



**ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO ASSEMBLY BILL 19**

May 7, 2013 – Offered by Representatives HEBL, WACHS and GOYKE.

1 **AN ACT** *to create* 804.017 and 804.018 of the statutes; **relating to:** discovery in
2 certain tort actions.

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

3 **SECTION 1.** 804.017 of the statutes is created to read:

4 **804.017 Required disclosures; claims against a bankruptcy trust. (1)**

5 In any civil action, a plaintiff who has filed a claim against a bankruptcy trust
6 pursuant to 11 USC 524 (g) shall provide to all parties, within 90 days after the
7 plaintiff files the civil action, all of the following:

- 8 (a) A final executed proof of claim against the bankruptcy trust.
9 (b) All trust claims materials filed as part of the claim, including his or her work
10 history and medical documents or other documentation including affidavits,
11 depositions, or testimony of the claimant.

1 (c) A statement as to whether there has been any request for deferral, delay,
2 suspension, or tolling in the 11 USC 524 (g) bankruptcy trust claims process.

3 (d) An affidavit of the plaintiff or plaintiff’s counsel that the information
4 provided under this subsection is based upon a good faith investigation of all
5 potential claims against a trust pursuant to 11 USC 524 (g).

6 **(2)** If the plaintiff files an additional claim pursuant to 11 USC 524 (g) or
7 supplements a claim, he or she shall produce all the discovery required under sub.
8 (1) within 30 days after the plaintiff files the additional claim or supplements the
9 claim, but in no event later than 30 days before the commencement of trial.

10 **(3)** A defendant in a civil action where a claim has been filed with a bankruptcy
11 trust pursuant to 11 USC 524 (g) may also seek discovery from the trust, including
12 trust governance documents. The plaintiff shall assist in any discovery from the
13 trust and provide whatever consent or expression of permission may be required by
14 the trust for release of the claim information or materials. Trust governance
15 documents include any document that determines the eligibility and payment levels,
16 including payment matrices, trust distribution procedures, or plans for
17 reorganization.

18 **(4)** A person’s social security number may be redacted from trust claims
19 materials.

20 **(5)** (a) A plaintiff who objects to providing discovery pursuant to sub. (1) or (2)
21 by claiming that the materials submitted to a bankruptcy trust governed by 11 USC
22 524 (g) are privileged shall present all of the following to the court:

23 1. An enumeration, with specificity, of the document, information, or other
24 disclosure that the plaintiff believes is privileged.

1 2. A statement of the privilege he or she claims for each document, information,
2 or other disclosure for which the plaintiff claims privilege and the basis for claiming
3 the privilege.

4 (b) If a plaintiff fails to satisfy the requirements of par. (a), the privilege shall
5 be deemed waived.

6 **SECTION 2.** 804.018 of the statutes is created to read:

7 **804.018 Required disclosures; claims involving asbestos exposure. (1)**

8 A plaintiff who commences an action alleging that he or she has been exposed to
9 asbestos fibers shall serve upon the defendants to the action his or her work history.
10 The work history shall include the name and address of the plaintiff's employer, the
11 name, address, or location of the job site where the plaintiff worked, and the time
12 period that the plaintiff contends he or she worked for each employer or at each job
13 site, to the best of the plaintiff's recollection.

14 **(2)** Within 60 days of receiving a plaintiff's work history pursuant to sub. (1),
15 each defendant shall provide or make available for copy or reproduction to the
16 plaintiff any documents, electronically stored information, photographs, images, or
17 other data or data compilations, or any deposition or trial testimony from another
18 civil action in his or her possession or control that relate to any employer or job site
19 specified by the plaintiff during the time period specified by the plaintiff in his or her
20 work history.

21 **SECTION 3.** 804.12 (1) (a) of the statutes is amended to read:

22 804.12 **(1)** (a) *Motion.* If a deponent fails to answer a question propounded or
23 submitted under s. 804.05 or 804.06, or a corporation or other entity fails to make a
24 designation under s. 804.05 (2) (e) or 804.06 (1), or a party fails to answer an
25 interrogatory submitted under s. 804.08, or if a party, in response to a request for

1 inspection submitted under s. 804.09, fails to respond that inspection will be
2 permitted as requested or fails to permit inspection as requested, or a party fails to
3 comply with the discovery requests under s. 804.017 or 804.018, the discovering
4 party may move for an order compelling an answer, or a designation, or an order
5 compelling inspection in accordance with the request or a party may move for an
6 order compelling the disclosure. When taking a deposition on oral examination, the
7 proponent of the question may complete or adjourn the examination before he or she
8 applies for an order. If the court denies the motion in whole or in part, it may make
9 such protective order as it would have been empowered to make on a motion made
10 pursuant to s. 804.01 (3).

11 **SECTION 4.** 904.035 of the statutes is created to read:

12 **904.035 Relevancy of bankruptcy trust documents.** (1) In this section,
13 “trust claims and trust materials” means all documents and information submitted
14 under s. 804.017 (1).

15 (2) Information contained in the proof of claim and trust claims and trust
16 materials submitted to a bankruptcy trust governed by 11 USC 524 (g) may be
17 relevant to a pending civil action and shall be presumed authentic. Information
18 contained in trust claims and trust materials submitted to a bankruptcy trust
19 governed by 11 USC 524 (g) may be used by the parties in the civil action to prove
20 alternative causation for the plaintiff’s asbestos exposure; however, the actual proof
21 of claim forms and the amounts plaintiff’s may have recovered from a trust shall be
22 governed by s. 904.08.

23 (3) Notwithstanding sub. (2), before any information contained in trust claims
24 and trust materials is admitted into evidence, the court may issue a limiting
25 instruction setting forth the fact that the bankruptcy trust requirements for proof

1 of exposure may differ from the proof of exposure required by the court for the
2 remaining defendants. The court may also give any other limiting instruction
3 regarding any trust claims and trust materials that may be applicable under state
4 law.

5 (4) Nothing in this section may affect the authority of the federal bankruptcy
6 court adjudicating the bankruptcy trust under 11 USC 524 (g).

7 **SECTION 5.** 904.036 of the statutes is created to read:

8 **904.036 Setoff and assignment of claim in certain judgments.** (1) In any
9 action where a fact finder has apportioned liability under s. 895.045 against a
10 company that has established a bankruptcy trust under 11 USC 524 (g), any
11 defendant found more than 51 percent at fault may request a hearing to determine
12 the total amount received or reasonably expected to be received from the bankruptcy
13 trust under 11 USC 524 (g). Defendants are entitled to a setoff or credit of the paid
14 liquidated value of the trust claims.

15 (2) If a judgment is rendered in an action before the plaintiff has received a
16 payment, the plaintiff shall assign to all defendants against whom the judgment is
17 rendered his or her rights to all unpaid bankruptcy claims under 11 USC 524 (g).

18 (3) The plaintiff shall cooperate with and assist the defendants in obtaining the
19 damages due to the claimant from each bankruptcy trust under 11 USC 524 (g) as
20 provided by each trust's distribution process. Each defendant's claim filed with a
21 bankruptcy trust under 11 USC 524 (g) shall be treated as if the plaintiff had
22 submitted the claim for any purposes under the terms, conditions, and provisions of
23 the trust claim procedures. With the assignment, the plaintiff is not responsible for
24 any costs associated with making and proving the claim.

