



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

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TO: Members, Joint Committee on Finance

FROM: Wisconsin Civil Justice Council, Inc.

RE: **Liability Provisions in State Budget (AB 75)**

DATE: May 26, 2009

As you may know, over 50 organizations participated in a Capitol press conference last week to oppose the budget provisions relating to joint and several liability, combined fault, and jury instructions. (Attached)

Local government was part of this effort, including the *Wisconsin Counties Association* and *Wisconsin Towns Association*. Also opposing these provisions is the *City of Milwaukee*, which in a recent memo highlighted the inequities of being held 100 percent responsible when only one percent at fault. One such case is worth noting:

Upon spotting a stolen vehicle, the police activated their lights and siren, which in turn "caused" the felon to flee down an alley and crash into and kill an innocent driver. Merely turning on their lights and siren created a one percent fault scenario leading to 100 percent liability. (Attached)

For simple fairness reasons, our laws now require at least 51 percent fault before being held 100 percent liable. *The bipartisan support for the 1995 reforms included 25 Democrats*. Unlike the proposals here, those reforms were enacted through a non-budget bill (SB 11/Act 17), with public hearings and the full deliberation of elected officials. (Attached)

This fairness precept is found throughout the Midwest, as all states (except Illinois) in the 12-state Midwest region have such a 50 percent or higher threshold, or no joint and several liability at all. While some may think moving to Illinois' 25-percent threshold is a compromise, we believe moving from the absurdity of a one percent rule to *merely* having the worst standard in the Midwest is not a compromise at all.

With respect to the jury instructions provision, the trial and appellate court judges in the state are also opposed. As noted in the Fiscal Bureau paper (#390), both the *Judicial Conference* and its Legislative Committee, both chaired by *Chief Justice Shirley Abrahamson*, oppose this provision, noting various problems, including more appeals and higher court costs.

Finally, the concept of combining the fault of all defendants to allow a plaintiff that is more at fault to sue those less at fault is a radical change designed for more lawsuits targeting more people, businesses, charities, and anyone with money or insurance.

Businesses, local officials and editorial boards across the state all agree that these provisions should be removed from the budget; only a very narrow constituency, certain personal injury lawyers, disagrees.