



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

Officers & Members

- President - Bill Smith
- National Federation of Independent Business*
- Vice President - James Buchen
- Wisconsin Manufacturers & Commerce*
- Treasurer-Andy Franken
- Wisconsin Insurance Alliance*
- Secretary - Pat Stevens
- Wisconsin Builders Association*
- John Mielke
- Associated Builder & Contractors*
- James Boullion
- Associated General Contractors of Wisconsin*
- Michael Crooks
- Civil Trial Counsel of Wisconsin*
- Beata Kalies
- Electric Cooperatives*
- Gary Manke
- Midwest Equipment Dealers Association*
- Nickolas George
- Midwest Food Processors Association*
- Mary Ann Gerrard
- Wisconsin Automobile & Truck Dealers Association*
- Peter Thillman
- Wisconsin Economic Development Association*
- Eric Borgerding
- Wisconsin Hospital Association Inc.*
- Mark Grapentine
- Wisconsin Medical Society*
- Thomas Howells
- Wisconsin Motor Carriers Association*
- Matthew Hauser
- Wisconsin Petroleum Marketers & Convenience Store Association*
- Edward Lump
- Wisconsin Restaurant Association*

TO: Members, Assembly Committee on Judiciary and Ethics
FROM: Andrew Cook, on behalf of the Wisconsin Civil Justice Council, Inc.
DATE: July 14, 2009
RE: **OPPOSITION TO ASSEMBLY BILL 291**

The Wisconsin Civil Justice Council respectfully requests your opposition to Assembly Bill 291, which allows recovery between adult children and their parents for loss of society and companionship in medical malpractice cases.

Loss of society and companionship in medical malpractice cases was never part of the common law but is a creature of statute. In fact, the Wisconsin Legislature has very carefully and thoughtfully limited recovery to spouses, minor siblings and minor children and their parents. Wisconsin law allows plaintiffs to be compensated for all expenses that can be measured by objective standards. For example, families can be compensated for medical bills, lost wages, loss of earning capacity, funeral expenses, pain and suffering and punitive damages.

In past debates over similar proposed legislation, proponents have argued that the legislation is needed because of a misinterpretation (by the Wisconsin Supreme Court) of the statute rather than a "conscious decision" made by the Legislature. However, during the 1997-98 legislative session the issue was openly discussed and debated. Further, the Supreme Court pointed out in *Czapinski v. St. Francis Hospital, Inc.* 236 Wis.2d 316, 613 N.W.2d 120 (2000), that the Senate rejected an amendment which would have defined "child" in Wis. Stat. § 655.007 to include adult or minor child.

Loss of society and companionship is impossible to measure objectively. No amount of money can replace the companionship that could have been shared with a loved one. Moreover, there is no established societal need to compensate an adult child or parent in medical malpractice cases. Wisconsin has chosen to allow such recovery in the limited circumstances referred to above. While the entire concept of allowing recovery for loss of society and companionship is debatable, the Wisconsin Legislature should be commended for limiting those eligible to recover. If this legislation is enacted, where might we go next? (Grandparents, cousins, significant others, close friends, or even associates?)

In conclusion, the WCJC respectfully urges you to oppose AB 291 and avoid encouraging additional difficult and costly litigation.

[The Wisconsin Civil Justice Council is comprised of a number of associations and businesses. The WCJC's primary goal is to achieve fairness and equity in the civil justice system, reduce costs, and enhance Wisconsin's image as a place to live and work.]

