



2013 ASSEMBLY BILL 19

February 15, 2013 – Introduced by Representatives JACQUE, HONADEL, KUGLITSCH, MURPHY, SCHRAA, SPIROS, STONE, STRACHOTA, THIESFELDT and WEININGER, cosponsored by Senators GROTHMAN and LASEE. Referred to Committee on Judiciary.

1 **AN ACT** *to create* 802.025 of the statutes; **relating to:** torts and personal injury
2 trusts.

Analysis by the Legislative Reference Bureau

This bill creates discovery and scheduling requirements for certain types of tort actions and limits a defendant's liability for a plaintiff's injury under certain circumstances. Under the bill, a plaintiff who files a tort action must disclose, within 30 days after he or she files the action, whether he or she has filed or anticipates filing a claim against a personal injury trust. A personal injury trust is a trust or compensation fund that is established pursuant to a bankruptcy or other legal action in order to compensate persons who file claims as a result of harm potentially compensable in the plaintiff's tort action, for which the entity that established the personal injury trust is alleged to be responsible.

Under the bill, if the plaintiff indicates that he or she has filed or anticipates filing a claim against a personal injury trust, the bill requires the court to stay the immediate proceedings until the plaintiff produces a final executed proof of claim against the personal injury trust. The bill also allows a defendant to identify a personal injury trust not named by the plaintiff, but against whom the defendant believes the plaintiff has a legitimate claim. If the court agrees that there is a good faith basis for the plaintiff to file a claim against the personal injury trust, the bill requires the court to order the plaintiff to file a claim against the trust and stay the proceedings until the plaintiff produces a final executed proof of claim against the personal injury trust.

Under the bill, the plaintiff must provide all parties to his or her immediate suit with all documents, records, trial or discovery materials, and other information

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relevant to any claim against a personal injury trust. The bill allows any party to use these materials in the immediate action to prove alternate causation of, or to allocate liability for, the plaintiff's injury. The bill allows a defendant in the immediate action to seek discovery from a personal injury trust against which the plaintiff has filed or anticipates filing an action.

The bill requires the court to enter into the record a list that identifies each personal injury the claim the plaintiff has made against a personal injury trust.

Under the bill, if a defendant in the immediate action is found liable for the plaintiff's injury, the defendant is entitled to a setoff in the amount of any money the plaintiff received from a personal injury trust for a substantially similar injury. If the immediate action proceeds to trial before the plaintiff's claim against a personal injury trust is resolved, the bill requires the court to establish an attributed value to the plaintiff's claim against the personal injury trust and to afford the defendant a setoff in that amount.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 802.025 of the statutes is created to read:

2 **802.025 Pleading certain personal injury actions; stay of proceedings.**

3 **(1) DEFINITIONS.** In this section: (a) "Personal injury claim" means any claim for
4 damages, loss, indemnification, contribution, restitution or other relief, including
5 punitive damages, that is related to bodily injury or another harm, including loss of
6 consortium, society, or companionship, loss of support, personal injury or death,
7 mental or emotional injury, risk or fear of disease or other injury, or costs of medical
8 monitoring or surveillance. "Personal injury claim" includes a claim made by or on
9 behalf of the person who claims the injury or harm or by or on behalf of the person's
10 representative, spouse, parent, minor child, or other relative. "Personal injury
11 claim" does not include a claim for compensatory benefits pursuant to worker's
12 compensation or veterans benefits.

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1 (b) "Personal injury trust" means a trust, compensation fund or claims facility
2 created as a result of an administrative or legal action, bankruptcy, agreement, or
3 other settlement or pursuant to 11 USC 524 (g) or 49 USC 40101, that is intended
4 to provide compensation to claimants alleging personal injury claims as a result of
5 harm, also potentially compensable in the immediate action, for which the entity
6 creating the trust, compensation fund, or claims facility is alleged to be responsible.

7 (c) "Trust claims materials" means all documents and information relevant or
8 related to a pending or potential claim against a personal injury trust. "Trust claims
9 materials" include claims forms and supplementary materials, affidavits,
10 depositions and trial testimony, work history, and medical and health records.

11 (d) "Trust governance document" means any document that determines
12 eligibility and payment levels, including claims payment matrices, trust distribution
13 procedures, or plans for reorganization, for a personal injury trust.

14 **(2) REQUIRED DISCLOSURES BY PLAINTIFF.** (a) Within 30 days after the effective
15 date of this paragraph [LRB inserts date] or within 30 days after an action for a
16 personal injury or other tort is filed in circuit court, the court shall order the plaintiff
17 to provide to the court and to all parties a statement identifying all personal injury
18 claims the plaintiff has or anticipates filing against a personal injury trust, and for
19 each claim, whether there has been a request to defer, delay, suspend, or toll the claim
20 against the personal injury trust. The statement shall include an attestation that
21 the plaintiff swears or affirms, under penalties of perjury, that the statement is
22 complete and is based on the plaintiff's good faith investigation of all potential claims
23 against personal injury trusts.

24 (b) The court shall order the plaintiff to produce to the court and to all parties,
25 for each personal injury claim he or she filed against a personal injury trust

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1 identified in par. (a), a final executed proof of claim and all other trust claims
2 materials relevant to each claim.

3 (c) The court shall order the plaintiff to produce to the court and to all parties,
4 for each personal injury claim he or she anticipates filing against a personal injury
5 trust identified in par. (a), all trust claims materials relevant to each claim. The court
6 shall order the plaintiff to produce to the court and to all parties a final executed proof
7 of claim for each claim when the plaintiff files the claim.

8 (d) The court shall order the plaintiff to supplement the information and
9 materials he or she provided pursuant to each order entered under par. (a), (b), or (c)
10 within 30 days after the plaintiff files an additional claim or receives additional
11 information or materials.

12 **(3) DISCOVERY; USE OF MATERIALS.** (a) The court shall presume trust claims
13 materials and trust governance documents to be relevant and authentic and shall
14 allow any party to present the trust claims materials to prove, without limitation,
15 alternative causation for a plaintiff's injuries or to allocate liability for the plaintiff's
16 injury. No claims of privilege may apply to trust claims materials or trust governance
17 documents.

18 (b) A defendant in a personal injury claim may seek discovery against a
19 personal injury trust identified under sub. (2). The plaintiff may not claim privilege
20 or confidentiality to bar discovery under this paragraph and shall provide consent
21 or other expression of permission that may be required by the personal injury trust
22 to release information and materials sought by the defendant.

23 **(4) SCHEDULING TRIAL; STAY OF ACTION.** (a) The court may not schedule a trial
24 in a personal injury action until at least 180 days after the plaintiff makes the
25 disclosures required under sub. (2).

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1 (b) If a party states under sub. (2) that he or she anticipates a claim against a
2 personal injury trust, the court shall stay all proceedings until the party files his or
3 her claim against the personal injury trust and provides to the court and to all parties
4 a final executed proof of claim and all other trust claims materials relevant to each
5 claim the party has against a personal injury trust. The party shall also state
6 whether there has been a request to defer, delay, suspend, or toll the claim against
7 the personal injury trust.

8 **(5) DEFENDANT'S IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE PERSONAL INJURY**
9 **TRUSTS.** (a) Any defendant may move the court for an order under par. (d) by
10 identifying a personal injury trust against which the defendant in good faith believes
11 the plaintiff can file a successful claim. For each personal injury trust a defendant
12 identifies, the defendant shall produce or describe the evidence sufficient to meet the
13 personal injury trust distribution procedure requirements to file a valid claim and
14 the amount of money the trust should pay for the claim.

15 (b) Within 10 days of receiving a motion under par. (a), the plaintiff shall, for
16 each personal injury trust identified by the defendant, do one of the following:

- 17 1. File a claim with the personal injury trust.
- 18 2. File a written response with the court that sets forth reasons why there is
19 insufficient evidence to permit the plaintiff to file a claim in good faith under the
20 personal injury trust distribution procedure identified by the defendant.

21 (c) The court shall determine, for each personal injury trust identified under
22 par. (a), whether there is a good faith basis for the plaintiff to file a claim with the
23 personal injury trust. The plaintiff shall have the burden of proving that he or she
24 does not meet criteria set forth in the personal injury trust's trust governance
25 documents.

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1 (d) If the court determines that there is a good faith basis for the plaintiff to file
2 a claim against a personal injury trust identified by a defendant, the court shall order
3 the plaintiff to file a claim with the personal injury trust and shall stay the
4 immediate action until the plaintiff swears or affirms that he or she has filed the
5 claim against the personal injury trust and the plaintiff provides to the court and to
6 all parties a final executed proof of claim and all other trust claims materials relevant
7 to each claim the plaintiff has against a personal injury trust.

8 (e) Not less than 60 days after the plaintiff provides the documentation
9 required under par. (d), the court may schedule the plaintiff's action for trial.

10 (f) Not less than 30 days prior to trial, the court shall enter into the record a
11 trust claims document that identifies each personal injury claim the plaintiff has
12 made against a personal injury trust.

13 **(6) VALUATION OF PERSONAL INJURY TRUST CLAIMS; JUDICIAL NOTICE.** If a plaintiff
14 proceeds to trial under this section before one of more of his or her personal injury
15 trust claims is resolved, there is a rebuttable presumption that the plaintiff is
16 entitled to, and will receive, the compensation specified in the trust governance
17 document applicable to his or her claim. The court shall take judicial notice that the
18 trust governance document specifies compensation amounts and shall establish an
19 attributed value to the plaintiff's personal injury trust claim.

20 **(7) SETOFFS; CREDIT.** In any personal injury claim for which damages are
21 awarded, a defendant is entitled to a setoff or credit in the amount of the valuation
22 established under sub. (6) and any amount the plaintiff has been awarded from a
23 personal injury trust claim identified in sub. (5) (f). If multiple defendants are found
24 liable for damages, the court shall distribute the amount of setoff or credit
25 proportionally, according to the liability of each defendant.

