



Alerts

Wisconsin Attempts to Provide Transparency and Prevent Fraud From Those Seeking Compensation From Personal Injury Bankruptcy Trusts

March 11, 2013

Toxic Tort Alert

A new bill introduced in the state of Wisconsin and now before the Wisconsin Judiciary Committee would require plaintiffs to identify all claims filed against federal bankruptcy trusts, or mandate those plaintiffs to indicate their intention as to whether they will be filing such claims in the trusts. While the actual bill is not limited to any particular type of litigation, it would directly impact the asbestos litigation in Wisconsin.

[Senate Bill 13/Assembly Bill 19 \(SB13/AB19\)](#), according to its supporters, would provide transparency and prevent fraud from multiple and unfair recoveries in the asbestos litigation. Asbestos plaintiffs often seek additional compensation from the federal personal injury bankruptcy trusts after their lawsuits have concluded. Defendants argue that this process is unfair because they do not have access to additional exposure information that often accompanies the claims to the trusts. Moreover, defendants assert that plaintiffs' lawyers are unfairly "double-dipping" and obtaining a financial windfall for their clients and for themselves. Opponents of the proposed bill, however, maintain that this is simply a way to unfairly hold up and delay these cases for years to come.

SB13/AB19 would provide, in relevant part:

1. Within 30 days after suit is filed, a plaintiff must disclose whether a claim has been filed against a personal injury trust or whether such a claim will be filed;
2. If the court agrees there is good faith involved in filing a personal injury trust claim, it can stay the proceedings until a final executed proof of claim against the trust is filed;
3. The plaintiff must then provide all defendants in the lawsuit with all documents, records and discovery material relevant to any claim against the trust;
4. Defendants may use these materials in the instant lawsuit to show alternative exposures and causation;
5. If a defendant is found liable in the instant lawsuit, that defendant is entitled to a dollar-for-dollar setoff that the plaintiff obtained from any trust.

Attorneys

Craig T. Liljestrand

Service Areas

Complex Tort & General
Casualty



The current bill has many similarities to an Ohio bill that became law last year. Wisconsin has a strong manufacturing sector, and many businesses in the state support the bill. The intention of this bill is to provide transparency, prevent double-dipping, and help level the playing field in this complicated litigation.

For more information, please contact [Craig T. Liljestrand](#) or your regular [Hinshaw attorney](#).

[Download PDF](#)

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.