



# WISCONSIN CIVIL JUSTICE COUNCIL, INC.

*Promoting Fairness and Equity in Wisconsin's Civil Justice System*

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## SAMPLE MEMORANDUM TO LEGISLATORS

TO:

FROM:

DATE:

RE: Contributory Negligence Provisions in State Budget (AB 75)

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Governor Jim Doyle's budget bill contains three provisions that would undo sensible reforms made during the 1990s and drastically alter Wisconsin's civil justice system. If enacted, these provisions would create a second set of victims by, in some cases, forcing a person or business minimally at fault pay 100% of the plaintiff's damages. Because the proposals in the budget go too far and will adversely affect Wisconsin's civil justice system, the \_\_\_\_\_ opposes these measures.

### **Joint and Several Liability**

The provision amending Wisconsin's joint and several liability law would undo the sensible reforms made in 1995. Prior to 1995, Wisconsin had a "pure" joint and several liability, meaning that a defendant as little as 1% at fault could be liable for 100% of the plaintiff's damages. The Legislature amended the law in 1995 in a bipartisan manner (69-27 in the Assembly; 24-8 in the Senate) so that a defendant can be responsible for 100% of damages only if he or she is 51% or more at fault. This compromise placed Wisconsin in the mainstream when compared with other state laws. The proposal in the budget would place Wisconsin in the dubious position of having the most expansive joint and several liability law in the Midwest, and one of the worst in the nation.

The budget would allow plaintiff attorneys to target anyone that may have a nexus to the event causing injury. For example, a bus company can be sued by a passenger of an automobile when the driver of the automobile runs a stop sign and hits the bus legally entering the intersection. With the driver of the automobile most at fault, but with no meaningful assets, the innocent passenger merely has to show the bus company was 1% at fault.

This is not a hypothetical. Before the 1995 changes, millions were paid by a bus company to avoid having to go to trial and being forced to pay even more. Under Gov. Doyle's budget proposal, expect defendants to settle prior to litigation in order to avoid being found 1% at fault, but 100% liable for substantial damages.

### **Suing Those Less at Fault**

A second provision would allow a plaintiff to sue a defendant who is less at fault than the plaintiff. Requiring someone to pay damages to another who is more at fault is unfair and will lead to substantially more litigation. This was never allowed under the law prior to the 1995 changes. Wisconsin has always compared a defendant's fault individually to the plaintiff.

The most significant danger this provision poses is how it allows plaintiff lawyers to go on a fishing expedition, suing anybody that has a remote connection to the incident. So long as the plaintiff is arguably 50% or less at fault, businesses and individuals can be sued even if their fault is substantially less than the plaintiff's. Therefore, plaintiffs will sue as many people as possible so that the combined negligence of the defendants surpasses their own negligence. This will lead to a litigation nightmare.

If enacted, more businesses and individuals are going to get dragged into a lawsuit. The more defendants there are, the easier it is for the plaintiff's lawyer to argue that the plaintiff's negligence is less than the combined negligence of defendants. Similar to the first provision, this creates a second class of victims.

**Explaining to Jury Effect of Their Verdicts**

The third provision forces circuit courts to explain to the jury the effect on awards and liabilities of the percentage of negligence found by the jury to be attributable to each party. The practical result is to create situations in which jurors are tempted to make or alter findings in such a way as to bring about a desired outcome without any regard to the true facts or the law.

All three provisions would severely affect Wisconsin's economy at a time when we can least afford it. Please remove these provisions from the state budget. At the very least, these provisions should be introduced as separate bills and be required to go through the proper legislative process.