



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0022/2
PJH:sac:jm

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 19**

April 4, 2013 – Offered by Representative J. OTT.

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: (a) “Personal injury claim” means any claim for
6 damages, loss, indemnification, contribution, restitution or other relief, including
7 punitive damages, that is related to bodily injury or another harm, including loss of
8 consortium, society, or companionship, loss of support, personal injury or death,
9 mental or emotional injury, risk or fear of disease or other injury, or costs of medical
10 monitoring or surveillance. “Personal injury claim” includes a claim made by or on
11 behalf of the person who claims the injury or harm or by or on behalf of the person’s

1 representative, spouse, parent, minor child, or other relative. “Personal injury
2 claim” does not include a claim for compensatory benefits pursuant to worker’s
3 compensation or veterans benefits.

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

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

16 (d) “Trust governance document” means any document that determines
17 eligibility and payment levels, including claims payment matrices, trust distribution
18 procedures, or plans for reorganization, for a personal injury trust.

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

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

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

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

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

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

20 (b) A defendant in a personal injury claim may seek discovery against a
21 personal injury trust identified under sub. (2). The plaintiff may not claim privilege
22 or confidentiality to bar discovery of any information relevant to the plaintiff's
23 personal injury claim under the control of a personal injury trust and the plaintiff
24 shall provide consents or other expression of permission that may be required by the
25 personal injury trust to release information and materials sought by the defendant.

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

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

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

1 (a) Any party may move the court for an order requiring the plaintiff to file a
2 claim against one or more personal injury trusts from which that party in good faith
3 believes the plaintiff can recover. The party moving for such an order shall produce
4 or describe the evidence it believes is sufficient to meet the requirements of each such
5 personal injury trust for filing a valid claim.

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

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

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

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

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

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

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

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

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

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

24 **SECTION 2. Initial applicability.**

