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Promoting Fairness and Equity in Wisconsin's Civil Justice System

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To: Members, Wisconsin Assembly; Members, Wisconsin Senate

From: Wisconsin Civil Justice Council, Executive Committee

Date: March 24, 2009

RE: Request to Remove Contributory Negligence Provisions from State Budget

On behalf of the Wisconsin Civil Justice Council, we respectfully request that the provisions in the budget (AB 75) relating to contributory negligence and jury instructions be removed to ensure these sweeping policy changes to Wisconsin's civil justice system be given fair and deliberate consideration.

As you may know, buried deep in the Budget Bill are fundamental changes to our civil justice system relating to contributory negligence and jury instructions. These changes include:

1. Anyone with equal or greater fault than the plaintiff can be held 100% responsible ("jointly and severally liable"), even if only 1% at fault. (AB 75, page 1605)
2. A person or business that is less at fault than the plaintiff can be sued so long as the "combined" fault of all persons sued is greater than the plaintiff. (AB 75, page 1605)
3. The court must inform the jury how the jury's findings on fault affect responsibility for damages; that is, to allow the jury to adjust fault determinations to maximize awards. (AB 75, page 1588)

The joint and several liability change in the budget repeals the reforms passed in 1995, which matched liability more closely to fault and fairness. We moved from a "one percent-pay all" system to one requiring at least 51 % at fault before being liable for 100% of the damages. Notably, the 1995 legislation (SB 11/Act 17) had public hearings and the full deliberation of elected officials. These reforms passed by wide margins, with bi-partisan support (24-8 in the Senate and 69-27 in the Assembly).

The Governor's budget not only abolishes Wisconsin's bipartisan reforms, it sets forth a system even more radical than existed prior to 1995. Never before have we required someone to pay damages to another who is more at fault. Never before have we required the jury be told how their fault allocations affect awards. And never again should we require someone with as little as one percent fault to pay for 100 percent of damages.

The attached Fact Sheet sets forth vital policy considerations. In essence, these provisions drastically change Wisconsin's litigation landscape, tilting the scales of justice away from fairness and toward more litigation, higher awards and to a less competitive Wisconsin. Virtually every business and the individuals that are members of associations on the Council's Board will be significantly harmed by these provisions. At a minimum, these provisions should be removed from the budget and allowed to be debated as separate legislation, with public hearings and the full deliberation of elected officials.