



Objections to Substitute Amendment 1 to AB-19

- **The substitute amendment still applies to all personal injury cases in Wisconsin.** In 2012 6,350 cases were filed. This would greatly increase the time required to handle personal injury cases and result in needless and unnecessary delay for trial courts.
- **If the substitute amendment is really about asbestos cases, there few asbestos cases filed in Wisconsin.** In 2012 there were only 9 asbestos cases filed in Wisconsin. In 2011, the number was 14. In 2010, the number of cases filed was 19 and the median length of time from filing to the end of the case was 774 days, the longest length of time to finish any civil case. The substitute amendment would still increase the time from filing a case until it closes.
- **The substitute amendment still requires a stay until all anticipated bankruptcy trust claims are filed.** The plaintiff's case could be delayed for months, if not years, because some trusts have not opened up a trust process. During this time, no additional discovery can take place. Plaintiff would not have the right to seek records regarding asbestos exposure or take the depositions of persons who may have this knowledge. The disclosed documents may reveal the existence of parties that manufactured, supplied or sold asbestos and should be named as defendants. However the stay may result in the plaintiff missing the statute of limitations for naming a culpable defendant. Such delays may result in the plaintiff losing the right to pursue a cause of action altogether.
- **The substitute amendment defendants can still force the plaintiff to file asbestos claims or face a delay.** Sometimes filing a claim with a trust will not be in the best interests of the plaintiff because the recovery available from many trusts is minimal. For victims of asbestosis, the amount received from some trusts may be less than the filing fee. This is an unfair burden.
- **The substitute amendment** declares certain trust evidence to be "relevant." The rules of evidence, Wis. Stat. § 904.01 et seq., define relevant evidence. Courts must scrutinize the evidence on a case-by-case basis to assess admissibility. *State v. Walters*, 2004 WI 18.
- **The new subsection 6 in the substitute amendment mandates a finding of negligence against the bankruptcy trust** without any additional proof. Bankruptcy trusts do not operate on a fault based system. Some trusts allow people to recover if they can show they were present in the building where the asbestos product was present, even though there may be no evidence of exposure. Yet, the substitute amendment treats the submission of a claim the same as a finding negligence. Only a jury should determine whether the company with a trust was a substantial factor in causing the plaintiff's injury.
- **The required finding of negligence is unnecessary since Wisconsin law requires jurors to consider bankrupt parties or parties who have settled prior to trial as part of the comparison of negligence.** In *Connar v. West Shore Equipment*, 68 Wis. 2d 42, 227 NW 2d 660 (1975), the Supreme Court said:

At the requested special-verdict-stage of a lawsuit, it is immaterial that the entity is not a party or is immune from further liability. ...the *apportionment must include all whose negligence may have contributed to the arising of the cause of action.* [Emphasis added.]
- **The substitute amendment still applies to pending cases which will cause delays and additional costs for the courts and violate the constitutional rights of injured citizens.** Legislation written to apply to already existing claims disrupts the constitutionally protected property rights of an injured person. The provision should be removed from the substitute amendment and the legislation, like all legislation, should apply prospectively.

PROTECT ASBESTOS VICTIMS, OPPOSE ASA1 to AB-19