



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 778	Assembly Amendments 1 (as amended), 4, 5 (as amended), and 6
<i>Memo published:</i> November 3, 2005	<i>Contact:</i> Don Dyke, Chief of Legal Services (266-0292)

Assembly Amendment 1 (as Amended by Assembly Amendment 1 to the Amendment)

Assembly Amendment 1 provides a definition of “relevant production period”: “the time period during which the specific product that allegedly caused the claimant’s injury or harm was manufactured, distributed, sold, or promoted.”

The definition of “relevant production period” is pertinent to the bill’s market share requirement, which requires the claimant, in order to have a remedy under the bill, to prove:

The manufacturers, distributors, sellers or promoters of a product who are named as defendants in the action, collectively, during the relevant production period, manufactured, distributed, sold, and promoted within this state at least 80 percent of all products chemically identical to the specific product that allegedly caused the claimant’s injury sold in this state.

The market share requirement is also addressed by Assembly Amendment 5, described below.

Assembly Amendment 4

Assembly Bill 778 provides that one of the conditions a claimant must prove in order to have a remedy under the bill is that “no other legal process exists for the claimant to obtain redress from another person for the injury or harm.”

Assembly Amendment 4 substitutes the term “lawful process” for the term “legal process”; the former is arguably broader than the latter and would include, for example, an administrative proceeding that provides redress from another person for the injury or harm. The amendment also substitutes the

term “seek redress” for the term “obtain redress”; thus, as amended, the claimant must prove there no other lawful process for the claimant to seek redress.

Assembly Amendment 5 (as Amended by Assembly Amendment 1 to Assembly Amendment 5)

Among other things, a claimant under the bill must prove that “the manufacturers, distributors, sellers, or promoters of a product who are named as defendants in the action collectively, during the relevant production period, manufactured, distributed, sold, and promoted within the state at least 80 percent of all products chemically identical to the specific product that allegedly caused the claimant’s injury sold in this state.”

Assembly Amendment 5, as amended by Assembly Amendment 1 to Assembly Amendment 5, revises this market share requirement by only including manufacturers who are named as defendants. Thus, under the revised provision, the claimant must prove that the action names as defendants those manufacturers of a product who collectively, during the relevant production period [as defined in Assembly Amendment 1], manufactured at least 80% of all products sold in this state that are chemically identical to the specific product that allegedly caused the claimant’s injury or harm.

Assembly Amendment 6

Assembly Bill 778 provides a remedy for a claimant, as defined in the bill, when the claimant is unable to prove that a particular manufacturer, distributor, seller, or promoter of a product manufactured, distributed, sold, or promoted the specific product alleged to have caused the claimant’s injury or harm. Under the remedy, a manufacturer, distributor, seller, or promoter of a product may be held liable if the claimant proves all of the conditions specified in the bill (see p. 3, lines 3 to 24). However, even if a manufacturer, distributor, seller, or promoter may otherwise be liable under that remedy, there is no liability if:

1. More than 25 years have passed between the date that the manufacturer, distributor, seller, or promoter of a product last manufactured, distributed, sold, or promoted a product chemically identical to the specific product that allegedly caused the claimant’s injury and the date that the claimant’s cause of action accrued; or
2. The period of the manufacturing of a product chemically identical to the specific product that allegedly caused the claimant’s injury was more than five years.

Assembly Amendment 6 deletes the second liability exception described above (i.e., the greater-than five-years manufacturing period exception). The first-described liability exception is retained.

Legislative History

All the amendments described in this memo were adopted by the Assembly on a voice vote. The adopted amendments were offered by Representative Wieckert, with the exception of Assembly Amendment 1 to Assembly Amendment 5, which was offered by the Assembly Committee on Judiciary. (Representative Staskunas joined Representative Wieckert in offering Assembly Amendment 6.) Assembly Bill 778, as amended, passed the Assembly by a vote of Ayes, 60; Noes, 36.