

**2013 DRAFTING REQUEST**

**Assembly Amendment (AA-SSA1-AB19)**

Received: 3/19/2014 Received By: phurley  
Wanted: As time permits Same as LRB:  
For: Gary Hebl (608) 266-7678 By/Representing:  
May Contact: Drafter: phurley  
Subject: Courts - damages 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:**

Asbestos torts; damages

**Instructions:**

See attached

**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>
/1	phurley 3/20/2014	jdye 3/20/2014	jmurphy 3/20/2014	_____	mbarman 3/20/2014	mbarman 3/20/2014	

FE Sent For:

<END>

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Table with columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Required. Row 1: /1, phurley, 3/20 jld, jd, [Signature], 3/20

FE Sent For:

<END>

## Hurley, Peggy

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**From:** Murray, Mike  
**Sent:** Wednesday, March 19, 2014 9:43 AM  
**To:** Hurley, Peggy  
**Cc:** Knocke, Ryan; Meyer, Bob  
**Subject:** Amendments to AB 19

Hi Peggy,

I hope you're doing well during this crazy week! Rep. Hebl would like to draft 2 amendments to SSA 1 to AB 19 (I think that is procedurally correct; let me know if it's not). As always, thanks for your help and let me know if you have any questions.

Mike

He would like an Assembly amendment identical to SA 1 to SSA1 to AB 19, which was LRB 2102/1:  
[https://docs.legis.wisconsin.gov/2013/related/amendments/ab19/sa1\\_ssa1\\_ab19.pdf](https://docs.legis.wisconsin.gov/2013/related/amendments/ab19/sa1_ssa1_ab19.pdf)

He would also like the following amendment to SSA 1 to AB 19:

- Strike all of Subection 6 and replace with the following:
  - (a) Notwithstanding Wis. Stat. 895.045, a non-asbestos trust defendant found to be casually negligent under this Act shall be jointly and severally liable for the damages allowed.
  - (b) In an asbestos personal injury action where a plaintiff has filed a claim with a bankruptcy trust under 11 USC 524 (g), any defendant held jointly and severally liable may request a post-judgment hearing to determine the total amount of payment received from the bankruptcy trusts under 11 USC 524 (g) prior to a judgment being rendered. The defendant may receive a dollar for dollar credit for payments already received by the plaintiff from the bankruptcy trusts only if the plaintiff has been made whole by the judgment.
  - (c) In an asbestos personal injury action where a plaintiff has filed a claim with a bankruptcy trust under 11 USC 524 (g), any defendant held jointly and severally liable may request a post-judgment hearing to determine any unpaid claims from the bankruptcy trusts under 11 USC 524 (g) prior to a judgment being rendered. The court may require the plaintiff to assign to defendants against whom the judgment is rendered his or her rights to unpaid bankruptcy claims under 11 USC 524 (g) only if the plaintiff has been made whole by the judgment.
  - (d) The plaintiff shall cooperate with and assist the defendants in obtaining the damages due to the claimant from each bankruptcy trust under 11 USC 524 (g) as provided by each trust's distribution process.  
Each defendant's claim filed with a bankruptcy trust under 11 USC 524 (g) shall be treated as if the plaintiff had submitted the claim for any purposes under the terms, conditions, and provisions of the trust claim procedures. With the assignment, the plaintiff is not responsible for any costs associated with making and proving the claim."

Mike Murray



## Hurley, Peggy

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**From:** Murray, Mike  
**Sent:** Thursday, March 20, 2014 8:55 AM  
**To:** Hurley, Peggy  
**Subject:** RE: drafting language for AB 19

Hi Peggy, this is good to go as is. Thanks so much and sorry for the delay.

Mike

Mike Murray  
Office of Rep. Gary Hebl  
46th Assembly District

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**From:** Hurley, Peggy  
**Sent:** Wednesday, March 19, 2014 10:52 AM  
**To:** Murray, Mike  
**Subject:** drafting language for AB 19

Hi Mike,

As a follow up to my last email, here is the language I've drafted that I believe reflects your intent, while keeping terminology consistent with what is in the substitute amendment. Please let me know your thoughts.

(6) Damages. (a) Notwithstanding s. 895.045, a defendant that is not an asbestos trust and that is found to be causally negligent in an action subject to this section shall be jointly and severally liable for the damages allowed.

(b) A defendant that is found jointly and severally liable under this section may request a post-judgment hearing to determine the total amount of payment the plaintiff received, before the judgment was entered against the defendant, from one or more asbestos trusts. The defendant may receive a dollar for dollar credit for payments already received by the plaintiff from the asbestos trust only if the plaintiff is made whole by the judgment against the defendant.

(c) A defendant that is found jointly and severally liable under this section may request a post-judgment hearing to determine whether, before the judgment was entered against the defendant, the plaintiff had any unpaid claims pending against one or more asbestos trusts. The court may order the plaintiff to assign to the defendant his or her rights to the unpaid claims only if the plaintiff is made whole by the judgment against the defendant.

(d) If the court orders assignment under par. (c), the plaintiff shall cooperate with, and assist the defendant in, obtaining the amounts due from each asbestos trust, according to the distribution process provided under the trust governance documents for each asbestos trust.

(e) If the court orders assignment under par. (c), each claim the defendant files pursuant to the assignment shall be treated as if the plaintiff submitted the claims for any purpose under the terms, conditions, and provisions of the trust claim procedures. Upon assignment of his or her claim under par. (c), the plaintiff is not responsible for any costs associated with making or providing the claim against the asbestos trust."

Peggy Hurley  
Legislative Reference Bureau  
608 266 8906



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBs0379/2  
PJH:wlj:jm

SENATE SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 19

March 11, 2014 - Offered by Senator GROTHMAN.

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; 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)



TODAY A.M.

JLD

**ASSEMBLY AMENDMENT ,  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 19**

1 At the locations indicated, amend the substitute amendment<sup>✓</sup> as follows:

2 **1.** Page 5, line 3: delete lines 3 to 15<sup>✓</sup> and substitute:

3 “(6) DAMAGES<sup>✓</sup> (a) Notwithstanding s. 895.045<sup>✓</sup>, a defendant that is not an  
4 asbestos trust<sup>✓</sup> and that is found to be causally negligent in an action subject to this  
5 section<sup>✓</sup> shall be jointly and severally liable for the damages allowed.

6 (b) A defendant that is found jointly and severally liable under this section<sup>✓</sup> may

7 request a post<sup>g</sup> judgment hearing to determine the total amount of payment the  
8 plaintiff received, before the judgment was entered against the defendant, from one  
9 or more asbestos trusts<sup>✓</sup>. The defendant may receive a dollar for dollar credit for  
10 payments already received by the plaintiff from the asbestos trust only if the plaintiff  
11 is made whole by the judgment against the defendant.<sup>✓</sup>

1 (c) A defendant that is found jointly and severally liable under this section<sup>✓</sup> may  
2 request a post<sup>e</sup> judgment hearing to determine whether, before the judgment was  
3 entered against the defendant, the plaintiff had any unpaid claims pending against  
4 one or more asbestos trusts.<sup>✓</sup> The court may order the plaintiff to assign to the  
5 defendant his or her rights to the unpaid claims only if the plaintiff is made whole  
6 by the judgment against the defendant.<sup>✓</sup>

7 (d) If the court orders assignment under par. (c),<sup>✓</sup> the plaintiff shall cooperate  
8 with, and assist the defendant in, obtaining the amounts due from each asbestos  
9 trust, according to the distribution process provided under each asbestos<sup>e trusts</sup> trust  
10 governance documents.<sup>✓</sup>

11 (e) If the court orders assignment under par. (c),<sup>✓</sup> each claim the defendant files  
12 pursuant to the assignment shall be treated as if the plaintiff submitted the claims  
13 for any purpose under the terms, conditions, and provisions of the trust claim  
14 procedures. Upon assignment of his or her claim under par. (c),<sup>✓</sup> the plaintiff is not  
15 responsible for any costs associated with making or providing the claim against the  
16 asbestos trust."<sup>✓</sup>

17 (END)