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**Testimony of Jeffrey A. Pitman  
Wisconsin Association for Justice  
Before the Senate Judiciary and Labor Committee  
April 11, 2013  
Regarding  
2013 Senate Bill 13**

Members of the Committee, my name is Jeff Pitman. I am a partner with the Milwaukee law firm of Pitman, Kyle, Sicula & Dentice, S.C. and I serve as President of the Wisconsin Association for Justice (WAIJ). Thank you for giving me the opportunity to speak against Senate Bill 13. SB-13 is an extreme bill that no other state in the country has passed.

While SB-13 deals with personal injury trusts, besides asbestos no other personal injury trusts have been identified that this legislation would apply to right now. That may not be true in 10 years.

We know the bill will apply to asbestos claims. Death and illness from asbestos have caused the longest-running public health epidemic in the world. The scope of the problem is huge. The World Health Organization estimates that more than 107,000 people die each year from asbestos-related lung cancer, mesothelioma and asbestosis resulting from exposure at work. Malignant mesothelioma is a fatal cancer primarily associated with exposure to asbestos.

In the United States the Center for Disease Control and Prevention (CDC) found a total of 18,068 deaths of persons with malignant mesothelioma were reported from 1999-2005. The Occupational Safety and Health Administration (OSHA) declared that they are "aware of no instances in which exposure to a toxic substance has more clearly demonstrated detrimental health effects on humans than has asbestos exposure."

From 1999 to 2005, Wisconsin ranked 14th in the nation in the number of mesothelioma and asbestos-related deaths, with a rate of 14.42 deaths per one million people per year or about 80 deaths per year.

Plain and simple, SB-13 is designed to make it more difficult for people, workers and veterans, that become ill from asbestos exposure to be compensated in a timely fashion for their disabling illness.

Having the benefit of hearing the testimony on the companion bill in the Assembly last week, the proponents of this legislation have not shown one iota of evidence that fraud or double-dipping is occurring in Wisconsin asbestos cases that necessitates this legislation.

**SB-13 adds more regulations and bureaucracy to all personal injury cases** by requiring individuals to undertake a convoluted and complex process for proceeding with a personal injury claim. If the goal is to have a less intrusive, less bureaucratic, smaller government, SB-13 does exactly the opposite. For asbestos victims in particular, dying individuals will be required to chase small and insignificant recoveries from asbestos trusts before they may pursue more substantial recoveries in court.

**The impact on all personal injury cases in Wisconsin would be great.**

Products Liability	95
Personal Injury, Auto	3,720
Medical Malpractice	117
Wrongful Death	83
Intentional Tort	279
Other Personal Injury	1,161
Asbestos	9
Property Damage	886
<b>Total</b>	<b>6,350</b>

If this process would apply to every personal injury case, that would be 6,350 cases affected in 2012. This would greatly increase the time required to handle personal injury cases and result in needless and unnecessary delay for trial courts.

If the issue is really about asbestos cases, there were only 9 asbestos cases filed in Wisconsin in 2012. Why are we creating this bureaucratic nightmare for people who are dying from a fatal disease? SB-13 would only increase the time from filing a case until it closes.

**SB-13 declares certain trust evidence to be “relevant.”** The rules of evidence, Wis. Stat. § 904.01 et seq., define relevant evidence. By law, courts must scrutinize the evidence on a case-by-case basis to assess admissibility. *State v. Walters*, 2004 WI 18. SB-13 would seem to invade the providence of the trial courts to determine what is relevant evidence.

**Bankruptcy courts are governed by federal law.** SB-13 requires a trial judge to determine a value for an unresolved claim. An asbestos trust established by a Bankruptcy Court would be under the jurisdiction of federal courts. Any state court valuation or determination of the rights of a person, which is under the jurisdiction of a bankruptcy court, would violate the Supremacy Clause of the U.S. Constitution.

**SB-13 is written to apply to pending cases, which will wreak havoc on the courts and violate the constitutional rights of injured citizens.** Retroactive legislation disrupts the constitutionally protected property rights of an injured person. SB-13 takes away the vested rights of an injured asbestos victim.

Over the past 25 years, the Wisconsin Legislature has attempted at various times to pass legislation that would retroactively apply to the rights of the citizens of this state. In each instance the Wisconsin Supreme Court has struck down the retroactive application of the legislation because the application was unfair.

- In *Martin v. Richards*, 192 Wis. 2d 156, 531 N.W.2d 70, 88 (1995), the Wisconsin Supreme Court held the retroactive application of the \$1 million cap on noneconomic damages in medical malpractice cases was unconstitutional (Legislation passed in 1986);
- In *Neiman v. American National Property and Casualty Co.*, 2000 WI 83, 236 Wis. 2d 411, 613 N.W.2d, the Wisconsin Supreme Court held the increase in the wrongful death caps could not be retroactively applied; (Legislation passed in 1998)
- In *Matthies v. The Positive Safety Mfg.*, 2001 WI 82, 244 Wis. 2d 720, 628 N.W.2d 842, the Wisconsin Supreme Court held the retroactive application of the joint and several liability statute unconstitutional. (Legislation passed in 1995) and
- In *Society Insurance et al v. LIRC*, et al, 2010 WI 68, 326 Wis. 2d 344, 786 N.W. 2d 385. the Wisconsin Supreme Court held the retroactive application of changes to workers compensation benefits in Wis. Stat. §§ 102.17(4) and 102.66(1), unconstitutional. (Legislation passed in 2006)

Including this provision in the bill will cause additional expenses and delays, because everything will get stayed to determine the bankruptcy trust issues. Cases that are set for trial will have to be re-evaluated under the new law. This would also apply to a case where a trial has taken place and is on appeal. Such an application is an inefficient and ineffective use of

judicial resources and disrupts the vested property rights of the injured party. The provision should be removed from the bill and the legislation, like all legislation, should apply prospectively.

**SB-13 is just the latest effort in this campaign to delay or deny justice** to people with personal injury claims, particularly those who are injured or who die as a result of asbestos. The legislation is an attack on Wisconsin's sickest and weakest citizens, who through no fault of their own, have a deadly disease.

Wisconsin asbestos and personal injury victims should not be an outlier for the extreme agenda of asbestos manufacturers. WAJ urges you to defeat SB-13.