



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

Budget Rewards Trial Lawyers—Harms Wisconsin's Economy

Hidden in Governor Jim Doyle's 1,743-page budget bill are three provisions that would reward trial lawyers and severely harm Wisconsin tourism industry—something this state can ill-afford during this severe recession.

The policy proposals reverse the reforms made during the 1990s. If enacted, the provisions will give Wisconsin the dubious honor of having the most expansive tort laws in the Midwest, and making it one of the worst states in the country.

The first provision, known as joint and several liability—or the “deep pocket” rule—makes each co-defendant in a tort lawsuit potentially responsible for 100% of the damages, if even if he or she is as little as 1% at fault.

Wisconsin addressed this problem in 1995 when it amended its law so that a defendant can be responsible for all damages only if he or she is 51% or more at fault.

Prior to this sensible reform, plaintiff attorneys used the joint and several liability law as a club to force businesses to “pay up” or risk going to court where they could lose everything.

An example of this was a case in Racine County where a man driving a car ran a stop sign and hit a school bus that was lawfully passing through the intersection. A passenger in the car was severely hurt, and because the car driver's insurance did not fully cover the passenger's damages, the passenger sued the bus company. The bus company settled the case for \$1.9 million out of fear of losing more if it went to trial.

In an interview with the *Milwaukee Journal*, the plaintiff attorney in the case explained how the trial lawyers' racket worked, “I contended that a jury would have found the bus driver at least 1% negligent. And in Wisconsin, regardless of the percentage of negligence, you can collect the whole judgment from whomever in the case has the most assets.”

Simple as that: find a deep-pocket who is as little as 1% at fault and sue. If the governor's proposals are adopted by the Legislature, trial lawyers will have the ability—and the incentive—to file more lawsuits and go after more businesses.

The second policy provision requires the court to inform the jury how its findings on fault affect responsibility for damages. The practical effect of this provision would be 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. This provision is designed to deliberately bias the jury.

The third provision will lead to lawsuit chaos. The provision allows a person who is the most at fault to sue the other parties in a case who are less at fault. For example, plaintiff attorneys will now have the ability to round up as many defendants as possible so that their combined negligence exceeds the plaintiff's negligence. Current law requires the plaintiff's negligence to be compared individually with each co-defendant. If the plaintiff is more at fault than the individual co-defendant, he or she cannot sue that person or business.

All three policy provisions would be disastrous for Wisconsin's economy. Businesses contemplating whether to locate here will undoubtedly think twice if these laws are enacted. Likewise, businesses currently operating in Wisconsin may decide to relocate where trial attorneys aren't allowed to sue with impunity.

Write or call (800-362-9472) your state senator and representative. Tell them that Wisconsin needs more jobs—not trial lawyers. Tell them you want the joint and several liability and other trial lawyer provisions removed from the budget.