



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2013 Wisconsin Act 154**  
[2013 Assembly Bill 19]

**Torts and Asbestos Trusts**

2013 Wisconsin Act 154 created various requirements for a plaintiff to produce information regarding claims the plaintiff has made or anticipates making against an asbestos trust.

### **Required Disclosures by Plaintiff**

The Act provides that within 45 days after March 29, 2014, or within 45 days after joinder of issues in actions subject to the provisions of the Act, whichever is later, the plaintiff must provide to all parties a sworn statement identifying each personal injury claim the plaintiff has filed or reasonably anticipates filing against an asbestos trust. The statement for each claim must 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.

Under the Act, “asbestos trust” is defined as a trust, qualified settlement fund, compensation fund, or claims facility created as a result of an administrative or legal action, bankruptcy, agreement, or other settlement, or created pursuant to federal bankruptcy law [11 U.S.C. s. 524 (g)] or the federal September 11<sup>th</sup> Victim Compensation Fund [29 U.S.C. 40101], that is intended to provide compensation to claimants alleging personal injury claims as a result of harm for which the entity creating the trust, qualified settlement fund, compensation fund, or claims facility is alleged to be responsible. The definition specifies that the claim must also be potentially compensable in the immediate action, meaning the action to which the provisions of the Act apply.

The Act defines “personal injury claim” as any claim for damages, loss, indemnification, contribution, restitution, or other relief, including punitive damages, that is related to bodily injury or another harm and that is allegedly caused by or related to the claimant’s exposure to

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

asbestos. The Act provides that “personal injury claim” includes a claim made by or on behalf of: (a) the person who claims the injury or harm; or (b) the person’s representative, spouse, parent, minor child, or other relative. “Personal injury claim” does not include a claim compensable by the injured patients and families compensation fund or a claim for compensatory benefits pursuant to worker’s compensation or veterans benefits.

The Act provides that, within 60 days after March 29, 2014, or within 60 days after joinder of issues in an action subject to the provisions of the Act, whichever is later, the plaintiff must provide to all parties all of the following:

- 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.
- 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.

Under the Act, “trust claims materials” means all documents and information relevant or related to a pending or potential claim against an asbestos trust. The definition specifies that these materials include claims forms and supplementary materials, proofs of claim, affidavits, depositions and trial testimony, work history, and medical and health records. The Act defines “trust governance document” to mean any document that determines eligibility and payment levels, including claims payment matrices, trust distribution procedures, or plans for reorganization, for an asbestos trust.

Under the Act, the plaintiff must supplement the information and materials he or she provided pursuant to the above provisions 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.

### **Discovery and Use of Materials**

The Act provides that trust claims materials and trust governance documents are admissible in evidence. No claims of privilege apply to trust claims materials or trust governance documents.

Under the Act, a defendant in a personal injury claim may seek discovery against an asbestos trust identified by the plaintiff, as described above, or identified by a defendant, as described below. The plaintiff may not claim privilege or confidentiality to bar discovery, and the plaintiff must provide consents or other expression of permission that may be required by the asbestos trust to release information and materials sought by the defendant.

### **Identification of Additional or Alternative Asbestos Trusts**

Under the Act, if any defendant identifies an asbestos trust that is not named by the plaintiff against which the defendant reasonably believes the plaintiff should file a claim, upon

motion by the defendant, the court must determine whether to order the plaintiff to file a claim against the asbestos trust. The defendant must provide all documentation it possesses or is aware of in support of the motion.

The court must establish a deadline for filing a motion regarding an additional or alternative asbestos trust. The court must ensure that any deadline established affords the parties an adequate opportunity to investigate the defendant's claims.

If the court orders the plaintiff to file a claim with the asbestos trust, the court must stay the immediate action until: (a) the plaintiff swears or affirms that he or she has filed the claim against the asbestos trust; and (b) 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.

The Act provides that the court may allow additional time for discovery or may stay the proceedings for other good cause shown.

Under the Act, not less than 30 days prior to trial, the court must enter into the record a trust claims document that identifies each personal injury claim the plaintiff has made against an asbestos trust.

#### **Use of Trust Claims Materials at Trial**

The Act provides that trust claims materials that are sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may be sufficient to support a jury finding that the plaintiff may have been exposed to products for which the trust was established to provide compensation and that such exposure may be a substantial factor in causing the plaintiff's injury that is at issue in the action.

#### **Damages and Assignment of Claims**

Under the Act, if a verdict is entered in favor of the plaintiff in an action subject to the provisions of the Act, and the defendant is found to be 51% or more causally negligent or responsible for the plaintiff's entire damages under Wisconsin's contributory negligence law, 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.

If a verdict is entered in favor of the plaintiff and the defendant is found to be less than 51% causally negligent or responsible for the plaintiff's entire damages, 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 may have for a personal injury claim against an asbestos trust.

#### **Sanctions for Failure to Provide Information**

The Act provides that a plaintiff who fails to timely provide all of the information required under the Act is subject to various sanctions under current law relating to representations to the court, failure to make discovery, failure to comply with procedural statutes, and frivolous claims.

*Effective date:* March 29, 2014. The Act first applied to actions filed on March 29, 2014.

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