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Promoting Fairness and Equity in Wisconsin's Civil Justice System

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TO: Members, Wisconsin Assembly

FROM: Wisconsin Civil Justice Council, Inc.

RE: **Joint Finance Changes to Liability Provisions Budget (AB 75)**

DATE: June 2, 2009

Anyone who suggests the Joint Finance changes to the liability provisions in the budget were helpful or some sort of compromise is either being dishonest or terribly ill informed. This adopted Motion 700 results in the following:

- A one-percent at fault defendant can still be forced to pay 100 percent of the damages.
- Less at fault defendant can be sued by an even more at fault plaintiff.
- Together the trial lawyers reach their nirvana – a business less at fault than those suing it could be jointly and severally liable.

The motion changed the joint and several trigger to 20 percent at fault, but then rendered that threshold meaningless by giving the trial lawyers *carte blanche* to game the 20 percent calculation. In artful – but deceitful – drafting, the motion only allows those they sue or settle with to be considered in the calculation.

This allows the trial lawyers to exclude from the calculation those most at fault but who have no assets or insurance. For example, they can sue only a 1 percent deep pocket, making that party 100 percent at fault under their math. Existing law fairly allows someone sued to present evidence of other parties at fault to show they don't breach the joint and several threshold.

Another ploy in the Joint Finance motion relates to pooling defendants' fault to allow someone more at fault to sue someone less at fault. The motion adds to the pool those who settled and third parties sued by the defendant. This destroys the concept of fairness behind the existing law that bars those more at fault from suing those less at fault. Notably, these third parties are included when it helps the trial lawyers, but are excluded for calculating the 20 percent threshold.

Here's how this rigged system would work assuming a 1% at fault deep pocket, 4% at fault plaintiff, 95% at fault actor with no financial resources, and \$1 million in damages. The plaintiff only sues the deep pocket, but the deep pocket files a third party complaint against the 95% party.

- Because the 95% is pooled with the deep pocket's 1%, and greater than the plaintiff's 4%, the more at fault plaintiff can sue the deep pocket.
- Because the 95% is a third-party defendant (not sued by plaintiff), that percent is excluded when calculating the joint and several threshold; thus, the deep pocket's 1% becomes 20% (plaintiff's 4% equates to 80% fault).
- Being 20% under this scheme triggering joint and several for the 1% deep pocket who must pay the plaintiff who is four times more at fault \$960,000 (\$1 million less the plaintiff's 4%, or \$40,000).

These changes made by Joint Finance are complicated, one-sided, and were probably misunderstood by the Committee. It screams for a process more open than the State budget as a vehicle to overhaul our civil justice system. We simply don't believe it is your intent to punish virtually all of your constituents merely to benefit the few trial lawyers who are behind this effort.