ASSEMBLY, No. 1860

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblywoman HOLLY T. SCHEPISI
District 39 (Bergen and Passaic)

SYNOPSIS

"Personal Injury Trust Fund Transparency Act;" requires plaintiff to file personal injury trust claims under certain circumstances; addresses allocation of trust claims; establishes scheduling and discovery requirements for certain tort actions.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning certain tort actions and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Personal Injury Trust Fund Transparency Act."

2. As used in this act:

"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 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. 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, but does not include a claim for compensatory benefits pursuant to crime victims' compensation, workers' compensation, or veterans' benefits.

"Personal injury trust" means a government-approved or court-approved trust, qualified settlement fund, compensation fund or claims facility created as a result of an administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U.S.C. s.524(g), 11 U.S.C. s.1121(A), or another applicable provision of law, that is intended to provide compensation to claimants alleging personal injury claims as a result of harm, also potentially compensable in a personal injury or tort action, for which the entity creating the trust, compensation fund, or claims facility is alleged to be responsible.

"Trust claims materials" means a final executed proof of claim against a personal injury trust and all other documents and information relevant or related to a resolved, pending or potential claim against a personal injury trust. Trust claims materials include, but are not limited to, claims forms and supplementary materials, affidavits, depositions and trial testimony, work history, medical and health records, all documents that reflect the status of the claim, and all documents that relate to the settlement of the claim if the claim has settled.

"Trust governance document" means all documents that relate to eligibility and payment levels, including claims payment matrices, trust distribution procedures, or plans for reorganization, for a personal injury trust.

3. a. Within 30 days after an action for a personal injury or other tort is filed in a court of this State relating to any condition or

a substantially similar condition that is eligible for payment from a personal injury trust, or within 30 days after the effective date of this act, whichever is later, and before any evidence is preserved by deposition in the personal injury or other tort action, the plaintiff shall do all of the following:

(1) Provide the court and parties with a sworn statement signed by the plaintiff and the plaintiff's counsel, under penalties of perjury, indicating that an investigation of all personal injury trust claims has been conducted and that all personal injury trust claims that can be made by the plaintiff or any person on the plaintiff's behalf have been filed. The sworn statement shall indicate whether there has been a request to defer, delay, suspend, or toll any personal injury trust claim, and provide the disposition of each personal injury trust claim.

(2) Provide all parties with all trust claims materials, including trust claims materials that relate to conditions other than those that are the basis for the personal injury or tort action and including all trust claims materials from all law firms connected to the plaintiff, including anyone at a law firm involved in the personal injury or tort action, any referring law firm, and any other firm that has filed a personal injury trust claim for the plaintiff or on the plaintiff's behalf.

(3) If the plaintiff's personal injury trust claim is based on an exposure through another individual, the plaintiff shall produce all trust claims materials submitted by the other individual to any personal injury trusts if the materials are available.

(4) Supplement the information and materials required under this section within 30 days after the plaintiff or a person on the plaintiff's behalf supplements an existing personal injury trust claim, receives additional information or materials related to a personal injury trust claim, or files an additional personal injury trust claim.

b. The court may dismiss the personal injury or other tort action if the plaintiff fails to comply with this section.

c. A personal injury or other tort action may not proceed to trial until not less than 180 days after the requirements of subsection a. of this section are met.

4. a. A defendant may file a motion requesting a stay of the proceedings on or before the later of the 60th day before the date on which the trial in the action is set to commence or the 15th day after the defendant first obtains information that could support additional trust claims by the plaintiff. The motion shall identify the additional personal injury trust claims the defendant believes the plaintiff can file and include information supporting the additional personal injury trust claims.

b. Within 10 days of receiving the defendant's motion, the plaintiff shall:

(1) File the personal injury trust claims;

(2) File a written response with the court stating why there is insufficient evidence for the plaintiff to file the personal injury trust claims; or

(3) File a written response with the court requesting a determination that the cost to file the personal injury trust claims exceeds the plaintiff's reasonably anticipated recovery.

c. (1) If the court determines that there is a sufficient basis for the plaintiff to file a personal injury trust claim identified in the motion to stay, the court shall stay the personal injury or tort action until the plaintiff files the personal injury trust claim and produces all related trust claims materials.

(2) If the court determines that the cost of submitting a personal injury trust claim exceeds the plaintiff's reasonably anticipated recovery, the court shall stay the personal injury or tort action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage, or other connection to personal injury or tort covered by that personal injury trust.

d. Not less than 60 days after the plaintiff provides the documentation required under this section, the court may schedule the personal injury or tort action for trial.

5. a. Not less than 30 days before trial in a personal injury or tort action, the court shall enter into the record a document that identifies every personal injury trust claim made by the plaintiff or on the plaintiff's behalf.

b. Trust claim materials that are sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may be sufficient to support a jury finding that the plaintiff was exposed to products for which the trust was established to provide compensation and that the exposure may be a substantial factor in causing the plaintiff's injury that is at issue in the personal injury or tort action.

6. a. Trust claims materials and trust governance documents are presumed to be relevant and authentic, and are admissible in evidence in a personal injury or tort action. A claim of privilege does not apply to any trust claims materials or trust governance documents.

b. A defendant in a personal injury or tort action may seek discovery from a personal injury trust. The plaintiff may not claim privilege or confidentiality to bar discovery 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 a defendant.

7. a. If a plaintiff proceeds to trial before one or more of the plaintiff's personal injury trust claims is resolved, there shall be a rebuttable presumption that the plaintiff is entitled to, and will receive, the compensation specified in the trust governance document applicable to that person's 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.

b. 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 subsection a. of this section plus any amount the plaintiff has been awarded from a personal injury trust claim identified in subsection a. of section 5 of this act. 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.

8. a. In a personal injury or tort action, on the motion of a defendant or judgment debtor seeking sanctions or other relief, the court may impose any sanction provided by court rule or a law of this State, including, but not limited to, vacating a judgment rendered in the action, for a plaintiff's failure to comply with the disclosure requirements of this act.

b. If the plaintiff or a person on the plaintiff's behalf files a personal injury trust claim after the plaintiff obtains a judgment in a personal injury or tort action, and that personal injury trust was in existence at the time the plaintiff obtained the judgment, the trial court, on motion by a defendant or judgment debtor seeking sanctions or other relief, has jurisdiction to reopen the judgment in the personal injury or tort action and adjust the judgment by the amount of any subsequent personal injury trust payments obtained by the plaintiff and order any other relief to the parties that the court considers just and proper.

c. A defendant or judgment debtor shall file any motion under this section within a reasonable time and not more than three years after the judgment was entered.

9. This act applies to personal injury or tort actions filed on or after the effective date of this act. The act also applies to any pending personal injury or tort actions in which trial has not commenced on or before the effective date of this act. However, if the application of a provision would unconstitutionally affect a vested right, the provision shall only be applied prospectively.

10. This act shall take effect on the first day of the tenth month next following enactment.

STATEMENT

This bill requires the filing of a claim against a personal injury trust in certain circumstances, addresses the allocation of trust claims, and establishes discovery and scheduling requirements for certain personal injury actions.

A personal injury trust is a trust or compensation fund that is established pursuant to a bankruptcy or other legal action in order to compensate plaintiffs who file claims as a result of harm potentially compensable in a personal injury action, for which the entity that established the personal injury trust is to be responsible. The personal injury trust compensation system operates independently of personal injury civil actions.

It is the sponsor's belief that a lack of transparency and oversight in the personal injury trust compensation system has resulted in suppression of evidence in personal injury or tort actions; statements made in personal injury or tort actions by plaintiffs that are inconsistent with information provided to personal injury trusts, and may reflect inaccurate or untruthful information in support of personal injury or tort litigation by plaintiffs; and unfair compensation for certain personal injury plaintiffs. It is the sponsor's intent, through this legislation, to provide access to documentation that will enable claims to be evaluated based on accurate and reliable information.

Under the bill, a plaintiff who files a personal injury claim or other tort claim must, within 30 days, provide the court with a sworn statement indicating that an investigation of all personal injury trust claims has been conducted and that any personal injury trust claims that can be made on the plaintiff's behalf have been filed. The plaintiff shall provide the parties with copies of all trust claims materials.

The bill also allows a defendant to move the court to stay proceedings if the defendant identifies additional personal injury trust claims the defendant believes the plaintiff can file. In response, the plaintiff may file the claims, explain to the court why there is an insufficient basis to file the claims identified by the defendant, or request a determination from the court that the cost of submitting the personal injury trust claims would exceed the plaintiff's reasonably anticipated recovery. If the court determines that there is sufficient basis for the plaintiff to file the personal injury trust claims, the court shall stay the proceedings until the plaintiff files the personal injury trust claims and provides copies of the trust claims materials to the parties. If the court determines that the cost of filing the personal injury trust claims identified by the defendant exceeds the plaintiff's reasonably anticipated recovery from those trusts, the court shall stay the proceedings until the plaintiff provides the parties with a sworn statement of the

plaintiff's history of exposure, usage, or other connection to personal injury or a tort covered by that personal injury trust.

The bill requires the court to enter into the record before trial a list identifying each personal injury claim the plaintiff has made against a personal injury trust.

Personal injury trust claims and trust claims materials are non-privileged under the bill.

If a defendant is found liable for the plaintiff's injury, the defendant is entitled to a setoff in the amount of any money the plaintiff received from a personal injury trust and the value of any pending trust claims.

Sanctions are available against a plaintiff that fails to comply with the act, including the potential for any judgment to be reopened and adjusted by the amount of any post-judgment personal injury trust payments received by the plaintiff.