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*Promoting Fairness and Equity in Wisconsin's Civil Justice System*

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## Assembly Bill 19/Senate Bill 13

### Personal Injury Trust Fund Transparency Legislation FAQ

- *What are asbestos bankruptcy trusts?*
  - Asbestos bankruptcy trusts (“trusts”) are personal injury settlement trusts created by defendant companies through federal bankruptcy law. The trusts are designed to address a defendant’s present and future asbestos-related liabilities.
  - The companies most directly responsible for asbestos injuries mined and supplied raw asbestos or manufactured products containing high levels of especially toxic forms of asbestos. A vast majority of these so-called “primary defendants” have filed for bankruptcy and established trusts.
  - A trust is created and funded at the conclusion of the bankruptcy process and assumes *all* of a bankrupt company’s asbestos liabilities. Put another way, a company that establishes a trust is effectively removed from the tort system. Because so many “primary defendants” have established trusts, nearly all present day asbestos litigation involves businesses that were only peripherally involved in the production of asbestos or asbestos-containing products.
- *How many companies have gone through this process?*
  - Since the first trust was approved in 1986, more than of **60 companies** have created trusts to address their asbestos liabilities, and it is certain that more trusts will be established in future.
- *How much money is in the trusts?*
  - A recent government report revealed that the trusts control more than **\$36 billion**.
- *What is the average recovery from these trusts?*
  - Only the trial bar knows for sure, but respected economic analysis firm Bates White has estimated that a claimant with asbestosis will recover **\$400,000** from trusts, while a claimant with mesothelioma may recover more than **\$1.6 million**.
- *Why does this matter?*
  - Each person who files an asbestos-related tort claim in Wisconsin likely has claims against multiple trusts.
  - There is currently no statutory requirement for plaintiffs to disclose, and plaintiffs often fail to disclose, their trust claims and payments in the tort system. And, in many cases, plaintiffs will wait to file their trust claims until *after* resolution of their court case.

- By failing to disclose or delaying the filing of their trust claims, plaintiffs ensure they have nothing to disclose to solvent defendants in court. This also positions them to **double dip** by recovering once from businesses and then again from the trusts.
- *Why is this unfair?*
  - In the trust claim filing, the claimants present **exposure information** and make affirmative claims as to cause of their injuries that is often highly relevant to court cases. Without access to this information, businesses can't fully and fairly defend themselves in court.
  - The unavailability of trust claims information in the tort system also **incentivizes contradictory claims about asbestos exposures**. For example, in a well-known Ohio case captioned *Kananian v. Lorillard Tobacco Company*, an asbestos claimant told a trust that he was exposed to its asbestos as a World War II shipyard worker. But in his tort suit he claimed he only passed through the shipyard while serving in the U.S. Army.
  - Contradictory filings of this nature are difficult, if not impossible, to discover when trust claims are filed after the resolution of tort suits.
  - Also, trust recoveries are not always factored into the resolution of court cases. This is especially true when trust claims are filed only after tort suits are finished. As a result of this **"double dipping"** defendants in Wisconsin are often required to pay more than their fair share of liability.
- *What are other states doing?*
  - Judges in West Virginia, California, and Massachusetts issued case management orders that require asbestos litigants to disclose trust-related information. A Pennsylvania judge issued an order that requires plaintiffs to file all available trust claims before trial and to provide defendants with copies of all filings.
  - Ohio recently enacted legislation that would require asbestos plaintiffs to timely file and disclose their trust claims. Similar legislation is being considered in Texas, Louisiana, Pennsylvania, and Oklahoma.
- *What can Wisconsin do to fix this problem?*
  - Enact legislation that would require plaintiffs in asbestos suits to file their trust claims before proceeding to trial, ensure that defendants have access to the exposure information contained in those claims, and effectively end inconsistent claiming and double dipping in Wisconsin.

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