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To: Members, Wisconsin Legislature
From: Andrew Cook, Wisconsin Civil Justice Council
Date: February 18, 2013
Re: **Please Support SB 13/AB 19, Personal Injury Trust
Claims Transparency**

The purpose of Senate Bill 13 is to provide transparency and prevent fraud in lawsuits involving personal injury trusts by creating certain discovery requirements during litigation. **Please SUPPORT Senate Bill 13/Assembly Bill 19.**

Background

Numerous types of personal injury trusts have been created under the federal bankruptcy code and state laws to ensure that injured people can be properly compensated.

The largest number of personal injury trusts is related to asbestos exposures. More than 60 bankrupt companies have created such trusts to compensate present and future asbestos claimants for alleged injuries. Nearly all of the companies most responsible for asbestos injuries – the miners and manufacturers of asbestos – have established such trusts. Many of the companies being sued today had only peripheral involvement in the asbestos business.

In some instances, plaintiffs who file (or could file) claims with these personal injury trusts may also seek compensation for their injuries through a second channel – lawsuits against solvent defendants (i.e., businesses) in the courts. **The ability of plaintiffs to seek multiple recoveries – without any transparency regarding these multiple recoveries – is what this bill addresses.**

By filing their personal injury trust claims after their lawsuits have concluded and otherwise hindering access to the exposure information presented to trusts, the plaintiffs' bar is denying businesses an opportunity to fully and fairly defend themselves. Equally problematic is that the double-dipping by plaintiffs and their lawyers is unfair to other personal injury victims, denying them money they may be owed.

Similar types of trusts have been created for construction and other personal injury related cases to compensate victims.

SB 13/AB 19 Prevents Fraud through Greater Transparency

Senate Bill 13/Assembly Bill 19 ensures that defendants have access to the exposure information contained in the plaintiff's personal injury trust claims and requires plaintiffs in lawsuits to file their trust claims before proceeding to trial. At the same time, the legislation maintains the plaintiffs' rights and remedies.

SB 13/AB 19 does the following:

- Creates discovery and scheduling requirements for certain types of tort actions.
- Requires a plaintiff who files a tort action to disclose, within 30 days after he or she files the action, whether he or she has filed or anticipates filing a claim against a personal injury trust.
- Defines “personal injury trust” as a trust or compensation fund that is established pursuant to a bankruptcy or other legal action in order to compensate persons who file claims as a result of harm potentially compensable in the plaintiff’s tort action.
- Allows a defendant to identify a personal injury trust not named by the plaintiff, but against whom the defendant believes the plaintiff has a legitimate claim.
- Requires the court to order the plaintiff to file a claim against the trust and stay the proceedings until the plaintiff produces a final executed proof of claim against the personal injury trust, if the court agrees that there is a good faith basis for the plaintiff to file a claim against the personal injury trust.
- Requires the court to stay the immediate proceedings until the plaintiff produces a final executed proof of claim against the personal injury trust if the plaintiff indicates that he or she has filed, or anticipates filing, a claim against a personal injury trust.
- Requires the plaintiff to provide all parties in the lawsuit with all documents, records, trial or discovery materials, and other information relevant to any claim against a personal injury trust.
- Allows any party to use these materials in the immediate action to prove alternate causation of, or to allocate liability for, the plaintiff’s injury.
- Allows a defendant in the immediate action to seek discovery from a personal injury trust against which the plaintiff has filed or anticipates filing an action.
- Requires the court to enter into the record a list that identifies each personal injury the claim the plaintiff has made against a personal injury trust.
- Provides that if a defendant in the immediate action is found liable for the plaintiff’s injury, the defendant is entitled to a set-off in the amount of any money the plaintiff received from a personal injury trust for a substantially similar injury.

Conclusion

Numerous Wisconsin-based companies, including many small and medium sized businesses, are being hurt by the current lack of trust claims transparency. As a state with a strong manufacturing sector, Wisconsin businesses stand to lose if double-dipping and fraud are not limited by the stronger discovery requirements contained in SB 13/AB 19.

Please support SB 13/AB 19.