

**2013 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-AB19)**

Received: 3/10/2014 Received By: phurley  
Wanted: As time permits Same as LRB:  
For: Jerry Petrowski (608) 266-2502 By/Representing:  
May Contact: Drafter: phurley  
Subject: Courts - civil procedure Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Sen.Petrowski@legis.wisconsin.gov  
Carbon copy (CC) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Asbestos trusts

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 3/10/2014	wjackson 3/10/2014		_____			
/1	phurley 3/11/2014		jmurphy 3/10/2014	_____	mbarman 3/10/2014	mbarman 3/10/2014	
/2		wjackson 3/11/2014	jmurphy 3/11/2014	_____	srose 3/11/2014	srose 3/11/2014	

FE Sent For:

<END>

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/?	phurley 3/10/2014	wjackson 3/10/2014		_____			
/1		<i>2wlyzll</i>	jmurphy 3/10/2014	_____	mbarman 3/10/2014	mbarman 3/10/2014	

FE Sent For:

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/?	phurley						
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1 WJ 3/10

Jan + CMH + WJ  
3/10

FE Sent For:

<END>

Simple Amendment 2 to Substitute Amendment 19 (working off Assembly Substitute Amendment 1 to AB 19)

**(1). Change the definitions**

Amend the definitions section so that the created statute only to *asbestos* related trusts, claims, and materials. ["an Asbestos Trust"] Any other type of personal injury trust, not established for the purposes of paying out for asbestos related injuries, should not fall under the scope of this sub amendment. It should not apply general to all personal injury trusts, claims and materials (this language would be identical to Section 1 paragraphs a-d of LRBs0131/p2).

**(2). Delete lines 19 – 25 on page 2 and lines 1 – 14 of page 3 of Assembly Substitute Amendment 1 to AB 19 and inserting the following language**

(a) "Within 45 days after the effective date of this paragraph... [LRB inserts date] or within 45 days after joinder of issues in an action subject to this section, whichever is later, the plaintiff shall provide to all parties a sworn statement identifying each personal injury claim he or she has filed or reasonably anticipates filing against an asbestos trust. The statement for each claim shall include the name address, and contact information for the asbestos trust, the amount claimed by the plaintiff, the date that the plaintiff filed the claim, the disposition of the claim and whether there has been a request to defer, delay, suspend, or toll the claim against the asbestos trust.

(b) Within 60 days after the effective date of this paragraph or 60 days after joinder of issues in an action subject to this section, whichever is later, the plaintiff shall provide to all parties all of the following

1. For each personal injury claim he or she has filed against an asbestos trust a copy of the final executed proof of claim, all trust documents, including trust claims materials, trust governance documents, any documents reflecting the current status of the claim, and, if the claim is settled, all documents relating to the settlement of the claim.

2. A list of each personal injury claim he or she reasonably anticipates filing against an asbestos trust, including the name, address, and contact information for the asbestos trust, and the amount he or she anticipates claiming against the trust.

(c) The plaintiff shall supplement the information and materials he or she provides under par. (a) and (b) within 30 days after the plaintiff files an additional claim or receives additional information or documents related to any claim he or she makes against an asbestos trust.

**(3) Discovery: Use of Materials. Amend this section as follows:**

(a) Trust claims materials and trust governance documents are ~~relevant and authentic and~~ admissible in evidence. ~~to prove, without limitation, alternative causation for a plaintiff's injuries~~

~~or to allocate liability for the plaintiff's injury.~~ No claims of privilege apply to a trust claims materials or trust governance documents.

(b) A defendant in a personal injury claim may seek discovery against a personal injury trust identified under sub. (2). The plaintiff may not claim privilege or confidentiality to bar discovery ~~of any information relevant to the plaintiff's personal injury claim under the control of a personal injury trust~~ and the plaintiff shall provide consents or other expressions of permission that may be required by the personal injury trust to release information and materials sought by the defendant.

(4) Delete sub. (4)

(5) Delete sub. (5) <sup>(u)</sup> and insert the following language: *new trust*

(a) If any defendant identifies an asbestos trust not named by the plaintiff against which the defendant reasonably believes the plaintiff should file a claim, upon motion by the defendant, the court shall determine whether there exists a reasonable belief for the plaintiff to file a claim against the asbestos trust. The defendant shall provide all documentation it possesses or is aware of in support of their motion.

(b) The court shall establish a deadline for filing a motion under this par. (a). The court shall ensure that any deadline established pursuant to par. (a) affords the parties an adequate opportunity to investigate the defendant's claims.

(c) If the court ~~determines that there is a reasonable belief for the plaintiff to the file a claim against an asbestos trust,~~ the court shall order the plaintiff to file a claim with the asbestos trust and shall stay the immediate action until the plaintiff swears or affirms that he or she has filed the claim against the asbestos trust and the plaintiff provides to the court and to all parties a final executed proof of claim and all other trust claims materials relevant to each claim the plaintiff has against an asbestos trust.

(d) The court may allow additional time for discovery or may stay the proceedings for other good cause shown.

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

**(6) Section (6) Use of trust claims materials at trial. Amend the language as follows.**

Trust claims materials that are sufficient to entitle a claim to consideration for payment under the applicable trust governance documents ~~may be~~ are sufficient, ~~by themselves,~~ to support a jury finding that the plaintiff ~~was~~ may have been exposed to products for which the trust was

established to provide compensation and that such exposure ~~was~~ may be a substantial factor in causing the plaintiff's injury that is at issue in the action.

**(7) Delete subsection 7.**

**(8) Create a new subsection 7 that reflects the following intent:**

Following the conclusion of a trial, plaintiff is required to assign all rights and claims to any pending or future asbestos related trusts to the defendant before they may collect any damage award. (this language will be worked out with LRB)

**Section 2. Initial Applicability: Amend Section 2 as follows**

This act first applies to actions filed on or after the effective date of this subsection.

## Hurley, Peggy

---

**From:** Ruhland, Lane  
**Sent:** Monday, March 10, 2014 3:04 PM  
**To:** Hurley, Peggy  
**Cc:** Gibbs, Adam  
**Subject:** RE: Drafting Instructions

Peggy,

Yes, what you have suggested makes sense. This is me in a rush to get this to you. Thanks for catching that!

Also one other change on the set-off issue may be forthcoming... it would be drafting language that would entitle the defendant a dollar for dollar set off. We are awaiting confirmation on that.

Thank you!

Lane

---

**From:** Hurley, Peggy  
**Sent:** Monday, March 10, 2014 3:00 PM  
**To:** Ruhland, Lane  
**Cc:** Gibbs, Adam  
**Subject:** RE: Drafting Instructions

Hi Lane and Adam,

The amendment drafting is coming along (I am drafting a senate substitute amendment to AB 19; it seems much simpler that way), but I have a question about some language.

In the section regarding a defendant identifying new asbestos trusts, you use the language "the court shall determine whether there exists a reasonable belief for the plaintiff to file a claim against an asbestos trust." The language is repeated in par. (c), which requires the court to stay the proceedings if the court finds that there is a reasonable belief and orders the plaintiff to file a new claim.

I am questioning this language because, first, par. (a) requires that the defendant have a reasonable belief that the plaintiff should file a claim against the asbestos trust, so it seems odd that the court would have to determine whether a reasonable belief exists. Second, even if the court decides that the defendant has a reasonable belief, that doesn't necessarily mean the court agrees with the defendant's conclusion and would order the plaintiff to file against the new trust.

I see that you do not want the "good faith basis" language any more, but would it make sense to say, in paragraph (a), "If any defendant identifies an asbestos trust not named by the plaintiff against which the defendant reasonably believes the plaintiff should file a claim, upon motion by the defendant, the court shall determine whether to order the plaintiff to file a claim against the asbestos trust."

And then in par. (c), say "If the court orders the plaintiff to file a claim with the asbestos trust, the court shall stay the immediate proceeding until . . ."

Please let me know your thoughts.

---

**From:** Ruhland, Lane  
**Sent:** Monday, March 10, 2014 2:16 PM  
**To:** Hurley, Peggy  
**Cc:** Gibbs, Adam  
**Subject:** FW: Drafting Instructions

Peggy,

Here are the much anticipated drafting instructions. Again, this document is working off of Assembly Substitute Amendment 1 to AB-19. Whether this is drafted as a new sub or just a simple to the sub is up to you, whichever is easier. Like I said before this is a rush order. Do not hesitate to contact me with questions.

Thank you so much!!!

Lane

## Hurley, Peggy

---

**From:** Ruhland, Lane  
**Sent:** Monday, March 10, 2014 5:19 PM  
**To:** Hurley, Peggy  
**Subject:** RE: Drafting Instructions

This evening please if possible.

Thank you,  
Lane

---

**From:** Hurley, Peggy  
**Sent:** Monday, March 10, 2014 5:18 PM  
**To:** Ruhland, Lane  
**Subject:** RE: Drafting Instructions

Excellent; I'll make that change and put it into editing. Do you still need it this evening, or will tomorrow morning work for you?

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**From:** Ruhland, Lane  
**Sent:** Monday, March 10, 2014 5:17 PM  
**To:** Hurley, Peggy  
**Subject:** RE: Drafting Instructions

Yes that works.

Thank you again!!

---

**From:** Hurley, Peggy  
**Sent:** Monday, March 10, 2014 5:16 PM  
**To:** Ruhland, Lane  
**Cc:** Gibbs, Adam  
**Subject:** RE: Drafting Instructions

Hi Lane,

Here is what is in sub. (7):

" Damages; liability. If any defendant is found to be 51 percent or more causally negligent or any product defendant is found to be 51 percent or more causally responsible for the plaintiff's injury such that the defendant or product defendant would be jointly and severally liable for the plaintiff's entire damages under s. 895.045 (1) or (3) (d), then notwithstanding those sections, the defendant or product defendant is entitled to a credit against the amount of damages for which it would otherwise be liable equal to the percentage of causal negligence or causal responsibility that the fact finder attributes to any personal injury trust or to a product for which a personal injury trust provides compensation."

Will it work to replace that with:

"Damages; liability. If any defendant is found to be 51 percent or more causally negligent or responsible for the plaintiff's injury such that the defendant or product defendant would be jointly and severally liable for the plaintiff's

entire damages under s. 895.045 (1) or (3) (d), then the defendant is entitled to a credit against the amount of damages for which it would otherwise be liable equal to the amount received by the plaintiff by an asbestos trust.”

Please advise.

---

**From:** Ruhland, Lane  
**Sent:** Monday, March 10, 2014 5:06 PM  
**To:** Hurley, Peggy  
**Cc:** Gibbs, Adam  
**Subject:** RE: Drafting Instructions

Peggy,

Would you mind sending us a draft that just completely strikes out section 7 of the substitute regarding set-offs and also a draft that includes language that would provide a dollar for dollar set-off for those defendants who are found 51% or more liable? I think we had some language like this before:

Under this substitute amendment, in any action where a fact finder has apportioned liability under Wis. Stat 895.045 against a company that has established an 11 USC 524 (g) bankruptcy trust, only defendants found more than 51 percent at fault are entitled to a setoff or credit of the paid liquidated value of the trust claims.

Thank you!  
Lane

---

**From:** Hurley, Peggy  
**Sent:** Monday, March 10, 2014 3:41 PM  
**To:** Ruhland, Lane  
**Subject:** RE: Drafting Instructions

Ok. Just send me the language when you have it nailed down. Thank you!

---

**From:** Ruhland, Lane  
**Sent:** Monday, March 10, 2014 3:40 PM  
**To:** Hurley, Peggy  
**Cc:** Gibbs, Adam  
**Subject:** RE: Drafting Instructions

Yes, we would like to keep sub. (8). We are still waiting on some clarifications about damages. There is a concern that completely deleting sub (7) from the substitute amendment will mean a proportional set-off that could lead to the plaintiff not being made whole. I have asked Anne Sappenfield about this and will hopefully hear soon.

Lane

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**From:** Hurley, Peggy  
**Sent:** Monday, March 10, 2014 3:34 PM  
**To:** Ruhland, Lane  
**Cc:** Gibbs, Adam  
**Subject:** RE: Drafting Instructions

Lane and Adam,

I've finished putting in the changes, except for the new subsection 7 (actually, I think it'll be subsection 6: (1) definition; (2) plaintiff's duties of disclosure; (3) discovery and use of materials; (4) identification by defendants of other trusts, and (5) use of trust materials at trial, and then , a subsection addressing either set-offs and/or assignment of rights and claims). I am awaiting further instruction on that section.

Do you want to keep sub. (8) of SSA, "failure to provide information; sanctions"?

Peggy

---

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**Sent:** Monday, March 10, 2014 3:04 PM  
**To:** Hurley, Peggy  
**Cc:** Gibbs, Adam  
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Thank you!

Lane

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I am questioning this language because, first, par. (a) requires that the defendant have a reasonable belief that the plaintiff should file a claim against the asbestos trust, so it seems odd that the court would have to determine whether a reasonable belief exists. Second, even if the court decides that the defendant has a reasonable belief, that doesn't necessarily mean the court agrees with the defendant's conclusion and would order the plaintiff to file against the new trust.

I see that you do not want the "good faith basis" language any more, but would it make sense to say, in paragraph (a), "If any defendant identifies an asbestos trust not named by the plaintiff against which the defendant reasonably believes the plaintiff should file a claim, upon motion by the defendant, the court shall determine whether to order the plaintiff to file a claim against the asbestos trust."

And then in par. (c ), say "If the court orders the plaintiff to file a claim with the asbestos trust, the court shall stay the immediate proceeding until . . . "

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Thank you so much!!!

Lane



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB 013177  
PJH:scj

wlj 50379

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

**SENATE SUBSTITUTE AMENDMENT,**

**TO SENATE BILL 13 ASSEMBLY BILL 19**

1 **AN ACT to create** 802.025 and 802.10 (3) (jd) of the statutes; **relating to:** torts  
2 and asbestos trusts.

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

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

4 **802.025 Pleadings, discovery, and damages in certain personal injury**  
5 **actions. (1) DEFINITIONS.** In this section:

6 (a) "Asbestos trust" means a trust, qualified settlement fund, compensation  
7 fund, or claims facility created as a result of an administrative or legal action,  
8 bankruptcy, agreement, or other settlement or pursuant to 11 USC 524 (g) or 49 USC  
9 40101, that is intended to provide compensation to claimants alleging personal  
10 injury claims as a result of harm, also potentially compensable in the immediate

1 action, for which the entity creating the trust, qualified settlement fund,  
2 compensation fund, or claims facility is alleged to be responsible.

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

14 (c) "Trust claims materials" means all documents and information relevant or  
15 related to a pending or potential claim against an asbestos trust. "Trust claims  
16 materials" include claims forms and supplementary materials, proofs of claim,  
17 affidavits, depositions and trial testimony, work history, and medical and health  
18 records.

19 (d) "Trust governance document" means any document that determines  
20 eligibility and payment levels, including claims payment matrices, trust distribution  
21 procedures, or plans for reorganization, for an asbestos trust.

22 (2) REQUIRED DISCLOSURES BY PLAINTIFF. (a) Within 45 days after the effective  
23 date of this paragraph .... [LRB inserts date] or within 45 days after joinder of issues  
24 in action subject to this section, whichever is later, the plaintiff shall provide to all  
25 parties a sworn statement identifying each personal injury claim he or she has filed

or reasonably anticipates filing

1 against an asbestos trust. The statement for each claim shall include the name,  
2 address, and contact information for the asbestos trust, the amount claimed by the  
3 plaintiff, the date that the plaintiff filed the claim, the disposition of the claim and  
4 whether there has been a request to defer, delay, suspend, or toll the claim against  
5 the asbestos trust.

6 (b) Within 60 days after the effective date of this paragraph ... [LRB inserts  
7 date] or within 45 days after joinder of issues in action subject to this section,  
8 whichever is later, the plaintiff shall provide to all parties all of the following:

9 1. For each personal injury claim he or she has filed against an asbestos trust,  
10 a copy of the final executed proof of claim, all trust documents, including any  
11 documents reflecting the current status of the claim and, if the claim is settled, all  
12 documents relating to the settlement of the claim.

13 2. A list of each personal injury claim he or she reasonably anticipates filing  
14 against an asbestos trust, including the name, address, and contact information for  
15 the asbestos trust, and the amount he or she anticipates claiming against the trust.

16 (c) The plaintiff shall supplement the information and materials he or she  
17 provides under pars. (a) and (b) within 30 days after the plaintiff files an additional  
18 claim or receives additional information or documents related to any claim he or she  
19 makes against an asbestos trust.

3 (4)

(3) DISCOVERY, ADDITIONAL TRUSTS AND EXTENSION OR STAYS.

20 (a) If any party  
21 identifies an asbestos trust not named by the plaintiff under sub. (2) against which  
22 the party believes the plaintiff has a good faith basis to file a claim, upon motion by  
23 the party, the court shall determine whether there is a good faith basis for the  
24 plaintiff to file a claim against the asbestos trust.

Insert title 3.20 (defendant)

defendant reasonably

should

defendant

to order

The defendant shall provide all documentation it possesses or is aware of in support of the motion.

Insert 3.19

Insert 4.1  
(c)

orders

the court shall

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

(d)

8 (c) The court may allow additional time for discovery or may stay the  
9 proceedings for other good cause shown.

(e)

10 (d) 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 an asbestos trust.

4.12 set

13 (4) VALUATION OF ASBESTOS TRUST CLAIMS; SETOFF AND CREDIT. (a) In any action  
14 subject to this section for which damages are awarded, a defendant whose  
15 responsibility for the damages to the plaintiff is 51 percent or more of the total  
16 responsibility for the damages is entitled to a setoff or credit equal to the amount the  
17 plaintiff has received from an asbestos trust.

18 (b) If the plaintiff has not received any amount from an asbestos trust but, at  
19 the time damages are awarded, has a pending claim against an asbestos trust, a  
20 defendant whose responsibility for the damages to the plaintiff is 51 percent or more  
21 of the total responsibility for the damages may request the fact finder to determine  
22 the value of the plaintiff's pending claim and may request a setoff or credit in the  
23 amount of the determined value. There is a rebuttable presumption, for the purpose  
24 of this paragraph, that the value of the plaintiff's pending claim against the asbestos  
25 trust is the dollar amount paid by the asbestos trust to other claimants who have filed

1 the same claim against the trust or who have the same injury allegedly caused by the  
2 entity that established the asbestos trust. In establishing the value of the plaintiff's  
3 personal injury claim, the court may take judicial notice, and may instruct the jury,  
4 that the trust payment to which the plaintiff is presumed to be entitled is equal to  
5 the amount other claimants with the same injury and claim against the asbestos  
6 trust were paid within the previous 6 months.

7 (c) The plaintiff shall promptly inform all parties if he or she receives a payment  
8 from an asbestos trust that varies by more than 10 percent from the amount  
9 established under par. (b) as the value of the plaintiff's personal injury claim. If the  
10 plaintiff does receive a payment from the asbestos trust that varies by more than 10  
11 percent from the amount established under par. (b), a party may move for relief  
12 pursuant to s. 806.07 (1) (g) to have the value of the plaintiff's personal injury claim  
13 adjusted by the court. Upon motion, the court shall adjust the value of the plaintiff's  
14 personal injury claim to the amount actually paid to the plaintiff by the asbestos  
15 trust.

16 (5) FAILURE TO PROVIDE INFORMATION; SANCTIONS. (a) A plaintiff who fails to  
17 provide all of the information required under subs. (2) or (3) (b) is subject to ss.  
18 802.05, 804.12, 805.03, and 895.044.

19 (b) If a party discovers, after an action brought under this section has  
20 concluded, that the plaintiff has filed a personal injury claim against an asbestos  
21 trust that was not identified under sub. (2), the party may, within one year of making  
22 the discovery, move the court to determine whether the plaintiff should have  
23 identified the asbestos trust while the action was pending. If the court determines  
24 that the plaintiff should have identified the asbestos trust while the action was

1 pending, the court may impose sanctions pursuant to par. (a) and may grant relief  
2 pursuant to s. 806.07 (1) (g).

3 **SECTION 2.** 802.10 (3) (jd) of the statutes is created to read:

4 802.10 (3) (jd) The time for discovery and motions required under s. 802.025.

5 **SECTION 3. Initial applicability.**

6 (1) This act first applies to actions filed on the effective date of this subsection  
7 and to actions pending on the effective date of this subsection if no scheduling order  
8 under s. 802.10 has been entered, or if no trial date has been set, in the action.

9 (END)

Insert 6.4

1 the personal injury trust. The statement shall include an attestation that the  
2 plaintiff swears or affirms, under penalties of perjury, that the statement is complete  
3 and is based on the plaintiff's and plaintiff's counsel's good faith investigation of all  
4 potential claims against personal injury trusts.

5 (b) The plaintiff shall produce to all parties, for each personal injury claim he  
6 or she filed against a personal injury trust identified in par. (a), a final executed proof  
7 of claim and all other trust claims materials relevant to each claim.

8 (c) The plaintiff shall produce to all parties, for each personal injury claim he  
9 or she anticipates filing against a personal injury trust identified in par. (a), all trust  
10 claims materials relevant to each claim. The plaintiff shall produce to all parties a  
11 final executed proof of claim for each claim when the plaintiff files the claim.

12 (d) The plaintiff shall supplement the information and materials he or she  
13 provided pursuant to par. (a), (b), or (c) within 30 days after the plaintiff files any  
14 additional claim, supplements an existing claim, or produces or receives any  
15 additional trust claim materials.

Insert 3.19

16 (3) DISCOVERY; USE OF MATERIALS. (a) Trust claims materials and trust  
17 governance documents are relevant and authentic and admissible in evidence to  
18 prove, without limitation, alternative causation for a plaintiff's injuries or to allocate  
19 liability for the plaintiff's injury. No claims of privilege apply to trust claims  
20 materials or trust governance documents.

21 (b) A defendant in a personal injury claim may seek discovery against  
22 an asbestos trust identified under sub. (2) or (4) personal injury trust identified under sub. (2). The plaintiff may not claim privilege  
23 or confidentiality to bar discovery of any information relevant to the plaintiff's  
24 personal injury claim under the control of a personal injury trust and the plaintiff

*Insert 3.19, cont.*

1 shall provide consents or other expression of permission that may be required by the  
2 personal injury trust *asbestos* to release information and materials sought by the defendant.

3 (4) SCHEDULING TRIAL; STAY OF ACTION. (a) The court may not commence the trial  
4 of a personal injury action until at least 180 days after the plaintiff makes the  
5 disclosures required under sub. (2). The court may, for good cause shown, shorten  
6 this period but under no circumstances may a trial be commenced less than 60 days  
7 after the last of the required disclosures is made.

8 (b) If a plaintiff states under sub. (2) that he or she anticipates making one or  
9 more claims against any personal injury trusts, then all proceedings in the action  
10 shall be stayed until the plaintiff files all such claims and provides the parties with  
11 the disclosures required by sub. (2) for all such claims. Nothing in this section shall  
12 prohibit a court, for good cause shown, to permit any party at any time to take a  
13 deposition of a plaintiff or any other witness whose health or other circumstances  
14 make it sufficiently likely that the person will be unavailable or otherwise unable,  
15 or have reduced capacity, including due to declining health or mental abilities, to give  
16 testimony when the stay is lifted. The court may also require any party to provide  
17 such additional discovery in connection with any such deposition as the court  
18 believes is appropriate in order that all parties may fairly and fully prepare for and  
19 examine or cross-examine the witness at any such deposition.

*Insert title 320*

20 (5) DEFENDANT'S IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE PERSONAL INJURY

21 TRUSTS. (a) Any party may move the court for an order requiring the plaintiff to file  
22 a claim against one or more personal injury trusts from which that party in good faith  
23 believes the plaintiff can recover. The party moving for such an order shall produce  
24 or describe the evidence it believes is sufficient to meet the requirements of each such  
25 personal injury trust for filing a valid claim.

*ASBESTOS*

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0379/ins  
.....

1           INSERT 4.1:

2           (b) The court shall establish a deadline for filing a motion under par. (a). The  
3           court shall ensure that any deadline established pursuant to this paragraph affords  
4           the parties an adequate opportunity to investigate the defendant's claims.

Insert  
4.12

1 (6) <sup>(5)</sup> USE OF TRUST CLAIM MATERIALS AT TRIAL. Trust claim materials that are  
 2 sufficient to entitle a claim to consideration for payment under the applicable trust  
 3 governance documents are <sup>may be</sup> sufficient by themselves <sup>may have seen</sup> to support a jury finding that  
 4 the plaintiff was exposed to products for which the trust was established to provide  
 5 compensation and that such exposure <sup>may be</sup> was a substantial factor in causing the  
 6 plaintiff's injury that is at issue in the action.

Insert  
6.4

7 (6) <sup>(7)</sup> DAMAGES; LIABILITY. If any defendant is found to be 51 percent or more  
 8 causally negligent or any product defendant is found to be 51 percent or more  
 9 causally responsible for the plaintiff's injury such that the defendant or product  
 10 defendant would be jointly and <sup>solely</sup> ~~severally~~ liable for the plaintiff's entire damages <sup>STET</sup>  
 11 under s. 895.045 (1) or (3) (d), then notwithstanding those sections, the defendant or  
 12 product defendant is entitled to a credit against the amount of damages for which it  
 13 would otherwise be liable equal to the percentage of causal negligence or causal  
 14 responsibility that the fact finder attributes to any company that has established a  
 15 personal injury trust or to a product for which a personal injury trust provides  
 16 compensation. <sup>amount received by the plaintiff from an asbestos trust.</sup>

17 (8) FAILURE TO PROVIDE INFORMATION; SANCTIONS. A plaintiff who fails to timely  
 18 provide all of the information required under sub. (2) <sup>or</sup> (4) <sup>or</sup> (5) (d) is subject to  
 19 ss. 802.05, 804.12, 805.03, and 895.044.

**SECTION 2. Initial applicability.**

21 (1) This act first applies to actions filed on the effective date of this subsection  
 22 and to actions pending on the effective date of this subsection if trial has not  
 23 commenced in the action.

## Hurley, Peggy

---

**From:** Ruhland, Lane  
**Sent:** Tuesday, March 11, 2014 9:58 AM  
**To:** Hurley, Peggy  
**Subject:** RE: Ab 19 sub

That is a concern I had, I am checking on this. I think the purpose behind this is to incentivize filing. Maybe one way to deal with it is have it apply only to future claims, so none that are pending unless you are 51% or more liable. I will get back to you ASAP. I will send the stripes now.

Lane.

---

**From:** Hurley, Peggy  
**Sent:** Tuesday, March 11, 2014 9:50 AM  
**To:** Ruhland, Lane  
**Subject:** RE: Ab 19 sub

Hi Lane,

I want to make sure I understand this. The language should read something like this, if I follow correctly:

**(6) Damages; assignment of claims. If a verdict is entered in favor of the plaintiff in an action subject to this section, the plaintiff may not collect any amount of damages from the defendant until after the plaintiff assigns to the defendant all present and future rights or claims he or she has or may have for a personal injury claim against an asbestos trust.**

Does that language reflect your intent?

What if the plaintiff has a huge claim pending against an asbestos trust and the defendant in the instant case is less than 51% liable? Wouldn't the plaintiff only be collecting a small percent of damages, while the defendant goes on to get the larger payment in the plaintiff's place? I think I am missing something.

Peggy

---

**From:** Ruhland, Lane  
**Sent:** Tuesday, March 11, 2014 9:39 AM  
**To:** Hurley, Peggy  
**Subject:** Ab 19 sub

Peggy,

Thanks for the quick turn around on the sub. Just two things:

- 1) You can completely strike subsection 6 on damages and liability.
- 2) Could you please add in a paragraph that has the following affect:
  - a. If and only if a verdict is entered in favor of the plaintiff, the plaintiff shall assign all rights and claims to any pending or future asbestos related trusts to the defendant before the plaintiff may collect any damage award. We want the defendant to be able to step into the plaintiff's shoes following a verdict for any unpaid claims, or any claims that the plaintiff may file going forward.

Thank you!

Lane

---

**From:** Hurley, Peggy  
**Sent:** Monday, March 10, 2014 6:24 PM  
**To:** Ruhland, Lane; Gibbs, Adam  
**Subject:** sub

Hi,

The sub is in typing and should be sent to your office soon. I will be checking my email this evening, so if you do need changes for tomorrow morning, please just send an email.

Peggy Hurley  
Legislative Reference Bureau  
608 266 8906

## Hurley, Peggy

---

**From:** Ruhland, Lane  
**Sent:** Tuesday, March 11, 2014 10:08 AM  
**To:** Hurley, Peggy  
**Cc:** Fiocchi, Tim; Gibbs, Adam  
**Subject:** RE: Ab 19 sub

Ok, solution to the assignment of rights...

If a verdict is entered in favor of the plaintiff, the plaintiff shall assign all rights and claims to any **future** asbestos related trusts to the defendant before the plaintiff may collect any damage award (any claims filed after verdict/waiver of rights). The plaintiff shall assign all rights and claims to **pending and future trust** claims for defendants who are 51% or more liable.

Thank you Peggy.

---

**From:** Hurley, Peggy  
**Sent:** Tuesday, March 11, 2014 9:51 AM  
**To:** Ruhland, Lane  
**Subject:** RE: Ab 19 sub

Oh, and I will also need the jacket back before I can redraft. If you think that returning the jacket will take too long, I can just enter a brand new substitute amendment for you.

Peggy

---

**From:** Ruhland, Lane  
**Sent:** Tuesday, March 11, 2014 9:39 AM  
**To:** Hurley, Peggy  
**Subject:** Ab 19 sub

Peggy,

Thanks for the quick turn around on the sub. Just two things:

- 1) You can completely strike subsection 6 on damages and liability.
- 2) Could you please add in a paragraph that has the following affect:
  - a. If and only if a verdict is entered in favor of the plaintiff, the plaintiff shall assign all rights and claims to any pending or future asbestos related trusts to the defendant before the plaintiff may collect any damage award. We want the defendant to be able to step into the plaintiff's shoes following a verdict for any unpaid claims, or any claims that the plaintiff may file going forward.

Thank you!

Lane

---

**From:** Hurley, Peggy  
**Sent:** Monday, March 10, 2014 6:24 PM  
**To:** Ruhland, Lane; Gibbs, Adam  
**Subject:** sub

Hi,

The sub is in typing and should be sent to your office soon. I will be checking my email this evening, so if you do need changes for tomorrow morning, please just send an email.

Peggy Hurley  
Legislative Reference Bureau  
608 266 8906



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBs0379/1

PJH:wlj:jm

2

rmr

stays

SENATE SUBSTITUTE AMENDMENT,  
TO ASSEMBLY BILL 19

now

1 AN ACT to create 802.025 of the statutes; relating to: torts and asbestos trusts.

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

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

3 802.025 Pleadings, discovery, and damages in certain personal injury  
4 actions. (1) DEFINITIONS. In this section:

5 (a) "Asbestos trust" means a trust, qualified settlement fund, compensation  
6 fund, or claims facility created as a result of an administrative or legal action,  
7 bankruptcy, agreement, or other settlement or pursuant to 11 USC 524 (g) or 49 USC  
8 40101, that is intended to provide compensation to claimants alleging personal  
9 injury claims as a result of harm, also potentially compensable in the immediate  
10 action, for which the entity creating the trust, qualified settlement fund,  
11 compensation fund, or claims facility is alleged to be responsible.

1 (b) “Personal injury claim” means any claim for damages, loss, indemnification,  
2 contribution, restitution or other relief, including punitive damages, that is related  
3 to bodily injury or another harm, including loss of consortium, society, or  
4 companionship, loss of support, personal injury or death, mental or emotional injury,  
5 risk or fear of disease or other injury, or costs of medical monitoring or surveillance  
6 and that is allegedly caused by or related to the claimant’s exposure to asbestos.  
7 “Personal injury claim” includes a claim made by or on behalf of the person who  
8 claims the injury or harm or by or on behalf of the person’s representative, spouse,  
9 parent, minor child, or other relative. “Personal injury claim” does not include a  
10 claim compensable by the injured patients and families compensation fund or a claim  
11 for compensatory benefits pursuant to worker’s compensation or veterans benefits.

12 (c) “Trust claims materials” means all documents and information relevant or  
13 related to a pending or potential claim against an asbestos trust. “Trust claims  
14 materials” include claims forms and supplementary materials, proofs of claim,  
15 affidavits, depositions and trial testimony, work history, and medical and health  
16 records.

17 (d) “Trust governance document” means any document that determines  
18 eligibility and payment levels, including claims payment matrices, trust distribution  
19 procedures, or plans for reorganization, for an asbestos trust.

20 (2) REQUIRED DISCLOSURES BY PLAINTIFF. (a) Within 45 days after the effective  
21 date of this paragraph .... [LRB inserts date], or within 45 days after joinder of issues  
22 in action subject to this section, whichever is later, the plaintiff shall provide to all  
23 parties a sworn statement identifying each personal injury claim he or she has filed  
24 or reasonably anticipates filing against an asbestos trust. The statement for each  
25 claim shall include the name, address, and contact information for the asbestos trust,

1 the amount claimed by the plaintiff, the date that the plaintiff filed the claim, the  
2 disposition of the claim and whether there has been a request to defer, delay,  
3 suspend, or toll the claim against the asbestos trust.

4 (b) Within 60 days after the effective date of this paragraph .... [LRB inserts  
5 date], or within 60 days after joinder of issues in an action subject to this section,  
6 whichever is later, the plaintiff shall provide to all parties all of the following:

7 1. For each personal injury claim he or she has filed against an asbestos trust,  
8 a copy of the final executed proof of claim, all trust documents, including trust claims  
9 materials, trust governance documents, any documents reflecting the current status  
10 of the claim and, if the claim is settled, all documents relating to the settlement of  
11 the claim.

12 2. A list of each personal injury claim he or she reasonably anticipates filing  
13 against an asbestos trust, including the name, address, and contact information for  
14 the asbestos trust, and the amount he or she anticipates claiming against the trust.

15 (c) The plaintiff shall supplement the information and materials he or she  
16 provides under pars. (a) and (b) within 30 days after the plaintiff files an additional  
17 claim or receives additional information or documents related to any claim he or she  
18 makes against an asbestos trust.

19 **(3) DISCOVERY; USE OF MATERIALS.** (a) Trust claims materials and trust  
20 governance documents are admissible in evidence. No claims of privilege apply to  
21 trust claims materials or trust governance documents.

22 (b) A defendant in a personal injury claim may seek discovery against an  
23 asbestos trust identified under sub. (2) or (4). The plaintiff may not claim privilege  
24 or confidentiality to bar discovery, and the plaintiff shall provide consents or other

1 expression of permission that may be required by the asbestos trust to release  
2 information and materials sought by the defendant.

3 (4) DEFENDANT'S IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE ASBESTOS TRUSTS.

4 (a) If any defendant identifies an asbestos trust not named by the plaintiff against  
5 which the defendant reasonably believes the plaintiff should file a claim, upon  
6 motion by the defendant, the court shall determine whether to order the plaintiff to  
7 file a claim against the asbestos trust. The defendant shall provide all  
8 documentation it possesses or is aware of in support of the motion.

9 (b) The court shall establish a deadline for filing a motion under par. (a). The  
10 court shall ensure that any deadline established pursuant to this paragraph affords  
11 the parties an adequate opportunity to investigate the defendant's claims.

12 (c) If the court orders the plaintiff to file a claim with the asbestos trust, the  
13 court shall stay the immediate action until the plaintiff swears or affirms that he or  
14 she has filed the claim against the asbestos trust and the plaintiff provides to the  
15 court and to all parties a final executed proof of claim and all other trust claims  
16 materials relevant to each claim the plaintiff has against an asbestos trust.

17 (d) The court may allow additional time for discovery or may stay the  
18 proceedings for other good cause shown.

19 (e) Not less than 30 days prior to trial, the court shall enter into the record a  
20 trust claims document that identifies each personal injury claim the plaintiff has  
21 made against an asbestos trust.

22 (5) USE OF TRUST CLAIM MATERIALS AT TRIAL. Trust claim materials that are  
23 sufficient to entitle a claim to consideration for payment under the applicable trust  
24 governance documents may be sufficient to support a jury finding that the plaintiff  
25 may have been exposed to products for which the trust was established to provide

1 compensation and that such exposure may be a substantial factor in causing the  
2 plaintiff's injury that is at issue in the action.

3 (6) DAMAGES; LIABILITY. If any defendant is found to be 51 percent or more  
4 causally negligent or responsible for the plaintiff's injury such that the defendant  
5 would be jointly and severally liable for the plaintiff's entire damages under s.  
6 895.045 (1) or (3) (d), then, notwithstanding those sections, the defendant is entitled  
7 to a credit against the amount of damages for which it would otherwise be liable  
8 equal to the amount received by the plaintiff from an asbestos trust.

9 (7) FAILURE TO PROVIDE INFORMATION; SANCTIONS. A plaintiff who fails to timely  
10 provide all of the information required under sub. (2) or (4) is subject to ss. 802.05,  
11 804.12, 805.03, and 895.044.

12 **SECTION 2. Initial applicability.**

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

14 (END)

Insert

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0379/lins  
PJH:wlj:jm

INSERT:

(6) DAMAGES; ASSIGNMENT OF CLAIMS. (a) If a verdict is entered in favor of the plaintiff in an action subject to this section and the defendant is found to be 51 percent or more causally negligent or responsible for the plaintiff's entire damages under s. 895.045 (1) or (3) (d), the plaintiff may not collect any amount of damages until after the plaintiff assigns to the defendant all pending, current, and future rights or claims he or she has or may have for a personal injury claim against an asbestos trust.

(b) If a verdict is entered in favor of the plaintiff in an action subject to this section and the defendant is found to be less than 51 percent causally negligent or responsible for the plaintiff's entire damages under s. 895.045 (1) or (3) (d), the plaintiff may not collect any amount of damages until after the plaintiff assigns to the defendant all future rights or claims he or she has or may have for a personal injury claim against an asbestos trust.

1 compensation and that such exposure may be a substantial factor in causing the  
2 plaintiff's injury that is at issue in the action.

3 (6) DAMAGES; ASSIGNMENT OF CLAIMS. (a) If a verdict is entered in favor of the  
4 plaintiff in an action subject to this section and the defendant is found to be 51  
5 percent or more causally negligent or responsible for the plaintiff's entire damages  
6 under s. 895.045 (1) or (3) (d), the plaintiff may not collect any amount of damages  
7 until after the plaintiff assigns to the defendant all pending, current, and future  
8 rights or claims he or she has or may have for a personal injury claim against an  
9 asbestos trust.

10 (b) If a verdict is entered in favor of the plaintiff in an action subject to this  
11 section and the defendant is found to be less than 51 percent causally negligent or  
12 responsible for the plaintiff's entire damages under s. 895.045 (1) or (3) (d), the  
13 plaintiff may not collect any amount of damages until after the plaintiff assigns to  
14 the defendant all future rights or claims he or she has or may have for a personal  
15 injury claim against an asbestos trust.

16 (7) FAILURE TO PROVIDE INFORMATION; SANCTIONS. A plaintiff who fails to timely  
17 provide all of the information required under sub. (2) or (4) is subject to ss. 802.05,  
18 804.12, 805.03, and 895.044.

19 **SECTION 2. Initial applicability.**

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

21 (END)