



# Supreme Court of Wisconsin

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For Information Only

2013 Senate Bill 13

Senate Committee on Judiciary and Labor  
Senator Glenn Grothman, Chair  
April 11, 2013

Thank you, Chairperson Grothman and members of the Committee. I am Nancy M. Rottier, the Legislative Liaison for the Director of State Courts. I am appearing on behalf of the Legislative Committee of the Wisconsin Judicial Conference, for information only, to raise some questions about portions of 2013 Senate Bill 13 regarding personal injury trusts. My remarks are substantially similar to those I made last week to the Assembly Committee on Judiciary regarding the companion bill, AB 19.

The Wisconsin Judicial Conference is composed of all appellate and circuit court judges in Wisconsin. The Legislative Committee is the Judicial Conference's elected committee of judges who examine legislation to determine its impact on the court system.

The Legislative Committee has not taken a position to either support or oppose SB 13 but does want to raise several questions and areas of concern about the possible implications of SB 13. When considering this bill, the committee also sought input from other experienced trial court judges, who helped the committee identify these questions and concerns.

## Definitions

SB 13 appears to apply to all "personal injury or other tort" actions filed in circuit court. (See page 3, line 16). In 2012, there were 6,350 actions filed in circuit courts that were identified as involving personal injury or property damage. Do the detailed procedures of the new s. 802.025 apply to all of these cases? For instance, does a claim for property damage fit the definition of "personal injury claim" in the bill? The definition is very broad and includes "any claim for damages, loss, . . . that is related to bodily injury or another harm." We think a reasonable argument could be made that the new statute

would apply to a very broad range of actions, including property damage claims. If it was not the intent to have these new procedures apply to all personal injury or property damage actions, then we believe some clarification is needed to clarify the applicable limits.

### **Timing and Scheduling Issues**

The greatest area of concern we have about SB 13 is sub (4) of the new s. 802.025 created by the bill. (See page 4, lines 23-25) That section reads: "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)." Although the language could be interpreted to mean a trial cannot be held sooner than 180 days after disclosure, we believe when read in its context, it is better read to require that the court *may not schedule a trial* until at least 180 days after disclosure.

In most of Wisconsin's circuit courts, judges hold scheduling conferences with the parties within about 90-120 days after the case is filed in order to lay out an orderly schedule of discovery, disclosure of witnesses, pretrial conferences and trial. Because of the way court calendars are handled, it is important for parties to have a firm date for a trial early in the process.

Under the terms of the bill, it appears the circuit court might not be able to hold a scheduling conference until seven or eight months after the case is filed. This will have the consequence of significantly increasing the time between filing and trial. The effect of the proposed language is to delay any trial being set no sooner than probably more than a year and a half after filing. This is well beyond the time frame most circuit courts customarily set.

Based on testimony given at last week's public hearing on the companion bill, AB 19, it appears it was the intent to limit the applicability of this scheduling provision to only cases involving personal injury trusts. If this committee concurs with that assessment, then we would request that there be clarifying language to make the new s. 802.025(4) clearer.

Another timing issue is the requirement for disclosure by the plaintiff of any possible claims against a personal injury trust. The bill requires the court to order the plaintiff to file a statement within 30 days after the action is filed. (See page 3, lines 14-23) Ordinarily, the court would not enter an order in a case without notifying all the parties. In the first 30 days, however, it is unlikely the defendants have even filed an answer to the complaint. If the issue being addressed is early disclosure of a possible personal injury trust issue, then we would suggest the committee consider whether the disclosure could be contained in the complaint itself.

### **Relevancy of Documents**

The new s. 802.025(3)(a) relates to the relevance and authentication of personal injury trust documents. (See page 4, lines 12-17) We wonder about the placement of this provision in ch. 802 relating to pretrial procedures and within a paragraph that is titled

“Discovery; use of materials.” Would this provision as it relates to the relevance and authentication of personal injury trust documents be more properly placed in the evidence code, chapters 901-911 of the statutes?

This provision also seems to conflict with our current evidence code, in ch. 909, Stats. about the authentication of documents. Several judges have raised this question: What gives the documents involved in these cases any more inherent reliability than any other documents?

### **Judicial Notice**

Finally, we want to call your attention to the provision that “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.” (See page 6, lines 17-19) This compound sentence seems to be capable of more than one interpretation because of its structure.

This provision also seems to be contradictory to the current statute governing judicial notice, s. 902.01(2)(b), Stats. The current judicial notice statute provides that an adjudicative fact must be “a fact capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” The value of a claim is often the main item disputed in a personal injury claim; it would appear to be outside the normal scope of the judicial notice statute. In addition, how can the court reasonably attribute any value to the claim without having heard it? We would request further consideration of whether this provision involving judicial notice is appropriate.

Thank you for your consideration. We would be very willing to work with the authors or this committee to help clarify some of these issues. I would be happy to answer any questions you may have. Thank you.