



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0135/1
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**SENATE SUBSTITUTE AMENDMENT 2,
TO SENATE BILL 13**

October 9, 2013 – Offered by Senators RISSER and HARRIS.

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

Analysis by the Legislative Reference Bureau

This substitute amendment creates mandatory discovery requirements for any plaintiff who files a civil action and who has 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

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. (1)**

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 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.

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 **(END)**