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Promoting Fairness and Equity in Wisconsin's Civil Justice System

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TO: Members, Assembly Committee on Judiciary
FROM: Wisconsin Civil Justice Council
DATE: December 10, 2015
RE: **Support for AB 539 (Collateral Source/Phantom Damages)**

The Wisconsin Civil Justice Council (WCJC) respectfully encourages you to support AB 539 relating to phantom damages in personal injury cases.

Despite nationally recognized civil justice reforms in recent years, businesses perceive Wisconsin's litigation climate as getting worse. Top attorneys from major companies partaking in a recent U.S. Chamber survey dropped us five spots to 20th in the nation for litigation climate.* This perception handicaps our ability to retain and grow existing businesses and attract new jobs to Wisconsin.

A key reason for our decline is the ability of plaintiffs and their attorneys to collect "phantom damages" that are reimbursement of expenses that the plaintiff never incurred.

Under current Wisconsin law, plaintiffs and their attorneys reap significant windfalls in personal injury cases because the jury never gets to see evidence of the amount actually paid to the medical provider for the plaintiff's injuries. Instead, due to a number of Wisconsin Supreme Court decisions, the jury is only allowed to see the billed amount, which is typically significantly more than what was actually paid.

In a recent case cited by the U.S. Chamber, the Wisconsin Supreme Court ruled juries can only consider the amount plaintiffs were initially billed for their medical care even if they paid significantly less to the healthcare provider. In this case, the phantom damages were a \$61,487 windfall, but such damages can amount to hundreds of thousands of dollars.

AB 539 is a fair middle-ground for the following reasons:

- Many businesses prefer California law that requires the jury to consider only the actual amount paid. AB 539 allows juries to see both the amount billed and the amount paid when determining reasonable medical expenses.
- AB 539 retains the current law that billing statements or invoices are presumed to state the reasonable value of the health care services.
- Wisconsin law currently allows the jury in medical malpractice cases to see both billed and paid expenses when determining the plaintiff's medical expenses. AB 539 merely extends the law to all personal injury cases.
- AB 539 does not affect the law relating to non-medical economic damages such as lost wages, non-economic damages such as pain and suffering and emotional distress, or punitive damages.

This legislation is fair to all parties and aligns Wisconsin with many states, including California, Indiana, Minnesota, Ohio, and Texas. Passage will make Wisconsin a more competitive place to do business.

WCJC respectfully requests you support AB 539.

*2015 Lawsuit Climate Survey – Ranking the States, U.S. Chamber ILR (Sept. 2015).