



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Assembly Bill 19

Senate Substitute Amendment 1

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2013 Assembly Bill 19 creates various requirements for a plaintiff in any action for personal injury or other tort to produce information regarding claims the plaintiff has made or anticipates making against a personal injury trust.

Assembly Bill 19, as Amended by the Assembly

Assembly Bill 19, as amended by the Assembly, requires a plaintiff in a personal injury or other tort action to provide to the court and all parties a statement identifying all personal injury claims the plaintiff has filed or anticipates filing against a personal injury trust, and for each claim, whether there has been a request to defer, delay, suspend, or toll the claim against the personal injury trust. This statement must be provided within 30 days after the action is filed or, for pending actions, within 30 days after the effective date of the bill.

Under the bill, the court may not commence the trial in a personal injury action until at least 180 days after the plaintiff makes the required disclosures relating to claims against personal injury trusts. The court may shorten this period for good cause shown but may not commence the trial within fewer than 60 days after the disclosures are made. If a plaintiff discloses that he or she anticipates making one or more claims against any personal injury trusts, then all proceedings in the action must be stayed until the plaintiff provides the parties with the disclosures required for these claims.

The bill sets forth the requirements of the parties if there is a motion for an order to require the plaintiff to file a claim against one or more personal injury trusts from which that party in good faith believes the plaintiff can recover. If the court determines that there is a good faith basis for the plaintiff to file a claim against a personal injury trust identified, the

court must stay the action until the plaintiff swears or affirms that he or she has filed the claims and provides to the parties a final executed proof of claim and all other trust claims materials relevant to each such claim.

The bill contains provisions relating to admissibility and discovery of trust claim materials. Under the bill, 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 injury and to allocate liability for the plaintiff's injury. No claims of privilege apply to trust claims materials or trust governance documents. A defendant in a personal injury claim may seek discovery against a personal injury trust identified by the plaintiff. The plaintiff may not claim privilege or confidentiality to bar discover of relevant information and the plaintiff must provide consents or other expression of permission that may be required by the personal injury trust to release information and materials sought by the defendant.

At trial, trust claims materials that are sufficient to entitle a claim to consideration for payment are sufficient, by themselves, to support a jury finding that the plaintiff was exposed to products for which the trust was established to provide compensation and that such exposure was a substantial factor in causing the plaintiff's injury that is at issue in the action.

Regarding damages, the bill entitles a defendant who is found to be 51% or more causally negligent or responsible for the plaintiff's injury, and is therefore jointly and severally liable for the plaintiff's entire damages, to a credit against the amount of damages for which it would otherwise be liable equal to the percentage of causal negligence or responsibility that the fact finder attributed to any company that has established a personal injury trust.

Under the bill, failure to timely provide required information under the bill subjects a plaintiff 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.

The bill first applies to actions filed on the effective date of the bill and to actions pending on the effective date if trial has not been commenced in the action.

Senate Substitute Amendment 1

Required Disclosures by Plaintiff

The substitute amendment provides that within 45 days after the effective date of the legislation or within 45 days after joinder of issues in actions subject to the provisions of the substitute amendment, 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 substitute amendment, “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 11th 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 substitute amendment, described below, apply.

The substitute amendment 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 asbestos. The substitute amendment 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 substitute amendment provides that, within 60 days after the effective date of the legislation or within 60 days after joinder of issues in an action subject to the provisions of the substitute amendment, 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 substitute amendment, “trust claims materials” means all documents and information relevant or related to a pending or potential claim against an asbestos injury 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 substitute amendment 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 substitute amendment, 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 substitute amendment 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 substitute amendment, 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 or 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 substitute amendment, 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 shall 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 substitute amendment provides that the court may allow additional time for discovery or may stay the proceedings for other good cause shown.

Under the substitute amendment, 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 substitute amendment 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 substitute amendment, if a verdict is entered in favor of the plaintiff in an action subject to the provisions of the substitute amendment, 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 substitute amendment provides that a plaintiff who fails to timely provide all of the information required under the substitute amendment 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.

Initial Applicability

The substitute amendment provides that it first applies to actions filed on the effective date of the substitute amendment.

Bill History

Senate Substitute Amendment 1 was offered by Senator Grothman. On March 11, 2014, the Senate adopted the substitute amendment by voice vote. The Senate concurred in the bill, as amended, on March 12, 2014, on a vote of Ayes, 17; Noes, 16.

AS:ksm