



State of Wisconsin
2013 – 2014 LEGISLATURE



LRBs0042/1
PJH:sac:rs

**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 13**

October 7, 2013 – Offered by Senator GROTHMAN.

1 **AN ACT** *to create* 802.025 of the statutes; **relating to:** torts and personal injury
2 trusts.

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

3 **SECTION 1.** 802.025 of the statutes is created to read:

4 **802.025 Pleading certain personal injury actions; stay of proceedings.**

5 **(1) DEFINITIONS.** In this section:

6 (a) “Personal injury claim” means any claim for damages, loss, indemnification,
7 contribution, restitution or other relief, including punitive damages, that is related
8 to bodily injury or another harm, including loss of consortium, society, or
9 companionship, loss of support, personal injury or death, mental or emotional injury,
10 risk or fear of disease or other injury, or costs of medical monitoring or surveillance.

11 “Personal injury claim” includes a claim made by or on behalf of the person who

1 claims the injury or harm or by or on behalf of the person’s representative, spouse,
2 parent, minor child, or other relative. “Personal injury claim” does not include a
3 claim compensable by the injured patients and families compensation fund or a claim
4 for compensatory benefits pursuant to worker’s compensation or veterans benefits.

5 (b) “Personal injury trust” means a trust, qualified settlement fund,
6 compensation fund or claims facility created as a result of an administrative or legal
7 action, bankruptcy, agreement, or other settlement or pursuant to 11 USC 524 (g) or
8 49 USC 40101, that is intended to provide compensation to claimants alleging
9 personal injury claims as a result of harm, also potentially compensable in the
10 immediate action, for which the entity creating the trust, compensation fund, or
11 claims facility is alleged to be responsible.

12 (c) “Trust claims materials” means all documents and information relevant or
13 related to a pending or potential claim against a personal injury trust. “Trust claims
14 materials” include, without limitation, claims forms and supplementary materials,
15 proofs of claims, affidavits, depositions and trial testimony, work history, and
16 medical and health 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 a personal injury trust.

20 **(2) REQUIRED DISCLOSURES BY PLAINTIFF.** (a) Within 30 days after the effective
21 date of this paragraph [LRB inserts date] or within 30 days after an action for a
22 personal injury or other tort is filed in circuit court, the plaintiff shall provide to the
23 court and to all parties a statement identifying all personal injury claims the plaintiff
24 has filed or anticipates filing against a personal injury trust, and for each claim,
25 whether there has been a request to defer, delay, suspend, or toll the claim against

1 the personal injury trust. The statement shall include an attestation that the
2 plaintiff swears or affirms, under penalties of perjury, that the statement is complete
3 and is based on the plaintiff's and plaintiff's counsel's good faith investigation of all
4 potential claims against personal injury trusts.

5 (b) The plaintiff shall produce to all parties, for each personal injury claim he
6 or she filed against a personal injury trust identified in par. (a), a final executed proof
7 of claim and all other trust claims materials relevant to each claim.

8 (c) The plaintiff shall produce to all parties, for each personal injury claim he
9 or she anticipates filing against a personal injury trust identified in par. (a), all trust
10 claims materials relevant to each claim. The plaintiff shall produce to all parties a
11 final executed proof of claim for each claim when the plaintiff files the claim.

12 (d) The plaintiff shall supplement the information and materials he or she
13 provided pursuant to par. (a), (b), or (c) within 30 days after the plaintiff files any
14 additional claim, supplements an existing claim, or produces or receives any
15 additional trust claim materials.

16 **(3) DISCOVERY; USE OF MATERIALS.** (a) Trust claims materials and trust
17 governance documents are relevant and authentic and admissible in evidence to
18 prove, without limitation, alternative causation for a plaintiff's injuries or to allocate
19 liability for the plaintiff's injury. No claims of privilege apply to trust claims
20 materials or trust governance documents.

21 (b) A defendant in a personal injury claim may seek discovery against a
22 personal injury trust identified under sub. (2). The plaintiff may not claim privilege
23 or confidentiality to bar discovery of any information relevant to the plaintiff's
24 personal injury claim under the control of a personal injury trust and the plaintiff

1 shall provide consents or other expression of permission that may be required by the
2 personal injury trust to release information and materials sought by the defendant.

3 (4) SCHEDULING TRIAL; STAY OF ACTION. (a) The court may not commence the trial
4 of a personal injury action until at least 180 days after the plaintiff makes the
5 disclosures required under sub. (2). The court may, for good cause shown, shorten
6 this period but under no circumstances may a trial be commenced less than 60 days
7 after the last of the required disclosures is made.

8 (b) If a plaintiff states under sub. (2) that he or she anticipates making one or
9 more claims against any personal injury trusts, then all proceedings in the action
10 shall be stayed until the plaintiff files all such claims and provides the parties with
11 the disclosures required by sub. (2) for all such claims. Nothing in this section shall
12 prohibit a court, for good cause shown, to permit any party at any time to take a
13 deposition of a plaintiff or any other witness whose health or other circumstances
14 make it sufficiently likely that the person will be unavailable or otherwise unable,
15 or have reduced capacity, including due to declining health or mental abilities, to give
16 testimony when the stay is lifted. The court may also require any party to provide
17 such additional discovery in connection with any such deposition as the court
18 believes is appropriate in order that all parties may fairly and fully prepare for and
19 examine or cross-examine the witness at any such deposition.

20 (5) DEFENDANT'S IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE PERSONAL INJURY
21 TRUSTS. (a) Any party may move the court for an order requiring the plaintiff to file
22 a claim against one or more personal injury trusts from which that party in good faith
23 believes the plaintiff can recover. The party moving for such an order shall produce
24 or describe the evidence it believes is sufficient to meet the requirements of each such
25 personal injury trust for filing a valid claim.

1 (b) Within 10 days, or such other time prescribed by the court, of receiving a
2 motion under par. (a), the plaintiff shall, for each personal injury trust identified by
3 the moving party, do one of the following:

4 1. File a claim with each personal injury trust identified.

5 2. File a written response with the court that sets forth reasons why there is
6 insufficient evidence to permit the plaintiff to file a claim in good faith under the
7 personal injury trust distribution procedure identified by the defendant.

8 (c) The court shall determine, for each personal injury trust identified under
9 par. (a), whether there is a good faith basis for the plaintiff to file a claim with the
10 personal injury trust. The plaintiff shall have the burden of proving that he or she
11 does not meet criteria set forth in the personal injury trust's trust governance
12 documents.

13 (d) If the court determines that there is a good faith basis for the plaintiff to file
14 a claim against a personal injury trust identified by any other party, the court shall
15 stay the action until the plaintiff swears or affirms that he or she has filed the claim
16 against the personal injury trust and the plaintiff provides to all parties a final
17 executed proof of claim and all other trust claims materials relevant to each such
18 claim. If a stay goes into effect under this subsection, the provisions of sub. (4) (b)
19 with respect to depositions apply during the stay.

20 (e) Trial of a plaintiff's action may not begin less than 60 days after the plaintiff
21 provides the documentation required under par. (d).

22 (f) Any party may, at any time before the close of evidence at trial, enter into
23 the record trust claims documents that identify each personal injury trust against
24 which the plaintiff has made a personal injury claim.

1 (6) USE OF TRUST CLAIM MATERIALS AT TRIAL. Trust claim materials that are
2 sufficient to entitle a claim to consideration for payment under the applicable trust
3 governance documents are sufficient, by themselves, to support a jury finding that
4 the plaintiff was exposed to products for which the trust was established to provide
5 compensation and that such exposure was a substantial factor in causing the
6 plaintiff’s injury that is at issue in the action.

7 (7) DAMAGES; LIABILITY. If any defendant is found to be 51 percent or more
8 causally negligent or any product defendant is found to be 51 percent or more
9 causally responsible for the plaintiff’s injury such that the defendant or product
10 defendant would be jointly and severally liable for the plaintiff’s entire damages
11 under s. 895.045 (1) or (3) (d), then notwithstanding those sections, the defendant or
12 product defendant is entitled to a credit against the amount of damages for which it
13 would otherwise be liable equal to the percentage of causal negligence or causal
14 responsibility that the fact finder attributes to any company that has established a
15 personal injury trust or to a product for which a personal injury trust provides
16 compensation.

17 (8) FAILURE TO PROVIDE INFORMATION; SANCTIONS. A plaintiff who fails to timely
18 provide all of the information required under sub. (2), (4) (b), or (5) (d) is subject to
19 ss. 802.05, 804.12, 805.03, and 895.044.

20 **SECTION 2. Initial applicability.**

21 (1) This act first applies to actions filed on the effective date of this subsection
22 and to actions pending on the effective date of this subsection if trial has not
23 commenced in the action.

24 (END)