2013 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB19)

Received:	**5/7/2013**	Received By:	**phurley**
Wanted:	**As time permits**	Same as LRB:	
For:	**Gary Hebl (608) 266-7678**	By/Representing:	
May Contact:		Drafter:	**phurley**
Subject:	**Courts - miscellaneous/other**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Hebl@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Pleading and discovery rules for certain tort cases

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	phurley 5/7/2013	kfollett 5/7/2013	rschluet 5/7/2013	_____ _____			
/1				_____ _____	sbasford 5/7/2013	sbasford 5/7/2013	

FE Sent For:

<END>

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/?	phurley	/1 sf 5/7	5/7				

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<END>

State of Wisconsin
2013 – 2014 LEGISLATURE

LRBs0035/1
PJH:kjf

stays
& wlj

Today

ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO ASSEMBLY BILL 19

S0045/1
rmnr

April 23, 2013 – Offered by Representative WACHS.

Regen

AN ACT *to create* 804.017 and 804.018 of the statutes; **relating to:** discovery in certain tort actions.

Analysis by the Legislative Reference Bureau

This substitute amendment creates mandatory discovery requirements for any plaintiff who files a civil action and who has also filed a claim against a bankruptcy trust in federal court. Under the substitute amendment, a plaintiff who files a civil action and who has also filed a claim against a bankruptcy trust must disclose, within 90 days after he or she files the civil action, all the trust claims materials he or she filed in the federal action. Under the substitute amendment, if a plaintiff wishes to argue that any of the required disclosures are privileged, he or she must identify, with specificity, each document for which he or she claims privilege and state the grounds therefore. A plaintiff who fails to do so is deemed to have waived any privilege for the required disclosures.

The substitute amendment allows a plaintiff who files an action alleging that he or she has been exposed to asbestos to provide to the defendants a work history that identifies his or employers and job sites and his or her dates of employment. Under the substitute amendment, a defendant who receives a work history is required to provide to the plaintiff any records, documents, or materials gleaned from other civil actions the defendant has in his or her possession or control that

relate, during the dates identified by the plaintiff, to an employer or job site identified by the plaintiff.

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

SECTION 1. 804.017 of the statutes is created to read:

804.017 Required disclosures; claims against a bankruptcy trust. (1) In any civil action, a plaintiff who has filed a claim against a bankruptcy trust pursuant to 11 USC 524 (g) shall provide to all parties, within 90 days after the plaintiff files the civil action, all of the following:

(a) A final executed proof of claim against the bankruptcy trust.

(b) All trust claims materials filed as part of the claim, including his or her work history and medical documents. Insert 2.8

(c) A statement as to whether there has been any request for deferral, delay, suspension, or tolling in the 11 USC 524 (g) bankruptcy trust claims process.

Insert 2.10

(2) If the plaintiff files an additional claim pursuant to 11 USC 524 (g) or supplements a claim, he or she shall produce all the discovery required under sub. (1) within 30 days after the plaintiff files the additional claim or supplements the claim, but in no event later than 30 days before the commencement of trial.

(3) (a) A plaintiff who objects to providing discovery pursuant to sub. (1) or (2) by claiming that the materials submitted to a bankruptcy trust governed by 11 USC 524 (g) are privileged shall present all of the following to the court:

1. An enumeration, with specificity, of the document, information, or other disclosure that the plaintiff believes is privileged.

Insert 2.14

2. A statement of the privilege he or she claims for each document, information, or other disclosure for which the plaintiff claims privilege and the basis for claiming the privilege.

(b) If a plaintiff fails to satisfy the requirements of par. (a), the privilege shall be deemed waived.

SECTION 2. 804.018 of the statutes is created to read:

804.018 Required disclosures; claims involving asbestos exposure. (1) A plaintiff who commences an action alleging that he or she has been exposed to asbestos fibers may serve upon the defendants to the action his or her work history. The work history may include the name and address of the plaintiff's employer, the name, address, or location of the job site where the plaintiff worked, and the time period that the plaintiff contends he or she worked for each employer or at each job site.

shall

shall

, to the best of the plaintiff's recollection

(2) Within 60 days of receiving a plaintiff's work history pursuant to sub. (1), each defendant shall provide or make available for copy or reproduction to the plaintiff any documents, electronically stored information, photographs, images, or other data or data compilations, or any deposition or trial testimony from another civil action in his or her possession or control that relate to any employer or job site specified by the plaintiff during the time period specified by the plaintiff in his or her work history.

(END)

Insert 3.20

State of Wisconsin
2013 – 2014 LEGISLATURE

LRBa0355/1
PJH:wlj:jm

ASSEMBLY AMENDMENT ,

TO ASSEMBLY SUBSTITUTE AMENDMENT 2,

TO ASSEMBLY BILL 19

Insert 2.8

At the locations indicated, amend the substitute amendment as follows:

1. Page 2, line 8: after "documents" insert "or other documentation including affidavits, depositions, or testimony of the claimant".

Insert 2.10

2. Page 2, line 10: after that line insert:

"(d) An affidavit of the plaintiff or plaintiff's counsel that the information provided under this subsection is based upon a good faith investigation of all potential claims against a trust pursuant to 11 USC 524 (g)".

Insert 2.14

3. Page 2, line 14: after that line insert:

"(3) A defendants in a civil action where a claim has been filed with a bankruptcy trust pursuant to 11 USC 524 (g) may also seek discovery from the trust, including trust governance documents. The plaintiff shall assist in any discovery from the trust and provide whatever consent or expression of permission may be

Insert 2.14, cont

1 required by the trust for release of the claim information or materials. Trust
2 governance documents include any document that determines the eligibility and
3 payment levels, including payment matrices, trust distribution procedures, or plans
4 for reorganization.

5 **(4)** A person's social security number may be redacted from trust claims
6 materials".

7 **4.** Page 2, line 15: delete "**(3)**" and substitute "**(5)**".

8 **5.** Page 3, line 9: delete "may" and substitute "shall".

9 **6.** Page 3, line 10: delete "may" and substitute "shall".

10 **7.** Page 3, line 13: after "site" insert "to the best of the plaintiff's recollection".

Insert 3.20

11 **8.** Page 3, line 20: after that line insert:

12 "**SECTION 3.** 804.12 (1) (a) of the statutes is amended to read:

LPS: auto nos. not hard nos

13 804.12 **(1)** (a) *Motion.* If a deponent fails to answer a question propounded or
14 submitted under s. 804.05 or 804.06, or a corporation or other entity fails to make a
15 designation under s. 804.05 (2) (e) or 804.06 (1), or a party fails to answer an
16 interrogatory submitted under s. 804.08, or if a party, in response to a request for
17 inspection submitted under s. 804.09, fails to respond that inspection will be
18 permitted as requested or fails to permit inspection as requested, <u>or a party fails to</u>
19 <u>comply with the discovery requests under s. 804.017 or 804.018,</u> the discovering
20 party may move for an order compelling an answer, or a designation, or an order
21 compelling inspection in accordance with the request <u>or a party may move for an</u>
22 <u>order compelling the disclosure</u>. When taking a deposition on oral examination, the
23 proponent of the question may complete or adjourn the examination before he or she
24 applies for an order. If the court denies the motion in whole or in part, it may make

Insert 3.28 cont

such protective order as it would have been empowered to make on a motion made pursuant to s. 804.01 (3).

SECTION ~~4.~~ 904.035 of the statutes is created to read:

904.035 Relevancy of bankruptcy trust documents. **(1)** In this section, "trust claims and trust materials" means all documents and information submitted under s. 804.017 (1).

(2) Information contained in the proof of claim and trust claims and trust materials submitted to a bankruptcy trust governed by 11 USC 524 (g) may be relevant to a pending civil action and shall be presumed authentic. Information contained in trust claims and trust materials submitted to a bankruptcy trust governed by 11 USC 524 (g) may be used by the parties in the civil action to prove alternative causation for the plaintiff's asbestos exposure; however, the actual proof of claim forms and the amounts plaintiff's may have recovered from a trust shall be governed by s. 904.08.

(3) Notwithstanding sub. (2), before any information contained in trust claims and trust materials is admitted into evidence, the court may issue a limiting instruction setting forth the fact that the bankruptcy trust requirements for proof of exposure may differ from the proof of exposure required by the court for the remaining defendants. The court may also give any other limiting instruction regarding any trust claims and trust materials that may be applicable under state law.

(4) Nothing in this section may affect the authority of the federal bankruptcy court adjudicating the bankruptcy trust under 11 USC 524 (g).

SECTION ~~5.~~ 904.036 of the statutes is created to read:

Insert 3.20, cont.

1 **904.036 Setoff and assignment of claim in certain judgments.** **(1)** In any
2 action where a fact finder has apportioned liability under s. 895.045 against a
3 company that has established a bankruptcy trust under 11 USC 524 (g), any
4 defendant found more than 51 percent at fault may request a hearing to determine
5 the total amount received or reasonably expected to be received from the bankruptcy
6 trust under 11 USC 524 (g). Defendants are entitled to a setoff or credit of the paid
7 liquidated value of the trust claims.

8 **(2)** If a judgment is rendered in an action before the plaintiff has received a
9 payment, the plaintiff shall assign to all defendants against whom the judgment is
10 rendered his or her rights to all unpaid bankruptcy claims under 11 USC 524 (g).

11 **(3)** The plaintiff shall cooperate with and assist the defendants in obtaining the
12 damages due to the claimant from each bankruptcy trust under 11 USC 524 (g) as
13 provided by each trust's distribution process. Each defendant's claim filed with a
14 bankruptcy trust under 11 USC 524 (g) shall be treated as if the plaintiff had
15 submitted the claim for any purposes under the terms, conditions, and provisions of
16 the trust claim procedures. With the assignment, the plaintiff is not responsible for
17 any costs associated with making and proving the claim.

18 **(4)** Nothing in this section shall prohibit any defendant from pursuing broader
19 relief under any other applicable law.

20 **SECTION 6[illegible]. Initial applicability.**

21 (1) This act first applies to actions filed on the effective date of this subsection".

22 **(END)**