



2015 ASSEMBLY BILL 862

February 4, 2016 - Introduced by Representatives WACHS, HESSELBEIN, MILROY, DANOU, JORGENSEN, MASON, KESSLER, BERCEAU, GOYKE, SHANKLAND, SINICKI, CONSIDINE, ZEPNICK, OHNSTAD, SPREITZER, JOHNSON, BROSTOFF, POPE, C. TAYLOR, ZAMARRIPA and SUBECK, cosponsored by Senators VINEHOUT, C. LARSON and RINGHAND. Referred to Committee on Judiciary.

- 1 **AN ACT to repeal and recreate** 802.025 (6) of the statutes; **relating to:** damages
2 in personal injury claims involving asbestos trusts.

Analysis by the Legislative Reference Bureau

Current law establishes various requirements for a plaintiff claiming damages in a personal injury action involving an exposure to asbestos and brought against one or more defendants, at least one of which is an asbestos trust. Under current law, if a verdict is entered in favor of the plaintiff in such an action and the defendant is found to be 51 percent or more causally negligent or responsible for the plaintiff's entire damages under Wisconsin's contributory negligence law, the plaintiff may not collect any amount of damages until after the plaintiff assigns to the defendant all pending, current, and future rights or claims he or she has or may have for a personal injury claim against an asbestos trust. Current law also provides that, if a verdict is entered in favor of the plaintiff in such an action and the defendant is found to be less than 51 percent causally negligent or responsible for the plaintiff's entire damages, the plaintiff may not collect any amount of damages until after the plaintiff assigns to the defendant all future rights or claims he or she has or may have for a personal injury claim against an asbestos trust.

This bill repeals these provisions concerning damages and the assignment of claims and instead provides the following:

1) A defendant in a personal injury action involving asbestos exposure that is not an asbestos trust and that is found to be causally negligent is jointly and severally liable for the damages allowed.

2) A defendant described under item 1 may request a postjudgment hearing to determine the total amount of payment received by the plaintiff, before the judgment

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was entered against that defendant, from one or more asbestos trusts. Such a defendant may receive a dollar-for-dollar credit for any such payment received by the plaintiff.

3) A defendant described under item 1 may request a postjudgment hearing to determine whether the plaintiff had any unpaid claims pending against one or more asbestos trusts. If the court finds any such unpaid claims, the court may order the plaintiff to assign to the defendant his or her unpaid claims only if the plaintiff will be made whole by the judgment.

4) If a court orders an assignment under item 3, the plaintiff must work with the defendant to obtain amounts due from each asbestos trust pursuant to the trust's governance documents.

5) If the court orders an assignment under item 3, each claim the defendant files pursuant to the assignment is to be treated as if the plaintiff submitted the claim.

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

1 **SECTION 1.** 802.025 (6) of the statutes is repealed and recreated to read:

2 802.025 (6) DAMAGES. (a) Notwithstanding s. 895.045, a defendant that is not
3 an asbestos trust and that is found to be causally negligent in an action subject to this
4 section shall be jointly and severally liable for the damages allowed.

5 (b) A defendant that is jointly and severally liable under this subsection may
6 request a postjudgment hearing to determine the total amount of payment the
7 plaintiff received, before the judgment was entered against the defendant, from one
8 or more asbestos trusts. The defendant may receive a dollar-for-dollar credit for
9 payments already received by the plaintiff from the asbestos trust only if the plaintiff
10 is made whole by the judgment against the defendant.

11 (c) A defendant that is jointly and severally liable under this subsection may
12 request a postjudgment hearing to determine whether, before the judgment was
13 entered against the defendant, the plaintiff had any unpaid claims pending against
14 one or more asbestos trusts. The court may order the plaintiff to assign to the

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1 defendant his or her rights to the unpaid claims only if the plaintiff is made whole
2 by the judgment against the defendant.

3 (d) If the court orders assignment under par. (c), the plaintiff shall cooperate
4 with, and assist the defendant in, obtaining the amounts due from each asbestos
5 trust, according to the distribution process provided under each asbestos trust's trust
6 governance documents.

7 (e) If the court orders assignment under par. (c), each claim the defendant files
8 pursuant to the assignment shall be treated as if the plaintiff submitted the claims
9 for any purpose under the terms, conditions, and provisions of the trust claim
10 procedures. Upon assignment of his or her claim under par. (c), the plaintiff is not
11 responsible for any costs associated with making or providing the claim against the
12 asbestos trust.

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(END)