

2013 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB19)

Received: 4/22/2013 Received By: phurley
Wanted: As time permits Same as LRB:
For: Gary Hebl (608) 266-7678 By/Representing:
May Contact: Drafter: phurley
Subject: Courts - miscellaneous/other Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Hebl@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Discovery in asbestos torts

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 4/22/2013			_____			
/1		kfollett 4/22/2013	rschluet 4/22/2013	_____	lparisi 4/22/2013	lparisi 4/22/2013	

FE Sent For:

<END>

2013 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB19)

Received: 4/22/2013 Received By: phurley
Wanted: As time permits Same as LRB:
For: Gary Hebl (608) 266-7678 By/Representing:
May Contact: Drafter: phurley
Subject: Courts - miscellaneous/other Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Hebl@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given


Topic:

Discovery in asbestos torts

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley	1/15 4/22		==			

FE Sent For:

<END>

Discovery of Bankruptcy Trusts Claims

The proposed draft applies to discovery issues related to the filing of certain claims involving bankruptcy trust claims.

- The proposal does not apply to all personal injury actions, only those claims that are filed under 11 USC 524 (g). This targets the legislation to those cases that involves bankruptcy trusts only.
- It is placed in the discovery statutes, which contains remedies and sanctions for nondisclosure. Wis. Stat. § 804.12
- Plaintiffs are required to turn over trust executed proof of claim and all other trust claims materials filed as part of the claim within 90 days of filing the action.
- Plaintiffs are also required to disclose whether there has been any request for deferral, delay, suspension or tolling in the 11 USC 524 (g) bankruptcy trust claims process. This would let the defendants know what is happening with the trust claims process in the bankruptcy trust.
- If the plaintiff files another claim or supplements a previous claim during the lawsuit, he or she must produce the final executed proof of claim and all other claims materials within 30 days. This can be done no later than 30 days before trial.
- The proposal does not eliminate the right to assert a privilege, but it makes it harder in that the objection must be raised with specificity and validity otherwise the claim is waived.
- To make sure the discovery proceeds expeditiously, the proposal allows the plaintiff to serves the defendants with a work history, which then requires that they turn over materials in their possession about the jobsite during the time the plaintiff worked there.

1 **Wis. Stat. § 804.017 of the statutes is created: Disclosures pursuant to 11 USC 524 (g).**

2 (a) If a plaintiff has filed a claim for compensation under 11 USC 524 (g), a bankruptcy
3 trust, he or she shall produce to all parties, within 90 days of the commencement of the
4 lawsuit, a final executed proof of claim and all other trust claims materials filed as part of
5 the claim, including, but not limited to work histories and medical documentation,
6 relevant to a pending claim. In addition the plaintiff shall disclose whether there has been
7 any request for deferral, delay, suspension or tolling in the 11 USC 524 (g) bankruptcy
8 trust claims process.

9 (b) If during the course of discovery, additional claims are filed pursuant to 11 USC 524
10 (g) or the plaintiff supplements an existing claim, he or she shall produce the final
11 executed proof of claim and all other claims materials within 30 days after the plaintiff
12 files any additional claim, or the plaintiff supplements an existing claim, but in no event
13 later than 30 days before the commencement of trial.

14 (c) Objections based on privilege for the materials submitted to a bankruptcy trust
15 governed by 11 USC 524 (g) shall clearly identify the privilege claimed and sufficient
16 information concerning (i) the basis for the claim of privilege to establish *prima facie* the
17 validity of the claim, and (ii) the privileged information to permit identification of the
18 information or document as to which privilege is claimed. If not so identified, the
19 privilege shall be deemed waived.

20 **Wis. Stat. § 804.018 of the statutes is created: Disclosures in allegations of asbestos**
21 **exposure.** After the commencement of the action alleging exposure to asbestos fibers,
22 plaintiff may serve upon the defendants to the action a work history of the plaintiff. The
23 work history may include the following information: the name of the employer, the
24 address of the employer, the name or location of the jobsite, and the time periods that the
25 plaintiff contends he or she worked there. Within 60 days of receiving the plaintiff's
26 work history, the defendants shall produce or make available for copy or reproduction
27 any documents, electronically stored information, photographs, images or other data or
28 data compilations, deposition or trial testimony from a another civil action, in its
29 possession or control relating to the jobsites during the time period specified by plaintiff
30 in his or her work history.



~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~
ASSEMBLY SUBSTITUTE AMENDMENT,
TO ASSEMBLY BILL 19

today
4-22

Gen

1

AN ACT ...; relating to: discovery in certain tort actions

Analysis by the Legislative Reference Bureau

This substitute amendment creates mandatory discovery requirements for plaintiffs who file a civil action and who have also filed a claim against a bankruptcy trust in federal court. Under the substitute amendment, a plaintiff who files a civil action and who has also filed a claim against a bankruptcy trust must disclose, within 90 days after he or she files the civil action, all the trust claims materials he or she filed in the federal action. Under the substitute amendment, if a plaintiff wishes to argue that any of the required disclosures are privileged, he or she must identify, with specificity, each document for which he or she claims privilege and state the grounds therefore. A plaintiff who fails to do so is deemed to have waived any privilege for the required disclosures.

The substitute amendment allows a plaintiff who files an action alleging that he or she has been exposed to asbestos to provide to the defendants a work history that identifies his or employers and job sites, and his or her dates of employment. Under the substitute amendment, a defendant who receives a work history is required to provide to the plaintiff any records, documents, or materials gleaned from other civil actions the defendant has in his or her possession or control that

X any

X

relate, during the dates identified by the plaintiff, to an employer or job site identified by the plaintiff.

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

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

2 **804.017 Required disclosures; claims against a bankruptcy trust. (1)**

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

6 (a) A final executed proof of claim against the bankruptcy trust.

7 (b) All trust claims materials filed as part of the claim, including his or her work
8 history and medical documents.

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

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

15 (3) (a) A plaintiff who objects to providing discovery pursuant to sub. (1) or (2)
16 by claiming that the materials submitted to a bankruptcy trust governed by 11 USC
17 524 (g) are privileged shall present all of the following to the court:

18 1. An enumeration, with specificity, of the document, information, or other
19 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.** (a)

8 A plaintiff who commences an action alleging that he or she has been exposed to
9 asbestos fibers may serve upon the defendants to the action his or her work history.

10 The work history may include the name and address of the plaintiff's employer, the
11 name, address, or location of the jobsite 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.

14 (b) Within 60 days of receiving a plaintiff's work history pursuant to sub. (a),
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 (END)

(1) (B)

(2) (B)

(1)