



## Ohio Revised Code

### Section 2307.86 Mixed dust disease claim - prima facie showing - evidence of physical impairment - effect of decision.

Effective: September 1, 2004

Legislation: House Bill 342 - 125th General Assembly

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(A) Physical impairment of the exposed person, to which the person's exposure to mixed dust is a substantial contributing factor, shall be an essential element of a mixed dust disease claim in any tort action.

(B) No person shall bring or maintain a tort action alleging a mixed dust disease claim based on a nonmalignant condition in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.87 of the Revised Code, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to mixed dust is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(1) Evidence verifying that a competent medical authority has taken a detailed occupational and exposure history of the exposed person from the exposed person or, if that person is deceased, from the person who is most knowledgeable about the exposures that form the basis of the mixed dust disease claim for a nonmalignant condition, including all of the following:

(a) All of the exposed person's principal places of employment and exposures to airborne contaminants;

(b) Whether each principal place of employment involved exposures to airborne contaminants, including, but not limited to, mixed dust, that can cause pulmonary impairment and, if that type of exposure is involved, the general nature, duration, and general level of the exposure.

(2) Evidence verifying that a competent medical authority has taken a detailed medical and smoking history of the exposed person, including a thorough review of the exposed person's past and present medical problems and the most probable causes of those medical problems;



(3) A diagnosis by a competent medical authority, based on a medical examination and pulmonary function testing of the exposed person, that both of the following apply to the exposed person:

(a) The exposed person has a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides to the evaluation of permanent impairment.

(b) The exposed person has mixed dust pneumoconiosis, based at a minimum on radiological or pathological evidence of mixed dust pneumoconiosis.

(C) No person shall bring or maintain a tort action alleging that mixed dust caused that person to contract lung cancer if the exposed person is or was also a smoker, in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.87 of the Revised Code, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to mixed dust is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(1) A diagnosis by a competent medical authority that the exposed person has primary lung cancer and that exposure to mixed dust is a substantial contributing factor to that cancer;

(2) Evidence that is sufficient to demonstrate that at least ten years have elapsed from the date of the exposed person's first exposure to mixed dust until the date of diagnosis of the exposed person's primary lung cancer. The ten-year latency period described in this division is a rebuttable presumption, and the plaintiff has the burden of proof to rebut the presumption.

(3) Both of the following:

(a) Radiological or pathological evidence of mixed dust pneumoconiosis;

(b) Evidence of the exposed person's substantial occupational exposure to mixed dust.

(D)(1) No person shall bring or maintain a tort action alleging a mixed dust disease claim based on wrongful death, as described in section 2125.01 of the Revised Code, of an exposed person, in the



absence of a prima-facie showing, in the manner described in division (A) of section 2307.87 of the Revised Code, that the death of the exposed person was the result of a physical impairment, that the death and physical impairment were the result of a medical condition, and that the person's exposure to mixed dust was a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(a) A diagnosis by a competent medical authority that exposure to mixed dust was a substantial contributing factor to the death of the exposed person;

(b) Evidence that is sufficient to demonstrate that at least ten years have elapsed from the date of the exposed person's first exposure to mixed dust until the date of diagnosis under division (D)(1)(a) of this section or death of the exposed person. The ten-year latency period described in this division is a rebuttable presumption, and the plaintiff has the burden of proof to rebut the presumption.

(c) Both of the following:

(i) Radiological or pathological evidence of mixed dust pneumoconiosis;

(ii) Evidence of the exposed person's substantial occupational exposure to mixed dust.

(2) If a person files a tort action that alleges a mixed dust disease claim based on wrongful death, as defined in section 2125.01 of the Revised Code, of an exposed person and further alleges in the action that the death of the exposed person was the result of living with another person who, if the tort action had been filed by the other person, would have met the requirements specified in division (D)(1)(c) of this section and that the exposed person lived with the other person for the period of time specified in division (DD) of section 2307.84 of the Revised Code, the exposed person is considered as having satisfied the requirements specified in division (D)(1)(c) of this section.

(E) Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies, shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment incorporated in the AMA guides to the evaluation of permanent impairment and reported as set forth in 20 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the interpretive standards set forth in the official



statement of the American thoracic society entitled "lung function testing: selection of reference values and interpretive strategies" as published in American review of respiratory disease, 1991:144:1202-1218.

(F) All of the following apply to the court's decision on the prima-facie showing that meets the requirements of division (B), (C), or (D) of this section:

(1) The court's decision does not result in any presumption at trial that the exposed person has a physical impairment that is caused by a mixed dust-related condition.

(2) The court's decision is not conclusive as to the liability of any defendant in the case.

(3) The court's findings and decision are not admissible at trial.

(4) If the trier of fact is a jury, the court shall not instruct the jury with respect to the court's decision on the prima-facie showing, and neither counsel for any party nor a witness shall inform the jury or potential jurors of that showing.