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Wisconsin AB 19 (2013)	ALEC Asbestos Claims Transparency Act
<p>(a) Personal injury claim" means any claim for damages, loss, indemnification, contribution, restitution or other relief, including punitive damages, that is related to bodily injury or another harm, including</p> <p>loss of consortium, society, or companionship, loss of support, personal injury or death, mental or emotional injury, risk or fear of disease or other injury, or costs of medical monitoring or surveillance.</p>	<p>(2) "Asbestos claim" means any claim for damages, losses, indemnification, contribution, restitution, or other relief of whatever nature (including punitive damages) arising out of, based on, or in any way related to the alleged health effects associated with the inhalation or ingestion of asbestos, to the extent such claims are recognized under state law including, but not limited to:</p> <p>(a) Loss of consortium; (b) Loss of support; (c) Personal injury or death; (d) Mental or emotional injury; (e) Risk or fear of disease or other injury; (f) The costs of medical monitoring or surveillance;</p>
<p>Personal injury claim includes a claim made by or on behalf of the person who claims the injury or harm or by or on behalf of the person's representative, spouse, parent, minor child, or other relative.</p>	<p>(g) Any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the exposed person.</p>
<p>Personal injury claim" does not include a claim for compensatory benefits pursuant to worker's compensation or veterans benefits.</p>	<p>The term "asbestos claim" does not include a claim for compensatory benefits pursuant to a workers' compensation law or a veterans' benefits program.</p>
<p>(b) Personal injury trust" means a trust, compensation fund or claims facility created as a result of an administrative or legal action, bankruptcy, agreement, or other settlement or pursuant to 11 USC 524 (g) or 49 USC 40101, that is intended to provide compensation to claimants alleging personal injury claims as a result of harm, also potentially compensable in the immediate action, for which the entity creating the trust,</p>	<p>(8) "Asbestos Trusts" means all trusts or claims facilities, created as a result of bankruptcies or other settlements, including but not limited to all trusts created pursuant to § 524(g) of Title 11, United States Code, intended to provide compensation to claimants alleging claims as a result of asbestos exposure.</p>

compensation fund, or claims facility is alleged to be responsible.	
(c) Trust claims materials" means all documents and information relevant or related to a pending or potential claim against a personal injury trust. Trust claims materials" include claims forms and supplementary materials, affidavits, depositions and trial testimony, work history, and medical and health records.	(6) "Trust Claims and Claims Material" means all documents and information , including but not limited to claim forms and supplementary material, relevant or related to pending or potential claims against Asbestos Trusts.
(d) Trust governance document" means any document that determines eligibility and payment levels , including claims payment matrices, trust distribution procedures, or plans for reorganization, for a personal injury trust.	(7) "Trust Governance Documents" means documents which determine eligibility and payment levels for the Asbestos Trusts and include Trust Distribution Procedures, Plans of Reorganization and related orders.
(2) REQUIRED DISCLOSURES BY PLAINTIFF. (a) Within 30 days after the effective date of this paragraph [LRB inserts date] or within 30 days after an action for a personal injury or other tort is filed in circuit court, the court shall order the plaintiff to provide to the court and to all parties a statement identifying all personal injury claims the plaintiff has or anticipates filing against a personal injury trust , and for each claim, whether there has been a request to defer, delay, suspend, or toll the claim against the personal injury trust. The statement shall include an attestation that the plaintiff swears or affirms, under penalties of perjury, that the statement is complete and is based on the plaintiff's good faith investigation of all potential claims against personal injury trusts.	(A) Required Disclosures. Within 30 days of commencing an asbestos action not otherwise barred or deferred under state law, and in no event less than 180 days prior to trial of that action, a claimant shall provide to all parties a statement of any and all existing or anticipated claims against Asbestos Trusts. Such statement shall be in addition to any existing preliminary disclosure requirements otherwise imposed by law or applicable agreement, ruling or judicial order. Furthermore, such statement must include under penalty of perjury an attestation by the claimant that the statement is based on a good faith investigation of all potential claims against Asbestos Trusts.
(b) The court shall order the plaintiff to produce to the court and to all parties, for each personal injury claim he or she filed against a personal injury trust identified in par. (a), a final executed proof of claim and all other trust claims materials relevant to each claim.	(1) As to any claims already asserted against Asbestos Trusts, the claimant must produce final executed proofs of claim together with any supporting materials used to support such claim against the Asbestos Trusts. . .
(c) The court shall order the plaintiff to produce to the court and to all parties, for each personal injury claim he or she anticipates filing against a personal injury trust identified in par. (a), all trust claims materials relevant to each claim. The court shall order the plaintiff to produce to the court and to all parties a final executed proof of claim for each claim when the plaintiff files the claim.	(2) As to any claims that a claimant has not yet asserted against the Asbestos Trusts but has disclosed pursuant to the requirements of subparagraph 4A.1 regarding potential claims, all materials described in subparagraph 4A.1 shall be produced, including, at the time of its filing, the final executed proof of claim.
(d) The court shall order the plaintiff to supplement the information and materials he or she provided pursuant to each order entered under par. (a), (b), or (c) within 30	In the event information obtained subsequent to the submission of the statement supports the filing of additional claims against Asbestos Trusts, the

<p>days after the plaintiff files an additional claim or receives additional information or materials.</p>	<p>claimant shall update the statement by amendment filed and served within 30 days of the receipt of the additional information.</p>
<p>(3) DISCOVERY; USE OF MATERIALS. (a) The court shall presume trust claims materials and trust governance documents to be relevant and authentic and shall allow any party to present the trust claims materials to prove, without limitation, alternative causation for a plaintiff’s injuries or to allocate liability for the plaintiff’s injury. No claims of privilege may apply to trust claims materials or trust governance documents.</p> <p>(b) A defendant in a personal injury claim may seek discovery against a personal injury trust identified under sub. (2). The plaintiff may not claim privilege or confidentiality to bar discovery under this paragraph and shall provide consent or other expression of permission that may be required by the personal injury trust to release information and materials sought by the defendant.</p>	<p>(C) Treatment of Trust Claims and Claims Material. Trust Claims and Claims Material (as well as related discovery materials) are presumptively relevant to and discoverable in an asbestos action and shall be presumed by the court to be authentic.</p> <p>Notwithstanding any other provision of law or agreement, no claims of privilege shall apply to Trust Claims and Claims Materials, and such Trust Claims and Claims Materials may be used by the parties in the asbestos action to prove, without limitation, alternative causation for the claimant’s asbestos exposure as well as serve as a basis to allocate responsibility for the claimant’s claim.</p>
<p>(4) SCHEDULING TRIAL; STAY OF ACTION. (a) The court may not schedule a trial in a personal injury action until at least 180 days after the plaintiff makes the disclosures required under sub. (2).</p>	<p>. . . in no event less than 180 days prior to trial of that action, a claimant shall provide to all parties a statement of any and all existing or anticipated claims . . .</p>
<p>(5) DEFENDANT’S IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE PERSONAL INJURY TRUSTS.</p> <p>(a) Any defendant may move the court for an order under par. (d) by identifying a personal injury trust against which the defendant in good faith believe the plaintiff can file a successful claim. For each personal injury trust a defendant identifies, the defendant shall produce or describe the evidence sufficient to meet the personal injury trust distribution procedure requirements to file a valid claim and the amount of money the trust should pay for the claim</p>	<p>(B) Defendant’s Order to Show Cause regarding Additional Trust Claims; Court Certification and Trust Claims Order.</p> <p>(1) Any defendant may proceed by Order to Show Cause (“OSC”) in the Court hearing such asbestos action setting forth the names of additional Asbestos Trusts against which the plaintiff has not made, but which the defendant in good faith believes the claimant can make a successful claim. The OSC shall set forth the factual basis for the claim describing the evidence sufficient to meet the Asbestos Trust distribution procedure requirements to file valid claims against such Asbestos Trust and the amount of money the trust should pay for the claim.</p>
<p>(b) Within 10 days of receiving a motion under par. (a), the plaintiff shall, for each personal injury trust identified by the defendant, do one of the following:</p>	<p>In response, within 10 days thereafter, the claimant shall:</p>

<p>1. File a claim with the personal injury trust.</p> <p>2. File a written response with the court that sets forth reasons why there is insufficient evidence to permit the plaintiff to file a claim in good faith under the personal injury trust distribution procedure identified by the defendant.</p>	<p>(a) File the claim with the Asbestos Trust as set forth by the defendant’s notice which will be dispositive as to the OSC as to that Trust; or</p> <p>(b) Show cause before the court hearing such asbestos action for a determination that</p> <p>(i) The proof of claim should be modified and then submitted, or</p> <p>(ii) That there is insufficient evidence to permit the claim to be filed in good faith under the applicable Asbestos Trust distribution procedures.</p>
<p>(c) The court shall determine, for each personal injury trust identified under par. (a), whether there is a good faith basis for the plaintiff to file a claim with the personal injury trust. The plaintiff shall have the burden of proving that he or she does not meet criteria set forth in the personal injury trust’s trust governance documents.</p>	<p>The court hearing the asbestos action shall decide the issue on the basis of declarations, deposition excerpts, interrogatory responses, and such other evidence as the court deems appropriate. The claimant shall have the burden of proving that the claim should be modified and then submitted or should not be filed because it does not meet the Asbestos Trust distribution procedure requirements.</p>
<p>(d) If the court determines that there is a good faith basis for the plaintiff to file a claim against a personal injury trust identified by a defendant, the court shall order the plaintiff to file a claim with the personal injury trust and shall stay the immediate action until the plaintiff swears or affirms that he or she has filed the claim against the personal injury trust and the plaintiff provides to the court and to all parties a final executed proof of claim and all other trust claims materials relevant to each claim the plaintiff has against a personal injury trust.</p>	<p>If the court hearing the asbestos action determines that there is a good faith basis for filing the claim, the claimant shall promptly file the claim with the Asbestos Trust as it was submitted by the defendant or as modified by the court hearing the asbestos action. The claimant’s asbestos action shall be stayed until such time as the claimant certifies that claimant has complied with the Court’s order and has disclosed the materials required to be disclosed by Section 4A.</p>
<p>(e) Not less than 60 days after the plaintiff provides the documentation required under par. (d), the court may schedule the plaintiff’s action for trial.</p>	<p>(2) Not later than 60 days before the scheduled trial date of an asbestos action, the court hearing such asbestos action must certify in writing that the discovery described in paragraph 4A and subparagraphs 4A.1 and 4A.2 is complete.</p> <p>Furthermore, no trial date may be assigned nor trial commenced absent certification of the completion of discovery and a determination that all additional Asbestos Trust Claims required to be made in response to an OSC have been submitted to the relevant Asbestos Trust(s).</p>
<p>(f) Not less than 30 days prior to trial, the court shall enter into the record a trust claims document that</p>	<p>A schedule of all Asbestos Trust Claims made shall be reflected in a “Trust Claims Order” which must be</p>

<p>(f) Not less than 30 days prior to trial, the court shall enter into the record a trust claims document that identifies each personal injury claim the plaintiff has made against a personal injury trust.</p>	<p>A schedule of all Asbestos Trust Claims made shall be reflected in a “Trust Claims Order” which must be entered no later than 30 days prior to trial. The Trust Claims Order shall be deemed to be a final order and may be amended only upon a showing of mistake, inadvertence, surprise, excusable neglect or fraud.</p>
<p>(6) VALUATION OF PERSONAL INJURY TRUST CLAIMS; JUDICIAL NOTICE. If a plaintiff proceeds to trial under this section before one of more of his or her personal injury trust claims is resolved, there is a rebuttable presumption that the plaintiff is entitled to, and will receive, the compensation specified in the trust governance document applicable to his or her claim. The court shall take judicial notice that the trust governance document specifies compensation amounts and shall establish an attributed value to the plaintiff’s personal injury trust claim.</p>	<p>(E) Asbestos Trust Claim Values. In the event a matter proceeds to trial before the claimant has received a decision from an Asbestos Trust or Trusts, as to each such claim, there shall be a rebuttable presumption that the claimant will receive the compensation specified for his or her claimed disease or injury in the relevant Trust Governance Documents. The court shall take judicial notice of these documents and the payment amounts specified therein. For each such pending claim, the court shall establish an attributed value that will be used for purposes of calculation of verdict or settlement set-offs or credits, subject to the adjustment specified in paragraph 4H below.</p>
<p>(7) SETOFFS; CREDIT. In any personal injury claim for which damages are awarded, a defendant is entitled to a setoff or credit in the amount of the valuation established under sub. (6) and any amount the plaintiff has been awarded from a personal injury trust claim identified in sub. (5) (f). If multiple defendants are found liable for damages, the court shall distribute the amount of setoff or credit proportionally, according to the liability of each defendant.</p>	<p>(G) Set-Offs. The defendants will be entitled to set-offs or credits of the full value of the Trust Claims against any judgment rendered against them in the asbestos action. In the event that a co-defendant settles or otherwise resolves the asbestos claims against it prior to verdict, if release(s) are obtained for the benefit of Asbestos Trusts, the defendants remaining in the asbestos action may pursue those claims by assignment according to whatever rights were held by claimants. To the extent that any applicable law provides broader relief to the defendants than is set forth herein, nothing in this provision shall prohibit any defendant from pursuing</p>

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