restrict and roll back the rights of veterans who are sick and dying from asbestos diseases.

Rather than taking steps to ensure veterans are no longer exposed to asbestos, the asbestos industry is pushing legislation around the country that would strip veterans and their families of the right to hold the industry accountable. Legislation introduced in Congress and a number of state legislatures would delay and deny compensation to sick and dying veterans. The bills are being pushed by corporations that were responsible for manufacturing asbestos or exposing workers to it, along with their insurers. The legislation places additional burdens on asbestos victims who wish to file claims against the asbestos industry.

Veterans and many veterans' organizations have expressed strong opposition to these proposals:

"If you think that the bill is protecting the rights of victims, it is not. It is about protecting corporations," said Renee Simpson, state commander of the Wisconsin Veterans of Foreign Wars, speaking in opposition to Assembly Bill 19.

"Although many of our members recognize the great things the [Wisconsin] State Legislature and governor have done for veterans this legislative session, unfortunately, all of the goodwill now be overshadowed by the deaf ear to our pleas to stop this devastating legislation to our

veterans and their families who have been exposed to asbestos," said Jason Johns, a Purple Heart recipient for his service in Iraq, and a representative of the Military Order of the Purple Heart, which, along with the state's American Legion and the Veterans of Foreign Wars, opposed A.B. 19 in Wisconsin.

"The Military Order of the Purple Heart, Department of Pennsylvania, wishes to inform this committee, and your colleagues in the [Pennsylvania] legislature of our opposition to HB 1150, titled Fairness in Claims and Transparency Act. With all due respect to the authors of this legislation, we believe that you may be unaware of the consequences of this legislation upon our members and the veterans' community in general," said Michael Mescavage, Military Order of the Purple Heart, Department of Pennsylvania.

"Rhetorically showing support for our veterans in speeches, while voting against their interests and wellbeing is nothing short of a slap in the face to these brave men and women who often put their lives in harm's way serving their country," said a letter to Congressional leaders on H.R. 526, the so-called FACT Act.

The letter was signed by the following organizations: Air Force Sergeants Association; Air Force Women Officers Associated; American Veterans; Association of the United States Navy; Commissioned Officers Association of the U.S. Public Health Service; Fleet Reserve

Association; Jewish War Veterans of the USA; Marine Corps Reserve Association; Military Officers Association of America; Military Order of the Purple Heart; National Association for Uniformed Services; National Defense Council; Naval Enlisted Reserve Association; The Retired Enlisted Association; U.S. Coast Guard Chief Petty Officers Association; U.S. Army Warrant Officers Association; and Vietnam Veterans of America.

“The FACT Act “is nothing but a way for the asbestos companies to attack those dying as a result of exposure to asbestos, and their families,” Rick Weidman, executive director of policy and government affairs for Vietnam Veterans of America, told the military newspaper Stars and Stripes.

ASBESTOS-CAUSED DISEASES REMAIN THREAT TO VETERANS

While asbestos use has dropped precipitously since the late 1970s, the number of Americans, including veterans, who become sick and die from asbestos-triggered diseases has not.

Today, up to 15,000 people in the U.S., including roughly 1,800 veterans, succumb to asbestos diseases every year, and that number will likely not decline for years—or even decades—to come.

Elected officials should advance policies that protect those who have sacrificed for our country, not push legislation that would deny them even a modicum of justice.

ASBESTO NATION



TOM BURKLE

Tom Burkle loved to work with his hands. In the age of automation, he said it was “a dying thing.”

He didn't know it would lead to his own death.

From 1966 to 1969, he was an Army mechanic, repairing trucks in West Germany. After his honorable discharge, he returned to his hometown of Indianapolis, becoming a pipefitter. He helped build schools, hospitals and the Hoosier Dome football stadium. When he retired in 2006, he started a handyman business called “Mr. Fix-It,” taking on small projects for his friends, family and the elderly in his community.

In 2014, his wife Joan retired from her nursing career so she and Burkle could travel the world together. But they were only able to take one trip to Italy before, in March 2015, while lifting weights, Tom felt a sharp pain in his back.

“At first we thought he'd just pulled a muscle,” said Joan, who was married to Burkle for 43 years. “But then the pain in his back moved around to the front, and he couldn't lie on one side. It was such a surprise, because he'd always been so healthy. The July after that, he started having shortness of breath, so we went to the doctor.”

An X-ray showed he had fluid on his right lung, but an initial biopsy of the fluid found no cancer cells. After surgery to drain more than a gallon of fluid, doctors found what Joan described as “innumerable” tumors on his lung, sternum and ribs. **They diagnosed pleural mesothelioma, a rare and incurable cancer caused by inhalation of asbestos fibers.** Burkle could have been exposed through truck brakes or pipes, two common uses of asbestos until its deadly nature became widely known in the mid-1980s.

Doctors said Burkle might survive two years. Despite multiple radiation and chemotherapy treatments, and intense pain, he lived five months.

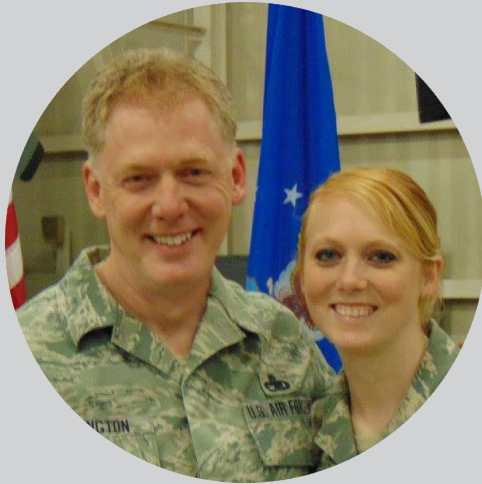
Burkle died Jan. 13, 2016, at age 69. Four hundred people, many of them Burkle's customers whom Joan didn't even know, came to his funeral.

Less than a month later, Joan learned about the so-called FACT Act, a proposed federal law that would make it harder for asbestos victims and their families to collect compensation from companies that made and used asbestos. She travelled to Washington, D.C., to urge her senators to oppose the bill.

“I'm not an angry type of person, but it's a horrible injustice that these companies kept making and using asbestos products when they knew it could kill people,” Joan said. “Because mesothelioma was so rare, they valued the profit motive above the loss of life.”

Recently, Joan sold and moved out of the house she and Burkle called home.

“I would look in the corner and all I could see was the hospice bed where he suffered so much,” she said. **“I just kept thinking that this could not be true, it's got to be a dream. It was a nightmare.”**



SHANDI SPEEDY

At age 22, Shandi Speedy asked herself what she was doing with her life.

Her father was a jet engine mechanic in the Air Force, a military lifer. Speedy had fond memories of waiting around the hangar at Forbes Field near Topeka, Kan., and giving him a big hug when he got off work. Her husband Billy was an Army medic who had previously served in the infantry. When she was working at a department store in Killeen, Texas, where Billy was stationed at Ft. Hood, she felt a call to do something “worth noting.”

“I wanted to be part of something bigger than myself,” she said.

In 2011 she joined the Air Force and two years later, she served a six-month deployment in the United Arab Emirates. On her return, she and Billy began trying to have a baby.

When she’d tried to get pregnant earlier, Speedy’s doctor found fluid in her stomach cavity, but it didn’t seem to be a problem. She later began taking fertility drugs and the amount of fluid increased. The doctor ran a biopsy on lesions found in her stomach cavity, and in October 2014, Speedy received devastating news: She had peritoneal mesothelioma, a rare and almost always fatal cancer caused only by exposure to asbestos.

She was 26, and her doctors said she had 14 months to live.

Her father had worked on old aircraft that had components containing asbestos. **Speedy was most likely exposed through contact with her father’s work clothing—what anti-asbestos activists call “deadly hugs.”** Her father, now 50 years old and still an Air Force mechanic, has shown no sign of asbestos-triggered disease, but he and the whole family know that symptoms often don’t surface until decades after exposure.

In January 2016, a month after she was medically retired from the Air Force, she had a nine-hour surgery to remove tumors in her stomach cavity. A week later doctors found that the cancer had spread to her lymph nodes. She had six rounds of chemotherapy.

Since then, there’s been no sign of disease, but she worries about the future.

“I feel very optimistic,” she said, “but it’s always in the back of my head: When is it going to come back?”

Speedy sued the companies that used asbestos to make airplane parts with which her father came into contact, and she’s settled most of her claims. **But she’s angered by proposals in Congress and some state legislatures that would make it harder for asbestos victims and their families to receive timely compensation.**

In a recent op-ed for the Fort Worth Star-Telegram, she wrote that such proposals are ***“an absurd plan, and it should be an embarrassment for the asbestos companies who are seeking to delay and deny what they owe.”***

“It’s so unfair,” she said. “How long ago did we find out that asbestos causes cancer and kills you? Asbestos is cheap and it works well, but at what cost? How many people do we have to lose?”



DICKIE VAN NESS

In 1968, Dickie Van Ness volunteered for the Navy and was assigned to the forward engine room of a World War II-era destroyer whose aging turbines required constant maintenance. Upon discharge, he returned to his hometown of Richmond, Va., and joined the plumbers and steamfitters union. Like the engine room, the factories he worked in contained asbestos, but he trusted that the protective gear and regular medical exams required by the union meant he would be safe.

“He was very fit,” said his wife Judy, whom he married in 1987. “He hardly ever even had a cold.”

In June 2011, he had a physical exam that found no problems. But, in late August, Van Ness experienced shortness of breath. When he went back to the doctor, his physician said he was like a six-cylinder car running on three cylinders.

After doctors took biopsy, Judy met with his thoracic surgeon to discuss the diagnosis privately.

“He showed me the X-rays and said it was pleural mesothelioma,” a rare cancer caused by inhaling asbestos fibers, **“and [said] there was no cure,”** Judy recalled. “The cancer was so thick around Dickie’s lung he’d probably had it for 40 years.” That suggested

Van Ness had first been exposed to asbestos while in the Navy, but given his later work, he was likely continually exposed as a civilian.

Van Ness started chemotherapy in October 2011; the following spring, it briefly seemed as if he was responding to treatment, but then he began weakening. Dickie Van Ness died at home on Aug. 30, 2012. He was 62 years old.

The following March, Judy went to a conference in Washington, D.C., about the so-called **FACT Act, a proposed bill that would make it harder for asbestos victims and their families to receive compensation from the companies that made and used asbestos.**

“At the conference, I said that I had always supported the Republican Party, but this was not a Republican or a Democratic issue, but a victims’ rights issue,” she said. “This was personal to me, and I wanted to explain it for people who didn’t understand.”

The Van Ness family had savings, good medical coverage and a long-term care insurance policy, and with the help of Sen. Jim Webb, D-Va., they received compensation from the Veterans Administration promptly.

“We were taken care of, but other people may not be so lucky,” Judy said. **“When someone is diagnosed with mesothelioma, realistically they’re not going to live very long. How dare they try to pass a bill to make it harder for veterans to get the help they’re entitled to? This is not a partisan issue—it’s about doing the right thing.”**